

आयकर अपीलीय अधिकरण “E” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 5707/Mum/2015

(निर्धारण वर्ष / Assessment Year 2008-09)

The Dy. Commissioner of Income Tax CC-6(1), R.No. 1905, 19 th Floor, Air India Bldg, Nariman Point, Mumbai-400 021	Vs.	Salasar Dwellers Pvt. Ltd. Vatsalya Ekta Association, Near RTO, Andheri (W), Mumbai-400 053
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAKCS7526C		

प्रत्याक्षेप सं./CO No. 257/Mum/2017

(Arising in ITA No. 5707/Mum/2015 for AY 2008-09)

Salasar Dwellers Pvt. Ltd. Vatsalya Ekta Association, Near RTO, Andheri (W), Mumbai-400 053	Vs.	The Dy. Commissioner of Income Tax CC-6(1), R.No. 1905, 19 th Floor, Air India Bldg, Nariman Point, Mumbai-400 021
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri DG Pansari, DR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Dharmesh Shah & Shri Dhaval Shah, AR's

सुनवाई की तारीख / Date of hearing:	17-09-2018
घोषणा की तारीख / Date of pronouncement :	28-09-2018



आदेश / ORDER

PER MAHAVIR SINGH, JM:

Out of these two, one appeal filed by the Revenue and the Cross Objection by the assessee are arising out of the order of Commissioner of Income Tax (Appeals)-51, Mumbai [in short CIT(A)], in appeal No. CIT(A)-51/IT-14/2013-14, dated 11.09.2015. The Assessment was framed by the Asst. Commissioner of Income Tax, Central Circle 34, Mumbai (in short 'ACIT/ AO') for the A.Y. 2008-09 vide order dated 29.12.2011 under section 143(3) read with section 153C of the Income Tax Act, 1961 (hereinafter 'the Act').

2. At the outset, the learned Counsel for the assessee stated that the assessee has raised jurisdictional issue in its cross objection against the order of CIT(A) upholding the validity of assessment under section 153C of the Act in the absence of any incriminating material found during the course of search under section 132 of the Act. Further, according to the learned Counsel there is no satisfaction recorded by the AO of the searched person as required under section 153C of the Act. For this assessee has raised the following two grounds in its Cross Objection: -

"1. The Ld. CIT(A) has erred in law and in facts in upholding the validity of assessment under section 153C of the Act in absence of any incriminating material found during the course of search.

2. The Ld. CIT(A) has erred in law and in facts in upholding the validity of the assessment in absence of recording of a valid satisfaction as required under section 153C of the Act."



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3. Briefly stated facts are that a search was conducted by the Income Tax department under section 132 of the Act on Shri Gangadhar Shetty Group on 20.08.2009. The assessee company i.e. Salasar Dwellers Pvt. Ltd. was floated by one Shri Dinesh Punia along with Shri Madhusuden Budhia as its director and on 29.03.2007, Shri Dinesh Punia invested a sum of ₹ 25 lacs as share capital. The assessee company entered into development agreement dated 26.04.2007 with M/s Sagar developers a partnership firm of M/s Gangadhar Shetty and Mr. Diwakar Shetty with three other partners for buying development rights in respect of sale component area of 5344.74 sq. mtr. involved in SRA Project at Gundavali Village, Andheri, Mumbai. A notice under section 153C of the Act issued and served on the assessee on 20.12.2010. In response to the said notice, a return of income was filed by the assessee on 28.09.2008 declaring nil income. The AO framed assessment and made the following additions: -

“8) Subject to the above discussion and after having considered the details filed the total income of the assessee is computed as follows:

Total income (As shown in return of income) Nil

Add: Unexplained cash paid, as discussed in para 6 1,75,00,000/-

Add: Bogus Share Capital, as discussed in Para 7 3,38,00,000/-

Total Income 5,13,00,000/- ”

The assessment was completed under section 153C read with section 143(3) of the Act. Aggrieved, assessee preferred the appeal before CIT(A).

4. During the appellate proceedings, the assessee has challenged validity of assessment framed under section 153C read with section



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143(3) of the Act and one of the grounds was that no proper satisfaction has been recorded by the AO of the searched person of Shri Gangadhar Shetty or its group cases. But the CIT(A) noted that since the AO of the searched person and the person assessed under section 153C of the Act is the same, it does not require to record a separate satisfaction in this regard. He also noted that satisfaction need not be reduced in writing. The CIT(A) dismissed this issue vide Para 9 of its order as under: -

“9. In general, Ground No. 1 to 4 relate to challenging of the authority of assessment order passed u/s 143(3)/153C of the I.T. Act. In this case, a search was conducted in the Gangadhar Shetty group. This group is engaged in the business of dealership of motor cars of Tata Motors, Motorcycles c. Hero Honda and dealership of car and motor cycle spare parts. The appellant company was floated by Shri Dinesh Punia alongwith Shri Madhusudhan Budhia. After its formation, the appellant company entered into the development agreement with MIs Sagar Developers, a partnership firm of Mr. Gangadhar Shetty and Mr. Diwakar Shetty with 3 other partners, for buying development rights in respect of sale component area of 5344.74 sq.mt. involved in the SRA project at Gundavali Village, Andheri (E), Mumbai. While perusing the assessment records and the seized material it is found that the development agreement entered into by the appellant company and M/s Sagar Developers Pvt. Ltd. was apparently for the consideration of Rs.8.5 Crs. Shri Gangadhar Shetty in his statement on oath



dated 15.10.2009 stated as follows in answer to Q.No. 21:

Q.21 From the seized material, which were found and seized from this premises on 20.08.2009, it is seen that you received cash of Rs.1.75 Crs. in relation to the SRA project undertaken by the partnership firm M/s Sagar Developers. Please explain why this should not be treated as firm's undisclosed income?

Ans. I would like to refer the statement recorded u/s 132(4) on 20.8.2009, wherein I have declared a sum of Rs.1.40 Crs. as unexplained cash expenses pertaining to this SRA project and I have received Rs. 1.75 Crs. as reimbursement of my spending from M/s Salasar Dwellers P. Ltd. So against Rs.1.75 Crs., I have already offered Rs. 140 Crs. as undisclosed income. Therefore, I is incorrect to treat and consider Rs. 1.75 Crs. a my undisclosed income.

The above statement of Shri Gangadhar Shetty is corroborated by the contents of the seized paper marked as page 38 of Annexure A- 15 to the Panchnama drawn. The said loose paper contains the name of the appellant company and which was also accepted by Shri Gangadhar Shetty in his statement on oath. The above mentioned seized paper was found and seized from the search premises on 28.8.2009. During the course of assessment proceedings, the appellant company



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never questioned the statement given by Shri Gangadhar Shetty accepting that the amount mentioned in the loose paper No.38 is the reimbursement of spending from the appellant company. As regards the issue of satisfaction is concerned, the AO of the searched person and the person assessed u/s 153C is the same. Hence, it is not required to record a separate satisfaction in this regard. Several judicial pronouncements have established the legal position on this point. Further, Hon'ble Supreme Court in the case of Macdata have observed that the satisfaction need not be reduced in writing. The AO may gather the required satisfaction from the documents/details/materials available on record and in the possession of the department. The fact of statement u/s 132(4) given by Shri Gangadhar Shetty was not challenged by the appellant at any point of time during the course of assessment as well the appellant proceedings. Hence, AO has rightly invoked the provisions of section 153C of the I.T. Act 1961. Therefore, I hold the action of the AU as legal and valid and the assessee fails on this ground. Accordingly, Grounds 1 to 4 are dismissed."

Aggrieved, now assessee is in second appeal before Tribunal.

5. At the outset, we have gone through the order sheet entries recorded by the Tribunal on various dates, which reads as under: -

"08.05.2018



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Ld. Departmental Representative is directed to convey to the Assessing Officer to provide the document like satisfactory notes within one month from today. Hearing is adjourned to 27.06.2018. Both parties informed.(a/w Co 257/M/17)

Sd/-
(MKA
AM)

sd/-
(JS)
(JM)

27.06.2018

Hearing is adjourned to 31.07.2018 at the request of Ld. DR. The case records related this case are not available. Both parties informed (a/w Co 257/M/17)

Sd/-
(RJK)
AM)

sd/-
(CNP)
(JM)

31.07.2018

Hearing is adjourned to 6.8.18. Last opportunity to Revenue. Both parties informed (a/w Co 257/M/17)

Sd/-
(GM)
AM)

sd/-
(MS)
(JM)

6.08.18

Hearing is adjourned to 11.09.18 at the request of Id. (CIT Departmental Representative). Last opportunity to the Ld. Departmental Representative to produce satisfactory note otherwise adverse view will be taken. Both parties informed. (alw Co 257/M/17)

Sd/-
(GM)

sd/-
(MS)



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AM)

(JM)

11.09.18

At the request Ld. DR hearing is adjourned to 17.09.2018. (alw Co 257/M/17) last opportunity. Both parties informed.

Sd/-
(RJK)
AM)

sd/-
(MS)
(JM)"

6. When this matter was called up for hearing on 17.09.2918, the Bench again inquired about the satisfaction note recorded by the AO of the search person. But the learned Sr. DR made statement that no satisfaction note is available on record and the records have not come for production before the Bench. We find from the records that the assessee before CIT(A) also on number of occasions requested for satisfaction note and for this Ld Counsel submitted as under:-

"We submit that in the course of hearing on 08.05.2018, the appellant had pointed out that request for providing copy of satisfaction note to the Assessing Officer was made on number of occasions during the course of proceedings before Ld. CIT(A) vide letters dated 20.04.2012, 19.11.2012 and 11.03.2014. Later, request was once again made to the Assessing Officer during the proceedings before the Hon'ble Tribunal vide letter dated 22.02.2018.

Accordingly, at the time of hearing on 08.05.2018, the Hon'ble Bench had directed the Ld. CIT-DR to provide the copy of the satisfaction note within one month to the assessee. The same was



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not provided to the assessee. At the time of hearing on 27.06.2018, the Ld. CIT-DR once again requested for time to obtain the copy of satisfaction note. Subsequent to the aforesaid hearing and the directions given by the Hon'ble Bench, the assessee had also followed up with the Assessing Officer. However, till date, the copy of satisfaction note has not been provided to the assessee."

7. From the above and the fact that the assessee has also requested for copy of satisfaction note before the AO during the course of assessment proceedings vide letter dated 20.04.2012. But the assessee was not granted the copy of any satisfaction note recorded by the AO of the search person or any other satisfaction note. This fact is also recorded by CIT(A) in his order and particularly in para 9 while adjudicating this issue he recorded that, "*as regards the issue of satisfaction is concerned, the AO of the searched person and the person assessed u/s 153C is the same. Hence, it is not required to record a separate satisfaction in this regard. Several judicial pronouncements have established the legal position on this point. Further, Hon'ble Supreme Court in the case of Macdata have observed that the satisfaction need not be reduced in writing. The AO may gather the required satisfaction from the documents/details/materials available on record and in the possession of the department. The fact of statement u/s 132(4) given by Shri Gangadhar Shetty was not challenged by the appellant at any point of time during the course of assessment as well the appellant proceedings. Hence, AO has rightly invoked the provisions of section 153C of the I.T. Act 1961. Therefore, I hold the action of the AU as legal and valid and the assessee fails on this ground.*" From this finding of CIT(A) it is clear that no satisfaction whatsoever is recorded by the AO. This issue has been considered by the Hon'ble Supreme Court in the case of CIT vs. Calcutta Knitwears (2014) 362 ITR 673 (SC).



8. We find that Hon'ble Supreme Court in the case of Calcutta Knitwears (supra) has held that it is clear from the provisions of section 153C of the Act that where the AO of the person searched is satisfied that any money, bullion, jewellery, books of account or other documents etc., belong to a person other than the person searched, then, such documents or assets, etc., shall be handed over to the AO of the 'other person' and the later AO shall proceed against such 'other person' to assess or reassess his income. A bare perusal of the provision indicates that before handing over such documents etc. to the AO of the 'other person', a 'satisfaction' has to be recorded by the AO of the person searched that money, bullion or jewellery, etc., found from the person searched belong to the 'other person'. Only when such 'satisfaction' is recorded by the AO of the person searched and such documents or assets seized, etc., are handed over to the AO of the 'other person', that the later AO acquires jurisdiction to make assessment or reassessment of the 'other person.' It is, therefore, amply vivid that the AO of the 'other person' can acquire jurisdiction to assess or reassess income of the 'other person' only when the AO of the person searched records satisfaction in his case before handing over money, bullion, jewellery, etc. to him. What emerges is that the recording of satisfaction by the AO of the person searched is a condition precedent for the AO of the 'other person' to acquire jurisdiction. Unless such jurisdictional condition is satisfied, there can be no question of making assessment or reassessment of the 'other person.' Subsequently, the Central Board of Direct Taxes (in short CBDT) vide Circular No. 24/2015 F. No. 273/Misc./140/2015/TTJ dated 31-12-2015 for implementation of the judgment in the case of Calcutta Knitwears (*Supra*), has explained the procedure in case the AO of the search person and the "the other person" is one at the same then also he is required to record his satisfaction as has been held by the Courts.



9. The relevant circular issued by CBDT reads as under:-

Subject: Recording of satisfaction note under section 158BD/153C of the Act - reg.-

The issue of recording of satisfaction for the purposes of section 158BD/ 153C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitweaves in its detailed judgment in Civil Appeal No.3958 of 2014 dated 12.3.20 14(available in MRS at 2014-LL-0312-5 1) has laid down that for the purpose of Section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AU who has jurisdiction over such other person u/s 15813D. The Hon'ble Court held that "the satisfaction note could be prepared at any of the following stages:

(a) at the time of or along with the initiation of proceedings against the searched person under Section 158BC of the Act; or

(b) in the course of the assessment proceedings under section 158BC of the Act; or

(c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person."

3. Several High Courts have held that the provisions of section 153C of the Act are substantially similar/pari-materia to the provisions of section



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158BD of the Act and therefore, the above guidelines of the Hon'ble SC, apply to proceedings u/s 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.

4. The guidelines of the Hon'ble Supreme Court as referred to in para 2 above, with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgment. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD / 153C should be withdrawn / not pressed if it does not meet the guidelines laid down by the Apex Court."

10. The argument of the learned CIT(A) in his order that the searched person and the assessee are being assessed by the same AO, the learned Counsel for the assessee contended that even in cases where the AO of the person searched and the assessee who is sought to be assessed u/s 153C of the Act is the same, the AO is required to record his satisfaction that the assets / documents seized belonged to a person i.e. the assessee, other than the searched person. This view is finally settled by Hon'ble Madhya Pradesh High Court in the case of CIT Vs.



Mechmen (2016) 380 ITR 591 (MP) wherein the view is expressed in the following manner :-

“18. The concomitant of this conclusion, is that, the legal position as applicable to Section 158BD regarding satisfaction in the first instance of the first Assessing Officer forwarding the items to the Assessing Officer having jurisdiction; and in the second instance of the Assessing Officer having jurisdiction whilst sending noticee to such other person (other than the person referred to in Section 153A), must apply proprio vigore. The fact that incidentally the Assessing Officer is common at both the stages would not extricate him from recording satisfaction at the respective stages. In that, the Assessing Officer is satisfied that the items referred to in Section 153C belongs or belong to a person (other than the person referred to in Section 153A), being sine qua non. He cannot assume jurisdiction to transmit those items to another file which incidentally is pending before him concerning other person (person other than the person referred to in Section 153A). The question as to whether that may influence the opinion of the Assessing Officer having jurisdiction over such other person, also cannot be the basis to take any other view. As a matter of fact, the other Assessing Officer to whom the items are



handed over, before issuing notice must himself be satisfied after due verification of the items received and the disclosures made by the other person in the returns for the relevant period already filed by the other person before him. For the same reason, we must reject the argument of the Department that the discretion of the Assessing Officer having jurisdiction will be impaired in any manner, if he were to hold a different view. Similarly, as there is no provision either express or implied (in the Act) to dispense with the requirement of satisfaction, if the Assessing Officer happens to be the same, as in this case, the argument of the Department must be negatived.

19. After receipt of the materials, the Assessing Officer having jurisdiction is expected to conduct enquiry and due verification of the relevant facts; before forming his prima facie satisfaction. The Assessing Officer having jurisdiction will be well within his rights to form an independent view before issuing notice to the other person (person other than the person referred to in Section 153A) under his jurisdiction on the basis of his own enquiry. In our opinion, the view formed by the Assessing Officer after his own enquiry does not entail in seating in appeal over the satisfaction of the first Assessing Officer, who had handed over the items to him.”



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11. In the given facts and circumstances of the case and the legal position clarified by CBDT and the case laws cited supra, we are of the view that the satisfaction in the case is not recorded by the AO of the searched party, which is a pre-condition for invoking jurisdiction u/s 153C of the Act and hence, the assessment framed u/s 153C read with Section u/s 143(3) of the Act is bad in law and hence, quashed. The jurisdictional issue of the assessee's cross objection is allowed.

12. Since, we have already adjudicated the jurisdictional issue of assessee's CO by quashing the Block Assessment; we need not to go into the merits of the case raised in Revenue's appeal. Hence, the same has become academic and needs no adjudication.

13. In the result, the appeal of Revenue is dismissed and that the CO of the assessee is allowed.

Order pronounced in the open court on 28-09-2018.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 28-09-2018

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
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