

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.11.2015

+ **ITA 171/2015**

COMMISSIONER OF INCOME TAX-7

..... Appellant

versus

M/S REFAM MANAGEMENT SERVICES (P) LTD. Respondent

AND

+ **ITA 172/2015**

COMMISSIONER OF INCOME TAX-7

..... Appellant

versus

M/S REFAM MANAGEMENT SERVICES (P) LTD. Respondent

AND

+ **ITA 173/2015**

COMMISSIONER OF INCOME TAX-7

..... Appellant

versus

M/S REFAM MANAGEMENT SERVICES (P) LTD. Respondent

AND

+ **ITA 174/2015**

COMMISSIONER OF INCOME TAX-7

..... Appellant

versus

M/S REFAM MANAGEMENT SERVICES (P) LTD. Respondent

Advocates who appeared in these cases:

For the Appellant	: Mr N.P. Sahni, Senior Standing Counsel with MR Nitin Gulati, Junior Standing Counsel.
For the Respondent	: Mr. Arvind Kumar and Mr. Vikas Jain.

CORAM:
DR. JUSTICE S. MURALIDHAR
MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The Revenue has preferred these appeals under Section 260A of the Income Tax Act, 1961 (hereafter the 'Act') impugning a common order dated 26th August, 2014 passed by the Income Tax Appellate Tribunal (hereafter the 'Tribunal') in a batch of six appeals and six cross objections relating to six assessment years (AYs), being AYs 2003-04 to 2008-09. The aforesaid appeals before the Tribunal, were filed by the Revenue (being ITA Nos. 1081-1086/Del/2012) impugning a common order of the Commissioner Income Tax (Appeals) dated 5th December, 2011 partly allowing appeals of the Assessee in respect of the assessment orders (all dated 31st December, 2010) passed by the Assessing Officer (hereafter 'AO') under Section 153C read with Section 143(2) of the Act. The Revenue was aggrieved inasmuch as the CIT(A) had set aside the addition to the total income of the Assessee made by the AO under Section 69C of the Act in respect of the purchases as declared by the Assessee as well as set aside the AO's decision to disallow the entire expenses claimed by the Assessee. The Tribunal's order dated 26th August, 2014 also disposed of the

cross objections preferred by the Assessee – 6 in number – as being academic. The Assessee had challenged the CIT(A)'s order to the limited extent that the CIT(A) had not accepted the Assessee's contention that the assessment orders passed were illegal and without jurisdiction.

2. This Court, by an order dated 9th March, 2015, admitted the present appeals and issued notice to the respondents. On the said date, the following questions were framed:-

1. Did the ITAT fall into error in holding that Section 69C was inapplicable in the facts and circumstances of the present cases given that the Revenue's contention was that the material in the form of statement recorded during the search proceedings indicated that no genuine sale and purchase transaction was entered into by the assessee; and
2. Whether in the circumstances, the AO was justified in bringing to tax the amounts disallowed in the course of search assessment under Section 153C.

3. At the outset, Mr Kumar, learned counsel for the Assessee submitted that the AO had no jurisdiction to make an assessment under Section 153C of the Act as no relevant material belonging to the Assessee had been found during the search conducted under Section 132 of the Act on B.K. Dhingra, Poonam Dhingra and Madhusudan Buildcon Pvt. Ltd. He submitted that in absence of any incriminating material, proceedings under Section 153C of

the Act could not be initiated. In addition, he submitted that the proceedings in respect of AY 2003-04 and AY 2004-05 were beyond the period of six years from the end of financial year preceding the year in which satisfaction under Section 153C of the Act was recorded and, thus, outside the scope of Section 153C of the Act. He submitted that the present case also involved the question as to jurisdiction of the AO to make assessments under Section 153C of the Act; but, as the questions of law were framed prior to issuance of notice in these appeals, the Assessee had no opportunity to suggest the same.

4. Mr N.P. Sahni, learned Senior Standing Counsel for the Revenue, did not dispute that the substantial question of law as suggested by Mr. Kumar also arose in these matters. Accordingly, the parties were also heard on the following question of law which arises from the impugned order passed by the Tribunal:-

Whether the AO had jurisdiction to assess and reassess the income of the Assessee under Section 153C in respect of AYs 2003-04 to 2008-09?

5. These appeals were taken up alongwith a batch of appeals captioned **Commissioner of Income Tax-7 v. RRJ Securities Ltd.:** ITA 164/2015 and other connected matters, decided on 30.10.2015.

6. Briefly stated, the relevant facts necessary to address the issues involved in the above captioned matters are as under:-

6.1 Search and seizure operations were undertaken under Section 132 of the Act in the case of Sh. B.K. Dhingra, Smt. Poonam Dhingra and M/s Madhusudan Buildcon Pvt. Ltd. (hereafter also referred to as 'searched persons') on 20th October, 2008. Certain documents belonging to the Assessee Company were seized during the search. The AO of the Assessee recorded a 'Satisfaction Note' on 5th July, 2010 to the effect that the documents seized belonged to the Assessee and, hence, Section 153C was invokeable. On the aforesaid basis, proceedings were initiated under Section 153C and a notice dated 6th July, 2010 for the AY 2003-04 was issued to the Assessee.

6.2 The Assessee, in compliance with the notice issued under Section 153C of the Act, filed its returns of income under protest. Subsequently, notices under Section 142(1)/143(2) of the Act were also issued for the purpose of assessing the income of the Assessee with respect to AY 2003-04.

6.3 The Assessee sent a letter dated 29th November, 2010 to the AO requesting the AO to provide copies of the seized material. The Assessee also contested the initiation of proceedings under Section 153C of the Act in addition to contending that the assessments were time barred. In reply to the said letter, the ACIT vide a letter dated 3rd December, 2010 observed that the Assessee interpreted the first proviso of Section 153C(1) wrongly.

6.4 The AO subsequently passed assessment orders dated 31st December, 2010, under Section 143(3)/153C of the Act. During the assessment proceedings, it was observed that the Assessee had purchased and sold textile goods and fabrics and it was called upon to provide evidence of purchases and was further directed to provide the details of payments (by cash or cheque). In its reply, the Assessee claimed that all the purchases were made in cash. The Assessee claimed that it was dealing only in tax free goods and was not required to file sales tax returns.

6.5 The AO observed that the case of the Assessee is connected with 'Thapar Group' of cases in which it was declared that at least 15 concerns were operating from the address "B-340, Hari Nagar, New Delhi". These concerns were alleged to be capital formation concerns with huge reserves and surpluses that were reflected as invested in stock of textiles. The AO

also found that no operations were undertaken from the aforementioned premises. In view of the aforesaid, the AO concluded that the Assessee was unable to substantiate any purchase of stocks and, therefore, made addition of the amounts reflected as purchases under Section 69C of the Act. The AO also disallowed 100% of the expenses claimed by the Assessee in its P & L Account concluding that they were unverifiable.

6.6 In response to a request under the Right to Information Act, 2005, the ACIT vide a letter dated 14th May, 2015 provided the Assessee with a photocopy of papers seized that contained 'Record Slips' of a cheque book pertaining to a Bank Account with Centurion Bank of Punjab Limited, Tilak Nagar Branch, New Delhi. The said record slips - which formed a part of the cheque book – contained an entries pertaining to a cheques issued in 2008.

6.7 The CIT(A), however, allowed the appeal of the Assessee with regard to the disallowance of purchases under Section 69C of the Act and observed that Section 69C of the Act applies only when there is some expenditure and the Assessee is unable to explain the source from which such expenditure has been incurred. The CIT(A) held that the Assessee had accounted for all the purchases made in cash in its books of accounts and,

thus, the source of the expenditure could not be stated to be unexplained. The CIT(A) also deleted the addition made by the AO on account of 100% disallowance of expenditure.

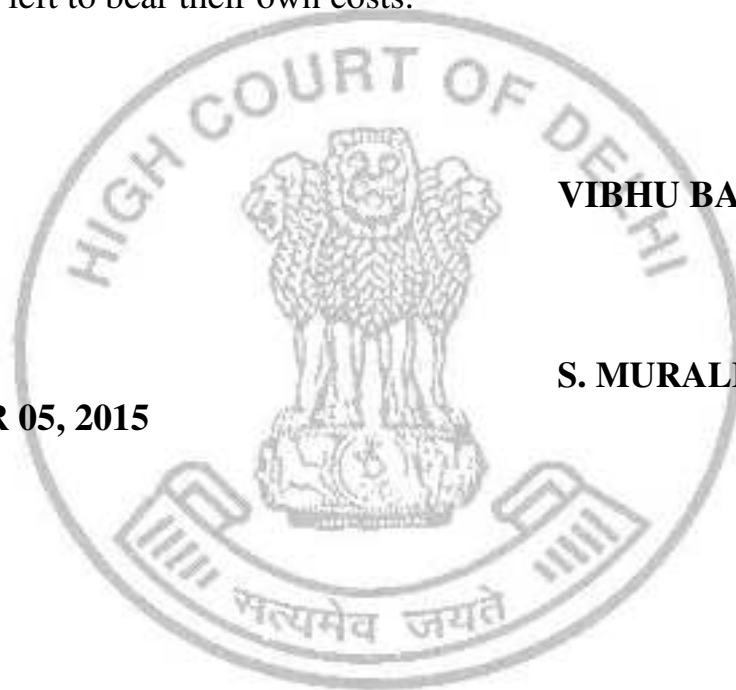
6.8 Being aggrieved by the common order dated 5th December, 2011 passed by the CIT(A), the Revenue filed six separate appeals in respect of the relevant assessment years before the Tribunal. The Assessee, on the other hand, filed cross objections which were numbered as separate appeals. The Tribunal upheld the view of CIT(A) that an addition under Section 69C of the Act was not sustainable and, accordingly, by an order dated 26th August, 2014, rejected the appeals preferred by the Revenue. The Tribunal also agreed with the decision of the CIT(A) regarding deletion of 100% disallowance of expenditure and depreciation claimed by the Assessee. The aforesaid order is impugned in the present appeals.

7. It is apparent from the above that the only document seized during the search in question was a cheque book pertaining to the Assessee which reflected issue of cheques during the period August 2008 to October 2008, relevant to the AY 2009-10. The facts and the questions of law that arise in these appeals are similar to the facts and the controversy involved in ***RRJ Securities Ltd.*** (*supra*). Thus, for the reasons stated in ***RRJ Securities Ltd.***

(*supra*), the third question framed, whether the proceedings under Section 153C of the Act could be initiated against the Assessee, is answered in favour of the Assessee and against the Revenue.

8. In view of the above, it is not necessary for us to examine the other questions. The appeals are, accordingly, dismissed. In the circumstances, the parties are left to bear their own costs.

NOVEMBER 05, 2015
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VIBHU BAKHRU, J

S. MURALIDHAR, J