

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : H : NEW DELHI

BEFORE SHRI R.S. SYAL, AM AND SHRI A.T. VARKEY, JM

ITA Nos.2421/Del/2014
Assessment Years : 2003-04

Tanvir Collections Pvt. Ltd., Vs. ACIT,
(Now known as "Rahab Central Circle-21,
Collections Pvt. Ltd.), New Delhi.
RZ-61, Gali No.25,
Indira Park, Palam Colony,
New Delhi.

PAN : AACCT6679D

(Appellant)

(Respondent)

Assessee By : Shri Kapil Goel, Advocate
Department By : Smt. P.K. Sidhu, CIT, DR

ORDER

PER R.S. SYAL, AM:

This appeal by the assessee is directed against the order passed by the CIT(A) on 21.3.2014 in relation to the assessment year 2003-04.

2. The assessee, through the first ground, has challenged the jurisdiction of the Assessing Officer in framing the assessment u/s 153C of the Income-tax Act, 1961 (hereinafter also called 'the Act').

3. Briefly stated, the facts of the case are that a search and seizure action u/s 132 of the Act was carried out in the cases of Shri B.K. Dhingra, Smt. Poonam Dhingra and M/s Madhusudan Buildcon Pvt. Ltd. on 20.10.08. The AO has recorded in the instant assessment order that during the course of search on the above three persons, certain documents belonging to the assessee were seized. Proceedings were initiated against the assessee u/s 153C read with section 153A of the Act on the basis of such documents. The AO computed total income at ₹22,49,330/-. The assessee unsuccessfully argued before the Id. CIT(A) that a proper satisfaction was not recorded by the correct AO before taking up the proceedings u/s 153C against the assessee. The Id. CIT(A) dismissed the appeal of the assessee on all the legal issues taken up before him and also on merits.

4. Before us, the Id. Counsel for the assessee emphasized on the improper recording of satisfaction by the AO to contend that the

search action and the consequential assessment be annulled. This was strongly countered by the Id. DR.

5. We have heard the rival submissions and perused the relevant material on record. It is apparent from the assessment order of the assessee that a search was carried out u/s 132 of the Act on Shri B.K. Dhingra, Smt. Poonam Dhingra and M/s Madhusudan Buildcon Pvt. Ltd., and in such search proceedings some incriminating material belonging to the assessee was found which led to the making of assessment u/s 153C read with section 153A of the Act. In order to appreciate the contention made by the Id. AR on the question of recording of proper satisfaction, it would be apposite to note down the prescription of the relevant parts of section 153(1) at the material time, as under:-

“153C.Assessment of income of any other person.- (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 income of such other person in accordance with the provisions of section 153A : ”

6. From the above provision, it is clear that where the AO of the person searched is satisfied that any money, bullion, jewellery, books of accounts 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.'

7. At this juncture, it would be relevant to note the provisions of section 158BD, which is a predecessor provision of section 153C, under the scheme of block assessment. The relevant part of this section is as under :-

“158BD. Undisclosed income of any other person.

Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other 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 under section 158BC against such other person and the provisions of this Chapter shall apply accordingly.”

8. It is discernible from a careful perusal of section 158BD that where the AO of the person searched is satisfied that undisclosed income belongs to any person other than the person searched, then, the books of account and other documents, etc., are to be

handed over to the AO having jurisdiction over such 'other person' after recording of proper satisfaction by the AO of the person searched. It is only thereafter, that the AO of the 'other person' can proceed for determining his undisclosed income.

9. The Hon'ble Supreme Court in *Manish Maheshwari VS. ACIT & Anr. (2007) 289 ITR 341 (SC)* noticed that the AO did neither record satisfaction that undisclosed income belonged to any person, other than the person searched nor handed over the books of account, documents, etc. to the AO having jurisdiction over the matter. In the light of the above facts, the Hon'ble Supreme Court quashed the proceedings under s. 158BD. It has been held in this case that sec. 158BD provides for taking recourse to a block assessment in terms of s. 158BC in respect of any other person, the conditions precedent wherefor are : (i) satisfaction must be recorded by the AO that any undisclosed income belongs to any person, other than the person with respect to whom search was made under s. 132; (ii) the books of account or other documents or assets seized or requisitioned had been handed over to the AO having jurisdiction over such other person; and (iii) the AO has proceeded under s. 158BC against such other person. The conditions precedent for invoking the provisions

of s. 158BD, thus, are required to be satisfied before the provisions of Chapter XIV-B are applied in relation to any person other than the person whose premises had been searched or whose documents and other assets had been requisitioned under s. 132A.

10. Almost similar issue of recording satisfaction and the framing of assessment u/s 158BD once again came up for consideration before the Hon'ble Supreme Court in the case of *CIT vs. Calcutta Knitwears (2014) 362 ITR 673 (SC)*. The Hon'ble Apex Court has, *inter alia*, held in this case that: "for the purpose of section 158BD of the Act, a satisfaction note is sine qua non and must be prepared by the AO before he transmits the records to the other AO who has jurisdiction over such other person.'

11. When we consider the language of section 158BD as interpreted by the Hon'ble Summit Court in the above cases, we find it as a clear-cut proposition that the recording of satisfaction by the AO having jurisdiction over the person searched is an essential and prerequisite condition for bestowing jurisdiction to the AO of the 'other person.' On a close comparative study, it is overt that in so far as the question of acquiring jurisdiction by the AO of the

person other than the person searched is concerned, the provisions of section 153C are in *pari materia* with section 158BD. Since the relevant part of section 158BD is similar to that of section 153C, the *ratio decidendi* of the judgments of the Hon'ble Summit Court to this extent will apply with full force in the context of sec. 153C as well.

12. Let us examine the facts of the instant case more elaborately. It is seen that some satisfaction was recorded, a copy of which is available on page 4 of the paper book, as under :-

"Satisfaction Note for issuing Notice u/s 153C of the I.T. Act, 1961 in the case of M/s Tanveer Collection Pvt. Ltd., RZ-126, West Sagar Pur, Shankar Park, New Delhi, PAN: AACCT6679D for A.Y. 2003-04 to 2008-09.

08.09.2010 In the case of Sh. B.K. Dhingra, Smt. Poonam Dhingra and M/s Madhusudan Buildcon Pvt. Ltd., search & seizure took place u/s 132 on 20.10.2008. The undersigned is the jurisdictional AO of this case. During the course of search & seizure documents/papers at pages 101 to 132 of Annexure A-30, Page 144 of Annexure 7 and pages 33 to 48 of Annexure 22 seized by Party R-2, are found to belong to M/s Tanveer Collection Pvt. Ltd., RZ-126, West Sagar Pur, Shankar park, New Delhi. I have examined the above mentioned documents/papers and provision of section 153C is invokeable in this case. As the undersigned is also the jurisdictional AO of M/s Tanveer Collection Pvt. Ltd., RZ-126, West Sagar Pur, Shankar Park, New Delhi. *This satisfaction note is recorded and is placed in the file before issuing notice u/s 153C.*

ACIT, Central Circle – 17, New Delhi"

13. It can be seen from the assessment order that notice u/s 153C was issued to the assessee by the ACIT, Central Circle-17 on 08.09.2010, being the same date on which the above satisfaction was recorded. It is apparent that it was : '*Satisfaction Note for issuing Notice u/s 153C of the I.T. Act, 1961 in the case of M/s Tanveer Collection Pvt. Ltd.*' It is further noticeable from the above that : '*This satisfaction note is recorded and is placed in the file before issuing notice u/s 153C.*' The contents of the above satisfaction note leave nothing to doubt that it was recorded by the AO of the assessee before taking up the assessment u/s 153C of the Act pursuant to the search conducted on Shri B.K. Dhingra, Smt. Poonam Dhingra and M/s Madhusudan Buildcon Pvt. Ltd. Pages 5-7 of the paper book are the copies of the reply furnished by the Dy. Commissioner of Income-tax, Central Circle-17, New Delhi to Shri B.K. Dhingra, Smt. Poonam Dhingra and M/s Madhusudan Buildcon Pvt. Ltd., under the provisions of RTI Act, 2005. The relevant part of the reply dated 10.6.2013 given to Sh. B.K. Dhingra, is as under:-

"2. From the assessment records of Sh. Bhupesh Kumar Dhingra, which is covered under section 153A, for the Asst. years from 2003-04 to 2008-09 (Block period) it is noticed that there is no 'satisfaction note' available/recorded in respect of other entities."

14. Similar replies have been given to Smt. Poonam Dhingra and M/s Madhusudan Buildcon Pvt. Ltd. On a consideration of the above replies given by the Department to the persons searched, it is manifest that there is '*no satisfaction note available/recorded in respect of other entities*'. On a conjoint reading of the Satisfaction note and replies given by the Department to the persons searched under the RTI Act, it clearly emerges that no satisfaction was recorded by the AO in the cases of the persons searched u/s 132(1) of the Act (i.e. Shri B.K. Dhingra, Smt. Poonam Dhingra and M/s Madhusudan Buildcon Pvt. Ltd.) that some books of account or documents etc. belonging to the assessee were found which were handed over to the AO of the 'other person' (i.e. the assessee). The Satisfaction note as reproduced above has been prepared by the AO of the assessee.

15. The Id. DR vehemently accentuated on the point that since the AO of the persons searched and the assessee is same, it does not make any difference whether the satisfaction is recorded in the case of the persons searched or other person. She emphasized on the factum of recording

satisfaction by the AO, which condition in her opinion stood satisfied, by virtue of it having been recorded by the common AO.

16. In our considered opinion, this contention advanced on behalf of the Revenue is devoid of merit. We fail to comprehend as to how the requirement of recording satisfaction by the AO of the person searched provided by the statute can be substituted with anything else. There is an underlying rationale in providing for recording of such satisfaction by the AO of the person searched. As the money, bullion, jewellery, books of account or documents etc. always come to the possession of the AO of the person searched who has to frame assessment, it is only he who can find out that which of such documents etc. do not belong to the person searched and are relevant for the assessment of the other person. It is not as if all the books of account and documents etc. found during the course of a search are evaluated by a separate authority to figure out that which of these documents belong to the person searched and to the others and thus handed over to the concerned AOs of the person

searched and others for making assessment. As it is only the AO of the person searched who can reach a conclusion that some of the documents etc. do not belong to the person searched but to some other person, the legislature has provided for recording of such satisfaction by the AO of the person searched. It is not permissible under the law to require the AO of the other person to record such satisfaction by the AO.

17. As regards the other argument of the Id. DR that since the AO of both the persons searched and the assessee is the same person, hence the requirement of recording satisfaction by the AO of the persons searched should be deemed to have been fulfilled with the recording of satisfaction by the AO of the assessee. We are again unable to appreciate this contention that the commonness of the AO would make no difference in so far as the recording of satisfaction in the case of the persons searched is concerned. What is relevant for this purpose is not the identity of the person assessing but his position and the capacity. When the law requires the AO of the person searched to record the necessary satisfaction, it is

the AO having jurisdiction over the person searched who is obliged to record such satisfaction in the capacity of that AO and that too in the case of the person searched. The mere fact that the AO of the person searched and the assessee is the same person, does not, in any manner, obliterate the requirement of law necessitating the recording of satisfaction in the case of the person searched that money, bullion, jewellery, etc., found from the person searched belongs to the 'other person.' What is crucial to note is capacity of the AO and not his identity. In view of the fact that when the statutory stipulation is for recording the satisfaction by the AO of the person searched, then, it cannot be substituted with the satisfaction of the AO of the 'other person.' This contention also fails.

18. At this stage, it is relevant to note that the legislature has substituted the latter part of section 153C(1) by the Finance (No.2) Act, 2014 w.e.f. 1.10.2014. The hitherto part of sub-section (1) : "and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the

other personreferred to in sub-section (1) of section 153A.’
has been substituted as under : -

‘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, if, 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.’

19. The above substitution has the effect of now making it mandatory for the AO of the ‘other person’ also to record satisfaction that the books of account or documents, etc., have a bearing on the determination of the total income of such ‘other person’ before embarking upon the exercise of his assessment or reassessment. Therefore, now under the law, w.e.f. 1.10.2014 it has become obligatory not only for the AO of the person searched to record satisfaction before handing over books of account or documents, etc., to the AO of the ‘other person’, but, such AO of the ‘other person’ is also required to record satisfaction that the books

of account or documents, etc. have a bearing on the determination of the total income of such other person. In the pre-substitution era of the relevant part of sub-section (1) of section 153C covering the period under consideration, the jurisdictional condition remains that the satisfaction is required to be recorded by and in the case of the person searched so as to enable the AO of the 'other person' to start with the proceedings for making assessment or reassessment.

20. The Id. DR contended that recording of satisfaction by the AO of the assessee at the most can be treated as a technical mistake and hence should not eclipse the assessment. Relying on certain judgments, the Id. DR submitted that the technicalities cannot be allowed to prevail in the course of indulgence of justice.

21. We agree in principle that technicalities cannot come in the way of dispensation of justice. However, it is important to note that the lack of jurisdiction by the AO cannot be put under the carpet in the guise of a technical defect. It goes without saying that no assessment or other proceedings can be lawfully taken up and completed unless the concerned authority has jurisdiction to do so. Lack of jurisdiction goes to the very root of the matter and cuts the tree of assessment if the foundation of jurisdiction is missing.

22. The Id. AR has brought to our notice two orders passed by the Delhi Benches of the Tribunal, namely, *ACIT vs. Inlay Marketing Pvt. Ltd. (ITA No.4200/Del/2012), etc. and DCIT vs. Aakash Arogya Mandir Pvt. Ltd. (ITA No.5437/Del/2013), etc.*, in which the notices and the consequential assessments u/s 153C, under identical circumstances, have been quashed. The Id. DR contended that the above referred two Tribunal orders are *per incurium* and should not be followed. The main reason for declaring the tribunal orders as *per incurium* was the non-consideration of the judgment of the Hon'ble jurisdictional High Court in judgment in the case of *SSP Aviation Ltd. VS. DCIT (2012) 252 CTR (Del) 291*.

23. Let us examine the case of *SSP Aviation Ltd. (supra)* for evaluating the contention that the instant assessment be declared as per law. The Hon'ble High Court in that case has held that the Assessing Officer having jurisdiction over the searched person should be satisfied that the valuable article or books of account or documents seized during the search belong to a person other than the searched person and 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 conclusively reflect or disclose any undisclosed income. We find that there is no such controversy before us as was there before the Hon'ble High Court. It is not the case of the assessee before us in this ground that the documents etc. found from the persons searched did not positively indicate the existence of some income in the hands of the assessee. The argument is simply confined to non-recording of satisfaction by the AO of the persons searched. Instead of supporting the Department's case, we find that this judgment strengthens the assessee's case by making it clear in no uncertain terms that the AO of the person searched is obliged to record the satisfaction. The relevant observations of the Hon'ble High Court contained in para 15 merit reproduction as under: -

'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.'

24. It is pretty clear from the above extraction that the satisfaction as referred to it in this case is that of the Assessing Officer having jurisdiction over the searched person. As such, we are of the considered opinion that this judgment does not support the Revenue's case. Resultantly, the characterization of the above Tribunal orders as *per incurium* by the Id. DR, is absolutely without any legally sustainable basis.

25. Even otherwise, the judicial discipline requires a subsequent bench to follow an earlier order of a co-ordinate bench on the point. It is only if the subsequent bench feels itself unable to concur with the view taken earlier that it is required to refer the case for consideration by a special bench. In our considered opinion, these two orders of the co-ordinate benches are perfectly in accordance with law.

26. Coming back to facts of the instant case, it is palpable that the AO of Shri B.K. Dhingra, Smt. Poonam Dhingra and M/s Madhusudan Buildcon Pvt. Ltd., did not record any satisfaction that some money, bullion, jewellery or books of accounts or other documents found from these persons belonged to the assessee. The absence of such satisfaction, in our considered opinion, failed to confer any valid and

lawful jurisdiction on the AO of the assessee to proceed with the matter of the assessment u/s 153C of the Act. We, ergo, set aside the initiation and the ensuing assessment on the assessee as void *ab initio*.

27. The reliance of the Id. DR on some decisions on other legal issues or merits is of no consequence in view of the lack of jurisdiction of the AO to proceed with the assessments u/s 153C of the Act. In view of our decision on the first legal issue, there is no need to espouse the other grounds taken by the assessee dealing with other legal issues or merits.

28. In the result, the appeal is allowed.

The order pronounced in the open court on 16.01.2015.

Sd/-

[A.T. VARKEY]
JUDICIAL MEMBER

Dated, 16th January, 2015.

dk

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.