

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D", NEW DELHI  
BEFORE SH. G.D. AGRAWAL, PRESIDENT  
AND  
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
ITA No.5217-18/Del/2013  
(Assessment Year: 2004-05)  
(Assessment Year : 2003-04)**

Vipul Motors Pvt. Ltd. 27/5, K.M. Main Mathura Road Faridabad	<b>Vs.</b>	ACIT Central Circle-2 New Delhi
PAN : AABCV0931B		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Sh. Ved Jain, Adv., Sh. Ashish Goel, CA  
Revenue by : Sh. Vijay Verma, CIT(DR)  
Date of hearing : 23.04.2018  
Date of pronouncement : 23.05.2018

**ORDER**

**PER BENCH:**

Both these appeals have been preferred by the assessee. ITA No. 5217/Del/2013 is preferred against the order dated 16.07.2013 passed by the Ld. CIT(A)-III, New Delhi for assessment year 2004-05 and ITA No. 5218/Del/2013 is assessee's appeal against order dated 15.07.2013 passed by the Ld. CIT(A)-III, New Delhi and

pertains to assessment year 2003-04. Since both the appeals involved identical issues, they were heard together and they are being disposed of through this common order for the sake of convenience.

2. The brief facts of the case are that for assessment year 2003-04, the return of income was filed declaring an income of Rs. 54,15,681/-. The return of income was filed on 21.11.2003. There was a search and seizure operation in the case of the assessee on 01.06.2006 pursuant to which notice u/s 153A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was issued. During the course of assessment proceedings the assessee was asked to file details with regard to the loan received from M/s. KVF Securities Pvt. Ltd. and the assessment was completed vide order dated 24.12.2008 at an income of Rs. 66,64,515/- after making an addition of Rs. 12,00,000/- u/s 68 of the Act on account of loan received from M/s. K.V.F Securities Pvt. Ltd. and interest thereon amounting to Rs. 15,534/-.

2.1 Aggrieved the assessee approached the First Appellate Authority and challenged the assessment order on legal grounds as well as on merits contending that no addition could have been

made in the case of the assessee in absence of any incriminating material found during the course of search. The Ld. CIT (A), vide order dated 10.03.2010, allowed the assessee's appeal stating that no addition would have been made in the case of the assessee in absence of any incriminating material having being found during the course of search.

2.2 Thereafter, the department filed an appeal before the Tribunal challenging the action of the Ld. CIT (A) on merits as well as on legal grounds. ITAT Delhi Bench in ITA No. 2676/Del/2010, vide order dated 08.08.2013, restored the matter back to the file of the Ld. CIT (A) for *de novo* re-adjudication of the appeal.

2.3 Meanwhile, during the pendency of department's appeal before the ITAT, the department initiated re-assessment proceedings against the assessee and issued notice u/s 148 of the Act to the assessee on 30.03.2010 and the re-assessment proceedings were completed vide order dated 03.12.2010 wherein the AO again made the addition of Rs. 12,00,000/- u/s 68 on account of loan received from M/s K.V.F. Securities Pvt. Ltd. and interest thereon amounting to Rs. 15,534/-.

2.4 Aggrieved by the re-assessment order passed u/s 147/143(3) of the Act, the assessee filed an appeal before the Ld. CIT (A) which was dismissed by the Ld. CIT (A) vide order dated 15.07.2013 against which the assessee has now approached the ITAT.

2.5 In assessment year 2004-05 the dispute is regarding an amount of Rs. 1,03,936/- which pertains to interest paid on loan received from M/s. K.V.F. Securities Pvt. Ltd amounting to Rs. 12,00,000/- and added to the income of the assessee in assessment year 2003-04 as mentioned in the preceding paragraphs. This addition was also upheld by the Ld. CIT (A) and against this also the assessee is before the ITAT challenging this addition also.

2.6 The grounds raised by the assessee in both the appeals are as under:-

ITA no. 5217/Del/2013

*“1. The Ld. CIT(A) has erred in law and facts of the case in confirming the reopening of the case made by the AO alleging the escapement of income of the assessee company u/s 147 need to be quashed and is uncalled for.*

*2. The Ld. CIT(A) has erred in law and facts of the case in confirming the disallowance of expense of Rs. 1,03,936/- made by the AO by rejecting the claim of interest expenses paid to unsecured loan, which is baseless, unjustified and*

*uncalled for.”*

ITA No. 5218/Del/2013

*“1. “1. The Ld. CIT(A) has erred in law and facts of the case in confirming the reopening of the case made by the AO alleging the escapement of income of the assessee company u/s 147 need to be quashed and is uncalled for.*

*2. The Ld. CIT(A) has erred in law and facts of the case in confirming the addition of Rs. 12,00,000/- made by the AO by treating unsecured loan as unexplained cash credit u/s 68, which is arbitrary, baseless, unjustified and uncalled for.*

*3. The Ld. CIT(A) has erred in law and facts of the case in confirming the disallowance of expense of Rs. 15,534/- made by the AO by rejecting the claim of interest expenses paid on unsecured loan, which is baseless, unjustified and uncalled for.”*

3. The Ld. Authorized Representative submitted that re-assessment proceedings initiated by the Assessing Officer were bad in law and are liable to be quashed as at the time of passing the re-assessment order the earlier proceedings u/s 153A of the Act, which were restored to the file of the Ld. CIT (A) by the ITAT, were still pending before the Ld. CIT (A) and was on similar issue. It was

submitted that it is a settled legal position that two parallel proceedings on the same subject matter cannot be sustained. Our attention was also drawn to Para 9 of the ITAT's order for assessment year 2003-04 in ITA No. 2676/Del/2010 wherein, vide order dated 08.08.2013, ITAT had restored the issue to the file of the Ld. CIT(A) for re-adjudication on the issue *de novo* . The Ld. Authorized Representative submitted that in Para 9, the ITAT has observed that as per statutory scheme of provisions of the Act during the pendency of proceedings u/s 153A of the Act, the AO is not empowered to issue notice u/s 147/148 of the Act. It was prayed that in view of this finding in assessee's own case for the same year under consideration, the Ld. CIT (A) was patently incorrect in upholding the validity of re-assessment proceedings u/s 148 for assessment year 2003-04.

3.1 It was also submitted that if the re-assessment proceedings are quashed in AY 2003-04, the addition in 2004-05 will also stand deleted as a matter of consequence.

4. In response the Ld. CIT DR filed written submission which is reproduced herein under for the sake of convenience:-

*“Without prejudice to several written submissions including request for constitution of Special Bench in the case of assessee and also in several other cases by referring to the appeals in the case of Vipul Motors P.Ltd, the Revenue further submits as under:*

1. *On merits the Revenue has made written submission, in para 6 to 8 of the written submissions filed on 08.03.2018, and also relied upon the decision dated 08.01.2018 of the Co-ordinate Bench in the case of Surya Financial Services Ltd., referred to in para 3 of the submission dated 08.03.2018.*
2. *Without prejudice to the above, the ground No. 1 of the assessee is against the reopening and in the written submission (Synopsis) Filed by the assessee, on page 4 and 5, the assessee has argued that parallel proceedings u/s 153A and 148 are not permitted. The Revenue has been making the same contention in several other appeals that since the parallel proceedings u/s 153A/ 153C and u/s 148 are not permitted any undisclosed income which meets the tests of Section 147/148 (that is excluding routine and legal addition) has to be made u/s 153A/153C only, as Section 153A starts with non obstante clause “Notwithstanding anything contained in Section 139, 147, 148 .....”.*
3. *It was in the above background that a request for constitution of a Special Bench was made in several cases including the present appeals for the following question of law:  
“Whether the AO can issue a notice u/s 148 in respect of escapement of income, during the pendency of proceedings u/s 153A/153C, which comes to his knowledge from a source other than the evidence found during the course of search or whether corresponding addition should be made u/s 153A/ 153C only.”*
4. *A related question of law also arises that “if the Hon’ble ITAT comes to a conclusion that parallel proceedings u/s 153A/153C and 148 are permitted and in a particular case the nature of addition meets*

*the tests of Section 147/148, should the Hon'ble ITAT issue direction u/s 150(1)."*

5. *It may not be out of place that the stand of the Revenue in para 2 (supra) was approved by a Co-ordinate bench in a recent decision dated 26.02.2018 in the case of Parag Dalmia, ITA No.5499/D/2017 and therefore the question of law in para 3 (supra) has already been answered. However, before the above decision in the case of Parag Dalmia, some other Benches had taken a contrary decisions. However, in none of those cases including the cases before the Hon'ble Delhi High Court and the Apex Court the above issue was raised or addressed, as specifically mentioned in the order in the case of Parag Dalmia (supra).*

6. *It needs to be mentioned that corresponding additions related to accommodation entries, detected on the basis of information regarding accommodation entry received from the Investigation Wing, the CIT(A) had deleted the addition in respect of appeal against the order u/s 153A on the ground that no evidence was found during the search. The Hon'ble ITAT in assessee's own case reversed the said findings and held in no uncertain term in para 9 that "pending proceeding u/s 153A, the AO is not empowered to issue notice u/s 147/148" and therefore remitted the matter back to the CIT(A) for decision on merits vide order dated 08.08.2013."*

7. *The decisions under dispute in orders u/s 153A may fall in three categories:*

*a. Additions related to the evidence found during the search.*

*b. Additions on the basis of information received from any source other than search which meets the tests of Section 147/ 148.*

*c. Other additions*

8. *None of the decisions except the decision in the case of Parag Dalmia has dealt with the additions of the nature falling in category*



*‘b’\_ The Revenue on merits had also relied on the decision in the case of Mukundray K.Shah reported at 290 ITR 433 in the case of Parag Dalmia (supra).”*

9. *The Revenue submits that this case cannot be heard on merits by the Hon’ble Bench unless the order dated 08.08.2013 in ITA No. 2675 & 2676/D/2010 is recalled by Hon’ble ITAT or reversed by Hon’ble High Court as two proceedings in respect of the same addition on merits cannot be allowed to continue and the issue is already settled that such an addition is to be made u/s 153A/153C. The present appeals involving same addition u/s 148, are essentially dealing with a protective addition by the Revenue u/s 148 in view of conflicting decisions before the decision in the case of Parag Dalmia. Merits can be examined only in the appeal related to the order of CIT(A) consequent to the order of Hon’ble ITAT dated 08.08.2013 (supra).*

5. We have heard the submissions of the Ld. AR and have also perused the written submissions submitted by the Ld. CIT DR in this regard. The facts in this case are undisputed. It is undisputed that the proceedings initiated u/s 153A of the Act were still pending for adjudication before the Ld. CIT (A) when the impugned notice u/s 148 of the Act was issued. It is also undisputed that the same issue of addition of Rs. 12,00,000/-, being loan received from M/s. K.V.F. Securities Pvt. Ltd., was the subject matter of 153A proceedings as well as 148 proceedings. It is a settled law that there cannot be two parallel proceedings on a similar subject matter and

proceedings initiated first must come to an end for making way for initiation of another proceedings on the same subject matter. In the case of Nilofer Hameed vs. ITO reported in 235 ITR 161 (Kerala) the Hon'ble Kerala High Court after referring to a number of judgments of other Hon'ble High Courts held, *"if an assessment is pending either by way of original assessment or by way of re-assessment proceedings, the assessing officer cannot issue a notice u/s 148 but if no proceedings are pending either by way of original assessment or by way of re-assessment, he can issue a notice u/s 148 within the time mentioned."* This judgment of the Hon'ble Kerala High Court was also followed by the Hon'ble Delhi High Court in the case of CIT vs. Sanjay Kumar Garg in ITA Nos. 92 to 96/2012 vide order dated 02.09.2015. A similar view has been taken by the Hon'ble Rajasthan High Court in the case of Smt. Pushpa Rajawati vs. CIT in ITA no. 205/2015 vide order dated 25.10.2017 wherein the Hon'ble Rajasthan High Court held that where the original proceedings were pending before the CIT (A), the adjudicating authority could not have issued second show cause notice u/s 148 of the Act. We find that even in assessee's own case, ITAT Delhi Bench in ITA No. 2676/Del/2010 had held, vide order dated

08.08.2013, that as per the statutory scheme and provisions of the Act, during the pendency of proceedings u/s 153A of the Act, the AO is not empowered to issue notice u/s 147/148 of the Act. Therefore, as the case of the assessee is squarely covered by the judicial precedents as discussed above we hold that the re-assessment proceedings for assessment year 2003-04 suffer from basic defect of the re-assessment notice being illegal and, therefore, the re-assessment proceedings cannot be sustained. Accordingly, we quash the reassessment proceedings for assessment year 2003-04 by holding it as vide *ab initio*.

5.1 Since the impugned addition in Assessment Year 2004-05 follows from the reassessment proceedings for 2003-04, the same also stands deleted.

6. Accordingly both the appeals of the assessee stand allowed.

(Order pronounced in the open court on 23<sup>rd</sup> May, 2018).

Sd/-

**(G.D.AGARWAL)**

PRESIDENT

Date: 23.05.2018

**Binita**

Sd/-

**(SUDHANSHU SRIVASTAVA)**

JUDICIAL MEMBER

*Copy of order to: -*

- 1) The Appellant;
  - 2) The Respondent;
  - 3) The CIT;
  - 4) The CIT(A)-, New Delhi;
  - 5) The DR, I.T.A.T., New Delhi;
- True Copy

By Order

ITAT, New Delhi

.No.	Details	Date
1	Draft dictated on	21.05.2018
2	Draft placed before author	22.05.2018
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement on	23.05.2018
7	File sent to Bench Clerk	
8	Date on which the file goes to the Head Clerk	
9	Date on which file goes to the A.R.	
10	Date of Dispatch of order	

