

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE
SHRI G.D. AGRAWAL, VICE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 3489/Del/2015
Assessment Year: 2003-04**

**ITA No. 3490/Del/2015
Assessment Year: 2004-05**

**ITA No. 3491/Del/2015
Assessment Year: 2005-06**

**ITA No. 3492/Del/2015
Assessment Year: 2006-07**

**ITA No. 3493/Del/2015
Assessment year: 2007-08**

**ITA No. 3494/Del/2015
Assessment year: 2008-09**

**ITA No. 3495/Del/2015
Assessment year: 2009-10**

**Vijay Kumar,
Village Darkuli,
Tehsil/Post-Sasni,
Maha Maya Nagar, Hatras,
Uttar Pradesh
(PAN: BANPK8254N)
(Appellant)**

vs

**ACIT,
Cent. Circle 16,
Room No. 344, 3rd Floor,
E-2, ARA Centre,
Jhandewalan Extension,
New Delhi-110055
(Respondent)**

**Appellant by : Shri B.K. Dhingra, FCA
Respondent by : Smt. Aparna Karan CIT(DR)**

**Date of hearing: 10.10.2018
Date of pronouncement : 31.10.2018**

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

All the seven appeals have been preferred by the assessee and the relevant dates of the impugned order/s as well as assessment years are as under:-

ITA No.	A.Y.	Date of impugned order
3489/D/2015	2003-04	24.04.2015
3490/D/2015	2004-05	24.04.2015
3491/D/2015	2005-06	24.04.2015
3492/D/2015	2006-07	24.04.2015
3493/D/2015	2007-08	24.04.2015
3494/D/2015	2008-09	24.04.2015
3495/D/2015	2009-10	24.04.2015

1.1 All these appeals were heard together and for the sake of convenience, they are being disposed of through this common order.

1.2 For the sake of convenience, we are taking up ITA No. 3489/Del/2015 pertaining to assessment year 2003-04 as the lead case. The facts are identical in all the seven years under appeal before us.

2.0 Brief facts of the case are that a search and seizure action u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was carried out in the cases of Shri B.K. Dhingra, Smt.

Poonam Dhingra and M/s Madhusudan Buildcon Pvt. Ltd. on 20.10.2008 and during the course of search at the residential premises at F-6/5, Vasant Vihar, New Delhi, certain documents belonging to the assessee were seized. On the basis of documents so found, after recording satisfaction, proceedings were initiated u/s 153C read with section 153A of the Act. Statutory notices were issued requiring the assessee to furnish return of income but the assessee neither furnished the return of income nor cooperated in the assessment proceedings, therefore, the assessment was completed u/s 144 r/w section 153C of the Act for assessment year 2003-04 at an estimated income of Rs. 2,00,000/-.

2.1 Similarly in assessment year 2004-05, the assessment was completed u/s 144 r/w section 153C of the Act at an estimated income of Rs. 3,00,000/- in view of the assessee's failure to furnish return of income in response to notice u/s 153C of the Act as well as his non-cooperation during the course of assessment proceedings.

2.2 Likewise in assessment year 2005-06, on similar facts, due to non-filing of return and non-cooperation of the assessee during

the course of assessment proceedings, the income was estimated at Rs. 4,00,000/-.

2.3 In assessment year 2006-07 again, due to non-filing of return and non-cooperation by the assessee during the course of assessment proceedings u/s 153C Act, the income of the assessee was determined by estimate at Rs. 5,00,000/-

2.4 Likewise, the income was estimated at Rs. 6,00,000/- u/s 144 r/w section 153C of the Act in AY 2007-08.

2.5 In assessment year 2008-09, the estimate of income made u/s 153C was Rs. 8,00,000/-.

2.6 In assessment year 2009-10, the income was estimated at Rs. 10,00,000/- under similar circumstances.

2.7 Aggrieved, the assessee approached the Ld. CIT (A) and challenged the initiation of proceedings u/s 153C of the Act for AY 2003-04 and 2004-05 on the ground that these two years fell outside the outer limit of six years for which 153C proceedings could be initiated as the satisfaction note in the case of the assessee was recorded on 1.10.2010 and, therefore, the six years to be covered would be only from AY 05-06 to AY 10-11. With respect to the assessments of AY 05-06 to AY 2009-10, the assessee submitted that no material belonging to the assessee

had been seized. However, the Ld. CIT (A) did not accept the assessee's contentions and held that the proceedings were validly initiated in assessment years under appeal and dismissed the assessee's appeals.

2.8 Aggrieved, the assessee is now before the ITAT and has challenged the order of the Ld. CIT (A) in upholding the assessment proceedings u/s 153C/144 of the Act.

3.0 The Ld. AR drew our attention to the Satisfaction Note recorded in the case of the assessee and submitted that the said Satisfaction Note was not valid to assume jurisdiction u/s 153C as the Satisfaction Note had not been recorded by the specified authority under the Act i.e. the Assessing Officer of the searched party. Drawing our attention to the Satisfaction Note, it was further submitted that there was not the remotest indication in this Note that the same was recorded during the course of assessment of the searched person. It was a mere noting by the Assessing Officer of the assessee (other than searched person) before the issuance of notice u/s 153C of the Act. It was further submitted that the search took place on 20.10.2008 whereas the Satisfaction Note on the basis of which action u/s 153C of the Act was taken was dated 01.10.2010 and, therefore, with reference to

the Satisfaction Note, the year of search was assessment year 2011-12 and the six earlier years should be from assessment year 2005-06 to 2010-11. It was submitted that therefore, the assessments framed for assessment years 03-04 and 04-04 were illegal. The Ld. AR also placed on record copy of order of ITAT Delhi Bench in the case of Tanvir Collections Pvt. Ltd. vs. ACIT reported in (2015) 168 TTJ 145(Delhi Tribunal) and submitted that this assessee i.e. Tanvir Collections Pvt. Ltd. belonged to the same group in which the search was carried out and the Satisfaction Note as reproduced in Para 12 of the said order of ITAT was verbatim copy of the Satisfaction Note as recorded in the assessee's case. It was further submitted that in this case of Tanvir Collections Pvt. Ltd., the ITAT Delhi Bench had held that there was absence of valid satisfaction and, therefore, the same did not confer any valid and lawful jurisdiction on the Assessing Officer of the assessee to proceed with assessment u/s 153C of the Act. The Ld. AR further submitted that this order of the ITAT was subsequently upheld by the Hon'ble Delhi High Court in the case of Pr. CIT vs. Tanvir Collections Pvt. Ltd. vide order dated 28.2.2018 in ITA 264/2018. It was further submitted that the department's Special Leave Petition against the order of the

Hon'ble Delhi High Court was also dismissed. A copy of these two orders were also placed on record. It was submitted that in view of identical issue in the case of the assessee belonging to the same group having been decided in favour of the assessee, the assessee's appeals for the captioned years should be allowed.

3.1 The Ld. AR further placed on record a copy of the Remand Report dated 21/04/2014 submitted by the AO before the Ld. CIT (A) in respect of admission of additional evidences under Rule 46A of the Income Tax Rules and submitted that this Remand Report was for Assessment Years 2003-04 to 2009-10, i.e. all the years under appeal in which it had been mentioned by the AO that admittedly there was no incriminating material belonging to the assessee which was seized during the search proceedings in the cases of Shri BK Dhingra and Smt. Poonam Dhingra. It was submitted that in view of this facts also, the assessments could not be sustained.

4.0 In response, the Ld. CIT DR placed reliance on the order of the lower authorities and vehemently argued that assessment proceedings had rightly been initiated in this regard. The Ld. CIT DR also placed reliance on the judgment of the Hon'ble Delhi High Court in the case of PCIT vs. Super Malls Pvt. Ltd reported

in 393 ITR 557 (Del) for the proposition that the Satisfaction Note recorded by the officer issuing notice u/s 153C is sufficient if the Assessing Officer of the searched person and the third party are the same. It was vehemently argued that the appeals deserved to be dismissed.

5.0 We have heard the rival submissions and perused the material available on record. We note that even without going into the question of the validity or otherwise of the satisfaction note, the observations of the AO in the remand report are sufficient to clinch the issue in assessee's favour. It is seen that in the remand report dated 21.04.2014 which was submitted by the AO before the Ld. CIT(A) for assessment years 2003-04 to assessment year 2009-10 on the question of admitting of additional evidences under Rule 46A of the Income Tax Rules, the Assessing Officer has categorically stated that it was an admitted fact that no incriminating material belonging to the assessee was seized during the search proceedings u/s 132 in the case of Shri B.K. Dhingra, Smt. Poonam Dhingra and M/s Madhusudan Buildcon Pvt. Ltd. The Assessing Officer has also mentioned in the remand report that the income of the assessee was estimated for lack of details etc. at the time of assessment. Thus, admittedly, there

was no incriminating material found during the course of search which could be attributed to the assessee and, accordingly, these additions cannot be sustained. It is also apparent from the assessment orders that all the additions were on an estimate and do not relate to any incriminating material which could be said to be belonging to the assessee. Therefore, in our view, such estimated additions could not have been made u/s 144 read with section 153C without the same being corroborated with any incriminating material. Accordingly, we have no hesitation in holding that the impugned assessments cannot be sustained and the same are quashed. Accordingly, all seven appeals of the assessee are allowed.

In the result, the appeals of the assessee stand allowed.

Order pronounced in the open court on 31st October, 2018.

**Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT**

**Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 31st OCTOBER , 2018
'GS'

Copy forwarded to: -

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

By Order

ASSTT. REGISTRAR