



2024:DHC:8919-DB

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

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Judgment delivered on: 20.11.2024

+ **ITA 218/2024****PRINCIPAL COMMISSIONER OF INCOME
TAX-1**

..... Appellant

versus

M/S AGROHA FINCAP LTD.

..... Respondent

Advocates who appeared in this case:For the Appellant : Mr Vipul Agrawal, Mr Gibran Naushad
and Ms Sakashi Shairwal, Advocates.

For the Respondents : Mr Arvind Kumar, Advocate.

CORAM**HON'BLE MR JUSTICE VIBHU BAKHRU****HON'BLE MS JUSTICE SWARANA KANTA SHARMA****JUDGMENT****VIBHU BAKHRU, J.**

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 26.05.2023 (hereafter *the impugned order*) passed by the Income Tax Appellate Tribunal (hereafter *ITAT*) in ITA No.8305/Del/2019 captioned *M/s Ahroha Fincap Ltd. v. ITO*.

2. The learned ITAT had allowed the appeal preferred by the Assessee (M/s Agroha Fincap Ltd.) against an order dated 20.08.2019 passed by the Commissioner of Income Tax (Appeals) [hereafter *CIT(A)*], whereby the Assessee's appeal against the assessment order dated 14.12.2018, was rejected.



3. The Assessee's assessment of income for the previous year relevant to assessment year (AY) 2011-12 was re-opened by issuance of a notice dated 30.03.2018 under Section 148 of the Act.
4. The reasons for reassessing the Assessee's income as set out in the assessment order indicates that the information was received from DIT (Investigation) to the effect that one Sh. Surinder Kumar Jain was providing accommodation entries through large number of dummy companies floated by him or his associates. The Investigation Wing of the Act had compiled a report and data of the beneficiaries of such entries. The name of the Assessee featured in the list of beneficiaries of accommodation entries by way of share capital premium / loan.
5. The assessment order records that information was "*based on search & seizure operation conducted in the case of Jain Brothers (Sh. Virendra Jain and Sh. Surinder Kumar Jain) their group concerns on 14/09/2010*". It was alleged that the material found was seized from the residence of Jain Brothers and the same included several diaries and registers, which contained incriminating information maintained in the form of daily cash books. It was reported that the cash received from beneficiaries was deposited in the bank accounts of various entities as cash received against sales and the same was immediately transferred to various dummy companies of Jain Brothers. The money was allegedly routed through a series of transactions through a web of dummy concerns managed by Jain Brothers. The funds were transferred to the beneficiary by cheque in lieu of cash that was given by the beneficiary initially. Jain Brothers received percentage of the amount as



commission. The reasons recorded indicates that the entries found in the seized documents of Jain Brothers were corroborated with the transactions through banking channels. And, the same revealed that the following entries were taken by the Assessee from the entry operators:

Cheque Book Date	From Company Name	To Company /Person Name	Name of The Issuing Bank	Cheque/RTGS/PO No/Cheque Date	Amount (Rs.)	Name of The Middelman / Mediator	Annexure No.	Page No.
18.06.10	Blue Bell Finance Ltd.	Agroha Fincap Ltd.	Axis	RTGS	25,00,000	Anil Singhal	A-10	Page 36

6. It is further stated that on examination of the returns it was noted that the Assessee had increased its authorised capital by ₹5,00,000/- and its paid-up capital by ₹4,80,000/-. The security premium account was credited by a sum of ₹43,20,000/-. Thus, the Assessee had increased its shareholder's fund by an aggregate sum of ₹48,00,000/-.

7. The Assessing Officer had issued the notice dated 30.03.2018 under Section 148 of the Act.

8. The assessment proceedings culminated in an assessment order dated 14.12.2018 passed under Section 147 of the Act, whereby the Assessing Officer made an addition of ₹25,45,000/- comprising of



₹25,00,000/- under Section 68 of the Act and ₹45,000/- under Section 69C of the Act.

9. The Assessee appealed the said assessment order before the learned CIT(A) on several grounds including on merits of the said addition. The learned CIT(A) rejected the Assessee's appeal, however, accepted its claim that it was entitled to TDS as per provisions of the Act after necessary verification.

10. Aggrieved by the said decision, the Assessee preferred an appeal before the learned ITAT. Before the learned ITAT, the Assessee also raised an additional ground claiming that proceedings under Section 147/148 of the Act were without jurisdiction as only proceedings under Section 153C of the Act could be initiated. The said ground found favour with the learned ITAT and the Assessee's appeal was allowed on the ground that the initiation of reassessment proceedings under Section 147/148 of the Act were invalid.

11. The learned ITAT held that the correct course for the Assessing Officer (AO) was to take recourse under Section 153C of the Act.

12. In the aforesaid facts, the Revenue has preferred the present appeal. On 30.04.2024, this Court framed the following question of law:

“A. Whether in the facts and circumstance of the case and in law, the Income Tax Appellate Tribunal [“ITAT”] erred in holding that the Department could have proceeded only under Section 153C of the Income Tax Act, 1961 [“Act”] and not under Section 147 of the Act?”

13. The present appeal was heard along with ITA No.401/2022 as the said appeal was also admitted on a similar question of law.



14. By a separate judgment delivered in ITA No. 401/2022, the question of law as framed has been answered in favour of the Revenue and against the Assessee. For the sake of brevity, we do not consider it apposite to reproduce the reasons and discussion as set out in the said decision in this order. However, the same may also be read as a part of this order.

15. For the said reasons, the question framed in the present petition is also required to be answered in favour of the Revenue and against the Assessee.

16. Having stated the above, we also note that in the present case, no satisfaction note was recorded by the AO of the search person or forwarded to the AO of the Assessee. Thus, in any event the conditions for reopening of the assessment under Section 153C of the Act were not satisfied. For this reason as well, recourse to Section 147 of the Act based on information as received by the Investigation Wing was not precluded. The AO could not be faulted for proceedings under Section 147/148 of the Act instead of Section 153C of the Act. It is also material to note that the search in the case of Jain Brothers was conducted on 14.09.2010. Section 153C(1) of the Act as in force at the material time postulated that the assessment/reassessment of income of person (other than the searched person) under Section 153C of the Act could be initiated only if the assets, documents or books of accounts or material found during the search under Section 132 of the Act or requisitioned under Section 132A of the Act in respect of another person, “belongs or belong to” such person other than the one searched who could then be



assessed under Section 153C of the Act subject to other conditions being satisfied. Thus, on the date on which the AO had received the information from the Investigation Wing, which is stated to be 12.03.2013, reassessment under Section 153C of the Act, was impermissible. Section 153(1) of the Act was amended subsequently by virtue of the Finance Act, 2015. However, the Supreme Court in *Income Tax Officer v. Sujit Kumar Bhatia*, (2023) 453 ITR 417, clarified that the amendment would also be applicable to search conducted prior to 01.06.2015.

17. The present case is covered squarely by the decision of the Supreme Court in *Principal Commissioner of Income Tax v. Abhisar Buildwell (P.) Ltd.*: (2023) 149 taxmann.com 399 (SC) as the jurisdictional condition for the AO of the Assessee to assume jurisdiction under Section 153C of the Act was not satisfied.

18. In view of the above, the present appeal is allowed and the Assessee's appeal is restored before the learned ITAT for consideration on other grounds as raised by the Assessee.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 20, 2024
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