

(2024) 05 ITAT CK 0053

Income Tax Appellate Tribunal (Delhi F Bench)

Case No: Income Tax Appeal No. 886/DEL/2020

ACIT

Vs

Pragun Finance Pvt. Ltd

APPELLANT

RESPONDENT

Date of Decision: May 30, 2024

Acts Referred:

- Income Tax Act, 1961 - Section 37, 132, 133A, 143(3), 147, 148, 153A, 153A(1), 153C, 153C(1), 263

Hon'ble Judges: G.S. Pannu, (VP); Anubhav Sharma, J

Bench: Division Bench

Advocate: Kanwaljit Singh, P.N. Barnwal

Final Decision: Dismissed

Judgement

1. This appeal is preferred by the Revenue against the order dated 16.12.2019 of the Commissioner of Income Tax (Appeals)-XXVI, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.10519/18-19 arising out of the appeal before it against the order dated 30.12.2018 passed u/s 153C r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act'), by the ACIT, Central Circle-13, New Delhi (hereinafter referred to as the Ld. AO).

2. In pursuance of search and seizure operations in different business and residential premises of Shri Deepak Aggarwal, Shri Mukesh Kumar and other group of cases based at Delhi, it was found that the group is an entry operator providing accommodation entries to beneficiaries. Allegedly, various incriminating papers/documents were found and seized during the course of search and seizure operation in the group cases and the statements recorded during the course of search and seizure operation and pre/post search operation allegedly confirmed the involvement of the group in the accommodation entry practices. Allegedly, in these operations and inquiries, many

incriminating papers/documents were found related to the assessee company. Accordingly, after drawing satisfaction note, notice u/s 153C of the Act, was issued to the assessee and addition was made which have been deleted by the CIT(A) for which the Revenue is in appeal raising the following grounds:-

- "1. That the Id. CIT(A) has erred on facts and law in holding that the assessment years covered u/s 153A and 153C are different.**
- 2. That the Id. CIT(A) has erred in treating the amendment u/s 153C as prospective in nature without appreciating the fact that the same are clarificatory in nature.**
- 3. That the Id. CIT(A) has erred on facts and law in treating the date of handing over of documents as the date of search for deciding the relevant assessment year without appreciating the fact that the provisions of section 153C flows from provisions of section 153A and the assessment years for both the sections have to be coterminous with each other.**
- 4. That the Id. CIT(A) has erred in law and facts and failed to appreciate the facts that the assessee company was a per and shell company and used only for providing accommodation entries and miserably failed in providing identity and credit worthiness of the lenders.**
- 5. That the Id. CIT(A) has erred in law and on facts in deleting the addition on account of unexplained share capital and share premium investment amounting to Rs.13,32,00,000/- and commission charges @ 2% amounting to Rs.2664000/- paid to bogus companies.**
- 6. That the Id. CIT(A) has erred in law and on facts in deleting the addition on account of undisclosed commission of Rs.53,26,221/- earned from laundering of fund for providing accommodation entries to the beneficiaries.**
- 7. That the Id. CIT(A) has erred in law and on facts in deleting disallowance of bogus expenses of Rs.5,80,314/- booked in profit and loss account being not genuine and not allowable u/s 37 of the Act.**
- 8. (a) The Id. Commissioner of Income Tax (Appeals) is erroneous and not tenable in law and on facts.**
(b) The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal."
3. Heard and perused the record.
4. The Id. DR has submitted that the Id.CIT(A) has failed to take the notice of the various incriminating documents on the basis of which additions were made by the CIT(A).

5. However, the ld. AR has relied the order of the CIT(A) and has argued particularly, on ground no. 1 to 3, of revenue's appeal, submitted that CIT(A) has rightly held that the exercise of jurisdiction u/s 153A for the year in had was vitiated .

6. We accordingly take up for discussion the ground no 1 to 3 of the appeal first for discussion. As we appreciate the order of ld.CIT(A), it comes forth that in regard to the present assessment year 2010-11, the case set up by the assessee is that the issuance of notice u/s 153C is barred by limitation as the satisfaction note under section 153C is recorded on 8th October, 2018 and notice under section 153C is also issued on the same date. Therefore it is to be assumed in absence of any evidence to the contrary that on the same date material has been handed over by the Assessing Officer of the person searched to the A.O of the assessee. Then the year of relevance would be 2018-19 i.e. A.Y. 2019-20 and six earlier years would be 2013-14 to 2018-19. The A.O. has issued notice under section 153C for the A.Y. 2010-11 which is clearly barred by limitation. Further assessee has contended the applicability of section 153C as per I.T. Act, 1961 for the relevant assessment year.

7. To this the AO has relied the provisions of section 153C of the Act, and was of view that assessment in this case was done with due procedure and issuing statuary notice as per the provision of 153C of the I.T. Act, 1961. Further period covered in this assessment is also in accordance to provision of Section 153C of the Act.

8. The CIT(A) has dealt with the issue with following observations;

"Findings

1 have considered the facts of the case, the order by the AO and the arguments of the AR during the appellate proceedings. The decision is as below-

i. The appellant has challenged the initiation of proceedings u/s 153C of the Act on the alleged ground that the said provisions are not applicable on the facts of the case. The basis for issuance of notice u/s 153C was search/survey operation in respect of Deepak Aggarwal and Mukesh Gupta and group cases on 23 July, 2015. The AO has relied on the findings of survey operation u/s 133A in the case of Sh. Deepak Aggarwal group cases who were found as entry operators. Certain incriminating documents were claimed to have been recovered during these searches and based on this material and after applying his mind, the AO has recorded reason for opening the case u/s 153C on 08/10/2018.

ii. The relevant assessment orders-dated 30.12.2018 has been framed u/s 153C/143(3) of the Act and it was mentioned therein that notice u/s 153C was issued on 08.10.2018. Therefore, in the absence of any evidence to the contrary, it is to be assumed that on the same date i.e. 8th October, 2018, material has been handed over by the AO of the person searched to the AO of the appellant. In such

a situation, the year of relevance would be 2018-19 i.e. AY 2019-20 and six earlier assessment years would be 2013-14 to 2018-19. It is pertinent to refer to the provisions of section 153C which reads as under-

Section.I53C

153C.(1) 96[Notwithstanding anything, contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) Any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) Any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153 A, 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 notice and assess or reassess the income of the other person in accordance with the provisions of section 153 A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person 97[for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153 A :

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153 A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:

Section 153 A is also to be referred to in this context and it reads as under-

153A. (I) 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 31st 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:

Provided that the Assessing Officer 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 under section 132 or making of requisition under section 132A, as the case may be, shall abate.

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not M/s Pragun Finance Pvt. Ltd. -be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made.

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) The income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) The search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.—For the purposes of this sub-section, the expression “relevant assessment year” shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made

which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation 2.—For the purposes of the fourth proviso, “asset” shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

Explanation.—for the removal of doubts, it is hereby declared that,—

save as otherwise provided in this section, section 153B and section 153C, all other

(i)provisions of this Act shall apply to the assessment made under this section;

(ii) In an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment v'O year.

[Emphasis supplied]

iii. Ld AR also invited attention to the judgment of Hon'ble Delhi High Court in case of SARWAR AGENCY PVT LTD ITA NO 422/2017 dated 17/08/2017 which is as below-

“1. The Revenue has filed this appeal under Section 260A of the Income Tax Act, 1961 ('Act') against the order dated 1st July 2016 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 6039/Del/2014 pertaining to the Assessment Year ('AY') 2006-07.

2. The question sought to be urged by the Revenue is whether the ITAT was justified in holding that the notice issued to the Assessee under Section 153 C of the Act for the AY in question, i.e. 2006-07, is without jurisdiction since the said AY is beyond the purview of issuance of notice in terms of the said provision.

3. The facts, in brief are that a search under Section 132 of the Act took place on 11th November 2010 in the Tinna Group of cases. The documents pertaining to the Assessee were forwarded along with a satisfaction note by the AO of the searched party to the AO of the Assessee on 3rd January 2013. The AO of the Assessee issued notice to the Assessee, which qua the searched party was the 'other person', under Section 153C on 4th January 2013.

4. Sub-section (1) of Section 153 C provides that the assessment or re-assessment of the income of the 'other person' would be in accordance with the provisions of Section 153 A. The first proviso to sub-section (1) of Section 153 C further states that, in case of such other person, the reference to the date of initiation of search in the second proviso to Section 153 A(l) "shall be construed as reference to the date of receiving the books of accounts or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person."

5. In terms of Section 153 A(l) (b) of the Act, the AO shall assess or re-assess the total income of six A Ys immediately preceding the A Y relevant to the previous year in which the search was conducted. The second proviso to sub-section (1) of Section 153 A of the Act, states that assessment or re- assessment relating to any AY falling within the period of six A Ys referred to in the said sub-section pending on the date of initiation of the search under Section 132. would abate.

6. The case of the Revenue is that the first proviso to Section 153 C refers only to the second proviso to Section 153 A(l) of the Act, which only indicates that any assessment relating to any A Y falling within the period of six AYs which is pending as of the initiation of search shall abate. Therefore, the second proviso to Section 153 C is also concerned only with the aspect of abatement of pending assessments. According to the Revenue, this makes no difference to the computation of the block of six years preceding the AY relevant to the previous year /in which the search was conducted. In other words, according to the Revenue, the block period for both the searched person and the 'other person' would remain the same notwithstanding that there may be some delay in transmitting the documents recovered during the search which belong or pertain to the 'other person' to the AO of such other person.

7. The case of the Assessee, on the other hand, is that since in the case of the 'other person' the AO issues notice only subsequent to the notices issued under Section 153 A to the searched person, the starting point for computation of the block period would be the date on which, based on the seized documents, notice is issued to the 'other person' under Section 153 C of the Act. Thus in the present case, the six year period prior to AY 2012-13 i.e. AY 2007-08 to AY 2012-13. Thus no notice could be issued under Section 153 C of the Act to reopen the Assessee's

assessment for A Y 2006-

7 Reliance is placed on the decision of this Court in *Commissioner of Income-tax-7 v. RRJ Securities Ltd.* [2016] 380 ITR 612 (Del) where this very question was examined and answered in favour of the Assessee and against the Revenue.

8 In *RRJSecurities (supra)*, the Court after noticing the decision in *SSP Aviation Ltd. v. Deputy CIT* (2012] 346 ITR 177 (Del), held as follows:

"21. As discussed hereinbefore, once the AO of the searched person is satisfied that the seized assets/documents belong to another person and the said assets/documents have been transferred to the AO of such other person, the proceedings for assessment/reassessment of income of the other person has to proceed in accordance with provisions of Section 153A of the Act. Section 153A requires that where a search has been initiated under Section 132 of the Act, the AO is required to issue notice requiring the notice to furnish returns of income in respect of six assessment years relevant to the six previous years preceding the previous year in which the search is conducted. As discussed hereinbefore, by virtue of second proviso to Section 153A, the assessment/reassessment pending on the date of initiation of search abate. In the context of proceedings under Section 153C of the Act, the reference to the date of initiation of the search in the second proviso to Section 153A has to be construed as the date on which the AO receives the documents or assets from the AO of the searched person. Thus, by virtue of second proviso to Section 153A of the Act as it applies to proceedings under Section 153C of the Act, the assessment/reassessment pending on the date on which the assets/documents are received by the AO would abate. In respect of such assessments which have abated, the AO would have the jurisdiction to proceed and make an assessment. However, in respect of concluded assessments, the AO would assume jurisdiction to reassess provided that the assets/documents received by the AO represent or indicate any undisclosed income or possibility of any income that may have remained undisclosed in the relevant assessment years 24. As discussed hereinbefore, 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(I) 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."

9. The said decision in RRJ Securities (supra) has been followed by this Court subsequently in ARN Infrastructure India Ltd. v. Assistant Commissioner of Income-tax, Central Circule-28, New Delhi [2017] 394 ITR 569 (Del).

10. Mr. Salil Aggarwal, learned counsel for the Assessee, has drawn the attention of the Court to the recent amendment made in Section 153 C of the Act by the Finance Act, 2017 with effect from 1st April 2017. This amendment in effect states that the block period for the searched person as well as the 'other person' would be the same six AYs immediately preceding the year of search. This amendment is prospective.

11. 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(I) 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.

12. Consequently, no substantial question of law arises from the impugned order of the ITAT. The appeal is, accordingly, dismissed."

iv. It is clear from the above discussions that the case/s for AYs 2010-11, 2011-12 and 2012-13 reopened under section 153C are clearly beyond jurisdiction as envisaged under the relevant provisions as listed above. It is therefore, clear that the impugned orders u/s 153C are beyond jurisdiction permitted as per law. It was also contended that the documents seized did not pertain to the appellant. The appellant had sold its investment in Mysore Finlease Private Limited in 2012-13. Accordingly, the said incriminating documents did not belong to the appellant on the date of search which was 23.07.2015 & subsequent date as the shares were sold on 19.07.2013 which was before the date of search. It is seen from the provision that action under Section 153C can be taken in respect of any other person than the person searched if the Assessing Officer of the person searched is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents belong to a person other than the person searched. The appellant had sold the investment in 2012-13 and the search was in July 2015. It was contended that at the time of search, the investment in shares of Mysore Finlease Pvt Ltd were not owned by the appellant. The LD AR also relied on the judgment of Hon'ble Supreme Court in case of CIT Vs. Sinhgad Technical Educational Society 397 ITR 344 also wherein it was also held that incriminating

material had to pertain to the specific person for the specific period. Assessment Year for making the addition. In view of the above facts, it is apparent that if any addition is made to the total income of the assessee u/s 153A/153C of the Act in -concluded assessment then it has to be based on incriminating material, which needs to be correlated with respective Assessment Year in which the addition is made. The Honourable jurisdictional high court binds us and further it also has the support of several other Honourable high courts such as Bombay and Gujarat, I am convinced that in absence of incriminating material in concluded assessment years, no additions .can be made in the hands of the appellant assessee. The additions are directed to be deleted basis discussions above.

v. The appellant succeeds on this issue of the notices being beyond valid jurisdiction in this regard. The AO is, however, at liberty to initiate proceedings u/s 147/148 or seek action under section 263 as per the provisions of law."

9. We have taken into consideration the aforesaid findings of the CIT(A) and the relevant dates of search, recording of satisfaction and transmission of record are as such not disputed, then CIT(A) was not in error to rely the judgment of Hon'ble jurisdictional high court in the case of Commissioner of Income-tax-7 v. RRJ Securities Ltd. (supra). In fact, the manner in which ground no. 1 to 3 are raised, without relying any contrary judicial decision, makes the grounds, superfluous. We have no reason to differ from the conclusion drawn by CIT(A). Accordingly, ground No.1 to 3, of the appeal of revenue, which go to the root of the exercise of jurisdiction, cannot be sustained. Consequently, the appeal of the Revenue is dismissed.