

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE

BEFORE SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND
SHRI. VIJAYPAL RAO, JUDICIAL MEMBER

I.T.A Nos.1362 & 1363/Bang/2010
(Assessment Year : 2005-06 & 2006-07)

Deputy Commissioner of Income tax,
Central Circle -2(2), Bangalore .. Appellant

v.

M/s. Bheemaneni Builders (I) P. Ltd,
[Now known as M/s. BBIPL Infrastructure (P) Ltd,
No.2/2, 3rd Block, Rajajinagar,
Dr. Rajkumar Road, Bangalore – 560 010 .. Respondent
PAN : AACCB1418N

Cross Objection Nos.5 & 6/Bang/2011
(In I.T.A Nos.1362 & 1363/Bang/2010)
(Assessment Year : 2005-06 & 2006-07)

Assessee by : Shri. A. Shankar, Advocate
Revenue by : Shri. M. Vijay Kumar, Asst. CIT

Heard on : 26.11.2015
Pronounced on : 11.12.2015

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

These are appeals and cross objections of the Revenue and assessee respectively directed against common order dt.29.09.2010, of CIT (A) – VI, Bengaluru, for the impugned assessment years.

02. Revenue in its appeals is aggrieved that CIT (A) held the materials and documents relied upon by the AO for initiating proceedings u/s.153C of the Income-tax Act, 1961 ('the Act' in short), not belonging to the assessee, but only referred to the assessee.

03. Facts apropos are that there was a search and seizure operation in the premises of a group called Divyashree Group, on 01.03.2007. During the course of search proceedings certain documents were found and seized which as per the AO belonged to the assessee. Said documents as per the assessment order were as under :

B/SPCL/2 -- *Pages 92-93*

B/SCPL/10 -- *Pages 120-128, 201-209*

A/D/SCPL/1 -- *Pages 124-130*

AO initiated proceedings u/s.153C of the Act, pursuant to which assessee filed return declaring income of Rs.1,44,09,671/- for A. Y. 2005-06 and Rs.5,52,35,420/- for A. Y. 2006-07. Thereafter hearings were conducted on various dates and assessments were completed making various additions. Total income for A. Y. 2005-06 came to Rs.8,55,92,670/- and for A. Y. 2006-07, came to Rs.8,11,91,510/-.

04. Aggrieved by the above assessee moved in appeal before the CIT

(A). One of the grounds taken up before the CIT (A) apart from those raised on merits, was on jurisdiction of the AO to issue notice u/s.153C of the Act. As per the assessee, satisfaction for issue of notice u/s.153C of the Act, mentioned by the AO in the facing sheet of the assessment order were related to three documents mentioned in the earlier paragraph. Claim of the assessee was that these documents seized during the search of Divyashree Group did not belong to the assessee. As per the assessee, pages 124 to 130, document no. A/D/SCPL/1, was an agreement entered by one M/s. Shyamaraju & Co. Pvt Ltd, with the assessee for execution of certain civil contracts. Seized material pages 92 & 93 of B/SCPL/2, as per assessee was a work order placed by one M/s. Chathur Realtors Pvt Ltd on the assessee for execution of certain works relating to a project called Divyashree Technopolis. Pages 120 to 128 of seized mater No.B/SCPL/10, as per the assessee was an articles of agreement between one M/s. Bheemaneni's Educational System Trust and the assessee for carrying out certain civil works for a project called Reva Institute for Engineering & Technology Studies at Jalahalli. As for pages 201 to 209 of seized record B/SCPL/10 claim of the assessee was that these were mere inter- office note and ledger accounts of the assessee company and one Shri. Damodar

in the books of Reva Institute for Engineering & Technology Studies. As per the assessee, none of these documents belonged to it. They all belonged to Divyashree group whose premises were searched. As per the assessee, AO without any basis concluded that these documents belonged to the assessee. Reliance was placed on Hon'ble Gujarat High Court decision in the case of Vijayabai N. Chandrani v. ACIT [333 ITR 436] and that of coordinate bench in the case of P. Srinivas Naik v. ACIT [117 ITD 201].

05. CIT (A) was appreciative of these contentions. According to him, pages 124 to 130 of seized record A/D/SCPL/1 was an agreement entered by Shyamaraju & Co with the assessee. As per the CIT (A), page 124 and 125 of this seized document, gave details of projectwise revenue and cost for the year 2004-05 in respect of Divyashree Holdings P. Ltd and in respect of Shyamaraju & Co.P. Ltd. CIT (A) noted that nothing what so ever regarding assessee was mentioned in these pages. CIT (A) noted that pages 126 to 130 of the very same seized material was the work contract agreement between Shyamaraju & Co.P. Ltd, and the assessee. As per the CIT (A) terms of the said agreement gave powers to Shyamaraju & Co., to enforce the conditions mentioned there in. Said agreement, as per the CIT

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(A) did not belong to the assessee. Further as per the CIT (A), pages 92 & 93 of seized material B/ SCPL/2 was a work order given by M/s. Chathur Realtors (P) Ltd, a company in the group of Divyashree concerns which was searched. As per the CIT (A), work order belonged to M/s. Chathur Realtors P. Ltd and they had kept such work order with them for enforcing the agreement terms. CIT (A) further noted that pages 120 to 128 and 201 to 203 of seized material No.B/SCPL/10, belonged to Rewa Institute for Engineering & Technology Studies for civil work and the said institution was also a part of Divyashree group. Pages 204 to 209 of seized material of B/SCPL/10, as per the CIT (A) was print out of accounts of assessee in the books of Rewa Institute for Engineering & Technology Studies, Bangalore and Bheemaneni's Educational System Trust. None of these documents, which were relied on by the AO for initiating proceedings u/s.153C of the Act, belonged to the assessee, as per the CIT (A). Ld. CIT (A) also noted that Section 132(4A) r.w.s.292C of the Act, gave rise to an automatic presumption that the seized documents belonged to various companies of Divyashree group. Further as per the CIT (A), Hon'ble Apex Court in the case of CWT v. Biswanath Chatterjee [103 ITR 536] had held that the expression 'belonged' meant property of a person which is in his possession as of right. Relying on the judgment of Hon'ble Gujarat High

Court in the case of Vijayabai N. Chandrani (supra), coordinate bench in the case of Srinivas Naik (supra) and that of Ahmadabad bench of this Tribunal in the case of Meghmani Organics Ltd v. DCIT [(2010) 36 DTR 0187], he held that none of the documents belonged to the assessee. Thus according to him, the primary condition for issue of notice u/s.153C of the Act was not satisfied. He quashed the assessments. Since he held that jurisdiction of the AO was ousted at threshold, other issues were not considered.

06. Now before us Ld. DR strongly assailing the order of CIT (A), submitted that the seized records were agreements entered by the assessee with various concerns of Divyashree group. Agreements all related to civil works that were to be done by the assessee for such concerns. Not only the concerns of Divyashree group, but also assessee had certain rights arising out of such agreement. As per the Ld. DR, therefore, agreements also related and belonged to the assessee. Assessee could enforce the conditions mentioned in the agreement just like other party. Hence according to him, CIT (A) erred in holding that the documents belonged to Divyashree group of concerns and not the assessee. Ld. DR submitted that belongingness did not mean physical possession alone. According to him it

included a legal right to enforce a condition in a contract. As for the reliance placed by the CIT (A) on the judgment of Hon'ble Gujarat High Court in the case of Vijabhai N. Chandrani (supra), Ld. DR submitted that what was found at the time of search in the said case was only a list containing names which inter alia included the name of the assessee therein. As for the decision of Ahmedabad bench in the case of Meghmani Organics Ltd (supra), Ld. DR submitted that what was seized there was only an estimate for the proposed work and not an agreement. As for the case of coordinate bench in the case of Srinivas Naik (supra), Ld. DR submitted that the decision actually went in favour of the Revenue. According to him the Bench had taken a view that notion of continuity if available in the seized record would establish an intimate connection with the person concerned over a period of time.

07. Per contra, Ld. AR strongly supporting the order of CIT (A), placed specific reliance on a judgment of Hon'ble Delhi High Court in the case of Pepsico India Holdings P. Ltd v. ACIT [(2015) 370 ITR 295]. According to him, a document which belonged to one person cannot simultaneously belong to another person also. As per the Ld. AR, unless and until it was established that the seized documents did not belong to the searched

person, provision of Section 153C of the Act would not get attracted. Ld. AR also pointed out that Section 153C of the Act was substituted through Finance Act, 2015, with effect from 01.04.2015. According to him, the provision as it stood prior to its substitution did not take within its ambit books or documents which pertained to a person other than the searched person for initiating proceedings u/s.153C of the Act. Therefore according to him, prior to 01.04.2015, it was imperative for the Revenue to establish that the seized documents did not belong to the searched person, before proceeding against a party other than the one who was searched.

08. Ad libitum reply of the DR was that the substitution of Section 153C of Finance Act, 2015 relied on by the Ld. AR was explanatory and clarificatory in nature and therefore applied retrospectively.

09. We have perused the orders and heard the rival contentions. Description of various documents which were seized as it appear in the assessment order and as it appear in CIT (A)'s order, has been described by us at para five above. What we find is that these documents were either contracts or agreements entered by the assessee with various concerns, which were part of Divyashree Group who were subjected to the search. CIT (A) held that such documents gave rights to the concerns of

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Divyashree Group for getting the work done by the assessee and hence belonged to such concerns and not to the assessee. As against this, argument taken by the Ld. DR before us is that these documents gave certain rights to the assessee also whereby it could legally enforce the obligations of the other party viz., concerns belonging to Divyashree Group. Therefore according to the Ld. DR the documents belonged to the assessee as well. In our opinion Ld. DR is right in his argument that the agreements and work orders would have given certain legally enforceable rights to the assessee also. However the question is whether by virtue of such right ensuing to the assessee, these agreements, which were found and seized during the course of search of Divyashree Group, could be considered as belonging to the assessee. Meaning of the term 'belong' as it appears in Section 153C of the Act, was the subject matter before the Hon'ble Delhi High Court in the case of Pepsico India Holdings P. Ltd (supra). In the said case there was a search and seizure operation in Jaipuria group. Seized material which was considered as belonging to the assessee therein, namely, Pepsico India Holdings P. Ltd (supra) were as under :

<i>Party/Annx./Page No.</i>	<i>Description of annexure</i>
<i>B-2/A-11/34-35</i>	<i>These two pages are the 10 years Cumulative Redeemable preference Shares of rupees 10 each, purchased by M/s. Pepsico India Holding Ltd. from M/s. Tripty Drinks Ltd. and 10 years Cumulative Redeemable Preference Shares of rupees 10 each, purchased by M/s. Pepsico India Holding Ltd. from M/s. SMV Beverages Ltd.</i>
<i>B-2/A-14/60</i>	<i>This is a cheque of Rs. 1,66,84002 in favour of Pepsico India Holding Pvt. Ltd. issued by M/s. Neetar Beverages Pvt. Ltd. on June 30, 2012.</i>
<i>B-2/A-14/61</i>	<i>This is the cheque of Rs. 6,00,00,000 in favour of Pepsico India Holding Pvt. Ltd. issued by M/s .Neetar Beverages Pvt. Ltd. on May 31, 2011.</i>
<i>B-2/A-14/62</i>	<i>This is the cheque of Rs. 6,00,00,000 in favour of Pepsico India Holding Pvt. Ltd. issued by M/s. Neetar Beverages Pvt. Ltd. on May 31, 2010.</i>
<i>B-2/A-14/63</i>	<i>This is the cheque of Rs. 6,00,00,000 in favour of Pepsico India Holding Pvt. Ltd. issued by M/s. Neetar Beverages Pvt. Ltd. on May 31, 2009.</i>
<i>B-2/A-14/64</i>	<i>This is a cheque of Rs. 5,46,91,818 in favour of Pepsico India Holding Pvt. Ltd. issued by M/s. SMV Agencies Pvt. Ltd. on June 30, 2012.</i>
<i>B-2/A-14/65</i>	<i>This is the cheque of Rs. 6,00,00,000 in favour of Pepsico India Holding Pvt. Ltd. issued by M/s. SMV Agencies Pvt. Ltd. on May 31, 2012.</i>
<i>B-2/A-14/66</i>	<i>This is the cheque of Rs. 6,00,00,000 in favour of Pepsico India Holding Pvt. Ltd. issued by M/s. SMV Agencies Pvt. Ltd. on April 30, 2012.</i>
<i>B-2/A-14/67</i>	<i>This is the cheque of Rs. 6,00,00,000 in favour</i>

	<i>of Pepsico India Holding Pvt. Ltd. issued by M/s. SMV Agencies Pvt. Ltd. on June 30, 2011.</i>
<i>B-2/A-14/68</i>	<i>This is the cheque of Rs. 6,00,00,000 in favour of Pepsico India Holding Pvt. Ltd. issued by M/s. SMV Agencies Pvt. Ltd. dated : April 30, 2011.</i>
<i>B-2/A-14/69</i>	<i>This is the cheque of Rs. 6,00,00,000 in favour of Pepsico India Holding Pvt. Ltd. issued by M/s. SMV Agencies Pvt. Ltd. dated : June 30, 2010.</i>
<i>B-2/A-14/70</i>	<i>This is the cheque of Rs. 6,00,00,000 in favour of Pepsico India Holding Pvt. Ltd. issued by M/s. SMV Agencies Pvt. Ltd. dated : April 30, 2010.</i>
<i>B-2/A-14/71</i>	<i>This is the cheque of Rs. 6,00,00,000 in favour of Pepsico India Holding Pvt. Ltd. issued by M/s. SMV Agencies Pvt. Ltd. dated : April 30, 2009.</i>
<i>B-2/A-14/72</i>	<i>This is the cheque of Rs. 6,00,00,000 in favour of Pepsico India Holding Pvt. Ltd. issued by M/s SMV Agencies Pvt. Ltd. dated : June 30, 2009.</i>
<i>C-2/A-1/101-115</i>	<i>These pages relates to “supply and loan agreement” made between Pearl Drinks Ltd. and Pepsico India Holdings Pvt. Ltd. on October 1, 2010.</i>

10. Their Lordship held that none of these documents were disclaimed by Jaipuria group. It was held that unless and until the documents were established as not belonging to the searched person, Section 153C of the Act did not get attracted. Relevant paras 14 & 15 of the judgment is reproduced hereunder :

“14. First of all we may point out, once again, that it is nobody's case that the Jaipuria group had disclaimed these documents as belonging to them. Unless and until it is established that the documents do not belong to the searched person, the provisions of section 153C of the said Act do not get attracted because the very expression used in section 153C of the said Act is that "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 . . ." In view of this phrase, it is necessary that before the provisions of section 153C of the said Act can be invoked, the Assessing Officer of the searched person must be satisfied that the seized material (which includes documents) does not belong to the person referred to in section 153A (i.e., the searched person). In the satisfaction note, which is the subject matter of these writ petitions, there is nothing therein to indicate that the seized documents do not belong to the Jaipuria group. This is even apart from the fact that, as we have noted above, there is no disclaimer on the part of the Jaipuria group in so far as these documents are concerned.

15. Secondly, we may also observe that the finding of photocopies in the possession of a searched person does not necessarily mean and imply that they "belong" to the person who holds the originals. Possession of documents and possession of photocopies of documents are two separate things. While the Jaipuria group may be the owner of the photocopies of the documents it is quite possible that the originals may be owned by some other person. Unless it is established that the documents in question, whether they be photocopies or originals, do not belong to the searched person, the question of invoking section 153C of the said Act does not arise.”

11. In the case before us it is an admitted position that the documents which were seized atleast partly belonged to various concerns of

Divyashree Group. Section 153C of the Act as it stood prior to the substitution of Finance Act, 2015, w.e.f.01.04.2015, read as under :

“(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 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 153A.”

12. The section would clearly require the satisfaction of the AO that the seized or requisitioned documents belonged to a person other than the person referred in Section 153A of the Act. Thus a situation where a particular document could belong to two persons of which one alone is the searched person was not clearly addressed. The legislature had indeed considered this aspect and in order to address this difficulty substituted the section w.e.f.01.04.2015. Substituted section 153C(1) is reproduced here under :

“(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

- (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, 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 153A :”

13. Whether the above substituted section was only to give clarity to the section or to address a situation where a document which gives certain rights to a party apart from the searched party is not our concern right now, since the substituted provision came into effect only from 01.04.2015. However crux of the judgment of Hon’ble Delhi High Court in Pepsico India Holdings P. Ltd (supra) is that unless the searched party disowns the

seized record, it cannot belong to another. It does not mean that rights and obligations arising to all parties of a contract and where parties can seek enforcement of their respective rights through a competent legal proceedings, has to be ignored and considered as belonging exclusively to the searched person from whose premises it was found. The question whether the searched party had owned up a document is a pure question of fact. No doubt by virtue of section 132(4A) and 292C of the Act, a presumption has to be taken that documents seized are that of the searched party. However this is a rebuttable one. There is nothing on record to show whether the Divyashree group had disowned the documents mentioned at para three and how Revenue had dealt with these documents in their hand. Ld. CIT (A) had gone by the judgment of Hon'ble Gujarat High Court in the case of Vijaybhai N. Chandrani (supra) and that of coordinate bench in the case of P. Srinivasa Naik (supra) and that of Ahmedabad Bench in the case of Meghmani Organics Ltd (supra). However as pointed out by Ld. DR, the documents seized in all these cases were not of a type which gave rise to rights and obligations to the searched party as well as the party against whom proceedings u/s.153C of the Act were initiated. We are of the opinion that this particular aspect which can have a strong bearing on the issue requires a fresh look by the CIT (A), for

which he might require inputs from the AO and verification of assessment and appeal records relating to Divyashree group. We therefore set aside the order of the CIT (A) and remit the issue of validity of proceedings u/s.153C of the Act, back to his file for consideration afresh in accordance with law.

14. Assessee in its cross objections is aggrieved that grounds apart from those assailing the jurisdictional issue was not adjudicated by the CIT (A).

15. Ld. CIT (A) had not adjudicated other grounds raised by the assessee except for the jurisdictional aspect. We therefore direct the CIT (A) to consider all the grounds taken by the assessee and dispose it off in accordance with law.

16. In the result, both appeals of the Revenue as well as cross objections of the assessee are allowed, for statistical purpose.

Order pronounced in the open court in 11th day of December, 2015.

Sd/-

(VIJAYPAL RAO)
JUDICIAL MEMBER

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order
Assistant Registrar