

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.83 OF 2014

Commissioner of Income Tax
Central-III, Mumbai ... Appellant.
Vs.
M/s.Arpit Land Pvt. Ltd. .. Respondent.

**WITH
INCOME TAX APPEAL NO.150 OF 2014**

Commissioner of Income Tax
Central-III, Mumbai ... Appellant.
Vs.
M/s.Ambit Realty Pvt. Ltd. .. Respondent.

Mr. Ashok Kotangale with Ms.Padma Divakar for the appellant.
Mr. J.D. Mistri with Mr.P.C. Tripathi i/b Raj Darak for the respondent.

**CORAM : M. S. SANKLECHA &
A.K. MENON, JJ.**

DATED : 7TH FEBRUARY, 2017

P.C. :

1. These two Appeals under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the common impugned order dated 22nd March, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The common impugned order disposed of 67 appeals pertaining to 52 different assesseees, amongst them were the present two respondents before us. The Revenue has filed these two appeals being aggrieved by the impugned order of the Tribunal to the extent it relates to assessment year 2007-08 in

Income Tax Appeal No.150 of 2014 in the case of M/s.Ambit Realty Pvt. Ltd. and it relates for assessment year 2008-09 in Income Tax Appeal No.83 of 2014 in the case of M/s.Arpit Land Pvt. Ltd.

2. Although multiple questions have been formulated in the appeal memo, Mr.Kotangale, learned counsel appearing on behalf of the Revenue urges only following question of law for our consideration :

“(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in ignoring crucial evidence and surrounding circumstances and proceeding to interpret Section 153C of the Act, narrowly and mechanically, and deleting the additions made under Section 69C of the Act both on merits and point of law ?”

3. The undisputed facts before us are that in search and seizure action under Section 132 of the Act was carried out in case of Jay Corporation group, its employees and close associates who were involved in the process of acquiring land. Mr.Dilip Dherai was managing and handling land acquisition on behalf of Jay Corporation group. During the course of search, certain documents were found in possession of Mr.Dilip Dherai on the

basis of which the Assessing Officer after recording satisfaction under Section 153C of the Act proceeded to initiate proceedings in respect of both respondents - assessee before us.

4. The Tribunal by the impugned order found that the documents seized from possession of Mr. Dilip Dherai did not belong to the assessee. Consequently, it held that the Assessing Officer did not have jurisdiction to initiate proceedings under Section 153C of the Act, as at the relevant time jurisdiction of Assessing Officer to proceed consequent to the search is only when money, bullion, jewellery or other valuable article or thing or books of accounts or documents seized or requisitioned belongs or belonged to a person other than the person who has been searched, then the Assessing Officer having jurisdiction over such person on being handed over seized document etc can proceed against such other person by recording satisfaction and issuing a notice in accordance with the provisions of Section 153A of the Act. The impugned order of the Tribunal records the fact that the documents seized from the possession of Mr. Dilip Dherai do not belong to any of two respondents - assessee before us, consequently, the Assessing Officer did not have jurisdiction under Section 153C of the Act to issue notice to the respondents - assessee. Consequently, the Tribunal also held that satisfaction recorded by the Assessing Officer before initiating assessment

proceedings in respect of two respondents - assessee before us were also not sustainable. In the above view, the impugned order of the Tribunal held that the Assessing Officer did not have jurisdiction to initiate proceedings under Section 153C of the Act on the two respondents - assessee's before us.

5. The grievance of the Revenue before us is that the respondent - assessee and Mr. Dilip Dherai are all hand in glove working in tandem to acquire land. Therefore, in the above facts the impugned notice under Section 153C of the Act and also satisfaction note recorded by the Assessing Officer cannot be found fault with. Thus the impugned order of the Tribunal calls for interference and these appeals be admitted.

6. We note that in terms of Section 153C of the Act at the relevant time i.e. prior to 1st June, 2015 the proceedings under Section 153C of the Act could only be initiated/proceeded against a party - assessee if the document seized during the search and seizure proceedings of another person belonged to the party - assessee concerned. The impugned order records a finding of fact that the seized documents which formed the basis of initiation of proceedings against the respondent assessee do not belong to it. This finding of fact has not been shown to us to be incorrect. Further, the impugned order placed reliance upon a decision of

Gujarat High Court in *Vijaybhai Chandrani vs. ACIT* 333 ITR Page 436 which records that the condition precedent for issuing notice under Section 153C of the Act is that the document found during search proceedings should belong to assessee to whom notice is issued under Section 153C of the Act. It was fairly pointed out to us by Mr. Mistry, the learned Senior Counsel for the respondent - assessee that the above decision was reversed by the Supreme Court in *CIT vs. Vijaybhai N. Chandrani* (2013) 357 ITR 713. However, we find that the Apex Court reversed the view of Gujarat High Court on the ground that efficacious alternative remedy was available to the petitioner to raise its objections before the authorities under the Act. Therefore, the Gujarat High Court should not have exercised its extra ordinary writ jurisdiction to entertain the petition. However, the Apex Court also clarified that it was not expressing any opinion of the correctness or otherwise of construction placed by the High Court on Section 153C of the Act. The Revenue has not pointed out any reason why the construction put on Section 153C of the Act by Gujarat High Court is not correct/appropriate. We find that in any case our Court has also taken a similar view in *CIT vs. Sinhgad Technical Education Society* (2015) 378 ITR 84 and refused to entertain Revenue's appeal.

7. The grievance of the Revenue as submitted by

Mr.Kotangale is a submission made on the basis of suspicion and not on the basis of any evidence on record which would indicate that the respondent - assessee and persons searched were all part of the same group. Be that as it may, the requirement of Section 153C of the Act cannot be ignored at the alter of suspicion. The Revenue has to strictly comply with Section 153C of the Act. We are of the view that non satisfaction of the condition precedent viz. the seized document must belong to the respondent - assessee is a jurisdictional issue and non satisfaction thereof would make the entire proceedings taken thereunder null and void. The issue of Section 69C of the Act can only arise for consideration if the proceedings under Section 153C of the Act are upheld. Therefore, in the present facts, the issue of Section 69C of the Act is academic.

8. In view of the above reasons and particularly the finding of fact that seized document which forms the basis of the present proceedings, do not belong to the petitioner and the same not being shown to be perverse, the question as raised does not give rise to any substantial question of law and thus not entertained.

9. Appeal dismissed. No order as to costs.

(A.K. MENON,J.)

(M. S. SANKLECHA,J.)