

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'C' : NEW DELHI)

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.365/Del/2018
(Assessment Year : 2013-14)

M/s. Heaven Suppliers Pvt. Ltd. Business Communication Centre, 21, Kolkata, West Bengal-700001 PAN : AABCH6901K	Vs.	ACIT, Central Circle-13 New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Salil Aggarwal, Sr. Adv., Shri Shailesh Gupta, Adv.
Revenue by	Shri J.S.Minhas, CIT-DR

Date of hearing:	18.04.2022
Date of Pronouncement:	04 .05.2022

ORDER

PER ANUBHAV SHARMA, JM:

The appeal is preferred by the assessee against order dated 13/11/2017 in appeal no. 77/16-17 for the assessment year 2013-14 passed by Ld.

Commissioner of Income Tax (Appeals)-XXVI, u/s 250(6) of the Income Tax Act, 1961.

2. Now before the Tribunal the assessee has raised following grounds of appeal:-

“1. The order of the Honble Commissioner of Income Tax (A) is arbitrary, against law and facts on record.

2. The Honble Commissioner of Income Tax (A) has failed to consider that the issuance of notices u/s 153C / 142(1)/143(2) of the Income Tax Act, 1961 by the learned Assessing officer and the proceedings conducted there under are against the provisions contained in the Income Tax Act, 1961 and is bad in law and hence liable to be quashed.

3. The Honble Commissioner of Income Tax (A) has erred in confirming addition of Rs. 1, 44, 00,000/- made on protective basis by the Assessing officer without going through the facts of the case, statutory provisions as well as explanation filed during the course of assessment proceeding as well as during appellate proceeding and order so passed shows lack of application of mind

4. The Honble Commissioner of Income Tax (A) while confirming the addition made by the learned Assessing officer has failed to consider the fact that during the course of search no incriminating documents in respect of transaction appearing in the bank account have been found and as such addition made by the Assessing officer while passing the order u/s 153C/ 143(3) is against the provision contained in the Income Tax Act, 1961

5. The Honble Commissioner of Income Tax (A) officer while confirming the addition made on protective basis has failed to consider that the substantive addition made in the hands of companies of JP Minda group has been deleted by Honble

Commissioner of Income Tax (A) on the ground that the investment made by the appellant is genuine

6. The appellant herein craves its right to alter, amend, add and / or withdraw any grounds of appeal and / or to take any additional grounds of appeal.”

3. The facts in brief are a search & seizure operation u/s 132 of the Income Tax Act, 1961 was conducted in the Minda Group of cases on 20.09.2013. During the search and seizure operation documents belonging to the assessee were, also seized from the business and residential premises of the Minda Group. Since documents related to assessee were found and seized during the course of search in the case of M/s Jay Ushin Ltd, therefore, satisfaction note as envisaged u/s 153C was recorded in the case of assessee as well as in the case of M/s Jay Ushin Ltd. Accordingly a notice u/s 153C of the IT Act for A.Y. 2008-09 was issued to the- assessee on 29.01.2016 requiring it to file return of income within 15 days of receipt of such notice. Assessee filed a reply on 25.02.2016 enclosing return of income, audited balance sheet and profit and loss account in response to notice u/s 153C of the Act. In this return assessee had shown income of Rs.7,55,810/-. A notice u/s 143(2) of the Act was issued to the assessee on 03.03.2016. A detailed questionnaire alongwith a notice u/s 142(1) of the Act was issued to the assessee on 03.03.2016.

4. Heard. On behalf of the assessee it was submitted by the Ld. Sr. Counsel that the ground no. 2 is the only ground to which he restricts these arguments as the same goes to the Jurisdictional issue. It was submitted that even the Ld. CIT(A) had appreciated the submission on behalf of the assessee that the judgment of Hon'ble Supreme Court of India in **Commissioner of Income**

Tax-iii, Pune vs. Singhad Technical Education Society, 397 ITR 344 settles the issue that in order to justify assumption of jurisdiction u/s 153C of the Act. The documents seized must be incriminating and must relate to each of the assessment years whose assessments are sought to be reopened. The Ld. CIT(A) without distinguishing still upheld the findings of Ld. AO while in the light of satisfaction note dated 29.01.2016. there was no incriminating material for the relevant financial year 2013-14. On the other hand, ld. DR defended the findings of ld. Tax Authorities below submitting that satisfaction note was only indicative and based upon it the detail inquiry was done in the reassessment.

5. Appreciating the matter on record and the contentions raised it can be observed that the original return of income was filed by the assessee on 30.03.2015 and the time limit to issue notice u/s 143(2) was up to 30.09.2015. However, on the basis of satisfaction note recorded on 29.01.2016 notice u/s 153C was issued in pursuance of which return was filed on 25.02.2016. The satisfaction note is on record at page 1 of the paper book which makes it apparent that admittedly the alleged incriminating evidence related to the assessee pertains to financial years 2008-09 and 2009-10. However, there was no reference to them in the assessment orders. The assessment proceedings were on extraneous facts and evidences then the one referred in the satisfaction note and which were basis for issuing notice u/s 153C of the Act.

5.1 It can be also observed that the ld. First Appellate Authority although took note of judgment of Hon'ble Supreme Court of India in the case of **Singhad Technical Education Society (Supra)** but failed to follow the ratio.

Hon'ble Supreme Court of India in the case of **CIT vs. Singhad Technical Education Society (supra)** has held that incriminating material in regard to the assessee has to pertain to the assessment years in question. Hon'ble Delhi High Court in the case of **CIT vs. Kabul Chawala (2015) 61 taxmann.com 412** has held that if no incriminating material was found during the course of search in respect of the issue, no addition in respect of that issue can be made to the assessment u/s 153A and 153C of the Act. Thus, the bench is of considered opinion that Ld. Tax Authorities below were not justified in making assessment, not based upon incriminating material mentioned in the satisfaction note and thus acted beyond jurisdiction and scope of Section 153C / 143(3) of the Act. That being so, the assessment order deserves to be quashed and the remaining grounds as raised in appeal need not be examined further. Consequently, **the appeal of the assessee is allowed**, the impugned orders are set aside.

Order pronounced in open court on this 4th day of May, 2022.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- 04.05.2022

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI