

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

ITA No.323 & 324/Bang/2011
Assessment years : 2005-06 & 2006-07

Smt. Uma Prasad, # 810, 8 th Main, 2 nd Cross, H.R.B.R. Layout, Bangalore – 560 043. PAN : AHVPP 5216B	Vs.	The Deputy Commissioner of Income Tax, Central Circle 1(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Chandrashekar, Advocate
Respondent by	:	Shri G.R. Reddy, CIT-I(DR)

Date of hearing	:	27.07.2015
Date of Pronouncement	:	30.07.2015

ORDER

Per N.V. Vasudevan, Judicial Member

Both these appeals are filed by the assessee against the common order dated 21.1.2011 of the CIT(Appeals), Mysore relating to assessment years 2005-06 & 2006-07.

2. The facts and circumstances under the aforesaid appeals arise are as follows. The assessee is an individual. There was a search & seizure operation conducted u/s. 132 of the Act in the case of Skyline group of cases on 28.2.2008. In the course of search, a document marked Exhibit SCHL/A/6 pages 60 to 65 were found and seized. The document so seized was an agreement to sell dated 18.4.2004 relating to property being dry land bearing Sy.No.239 measuring 4 acres 38 guntas at Kengeri Village, Kengeri Hobli, Bangalore South Taluk [hereinafter referred to as "the property"]. Under this agreement, Smt. Nanjamma, Shri Kumar, Shri Sanjeeva and Smt. Anamma; the owners of the property agreed to sell the property to the assessee herein for a sale consideration of Rs.75 lakhs. A sum of Rs.25 lakhs had been paid by way of cash at the time of signing of agreement and remaining sum of Rs.50 lakhs was agreed to be paid within 15 months from the date of agreement at the time of registration of sale deed. It is very pertinent to mention that this agreement for sale has been signed only by the Vendor and not by the assessee, who is stated to be the purchaser in the agreement for sale.

3. The Assessing Officer assessing the assessee as well as Skyline group of cases was one and the same person. He recorded the satisfaction note in the case of assessee for proceeding to make an assessment u/s. 153C of the Act as follows:-

“Satisfaction note for initiating action u/s. 153C

Action u/s. 132 was conducted in the premises of Skyline group of cases on 28/02/2008 based on the Authorization issued by the Addl. DIT (Inv)-II, Bangalore vide Warrant No. dated

During the course of search in the case of Skyline group of companies and others, the following books/documents were found and seized u/s. 132.

<u>Exhibit I.D</u>	<u>Page No.s</u>
SCHL/A/6	Page No.60 to 65

On a scrutiny of the above document seized it is seen that the above materials belongs to you. I am satisfied that action u/s 153C has to be initiated in the case of Smt. Uma Prasad, for the A.Y. 2005-06.

Hence issue notice u/s. 153C.

Dt. 08/05/2009”

4. The AO thereafter gathered information that the sale deed of the property was executed by the Vendors in favour of the assessee on 23.6.2005 and the value reflected in the registered sale deed was only a sum of Rs.43,80,000. The AO was therefore of the view that a sum of Rs.25 lakhs which was paid by cash as found recorded in the agreement of sale seized in the course of search had to be added as unexplained cash for AY 2005-06. The AO was also of the view that as far as AY 2006-07 is concerned, the sum of Rs.6,20,000 had to be treated as unexplained cash, which is arrived at in the following manner:-

Sale consideration as per agreement for sale	75,00,000
Less: Value as per regd. Sale deed	<u>43,80,000</u>
	31,20,000
Less: Cash paid as per agreement of sale dated 18.4.2004	<u>25,00,000</u>
Cash paid at the time of registration of Sale Deed dated 23.6.2005	6,20,000

5. In the course of assessment proceedings, when confronted with the above, the assessee filed a letter dated 19.11.2009 stating that the amount was by mistake omitted from being accounted in the books of account and that the assessee would offer the same as income for the respective assessment years. The AO accordingly completed the assessment making addition of Rs.25 lakhs and Rs.6.20 lakhs for AYs 2005-06 & 2006-07 respectively. Aggrieved by the order of the AO, the assessee filed appeals before the CIT(Appeals).

6. Before CIT(Appeals), the assessee challenged the action of the AO in assuming jurisdiction u/s. 153C of the Act. Where there is a search u/s. 132, in the case of say X, and in the course of such search, money, bullion, jewellery or other valuable articles or things or books of account or documents is seized, and the AO of the person who was searched, is satisfied that the document or thing seized belongs to a person other than the person who was searched, then the seized documents or things should

be handed over to the AO of that other person and that AO will proceed against that other person u/s. 153C of the Act.

7. It can be seen from the aforesaid provisions that the crucial condition for assuming jurisdiction u/s. 153C of the Act is that the AO of the searched person should be satisfied that the document found in the course of search **“belongs”** to some other person. It was the plea of the assessee before the CIT(Appeals) that the agreement for sale dated 18.4.2009 which was seized in the course of search of Skyline group of cases was not signed by the assessee. In such circumstances, according to the assessee, seizure of an unsigned document in the course of search of a third party, cannot be the basis on which satisfaction as required u/s. 153C of the Act can be arrived at for assuming jurisdiction u/s. 153C. Pointing to the satisfaction note extracted in the earlier part of this order, the assessee contended that the basis on which the AO arrived at a conclusion that the seized document belongs to the Assessee was not proper and therefore proceedings u/s. 153C of the Act should be held without jurisdiction and quashed.

8. Apart from the above, the assessee also submitted cash book before the CIT(A) showing that there was availability of cash balance as per books of account from which the alleged cash payments could be explained and therefore no addition ought to have been made by the AO.

9. Both the aforesaid contentions were not accepted by the CIT(Appeals). On the argument that assessee had not signed the agreement for sale, the CIT(A) was of the view that absence of the assessee's signature in the agreement for sale will not undermine the veracity of the document and that it is a common practice in the real estate business that such sale transaction are put in an agreement for sale to safeguard the interest of the purchaser. It is more in the nature of receipt and therefore does not bear the signature of the purchaser. On such reasoning, the CIT(Appeals) upheld the assumption of jurisdiction u/s. 153C of the Act.

10. With regard to availability of cash balance, the CIT(A) was of the view that if the cash payments made and added in the assessment are reduced from the cash book filed by the assessee, then there would be a negative cash balance in AY 2008-09. The claim of the assessee was therefore rejected by the CIT(A).

11. Aggrieved by the order of the CIT(Appeals), the assessee has preferred the present appeals before the Tribunal.

12. We have heard the submissions of the Id. counsel for the assessee, who apart from reiterating the contentions put forth before the CIT(A), also submitted that even where the AO of the person searched and the assessee are one and the same, satisfaction is required to be arrived at for assuming jurisdiction u/s. 153C of the Act. Such satisfaction has to be

recorded both in the case of person searched and in the case of person against whom proceedings u/s. 153C of the Act are initiated. For this proposition, our attention was drawn to the decision of the Hon'ble Madhya Pradesh High Court in *CIT v. M/s. Mechmen, ITA No.44 of 2011, judgment dated 10.7.2015*. He pointed out that the revenue has not produced the satisfaction note recorded in the case of the person searched u/s.132 of the Act. Further reliance was also placed on the decision of ITAT Delhi Bench in *Tanveer Collections P. Ltd. v. ACIT, ITA No.2421/Del/2014, order dated 16.1.2015*, wherein the Delhi Tribunal observed as follows:-

“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.”

13. The Id. AR drew our attention to the satisfaction note and submitted that the same cannot be the basis to initiate proceedings u/s. 153C of the Act.

14. The Id. DR, on the other hand, placed reliance on the order of CIT(Appeals).

15. We have given a careful consideration to the rival submissions. The condition precedent for issuing notice u/s. 153C is that the document seized in the course of search of Skyline group of cases should belong to the assessee. In the present case, what was found was a photocopy of the agreement for sale dated 18.4.2004. Purchaser has not signed this document. In the course of search nobody was examined nor post-search investigations was made regarding the absence of signature of the assessee in this document. It is no doubt true that in the course of 153C proceedings, the AO did not give any explanation about this document for deciding the question of assumption of jurisdiction. We should not take

note of the events that occurred subsequent to assumption of jurisdiction u/s. 153C. The question is as to whether on 8.5.2009, when proceedings were initiated against the assessee u/s. 153C, there was material to show that the document found and seized in the course of search of Skyline group of cases belonged to the assessee. The document in question is a photocopy of agreement for sale dated 18.4.2004, which is signed only by the Vendors and in which the assessee's name as purchaser is found, but the assessee's signature is not found in the said document. As we have already observed, there has been no post-search enquiries on the aforesaid document. In such circumstances, we fail to see as to how the AO formed an opinion that the document found in the course of search belongs to the assessee. The proceedings against the assessee commenced on issue of notice u/s. 153C on 8.5.2009. In the order u/s. 153C, there is a reference to the agreement for sale seized and the difference in value between registered document and agreement for sale. There is a reference to show cause notice dated 18.11.2004 issued to assessee and reply dated 19.11.09 filed by the assessee. The order of assessment was passed by the AO on 29.12.2009 and there is no reference to any other document or statement in the order of assessment. Even before us, no material was placed regarding the basis on which satisfaction note dated 8.5.2009 was recorded by the AO. In these circumstances, we are of the view that assumption of jurisdiction u/s 153C of the Act was not proper and therefore the proceedings for both the

assessment years are required to be quashed. We also derive support for the above conclusion from the decision of the Hon'ble Gujarat High Court in *Vijaybhai N Chandrani v. ACIT, 333 ITR 436 (Guj)*, wherein it was held that the fact of a reference to the name of person in the seized document cannot be the basis to come to the conclusion that the document belonged to the said person. Proceedings initiated on the basis of such assumption u/s 153C were held to be without jurisdiction and quashed by the Hon'ble Gujarat High Court.

16. We are of the view that in the facts and circumstances of the present case, no proper satisfaction had been recorded by the AO for assumption of jurisdiction u/s. 153C of the Act and therefore the order u/s. 153C is held to be not valid in law and the same is hereby quashed.

17. In view of the above conclusions, the other arguments addressed on merits of the case are not taken up for consideration.

18. In the result, the appeals by the assessee are allowed.

Pronounced in the open court on this 30th day of July, 2015.

Sd/-

Sd/-

(ABRAHAM P. GEORGE)
Accountant Member

(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 30th July, 2015.

/D S/

Copy to:

1. Appellant
2. Respondents
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar /
Senior Private Secretary
ITAT, Bangalore.