



आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" Bench" JAIPUR

श्रीगगन गोयल, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI GAGAN GOYAL, AM& SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 1175/JPR/2024
निर्धारण वर्ष/Assessment Year : 2011-12

Deputy Commissioner of Income Tax, Central Circle-4, Jaipur.	बनाम vs.	Sh. Kailash Chand Hirawat 9, Narain Singh Road, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAKPH9224R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Rohan Sogani, C.A.
राजस्व की ओरसे / Revenue by: Shri Arvind Kumar, CIT-DR &
Mrs. Anita Rinesh, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 30/01/2025
उद्घोषणा की तारीख / Date of Pronouncement: 06/02/2025

आदेश / ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER.

Department-appellant is in appeal against order dated 18.07.2024, passed by Learned CIT(A), u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

Impugned Order

Vide impugned order, Learned CIT(A) has allowed the appeal filed by the assessee thereby setting aside the assessment order dated

08.12.2018, relating to the assessment year 2011-12, and passed u/s 147 r.w.s. 143(3) of the Act.

Assessment Order

2. Vide assessment order dated 08.12.2018, the Assessing Officer made two additions i.e. one to the tune of Rs. 3,61,00,000/-, and other to the tune of Rs. 17,93,000/-.

3. In brief, it may be mentioned here that case of the assessee was reopened and notice u/s 148 of the Act was issued on 30.03.2018 whereupon the assessee filed return of income, declaring total income of Rs. 17,08,170/-, the one even earlier declared by him, while filing original return of income dated 29.09.2011.

As per case of the department, information was received from DCIT, Central Circle-4, Jaipur, that the said group indulged in cash loan financing at large scale.

The information was based on search and seizure action conducted u/s 132 of the Act in the case of a group known as Ramesh Manihar Group on 07.01.2016.

During search, voluminous data contained in excel sheets in the 18 pen-drives was seized from the main office of the said group situate in Johari Bazar, Jaipur. The information further revealed that the assessee

was advanced unaccounted cash loan during said group, and there was income by way of interest on the said amount, which required to be taxed.

4. When the matter came up before Learned CIT(A), while placing reliance on decision by our own Hon'ble High Court in **Shyam Sunder Khandelwal v. Assistant Commissioner of Income Tax**, (2024) 161 taxmann.com 255 (Rajasthan), D.B. Civil Writ Petition No. 18363/2019, Learned CIT(A) held that as per said decision notice u/s 148 of the Act having been quashed, the order passed by the Assessing Officer had become ineffective,.

5. In para 4.2.7 of the impugned order, Learned CIT(A) extracted findings recorded by the Hon'ble High Court. Said para reads as under:-

"4.2.6 The findings of Hon'ble High Court, Rajasthan in the above order dated 19.03.2024 in D.B. Civil Writ Petition No.18363/2019 and several other linked petitions are a under:

"23. The reasons supplied in case in hand for initiation of proceedings under Section 147/148 are based on the incriminating material and documents including Pen Drives seized during the search carried out of the Manihar Group and the statements recorded during proceedings. From the information received the AO noticed that the loan advanced and interest earned thereon were unaccounted. In other words the basis for initiation of Section 148 proceedings is the material seized relating to or belonging to the petitioner, during the search conducted of Manihar Group.

24. In the case where search or requisition is made, the AO under Section 153A mandatorily is required to issue notices to the assessee for filing of income tax return for the relevant preceding years. The AO assumes jurisdiction to assess/reassess 'total income' by passing separate order for each assessment.

25. In cases of the person other than on whom search was conducted but material belonging or relating such person was seized or requisition, the AO has to proceed under Section 153C. The two pre-requisites are that the AO dealing with the assessee on whom search was conducted or requisition made, being satisfied that seized material belongs or relates to other assessee shall hand over it to AO having jurisdiction of such assessee. Thereafter, the satisfaction of AO receiving the seized material that the material handed over has a bearing for determination of total income of such other person for the relevant preceding years. On fulfillment of twin conditions the AO shall proceed in accordance with the provisions of Section 153A.

26. Special procedure is prescribed under Section 153A to 153D for assessment in cases of search and requisition. There cannot be a quibble with the proposition that the special provision shall prevail over the general provision. To say it differently the provisions of Section 153A to 153D have prevalence over the regular provisions for assessment or reassessment under Section 143 & 147/148.

27. Section 153A and 153C starts with non-obstante clause. The procedure for assessment reassessment in Section 153A, 153C in cases of search or requisition has an overriding effect to the regular provisions for assessment or reassessment under Sections 139, 147, 148, 149, 151 & 153.

28. The language of explanation 2 to new Section 148 is akin to Section 153A and Section 153C. Corollary being that after seizing of operational period of Section 153A to 153D, the cases being dealt thereunder were circumscribed in the scope of newly substituted Section 148.

29. The Department has not set up a case that for initiating proceedings under Section 148 it had material other than the material seized during the search of Manihar Group. The contention was that though the material with regard to unaccounted loan advanced by the petitioner was received, the earning of interest on unaccounted loan was derivation of the AO from the material received. The submission is that the derived conclusion cannot be acted upon under Section 153C. The submission lacks merit and shall defeat the concept of single assessment order for each of relevant preceding years for assessing 'total income' in case of incriminating material found during search or requisition.

30. The argument that by enactment of Section 153A to 153D has not eclipsed Section 148 does not enhance the case of respondent to initiate the proceedings

under Section 148. On fulfillment of two conditions for invoking Section 153C the proceeding in accordance with Section 153A are to be initiated. The operating field of and Section 153A to 153D and Section 148 are different Applicability of Section 153C in cases where the seized material related to or belonged to person other than on whom search is conducted or requisition made does not render Section 148 otiose. Section 148 shall continue to apply to the regular proceedings and also in cases where no incriminating material is seized during the search or requisition.

31. The other aspect of the matter is that under Section 153A and 153C, the total income' is to be assessed. The total income includes returned income (if any), undisclosed income unearthed during the search or requisitioning and information possessed from the other sources. For Illustration: An assessee had returned income of Rs.100, undisclosed Income of Rs.200 is unearthed during search and there is information from annual information statement of non-disclosure of income of Rs. 150/-, The AO under Section 153A and 1530 shall pass order dealing with income of Rs. 100+Rs.200+Rs.150, the total income being Rs.450/-. In cases where there is no unearthing of undisclosed income of Rs.200/-, the department can resort to proceeding under Section 147/148.

32. The argument that Section 153C can be invoked in case there is incriminating material for all the relevant preceding years and otherwise Section 148 is to be resorted to, is misplaced. On satisfaction of the twin condition for proceedings under Section 153C, the AO has to proceed in accordance with Section 153A. Notice is to be issued for filing of the returns for relevant preceding years and thereupon proceed to assessee or reassesses the 'total income'. It is not obligatory on the AO to make assessment for all the years, the earlier orders passed may be accepted. But once there is incriminating material seized or requisitioned belonging or relatable to the person other than on whom search was conducted, Section 153C is to be resorted to.

40. In view of above discussion the notices issued under Section 148 and the impugned orders are quashed. However, the respondents shall be at liberty to proceed against the petitioners in accordance with law."

6. In para 4.2.7, while referring to the above said decision by our own Hon'ble High Court, Learned CIT(A) observed that as per said decision, in

cases of person other than on whom search was conducted, the material belonging or relating to such person was seized or requisitioned, the AO had to proceed u/s 153C of the Act, instead of section 147/148 of the Act, the reason being that the proceedings were initiated on the basis of incriminating material in the form of documents including pen-drives seized during search at the premises of the above named group, as well as statements recorded during said proceedings.

7. Today, when the appeal has been taken up for hearing, Ld. AR for the assessee has submitted copy of notice u/s 153C of the Act issued by Assistant Commissioner of Income Tax, Central Circle-4, Jaipur, relating to the same assessment year 2011-12 whereby the assessee has been required to prepare true and correct return of his total income for the said assessment years.

8. Admittedly, the department has issued notice u/s 153C of the Act. In this situation, it can safely be said that the department has given effect to the decision by our own Hon'ble High Court.

The department having complied with and acted upon the above said decision by our own Hon'ble High Court, present appeal by the department can safely be said to have become infructuous.

Result

9. As a consequence, this appeal is hereby dismissed as having become infructuous.

File consignment to the record room after the needful is done by the office.

Order pronounced in the open court on 06/02/2025.

Sd/-
(गगन गोयल)
(GAGAN GOYAL)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 06/02/2025

Sd/-
(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

*Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant-.DCIT, Central Circle-4, Jaipur.
2. प्रत्यर्थी / The Respondent- Sh. Kailash Chand Hirawat, Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File ITA No. 1175/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar

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Sd/-
(गगन गोयल)
(GAGAN GOYAL)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 06/02/2025

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