

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

1964

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
&
SHRI K.N. CHARY, JUDICIAL MEMBER****ITA Nos.- 384 & 385/Del/2013
(Assessment Years: 200809 & 2010-11)**

Ascot Investments 626, 6 th Floor, Tower-A, DLF Tower, Jasola, New Delhi. AAMFA6159Q	vs	ACIT Central Circle 25 New Delhi.
Assessee by	Sh.Ved Jain, Adv. & Sh. Ashish Goel, CA	
Revenue by	Sh. Rani Jain, CIT DR	

Date of Hearing	01.05.2017
Date of Pronouncement	05.05.2017

ORDER**PER BENCH:**

These appeals challenging the order dated 14.11.2012 in appeal nos. 364 & 366/2011-12 on the file of the Commissioner of Income Tax (Appeals)-1, New Delhi.

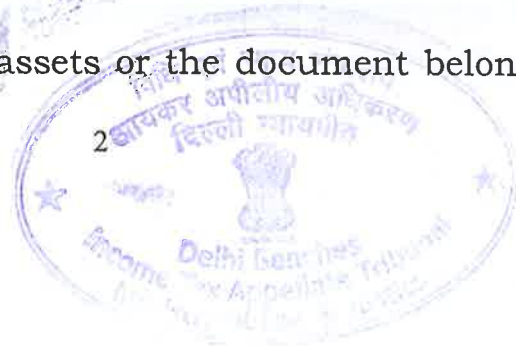
2. Brief facts of the case are that the assessee is a partnership firm of which one Satish Kumar Gupta, Sameer Gupta and Sundeep Gupta are the partners and it was constituted on 10.04.2006 for making investments. Pursuant to the search and seizure operations that were conducted in the premises of the partners of the firm on 10.02.2012 and notice u/s 153C of the



Act, for the AY 2008-09, the assessee filed return of income of Rs. 4,88,38,540/-. AO computed the income of the assessee at Rs. 6,71,69,500/- treating the income earned from investments as business income, as against the short term and long term capital gains claimed by the assessee. Appeal preferred by the assessee was allowed in part by the Ld.CIT (A) holding that the income on the sale of capital assets should be treated as capital gain, and the expenditure on PMS cannot be added back to the business income of the assessee.

3. Aggrieved by this finding of the Ld. CIT (A) the assessee is before us in this appeal vehemently contended that the proceedings initiated u/s 153C of the Act are bad and are liable to be quashed in the absence of any satisfaction recorded by the AO of the searched person that the incriminating material belonging to the assessee was found during the course of such search. Besides this it is also stated in the grounds that PMS amounting to Rs. 69,29,808/- is being eligible while computing the capital gain and cannot be added to the business income of the assessee.

4. Contention of the Ld.AR is twofold. One is that, unless and until the AO of the person searched records the satisfaction note to the effect that the seized assets or the document belongs to a

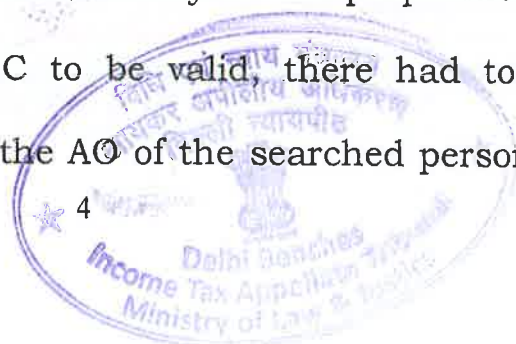


person other than the searched person, the AO of the other person does not get jurisdiction to proceed with the matter. The other contention is that unless and until the document that was found during the search is incriminatory in nature qua the assessee, no proceedings u/s 153C or 153A can be initiated.

5. Ld. DR placed reliance on the decision reported in PCIT vs. M/s Nau Nidh Overseas Pvt. Ltd. in ITA No. 58 of 2017 (Del) (HC) dated 03.02.2017 for the principle that where the AO is common for the person searched and the other person, he had jurisdiction to complete the assessment in respect of both the searched persons and the third party, and for the purpose of Section 153C the satisfaction of the AO of the other person is sufficient. Per contra, Ld. AR placed reliance on the decision reported in PCIT vs. M/s Super Malls Pvt. Ltd. (2016) 11 TMI 1370 (Del) (HC) in ITA No. 449 of 2016 dated 22.11.2016 in support of his contention that in Nau Nidh's case the Hon'ble Jurisdictional High Court placed reliance on its own decision in PCIT vs. M/s Super Malls Pvt. Ltd. (2016) 11 TMI 1370 (Del) (HC) in ITA Nos. 449-451 & 453 of 2016 dated 22.11.2016 and submitted that in both Nau Nidh Overseas case (supra) and M/s Super Malls P. Ltd. case (supra) the person confess happened to be one of the Directors of



the assessee as such the Hon'ble High Court held that the satisfaction of the searched person or the other person is sufficient. However, he placed reliance on the decisions of the Jurisdictional High Court in CIT vs. RRJ Securities Ltd. (2015) 11 TMI 19 (Del) (HC) ITA No. 164 of 2015 dated 30.10.2015 as approved in ARN Infrastructure India Ltd. 2017 (4) TMI 1194 (Delhi) for the principle that 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 and 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. In ARN Infrastructure India Ltd. vs. ACIT (2017) 4 TMI 1194 (Del) (HC) in W.P. (C) No. 2768 of 2016 dated 25.04.2017 the Hon'ble High Court further held that the decision in CIT vs. RRJ Securities Ltd. (supra) is also an authority for the proposition that for the proceedings u/s 153C to be valid, there had to be a satisfaction note recorded by the AO of the searched person. He



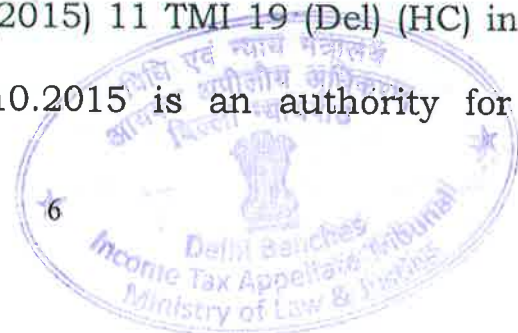
further placed reliance on the decision reported in Narsi Creations vs. DCIT (2016) 6 TMI 83 (Del) (ITAT) in ITA No. 3188 to 3194/Del/2013 dated 10.05.2016 for the principle that recording of satisfaction by the Assessing Officer of the person searched that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized belong to the person other than the person searched is a *sine qua non* for initiating action u/s 153C.

6. Ld. DR placed reliance on the decision of the Hon'ble Kerala High Court in E.N. Gopi Kumar vs. CIT ITA No. 31/2016 for the principle that the assessment proceedings generated by the issuance of a notice u/s 153A(1)(a) of the Act can be concluded against the interest of the assessee including making additions even without any incriminating material being available against the assessee in the search u/s 132 of the Act on the basis of which the notice was issued u/s 153A(1)(a) of the Act. Per contra, it is the submission of the Ld. AR that the reasons recorded could only show that the print out of the contents of hard disk revealed that there are transactions in HDFC Bank Account No. 034174007 of the assessee as such proceedings u/s 153C are initiated. He further submitted that nothing is added on the basis



of the entries in this account and this was the regular account of the assessee declared to the Department. He placed reliance on the decision of the Tribunal in M/s Global Realty Creations Ltd. vs. DCIT (2017) 4 TMI 470 (Del) (ITAT) in ITA No. 1245/Del/2014 dated 07.04.2017 for the principle that without any incriminating material found during the search and seizure operations no additions are sustainable. Further in the decision reported in M/s Best Infrastructure (India) Pvt. Ltd. vs. DCIT in ITA No. 2739/Del/2014 dated 08.02.2017 the coordinate bench of this Tribunal following the decision in Kabul Chawla's case and RRJ Securities held that unless and until there is incriminatory material against the assessee no proceedings u/s 153C are maintainable against the assessee.

7. We have carefully gone through the record. Insofar as the first contention as to the recording of satisfaction of the AO of the person searched to be necessary for assumption of jurisdiction by the AO of the other person is concerned, the latest decision of the Hon'ble Jurisdictional High Court in ARN Infrastructures delivered on 25.04.2017 is specific to the point that the decision in CIT vs. RRJ Securities Ltd. (2015) 11 TMI 19 (Del) (HC) in ITA No. 164/Del/2015 dated 30.10.2015 is an authority for the



proposition that for the proceedings u/s 153C to be valid, there had to be a satisfaction note recorded by the AO of the searched person, which is conspicuously absent in this case. The judgment in A.R. Infrastructure India Ltd. is latest in point of time and binds this Tribunal on this aspect.

8. Further in so far as the entries of HDFC Bank are concerned there is no denial of the facts submitted by the Ld. AR that there is no adverse comment by the AO in respect of such entries and there is no denial from the Revenue that such an account is the regular account of the assessee declared to the Department over the years. Admittedly, nothing incriminatory could be found in the entries. We, therefore, respectfully following the decision of the Hon'ble Jurisdictional High Court in CIT vs. Kabul Chawla (Del) (HC) in ITA No. 707 of 2014 and RRJ Securities' case (2015) 11 TMI 19 (Del) (HC) in ITA No. 164/Del/2015 dated 30.10.2015 hold that no addition could be made on the basis of any material which is not incriminatory in nature.

9. For the reasons set forth in the preceding paragraphs, while respectfully following the decisions of the Hon'ble Jurisdictional High Court, we find that the proceedings u/s 153C of the Act without recording the satisfaction of the AO of the searched



person to the effect that the documents that were found in the search do not belong to the searched person and they belong to the other person than the searched one, are bad under law and further that without any incriminatory material against the assessee no additions could be made against them. We, therefore, quash the orders of the authorities below.

10. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 05th May, 2017

(G.D. AGRAWAL) 40
PRESIDENT

Dated: 05.05.2017

*Kavita Arora

(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

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2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

सहायक रजिस्ट्रार

Assistant Registrar

आयकर अपीलार्थी अधिकरण

Income Tax Appellate Tribunal

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