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* IN THE HIGH COURT OF DELHI AT NEW DELHI
4-9.
\+ ITA 370/2015

PR. COMMISSIONER OF INCOME TAX-12 ..... Appellant
Through: Mr. Dileep Shivpuri, Senior Standing Counsel with Mr. Zoheb Hossain, Advocate.

versus

R. L ALLIED INDUSTRIES ..... Respondent
Through: Mr. K.R. Manjani, Advocate with Mr. B.K. Manjani, Advocate.

With

\+ ITA 401/2015

PR. COMMISSIONER OF INCOME TAX-12 ..... Appellant
Through: Mr. Dileep Shivpuri, Senior Standing Counsel with Mr. Zoheb Hossain, Advocate.

versus

R. L ALLIED INDUSTRIES ..... Respondent
Through: Mr. K.R. Manjani, Advocate with Mr. B.K. Manjani, Advocate.

With

\+ ITA 402/2015

COMMISSIONER OF INCOME TAX-12 ..... Appellant
Through: Mr. Dileep Shivpuri, Senior Standing Counsel with Mr. Zoheb Hossain, Advocate.

versus

R. L ALLIED INDUSTRIES ..... Respondent
Through: Mr. K.R. Manjani, Advocate with

Mr. B.K. Manjani, Advocate.

With

+ **ITA 390/2015**

PR. COMMISSIONER OF INCOME TAX-12 ..... Appellant
Through: Mr. Dileep Shivpuri, Senior Standing Counsel with Mr. Zoheb Hossain, Advocate.

versus

R. L ALLIED INDUSTRIES ..... Respondent
Through: Mr. K.R. Manjani, Advocate with Mr. B.K. Manjani, Advocate.

With

+ **ITA 391/2015**

PR. COMMISSIONER OF INCOME TAX-12 ..... Appellant
Through: Mr. Dileep Shivpuri, Senior Standing Counsel with Mr. Zoheb Hossain, Advocate.

versus

R. L ALLIED INDUSTRIES ..... Respondent
Through: Mr. K.R. Manjani, Advocate with Mr. B.K. Manjani, Advocate.

And

+ **ITA 494/2015**

PR. COMMISSIONER OF INCOME TAX-12 ..... Appellant
Through: Mr. Dileep Shivpuri, Senior Standing Counsel with Mr. Zoheb Hossain, Advocate.

versus

R. L ALLIED INDUSTRIES ..... Respondent
Through: Mr. K.R. Manjani, Advocate with Mr. B.K. Manjani, Advocate.

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CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

ORDER

% **28.01.2016**

1. These appeals by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') are directed against the common order dated 28th November 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 567-568/Del/2011 and 4812-4816/Del/2012 for the Assessment Years ('AYs') 2000-01 to 2002-03.

2. The question sought to be urged by the Revenue is whether the ITAT erred in accepting the plea of the Assessee that the assessments for the aforementioned AYs were barred by limitation in terms of the proviso to Section 153C of the Act.

3. A search and seizure action under Section 132 of the Act was carried out on the RL Group on 13th December 2005. In the course of search, several documents were seized. It was claimed that some of the documents belonged to the Respondent herein, i.e., M/s R.L. Allied Industries (the Assessee). The seized material pertaining to the Assessee was received by the Assessing Officer ('AO') of the searched entity from the Assistant Commissioner of Income Tax ('ACIT') Circle -17 on 12th March 2009. Thereafter they were handed over to the AO of the Assessee and the notice under Section 153C was issued and served upon to the Assessee on 24th March 2009.

4. The contention of the Assessee, which found favour with the ITAT, is that

in terms of the proviso to Section 153C (1) of the Act, the date of receipt of the books and accounts by the AO of the Assessee is deemed to be the date of search as far as the Assessee is concerned. The six AYs preceding the year of the search, for which the assessment was proposed to be reopened, related as far back as 2003-04. Consequently, it was held by the ITAT that the reopening of the assessment for AYs 2001-02 to 2002-03 was barred by limitation.

5. It is sought to be urged by the learned counsel for the Revenue that the decision of this Court in ***SSP Aviation Ltd. v. DCIT (2012) 346 ITR 177*** and the subsequent decision in ***CIT v. RRJ Securities Ltd. (2015) 62 taxmann.com 391(Del.)*** perhaps did not discuss the first proviso to Section 153B (1) of the Act. The further contention is that in any event the effect of a combined reading of the first proviso to Section 153B (1) and the first proviso to Section 153C (1) of the Act would only be that regular assessments which may have been pending for any of the six AYs preceding the year of search would abate but that the period for completion of assessments would begin to run from the later date i.e. the date of handing over of the accounts and documents etc to the AO of the 'other person'. In effect, learned counsel for the Revenue doubted the correctness of the decisions in ***SSP Aviation** (supra)* and ***RRJ Securities**(supra)* and sought a reference of the case to a larger Bench.

6. Having considered the relevant provisions and the decisions referred to, this Court is not persuaded to accept the above plea. The decision of this Court in ***RRJ Securities*** (*supra*), apart from discussing the provisions in

question also adverted to the earlier decision in ***SSP Aviation****(supra)* and concluded as under:

> "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(1) 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. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment year 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years prior to the assessment year relevant to the previous year in which the search was conducted. If this interpretation as canvassed by the Revenue is accepted, it would mean that whereas in case of a person searched, assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be reopened would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to the AO would be subsequent to the date of the search. This, in our view, would be contrary to the scheme of Section 153C(1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one searched) as the date of the search on the Assessee. The rationale appears to be that whereas in the case of a searched person

the AO of the searched person assumes possession of seized assets/documents on search of the Assessee; the seized assets/documents belonging to a person other than a searched person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee's income for that year."

7. This Court reiterates the view already expressed by it in ***RRJ Securities*** *(supra)* when it comes to reopening of assessments of a person other than the searched person, in terms of the first proviso to Section 153C(1). In such event the date of search would get postponed to the date of receipt of the books of accounts or documents seized by the AO having jurisdiction over such 'other person' and the six earlier AYs would have to be reckoned with reference to such postponed date of search. The first proviso to Section 153 B (1) does not support the case sought to be canvassed by the Revenue. It refers to and acknowledges that the date of search qua the 'other person', in terms of the first proviso to Section 153 C (1), gets postponed to the date on which documents are handed over to the AO of the 'other person'. Consequently, the question of referring the case to a larger Bench does not arise.

8. In the present case, there is no doubt that it was only on 24th March 2009 that the AO of the Assessee received the documents seized and it was on

that date a notice under Section 153C (1) was issued and served upon the Assessee. Consequently, this Court finds no legal error in the conclusion of the ITAT that notice under Section 153C (1) could not have been issued for AYs 2001-02 and 2002-03.

9. No substantial question of law arises for consideration. The appeals are dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 28, 2016
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