(2017) 04 DEL CK 0119

In the Delhi High Court

Case No : 2768 of 2016

ARN INFRASTRUCTURE INDIA LTD APPELLANT

Vs

ASSISTANT COMMISSIONER OF INCOME-TAX RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

Income Tax Act, 1961, Section 153A, Section 153A, Section 153A, Section 153A, Section 142(1), <a href=15199-142>Section 14

Citation : (2017) 04 DEL CK 0119

Hon'ble Judges : S Muralidhar, Chander Shekhar

Bench : DIVISION BENCH

Advocate : Sanjeev Sabharwal, Anshumaan Sahni, Rahul Chaudhary, Lakshmi Gurung

Judgement

1. ARN Infrastructures India Ltd. has filed these two writ petitions against the Income Tax Department (''the Department'') assailing the assumption of jurisdiction under Section 153C of the Income Tax Act, 1961 (''the Act'') by the Respondent, Assistant Commissioner of Income-Tax, Central Circle-28, by issuing the impugned notice dated 23rd July, 2014 and proceeding thereafter to pass an order dated 18th March, 2016 proposing to frame an assessment for the Assessment Years (''AYs'') 2007-08 to 2012-13.

2. The background facts are that on 16th January, 2013, a search under Section 132 of the Act was initiated and conducted in the case of Earth Infrastructures Ltd (''EIL'') wherein certain documents were seized. When the panchnama for the search was prepared on 18th January 2013, the name of Real Gain Estate Pvt. Ltd. (''RGEPL'') was also added to it. It is stated that during the course of search, a letter dated 27th January, 2010 written by the Petitioner to RGEPL was found. It contained the details of the commission payments made by the Petitioner to RGEPL in that year with a request to RGEPL to issue bills to the Petitioner. A three-page copy of the ledger account of RGEPL maintained by the Petitioner as

proof of payments made through official channel was also seized.

3. The aforesaid seized documents were handed over to the Assessing Officer (''AO'') of EIL. However, only one document, viz., the letter dated 27th January, 2010 written by the Petitioner to RGEPL was handed over to the AO of the Petitioner.

4. The impugned notice dated 23rd July, 2014 under Section 153 C of the Act was issued to the Petitioner by the Respondent directing it to file its return of income for AY 2007-2008 to AY 2012-2013. Along with the said notice, a Satisfaction Note dated 21st July, 2014 was also enclosed. The said ''Satisfaction Note'' reads thus: "Satisfaction note for initiating proceedings under Section 153C read with 153A of the Income Tax Act, 19611n the case of M/s ARN Infrastructures India Limited, 9, Birla House, Arya Samaj Road, Karol Bagh, Karol Bagh, Delhi- 110005 (PAN AAFCA6403M) A search action u/s 132 of the I T Act,. 1,961 was initiated in the case of M/s Earth Infrastructures Ltd, at B-100, Indl Area Naraina, Phase-I, New Delhi on 16/01/2013. It has been brought to the notice by the AO of M/s Earth Infrastructures Ltd,(in this case the AO is same as undersigned) in whose cases-action under section 132 of the Income Tax Act was taken place that various documents/books of accounts etc were found, and seized during the course of search and statement of various persons were recorded; The AO of the searched persons has recorded his satisfaction that the following seized papers / documents belonged to the assessee i.e. M/s ARN Infrastructure India Limited.

Party No

Name and, address of the person searched Details of Annexure Details of papers/documents seized

1.

M/s Earth Infrastructures Ltd, at B-100, Indl Area, Naraina, Phase -1 New Delhi Annexure A/27 of panchnama dated 18.01.2013

Pages 120-122 are a extract from the books (Ledger) of M/s ARN Infrastructures India. Limited relating to M/s Real Gains Estate Pvt Ltd. Page no. 123 is a fetter ; written by ARN Infrastructures India Limited dated 27/1/2010.

The said satisfaction note prepared by the AO of the person searched has been kept on record.

I have also examined the above documents and the contents noted/written therein. After examination of these documents, I am also satisfied, that these documents belong to M/s ARN Infrastructures India Limited. .In view of the same, I am; further satisfied that it is fit case for initiating proceedings u/s 153C rws-153A of the Income Tax Act, 1961 for AYs 2007-08 to A.Y 2012-13.

Accordingly, notices u/s 153A rws 153C are issued as per provisions of the IT Act, 1961.

New Delhi Asst. Commissioner of Income Tax

21/7/2014 Central Circle-14, New Delhi."

5. The AO then issued a Questionnaire under Section 142 (1) of the Act requiring the Petitioner to answer certain queries of certain other documents recovered during search. At that stage, the Petitioner filed a writ petition, W.P.(C) No. 2996 of 2015, in this Court assailing the assumption of jurisdiction and issuance of notice to the Petitioner under Section 153 C of the Act. On 12th January, 2016, the Petitioner sought leave to withdraw the petition with liberty to urge all the points raised therein before the AO in accordance with law. The petition stood dismissed as withdrawn and the interim order was vacated.

6. On 11th March, 2016, the Petitioner furnished to the AO answers to the questionnaire. On 17th March, 2016, the Petitioner replied to the notice under Section 153 C of the Act. Inter alia it was pointed out that there was no ''satisfaction note'' prepared by the AO in the case of searched person i.e., EIL. Further, the seized documents belonged to RGEPL and not the Petitioner. The Petitioner pointed out that taking the date of initiation of the proceedings under Section 153C to be 21st July, 2014 in terms of the ''satisfaction note'', the relevant AYs would be AYs 2009-10 to 2014-15 and not AYs 2007-08 to 2012-13. It was therefore submitted that the initiation of the Section 153 C proceedings in respect of AYs 2007-08 and 2008-09 was without the authority of law. Reliance was placed on the decision of this Court in CIT-7 v. RRJ Securities Ltd. (2016) 380 ITR 612 (Del). Further, apart from the fact that papers seized did not belong to the Petitioner, they were relevant only for the AY 2010-11. It was contended that the seized papers could at best constitute relevant material only for the year of search and not for the earlier years. It was further pointed out that as regards AYs 2007-08 to 2012-13, there was no pending assessment, and in the absence of any incriminating material, the question of re-opening those assessments that already stood completed, did not arise. Reliance was placed on the decision of this Court in CIT (Central)-III v Kabul Chawla (2016) 380 ITR 573 (Del). It was pointed out that for AY 2010-11, the payment of the commission as per the ledger account in the sum of Rs. 4.95 crores was part of its books of accounts that already stood disclosed during the regular assessment. It could not be said to be an incriminating material that pointed to concealment of income during AY 2010-11.

7. The ACIT by letter dated 18th March, 2016 responded to the above reply of the Petitioner. It was inter alia stated that decision of CIT-7 v. RRJ Securities Ltd (supra) was not acceptable since the Revenue had filed a Special Leave Petition (SLP) against the said judgment in the Supreme Court and the issue had not yet attained finality. Therefore, subject to the decision of the Supreme Court in the said case, the assessment for the AYs 2007-08 and 2012-13 were proposed to be completed. It was further stated therein that the documents seized did not belong to RGEPL. It appeared that what was stated in the Satisfaction Note had been misunderstood by the Petitioner. It was stated that numerous documents

that belonged to the Petitioner were seized and only because a few of those documents had been referred to in the Satisfaction Note and "that too for the purposes of making the satisfaction note a precise one" would not exonerate the Petitioner from the proceedings under section 153 C of the Act. The Petitioner was asked to file its reply in respect of each of the additions proposed in the SCN for the relevant AYs on or before 23rd March 2016, failing which, the assessments which were getting barred by limitation on 31st March, 2016 would be finalized as such.

8. It is at that stage that the second writ petition being WP (C) No. 2769 of 2016 was filed by the Petitioner in this Court. In that petition, notice was issued on 29th March, 2016 and an interim order was passed that the Assessment order pursuant to the impugned notice dated 23rd July, 2014 shall not be given effect to till the next date of hearing. That interim order has continued since.

9. The Court has heard the submissions of Mr Sanjeev Sabharwal, learned Senior Counsel appearing for the Petitioner and Mr Rahul Chaudhary, learned Senior Standing Counsel appearing for the Revenue.

10. Mr Sabharwal relied upon the decisions in CIT (Central)-III v Kabul Chawla (supra) CIT-7 v. RRJ Securities Ltd. (supra) and Principal Commissioner of Income Tax-06 v. Nikki Drugs and Chemicals Private Ltd. (2016) 386 ITR 680 (Del) to urge one condition for the applicability of Section 153 C of the Act, viz., that the material seized had to ''belong'' to the person other than the searched person was not fulfilled in the present case. Reliance was also placed on the decision of this Court in Pepsico India Holding Pvt. Ltd. vs. ACIT (2015) 370 ITR 295 (Del). He reiterated the contentions of the Petitioner as raised in its letter dated 17th March, 2016 to the AO.

11. In reply, Mr Rahul Chaudhary, learned Senior Standing Counsel appearing for the Revenue, submitted that both the letter dated 27th January 2010 written by the Petitioner on its letter-head to RGEPL as well as the three page ledger account in fact belonged to or pertained to the Petitioner. Therefore, initiation of proceedings under Section 153C of the Act was not bad in law. He reiterated the stand of the Revenue that since the SLP against the decision of this Court in CIT-7 v. RRJ Securities Ltd., (supra) was pending in the Supreme Court, it could not be said that the ratio of that decision was the settled legal position.

12. The decision in CIT-7 v. RRJ Securities Ltd. (supra) is categorical that under Section 153 C 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 153 C of the Act was issued on 23rd July 2014. The previous six AYs would therefore be from AY 2009-10 to AY 2014-15. This would therefore not include AYs 2007-08 and 2008-09. The decision in CIT-7 v. 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.

13. As regards the seized documents, what is mentioned in the Satisfaction Note are two documents: the ledger account maintained by the Petitioner running into 3 pages showing the commission payments made by the Petitioner to RGEPL and the letter dated 27th January, 2010 written by the Petitioner to RGEPL. As far as the latter document is concerned, it is a letter written by the Petitioner to RGEPL and, therefore, should be treated as a document belonging to RGEPL and not to the Petitioner. Whether it may or may not be related to the Petitioner is not relevant since the amendment to Section 153 C of the Act in that regard was prospective with effect from 1st June 2015 i.e. subsequent to the date of preparation of the ''Satisfaction Note'' in the present case.

14. The decision in Pepsico India Holding Pvt. Ltd. v. ACIT (supra) which interpreted Section 153 C of the Act, as it stood prior to its amendment, explained that the expression ''belongs to'' should not be confused with the expression ''relates to''. One of the instances cited in the said decision was a registered sale deed, copies of which could be available both with the vendor and the vendee. The copy available with the vendee could not be said to ''belong'' to the vendor and vice versa.

15. In Principal Commissioner of Income Tax-06 v. Nikki Drugs and Chemicals Ltd. (supra), the searched person was SVP Builders India Ltd. The photocopy of documents, the original of which were with the Assessee in that case, were recovered from SVP Builders during the search. In the circumstances, it was observed by the Court as under: "21. ..... In the present case, although the photocopies of the documents handed over to SVP Builders India Ltd. may be copies of the original documents that belong to the assessee, the said photocopies would belong to SVP Builders India Ltd. as the same were handed over to it in connection with the investment made by the Assessee. Similarly, a certified copy of the Assessee''s resolution signed by its Directors, would also belong to the SVP Builders India Ltd. even though the minutes of the Board meeting form a part of the record of the Assessee. We find no infirmity with the view taken by the ITAT in this regard. Thus, notwithstanding the controversy whether the assessing officer of the searched persons had recorded his satisfaction that the specified seized documents belonged to the Assessee, the initiation of proceedings under section 153C of the Act, in respect of the Assessee would be without jurisdiction."

16. Therefore, it cannot be said that the letter dated 27th January, 2010 written by the Petitioner to RGEPL and recovered from the premises of RGEPL was a document which belonged to the Petitioner.

17. As regards the other document seized, and mentioned in the Satisfaction Note viz., the extract of the ledger account maintained by the Petitioner concerning the payments of commission made by it to RGEPL, even if it is held to

''belong'' to the Petitioner, it could hardly be said to be an ''incriminating'' document. This was a document relevant only for the AY 2010-11. It could not have been used for re-opening the assessments of the earlier years i.e. AYs 2007-08 to AY 2009-10, 2011-12 and 2012-13. This position again stands settled by the decision in CIT-7 v. RRJ 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.

18. While the ledger account extract may be relevant for AY 2010-11, it cannot be said to be incriminating material warranting re-opening of the assessment. The return originally filed by the Petitioner for the said AY 2010-11 was picked up for scrutiny and finalised by an assessment order under Section 143 (3) of the Act. The payments of commission to RGEPL to the tune of Rs. 4.95 crores as reflected in the ledger account was already disclosed in the Petitioner''s accounts which were examined while finalising the regular assessment. Therefore, the ledger account could not have led the AO to be satisfied that any income had escaped assessment for the AY 2010-11.

19. The net result is that neither of the documents mentioned in the Satisfaction Note could have formed a valid basis for the AO to initiate proceedings against the Petitioner under Section 153 C of the Act for AY 2010-11 or any of the other years as proposed.

20. For all of the aforementioned reasons, the Court quashes the impugned notice dated 23rd July, 2014 issued by the AO to the Petitioner under Section 153A read with Section 153C of the Act and all proceedings consequent thereto including the order dated 16th March 2016 of the AO.

21. The writ petitions are allowed in above terms but, in the circumstances, with no orders as to costs. The pending applications are also disposed of.

