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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 438/2019

THE PR. COMMISSIONER OF INCOME TAX -3

..... Appellant

Through: Mr.Aseem Chawla, Sr.SC with Mr.Naveen Rohila, Adv.

versus

DALMIA CONSOLIDATED PVT. LTD. ..... Respondent

Through: Mr.Satyen Sethi and Mr.Arta Trana Panda, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **16.04.2024**

1. The Revenue questions the correctness of the judgment rendered by the Income Tax Appellate Tribunal [‘**ITAT**’] dated 19 July 2018 and has posited the following questions of law for our consideration:-

> “A. Whether on the facts and circumstances of the case and in law, the Hon’ble Income Tax Appellate Tribunal (“ITAT”) has erred in holding that jurisdiction under Section 153C of the Income Tax Act, 1961 (“the Act”) was invalidly assumed rendering the assessment void ab-initio.
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> B. Whether on the facts and circumstance of the case and in law, the Hon’ble ITAT has erred in deleting the addition under Section 68 of the Act towards Share capital/Share premium amounting to Rs.3,00,00,000/-.”

2. The facts which would be relevant for the purposes of evaluating the challenge which stands raised are as follows. A search and seizure action under Section 132(1) of the Income Tax Act, 1961

[**'Act'**] was conducted in respect of the Dalmia Group of Companies on 20 January 2012, 27 January 2012 and 28 January 2012. It is the case of the appellant that in the course of the search certain incriminating documents were seized and which related to the respondent-assessee. The Assessing Officer [**'AO'**] of the searched entity is stated to have forwarded those documents along with the Satisfaction Note on 21 March 2014. Subsequently, the jurisdictional AO of the respondent-assessee invoked Section 153C of the Act and issued a notice on even date. Pursuant to the aforesaid notice, the respondent-assessee submitted its return pertaining to Assessment Year [**'AY'**] 2008-09. On the basis of the material which came to the fore, various additions under Section 68 of the Act came to be made by the AO in the hands of the respondent.

3. Aggrieved by the aforesaid, the respondent preferred an appeal before the Commissioner of Income Tax (Appeals) [**'CIT(A)'**] which came to be dismissed. The aforesaid order was assailed before the ITAT which has in terms of the order impugned before us annulled the invocation of Section 153C of the Act basing its decision on the judgment rendered by the Supreme Court in **Commissioner of Income Tax vs. Singhad Technical Education Society** [(2018) 11 SCC 490]. This is evident from Para 9.20 of the order of the ITAT which is reproduced hereinbelow: -

> "9.20 Keeping in view of the facts and circumstances of the case as explained above and respectfully following the decision of the Hon'ble Supreme Court of India in the case of CIT vs. Singhad Technical Education Society (Supra) as well as the decision of the Hon'ble Jurisdictional High Courts referred above, we are of the considered view that documents referred to in the Satisfaction Note are related to Assessment Year in dispute i.e. AY 2008-09. Therefore, invocation of jurisdiction is vitiated in law and would render the assessment void-ab-initio. Accordingly, we cancel the assessment order as well as appellate order."

4. The fact that the incriminating material did not pertain to AY 2008-09 could not be disputed before us. We note that we have in **Saksham Commodities Limited vs. Income Tax Officer Ward 22(1), Delhi** [2024 SCC OnLine Del 2551], while dealing with the imperatives of a connection between the incriminating material pertaining to the relevant AY had held as follows:-

> **"63.** On an overall consideration of the structure of Sections 153A and 153C, we thus find that a reopening or abatement would be triggered only upon the discovery of material which is likely to "*have a bearing on the determination of the total income*" and would have to be examined bearing in mind the AYs' which are likely to be impacted. It would thus be incorrect to either interpret or construe Section 153C as envisaging incriminating material pertaining to a particular AY having a cascading effect and which would warrant a mechanical and inevitable assessment or reassessment for the entire block of the "*relevant assessment year*".
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> **64.** In our considered view, abatement of the six AYs' or the "*relevant assessment year*" under Section 153C would follow the formation of opinion and satisfaction being reached that the material received is likely to impact the computation of income for a particular AY or AYs' that may form part of the block of ten AYs'. Abatement would be triggered by the formation of that opinion rather than the other way around. This, in light of the discernibly distinguishable statutory regime underlying Sections 153A and 153C as explained above. While in the case of the former, a notice would inevitably be issued the moment a search is undertaken or documents requisitioned, whereas in the case of the latter, the proceedings would be liable to be commenced only upon the AO having formed the opinion that the material gathered is likely to inculpate the assessee. While in the case of a Section 153A assessment, the issue of whether additions are liable to be made based upon the material recovered is an aspect which would merit consideration in the course of the assessment proceedings, under Section 153C, the AO would have to be prima facie satisfied that the documents, data or asset recovered is likely to "*have a bearing on the determination of the total income*". It is only once an opinion in that regard is formed that the AO would be legally justified in issuing a notice under that provision and which in turn would culminate in the abatement of pending assessments or reassessments as the case may be.

65. We would thus recognize the flow of events contemplated under Section 153C being firstly the receipt of books, accounts, documents or assets by the jurisdictional AO, an evaluation and examination of their contents and an assessment of the potential impact that they may have on the total income for the six AYs' immediately preceding the AY pertaining to the year of search and the "*relevant assessment year*". It is only once the AO of the non-searched entity is satisfied that the material coming into its possession is likely to "*have a bearing on the determination of the total income*" that a notice under Section 153C would be issued. Abatement would thus be a necessary corollary of that notice. However, both the issuance of notice as well as abatement would have to necessarily be preceded by the satisfaction spoken of above being reached by the jurisdictional AO of the non-searched entity.

66. Therefore, and in our opinion, abatement of the six AYs' or the "*relevant assessment year*" would follow the formation of that opinion and satisfaction in that respect being reached.

67. <u>On an overall consideration of the aforesaid, we come to the firm conclusion that the "incriminating material" which is spoken of would have to be identified with respect to the AY to which it relates or may be likely to impact before the initiation of proceedings under Section 153C of the Act. A material, document or asset recovered in the course of a search or on the basis of a requisition made would justify abatement of only those pending assessments or reopening of such concluded assessments to which alone it relates or is likely to have a bearing on the estimation of income. The mere existence of a power to assess or reassess the six AYs' immediately preceding the AY corresponding to the year of search or the "*relevant assessment year*" would not justify a sweeping or indiscriminate invocation of Section 153C.</u>

68. The jurisdictional AO would have to firstly be satisfied that the material received is likely to have a bearing on or impact the total income of years or years which may form part of the block of six or ten AYs' and thereafter proceed to place the assessee on notice under Section 153C. The power to undertake such an assessment would stand confined to those years to which the material may relate or is likely to influence. Absent any material that may either cast a doubt on the estimation of total income for a particular year or years, the AO would not be justified in invoking its powers conferred by Section 153C. It would only be consequent to such satisfaction being reached that a notice would be liable to be issued and thus resulting in the abatement of pending proceedings and reopening of concluded assessments."

5. Accordingly, and for the aforesaid reasons, we find no merit in the instant appeal. It shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 16, 2024

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