

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No.7683/MUM/2019
(Assessment Year 2010-11)

ITA No.7679/MUM/2019
(Assessment Year 2011-12)

Specialty Papers Ltd
93, Dadi Seth Agiry Lane, Kalbadevi
Road,
Mumbai- 400 002
(Appellant)

Vs.

DCIT CC 12
8th Floor, Pratihtha Bhavan,
M.K.Road,
Mumbai-400 020
(Respondent)

ITA No. 7601/MUM/2019
(Assessment Year 2010-11)

ITA No. 7602/MUM/2019
(Assessment Year 2011-12)

DCIT CC 2(2)
Old CGO Building, 8th Floor,
M.K.Road,
Mumbai-400 020
(Appellant)

Vs.

Speciality Paper Ltd
93, Dadi Seth Agiry Lane,
Kalbadevi Road,
Mumbai- 400 002
(Respondent)

PAN No. AAEC50861Q

Assessee by : Shri S.H.Raheja
Revenue by : Shri. Sanjeev Kashyap, CIT DR.

Date of hearing: 30.11.2022
Date of pronouncement : 29.12.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are the 4 cross appeals of the same assessee for 2 assessment years i.e. A.Y. 2010-11 and 2011-12 involving similar issue therefore, both the parties argued it together and those are disposed of by this common order.
02. ITA No. 7601/MUM/2019 is filed by the DCIT CC-2(2) Mumbai (the ld. AO) for A.Y. 2010-11 against the order of the CIT(A)-48, Mumbai (the ld CIT-A) and ITA No. 7683/MUM/2019 for the same A.Y. is filed by the Spaciality Paper Ltd (the Assessee) against the same appellate order.
03. In ITA No. 7601/MUM/2019 the ld. AO has raised following grounds of appeal stating that ld CIT (A) is not correct in holding :

“1. On the facts and circumstances of the Appellant’s case and in law the ld. AO erred in passing ex-parte order by invoking the provisions of Sec. 144 of the Income Tax Act, 1961 without providing reasonable opportunity of being heard.

2. On the facts and circumstances of the appellants case and in law the Learned Assessing Officer erred in rejecting the book results u/s. 145(3) of the Income Tax Act, 1961.

3. On the facts and circumstances of the Appellant’s case and in law the ld A.O. erred in estimating the gross profit at the rate of 28% amounting to ₹ 31,38,34,088/- as per para 13 of the impugned order.

4. On the facts and circumstances of the Appellant’s case and in law the ld. A.O. erred in making the addition of ₹ 10,43,01,079/- on account of alleged unexplained loan creditors by invoking provisions of Section 68 of the Income Tax Act, 1961 as per para 14 of the impugned order.

5. On the facts and circumstances of the Appellant’s case and in law the ld. A.O. erred in making an ad-hoc addition of ₹ 10,00,000/- as alleged unexplained cash credit basis by invoking provisions of Section 68 of the Income Tax Act, 1961 as per para 31 of the impugned order.”

04. In ITA No. 7683/MUM/2019 the assessee has raised following grounds of appeal:

- “1. On the facts and circumstances of the case and in law the Ld Commissioner of Income-Tax(Appeal) erred in not allowing the additional grounds of appeal on the ground that the assessment order is passed on the normal provisions of the Act, based on notice issued under section 143(2) without accepting the fact that notice u/s. 153C was issued in the case of the Appellant and based on the date of intimation of search on the basis of satisfaction note, the year falls within the period of six years from the date of initiation of search and order should have been passed under section 153C r.w.s. 153A and not under section 144/143(3) of the Income Tax Act, 1961 on the ground or grounds as stated in the Appellate Order or otherwise.
2. On the facts and circumstances of the case and in Law the Ld. Commissioner of Income Tax (Appeals)(referred as CIT(A)) erred in confirming the ex-parte order passed by the Assessing Officer (AO) by invoking the provision of section 144 without calling any information from the AO on the ground as contained in the appellate order or otherwise.
3. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the rejection of books of account u/s. 145(3) of the Income Tax Act, 1961 on the ground or grounds as stated in the Appellate order of otherwise.
4. On the facts and circumstances of the case in law, the Ld. CIT(A) erred in confirming the addition of G.P @25% based on order in some other case, and thereby confirming the addition on account of gross profit of ₹ 28,02,09,007/- on the ground as stated in the Appellate order of otherwise.
5. On the facts and circumstances of the case and in law and Ld. CIT(A) erred in confirming the addition of ₹

10,43,01,079/- on account of unexplained cash credit on the ground or grounds as stated in the Appellate order or otherwise.”

05. Briefly stated the fact for A.Y. 2011-12 shows that search took place u/s. 132 of the Act in case of Reliable Paper (India) Ltd. and its group concerns from 23.02.2010 to 28.04.2010. Subsequently, notice u/s. 142(1) of the Act dated 19.11.2012 was issued to the assessee which was not responded to. However, the fact shows that assessee has filed original return of income u/s. 139 of the Act on 19.07.2011 at ₹Nil. Several further notices were issued which were not complied with. Therefore, the AO issued show cause notice to complete the assessment u/s. 144 of the Act. Even that notice was not complied with.
06. Then, the LD AO proceeded to complete the assessment. The ld. AO noted that assessee is a dealer in papers and has incurred losses of ₹6,75,42,733/- .Further, assessee has carried forward losses of ₹8.39 Crores. The ld. AO examined balance-sheet and profit and loss account of the assessee and in absence of any information with respect to the raw material consumed and expenditure incurred as well as the stock statement and books of accounts, the ld. AO rejected books applying the provisions of Section 145(3) of the Act. After rejecting the books of accounts and in absence of delivery challans, transport bills, lorry receipts, expenditure accounts, quantitative details of stock & banks loan which were not produce before the Assessing Officer, he estimated the total income of the assessee at ₹31,38,34,088/- @ 28% of the total turnover. In absence of any information about the creditors amounting to ₹10,43,01,079 and unexplained cash credit u/s. 68 of ₹ 10lacs, both these sums were added u/s 68 of the Act. Accordingly, assessment order u/s. 144 of the Act was passed on 28.03.2013 determining total income of the assessee at ₹ 41,91,35,170/-.
07. Assessee aggrieved with Assessment order preferred appeal before ld. CIT-A. Assessee objected to the rejection of books of accounts as well as additions. The ld. AR before the ld. CIT(A) filed an additional ground of appeal stating that the order passed u/s. 144 is illegal and non maintainable because Assessment order should have been passed u/s. 153C of the Act. Assessee submitted that ld AO issued notices u/s 153C of The Act for A.Y. 2004-05 to 2009-10 were issued on 19/11/2012. It was further stated that notice u/s.

153C of the Act was issued on 19.11.2012 and therefore at least, in absence of any other information, it should be taken as date of search and accordingly the year of search is A.Y. 2013-14 and impugned assessment years covered in the 6 preceding previous years starts from Ay 2006-07 to 2011-12. Therefore this year is covered in the above period as the impugned assessment year is AY 2010-11. Therefore the assessment should have been passed u/s 153C of The Act for this year, however ld AO passed it u/s 144 rws 143 (3) of the Act, hence it is invalid.

08. The ld CIT (A) , On the merits, after confirming the action of ld. AO of making assessment u/s. 144 of the Act estimated the gross profit @25% based on the decision in case of group concern. He upheld the addition of unexplained credits of ₹ 10,43,01,079 u/s. 68 but deleted the ad-hoc addition of ₹ 10 lacs u/s. 69 of the Act.
09. On the issue of additional ground, LD CIT (A) held that the assessee is merely assuming the date of satisfaction note u/s. 153C of the Act and dismissed additional ground. Such appellate order was passed on 20.09.2019.
010. The ld. AO is aggrieved with the action of the ld.CIT (A) in reducing the gross profit from 28%-25% and deletion of addition of ₹ 10 Lacs, is in appeal before us.
011. Assessee is aggrieved with the order of the ld.CIT (A) on the ground that the assessment should have been made u/s. 153C of the Act. The order u/s. 144 is not valid, rejection of the books of accounts is not good and further the confirming of unexplained cash credit of ₹ 10,43,10,79/- is also not good.
012. As main ground in appeal of assessee is a jurisdictional ground that the order should have been passed u/s. 153 C of the Act, we take up appeal of the assessee first.
013. As per Ground No. 1 assessee challenged that the assessment should have been u/s. 153C of the Act. The impugned assessment order is passed u/s. 144 of the Act, therefore same is invalid.
014. The ld. AR relied on the decision of the Hon'ble Delhi High Court in case of PCIT Vs. Sarvar Agency Pvt. Ltd. as well as the decision of the co-ordinate

bench in ITA No. 7682 and 7680 in case of Global Paper Impex A dated 22.09.2022 on the similarly issued where on the identical facts and circumstances the assessment passed by the ld. AO u/s. 144 of the Act is held to be not sustainable as same was required to be passed u/s. 153(C) of the Act. He therefore submitted that, issue is squarely covered in favor of the assessee.

015. The ld. DR vehemently supported the orders of the ld.CIT (A) where this issue was raised for the first time. It was submitted that there is no satisfaction and therefore assessee is not entitled to take shelter under the provisions of u/s. 153C of the Act.
016. We have carefully considered the rival contention and perused the orders of the lower authorities. In the present case, the assessment order is passed u/s. 144 r.w.s. 143 (3) of the Income Tax Act. The fact shows that, a search took place in the case of reliable paper group on 23.03.2010 to 28.04.2010. The assessment order in case of the assessee was already made u/s. 153C of the Act for A.Y. 2004-05 to 2009-10. Those assessment orders travelled up to the level of co-ordinate bench and additions were deleted in absence of any incriminating material found during the course of search. Since, the ld. AO issued the notices u/s. 153(C) of the Act for A.Y. 2004-05 to 2009-10 on 19.11.2012, this is presumably the last date which can be assumed safely being the 'date of search' in case of the assessee i.e. 'other person'. As per the 1st proviso to section 153C(1) of the Act date of initiation of search in case of 'other person' shall be construed as per date of receiving the books of accounts for documents or assets seized or requisition by the AO of the assessee. In this case, it can be safely presume that the date of search in the case of assessee is 19.11.2012 because as on that date notices u/s 153C of the Act was issued for other assessment years. Accordingly, order u/s. 153C of the Act is required to be passed for the A.Y. 2006-07 to 2011-12. Further any addition to be made for this assessment year is to be based on incriminating material found during the course of search. When the issue was raised before the ld. CIT-A, the LD AO in the remand report categorically submitted that relevant files are not traceable; therefore, the ld. AO is not in a position to give any specific date. This fact is specifically mentioned by the ld. AO in his remand report dated 23.08.2016. Therefore, we are constraint to take the date of search as 19.11.2012. This is the date of search also accepted by the

both the parties in assessment of the assessee u/s. 153C of the Act for earlier year.

017. Identical issue has been decided in ITA No. 7682/MUM/2019 and 7680 and 7603/MUM/2019 for A.Y. 2011-12 by the co-ordinate bench by order dated 22.09.2020 in case of Global Paper Impex Pvt Ltd wherein also on the same search and on the basis of notice u/s. 153(C) issued in earlier years on the same date i.e. 19.11.2012, the co-ordinate bench quashed the assessment framed by the ld. AO u/s 144 of the Act holding as under:-

“3. Briefly stated facts necessary for adjudication of the controversy at hand in all the aforesaid appeals are: on the basis of search and seizure operation carried out in case of Reliable paper (I) Pvt. Ltd. and its group company, Mumbai during the period 23.02.2010 and 20.04.2010 notice under section 142(1) of the Income Tax Act, 1961 (for short ‘the Act’) dated 19.11.2012 was issued and served upon the assessee. However, assessee has not filed the return of income in response to the notice under section 142(1) of the Act. Then notice under section 142(1) dated 11.01.2013 along with questionnaire was issued and duly served upon fixing the next date as 23.01.2013 but none appeared on behalf of the assessee. Thereafter, subsequent notices were issued but assessee failed to comply with the same and consequently Assessing Officer (AO) proceeded to complete the assessment under section 144 of the Act.

4. AO proceeded to assess the income of the assessee on estimation basis by taking sales turnover of the assessee of the previous year and extrapolating the sales turnover by 10% of the previous years which amounts to Rs.9,57,30,405/-. AO by considering the extrapolating the turnover by extra 10% which comes to Rs.1,05,30,34,458/- proceeded to compute the income of the assessee at Rs.29,48,49,648/- being 28% of the total turnover i.e. Rs.1,05,30,34,458/- as discussed in the preceding para. AO also made adhoc addition of Rs.55,00,000/- under section 68 as unexplained cash credit on his failure to submit the bank statements after repeated requests and thereby framed the assessment at the total income of Rs.29,98,49,650/- under section 144 of the Act.

5. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved assessee as well as Revenue have come up before the Tribunal by way of filing present cross appeals for A.Y. 2010-11.

6. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld.

Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

7. Undisputedly both the cases for A.Y. 2010-11 & 2011-12 have arisen on the basis of search took place in the case of Reliable Group of Company during the period 23.02.2010 to 20.04.2010. It is also not in dispute that as per 1st and 2nd proviso of section 153C and 153A respectively the AO got jurisdiction on the date on which he records the satisfaction note, which is the date of initiation of search, and the date in this case as per record is 19.11.2012 because the AO has recorded his satisfaction for the other assessment years viz. 2004-05 to 2009-10 in which he had issued the notice under section 153C of the Act. It is also not in dispute that when the date of recording the satisfaction is 19.11.2012 then proceedings under section 153C of the Act are required to be initiated for all the assessment years for six years i.e. 2006-07 to 2011-12. It is also not in dispute that assessment made by the AO in case of assessee for A.Y. 2004-05 to 2009-10 under section 153C have been deleted on the ground that the same did not arise out of any seized material. It is also not in dispute that on 19.11.2012 assumed date for recording satisfaction of the assessment for A.Y. 2010-11 was not pending and notice under section 142(1) was issued whereas no notice under section 143(2) has ever been issued. It is also not in dispute that addition in this case for both the years is not based upon any seized material. It is also not in dispute that on 19.11.2012 A.Y. 2011-12 was pending and notice under section 143(2) was issued on 24.09.2012 meaning thereby assessment abates and notice under section 153C of the Act was required to be issued.

8. In the backdrop of the aforesaid facts and circumstances of the case the Ld. A.R. for the assessee raised legal ground that the assessment for both the years i.e. A.Y. 2010-11 and 2011-12 was required to be framed under section 153C of the Act and not under section 144 of the Act as has been done by the AO and relied upon the decision rendered by co-ordinate Bench of the Tribunal in case of Shri Meer Hassan vs. ITO & ors. in ITA No.1571/Del./2015 & ors. vide order dated 28.02.2019 and in case of DCIT vs. M/s. Specialty Paper Ltd. in ITA No.6869/M/2016 to 6874/M/2016 for A.Ys. 2004-05 to 2009-10 vide order dated 21.03.2018.

9. This issue was decided by the Ld. CIT(A) against the assessee on the sole ground that the entire argument of the assessee is on the assumed date of satisfaction note under section 153C of the Act i.e. 19.11.2012.

10. However, on the other hand, the Ld. D.R. for the Revenue relied upon the order passed by the Ld. CIT(A).

11. On the basis of grounds raised by the assessee, argument addressed by the Ld. Counsels for the parties to the aforesaid appeals the sole legal issue to be decided in this case is:

“as to whether assessment for both the years i.e. A.Y. 2010-11 & 2011-12 undisputedly being the part of last six assessment years from the date of search were required to be framed under section 153C read with section 153A of the Act and not under section 144 read with section 143(3) of the Act.?”

12. When we examine aforesaid issue in the light of the fact that undisputedly assessment proceedings in case of the assessee for A.Y. 2010-11 & 2011-12 were initiated on the basis of search and seizure operation carried out in case of *Reliable Paper (I) Pvt. Ltd.* under section 132 of the Act during period 23.02.2010 and 20.04.2010 wherein incriminating documents relating to the assessee were allegedly found as has been recorded by the AO in first para of the assessment order, assessment was required to be framed under section 153C read with section 153A of the Act and not under section 144 of the Act. Ld. CIT(A) decided this legal issue against the assessee on the sole ground that assessee has assumed the date of satisfaction note under section 153C of the Act as 19.11.2012.

13. However, the Ld. A.R. for the assessee to substantiate his argument drew our attention towards order dated 21.03.2018 passed in ITA No.6875 to 6879 of 2016 in case of assessee for A.Y. 2005- 06 to 2009-10 which were also part of the assessment years covered by the block assessment on the basis of search and seizure operation carried out on *Reliable Group* during the period 23.02.2010 and 20.04.2010, it has specifically come on record that the “the AO has assumed jurisdiction to make the impugned assessment by issuing notices for each of the captioned assessment years under section 153C of the Act dated 19.11.2012.”

13. Furthermore, during the assessment proceedings the Ld. CIT(A) called upon the AO to bring on record the satisfaction note recorded in these cases, to which AO informed by way of letter dated 18.03.2016, DCIT/CENT.CIR.2(2)/Rem./2015-16 which is part of the judicial record that “as regards satisfaction note, a reference may be drawn to the assessment order wherein the AO has mentioned that, “the satisfaction was drawn before initiating the proceedings u/s 153C. Sir, it may further be appreciated that this records were originally lying on 8th floor of this building. Thereafter records were shifted to 11th floor due to renovation on 8th floor. Further after restructuring records were again shifted to 8th floor. In this process, the satisfaction note appears to have been misplaced. I rely on the provision of section 292B and 292BB of the Income Tax Act, 1961. Therefore it is submitted that

notice u/s 153C is properly issued and served on the assessee.”

14. The onus to prove the date of recording of the said satisfaction note by the AO was on the Revenue which they have failed to discharge. Moreover, it is amply proved on the record from the order dated 21.03.2018 (supra) passed in case of assessee for A.Y. 2005-06 2009-10 and from the date of search that the satisfaction note was recorded on 19.11.2012 which mandates that the assessment in this case was to be framed under section 153C of the Act for assessment years 2006-07 to 2011-12 (including A.Y. 2010-11 & 2011-12 the years under consideration)

15. Co-ordinate Bench of the Tribunal in case of Shri Meer Hassan vs. ITO & ors. in ITA No.1571/Del./2015 & ors. vide order dated 28.02.2019 decided the identical issue by holding that provisions contained under section 153C of the Act are applicable to initiate the assessment proceedings on the basis of seized material, seized in case of some third person, initiation of assessment proceedings under section 147 of the Act is void abinitio by returning following findings:

“12. In the backdrop of the aforesaid facts and circumstances of the case, the first question for determination in this case is :-

“as to whether on the basis of alleged incriminating material seized during search at the premises of M/s. R.B. Enterprises on 04.03.2009, AO as well as CIT (A) have erred in initiating the proceedings u/s 147 of the Act.”

13. The ld. AR for the assessee challenging the impugned order contended that when the AO has specifically relied upon material/ documents LP-103 A-1 pages 30 seized during the search operation conducted at the premises of M/s. R.B. Enterprises, he had the authority to assess that person u/s 153C of the Act as the provisions contained u/s 153C are non-obstante provisions which specifically exclude the operation of section 147 of the Act and as such, assessment framed in this case u/s 147 is not sustainable in the eyes of law.

14. However, on the other hand, ld. DR for the Revenue relied upon the order passed by the ld. CIT (A).

15. For facility of reference, provisions contained u/s 153C are extracted for ready perusal as under :-

“153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that, - -



(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person 17[for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153A :

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to subsection (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

Provided further that the Central Government may by rules 18 made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made 19[and for the relevant assessment year or years as referred to in sub-section (1) of section 153A] except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year-

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under subsection

(2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.”

16. Bare perusal of the provisions contained u/s 153C which is a non-obstante provision shows that when the assessment order shows that the assessment proceedings were to be initiated on the basis of incriminating material found in search of a third party, as in the present case, the provisions contained u/s 153C are applicable which specifically excludes application of sections 147 & 148 of the Act.

17. In the instant case, undisputedly, originally assessment proceedings were initiated against the present assessee u/s 153C read with section 153A of the Act which was completed vide order dated 30.12.2011 but the same were annulled by Id. CIT (A) vide order dated 28.08.2012 on the ground that proper course in this case was to initiate proceedings u/s 147 of the Act and make assessment accordingly. The said assessment u/s 153C read with section 153A was completed on the basis of some seized material/document LP-103 A-1 pages 30, which is a memorandum of understanding alleged to have been entered into between the assessee and M/s. R.B. Enterprises.

18. So, we are of the considered view that when provisions contained u/s 153C are applicable in this case to initiate assessment proceedings on the basis of seized material seized in case of some third party, notice issued u/s 148 of the Act and subsequent assessment framed u/s 147 of the Act is void ab initio and as such, assessment framed u/s 147/143(3) of the Act is liable to be quashed.”

16. Not only this 1st and 2nd proviso to section 153C and 153A of the Act make it clear that the AO acquires jurisdiction on the date on which satisfaction note has been recorded, which ought to be date of search, and in this case date of recording satisfaction has come on record as 19.11.2012, then

proceedings under section 153C are required to be initiated for the preceding six assessment years i.e. 2006-07 to 2011-12. As on 19.11.2012 the assessment for assessment year 2010-11 was not pending. The AO has undisputedly issued the notice under section 142(1) and no notice under section 143(2) of the Act was ever issued, which vitiates the entire assessment proceedings framed under section 144 of the Act, particularly when addition made in these cases is not based on seized material.

17. At the same time, in case of assessment year 2011-12, the assessment was pending and notice under section 143(2) of the Act was issued on 24.09.2012. Since the assessment abates again notice under section 153C of the Act was required to be issued.

18. In view of what has been discussed above, we are of the considered view that the assessment framed in this case by the AO under section 144 of the Act is not sustainable as the same was required to be framed under section 153C read with section 153A of the Act, hence ordered to be quashed without entering into merits of this case. Consequently, appeals filed by the assessee are allowed and appeal filed by the Revenue is hereby dismissed.”

018. As the facts in the case of the assessee as well as the facts in the case of the Global Papers Impex Ltd are identical, respectfully following the decision of the co-ordinate bench in case of Global Impex Ltd (Supra), we also quash assessment order for A.Y. 2010-11 passed by the ld. AO u/s. 144 of the Act. Accordingly, Ground No. 1 of the appeal of the assessee is allowed.
019. In view of our decision all the other grounds in the appeal of the assessee as well as in the appeal of the ld. AO becomes infructuous and hence, dismissed.
020. Accordingly, appeal of the assessee ITA No. 7683/MUM/2019 is allowed and appeal of the AO in ITA No.7601/MUM/2010 is dismissed.
021. For A.Y. 2011-12, ITA No. 7602/MUM/2019 is filed by the ld. AO and ITA No. 7679/MUM/2019 is filed by the assessee.
022. The facts in this year are identical to the facts for A.Y. 2010-11 in case of the assessee. In this A.Y. also the assessment was framed u/s. 144 of the Act instead of assessment u/s. 153C of the Act.



023. Identically, the assessee in its grounds of appeals also raised this issue. Both parties also confirmed that the facts and the issue are identical to the facts in the case of the assessee for A.Y. 2010-11.
024. We have carefully considered the rival contentions and perused the order of the lower authorities. For the reasons given by us in appeal of the assessee deciding Ground No. 1 of the appeal for A.Y. 2010-11, following the decisions of the co-ordinate bench, we have held that this assessment should have been made u/s. 153C of the Act and not u/s. 144 of the Act, we quash assessment order passed by the Id. AO u/s. 144 of the Act. Accordingly, Ground No. 1 of the appeal of the assessee is allowed.
025. All other Grounds of the appeal assessee as well as the appeal of the Id. AO becomes infructuous and hence, dismissed.
026. In the result, appeal filed by the assessee for A.Y. 2011-12 is allowed.
027. Accordingly, appeal filed by the assessee for both these years are allowed and appeals of Id AO for both these years are dismissed.

Order pronounced in the open court on 29/12/2022.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29/12/2022

Uday Mugal, Stenographer

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar



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