

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

BEFORE

DR. BRR KUMAR, ACCOUNTANT MEMBER

AND

MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 3631/Del/2019

Asstt. Year: 2012-13

DCIT, Central Circle-II, Noida	Vs.	M/s. M.G. Metalloy Pvt. Ltd. (Formerly M/s. Apple Iron Enterprises Pvt. Ltd.) B-16, Sector-2, Noida, Uttar Pradesh-201301 PAN AAHCA8642G
(Appellant)		(Respondent)

Assessee by:	Shri Pranav Yadav, Advocate
Department by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing:	30.08.2023
Date of pronouncement:	01.11.2023

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the Revenue is directed against the order dated 07.01.2019 of the Ld. Commissioner of Income Tax (Appeals)-IV, Kanpur ("**CIT(A)**") pertaining to Assessment year ("**AY**") 2012-13.

2. The Revenue has taken the following grounds of appeal:-

- "1. *Whether on facts is and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that there was no incriminating material for the issuance of notice u/s 153C without appreciating that while recording the satisfaction for issue of notice 153C the test for incriminating material' has to be only in nature of prima facie belief*

based on some material having live nexus and not in the nature of absolute evidence established after detailed investigation of facts or law.

2. *The Ld. CIT(A) relied upon the submission made by the Appellant ignoring the Department findings during the search u/s 132(1) of the Act and information contained in the seized documents.*
3. *Whether on facts and circumstances of the case and in law, the Ld. CIT (A) erred in applying the decision of the Hon'ble Supreme Court in the case of M/s Sinhgad Technical Education Society. which was distinguishable on the facts of the present case as the same pertained to prior period to 01.04.2005 whereas after 01.04.2005 153C notice can be issued when AO is satisfied that seized material has a bearing on the assessment of income of other person.*
4. *That the Ld. CIT(A) did not appreciate the facts and material on record.*
5. *The order of the Ld CIT(A) is erroneous in law and on facts of the case and is liable to be set aside and the order of the AO be restored.”*

3. The brief facts are that a search and seizure operation was carried out under section 132(1) of the Income Tax Act, 1961 (**the “Act”**) on 11.11.2014 in M/s. Apple Group of Companies (**“AGC”**) wherein certain incriminating material were found and seized belonging to the assessee. Notice under section 153C was issued to the assessee in response to which the assessee filed its return declaring loss of Rs. 17,604/- for AY 2012-13. Subsequently, notices under section 143(2) and 142(1) of the Act were issued and assessment was completed by the Ld. Assessing Officer (**“AO”**) on 31.12.2016 under section 153C r.w. section 143(3) of Act making an addition of Rs. 7,55,40,000/- on account of unverified share capital,

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A) challenging the legal validity of notice issued under section 153C of the Act for the reasons that no satisfaction as required under section 153C of the Act was recorded by the Ld. AO; that no document(s) belonging to the assessee was found and seized during the course of search; that no incriminating material was found and there is no co-relation of yearwise incriminating documents mentioned in the assessment order and finally the addition made by the Ld. AO is beyond the scope of jurisdiction of section 153C of the Act. It was also

the case of the assessee that after the decision of Hon'ble Supreme Court in PCIT v. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC) the law is crystal clear that issue of notice under section 153C without incriminating material for the relevant AY is legally not sustainable.

4.1 Elaborating further during the appellate proceedings the assessee submitted that the Ld. AO of the searched person has not recorded the satisfaction that seized documents belonged to the assessee and that no incriminating material was found for the AY 2012-13 for which notice under section 153C has been issued. The Ld. CIT(A) obtained the comments/report of the Ld. AO who stated that search was conducted in Tirupati Sunworld Group of companies and perusal of seized material prima facie showed that these were related to the assessee which is incriminating in nature. Requisite satisfaction was recorded before the commencement of proceeding under section 153C of the Act. The Ld. AO also stated that on the legal issue raised by the assessee, the Ld. CIT(A) may take appropriate decision in accordance with law. The Ld. CIT(A) called for counter comments of the assessee.

4.2 Before the Ld. CIT(A) the assessee in its written submission dated 28.12.2018 stated that the Ld. AO in his satisfaction note referred to seized material (Annexure LP-26 page No. 1 to 144 and LP-12 page No. 21 & 12 LP-21 Page No.136) but none of these documents belonged to the assessee. It was explained what these documents were and to whom it belonged. It was clarified that not only that there is nothing incriminating in the said seized papers, these did not even belong to the assessee and as such there was no justification for issue of notice under section 153C based on these documents.

5. The assessee's submissions/counter comments were acceptable to the Ld CIT(A) who arrived at the conclusion that notice under section 153C issued by the Ld. AO needs to be treated as ab-initio invalid and legally not sustainable and therefore, he quashed the assessment framed on the basis

of legally unsustainable notice under section 153C of the Act observing and recording his findings as under:-

“5.8 The proceedings u/s 153C of the Act are very specific and clearly explained in the Act. For the sake of clarity, relevant provision of Act is as under:-

"133C ((1))" (Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 133, 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, 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 for the relevant assessment year or years referred to in sub-section (1) of section 153A):

A plain reading of provision u/s 153C makes it abundantly clear that the some imperative condition need to be satisfied by the AO, prior to the issue notice u/s 153C of the Act. This pre-condition includes:

i) Existence of undisclosed/unexplained asset or incriminating seized documents against the appellant, as a result of search.

ii) Recording of satisfaction by the AO of the person searched that, the undisclosed assets or incriminating document found as a result of search should "belongs to the appellant, for relevant assessment year.

iii) Proper satisfaction is to be recorded by the AO for the relevant assessment year for issuance of notice u/s 153C.

All the above three conditions are to be satisfied cumulatively and simultaneously as per provisions of section 153C of the Act. Non satisfaction of any of the pre-conditions mentioned here in above, would result in notice u/s 153C of the Act legally unsustainable or invalid. In the present facts of the case AO has failed to demonstrate that, seized document belongs to the appellant company and no seized documents were found as a result of search and have bearing on the determination of total income of the appellant

company. Hence, imperative jurisdictional condition for issue of notice 153C of the Act is not satisfied.

5.9 Hon'ble Supreme Court in the case of PCIT-3, Pune Vs Sinhgad Technical Education Society (2017) 397 ITR 344 (SC) has held that the nexus between issue of notice u/s 153C and the incriminating material found as a result of search must exist. Hon'ble Supreme Court in para 13 of the order has observed that one of the jurisdictional conditions precedent to the issue of a notice u/s 153C of the Act is that "money, bullion, Jewellery or other- valuable article or thing" or any "books of account or document must be seized or requisitioned for the relevant assessment year for issue of notice u/s 153C of the Act." The observation of the Supreme Court in para 18 of the order mentioned here in above is reproduced below:

"The ITAT permitted this additional ground by giving a reason that it was a Jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document- wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred."

Thus, facts of the instant case are squarely covered by the ratio of the judgment mentioned here-in-above.

5.10 Hon'ble Delhi High Court in para 31 has held in the case of Index Security Pvt. Ltd [86 taxmann.com 84 (Del)] as follows:

"As regards the section Jurisdictional requirement viz, that the seized documents must be incriminating and must relate to the A.Ys. whose assessments are sought to be reopened, the decision of the Supreme Court in Commissioner of Income Tax-III, Pune Vs. Sinhgad Technical Education Society (Supra) settles the issue and holds this to be an essential requirement. The decision of this Court in CIT-7 Vs RRJ

Securitles (2016) 380 ITR 612 (Del) and ARN Infrastructure India Ltd. Vs ACIT [2017] 394 ITR 569 (Del) also held that in order to justify the assumption of Jurisdiction under section 153C of the Act the documents selted must be incriminating and must relate to each of the AYs whose assessments are sought to be reopened."

Thus, by now, it is a settelled law that notices u/s 153C of the Act is ab-initio-invalid in absence of incriminating seized material. From the plain reading of language of section 153C of the Act and various judicial pronouncement cited here-in-above, it is abundantly clear that in order to reopen the assessment of other person u/s. 153C of the Act for the assessment year earlier to the year of search, direct correlation must exist between existence of incriminating material and relevant assessment years. In the instance case, admittedly, additions are not based on any incriminating document found, as a result of search. Further, AO has not recorded the satisfaction for these relevant assessment years, as envisaged u/s 153C of the Act. In fact, no assessment year is mentioned in the satisfaction note recorded by the AO."

6. Dissatisfied, the Revenue is in appeal and all the grounds relate thereto.

7. We have heard the Ld. Representative of the parties, considered their respective arguments and perused the records. We observe that the Ld. CIT(A) has reproduced in para 5.6 of his appellate order the satisfaction note dated 14.12.2016 recorded by the Ld. AO. On analysis of the said satisfaction note the Ld. CIT(A) found that no satisfaction note is recorded by the Ld. AO of searched person to establish the fact that specific seized document indeed belonged to the assessee company. On detailed study of the seized material at Annexure LP-26 Page No. 1 to 144 mentioned in the satisfaction note the Ld. CIT(A) found that it is ledger print out of tally books containing confirmation of various parties in the ledger account of Apple Commodities Ltd. Further, page No. 21 and 12 of LP-12 is trial balance printout of Manohar Metalloys Pvt. Ltd. and Apple Buildtech Pvt. Ltd. from 01.04.2014 onwards. Page No. 136 of LP-21 is the ledger account of tally print out of Apple Commodities Ltd. and not the assessee company. Perusal of these documents, according to Ld. CIT(A), reveals that neither they belong to the assessee company nor they are of incriminating nature and that the Ld. AO has not made any addition on the basis of these seized documents.

The Ld. CIT(A) therefore recorded the finding that there does not exist any incriminating documents, as a result of search which 'belong to' the assessee company. The addition made by the Ld. AO is from balance sheet already on the records of the Ld. AO for which no incriminating document was found and seized during search operation. Accordingly, in absence of incriminating seized material relating to AY under consideration notice issued under section 153C of the Act to the assessee is held to be invalid in the eye of law by the Ld. CIT(A) which we uphold.

8. It is abundantly clear from reading of the provision of section 153C of the Act that the satisfaction of the Ld. AO of the person searched that (a) any money, bullion, jewellery or other valuation article or thing seized or requisitioned, "belongs to"; or (b) any books of account, or documents, seized or requisitioned, pertains to or any information contained therein, relates to a person other than the person referred to in section 153A namely, the assessee is sine qua non for issue of notice under section 153C for the relevant AY. The Ld. CIT(A) recorded the finding that the Ld. AO could not demonstrate that seized documents belonged to the assessee company. It could also not be established that any seized document as a result of search had any bearing on the determination of total income of the assessee. Nexus between issue of notice under section 153C and the incriminatory material found as a result of search must exist as held by the Hon'ble Supreme Court in *Sinhgad Technical Society* (supra). We, therefore do not find any legal substance in the contention of the Revenue that while recording the satisfaction for issue of notice under section 153C the test for 'incriminating material' has to be only in the nature of prima facie belief based on some material having live nexus. It is the ratio decidendi of the Hon'ble Supreme Court's decision in *Sinhgad Technical Society* (supra) which applies to the assessee and not the factual matrix of that case.

9. For the reasons set out above, we uphold the finding of the Ld. CIT(A) that in order to re-open the assessment of other person under section 153C of the Act for the AY earlier to the year of search, direct co-relation must

exist between existence of incriminating material and relevant AY. Such is not the position in the case of the assessee under consideration. Addition is not based on any incriminating document found as a result of search. We therefore concur with the findings and decision of the Ld. CIT(A) and reject the appeal of the Revenue.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 1st November, 2023.

**sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

**sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 01/11/2023

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

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