

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F' : NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND  
SHRI I.C. SUDHIR, JUDICIAL MEMBER

ITA Nos.567/Del/2011 & 568/Del/2011  
Assessment Years : 2001-02 & 2002-03

M/s R.L. Allied Industries, 50-F, Kohlapur Road, Kamla Nagar, Delhi – 110 007. PAN : AAAFR5507P. (Appellant)	Vs. Income Tax Officer, Ward-20(1), New Delhi.  (Respondent)
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ITA Nos.4812/Del/2012 to 4816/Del/2012  
Assessment Years : 2000-01, 2001-02, 2001-02, 2002-03 & 2002-03

M/s R.L. Allied Industries, 50-F, Kohlapur Road, Kamla Nagar, Delhi – 110 007. PAN : AAAFR5507P. (Appellant)	Vs. Income Tax Officer, Ward-20(1), New Delhi.  (Respondent)
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Appellant by : Shri K.R. Manjani, Advocate.  
Respondent by : Shri M.B. Reddy, CIT-DR.

**ORDER**

**PER BENCH :**

**ITA Nos.567/Del/2011 & 568/Del/2011 :-**

These appeals by the assessee are directed against the order of learned CIT(A)-XXII, New Delhi dated 18<sup>th</sup> November, 2010 for the AY 2001-02 & 2002-03.

2. Ground No.1 of the assessee's appeals in both the years reads as under:-

*"The Id A.O. as well as CIT(A) have erred in not declaring the assessment barred by limitation, the*

*search having been conducted in 13<sup>th</sup> Dec, 05 and assessment having been completed in Dec, 07, the Id A.O. had correctly requested in 1<sup>st</sup> week of Feb, 08 to the A.O. having jurisdiction over M/s R.L. Industries for taking the records which consisted in only 4 files. Even A.O.'s Addl. Commissioner wrote to him on 4<sup>th</sup> March, 08 to take the record and necessary action but no action was taken till March, 09 without indicating the reason for not taking the action for more than one year inspite of the facts that limitation is involved. Since intimation for taking record was received in Feb, 08, limitation for completion for 153C proceeding was Dec, 08. Therefore, both the authorities erred on facts as well as in law in not declaring the assessment barred by limitation."*

3. The facts of the case are that assessment for AY 2001-02 and 2002-03, which is under consideration, has been completed under Section 143(3) read with Section 153C of the Income-tax Act, 1961. As per assessment order, the search and seizure action under Section 132 was carried out on R.L. Group on 13<sup>th</sup> December, 2005. During the course of such search, various documents were found and seized out of which certain documents are claimed to be belonging to M/s R.L. Allied Industries i.e., the assessee. As per paragraph 2 of the assessment order, the seized material pertaining to the assessee was received on 12<sup>th</sup> March, 2009 from ACIT, Circle-17, accordingly, notice under Section 153C was issued and served upon the assessee on 24<sup>th</sup> March, 2009. The learned counsel for the assessee has claimed that as per Section 153C proviso, the date of receiving the books of account or documents is deemed to be the date of search under Section 153A. He also referred to Section 153A and pointed out that the notice can be issued under Section 153C for six years preceding to the year of search. He, therefore, submitted that as per the proviso to Section 153C, the date of receiving the books of account would be the date of search and, therefore, the notice under Section 153C could not have been issued for AY 2001-02 and 2002-03. Accordingly, the issue of

notice under Section 153C was barred by limitation and consequently, the assessment for these two years is *non-est* and void *ab-initio*.

4. Learned DR, on the other hand, relied upon the orders of authorities below and submitted that the notice has been validly issued on the basis of search which took place in the year 2005. He, therefore, submitted that the orders of authorities below should be sustained and this ground of the assessee's appeals should be rejected.

5. We have heard the arguments of both the sides and perused relevant material placed before us. The relevant facts as mentioned by the Assessing Officer in paragraph 1 and 2 of the assessment order read as under:-

*"Search & seizure action u/s 132 of the Income Tax Act was carried out on R.L. Group on 13/12/2005. This operation was carried out at Premises No. B-265, Derawala Nagar, Delhi. This premises belongs to Sh. Ram Lal Bhatia Partner of M/s R.L. Allied Industries. At this premises certain documents were found and seized. Out of this, Pages of Annexure A-1 to A-3, A-7 to A-9, A-15 to A-18 and A-21 to A-24 belongs to M/s R L Allied Industries.*

*2. In this case the seized material pertaining to M/s R.L. Allied Industries was received on 12/03/2009 from ACIT Central Circle-17. Accordingly notice under section 153C was issued and served upon assessee on 24/03/2009, requesting to file return within 15 days of service of notice. In response to this notice a letter was filed by the advocate of the assessee requesting for the inspection of the material. On 22/05/2009 Sh Tarun Aswani, advocate was allowed the inspection of the file."*

6. From the above, it is evident that in the case of the assessee, assessment has been completed on the basis of notice under Section 153C which was issued on 24<sup>th</sup> March, 2009 and the seized material

pertaining to the assessee was received on 12<sup>th</sup> March, 2009 from ACIT, Central Circle-17. In the light of these facts, let us examine the relevant provisions of the Income-tax Act. Section 153C reads as under:-

*“153C. [(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A:.”*

7. As per Section 153C, where the Assessing Officer is satisfied that where the books of account or documents seized belong to a person other than the person referred to in Section 153A, then the books of account or documents shall be handed over to the Assessing Officer having jurisdiction of such other person and that Assessing Officer shall proceed against each such other person in accordance with the provisions of Section 153A. Section 153A reads as under:-

*“153A. [(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31<sup>st</sup> day of May, 2003, the Assessing Officer shall –*

*(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in*

*clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;*

*(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:.”*

8. Thus, as per Section 153A(1)(b), the Assessing Officer is empowered to assess or reassess the total income of the six assessment years immediately preceding the assessment year relevant to the assessment year in which search is conducted. Thus, in other words, he has to assess the search year and six preceding years. As per proviso to Section 153C, for the purpose of Section 153C, the date of receiving the books of account or documents shall be considered the date of search. Therefore, with the combined reading of proviso to Section 153C and Section 153A(1)(b), it is clear that in the case of the person in whose case action is required under Section 153C, the Assessing Officer is empowered to take action under Section 153C for the year in which the seized document is received by him and the preceding six years. In the case under appeal before us, as mentioned by the Assessing Officer in paragraph 2 of his order, the seized material was received on 12<sup>th</sup> March, 2009 from ACIT, Central Circle-17. Thus, the year in which seized material was seized is previous year 2008-09 relevant to AY 2009-10. The preceding six years would be AY 2008-09, 2007-08, 2006-07, 2005-06, 2004-05 and 2003-04. Therefore, after considering the facts of the assessee's case and combined reading of Section 153C as well as Section 153A, in our opinion, the issue of notice under Section 153C for AY 2001-02 & 2002-03 is barred by limitation. Accordingly, we quash the same and consequentially, the assessment order passed in pursuance to the notice issued under Section 153C is also quashed.

9. Since we have quashed the assessment order, the other grounds raised by the assessee in both the years, which are against the merits of the additions, do not survive for adjudication.

10. ITA Nos.4814/Del/2012 & 4816/Del/2012 are the assessee's appeals for AY 2001-02 & 2002-03 respectively against the levy of penalty under Section 271F amounting to ₹5,000/- each. As we have quashed the issue of notice under Section 153C, the levy of penalty upon the assessee for failure to furnish the return in pursuance of such notice cannot be sustained. The same are also cancelled.

11. ITA Nos.4813/Del/2012 & 4815/Del/2012 are the assessee's appeals for AY 2001-02 & 2002-03 respectively against the order passed under Section 154.

12. The Assessing Officer has modified the order passed under Section 153C for these two years and charged the interest under Section 234B. However, while disposing of the assessee's appeal in ITA Nos.567/Del/2011 & 568/Del/2011, we have quashed the assessment order passed under Section 143(3) read with Section 153C. Once the assessment order has been quashed, the question of rectification of the same does not arise. Accordingly, the order passed under Section 154 for AY 2001-02 & 2002-03 is quashed and consequentially, the assessee's appeals vide ITA Nos.4813/Del/2012 & 4815/Del/2012 are allowed.

13. ITA No.4812/Del/2012 is the assessee's appeal for AY 2000-01 against the levy of penalty of ₹5,000/- for non-filing of the return in pursuance to notice under Section 153C. While deciding the assessee's appeals for AY 2001-02 & 2002-03 in paragraph Nos.5 to 8 above, we have held that the issue of notice prior to AY 2003-04 is

barred by limitation. Once the notice issued under Section 153C is barred by limitation, the same is void and the assessee cannot be penalized for non-filing of the return in response to such notice which is not valid in law. Accordingly, the penalty levied under Section 271F for AY 2000-01 is also cancelled.

14. In the result, all the appeals of the assessee are allowed.  
Decision pronounced in the open Court on 28<sup>th</sup> November, 2014.

Sd/-  
**(I.C. SUDHIR)**  
JUDICIAL MEMBER

Sd/-  
**(G.D. AGRAWAL)**  
VICE PRESIDENT

Dated : 28.11.2014  
VK.

Copy forwarded to: -

1. Appellant : **M/s R.L. Allied Industries,**  
**50-F, Kohlapur Road,**  
**Kamla Nagar, Delhi – 110 007.**
2. Respondent : **Income Tax Officer,**  
**Ward-20(1), New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar