

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH: 'E' NEW DELHI ]**

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
A N D  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I.T.A. Nos. 4160, 4161, 4162 & 4163/Del/2018  
Assessment Years : 2005-06, 2006-07, 2007-08 & 2008-09  
(THROUGH VIDEO CONFERENCING)**

Manoj Kumar Jain,  
C/o. M/s. Kapil Goel  
Associates, F-26/124, Sector  
7, Rohini, Delhi – 110 085.

Vs.

DCIT,  
Central Circle,  
Ghaziabad.

**PAN : ACLPJ4982H**

**(APPELLANT)**

**(RESPONDENT)**

Assessee by :

N o n e;

Department by:

Ms. Parmita M. Biswas,  
[CIT] – DR;

Date of Hearing  
Date of Pronouncement

27.07.2021  
27.07.2021

**ORDER**

**PER PRASHANT MAHARISHI, AM :**

01. These are the appeals filed by the assessee for assessment years 2005-06 to 2008-09 against the order passed by the ld. CIT (Appeals) Ghaziabad, dated 31<sup>st</sup> March, 2015. The ld. CIT (Appeals) passed an order holding that the action of the Assessing Officer in assuming jurisdiction under Section 153C of the Income Tax Act, 1961 (the Act) are not valid and, therefore, he quashed the orders passed by the Dy. Commissioner of

Income Tax, Central Circle, Ghaziabad, under Section 153C of the Act for all these years.

02. In the present case, after the search it was found that assessee is part of group of persons who are engaged in providing bogus entries by supplying bogus bills of steel to various concerns. In case of assessee itself volume of issuing bogus bills is to the tune of more than ₹ 100 crores. It is alleged that this group is maintaining not one but nine other such entities who are engaged in providing bogus bills. Detailed statements were recorded of all the persons, large number of bank accounts were verified and date are tabulated which shows that it was a racket created by few persons wherein bogus entities were created for supplying bogus bills of steel to a large number of beneficiaries. Assessee is actively involved in this money laundering racket of providing accommodation entries.
03. The ld. CIT(Appeals), however, directed the ld. Assessing Officer to take action under Section 147 / 148 of the Act. Further As the ld. CIT (Appeals) allowed the appeal of the assessee by quashing the order under Section 153C of the Act, he did not adjudicate on the other grounds of appeal such as merits of the addition. The ld. CIT (Appeals) held that as the proceedings under Section 153C of the act stand quashed the other grounds of appeal on merits of the addition do not survive for adjudication and the same are dismissed without adjudicating them on merits. Thus, the assessee is aggrieved with the above two directions given by the learned CIT – A.
02. In all these four appeals the identical grounds are raised where the assessee has challenged that the CIT (Appeals) is not justified in issuing direction to the ld. Assessing Officer to take action under Section 147 / 148 of the Act and further the ld. CIT (Appeals) should have held that the other grounds related to the merits of the addition are not being

adjudicated on merits because the assessment order passed under Section 153C of the Act has been quashed.

04. On the appointed date of hearing, despite notice to the assessee fixing the date of hearing for today, none appeared on behalf of the assessee. On enquiry from the registry it was found that the registry has sent notice to the assessee at the address mentioned in column number 10 in form number 36 furnished by the assessee which is the address of the advocate of the assessee. It was also shown that in the cause list published on the website of ITAT the above case of the assessee were fixed for hearing today. Despite this neither the application of adjournment nor any representation or written submission was made on behalf of the assessee. In view of this, we are left with no alternative but to proceed to decide the issue on the merits of the case as per facts available on record.
05. There is no doubt that rule 24 of the ITAT rules 1963 give such powers to the ITAT dispose of the appeal in absence of nonappearance by the appellant. We are also conscious that the proviso to that rules requires us to recall the order if appellant satisfies that there was sufficient cause for nonappearance. However at this moment we do not have any such material on record. The assessee may also have a right to do it at letter on as per the rules prescribed. But this cannot be the reason to keep the appeals pending for an indefinite time.
06. The Id.[CIT] – DR vehemently submitted that the provisions of Section 251(1)(i) clearly gives power to the Id. CIT (Appeals) against an order of assessment of confirmation, reduction, enhancement or annulment of the assessment. She further referred to the Explanation (2) to Section 251 of the income tax act that the CIT (Appeals) has power to consider and decide any matter arising out of the proceedings notwithstanding the fact that such matter was not raised before him by the assessee. She found that in the present proceedings the correct action to be initiated by

the Id. Assessing Officer is re-opening of the assessment and, therefore, the CIT (Appeals) has correctly given the direction to initiate proceedings under Section 147 / 148 of the Act. She further referred to the large number of decisions of the various courts to support her contentions.

07. We have carefully considered the contentions raised by the Id. [CIT] – DR as well as the grounds raised by the assessee and the orders of the lower authorities. We have also considered the judgements relied upon by the learned CIT DR about the powers of the CIT – A for giving such direction. We find that assessment orders were passed under Section 153C of the Act wherein search was conducted and bank account of the assessee was found and therefore notice under Section 153A of the Act was issued to the assessee. Consequently the assessment was framed and an addition of Rs. 26,56,06,067/- was made in case of the assessee on protective basis. It is to be noted that this addition has been made on account of cash deposits in various bank accounts held by M/s. Rishav Trading Company, whose proprietor was Mr. Manoj Kumar Jain – the appellant in this case. The Id. CIT (Appeals) has correctly held that there is no seizure of any document and the only asset found was the cash deposited in the bank account and there is no satisfaction that any money belongs to the assessee. The satisfaction recorded by the Assessing Officer mention that assessee is involved in providing accommodation entries. On this basis the jurisdiction assumed by the Id AO under Section 153C of the Act was held to be invalid. However the learned CIT – A issued direction to the learned assessing officer to initiate action u/s 147 – 148 of the income tax act. Consequently he also did not decide any other grounds of appeal and dismiss them as the order of the assessment was passed u/s 153C of the act itself.
08. Now the fact shows that assessee is involved in the business of money laundering as a part of group of persons by issuing bogus bills . The assessment order from assessment year 2005-06 to 2010-11 shows the accommodation entries of more than Rs 100 crores were added in the

hands of the assessee on protective basis. The assessee was found to be engaged in providing accommodation entries by providing bills of steel along with Mr. Pankaj Sharma, Ajay Sharma, Sanjay Thakur, Sri Vishnu Bhagwan etc. More than 10 bogus firms or entities were created. One of the entity M/s. Rishav Trading Company was also issuing bogus bills of steel and assessee was found to be proprietor of this firm. There was also a list of persons showing name of the beneficiaries, who were also found. Summonses were also issued to the various parties. No replies were received from them. The Assessing Officer has categorically stated that total of the accommodation entries is in the range of only one firm of M/s. Rishav Trading Company of Rs 100 Crores and there are 9 other firms. This clearly shows the magnitude of the accommodation entry racket operated by the assessee in connivance with other persons. The bank account of M/s. Rishav Trading Company shows a mammoth credit for which the assessee has no explanation. The addition has been made in the hands of assessee on protective basis. No doubt on legal ground the orders under Section 153C of the Act were quashed by the Id. CIT (Appeals). However, in view of such glaring fact covering huge racket of providing accommodation entries of issuing bogus bills, the Id. CIT (Appeals) being conscious of his powers and his authority in directing the Id. Assessing Officer to issue notice under Section 147 / 148 of the Act. No doubt the action of the Id. Assessing Officer would always be tested on the parameters of Section 147 & 148 of the Act. The assessee would also be granted proper opportunity of hearing and objecting to such action of the learned assessing officer. The provisions of Section 116 of the income Tax Act clearly defines authority where the CIT (Appeals) is also mentioned. The powers of the CIT (Appeals) are enumerated under Section 251 on the Income Tax Act. The direction of the Id. CIT (Appeals) does not prejudice the assessee if the Id. Assessing Officer issue notices after following the provisions of law and giving an opportunity of hearing to the assessee under Section 148 of the Act. It is to be noted that CIT

(Appeals) has not enhanced the income of the assessee. However, in fact he has given relief to the assessee. When at the time of giving relief, the CIT (Appeals) in the peculiar circumstances of the facts of the case has clearly seen that the case of the assessee should be covered under the provisions of Section 147 of the Act; he has given such guidance to the assessing officer to proceed u/s 147 – 148 of the act. Now it would be the prerogative of the assessing officer to whether to invoke those sections are not. Therefore we do not find any reason about the grievance of the assessee when the assessing officer has not initiated 147 – 148 proceedings merely on the direction of the learned CIT – A. Furthermore the learned directions of the learned CIT – A it would be the conscious decision of the learned assessing officer himself whether to proceed with that sections or not. The learned CIT appeal is duty-bound to correct the errors made by the learned assessing officer. In the present case the error of the assessing officer is to initiate proceedings u/s 153C of the act which the assessing officer should not have done but should have initiated action u/s 147 – 148 of the income tax act and this error is pointed out by the learned CIT – A.

09. The learned CIT appeals powers are coterminous with the powers of the learned assessing officer.
10. It is well-known that in an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings Under appeal and to issue, if necessary, appropriate direction to the authority against whose decision the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statute. Such is the mandate of the honourable Supreme Court in 131 ITR 451 in case of Kapoorchand Shrimal V CIT . Further the honourable Calcutta High Court in 204 ITR 580 has clearly held that where the assessing officer commits an error in the course of completing the assessment proceedings after having duly assumed jurisdiction, it is the duty of the

appellate authority to remove the particular defect or irregularity occurring in the course of the proceedings.

11. It is also clear that the powers of the learned CIT – A extends to the subject matter of the assessment. The entire assessment is thrown open before the first appellate authority and so long as it does not travel outside the matters considered and determined by the assessing officer, it can correct any decision of the assessing officer in the course of the assessment even if the assessee satisfied with it and has not specifically challenged it in appeal. Therefore it is evident that the first appellate authority has power to consider the issues Suo Moto and deal with all points and grounds which arises from not merely the subject matter of the appeal but even from the larger area of the subject matter of assessment. Such is the mandate of the honourable Gujarat High Court in 206 ITR 574.
12. The learned CIT appeal is a superior authority then the learned assessing officer and he can give any direction on the facts and circumstances of the case and in light of the provisions of the act. If the assessing officer or the assessee has any grievance the provisions are already there to file an appeal before the ITAT. But the first appellate authority has every right to correct the mistakes in the order of the assessing officer and he can give any directions in conformity with the provisions of the act. In fact it does not curtail the powers of the assessing officer but in fact it is in the conformity of the provisions of the act and guides the assessing officer for proper administration of the act. Such is the mandate of the honourable Rajasthan High Court in CIT versus Jewels emporium 257 ITR 736.
13. Further as the learned CIT – A has merely gave a direction to the assessing officer , challenging the same before us is premature at this stage because we are not aware whether the learned assessing officer has initiated any action thereon or not. Further as and when such actions are initiated by the learned assessing officer, assessee has all rights

available to him under the income tax act to challenge the action of the learned assessing officer. Such a stage has not yet come.

14. Therefore the order of the learned CIT – A in guiding the assessing officer giving a direction to proceed u/s 147 – 148 of the act are in conformity with the income tax act, the direction itself does not prohibit or curtail upon any power of the assessing officer mentioned in those sections, it is in conformity with the provisions of the law and by merely giving this directions the assessee is not aggrieved at all as he has all the rights vested in the income tax act to challenge such action of the assessing officer as and when taken.
15. Furthermore when such a glaring facts of money laundering racket run by assessee are found by the income tax department, income tax authority is duty-bound to correct any procedure or other lapses in the assessment order by guiding its subordinate authorities to correct the same and proceed in accordance with the law. There is nothing illegal and improper in such directions.
16. Even the case before us clearly shows that huge bogus bills of several hundred crores were issued by this group of persons, only one of them is before us. There cannot be two opinions on the issue that such practices must be curbed and must be tested on the strictest provisions of the law. In fact in this case the learned assessing officer has made addition on protective basis in the hands of the assessee but we do not know where the substantive additions have been made in the hands of the beneficiaries or not. In fact the beneficiaries are the persons who have taken bogus bills from these persons one of them is the assessee before us. The learned assessing officer, if found proper and in accordance with the law, may also examine the applicability of the provisions of The Prohibition Of Benami Property Transactions Act 1988 in the hands of the beneficiaries and as well as in the hands of this assessee and other persons who are involved in this whole racket of providing bogus bills over and above initiating the provisions of Section



147 and 148 in the hands of the assessee as well as in the hands of the beneficiaries if the time so permits.

17. In view of the above fact, we do not find any infirmity in the order of the ld. CIT (Appeals) in giving direction to the Assessing Officer for issuing notices under Section 151 of the Act. It was not the case that Assessing Officer has already issued notice to the assessee and assessee did not have any opportunity to defend him before the ld. Assessing Officer. In view of this, ground No. 1 of the appeal is dismissed.
18. With respect to the second ground of appeal treating that CIT (Appeals) has dismissed the other grounds of appeal without adjudicating those grounds, we do not find any force in this ground of appeal as assessee is not aggrieved. In the result, ground No. 2 of the appeal of the assessee is also dismissed.
19. In view of above facts, all the four appeals do not merit any consideration and hence same are dismissed.

Order pronounced in the open court on : **27/07/2021**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Dated: 27/07/2021.

\*MEHTA\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	27.07.2021
Date on which the typed draft is placed before the dictating Member	27.07.2021
Date on which the typed draft is placed before the Other Member	27.07.2021
Date on which the approved draft comes to the Sr. PS/PS	27.07.2021
Date on which the fair order is placed before the Dictating Member for pronouncement	27.07.2021
Date on which the fair order comes back to the Sr. PS/PS	27.07.2021
Date on which the final order is uploaded on the website of ITAT	27.07.2021
Date on which the file goes to the Bench Clerk	27.07.2021
Date on which the file goes to the Head Clerk	