

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 07.08.2014

W.P.(C) 415/2014 & CM 823/2014

PEPSI FOODS PVT. LTD.

.....Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX

.....Respondent

W.P.(C) 568/2014 & CM 1151/2014

PEPSI FOODS PVT. LTD.

.....Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX

.....Respondent

W.P.(C) 570/2014 & CM 1154/2014

PEPSI FOODS PVT. LTD.

.....Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX

.....Respondent

W.P.(C) 571/2014 & CM 1155/2014

PEPSI FOODS PVT. LTD.

.....Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX

.....Respondent

W.P.(C) 575/2014 & CM 1159/2014

PEPSI FOODS PVT. LTD.

.....Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX

.....Respondent

W.P.(C) 576/2014 & CM 1160/2014

PEPSI FOODS PVT. LTD.

.....Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX

.....Respondent

Advocates who appeared in these cases:

For the Petitioner : Mr Deepak Chopra, Mr Harpreet Singh, Mr Amit Srivastava,
Mr Piyush K. Singh and Mr Rishi Khanna.

For the Respondent : Mr Rohit Madan, Mr P.Roychaudhuri and Mr Akash Vajpai.

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. These six writ petitions pertain to the very same issue and therefore the same are being disposed of together. The petitioner has challenged the notices issued under Section 153C of the Income Tax Act, 1961 (hereinafter

referred to as the 'said Act') all dated 02.08.2013 pertaining to the assessment years 2006-07 to 2011-12.

2. The point urged by the learned counsel appearing on behalf of the petitioner is that the basic ingredient of Section 153C of the said Act has not been satisfied and, therefore, the notices are without jurisdiction and ought to be quashed. The learned counsel for the petitioner submitted that Section 153C permits the issuance of a notice by an Assessing Officer of a person who has not been searched, on the basis of a satisfaction note prepared by the Assessing Officer of a searched person indicating that during the search certain documents belonging to the other person (the person not searched) were found. The learned counsel for the petitioner submitted that before a notice under Section 153C can be issued in the manner indicated, the Assessing Officer of the searched person must arrive at a positive satisfaction that the documents belong to the person not searched. He submitted that in the first instance a presumption is created by virtue of the provisions of Section 132(4A)(i) of the said Act that the documents belong to the searched person. A similar presumption is also indicated by the provisions of Section 292C of the said Act. The learned counsel for the petitioner submitted that, therefore, before the Assessing Officer of the

searched person can be said to have arrived at the satisfaction that the documents belonged to the other person (the person not searched) there has to be a rebuttal of that presumption on the basis of some material to which the Assessing Officer of the searched person should have applied his mind. He further submitted that on going through the satisfaction note of the Assessing Officer of the searched person, in the present cases, it is not at all clear as to on what basis the said Assessing Officer has arrived at the so called satisfaction that the seized documents belong to the petitioner. It was, therefore, contended that the notices under Section 153C of the said Act which are impugned herein are without any basis and ought to be quashed.

3. The learned counsel appearing on behalf of the Revenue contended that the documents which have been seized during the search operations conducted on the Jaipuria Group on 27.03.2012 related to the petitioner (Pepsi Foods Pvt. Ltd.). The learned counsel also handed over copies of the documents which have been tabulated in the satisfaction note for our consideration. He submitted that since these documents pertained to transactions with the petitioner, they can be construed as belonging to the petitioner and, therefore, there is nothing wrong in the Assessing Officer of the Jaipuria Group in recording the satisfaction note and expressing his

satisfaction that the said documents belonged to the petitioner. Consequently, he submitted that the issuance of the notices by the Assessing Officer of the petitioner (which incidentally is the same Officer as that of the Jaipuria Group) cannot be faulted and that the writ petitions ought to be dismissed. The learned counsel of the Revenue placed reliance on a decision of the Gujarat High Court in **Kamleshbhai Dharamshibhai Patel v. Commissioner of Income Tax**: (2013) 214 Taxman 558. He also placed reliance on a decision of the Allahabad High Court in the case of **Commissioner of Income Tax v. Classic Enterprises**: (2013) 358 ITR 465 and that of a Division Bench of this court in **SSP Aviation Ltd. v. Deputy Commissioner of Income Tax**: (2012) 346 ITR 177. Based on these decisions he contended that as long as the documents bear some relation with the petitioner, they can be said to belong to the petitioner and, therefore, there was no illegality committed by the concerned Assessing Officer in issuing the satisfaction note as also the impugned notices under Section 153C.

4. Referring to the decision of a Division Bench of this court in ***SSP Aviation Ltd. (supra)***, the learned counsel for the Revenue submitted that the issuance of the notice under Section 153C is only a first step to the enquiry which is to follow. He submitted that once the Assessing Officer of the

searched person arrives at the satisfaction that a document found during the search operation related to a person other the searched person, then it could be said that the said document belonged to such other person and the Assessing Officer was then bound to forward the document to the Assessing Officer having jurisdiction over the other person (the person not searched), and, thereafter, it was for that Assessing Officer to follow the procedure prescribed under Section 153A in an attempt to ensure that the income reflected in the seized documents had been accounted for by the other person (the person not searched).

5. We have considered the submissions made by the counsel for the parties. Before proceeding any further it would be necessary to set out the relevant provisions of the said Act as applicable to the assessment years under consideration:-

“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 any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong 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 such other person notice and assess or reassess

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 sub-section (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:

- (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 sub-section (2) of section 143 has expired, or
- (c) assessment or reassessment, if any, has been made,

“132. (1) XXXX XXXX XXXX

(i) That such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

www.taxguru.in

Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or re-assess his income in accordance with the provisions of Section 153A. Therefore, before a notice under Section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is – after such satisfaction is arrived at – that the document is handed over to the Assessing Officer of the person to whom the said document “belongs”. In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to examine the provisions of presumptions as indicated above. Section 132(4A)(i) clearly stipulates that when *inter alia* any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in Section 292C(1)(i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or “satisfaction” that the document in fact belongs to somebody

else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of “satisfaction”.

7. This would be the appropriate stage to consider the decisions referred to by the learned counsel for the Revenue. The decision referred to in ***Kamleshbhai Dharamshibhai Patel*** (*supra*) is of no relevance insofar as the present case is concerned. In that case certain documents were said to have belonged to the petitioners therein but a plea had been taken that as the land, in relation to which the documents were, no longer belonged to the petitioners therefore the said documents could not be regarded as belonging to the petitioners. That is an entirely different situation and the facts of that case are clearly distinguishable from the facts of the present case. Insofar as the decision of the Allahabad High Court in ***Classic Enterprises*** (*supra*) is concerned, we are, with respect, unable to agree with the observations that as the proceedings are at the very initial stage the “satisfaction” is neither required to be firm or conclusive. We say so because we are of the view that this conclusion of the Allahabad High Court is premised on a consideration of the provisions of Section 158BD of the said Act which are entirely

different from Section 153C. Under Section 158BD the Assessing Officer's satisfaction is with regard to 'undisclosed income' belonging to a person other than the searched person. It is obvious that such satisfaction under Section 158BD by its very nature has to be *prima facie* and tentative. The same methodology cannot be imported into Section 153C where, in our view, the Assessing Officer is required to arrive at a conclusive satisfaction that the document belongs to a person other than the searched person because such Assessing Officer has to rebut the normal presumptions which are suggested by the statute under Sections 132(4A)(i) and 292C(1)(i) of the said Act. Therefore, the decision of the Allahabad High Court in the case of ***Classic Enterprises (supra)*** would not come to the aid of the Revenue.

8. Insofar as the decision in the ***SSP Aviation Ltd. (supra)*** is concerned we do not find anything therein which militates against the view that we are taking. In fact the very distinction between Section 153C and 158BD (although Section 158BD is not mentioned) is indicated by the following observations of the Division Bench in ***SSP Aviation Ltd. (supra)***:-

“It needs to be appreciated that the satisfaction that is required to be reached by the Assessing Officer having jurisdiction over the searched person is that the valuable article or books of account or documents seized during the search belong to a person other than the searched person.

There is no requirement in section 153C(1) that the Assessing Officer should also be satisfied that such valuable articles or books of account or documents belonging to the other person must be shown to show to conclusively reflect or disclose any undisclosed income.”

9. It is only in this context that the Division Bench was of the view that the issuance of the 153C notice was only first step in the process of enquiry.

10. The only thing that remains to be examined now is the satisfaction note itself. The satisfaction note dated 02.08.2013 is in respect of the assessment years 2006-07 to 2011-12 and the same reads as under:-

**“M/s Pepsi Foods Pvt. Ltd.
AY 2006-07 to 11-12**

02.08.2013 Satisfaction Note for issue of Notice u/s 153C of Income Tax Act, 1961 in the case of M/s Pepsi Foods Pvt. Ltd, for the Assessment Years 2006-07 to 2011-12.

Satisfaction Note

A search and seizure operation u/s 132(1) of the I.T. Act was carried out at the various premises of M/s Jaipuria Group on 27.03.2012. The group is also into various other business viz. Raymond Retail franchisee, real estate and construction, fast foods, mining, education, ayurvedic products, information technology and medical services. One of the major allegations against the Jaipuria Group is that the assessee group in order to reduce its taxable profit indulged in enhancing the cost of raw material

purchased. On examination of the accounts of various concerns, it is noticed that raw material are procured from fixed vendors. Since bulk purchases are made, rates should have been lower. However raw material are being procured on a high rates resulting in lower taxable income. The bottler shall buy all units of concentrate required for the manufacture of the beverage from PFL (Pepsi Foods Ltd.), or a manufacturer approved in writing by PFL (Pepsi Foods Ltd.) at a price and in accordance with the terms and conditions established by the seller. Being the sole supplier of concentrate to Jaipuria Group, Pepsi Foods Pvt. Ltd. is closely associated to Jaipuria Gr.

During the post search investigation, summons were issued to M/s Pepsi Foods Pvt. Ltd. to furnish certain details. The complete details were not furnished.

The following documents were also found and seized during the course of search and seizure action u/s 132(1) of I.T. Act, 1961 belonging to (PFL) M/s Pepsi Foods Pvt. Ltd. (PAN:AAACP1557E) over which the jurisdiction lies with the undersigned:

rtty/Ann./Page No.	Description of Annexure
C-4/A-2/77	This page contains summary of PFL Claims as on 29-11-2011 (Claims up to 31/10/2011)
C-4/A-4/18-20	These pages contain a detail of D VAT impact (April' 10- June' 10) Vs PFL Support report and MRP Plan.
C-4/A-4/21-23	These pages contain a details of discount per C/S PDL VS PFL.
C-4/A-4/27	These pages contain a details of status of PFL claims.
C-4/A-5/54	This page contains details of concentrate stock summary as on 31.12.2010.
C-4/A-5/99	This page contains a summary of

	PFL claims as on 8/9/2011. Claims upto 31/8/2011.
C-4/A-5/100	This page contains a detail of PFL Support year 2011

Accordingly, section 153C of the I.T. Act, 1961 is applicable to M/s Pepsi Foods Pvt. Ltd. which state that “where an Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong or belongs 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 such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.”

In view of facts narrated above, I am satisfied that the case of M/s Pepsi Foods Pvt. Ltd. is a fit case for issue of notice u/s 153C of the I.T. Act, 1961. Notice u/s 153C dated 02.08.2013 is issued requiring the assessee to file return of income for the A.Y. 2006-07 to 2011-12.

(Pukini Lokho)
Asstt. Commissioner of Income Tax,
Central Circle-12, New Delhi”

11. It is evident from the above satisfaction note that apart from saying that the documents belonged to the petitioner and that the Assessing Officer is satisfied that it is a fit case for issuance of a notice under Section 153C, there is nothing which would indicate as to how the presumptions which are

to be normally raised as indicated above, have been rebutted by the Assessing Officer. Mere use or mention of the word “satisfaction” or the words “I am satisfied” in the order or the note would not meet the requirement of the concept of satisfaction as used in Section 153C of the said Act. The satisfaction note itself must display the reasons or basis for the conclusion that the Assessing Officer of the searched person is satisfied that the seized documents belong to a person other than the searched person. We are afraid, that going through the contents of the satisfaction note, we are unable to discern any “satisfaction” of the kind required under Section 153C of the said Act.

12. This being the position the very first step prior to the issuance of a notice under Section 153C of the said Act has not been fulfilled. Inasmuch as this condition precedent has not been met, the notices under Section 153C are liable to be quashed. It is ordered accordingly. The writ petitions are allowed as above. There shall be no order as to costs.

BADAR DURREZ AHMED, J

AUGUST 07, 2014/mk

SIDDHARTH MRIDUL, J