

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" NEW DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No.591/Del/2022

निर्धारणवर्ष/Assessment Year: 2008-09

ACIT Central Circle-1, Gurgaon, Haryana.	बनाम Vs.	Enpro Telecom Pvt. Ltd., F-1098, Basement, Chittranjan Park, New Delhi. PAN No. AABCE1400A
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Cross Objection No. 88/Del/2023
(In I.T.A No.591/Del/2022)

निर्धारणवर्ष/Assessment Year: 2008-09

Enpro Telecom Pvt. Ltd., F-1098, Basement, Chittranjan Park, New Delhi. PAN No. AABCE1400A	बनाम Vs.	ACIT Central Circle-1, Gurgaon, Haryana.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

&

आ.अ.सं./I.T.A No.592/Del/2022

निर्धारणवर्ष/Assessment Year: 2013-14

ACIT Central Circle-1, Gurgaon, Haryana.	बनाम Vs.	Enpro Telecom Pvt. Ltd., F-1098, Basement, Chittranjan Park, New Delhi. PAN No. AABCE1400A
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Cross Objection No. 89/Del/2023
(In I.T.A No.592/Del/2022)

निर्धारणवर्ष/Assessment Year: 2013-14

Enpro Telecom Pvt. Ltd., F-1098, Basement, Chittranjan Park, New Delhi. PAN No. AABCE1400A	बनाम Vs.	ACIT Central Circle-1, Gurgaon, Haryana.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Revenue by	Shri Ashis Chandra Mohanty, CIT DR
Assessee by	Shri C.S. Anand, Adv.

सुनवाईकीतारीख/ Date of hearing:	28.12.2023
उद्घोषणाकीतारीख/ Pronouncement on	08.02.2024

आदेश /O R D E R

PER C.N. PRASAD, J.M.

These appeals and cross objections are filed by the Revenue and Assessee against different orders of the Ld. CIT(Appeals) for the assessment years 2008-09 and 2013-14 dated 17.01.2022 and 28.01.2022 respectively.

2. In the cross objection filed by Assessee for the AY 2008-09 assessee challenged the very jurisdiction of the Assessing Officer in passing the assessment order as bad in law. In other words, the assumption of jurisdiction by the Assessing Officer to complete the assessment was challenged. In the cross objections the assessee contended that initiation of proceedings u/s 153C for AY 2008-09 on 02.02.2016 on which date the Ld. AO had recorded his satisfaction for taking up the case of the assessee u/s 153C of the Act and issuing notice u/s 153C for making an assessment was bad in law.

3. Ld. Counsel for the assessee referring to page 3 of the Paper Book submits that the Assessing Officer recorded satisfaction note

on 02.02.2016 for making an assessment u/s 153C r.w.s. 153A of the Act and placing reliance on the decision of the Jurisdictional High Court in the case of CIT Vs. RRJ Securities Limited [380 ITR 612] and the decision of the coordinate bench of Delhi Tribunal in the case of CIT Vs. M/s Ankit Nivesh & Management Pvt. Limited in ITA No.4051 & 4052/Del/2017 dated 18.06.2021 submitted that the Assessing Officer could have only made assessments for six preceding assessment years from the date of handing over of the documents or the date of recording of satisfaction. The Ld. Counsel for the assessee submits that in its case since recording of satisfaction was made on 02.02.2016 and in the absence of recording of any date of handing over of the documents for making assessment u/s 153C of the Act the date of recording of satisfaction shall have to be taken as the date of handing over of the documents for the purpose of assumption of jurisdiction u/s 153C of the Act and completion of assessment thereafter. The Ld. Counsel for the assessee submits that the AY 2008-09 falls beyond the period of six preceding assessment years from the date of recording of satisfaction i.e. 02.02.2016 and, therefore, the assessment made u/s 153C r.w.s. 153A of the Act is beyond the block of six years.

4. We have heard the rival submissions and perused the record before us and the decisions relied on.

5. We observed that an identical issue has been decided by the coordinate bench of the Tribunal in the case of ACIT vs. M/s Ankit Nivesh & Management Pvt. Limited (supra), wherein the Tribunal following various decisions including the jurisdictional High Court held that since there is no specific date of handing of material in the satisfaction note, the date of satisfaction note is to be reckoned as the date of handing over the material and the time limit calculating the six years has to be calculated from this date. While holding the coordinate bench observed as under:

“11. We have heard the rival submissions and also perused the relevant finding given in the impugned orders as well as material referred to before us. The assessee is engaged in the business of investment and sale purchase of shares during the relevant assessment year and filed its return of income u/s 139 of the Act on 30.10.2007 declaring income of Rs.729/-. Consequent to the search and seizure operation u/s 132 on M/s. Prakash Industries of Companies on 31.10.2012 satisfaction was recorded by the Assessing Officer u/s 153C and proceedings u/s 153C was initiated after issuance of notice on 19.09.2014. Here in this case though the date of search in the case of Prakash Industries was 30.10.2012 however the date of recording of satisfaction by the Assessing Officer is on 19.09.2014. Since there is no specific date of handing of material in the satisfaction note, then date of 19th September, 2014 is to be reckoned as date of handing over the material and the time limit of calculating the six years has to be calculated from this date. Prior to

the amendment by Finance Act, 2017, in terms of the proviso to Section 153C(1) of the Act, the date of receipt of the books and accounts by the AO of the Assessee is deemed to be the date of search. In the present case in absence of any specific date of handing over of material, the date of recording satisfaction i.e., 19.09.2014 is to be treated as the date of handing over of material and therefore the six assessment years preceding the year of the search, for which the assessment was proposed to be reopened, should be A.Y. 2009-10 to A.Y. 2014-15.

12. *Consequently the notice u/s 153C(1) could have been issued for Assessment Years 2009-10 to 2014-15. Prior to the amendment brought by the Finance Act, 2017 the date on which the Assessing Officer 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.*

13. *In the following judgments, the Hon'ble Delhi High Court have clearly held that the provisions of six years would have to be counted from the year in which satisfaction note is prepared.*

a. Hon'ble High Court of Delhi in the case of RRI Securities (380 ITR 612) has held that - dated 30.10.2015

Held:

In terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment

years for which assessments/reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment years 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years, prior to the assessment year relevant to the previous year in which the search was conducted. If this interpretation as canvassed by the Revenue is accepted, it would mean that whereas in case of a person searched, assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be reopened would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to the AO would be subsequent to the date of the search. This, in our view, would be contrary to the scheme of Section 153C(1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one searched) as the date of the search on the Assessee. The rationale appears to be that whereas 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. Thus, 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. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee's income for that year.

b. Hon'ble High Court of Delhi in the case of ARN Infrastructure India Ltd. (81 taxmann.com 260) has held that:

Held:

The decision in RRJ Securities Ltd. (supra) is categorical that under section 153C of the Act, the period of six years as regards the person other than the searched person would commence only from the year in which the satisfaction not is prepared by the AO of the searched person and a notice is issued pursuant thereto. The date of the Satisfaction Note is 21st July, 2014 and the notice under section 153C of the Act was issued on 23rd July 2014. The previous six assessment years would therefore be from AY 2009-2010 to AY 2014-2015. This would therefore not include AYs 2007-08 and 2008-09. The decision in RRJ Securities Ltd. (supra) is also an authority for the proposition that for the proceedings under Section 153C to be valid, there had to be a satisfaction note recorded by the AO of the searched person.

The Court also stated that - This position again stands settled by the decision in RRI Securities Ltd (supra). The fact that the Revenue's SLP against the said decision is pending in the Supreme Court does not make a difference sine the operation of the said decision has not been stayed.

c. Hon'ble High Court of Delhi in the case of Raj Buildworth Pvt. Ltd. (113 taxmann.com 600) has held that dated - 23.10.2018

The Assessing Officer of the search party and the respondent assessee was the same. In such a factual

matrix, the Assessing Officer could not have been initiated and passed an Assessment Order under section 153C of the Act for the Assessment Year 2007-08 as the same was beyond the period of six years from the end of the financial year in which the satisfaction note was recorded by the Assessing Officer.

d. Hon'ble High Court of Delhi in the case of Sarwar Agency Pvt. Ltd. (85 taxmann.com 269) has held that:

Held:

Mr. Ashok Manchanda, learned Senior Standing counsel for the Appellant, sought to pursue this Court to reconsider its view in RRJ Securities (supra). The Court declines to do so for more than one reason. First, for reasons best known to it, the Revenue has not challenged the decision of this Court in RRJ Securities (supra) in the Supreme Court. The said decision has been consistently followed by the authorities under this Court as well as by this court. Thirdly, the recent amendment to Section 153C(1) of the Act states for the first time that for both the searched person and the other person the period of reassessment would be six AYs preceding the year of search. The said amendment is prospective.

14. This proposition has also been upheld and followed by this Tribunal in catena of judgment as cited by the Ld. Counsel. Thus, respectfully following the ratio laid down by the Hon'ble Jurisdictional High Court we hold that is a terminal date for determining of six preceding assessment years for the purpose of Section 153C r.w.s. 153A would be the date of handing over the documents or the dated of recording of the satisfaction. Admittedly, the six preceding assessment years in the case of the assessee is from Assessment Year 2009-10 and ending on 2014-2015. Accordingly, we hold that Ld. CIT(A) was correct in law that no assessment u/s153C was made in respect of Assessment Year 2007-08 and is barred by limitation.

15. Similarly in Assessment Year 2008-09 also we need the same fate which is also beyond the limitation period of six years as stated above. Accordingly, the order of the Ld. CIT(A) is upheld and the Revenue's Appeal is dismissed."

6. The ratio of this decision squarely applies to the facts of the assessee's case. In the case on hand also the date of handing over of the materials was not mentioned in the satisfaction note and, therefore, in the absence of mentioning the date of handing over of the materials the date of satisfaction note shall be reckoned as the date of handing over of the materials and consequently the time limit of calculating the six years has to be calculated from this date i.e. 02.02.2016. In this scenario the assessment year 2008-09 is beyond the period of six assessment years and, therefore, respectfully following the decision of the jurisdictional High Court and the coordinate bench, we hold that the assessment made for the AY 2008-09 is barred by limitation. Grounds raised in the cross objection of the assessee on this issue are allowed. Since, we have held that the assessment made u/s 153C r.w.s. 153A is time barred. The appeal of the Revenue challenging the order of the Ld.CIT(A) on the merits of the addition/disallowance becomes infructuous.

7. Coming to cross objection filed by the Assessee for the AY 2013-14 the assessee challenged the order of the Assessing Officer

as unsustainable on the ground that in the absence of any seized incriminating documents/materials the addition cannot be made in the assessment completed u/s 153C r.w.s. 153A of the Act. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell [454 ITR 212] and the decision of the Jurisdictional High Court in the case of CIT Vs. Kabul Chawla [380 ITR 573]. Ld. Counsel for the assessee further submits that since the Ld.CIT(Appeals) decided the merits of the addition/disallowance in favour of the assessee. Ld. CIT(A) has chosen not to decide this ground raised before him.

8. We have heard the rival submissions, perused the orders of the authorities below. In the case of PCIT Vs. Abhisar Buildwell Pvt. Limited (supra) the Hon'ble Supreme Court held that in respect of completed or unabated assessment no addition can be made by the Assessing Officer in the absence of any incriminating material having been found during the course of search u/s 132 or requisition u/s 132A of the Act. On perusal of the assessment order, we noticed that there is no reference to any seized documents or materials based on which the addition was made by the Assessing Officer. We further observed that the Assessing Officer in the course of assessment proceedings issued show-cause notice to establish the

genuineness of the transaction and creditworthiness of the parties on the basis of the submission of the assessee that it had taken various unsecured loans in the assessment year under consideration. Therefore, it is very much clear that the addition made u/s 68 of the Act is not based on any seized documents or materials impounded in the course of search or requisition. Applying the ratio of the decision of the Hon'ble Supreme Court in the case of PCIT Vs. Abhisar Buildwell P. Ltd. (supra) we hold that the Assessing Officer could not have made any addition while framing the assessment u/s 153C r.w.s. 153A of the Act. Ground no. 5 of grounds of appeal of the cross objection filed by the assessee is allowed.

9. Since, we have held that the Assessing Officer could not have made any addition in the absence of any incriminating material seized in the course of search the appeal filed by the Revenue challenging the order of the Ld.CIT(A) in deleting addition/disallowance on merits becomes infructuous.

10. In the result, appeals filed by the Revenue for the assessment years 2008-09 and 2013-14 are dismissed as infructuous and Cross Objections filed by the Revenue are allowed as indicated above.

Order pronounced in the open court on 08/02/2024

Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 08/02/2024

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi