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

+ **ITA No. 422/2017**

PR COMMISSIONER OF INCOME TAX, Appellant

Through : Mr. Ashok K. Manchanda, Senior
Standing Counsel for the Income Tax
Department with Mr. Anand
Chaudhuri, Advocate.

versus

SARWAR AGENCY PVT. LTD., Respondent

Through : Mr. Salil Aggarwal, Advocate.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

ORDER
17.08.2017

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Dr. S. Muralidhar, J.:

1. The Revenue has filed this appeal under Section 260A of the Income Tax Act, 1961 ('Act') against the order dated 1st July 2016 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 6039/Del/2014 pertaining to the Assessment Year ('AY') 2006-07.

2. The question sought to be urged by the Revenue is whether the ITAT was justified in holding that the notice issued to the Assessee under Section 153 C of the Act for the AY in question, i.e. 2006-07, is without jurisdiction since the said AY is beyond the purview of issuance of notice in terms of the



said provision.

3. The facts, in brief, are that a search under Section 132 of the Act took place on 11th November 2010 in the Tinna Group of cases. The documents pertaining to the Assessee were forwarded along with a satisfaction note by the AO of the searched party to the AO of the Assessee on 3rd January 2013. The AO of the Assessee issued notice to the Assessee, which *qua* the searched party was the 'other person', under Section 153C on 4th January 2013.

4. Sub-section (1) of Section 153 C provides that the assessment or re-assessment of the income of the 'other person' would be in accordance with the provisions of Section 153 A. The first proviso to sub-section (1) of Section 153 C further states that, in case of such other person, the reference to the date of initiation of search in the second proviso to Section 153 A(1) “shall be construed as reference to the date of receiving the books of accounts or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person.”

5. In terms of Section 153 A(1) (b) of the Act, the AO shall assess or re-assess the total income of six AYs immediately preceding the AY relevant to the previous year in which the search was conducted. The second proviso to sub-section (1) of Section 153 A of the Act, states that assessment or re-assessment relating to any AY falling within the period of six AYs referred to in the said sub-section pending on the date of initiation of the search under Section 132, would abate.



6. The case of the Revenue is that the first proviso to Section 153 C refers only to the second proviso to Section 153 A(1) of the Act, which only indicates that any assessment relating to any AY falling within the period of six AYs which is pending as of the initiation of search shall abate. Therefore, the second proviso to Section 153 C is also concerned only with the aspect of abatement of pending assessments. According to the Revenue, this makes no difference to the computation of the block of six years preceding the AY relevant to the previous year /in which the search was conducted. In other words, according to the Revenue, the block period for both the searched person and the 'other person' would remain the same notwithstanding that there may be some delay in transmitting the documents recovered during the search which belong or pertain to the 'other person' to the AO of such other person.

7. The case of the Assessee, on the other hand, is that since in the case of the 'other person' the AO issues notice only subsequent to the notices issued under Section 153 A to the searched person, the starting point for computation of the block period would be the date on which, based on the seized documents, notice is issued to the 'other person' under Section 153 C of the Act. Thus in the present case, the six year period prior to AY 2012-13 i.e. AY 2007-08 to AY 2012-13. Thus no notice could be issued under Section 153 C of the Act to reopen the Assessee's assessment for AY 2006-07. Reliance is placed on the decision of this Court in *Commissioner of Income-tax-7 v. RRJ Securities Ltd. [2016] 380 ITR 612 (Del)* where this very question was examined and answered in favour of the Assessee and against the Revenue.



8. In *RRJ Securities (supra)*, the Court after noticing the decision in *SSP Aviation Ltd. v. Deputy CIT [2012] 346 ITR 177 (Del)*, held as follows:

“21. As discussed hereinbefore, once the AO of the searched person is satisfied that the seized assets/documents belong to another person and the said assets/documents have been transferred to the AO of such other person, the proceedings for assessment/reassessment of income of the other person has to proceed in accordance with provisions of Section 153A of the Act. Section 153A requires that where a search has been initiated under Section 132 of the Act, the AO is required to issue notice requiring the noticee to furnish returns of income in respect of six assessment years relevant to the six previous years preceding the previous year in which the search is conducted. As discussed hereinbefore, by virtue of second proviso to Section 153A, the assessment/reassessment pending on the date of initiation of search abate. In the context of proceedings under Section 153C of the Act, the reference to the date of initiation of the search in the second proviso to Section 153A has to be construed as the date on which the AO receives the documents or assets from the AO of the searched person. Thus, by virtue of second proviso to Section 153A of the Act as it applies to proceedings under Section 153C of the Act, the assessment/reassessment pending on the date on which the assets/documents are received by the AO would abate. In respect of such assessments which have abated, the AO would have the jurisdiction to proceed and make an assessment. However, in respect of concluded assessments, the AO would assume jurisdiction to reassess provided that the assets/documents received by the AO represent or indicate any undisclosed income or possibility of any income that may have remained undisclosed in the relevant assessment years.....”



24. As discussed hereinbefore, 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."

9. The said decision in ***RRJ Securities (supra)*** has been followed by this Court subsequently in ***ARN Infrastructure India Ltd. v. Assistant Commissioner of Income-tax, Central Circule-28, New Delhi [2017] 394 ITR 569 (Del.)***.

10. Mr. Salil Aggarwal, learned counsel for the Assessee, has drawn the attention of the Court to the recent amendment made in Section 153 C of the Act by the Finance Act, 2017 with effect from 1st April 2017. This amendment in effect states that the block period for the searched person as well as the 'other person' would be the same six AYs immediately preceding the year of search. This amendment is prospective.

11. 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 153 C(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.

12. Consequently, no substantial question of law arises from the impugned order of the ITAT. The appeal is, accordingly, dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 17, 2017

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