

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

BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
&
SHRI I.C. SUDHIR, JUDICIAL MEMBER

ITA No. 1436/Del/2012
Assessment Year: 2009-10

Jasjit Singh,
29/56, Punjabi Bagh West,
New Delhi.
ABHPS1536P
(Appellant)

vs.

ACIT,
Central Circle-11,
New Delhi.

(Respondent)

&

ITA No. 1707/Del/2012
Assessment Year: 2009-10

ACIT
Central Circle 11,
New Delhi.
(Appellant)

vs.

Jasjit Singh,
29/56, Punjabi Bagh West,
New Delhi.
(Respondent)

Appellant by : Sh. Prakash Chand Yadav, Adv. &
Sh. Sachin Jain, CA
Respondent by : Ms. Sulekha Verma, DR

ORDER

PER I.C. SUDHIR, J.M.

In the appeals referred by the assessee against the first appellate order on the regular grounds that the Id. CIT(A) has erred in (i) sustaining the disallowance of deduction claimed u/s 54F, (ii) not giving the credit of TDS, and (iii) sustaining the treatment of expenses incurred on telephone, vehicle, depreciation and conveyance to the extent of 15% as personal in nature. Besides, two more additional grounds (numbered as 4 and 5) have been raised. Vide order dated 01/05/2014 the Tribunal has allowed

additional ground numbered as ground no. 4 for the adjudication. This additional ground reads as under:

“That under the facts and circumstances of the case, an assessment order passed by the Id. AO u/s 143(3) of the Income Tax Act, 1961 is illegal and non maintainable since the same has to be passed u/s 153C and not u/s 143(3) of the Act.”

2. Since the issue raised in the above additional ground is legal in nature and goes to the root to the matter, we preferred to adjudicate upon it first.

3. Heard and considered the arguments advanced by the parties in view of orders of the authorities below, material available on record and the decisions relied upon.

4. The facts in briefs are that the assessee, an individual is doing the business of import and export, prior to the year under consideration i.e. A.Y. 2009-10. The assessee had been filing its return of income with Ward 25(3) under the resident status but for the first time he filed his return of income under the status of “Non Resident Indian”(NRI). A search and seizure operation was conducted in the case of Koutones Group on 19/02/2009. It has been alleged that documents belonging to assessee were found in the said search. As a result, the assessments of the assessee were centralized by the Id. CIT(A)-X on 16/06/2009 and jurisdiction of the assessee was transferred from Ward 25(3) to ACIT, Central Circle XI, which is the present AO. The AO completed the assessment of the assessment year 2009-10 under consideration under normal provisions of section 143(3) treating the year 2009-10 as the year of search and reopened the assessments for the assessment years of 2008-09 to 2003-04. Aggrieved with the assessment order, the assessee preferred appeal before the Id. CIT(A) who has allowed the appeal partly. Still aggrieved with the action of the Id. CIT(A) the assessee has filed

present appeal before the Tribunal raising the additional ground in question, besides three regular grounds.

5. In support of the issue raised in the additional ground, the Id. AR submitted that provisions u/s 153C(1) speaks that assessment or reassessment of income of any other person u/s 153C than the person searched, will be made in accordance with the provisions of the section 153A. Section 153A(1) clearly suggest that the AO will issue notice calling for the return of income in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted and assessed or reassessed the total income of the assessee. Thus, it is evident from this provision that in the search year regular assessment has to be made and in the preceding six years action u/s 153C read with section 153A has to be taken by the AO. The Id. AR submitted that the documents pertaining to the assessee were handed over to the AO after 15/16/06/2009 (the date of centralization of the case) and as per the provisions of section 153C proviso 1, the date of search would be 15/06/2009 which falls under A.Y. 2010-11 and the six previous years would be from A.Y. 2004-05 to 2009-10 and not from A.Y. 2003-04 to 2008-09 as done by the AO. In this regard he placed reliance on the decision of Delhi Bench of the Tribunal in the case of V.K. Fiscal in ITA Nos. 5460 to 5466/2012 and in the case of DSL Properties ITA No. 1344/Del/2012.

6. The Id. AR also emphasized the decision of Hon'ble Jurisdictional Delhi High Court on the issue in the case of SSP Aviation Limited vs. DCIT in W.P.C. No. 309/2011 dated 29/03/2012 (para nos. 13, 14 & 15).

7. Taking strength from the ratio laid down in the above cited decisions the Id. AR submitted that proviso 1 to section 153C is only in respect of abatement of proceedings and not in respect of assessment of

proceedings. He pointed out that in the case of assessee there was no pending proceedings as on the date of search hence there was no question of abatement of proceedings.

8. The Id. AR submitted further that while interpreting the provisions laid down u/s 153A and 153C the Delhi Bench of the Tribunal in the case of DSL Properties (supra) has held that harmonious interpretation should be given to the provisions of clause (b) and proviso to section 153C of the Act. He submitted that by virtue of first proviso, embedded with section 153C, the date of handing over the documents would become the date of search in the case of other person and previous six years period would have to be reckoned from this date which means the relevant assessment year of search in the case of assessee would be 16/06/2009 which falls under A.Y. 2010-11 and not A.Y. 2009-10 and six previous years would be 2009-10 to 2003-04.

9. The Id. AR submitted that as per the sub-rule 5 of Rule 6F IT Rules, 1962, every assessee under the Income tax has to maintain the account of six previous years for the purpose of Income tax. Now supposing a search is conducted in one year and documents of the other person are handed over to the AO of other person or to the AO with whom jurisdiction is centralized, after two years from the date of search, then for which six years the other person would show his accounts, whether for the years which are applicable for searched person or for those years which are governed by the proviso. He submitted that obviously for those years which are governed by the proviso, because the Income tax Rules say so. And that is why the legislature in their wisdom by virtue of proviso has substituted the date of search with the date of receiving of the document pertaining to such other person. Otherwise provisions of Rule 6F would be redundant and the AO can ask for records of those years also for which an assessee is not obliged to maintain

records. In the present case however, the AO framing the assessment for the year under consideration (2009-10) as a year of search has reopened the assessments of A.Y. 2008-09 to A.Y. 2003-04. Therefore, the assessment framed by the AO u/s 143(3) of the Act for the year under consideration is *void ab initio* as the same has been framed without following the mandatory provisions of section 153C of the Act. In other words, in the present case the AO has overlooked the provisions of proviso to section 153C and presumed that the deemed date of search in the case of assessee would be 19/02/2009 which falls under A.Y. 2009-10 and hence without issuing any notice of section 153C and without recording any satisfaction the AO has framed the assessment under the provisions of section 143(3) of the Act.

10. The Id. AR submitted further that if we apply the mandate of the proviso of section 153C read with 153A(1) and principle of law as laid down by the Tribunal in the case of DSL Properties Ltd. (*supra*) then the six years which were to be covered are assessment years 2009-10, 2008-09, 2007-08, 2006-07, 2005-06 and 2004-05 and not 2008-09 to 2003-04. He submitted that provisions of section 153C are mandatory hence notice of section 153C and recording of satisfaction is *sine qua non* for assuming jurisdiction of a year which as per the provisions of proviso falls under the period of six years as held by the coordinate bench of the Tribunal in the case of Jindal Stainless Limited vs. ACIT, 120 ITD 301 (Del.). With the assistance of these submissions the Id. AR prayed that the assessment should be declared as null and void, in the result, the appeal of the assessee should be allowed and appeal of the Revenue should be dismissed.

11. Ld. CIT(DR) on the other hand, submitted that reference of proviso 1 to section 153C is only in relation to second proviso to sub-section (1) of section 153A which speaks about the abatement of the pending

proceedings of six assessment years and not regarding the assessment of the preceding six assessment years which will be the same as in section 153A as well as in section 153C of the Act. In support she placed reliance on the judgment dated 29/03/2012 of the Hon'ble Delhi High Court in the case of SSP Aviation Ltd. vs. DCIT, W.P.C. No. 309/2011. She submitted further that the Delhi Bench of the Tribunal in the case of V.K. Fiscal Services Pvt. Ltd., ITA Nos. 5460 to 5465/Del/2012 dated 27/11/2013 has followed its decision dated 22/03/2013 in the case of DSL Properties P. Ltd. ITA No. 11349/D/2012 and the order of the Hon'ble Delhi High Court in the case of SSP Aviation Ltd. vs. DCIT (supra) pronounced on 29/03/2012, should have been followed. She further submitted that the appeal preferred by the Revenue in the case of DSL Properties P. Ltd. (supra) has been admitted by the Hon'ble Delhi High Court.

12. The Id. AR rejoined with the submission that while admitting the appeal preferred by the Revenue against the order of the Tribunal in the case of DSL Properties P. Ltd. (supra), the Hon'ble High Court has not stayed the operation of the decision of the Tribunal in the said case, hence the Tribunal is bound to follow its earlier order on an identical issue.

13. We find that there is no dispute on the relevant facts of the case that search and seizure operation u/s 132 of the Act in the case of Koutons was conducted on 19/02/2009 which is relevant to the F.Y. 01/04/2008 to 31/03/2009 and the relevant assessment year is 2009-10. It is also undisputed that the case of the assessee was centralized by Id. CIT u/s 127 of the Act and the jurisdiction of the assessee from Ward 25(3) to Central Circle 11 was transferred on 16/06/2009, hence previous year would be 01/04/2009 to 31/03/2010 and the A.Y. will be 2010-11. On the basis of these facts the contention of the assessee in the

additional ground is that the assessment order framed u/s 143(3) of the Act for the assessment year in question is not valid and not maintainable. As per him, the date of search in the case of the present assessee would be the date i.e. 16/06/2009 when documents belonging to the assessee (found during the course of search) were handed over and jurisdiction for framing the assessment was transferred to the AO having jurisdiction for the assessment on the assessee. Taking into account the date 16/06/2009 as date of search in the case of the assessee, the contention of the Id. AR remained that the search year in the case of assessee would be A.Y. 2010-11 and six previous assessment years would be 2009-10 to 2003-04. In other words, the regular assessment u/s 143(3) of the Act in the present case should have been framed for the assessment year 2010-11 and the assessment for the assessment year under consideration should have been framed u/s 153C read with 143(3) of the I.T. Act. In support the above cited decisions were relied upon by the Id. AR.

14. The contention of the Id. CIT(DR) on the contrary remained that the reference of proviso 1 of section 153C is only in relation to the second proviso to sub-section 1 of section 153A which speaks about the abatement of the pending proceedings of six assessment years and not regarding the assessment of the preceding six assessment years which will be the same as in section 153A as well as in section 153C of the Act. In this regard she placed reliance on the decision of Hon'ble Delhi High Court in the case of SSP Aviation Ltd. vs. DCIT (supra).

15. We find that an identical issue has been decided by Delhi Bench of the Tribunal in the case of DSL Properties P. Ltd. (supra) in favour of the assessee accepting the similar contention of the assessee. Similar view has been expressed by the Delhi Bench of the Tribunal in the case of V.K. Fiscal (supra) holding that the date of receiving of the seized documents would become the date of search and six years period would

be reckoned from this date. For a ready reference para no. 19, 21, 22 & 23 of the decision of Delhi Bench of the Tribunal in the case of DSL Properties (supra) are being reproduced hereunder:

19. *"We have carefully considered the rival submissions. Proviso to section 153C reads as under:*

"Provided that in case of such other person, the reference to the date of initiation of the search u/s 132 or making of requisition u/s 132A in the second proviso to [sub-section (1) of] section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the AO having jurisdiction over such other person."

20. *The above proviso refers to second proviso to sub-section (1) of section 153A. That section 153A(1) and its first and second provisions read 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 u/s 132 or books of account, section 132A after the 31st day of May, 2003, the AO 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 u/s 139;

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

Provided that the AO shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this [sub-section] pending on the date of initiation of the search u/s 132 or making of requisition u/s 132A, as the case may be, shall abate."

21. *From the above, it is evident that as per clause (b) of sub-section (1) of section 153A and second proviso, the AO can be issue notice for assessment or reassessment of total six assessment years immediately preceding the assessment year relevant to previous year in which search is conducted. As per proviso to section 153C, the date of search is to be substituted by the date of*

receiving the books of account or documents or assets seized by the AO having jurisdiction over such other person. Id. DR has stated that since the AO of the person searched and the AO of such other person was the same, no handing over or taking over of the document was required. That section 153C(1) and its proviso have to be read together in a harmonious manner. While interpreting section 153C, we have already held that for initiating valid jurisdiction u/s 153C, even if the AO of the person searched and the AO of such other person is the same, he has to first record the satisfaction in the file of the person searched and thereafter, such note alongwith the seized document/books of account is to be placed in the file of such other person. The date on which this exercise is done would be considered as the date of receiving the books of account or document by the AO having jurisdiction over such other person. Though while examining the facts of the assessee's case we have arrived at the conclusion that no such exercise has been properly carried out and, therefore, initiation of proceedings u/s 153C itself is invalid, however, since both the parties have argued the issue of period of limitation also, we deem it proper to adjudicate the same. Since in this case satisfaction is recorded on 21st June, 2010 and notice u/s 153C is also issued on the same date, then only conclusion that can be drawn is that the AO of such other person has taken over the possession of seized document on 21st June, 2010. Accordingly, as per section 153(1), the AO can issue the notice for the previous year in which search is conducted (for the purpose of Section 153C the document is handed over) and six assessment years preceding such assessment year. Now, in this case, the previous year in which the document is handed over is 1st April, 2010 to 31st March, 2011. The assessment year would be A.Y. 2011-12. Six preceding previous years and relevant assessment year would be as under:

<u>Previous Year</u>	<u>Assessment Year</u>
1.4.2009 to 31.3.2010	2010-11
1.4.2008 to 31.3.2009	2009-10
1.4.2007 to 31.3.2008	2008-09
1.4.2006 to 31.3.2007	2007-08
1.4.2005 to 31.3.2006	2006-07
1.4.2004 to 31.3.2005	2005-06

22. The AO has issued notice u/s 153C for A.Y. 2004-05 which is clearly barred by limitation. Therefore, issue of notice u/s 153C issued by the Revenue cannot be sustained on both the above counts, i.e., it is legally not valid as conditions laid down u/s 153C has not been fulfilled and it is barred by limitation. In view of the

above, we quash the notice issue du/s 153C and consequently, the assessment completed in pursuance to such notice, is also quashed.

23. Since we have quashed the assessment order itself, the additions challenged by the assessee by way of other grounds of appeal do not survive, and, therefore, do not require any adjudication."

16. We thus, find that the issue raised in the additional ground has been answered in favour of the assessee, by the Coordinate Delhi Bench of the Tribunal in the case of DSL Properties (supra).

17. So far as decision of Hon'ble Delhi High Court in the case of SSP Aviation Ltd. vs. DCIT (supra) relied upon by the Id. CIT(DR) is concerned, we find that it is not helpful to the revenue as in that case also in para no. 14 of the judgment it has been held as under:

14. "Now there can be a situation when during the search conducted on one person u/s 132, some documents or valuable assets or books of account belonging to some other person, in whose case the search is not conducted, may be found. In such case, the AO has to first be satisfied u/s 153C, which provides for the assessment of income of any other person, i.e., any other person who is not covered by the search, that the books of account or other valuable article or document belongs to the other person (person other than the one searched). He shall hand over the valuable article or books of account or document to the AO having jurisdiction over the other person. Thereafter, the AO having jurisdiction over the other person has to proceed against him and issue notice to that person in order to assess or reassess the income of such other person in the manner contemplated by the provisions of section 153A. Now a question may arise as to the applicability of the second proviso to section 153A in the case of the other person, in order to examine the question of pending proceedings which have to abate. In the case of the searched person, the date with reference to which the proceedings for assessment or reassessment of any assessment year within the period of the six assessment years shall abate, is the date of initiation of the search u/s 132 or the requisition u/s 132A. For instance, in the present case, with reference to the Puri Group of Companies, such date will be 5.1.2009. However, in the case of the other person, which in the present case is the petitioner herein,

such date will be the date of receiving the books of account or documents or assets seized or requisition by the AO having jurisdiction over such other person. In the case of the other person, the question of pendency and abatement of the proceedings of assessment or reassessment to the six assessment years will be examined with reference to such date.”

18. In view of the above finding, the assessment framed u/s 143(3) of the Act for the A.Y. 2009-10 in the present case is not valid. Respectfully following the above cited decisions on an identical issue, the additional ground no. 4 in the present case is decided in favour of the assessee and in the result the assessment order is quashed as void.

19. Since in the above finding on the issue raised in additional ground no. 4 we have quashed the assessment order itself, the additions questioned by the assessee by way of other grounds of the appeal do not survive and, therefore, do not require any adjudication.

20. In the result, the appeal of the assessee is allowed.

ITA No. 1707/D/2012:

21. In this appeal the Revenue has questioned the first appellate order on the relief given to the assessee by Id. CIT(A) and the admission of additional evidence allowed by him.

22. In view of the above finding holding the assessment order in question as invalid, the grounds of the present appeal have become infructuous and do not need any adjudication. The appeal is accordingly dismissed.

23. In summary the appeal preferred by the assessee is allowed and that filed by the Revenue is dismissed.

The order is pronounced in the open court on 05/11/2014

Sd/-

(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated: 05/11/2014

Sd/-

(I.C. SUDHIR)
JUDICIAL MEMBER

*Kavita, P.S.

Copy forwarded to: -

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

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By Order,

ASSISTANT REGISTRAR