

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

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

ITA No. 3095/DEL/2013 [A.Y. 2004-05]
ITA No. 3099/DEL/2013 [A.Y. 2005-06]

M/s Esha Securities Pvt Ltd
59/17, Bahubali Apartment
New Rohtak Road, Karol Bagh
New Delhi

Vs.

The Dy. C.I.T
Central Circle - 13
New Delhi

ITA No. 3357/DEL/2013 [A.Y. 2004-05]

The Dy.C.I.T
Central Circle - 13
New Delhi

Vs. M/s Esha Securities Pvt Ltd
59/17, Bahubali Apartment
New Rohtak Road, Karol Bagh
New Delhi

PAN - AAACE2862 P

PAN - AAACE 2862 P

(Applicant)

(Respondent)

Assessee By : Shri Amit Goel, CA
Shri Pranav Yadav, Adv

Department By : Shri T. James Singson

Date of Hearing : 27.05.2024
Date of Pronouncement : 30.05.2024

ORDER

PER NAVEEN CHANDRA, ACCOUNTANT MEMBER:-

The above captioned appeal and cross appeals by the Revenue and assessee are directed towards three separate orders of the CIT(A) - 1, New Delhi dated 13.03.2013 pertaining to A.Ys. 2004-05 and 2005-06.

2. These appeals and cross appeal pertaining to same assessee were heard together and are disposed of by this common order for the sake of convenience and brevity.

ITA No. 3099/DEL/2013 [A.Y. 2005-06]

3. The ld. counsel for the assessee sought permission to withdraw the appeal filed by the assessee in ITA No. 3099/DEL/2013 vide application dated NIL. Therefore, the same is dismissed as withdrawn.

ITA No. 3095/DEL/2013 [A.Y. 2004-05]
[Assessee's appeal]

4. The sum and substance of the grievance of the assessee is that notice issued u/s 153C of the Income-tax Act, 1961 [the Act, for short] is illegal and without jurisdiction.

5. Briefly stated, the facts of the case are that original return of income was filed by the assessee on 31.08.2005 declaring an income of Rs. 60,74,365/-. A search and seizure action was conducted in M/s Bhushan Steel Group of cases on 03.03.2010. In the search, documents belonging to the assessee were found and seized. Accordingly, notice u/s 153C was issued on 23.11.2010 after recording of satisfaction on 23.11.2010 u/s 153C of the Act. On the basis of the same, assessment was made making an addition of Rs. 2,10,07,350/- on account of unexplained credits and Rs. 45,186/- u/s 14A of the Act on account of dividend income.

6. Aggrieved, the assessee went in appeal before the Id. CIT(A) who allowed the grievance relating to unexplained cash credit. However, the Id. CIT(A) dismissed the ground pertaining to disallowance u/s 14A of the Act.

7. The assessee is now aggrieved that the CIT(A) should have held that the assumption of jurisdiction itself under section 153C r.w.s 153A was illegal.

8. Before us, the ld. counsel for the assessee vehemently stated that assumption of jurisdiction u/s 153C for the AY 2004-05 of the Act on the basis of satisfaction recorded on 23.11.2010 is contrary to the decision of the Hon'ble Supreme Court in the case of CIT Vs. Jagjit Singh [2023] 295 Taxman 612 (SC) order dated 26.09.2023.

9. The ld. counsel for the assessee argued that as the satisfaction was recorded on 23.11.2010, the assessment year relevant to the previous year in which search is conducted or requisition is made becomes A.Y 2011-12. The six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, begins from AY 2005-06. The ld AR vehemently argued that the impugned A.Y 2004-05 is therefore, out of the block of six assessment years for which assessment could be made. It was submitted that as the satisfaction u/s 153C of the Act was recorded on 23.11.2010, the last of the six A.Ys for which the Assessing Officer can assume jurisdiction is AY 2005-06. The impugned A.Y is 2004-05 and is, therefore, out of block of six assessment years and therefore the Assessing Officer cannot assume jurisdiction for making assessment.

10. The ld. counsel for the assessee also strongly relied upon the latest decision of the Hon'ble Delhi High Court in the case of Ojjus Medicare Pvt Ltd & Others [2024] 161 taxmann.com 160 (Delhi)order dated 03.04.2024.

11. On the other hand, the ld. DR relied upon the orders of the AO.

12. In rejoinder, the ld. counsel for the assessee pointed out to Para No. 3.4 at Page 32 of the appellate order of the ld. CIT(A) wherein the ld. CIT(A) has himself admitted that:

"the claim of the appellant appears correct that present A.Y 2004-05 has gone out of the ambit of assessments that can be made as a consequence of search and handing over of the books of account or documents or assets seized or requisitioned to the present Assessing Officer having jurisdiction over the appellant".

13. The ld. counsel for the assessee pointed out that the ld. CIT(A) did not decide the issue as being beyond the competency of the ld. CIT(A).

14. We have heard the rival submissions and have perused the relevant material on record. We find that this issue of the date of

search for persons covered under section 153C is no longer res-integra. It has now been well settled by the Hon'ble Supreme Court in the case of CIT Vs. Jasjit Singh 458 ITR 437(SC). The relevant law laid down by the Hon'ble Supreme Court in the case of CIT Vs. Jasjit Singh 458 ITR 437(SC) are as under:

"It is evident on a plain interpretation of Section 153C (1) that the Parliamentary intent to enact the proviso was to cater not merely to the question of abatement but also with regard to the date from which the six year period was to be reckoned, in respect of which the returns were to be filed by the third party (whose premises are not searched and in respect of whom the specific provision under Section 153-C was enacted. The revenue argued that the proviso [to Section 153(c)(1)] is confined in its application to the question of abatement. It is quite plausible that the AO seized of the materials...would take his own time to forward the papers and materials belonging to the third party, to the concerned AO. In that event if the date would virtually 'relate back' as is sought to be contended by the revenue,(to the date of seizure), the prejudice caused to the third party, who would be drawn into proceedings as it were unwittingly (and in many cases have no concern with it at all), is disproportionate."

15. The Hon'ble Delhi High Court has further elaborated the legal dictum in the case of Ojjus Medicare Pvt Ltd [2024] [supra] wherein it has held as under:

“First Proviso to Section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten-year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is governed by the First Proviso to Section 153C, which significantly shifts the reference point spoken of in Section 153A(1), while defining the point from which the period of the “relevant assessment year” is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the non-searched person. The shift of the relevant date in the case of a non-searched person being regulated by the First Proviso of Section 153C(1) is an issue which is no longer res integra and stands authoritatively settled by virtue of the decisions of this Court in SSP Aviation Ltd v. Dy.CIT (2012) 346 ITR 177 (Delhi)(HC) and CIT v. RRJ Securities Ltd 2015 SCC Online Del 13085 as well as the decision of the Supreme Court in CIT v Jasjit Singh 2023 SCC Online SC1265. The aforesaid legal position also stood reiterated by the Supreme Court in ITO v. Vikram Sujitkumar Bhatia 2023 SCC Online SC 370. The submission of the revenue, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted. The reckoning of the six AYs’ would require one to firstly identify the FY in which the search was undertaken and which would lead to the ascertainment of the AY relevant to the previous year of search. The block of six AYs’ would consequently be those which immediately precede the AY relevant to the

year of search. In the case of a search assessment undertaken in terms of Section 153C, the solitary distinction would be that the previous year of search would stand substituted by the date or the year in which the books of accounts or documents and assets seized are handed over to the jurisdictional AO as opposed to the year of search which constitutes the basis for an assessment under Section 153A.”

16. The law as interpreted by the Hon'ble Supreme Court and the Delhi High Court as above, declares that as per provisions of section 153C of the Act, the commencement date for computation of the six assessment years is deemed to be the date of receipt of books of account/materials/asset, belonging/pertaining to non-searched person, by the jurisdictional AO of the non-searched person. In other words, date of recording of the satisfaction in the case of the searched person qua the non-searched person becomes date of search in the case of non-searched person [the assessee in the present case]. In the instant case of the assessee (non-searched person), the date of search would become the date of recording satisfaction i.e., 23.11.2010. The impugned A.Y 2004-05 would therefore fall beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the assessing officer of the searched person. In light of the decision of the Hon'ble Supreme Court and Delhi High Court

[supra], therefore, we have no hesitation in quashing the impugned assessment order being made without jurisdiction.

17. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case.

ITA No. 3357/DEL/2013 [A.Y. 2004-05]
[Revenue's appeal]

18. Since we have quashed the assessment order and allowed the appeal of the assessee, the appeal of the Revenue becomes infructuous and dismissed as such.

19. In the result:

ITA No. 3099/DEL/2013	-	Appeal of assessee is dismissed as withdrawn.
ITA No. 3095/DEL/2013	-	Appeal of assessee is allowed
ITA No. 3357/DEL/2013	-	Appeal of Revenue is dismissed

20. The order is pronounced in the open court on 30.05.2024.

Sd/-

[SAKTIJIT DEY]
VICE PRESIDENT

Dated: 30th MAY, 2024.

VL/

Sd/-

[NAVEEN CHANDRA]
ACCOUNTANT MEMBER

Copy forwarded to:

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	