

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'A': NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND**

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

**ITA No.3074/DEL/2023
[Assessment Year: 2021-22]**

Akansha Gupta, C-39, Anand Vihar, I.P. Extension, New Delhi-110092	Vs	ACIT, Central Circle-04, Delhi
PAN-AIHPA1079L		
Assessee		Revenue

Assessee by	Shri Ved Jain, Adv. & Shri Aman Garg, CA
Revenue by	Shri Prakashnath Barnwal, CIT-DR

Date of Hearing	30.05.2024
Date of Pronouncement	10.07.2024

ORDER

PER BRAJESH KUMAR SINGH, AM,

This appeal by the assessee is directed against the order of the Ld. Commissioner of Income Tax-(Appeals)-23 (in short 'CIT(A)'), New Delhi, dated 13.09.2023 pertaining to Assessment Year 2021-22.

2. The assessee has raised following grounds of appeal:-

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts as the same has been passed without quoting the valid DIN in the body of the order as per the mandatory requirement of CBDT Circular dated 14.08.2019.

3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in passing the order ex parte without providing the assessee adequate opportunity of being heard in violation of principle of natural justice.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order passed by the AO despite the fact that the notice issued by the AO under section 143(2) and consequent reassessment order is illegal, invalid and has been issued and passed without having valid jurisdiction upon the assessee.*

5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the order passed by the AO, despite the fact that the same has been passed violating the provisions of section 153D of the Income Tax Act.*

6. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.94,00,000/- invoking the provisions of section 45 of the Act and treating the Full value of consideration in respect to the property transferred by the assessee as Rs. 2,54,00,000/- as against the actual sales consideration of Rs.1,60,00,000/- declared by the assessee.*

ii) *That the abovesaid addition has been confirmed despite the fact that learned AO has not brought on record anything which indicates that the assessee has paid the additional amount of Rs. 94,00,000/- to the buyers of the property.*

(iii) *That the abovesaid addition has been confirmed despite the fact that addition has been made without conducting any independent enquiry from the alleged buyers or without bringing on record any evidence to justify that the buyers have received the additional amount from the assessee.*

(iv) *That the abovesaid addition has been confirmed despite the fact that addition has been made by the AO without exercising his powers to refer the valuation to the DVO under section 55A of the Act.*

7. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.2,50,000/- made by the AO holding that the assessee has made the payment of commission on account sale of property and treating the same as unexplained expenditure invoking the provisions of section 69C read with the section 115BBE of the Act.*

(ii) That the abovesaid addition has been confirmed despite the nothing has been brought on record by the AO on record in support of the allegation made against the assessee.

8. On the facts and circumstances of the case, the learned CIT(A), NFAC has grossly erred both on facts and in law in confirming the above additions by indulging in surmises without bringing on any direct evidence against the assessee, only on the basis of presumption and assumption.

9. On the facts and circumstances of the case, the learned CIT(A), NFAC has grossly erred both on facts and in law in confirming the above additions ignoring the fact that the addition has been made by the AO relying upon the statements of third parties recorded at the back of the assessee without providing the opportunity of cross examination of those statements.

3. The assessee has also raised additional ground vide letter dated 19.03.2024, being ground nos.11, 12 and 13, which are reproduced as under:-

1. The applicant has filed the above said appeal No. 3074/Del/2023 on 30th October, 2023 against the order dated 13.09.2023 passed by the learned Commissioner of Income Tax (Appeals)-23, New Delhi under Section 250 of the Income Tax Act.

2. That while filing the appeal, the applicant has raised 10 grounds of appeal.

3. However, while filing the appeal the appellant inadvertently has left out the ground of appeal relating to the assessment proceedings initiated without complying with the provision of section 153C of the Act being bad in law and without jurisdiction and therefore same is liable to be quashed.

4. That accordingly, the applicant is filing additional grounds of appeal.

5. That it is submitted that the following additional grounds may kindly be taken as the same goes to the root of the issue and all the facts are already on record:

"11. On the facts and circumstances of the case, the learned AO has erred in considering the assessment year under consideration as the assessment year relevant to the previous year in which search was conducted and consequently passing the assessment

order under section 143(3) of the Act instead of section 153C of the Act.

12. On the facts and circumstances of the case, assessment order is otherwise liable to be quashed in the absence of notice being issued under section 153C of the Act.

13. On the facts and circumstances of the case, the assessment proceedings initiated without complying with the provision of section 153C of the Act is bad in law and without jurisdiction and the same is liable to be quashed"

6. That the grounds revised in this application are purely legal grounds going to the root of the matter, and all the facts relating to the same are already part of record."

4. Brief facts of the case:- The assessee is an individual and filed her return of income on 24.12.2021 declaring total income of Rs.63,67,760/-. The return was processed u/s 143(1) of the Act on 29.03.2022. A search and seizure action was carried out on 06.01.2021 in the cases of Hans Group/Praveen Jain/Janco Limited and the close associates and few transacting parties with whom the assessee Ms. Akansha Gupta had entered into unaccounted cash transactions. According to the AO, during the course of search action u/s 132 of the Act, conducted at C-42, C block, Preet Vihar, Delhi-110092, certain documents/digital evidences in form of clone data of Praveen Kumar Jain's mobile were seized. In this clone data, a Kachi Parchi was found from where the AO found evidence of receipt of unaccounted cash of Rs.94 lakhs and payment of commission of Rs.2.50 lakhs in respect of sale of a property situated at E-92, 2nd Floor, Preet Vihar, Delhi-110092 by the assessee to Ms. Navita Malhotra and Shri Gurdeep Singh. This property was registered on 28.01.2021. After considering the submissions of the assessee, the Assessing Officer passed an assessment order u/s 143(3) of the Act on 29.12.2022

determining total income at Rs.1,60,17,760/- after making an addition of Rs.94,00,000/- towards undisclosed sales consideration and Rs.2.50 lakhs as unexplained expenditure.

5. Aggrieved with the order, the assessee filed an appeal before the ld. CIT(A). The Ld. CIT(A) noted that various notices of hearing were issued to the assessee, in response to which, the assessee filed only adjournment letters and no reply was furnished in respect of any ground of appeal. The ld. CIT(A) observed that prima facie, it was evident that the assessee was not interested in pursuing the present appeal. However, it is noted that the ld. CIT(A) in para-15 observed that he had gone through the submission of the assessee. In the paper book filed, it is also submitted by the assessee and certified by the assessee that copy of written submission were e-filed before the ld. CIT(A), which is placed at page nos.44 to 55 of the paper book. The ld. CIT(A) confirmed the order of the AO and dismissed the appeal of the assessee.

6. Aggrieved with the order of the ld. CIT(A), the assessee is in appeal before us.

7. Before us, it was submitted by the Ld. AR that the assessee had filed additional ground vide letter dated 19.03.2024, which goes to the root of the matter as the assessment order passed is without jurisdiction and is liable to be quashed. It was further submitted that all the facts relating to the additional grounds are already part of record and requested that the same may kindly be admitted and adjudicated first before taking the other grounds filed on merits. In this regard, the ld. AR

drew our attention to the copy of satisfaction dated 30.06.2022 recorded by the for initiating proceedings u/s 153C of the Act for AY 2015-16 to 2020-21 and u/s 143(2) of the Act for AY 2021-22; (placed at page no.11 and 12 of the paper) and submitted that the documents seized from the premises of Pravin Kumar Jain was received by the AO of the assessee on 30.06.2022, the date on which, the satisfaction note was recorded. The satisfaction note recorded by the AO is reproduced as under:-

Reasons for satisfaction required for initiating the proceedings u/s 153C of the Income Tax Act, 1961 in the case of Akanksha Gupta (PAN: AIHPA1079L), having registered address at C-40, Anand Vihar, Delhi 110092 (for the A.Ys. 2015-16 to 2020-21 u/s 153C and for AY 2021-22 u/s 143(3))

A search and seizure operation action u/s 132 of the Income-tax Act, 1961 was carried out in the cases of M/s Hans Group/Praveen Jain/Jainco and their close associates on 06.01.2021.

2. While examining the seized assets and seized documents/digital data and information in the case of M/s Hans Group/Praveen Jain/Jainco and their close associates, certain documents as appended below have been found to be related to Akanksha Gupta, (PAN: AIHPA1079L), having registered address at C-40, Anand Vihar, Delhi 110092 from the following premises:


Sr. No.	Warrant in the Name of	Warrant for the premise	Date of Execution of warrant
1	Shri Praveen Jain & Others	C-42, C Block, Preet Vihar, Delhi 110092	06.01.2021

3. After going through the contents of seized documents/digital data and information in the case of M/s Hans Group/Praveen Jain/Jainco and their close associates) the Assessing Officer of M/s Hans Group/Praveen Jain/Jainco and their close associates is satisfied that the information belongs to Akanksha Gupta and has recorded his satisfaction in the capacity of the A.O. of the searched person. The description of the incriminating seized material is as follows:

Annexure No.	Brief Description of Documents	Person to who the documents belongs
Cloned data of Parveen K Jain's mobile marked as, Annexure A5	Cloned data of Parveen K Jain's mobile marked as Annexure A5 containing image of kacha parchi sent by Vaibhav having details of cash transaction regarding property sold by Smt. Akanksha Gupta	Smt. Akanksha Gupta

4. After going through the contents of seized documents/digital data which were seized by the during the search action Annexure A5 from the premises of searched person i.e. Shri Praveen Jain & Others which were transferred by the A.O. of searched person and from the satisfaction recorded by the A.O. of searched person i.e. Shri Praveen Jain & Others and on the basis of incriminating material, I am satisfied that the above seized incriminating material (in the form of digital data) are pertaining to the assessee i.e. Smt.

Akanksha Gupta, PAN: AIHPA1079L and these seized documents have bearing on determination of total income of the assessee for the relevant assessment years referred to in sub section (1) of the section 153A of the Act and that It is a fit case for initiating proceedings u/s 153C of the Act, in the case of Smt. Akanksha Gupta, PAN: AIHPA1079L for the A.Ys. 2015-16 to 2020-21 and for AY 2021-22 u/s 143(3).


(Rohit Singh)

Dy. Commissioner of Income Tax,
Central Circle-04, New Delhi

7.1. Ld. AR further submitted that the notice u/s 143(2) for AY 2021-22 was issued on 30.06.2022, which is placed at page no.13 to 15 of the paper book. The ld. AR submitted that it is settled position in law that in respect of assessment proceedings u/s 153C of the Act, block period of six assessment years has to be reckoned from the date of receipt of the documents by the AO. In this regard, he relied upon the decision of the Co-ordinate Bench of the Tribunal in the case of Jasjit Singh vs ACIT 2014 (11) TM 1012, which has been affirmed by the Hon'ble Delhi High Court in the case of CIT vs Sh. Jasjit Singh 2015(8) TMI 982. It was further submitted that the above decision of the Hon'ble High Court was also affirmed by the Hon'ble Supreme Court in the case of CIT vs Sh. Jasjit Singh 2023(10) TMI 572 and therefore, the assessment order u/s 143(3) of the Act, dated 29.12.2022 was bad in law and it may be quashed.

7.2. Relying upon the decision of the Co-ordinate Bench in the cited case, the AR submitted that for assessment proceedings u/s 153C of the Act, the period of six years immediately preceding the assessment year relevant for the previous year, in which search was conducted has to be reckoned from the date of receipt of the documents by the AO of the assessee which is 30.06.2022 and accordingly assessment years relevant for the previous year in which search was conducted is AY 2023-24 and the six assessment years immediately preceding the assessment year, relevant for the previous year in which search was conducted will be AY 2018-19 to 2022-2023. He further submitted that in the present case assessment proceedings for AY 2021-22 should have been framed u/s

153C of the Act after issuance of notice u/s 153C of the Act. The ld. AR submitted that however in the present assessment year i.e. AY 2021-22, it was wrongly framed under section 143(3) of the Act by the issue of notice u/s 143(2) of the Act on 30.06.2022 along with notice u/s 153C for Assessment years 2015-16 to 2020-21.

7.3. The Ld. DR supported the orders of the authorities below

8. We have considered the rival submissions and perused the material available on record. We find merit in the submission of the assessee that the legal ground raised by way of additional ground goes to the root of the matter as it challenges the legal validity of the order u/s 143(3) dated 29.12.2022 passed in pursuance of notice u/s 143(2) of the Act issued on 30.06.2022. Therefore, we first take up the additional ground for adjudication. These additional grounds were not raised before the Ld. CIT(A) nor any similar plea was taken before the AO, but since the additional grounds are purely legal ground and all the facts relating to the same are already part of record, therefore, the same is admitted in view of the decision of the Hon'ble Apex Court in the case of National Thermal Power Corporation [1998] 229 ITR 383(SC) and is hereby adjudicated.

8.1. On perusal of the satisfaction note, it is seen that the same was recorded on 30.06.2022 by the AO after giving a finding that the clone data of Pravin Kumar Jain's Mobile marked as Annexure-5 belongs to the assessee, which has bearing on the determination of total income of the assessee for the relevant assessment years referred to in sub section-1 of section 153A of the Act and it was a fit case for initiating proceedings in

the case of the assessee for AY 2015-16 to 2020-21 u/s 153C of the Act and for AY 2021-22 u/s 143(2) of the Act. Thereafter, he issued a notice u/s 143(2) on 30.06.2022 for AY 2021-22. On similar facts, the Co-ordinate Bench of the Tribunal in the case of Jasjit Singh (supra) referred to the decision in the case of Co-ordinate Bench in the case of V.K. Fiscal Services Pvt. Ltd. ITA Nos.5460 to 5465/Del/2012, wherein, it was held 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. The findings of the Tribunal in the case of Jasjit Singh (supra) in para-15 to para -20 is reproduced as under:-

"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 153(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 subsection (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. Ld. 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:

Previous Year	Assessment Year
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 Assessing Officer 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 issued u/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."

9. Therefore, in view of the above decision, the date of recording of the satisfaction will be the deemed date for the possession of the seized documents, which is 30.06.2022 in the present case and the date of search and six years period would be reckoned from this date i.e. 30.06.2022. Therefore, there is merit in the submission of the assessee

that the assessment year relevant for previous year in which search was conducted in the case of the assessee will be AY 2023-24 and the six assessment years immediately preceding the assessment year relevant for the previous year in which search was conducted for initiating proceeding u/s 153C of the Act will be AY 2018-19 to 2022-23. Therefore, respectfully following the decision of the cited case, it is held that in the present case, the assessment for AY 2021-22 should have been carried out by issuing notice u/s 153C of the Act and not u/s 143(2) of the Act as done by the AO in this case. No other contrary facts or decision was brought on record by the Ld. DR Therefore, it is held that the assessment order dated 29.12.2022 passed u/s 143(3) of the Act by the issuance of notice u/s 143(2) of the Act dated 30.06.2022 is bad in law and hence the notice u/s 143(2) of the Act, dated 30.06.2022 and the consequent assessment order dated 29.12.2022 passed u/s 143(3) of the Act are hereby quashed. The additional grounds filed by the assessee are allowed.

10. Since, in the above finding on the issue raised in ground nos.11 to 13, 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.

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

Order pronounced in the open court on 10th July, 2024.

Sd/-
[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER

Dated 10.07.2024.

SNK

Sd/-
[BRAJESH KUMAR SINGH]
ACCOUNTANT MEMBER

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi