

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA Nos.1384 & 1385/PUN/2016
निर्धारण वर्ष / Assessment Years : 2003-04 & 2004-05

Kewal Kumar Jain
Kumar Capital, 1st Floor,
2413, East Street,
Pune – 411001

.... अपीलार्थी/Appellant

PAN: AAYPJ2209C

Vs.

The Asst. Commissioner of Income Tax,
Circle 4, Pune

.... प्रत्यर्थी / Respondent

Assessee by : Shri Rajendra Agiwal
Revenue by : Shri O.A. Mao

सुनवाई की तारीख / Date of Hearing : 30.08.2018	घोषणा की तारीख / Date of Pronouncement: 06.11.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

Both the appeals filed by assessee are against consolidated order of CIT(A)-2, Pune, dated 03.03.2016 relating to assessment years 2003-04 and 2004-05 against respective orders passed under section 143(3) r.w.s. 153C of Income Tax Act 1961 (in short the 'Act').

2. Both the appeals filed by assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. However, in order to adjudicate the issues, we make reference to the facts and issues in ITA No.1384/PUN/2016, relating to assessment year 2003-04.

3. The assessee in ITA No.1384/PUN/2016, relating to assessment year 2003-04 has raised the following grounds of appeal:-

On the facts and in the circumstances of the case and in law, the learned AO/CIT(A) has:

General Ground

1. *erred in assessing the total income at Rs.36,90,900 as against returned income of Rs.34,80,900 computed by the Appellant;*

Invalidity of assessment proceedings under section 153C of the Act

2. *erred in upholding assessment/reassessment order under section 143(3) r.w.s 153C of the Act, even though the notice under section 143(2) has not been issued within the prescribed time-limit;*
3. *erred in holding that issue of notice under section 143(2) of the Act, in case of assessment/reassessment made pursuant to proceedings under section 153A/153C of the Act is not prescribed under the Act and thereby there is no condition to issue notice under section 143(2) before completion of assessment in the present case;*

Action on documents belonging to searched person

4. *erred in initiating proceedings under section 153C of the Act, on the basis of documents found in the premises of the searched person, which do not belong to the Appellant;*

Recording of satisfaction

5. *erred in concluding that initiation of proceedings under section 153C of the Act by the learned AO is valid even in the absence of recording of satisfaction by the AO of the searched person before handing over the documents to the jurisdictional AO of the other person;*

Addition under section 69C of the Act

6. *erred in upholding the action of the AO in making addition of Rs.2,10,000 as interest on alleged borrowings by invoking the provisions of section 69C of the Act, without bringing any evidence on record of incurrance of such expenditure or borrowings by the Appellant;*

7. *should have appreciated the fact that addition based on surmise and conjectures cannot be made by invoking the provisions of section 69C of the Act.*

Any consequent relief, to which the Appellant may be entitled under the law in pursuance of the aforesaid grounds of appeal, or otherwise, may thus be granted.

4. The assessee has challenged the jurisdiction exercised under section 153C of the Act on the basis of documents found in the premises of searched person, in the absence of recording of satisfaction by the Assessing Officer of searched person, before handing over the documents to jurisdictional Assessing Officer of said person.

5. Briefly, in the facts of the case, search and seizure operation under section 132 of the Act was conducted in the case of Shri Shreeram S. Soni on 29.07.2003. During the course of search operation, documents relating to assessee were seized. The copies of documents seized were vide bundle No.5, 24, 98, 99 and 100 vide Panchanama dated 02.08.2003. The said documents related and belonged to Shri Kewal Kumar Jain i.e. assessee before us. The said documents were forwarded by Addl. CIT, Central Range 2, Pune vide letter dated 30.05.2007 to the Assessing Officer incharge of assessee. On receipt of said documents, notice under section 153C of the Act was issued to assessee. In response thereto, the assessee filed reply stating that return of income originally filed, may be treated as return filed in response to notice issued under section 153C of the Act. The assessee was also supplied copies of seized documents and the case of assessee was taken up for scrutiny. Various additions were made in the hands of assessee on the basis of documents seized.

6. Before the CIT(A), assessee challenged initiation of proceedings under section 153C of the Act on the ground that conditions of said section were not satisfied in the case of assessee, hence assessment be treated as invalid and hence, annulled. The assessee also raised the issue on merits. The CIT(A) first decided the issue of validity of initiation / conduct of proceedings under section 153C of the Act. Referring to the provisions of section 153A of the Act, it pointed out that the said section lays down the procedure to be followed by Assessing Officer on filing of return of income in response to notice issued under section 153A / 153C of the Act. The case of assessee before the CIT(A) was that proceedings under section 153C of the Act were initiated against the assessee on lapse of almost two years after the proceedings in the case of searched person were concluded. Further, the Assessing Officer having jurisdiction over the searched party had handed over the relevant documents to the Assessing Officer on 15.06.2007 i.e. on lapse of one year after proceedings in the case of searched party, were concluded. Hence, the plea raised was that satisfaction was recorded by the jurisdictional Assessing Officer of searched party after the assessment proceedings against searched party under section 153A of the Act were concluded. The assessee pleaded that recording of satisfaction had to be completed before completion of assessment under section 153A of the Act of searched party. The CIT(A) forwarded submissions of assessee to the Assessing Officer, who in turn, filed remand report and the assessee's rebuttal was also taken into account by him. The CIT(A) did not accept submission of assessee that initiation of proceedings under section 153C of the Act should be before completion of assessment under section 153A of the Act in respect of searched person. Referring to the proviso to section 153C of the Act, he pointed out that date of receipt of information by Assessing Officer was 15.06.2007 and

notice under section 153C of the Act was issued on 05.02.2008, therefore the issue of notice under section 153C of the Act was not barred by any limitation and was in order. The decisions relied upon by the assessee were held to be distinguishable on facts and hence, plea of assessee was rejected and the assessment made under section 153C r.w.s. 143(3) of the Act was held to be perfectly in order.

7. The assessee is in appeal against the order of CIT(A).

8. The assessee has raised various grounds of appeal but the issue which is argued before us is raised vide grounds of appeal No.4 and 5. The learned Authorized Representative for the assessee pointed out that search in the case of Shri Shreeram S. Soni had taken place on 29.07.2003 and the assessment under section 153A r.w.s. 143(3) of the Act was completed in his hands on 27.03.2006. However, the Assessing Officer in charge of assessee received information from the Assessing Officer of searched person along with seized documents on 15.06.2007. He pointed out that information was received much after the close of assessment in the case of searched person, hence provisions of section 153C of the Act have not been satisfied. He further pointed out that Assessing Officer having jurisdiction over the searched person has not recorded satisfaction within time frame allowed before handing over the documents to Assessing Officer of assessee and hence, initiation of proceedings under section 153C of the Act are vitiated. He further referred to Circular No.24/2015, dated 31.12.2015, wherein it has been proposed that the issue of recording of satisfaction for the purpose of section 158BD / 153C of the Act are *pari-materia* and the Courts have held that the stages at which satisfaction note has to be

prepared. The CBDT Circular provides that the issue has been settled in respect of 158BD proceedings and since section 153C of the Act was substantially same/*para-materia* to section 158BD of the Act, therefore guidelines of the Hon'ble Supreme Court in the case of M/s. Calcutta Knitwears (2014) 43 taxmann.com 446 (SC) are to be applied. He then referred to sequence of events as noted by CIT(A) at page 5 of appellate order and stressed that there was substantial delay in initiation of proceedings under section 153C of the Act. He placed reliance on the ratio laid down by the Pune Bench of Tribunal in group of cases with lead order in Shri Vijaykumar Devichand Nibjiya Vs. DCIT in ITA No.1745/PN/2013, relating to Block period 1996-97 to 2002-03, order dated 22.07.2015.

9. The learned Departmental Representative for the Revenue on the other hand, pointed out that in pre-amended provisions of section 153C of the Act, there was no requirement to record satisfaction and hence, initiation and conclusion of proceedings under section 153C of the Act were justified in the case of assessee.

10. We have heard the rival contentions and perused the record. The assessee is aggrieved by initiation and completion of proceedings under section 153C of the Act, so we shall first make reference to said section. Under the pre-amended provisions of section 153C(1) of the Act, it is provided that notwithstanding anything contained in sections 139, 147, 148, 149, 151 and 153 of the Act, 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 to a person other than a person referred to in

section 153A of the Act, 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 such other person and issue notice and assess or re-assess income of such 'other person' in accordance with provisions of section 153A of the Act. In other words, recording of satisfaction has to be made by Assessing Officer of searched person before handing over the books of account or documents or assets seized or requisitioned, to the Assessing Officer having jurisdiction over such other person. The recording of satisfaction has been mandated to be made before or at the time of completion of assessment proceedings of searched person; since after assessment has been completed of the searched person, the Assessing Officer becomes *ex-officio* of searched person.

11. The Hon'ble Supreme Court in the case of M/s. Calcutta Knitwears (supra) have laid down the proposition for section 158BD of the Act that recording of satisfaction note is pre-requisite and satisfaction note must be prepared by Assessing Officer before he transmits the record to the other Assessing Officer, who has jurisdiction over 'other person' under section 158BD of the Act. The Apex Court held that *the satisfaction note could be prepared at any of the following stages:*

- (a) *at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; or*
- (b) *in the course of the assessment proceedings under section 158BC of the Act; or*
- (c) *immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person.*

12. The Hon'ble High Courts have also held that provisions of section 153C of the Act are substantially similar / *para-materia* to the provisions of section 158BD of the Act. The CBDT recognizing the above said position has issued circular No.24/2015, dated 31.12.2015 in respect of proceedings under section 153C of the Act i.e. for the purpose of assessment of income of 'other person' other than searched person. The CBDT has issued circular to the effect that guidelines of the Hon'ble Supreme Court with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified by the CBDT that even if the Assessing Officer of searched person and the other person are one and the same, then also he was required to record his satisfaction as has been held by the Courts.

13. Applying the ratio laid down by the Hon'ble Supreme Court, satisfaction note has to be prepared by the Assessing Officer of searched person at the time of or along with the initiation of proceedings against searched person; or in the course of the assessment proceedings of searched person; or immediately after the assessment proceedings of the searched person. This view of the Hon'ble Supreme Court though in the context of proceedings under section 158BD of the Act has to be applied even for the proceedings to be initiated under section 153C of the Act. In other words, where any document is found or requisitioned or books of account are found and / or any other asset or valuable article or thing is found, which belongs to a person other than searched person, then the Assessing Officer of searched person has to record satisfaction in this regard before handing over the documents to Assessing Officer having jurisdiction over 'other person', other than searched person. In such scenario, where provisions

of the Act have been made clear by Hon'ble Supreme Court, no other view is sustainable.

14. Now, coming to the facts of present case. We make reference to sequence of events as noted by CIT(A) at page 5 of appellate order. On 29.07.2003, search action was carried out at the office and residential premises of search party. On 27.03.2006 order under section 143(3) r.w.s. 153A of the Act was passed in the case of searched party. Further, on 15.06.2007, the Assessing Officer of searched party passed on information / seized documents to the jurisdictional Assessing Officer of assessee. On 18.02.2008, notice under section 153C of the Act was served upon the assessee. On 25.02.2008, letter was filed by assessee stating that original return of income filed be treated as return filed in response to notice issued under section 153C r.w.s. 153A of the Act. Thereafter, assessment proceedings were taken up on various occasions and assessment order under section 143(3) r.w.s. 153C of the Act was passed on 30.12.2008. In such scenario, where assessment of searched person was completed on 27.03.2006, then the handing over of seized documents by Assessing Officer of searched person to the jurisdictional Assessing Officer of assessee on 15.06.2007 is belated and is beyond the period prescribed in section 153C of the Act for initiation of proceedings under section 153C of the Act. Accordingly, we hold so. Even the Circular issued by CBDT dated 31.12.2015 lays down such proposition, in turn, applying the ratio laid down by the Hon'ble Supreme Court in the case of M/s. Calcutta Knitwears (supra). Accordingly, we hold that proceedings initiated under section 153C of the Act are beyond the time prescribed and hence, are invalid and consequently, assessment order passed under section 143(3) r.w.s. 153C of the Act stands

annulled. The grounds of appeal No.4 and 5 raised by assessee are thus, allowed and all other grounds of appeal raised by assessee become academic in nature.

15. The facts and issues in ITA No.1385/PUN/2016 are identical to the facts and issues in ITA No.1384/PUN/2016 and our decision in ITA No.1384/PUN/2016 shall apply *mutatis mutandis* to ITA No.1385/PUN/2016.

16. In the result, both the appeals of assessee are allowed.

Order pronounced on this 6th day of November, 2018.

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 6th November, 2018.

GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-2, Pune;
4. The Pr.CIT-2, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune