

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 6194/DEL/2017 [A.Y 2011-12]

The A.C.I.T
Central Circle -18
New Delhi

Vs.

M/s Jagat Overseas
5586, 1st Floor, Lahori Gate
Naya Bazar, Delhi

PAN : AAAFJ 8256 F

CO No. 10/DEL/21
ITA No. 6194/DEL/2017 [A.Y 2011-12]

M/s Jagat Overseas
5586, 1st Floor, Lahori Gate
Naya Bazar, Delhi

Vs.

The A.C.I.T
Central Circle -18
New Delhi

PAN : AAAFJ 8256 F

(Applicant)

(Respondent)

Appellant by : Shri Salil Aggarwal, Sr. Adv
Shri Shailesh Gupta, CA
Shri Madhur Aggarwal, Adv

Department By : Shri Waseem Arshad, CIT-DR

Date of Hearing : 28.08.2023
Date of Pronouncement : 01.09.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue and Cross Objections by the assessee are directed towards the order of the Id. CIT(A) - 27, New Delhi dated 21.07.2017 pertaining to Assessment Years 2008-09 to 2011-12. The impugned appeal is for A.Y 2011-12. The appeal and the cross objections were heard together and are disposed of by this common order for the sake of convenience and brevity.

2. Grievances of the Revenue read as under:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the additions of Rs. 59,00,00,000/- without appreciating the fact that the evidence of transaction of these amounts was found during the course of search and the assessee had surrendered this amounts before the Assessing Officer from his own free will.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the additions of Rs. 59,00,00,000/- by holding that the surrender made by the assessee was not free and that since there was no corroborative evidence in the matter, the addition made on account of surrender cannot be sustained. In fact, the evidence of transaction of Rs. 59,00,00,000/- was found during the search and while confronting the same the assessee has admitted the same and surrendered this amount.

3. The Ld. CIT(A) has erred in holding that the Assessing Officer has made the whole addition on the basis of suspicion and that no evidence was placed on record by the Assessing Officer. In fact, the Assessing Officer has placed enough evidence on record to justify the addition made by him. Further, the assessee did not file any rebuttal evidence either during the course of assessment proceedings or appellate proceedings which explain the contents of the document found during the course of search proceedings.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the additions of Rs. 2,97,15,931/- without appreciating the fact that certain incriminatory documents relating to assessee were found from the premises of Sh. Satish Kumar Pawa and when confronted Sh. Satish Kumar Pawa and assessee could not explain the transaction.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the addition was made on the basis of loose sheet of paper and that no corroborative evidence was there to substantiate the transaction. In fact, as the incriminating documents were found from the possession of partner of assessee firm, burden of proof was on the assessee to explain the transactions recorded therein which the assessee failed to do.

6. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the additions made by the AO without verifying and appreciating the seized records on the basis of which the additions were made by the AO. The Ld. CIT(A) has erred in non verification of seized record even then allowing relief to the assessee obviating the entire search operation which is not justified and against the law."

3. The cross objections are as under:

"1. That the Id. Ld. CIT(A) has grossly erred in law and on facts in sustaining the impugned order of assessment, as they assessment order dated 28.03.2013 passed by the Id. Assessing Officer is without jurisdiction and void ab-initio and is liable to be quashed, as no notice u/s 153C of the Act was ever issued for the impugned A.Y.

2. That the Id. Ld. CIT(A) has further erred both in law and on facts in sustaining the initiation of proceedings u/s 153C of the Act and further completion of assessment order u/s 153C/143(3) of the Act without satisfying the statutory pre conditions for initiation of the proceedings and completion of assessment under the Act.

3. That the Id. Ld. CIT(A) has grossly erred in law and on facts in overlooking the basic fact that no addition was made based on the satisfaction note and the assessment as contemplated u/s 153C is not a de novo assessment and as such the additions so made by the Assessing Officer which are beyond satisfaction note are liable to be deleted in totality, as the same are outside the scope of assessment made u/s 153C of the Act."

4. Since the issues raised in the cross objections go to the root of the matter, we decided to adjudicate it first.

5. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules. Judicial decisions considered wherever they were relevant.

6. Briefly stated, the facts of the case are that a search and seizure operation was conducted by the Directorate of Income-tax, Investigation - 2, New Delhi in Jagat Group of cases, its directors, other individuals and connected associates at the business and residential premises on 14.09.2010.

7. Satisfaction Note was drawn in the case of the assessee on 31.01.2013, which reads as under:

"During the course of assessment proceedings u/s 153A in the case of Shri Sant Lal Agarwal, it is noticed that search and seizure operation u/s 132 was undertaken on 14.09.2010 in the case of Shri Sant Lal Aggarwal at D-31, Pushpanjali Enclave, Pitampura, Delhi. Documents belonging to M/s Jagat Overseas were found and seized from the above premises. Page No. 1 to 11 of Annexure A-18 is a copy of Sale Deed executed between Pramod Garg and Jagat Overseas in respect of built up property being No. 1, Area measuring 208.52 sq. mtr Block A, Pocket -2, Sector

17, Dwarka Residential Scheme, Dwarka, New Delhi for a consideration of Rs. 12 lakhs. The said Sale Deed was executed on 19th day of April 2007. The document pertain to the previous year 2007-08 relevant for A.Y 2008-09.

Apart from the above, during the course of assessment proceedings u/s 153A in the assessee case ...page No. 18 of Annexure A-8 was found and seized during the search operation u/s 132 on 14.09.2010 at D-842, New Friends Colony, New Delhi from the residence of Shri Satish Kumar Pawa. This document refers to advance to farmers for purchase of paddy as on 31.08.2010 to the tune of Rs. 59.00 crores. Statement of Shri Satish Pawa was recorded on 15.09.2010 during the assessee course of search operation u/s 132 of the I.T. Act. He admitted that this amount of Rs. 59 crores was advanced in cash by M/s Jagat Overseas and also that these payments were not reflected in the regular books of account of M/s Jagat Overseas. He declared this amount of Rs. 59 crores as unaccounted income of Ms/ Jagat Overseas for the F.Y. 2010-11 relating to the assessment year.

The case of M/s Jagat Overseas was centralized with this office vide letter No. CIT-19/Order u/s 127(2)/12-13 dated 09.01.2013 issued by the CIT-19, Mumbai.

I am therefore satisfied that the documents seized as referred to above belong to M/s Jagat Overseas warranting action u/s 153C in this case.

31.01.2013

(Sumesh Swani)

Deputy Commissioner of Income
tax, Central Circle -19, New Delhi

Notices u/s 153C of the Income tax Act, 1961 are hereby issued for the
A.Ys 2005-06 to 2010-11.

(Sumesh Swani)

Deputy Commissioner of Income tax,
Central Circle -19, New Delhi."

8. Satisfaction Note was drawn on 31.01.2013, therefore, reference to the date of search in the case of the assessee [being a person other than the searched person] would have to be construed as the date of recording the satisfaction. This view is as per the decision of the Hon'ble Delhi High Court in the case of RRJ Securities 380 ITR 612. The relevant findings read as under:

"In terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(1) of the Act, would have

to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment years 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years prior to the assessment year relevant to the previous year in which the search was conducted. If this interpretation as canvassed by the Revenue is accepted, it would mean that whereas in case of a person searched, assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be reopened would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to the AO would be subsequent to the date of the search. This, in our view, would be contrary to the scheme of Section 153C (1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one

searched) as the date of the search on the Assessee. The rationale appears to be that whereas in the case of a searched person the AO of the searched person assumes possession of seized assets/documents on search of the Assessee: the Page 5 of 8 seized assets/documents belonging to a person other than a searched person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the assessee's income for that year.

9. The Hon'ble High Court reaffirmed its view in the case of ARN Infrastructure India Ltd 81 Taxmann.co, 260 held as under:

"The decision in RRJ Securities Ltd. (supra) is categorical that under Section 153C of the Act, the period of six years as regards the person other than the searched person would commence only from the year in which the satisfaction note is prepared by the AO of the searched person and a notice is issued pursuant thereto. The date of the Satisfaction Note is 21st July, 2014 and the notice under Section 153C

of the Act was issued on 23rd July 2014. The previous six AYs would therefore be from AY 2009-10 to AY 2014-15. This would therefore not include AYs 2007-08 and 2008-09. The decision in RRJ Securities Ltd. (supra) is also an authority for the proposition that for the proceedings under Section 153C to be valid, there had to be a satisfaction note recorded by the AO of the searched person. The Court also stated that - This position again stands settled by the decision in RRI Securities Ltd (supra). The fact that the Revenue's SLP against the said decision is pending in the Supreme Court does not make a difference sine the operation of the said decision has not been stayed."

10. In the case of Raj Buildworth Pvt Ltd 113 Taxmann.com 600, the Hon'ble High Court observed as under:

"The Assessing Officer of the search party and the respondent assessee was the same. In such a factual matrix, the Assessing Officer could not have been initiated and passed an Assessment Order under Section 153C of the Act for the Assessment Year 2007-08 as the same was beyond the period of six years from the end of Page 6 of 8 the financial year in which the satisfaction note was recorded by the Assessing Officer."

11. And in the case of Sarwar Agency Pvt Ltd 85 Taxmann.com 269, the relevant findings read as under:

"Mr. Ashok Manchanda, learned Senior Standing counsel for the Appellant, sought to pursue this Court to reconsider its view in RRJ Securities (supra). The Court declines to do so for more than one reason. First, for reasons best known to it, the Revenue has not challenged the decision of this Court in RRJ Securities (supra) in the Supreme Court. The said decision has been consistently followed by the authorities under this Court as well as by this court. Thirdly, the recent amendment to Section 153 C(l) of the Act states for the first time that for both the searched person and the other person the period of reassessment would be six AYs preceding the year of search. The said amendment is prospective.

14. This proposition has also been upheld and followed by this Tribunal in catena of judgment as cited by the Id. Counsel. Thus, respectfully following the ratio laid down by the Hon'ble Jurisdictional High Court we hold that is a terminal date for determining of six preceding assessment years for the purpose of Section 153C r.w.s. 153A would be the date of handing over the documents or the dated of recording of the satisfaction. Admittedly, the six preceding assessment years in the case of the assessee is from Assessment Year 2009-10 and ending on 2014-15. Accordingly, we hold that Id. CIT (A) was correct in law that no assessment u/s.153C was made in respect of Assessment Year 2007-08 and is barred by limitation.

15. Similarly in Assessment Year 2008-09 also we need the same fate which is also beyond the limitation period of six years as stated above. Accordingly, the order of the Id. CIT(A) is upheld and the Revenue's Appeal is dismissed."

12. In light of the aforesaid judicial decisions, the date of search in the case of the assessee would be 31.01.2013. Therefore, the period of block of six A.Ys would be A.Y 2007-08 to 2012-13. Since the impugned A.Y is A.Y 2011-12, it falls within the block of six A.Ys. Therefore, it would be incumbent upon the Assessing Officer to assess the assessee u/s 153C of the Act as the assessee is a person other than the searched person.

11. A perusal of the assessment order shows that at Sl. No. 13, section and sub-section under which assessment is made, there is a mention of section 143(3) r.w.s 153C of the Act. Undoubtedly, the Assessing Officer has proceeded to assess the assessee u/s 153C of the Act as per the relevant provisions of the Act in line with the judicial decisions discussed hereinabove.

12. However, for the assumption of jurisdiction, sine qua non is the issue of notice and service of the same. In the instant case, there is no evidence whatsoever, to show that the Assessing Officer has issued notice u/s 153C of the Act for assuming jurisdiction under the said section and has served the said notice to set the law into motion.

13. Though the ld. DR has strongly stated that the Assessing Officer has framed the assessment u/s 143(3) of the Act as there was no bar in assessing the income u/s 143(3) of the Act and only by way of typo error, the Assessing Officer has added section 153C in Sl. No. 13 of index of the assessment order.

14. We do not find any force in this submission of the ld. DR, in as much as, at Paras 4 and 5 of the assessment order, the Assessing Officer has made it very clear that he intends to assess the assessee u/s 153C of the Act. Paras 4 and 5 read as under:

"4. Apart from the above, during the course of assessment proceedings u/s 153A in the case Sh. Satish Pawa, page no. 18 of Annexure A-8 was found and seized during search operation u/s 132 on 14.09.2010 at D-842, New Friends Colony, New Delhi from residence of Sh. Satish Kumar

Pawa. This document refers to advance to farmers for purchase of paddy as on 31.08.2010 to the tune of Rs. 59.00 crores! Statement of Sh. Satish Pawa was recorded on 15.09.2010 during the course of Search Operation us 132 of the Income-tax Act, 1961. He admitted that this amount of Rs.59.00 crores was advanced in cash by M/s Jagat Overseas and also that these payments were not reflected in the regular books of account of M/s Jagat Overseas. He declared this amount of Rs.59.00 Crores as unaccounted income of M/s Jagat Overseas for the financial year 2010-11 relating the assessment year 2011-12. Satisfaction Note u/s 153C was drawn on 31.01.2013. The assessee was provided a copy of "satisfaction Note" to the assessee vide letter No. 1200 dated 31.1.2013 alongwith copies of seized documents. As such notices us 153C of the Income-tax Act, 1961 were issued on 31.01.2013 for the assessment years 2005-06 to 2010-11 alongwith notices us 142(1) and questionnaires of even date and the same were served upon the assessee.

5. As the assessee had already placed on record, the copies of return in pursuant to notice us 153A earlier, the same is taken to have been filed in response to notice u/s 153C of the Act. In response to notice u/s 143(2) and 142(1), Sri Mukesh Aggrawal CA/Smt. Divya Madan CA filed part replies. Later on the assessee filed another PO on 28.2.2013, in the favour of Sri Ajay Wadhwa, Adv. & Sri Ravinder Kumar CA."

15. The Assessing Officer did not stop here, but at Para 16 observed as under:

"16. This order is passed after obtaining prior approval u/s 153D of the Income tax Act, 1961 of the Addl. Commissioner Income tax Central, Range-4, New Delhi received vide letter No. 153D/CC-09/Jagat Group/2012-13/1996 dated 28.03.2013."

16. The concluding para clearly shows that assessment has been framed u/s 153C of the Act after taking necessary approval u/s 153D of the Act.

17. Considering the facts of the assessment, in light of the judicial decisions mentioned elsewhere, we are of the considered view that without issuing notice u/s 153C of the Act and without serving the same, the Assessing Officer could not have assumed jurisdiction for framing the impugned assessment, which makes the assessment as *non est* in law. The cross objections of the assessee are accordingly allowed, making the appeal of the Revenue infructuous.

18. In the result, the cross objections of the assessee are allowed whereas the appeal of the Revenue in ITA No. 6194/DEL/2017 is dismissed.

The order is pronounced in the open court on 01.09.2023.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 01st September, 2023.

VL/

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	