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

\+ ITA 230/2020 & CM APPL. 34531/2020 (Stay)

PR.COMMISSIONER OF INCOME TAX (CENTRAL-II)NEW DELHI .....Appellant

Through: Mr. Sanjay Kumar, SSC with Mr. Puneett Singhal & Ms. Eisha Kadian, JSCs.

versus

SHRI JAGJIT SINGH .....Respondent

Through: Dr. Rakesh Gupta, Mr. Somil Agarwal & Mr. Dushyant Agrawal, Advs.

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\+ ITA 2/2021

PR.COMMISSIONER OF INCOME TAX (CENTRAL-II), NEW DELHI .....Appellant

Through: Mr. Sanjay Kumar, SSC with Mr. Puneett Singhal & Ms. Eisha Kadian, JSCs.

versus

SHRI JAGJIT SINGH .....Respondent

Through: Dr. Rakesh Gupta, Mr. Somil Agarwal & Mr. Dushyant Agrawal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **04.07.2024**

1. The Principal Commissioner assails the validity of the judgment rendered by the Income Tax Appellate Tribunal ["**Tribunal**"] dated 01 October 2019 and has framed the following questions of law for our consideration:

ITA 230/2020

"I. Whether the Hon'ble ITAT has erred in quashing the assessment order framed u/s 153C r.w. section 153A of the Income Tax Act, 1961 without appreciating the facts and circumstances of the case?

II. Whether the Hon'ble ITAT has erred in quashing the assessment order framed U/s 153C r.w. section 153A of the Income Tax Act, 1961 on the ground that satisfactions were recorded mechanically by the AO without appreciating the facts that the satisfaction is duly recorded by the AO of the searched person and that of the assessee in consonance with the provisions of the Sec. 153C of the IT Act?

III. Whether the Hon'ble ITAT has erred in quashing the assessment order framed u/s 153C R/W 153A of the Income Tax Act, 1961 by holding that the documents were not incriminating in nature by completely ignoring the fact that the documents contained interalia, SMSs relating to cash transactions of substantial amounts with the assessee, which are completely incriminating?

IV. Whether the Hon'ble ITAT has not erred in applying the ratio in the case of CIT Vs. RRJ Securities Ltd. and Pepsico India Holdings Pvt. Ltd. and in holding that the conditions mandated u/s 153C of the Act were not fulfilled in the case, without appreciating the decision of the Hon'ble Respective High Courts in the cases of Ganpati Fincap Services Pvt. Ltd. Vs. CIT [2017] 82 TAXMANN.COM 408 (Delhi) and PCIT Vs. Super Malls Pvt. Ltd. [2016] 76 taxmann.com 267(Delhi)/[2017] 393 ITR 557 (Delhi)/[2017] 291 CTR 142 (Delhi)?

V. Whether in law and on facts of the case the order of the Hon'ble ITAT is erroneous and perverse?"

ITA 2/2021

"I. Whether the Hon'ble ITAT has erred in quashing the assessment order framed u/s 153C r.w. section 143(3) of the Income Tax Act, 1961 without appreciating the facts and circumstances of the case.

II. Whether the Hon'ble ITAT has erred in quashing the assessment order framed U/s 153C R/W Section 143(3) of the Income Tax Act, 1961 on the ground that satisfactions were recorded mechanically by the AO without appreciating the facts that the satisfaction is duly recorded by the AO of the searched person and that of the assessee in consonance with the provisions of the Sec. 153C of the IT Act?

III. Whether the Hon'ble ITAT has erred in quashing the assessment order framed u/s 153C R/W Section 143(3) of the

Income Tax Act, 1961 by stating that the documents were not incriminating in nature by completely ignoring the fact that the documents contained SMSs relating to transactions of cash/ transactions of substantial amounts with the assessee, which are completely incriminating?

IV. Whether the Hon'ble ITAT has erred in applying the ratio in the case of CIT Vs. RRJ Securites Ltd. without appreciating the facts and circumstances of the case?

V. Whether the Hon'ble ITAT has erred in holding that the assessment order was passed u/s 143(3) completely ignoring the fact that the order was passed after taking due approval from Addl. CIT u/s 153D which implies that the order was passed u/s 153C r.w.s. 143(3) of the IT Act and only because of typographical error, omission of Sec. 153C was made on the first page of the order?

VI. Whether in law and on facts of the case the order of the Hon'ble ITAT is erroneous and not tenable in law?"

2. The dispute itself pertains to the issuance of a notice under Section 153C of the Income Tax Act, 1961 ["**Act**"] and pursuant to which the Assessing Officer ["**AO**"] sought to reopen Assessment Years' ["**AYs'**"] 2006-07 to 2011-12. Additionally, AY 2012-13 was also sought to be reopened on the basis of material that had been gathered in the course of the search.

3. One of the principal issues which appears to have been urged for the consideration of the Tribunal was the commencement point from which the block period of six years was to be computed. The Tribunal bearing in mind the judgment rendered by this Court in **CIT vs RRJ Securities** [2015 SCC OnLine Del 13085] and other decisions, held that in the case of non-searched entities, it would be the date of recordal of satisfaction and not the date of search which would constitute the commencement point for reckoning the block period of six years. The Tribunal on facts has further found that insofar as AY 2012-13 is concerned, and to which alone the seized material related and could be said to be incriminating, was sought to

be assessed on the anvil of the powers conferred under Section 143(3) of the Act.

4. It is in the aforesaid backdrop that it was held that if the assessment was sought to be undertaken on the basis of material unearthed in the course of the search, the only recourse available to the AO would have been to invoke Section 153C. Undisputedly, the search assessment powers as conferred by Section 153C were not invoked for AY 2012-13. On facts, and as would be borne out from the order of the Tribunal, the AO for that year had invoked Section 143(3) of the Act and made additions to the tune of INR 4 crores on account of unexplained investment and INR 70,10,000 on account of unexplained cash credit, thereby assessing the total income at INR 4,94,74,400 for the said year. Separate proceedings for penalty under Section 271(1)(c) of the Act were also initiated by the AO.

5. Insofar as the other AYs' which are sought to be reopened, the Tribunal has categorically found in Para 24 that the incriminating material did not relate or pertain to those years. Para 24 of the Tribunal's impugned judgment is extracted hereinbelow:

> "**24.** At the same time, SMS mentioned by the AO at page 2 of the assessment order <u>found on the mobile phone of Atul Bansal, searched person, are relevant only for AY 2012-13 and not AY 2011-12 as the date of search on the basis of which assessment u/s 153C was initiated on 09.11.2011</u>. Moreover, CIT (A) in para 5.2 of AY 2011-12 failed to clarify if any incriminating material was seized for this year."

6. That view, in our considered opinion, is in consonance with the requirement of an indelible link between the incriminating material and the AYs' in question, and which aspect has been highlighted in **Saksham Commodities Limited vs. Income Tax Officer, Ward 22(1), Delhi & Anr** [2024 SCC OnLine Del 2551]. The relevant

paragraphs of the said decision read 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. <u>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*"</u>.

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. <u>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</u>.

65. <u>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</u>

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. 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.

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."

7. On an overall consideration of the aforesaid, we find no justification to interfere with the ultimate view taken by the Tribunal. The appeals fail and shall stand dismissed on the aforesaid terms.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 4, 2024/kk