IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

ITA No.3275/Mum/2015 & 3276/Mum/2015
(**Assessment Year :2003-04 & 2005-06**)

M/s. Rayoman Carriers Pvt. Ltd., Nilkanth Apartments 62, Hill Road, Acharya Atre Marg Behind Worli Diary Mumbai – 400 018	Vs.	Asst. CIT CEN CIR 12 Mumbai
PAN/GIR No.AAACR1896C		
Appellant)	..	**Respondent**)

Assessee by	Shri Shashank Dundu
Revenue by	Ms. Arju Garodia
Date of Hearing	**22/01/2018**
Date of Pronouncement	**16/03/2018**

आदेश / O R D E R

PER R.C.SHARMA (A.M):

These are the appeals filed by assessee against the order of CIT(A)-14, Mumbai dated 23/03/2015 for A.Y 2003-04 & 2005-06 in the matter of order passed u/s.143(3) r.w.s. 147 of the IT Act 1961.

2. The following grounds have been taken by assessee:-

> ***1. The*** *learned Commissioner of Income Tax (Appeals) erred in upholding the validity of notice issued u/s. 148 and the assessment order framed pursuant thereto u/s. 143(3) r.w.s. 147 and while doing so she amongst others failed to appreciate that:*
>
> *a) There was no income chargeable to tax which had escaped assessment;*
>
> *b) The notice u/s. 148 was issued was invalid since the AO had already issued a\ notice u/s. 153C to the appellant prior to the date of issue of notice u/s. 148;*

c) There was no failure on part of the appellant to file the return of income or to disclosed truly all fully all material facts necessary for assessment;
d) The AO had not passed any order disposing off the objections raised by the appellant against the reasons recorded for reopening of assessment;
e) There was no tangible material on record on the basis of which the AO could have reason to believe that income chargeable to tax had escaped assessment

2. On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in treating the proceeds received on transfer of shares of Transmission Securities Ltd. of Rs. 29,92,480/- as unexplained money in possession of the appellant.

3. On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in assessing Rs. 1,49,624/- u/s. 69C of the Act.

3. Rival contentions have been heard and record perused.

4. Legal grievance of assessee relates to assuming jurisdiction u/s.147 and framing assessment u/s.143(3) r.w.S. 147, when the case falls under the purview of Section 153C for which notice was also issued by AO.

5. From the record, I found that for the A.Y.2004-05 the return of income was filed u/s.143(1) dated 30/04/2007. There was a Search and Seizure action dt.24/01/2006 in the case of Mrs. Rupi V.Chinoy(Director of the Company), thereafter, notice u/s 153C was issued to the assessee dt.29/03/2007. In response to notice u/s.143(3) r.w.s. 153C, the assessee has filed following details:-

- *Bank Statement for period 01/04/2003 to 31/30/2004*
- *Working capita! gains with Xerox copy of brokers bill for purchase and sale of shares.*
- *Explanation and details w.r.t. how G-Tech info ltd. shares were purchased and dematted.*

6. However, the AO dropped the proceedings u/s.153C and issued notice u/s.148 on 04/02/2008. The assessee challenged the assessment u/s.143(3) r.w.S.147 before the CIT(A). The CIT(A) upheld the AO's order stating that no notice u/s 153C had been issued to the assessee and that the assessee had not been able to prove their claim that 153C notice was first issued**.** Assessee vide letter dated 11/05/2017 asked the department to show the reasons for dropping the assessment proceedings initiated u/s.153C, however, there was no response by the Department.

7. In view of the above factual matrix, learned AR Shri Shashank argued that no assessment u/s.153C was completed and notice was issued u/s.148 on 04/02/2008. As per learned AR S*ec. 153C provides* that persons relating to whom some material is found in search of some other person should be assessed under sec. 153C of the Act. The provisions of section 153C are non-obstantive provisions and specially exclude the operation of sec. 147 of the Act, therefore, the Assessing Officer in the present case has erred in invoking the provisions of sec. 147 of the Act. If action under sec. 147 is permitted on the basis of material found in the course of search, then the provisions of sec. 153 would be redundant.

8. He further contended that in the instant case provisions of sec. 153C were applicable in terms of search and documents found at the premises of Director of Company, which excludes the application of sections 147 and 148 of the Act and hence the notice issued under

sec. 148 and proceedings under sec. 147 are illegal and void ab initio. For this proposition, reliance was placed on the decision of Delhi Tribunal in the case of Rajat Shubra Chatterji vs. ACIT (2007-08) ITA No.2430/Del/2015 and ITO vs. Arun Kumar Kapoor (2011) 16 taxmann.com 373 (Amritsar) (Pg. No.107-112, PB-III).

9. Reliance was also placed on the decision of ITAT Visakhapatnam Bench in the case of G. Koteswara Rao vs. DCIT (2015) 64 taxmann.com 159 wherein it was held that having Initiated the proceeding u/s 158BC, there was no justification to issue the notice u/s 147 as they would undoubtedly result in parallel proceedings.

10. It was also argued by learned A.R Shri Shashank that for the purpose of computing the time limit for completion of the Assessment u/s 153C r.w.s 153B is the period either 21 months from the end of the financial year in which the authorization for Search u/s 132 is given or 9 months from end of financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.

11. On the other hand, learned DR relied on the decision of G.R.Pandya Share Broking Ltd., ITA No.537/Mum/2014 dated 12/08/2016.

12. I have considered rival contentions and carefully gone through the orders of the authorities below and I have also deliberated on the judicial pronouncements referred by lower authorities in their respective orders as

well as cited by learned AR and DR during the course of hearing before me in the context of factual matrix of the case. From the record, I found that there was a search and seizure action on 24/01/2006 of Mrs. Rupi V.Chinoy (Director of the company). In respect of the years under consideration, certain documents belonging to assessee were found, therefore, notice u/s.153C was issued to the assessee on 29/03/2007. However, no assessment u/s.153C was completed and notice u/s.148 dated 04/02/2008 was issued to the assessee. During the course of appellate proceeding before CIT(A), the contention was also raised by the assessee with regard to issue of notice u/s.153C, however, CIT(A) observed that no notice u/s.153C was issued to the assessee. This observation of CIT(A) is factually incorrect as per material placed on record. Now, coming to the proposition as to the assessment framed u/s.147 r.w.S. 143(3) when assessment has already been taken up u/s.153C. In case of assessment made on assessee consequent to search in another case, Assessing Officer is bound to issue notice under section 153C and thereafter he has proceeded to assess income under section 153C, however, if the Assessing Officer after issue of notice u/s.153C, had proceeded with reassessment under section 147/148 and passed assessment' order under section 143(3), same would be arbitrary and without any Jurisdiction in terms of following judicial pronouncements. In the case of Rajat Shubra Chatterji (supra) ITAT Delhi Bench held as under:-

"On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), we find that in that case as in the present case before us, reassessment was initiated on the basis of incriminating material found in search of third party and the validity of the same was challenged by the assessee before the Learned CIT(Appeals) and the Learned CIT(Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisions of sec. 153C were applicable which excludes the application of sections 147 and 148 of the Act. The ITAT held the notice issued under sec. 148 and proceedings under sec. 147 as illegal and void ab initio. It was held that Assessing Officer having not followed procedure under sec. 153C, reassessment order was rightly quashed by the Learned CIT(Appeals). In the present case before us, it is an admitted fact, as also evident from the reasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information received from the Directorate of Income-tax (Inv.) on the basis of search & seizure operation conducted at the premises of Rock Land Group of Cases and the documents related to the assessee found during the course of search were made available to the Assessing Officer of the present assessee. We thus respectfully following the decision of Co-ordinate Bench of the ITAT in the case of ACIT vs. Arun Kapur - 140 TTJ 249 (Amritsar) hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which excludes the application of sec. 147 of the Act, hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. The reassessment in question is accordingly quashed. The ground No.1 is accordingly allowed."

13. Similarly, ITAT Amritsar Bench in case of Arun Kumar Kapoor 16 Taxmann.com 373 after relying on the decision of Hon'ble Supreme Court in the case of Manish Maheshwari 289 ITR 341 held as under:-

A search was conducted under section 132 in the case of T Ltd., during the course of which certain incriminating documents were allegedly seized. The Deputy Commissioner intimated the Assessing OUlcer of the assessee about seizure of certain documents pertaining to the assessee during search and enclosed copy of those documents requesting him to take appropriate action under section 153C/148. Thereupon, the Assessing Officer initiated reassessment proceedings under section 148. On appeal, the assessee took an additional ground* *to the effect that the reassessment proceedings initiated by the Assessing Officer under section 148 were illegal and void ab initio. The Commissioner (Appeals) held that the Assessing Officer should have issued notice under section 153C and should have framed the assessment under section 153C, read with section 153A. Since the Assessing Officer failed to do so, the Commissioner (Appeals) set aside the order of the Assessing Officer passed in reassessment proceedings.*

Held:-

On a perusal of section 153C, it would be clear that the provisions of this section are applicable, which supersedes the applicability of provisions of sections 147 and 148. In the instant case, the documents were seized during the search under section 132 and the same were sent to the Assessing Officer of the assessee and thus, the Commissioner (Appeals) has correctly observed that only the provision in which any assessment could be made against the assessee was section 153C, read with section 153A. It was also apparent from the record that the officer in the case of'T' Ltd. had mentioned in his letter that the necessary action may be taken as per law under section 153C/148. Hence, notice issued under section 148 and proceedings under section 147 by the Assessing Officer were illegal and void ab initio. In view of the provisions of section 153C, section 147/148 stands ousted. In the instant case, the procedure laid down under section 153C has not been followed by the Assessing Officer and, therefore, assessment has become invalid. The Commissioner (Appeals) was justified in following the ratio laid down by the Supreme court in the case o/'Manish Maheshwari v. Asstt. CIT [2007] 289 ITR 341 / 159 Taxman 258 wherein it has been held that if the procedure laid down in section 158BD is not followed, block assessment proceedings would be illegal. The Commissioner (Appeals) has correctly observed that the provisions of section 153C are exactly similar to the provisions of section 158BD in block assessment proceedings. Thus, considering the entire facts and the circumstances of the case, the Commissioner (Appeals) was fully justified in quashing the reassessment order.

14. ITAT Visakhapatnam Bench in case of G.Koteswara Rao (supra) held as under:-

- *The question came up for consideration is (i) whether the Assessing Officer is right in reopening the assessment under section 147, where the Assessing Officer is satisfied that any money, bullion, 'jewellery or valuable article or thing or books of account or documents seized or requisitioned belongs to a person other than the person referred to in section 153A. The Act, by sections 153A, 153B and 153C provides for new scheme of assessment of cases, where the search is taken place on or after*

31-5-2003. Until, insertion of sections I53A to 153C, the search assessment was governed by separate provisions of block assessment under section 158BC and as per the said provisions, the concept of block assessment was in force.

- *The amendment brought into the statute with effect from 1-6-2003, replaces the existing provisions with the new sections, i.e. 153A to 153C which govern the new scheme of search assessments, which abundantly makes it clear that search assessment governed by these sections is independent from any other provisions of the Act. [Para 8]*
- *Section 153C deals with cases of persons other than the persons referred to in section I53A, As per the provisions of section 153C, where the Assessing Officer is satisfied that any money, bullion, jewellery or valuable article or thing or books of account or other documents seized or requisitioned belongs 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 over such other person and that Assessing Officer shall proceed in accordance with the provisions of section 153A. The CBDT issued a circular No.7 of 2003 dated 5-9-2003, explaining the new scheme of assessment procedure. [Para 10]*
- *A careful study of sections 153A to 153C and also the circular issued by the CBDT explaining the procedure of assessment in search cases shows that these are separate provisions independent of other provisions relating to reassessment, because of the non abstante clause begins with the said sections. The language used in these sections, i.e. 'notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 made it clear that provisions of these sections are not made applicable to the assessments covered by the provisions of section 153A. Prior to the introduction of these three sections, there was a separate chapter XIV-B of the Act, by sections 158BC to 158BE which governs the search assessments which is popularly known as block assessment.*

15. In terms of above judicial pronouncements, Section 153C provides that persons relating to whom some material is found in search of some other person should be assessed under sec. 153C of the Act. The provisions of section 153C are non-obstantive provisions and specially exclude the operation of sec. 147 of the Act, therefore, the Assessing Officer in the present case has erred in invoking the provisions of sec. 147 of the Act. If action under sec. 147 is permitted on the basis of material

found in the course of' search, then the provisions of sec. 153 would be redundant. The provisions of sec.153C were applicable which excludes the application of sections 147 and 148 of the Act and hence the notice issued under sec. 148 and proceedings under sec. 147 are void ab initio.

16. Applying the proposition of law laid down in the above judicial pronouncements to the facts of the instant case, wherein consequences to search at the premises of director, proceedings u/s.153C has been initiated in the hands of assessee company, the AO was not justified in not complying with the provisions of 153C and proceeding with the provisions of Section 147. Thus, assessment order framed u/s.143(3) r.w.s. 147 is without any jurisdiction. Respectfully following the above judicial pronouncements, I set aside the order passed by the AO.

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

18. Similar is the position with respect to the A.Y.2003-04. Once the proceedings are initiated u/s.153C, details were furnished, re-assessment proceedings u/s.147 cannot be initiated.

19. Following the reasoning given in the A.Y.2005-06, I set aside the order passed by the AO u/s.143(3) r.w.S.147 of the IT Act.

20. In the result, appeals of the assessee are allowed in terms indicated hereinabove.

Order pronounced in the open court on this 16/03/2018

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 16/03/2018
Karuna Sr.PS

<u>Copy of the Order forwarded to</u> :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai