

आयकर अपीलीय अधिकरण “G” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 2149/Mum/2016

(निर्धारण वर्ष / Assessment Year 2008-09)

आयकर अपील सं./ ITA No. 2145/Mum/2016

(निर्धारण वर्ष / Assessment Year 2009-10)

आयकर अपील सं./ ITA No. 2147/Mum/2016

(निर्धारण वर्ष / Assessment Year 2010-11)

Shri Ajay Gupta HUF 301-A, Mithila Apartments, J.B. Nagar, Andheri East, Mumbai-400 059	Vs.	The Asst. Commissioner of Income Tax-Central Circle 43, R.No. 659, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAHHA0217J		

आयकर अपील सं./ ITA No. 1829/Mum/2016

(निर्धारण वर्ष / Assessment Year 2008-09)

आयकर अपील सं./ ITA No. 1830/Mum/2016

(निर्धारण वर्ष / Assessment Year 2009-10)

आयकर अपील सं./ ITA No. 1831/Mum/2016

(निर्धारण वर्ष / Assessment Year 2010-11)

The Asst. Commissioner of Income Tax-Central Circle 43, R.No. 659, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai- 400 020	Vs.	Shri Ajay Gupta HUF 301-A, Mithila Apartments, J.B. Nagar, Andheri East, Mumbai-400 059
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ITAs No. 2149, 2145, 2147/Mum/2016 &
ITAs No. 1829 to 1830/Mum/2016

अपीलार्थी की ओर से / Appellant by	:	Shri RC Jain, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri BB Rajendra Prasad, DR

सुनवाई की तारीख / Date of hearing:	16-01-2019
घोषणा की तारीख / Date of pronouncement :	30-01-2019

आदेश / ORDER

PER BENCH:

These appeals filed the assessee are arising out of the common order of Commissioner of Income Tax (Appeals)-49, (in short CIT(A)], in appeal No. CIT(A)-49/IT-200,201,202,203,162/2014-15 dated 05.01.2016. The Assessments were framed by the Asst. Commissioner of Income Tax, Centre Circle-43, Mumbai (in short 'ACIT'/ 'ITO'/ AO') for A.Yrs. 2008-09 to 2010-11 vide order of even date 29.03.2014 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The first common issue in this three appeals of assessee is against the order of CIT(A) confirming the action of the AO despite the fact that the AO framed assessment under section 153C read with Section 143(3) of the Act, the assessee being non searched party, no satisfaction is recorded in the case of searched person. For this assessee has raised the identical additional grounds in all the three appeals i.e. in ITA No. 2149,2145 and 2147/Mum/2016 for AYs 2008-09 to 2010-11. The relevant additional grounds raised in ITA No. 2149/Mum/2016 for AY 2008-09 reads as under: -

“1. *the assessment made under section 143(3) read with section 153C of the I.T. Act,*



1961 without recording satisfaction is void and illegal, and, therefore, bad, in law.

1.1 Your appellant submits that the additional ground as above is purely a legal ground which does not involve any fresh investigation of facts and, therefore, be admitted and adjudicated along with the original grounds of appeal.”

3. At the outset, the learned Counsel for the assessee stated that these additional grounds raised are purely jurisdictional and legal and no new facts need to be investigated, hence he requested for admission of additional grounds. On the other hand, the learned Sr. Departmental Representative has not objected to the admission of these additional grounds.

4. Briefly stated facts are that a search and seizure action under section 132 of the Act was carried out on the Loha Ispat Group of cases on 22.02.2012 and on subsequent date by investigation wing of Income Tax Department, Mumbai. Admittedly, there is no search warrant in the case of the assessee i.e. Ajay Gupta (HUF) and accordingly notice under section 153C of the Act was issued on 30.10.2012 and in response to the same, the assessee filed return of income on 12.08.2013. Admittedly, assessment was also framed under section 153C of the Act read with section 143(3) of the Act in all these three assessment years.

5. When a query was put to the learned Sr. Departmental Representative, whether any satisfaction is recorded for issuing notice under section 153C of the Act, the learned CIT Departmental Representative, contended that as per the records no satisfaction is



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recorded in the case of searched person i.e. Loha Ispat Group of cases, wherein search was conducted by the Income Tax Department on 22.02.2012. However, it was stated that satisfaction was recorded in the case of assessee i.e. Ajay Gupta (HUF). The relevant copy of satisfaction was filed by learned CIT DR and the relevant reads as under: -

“Ajay Gupta (HUF)

27.09.2012

AY 2006-07 to 2011-12

A search and seizure action u/s 132 was carried out by investigation wing in the case of M/s Loha Ispat Ltd. on 22.02.2012. Various premises were covered and it was seen that Ajay Gupta (HUF) who is the proprietor of M/s Varun Sales Corporation has entered into sales/ purchase transactions with M/s Loha Ispat Ltd. for various assessment years. It has also been found out that these are bogus transactions.

In view of the above facts I am satisfied that the case of Ajay Gupta is covered u/s 153 of the IT Act. Notice u/s 153 C is hereby issued to the assessee to furnish true and correct return of income for the AY 2006-07 to AY 2011-12.”

6. We have heard rival contentions and gone through the facts and circumstances of the case. We find from the assessment orders in these three years that the only issue of bogus purchase added by AO and restricted by CIT(A) at 12.5% and also commission of these bogus purchases added at 3% and restricted by CIT(A) at 0.5%. The Revenue



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is in appeal against restriction of addition of bogus purchases and commission. And assessee is in appeal for deletion of entire addition and also raised this jurisdictional issue.

7. We have gone through the facts and noted that search under section 132 of the Act was conducted on the Loha Ispat Group of cases on 22.02.2012 by Investigation Wing of Income Tax Department, Mumbai. Admittedly, the assessee is one of the entities of these group cases but was not covered under search under section 132 of the Act. Admittedly, the assessment was framed under section 153C read with section 143(3) of the Act after issuance of notice under section 153C of the Act. Whether satisfaction is recorded by the AO in the case of searched person i.e. Lohha Ispat Group of cases i.e. Loha Ispat Limited. Once, there is no satisfaction recorded by AO of the searched person as explained by Hon'ble Supreme Court in the case of CIT vs. Calcutta Knitweaves (2014) 362 ITR 673 (SC).

8. We find that Hon'ble Supreme Court in the case of Calcutta Knitweaves (supra) has held that it is clear from the provisions of section 153C of the Act that where the AO of the person searched is satisfied that any money, bullion, jewellery, books of account 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



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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.' Subsequently, the Central Board of Direct Taxes (in short CBDT) vide Circular No. 24/2015 F. No. 273/Misc./140/2015/TTJ dated 31-12-2015 for implementation of the judgment in the case of Calcutta Knitweaves (*Supra*), has explained the procedure in case the AO of the search person and the "the other person" is one at the same then also he is required to record his satisfaction as has been held by the Courts.

9. The relevant circular issued by CBDT reads as under: -

Subject: Recording of satisfaction note under section 158BD/153C of the Act - reg.-

The issue of recording of satisfaction for the purposes of section 158BD/ 153C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitweaves in its detailed judgment in Civil Appeal No.3958 of 2014 dated 12.3.20 14(available



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in MRS at 2014-LL-0312-5 1) has laid down that for the purpose of Section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AU who has jurisdiction over such other person u/s 15813D. The Hon'ble 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."

3. Several High Courts have held that the provisions of section 153C of the Act are substantially similar/pari-materia to the provisions of section 158BD of the Act and therefore, the above guidelines of the Hon'ble SC, apply to proceedings u/s 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.

4. The guidelines of the Hon'ble Supreme Court as referred to in para 2 above, with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that



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even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgment. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD / 153C should be withdrawn / not pressed if it does not meet the guidelines laid down by the Apex Court."

10. The argument of the learned CIT(A) in his order that the searched person and the assessee are being assessed by the same AO, the learned Counsel for the assessee contended that even in cases where the AO of the person searched and the assessee who is sought to be assessed u/s 153C of the Act is the same, the AO is required to record his satisfaction that the assets / documents seized belonged to a person i.e. the assessee, other than the searched person. This view is finally settled by Hon'ble Madhya Pradesh High Court in the case of CIT Vs. Mechmen (2016) 380 ITR 591 (MP) wherein the view is expressed in the following manner :-

"18. The concomitant of this conclusion, is that, the legal position as applicable to Section 158BD regarding satisfaction in the first instance of the first Assessing Officer forwarding the items to the Assessing Officer having jurisdiction; and in the second instance of the



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Assessing Officer having jurisdiction whilst sending noticee to such other person (other than the person referred to in Section 153A), must apply proprio vigore. The fact that incidentally the Assessing Officer is common at both the stages would not extricate him from recording satisfaction at the respective stages. In that, the Assessing Officer is satisfied that the items referred to in Section 153C belongs or belong to a person (other than the person referred to in Section 153A), being sine qua non. He cannot assume jurisdiction to transmit those items to another file which incidentally is pending before him concerning other person (person other than the person referred to in Section 153A). The question as to whether that may influence the opinion of the Assessing Officer having jurisdiction over such other person, also cannot be the basis to take any other view. As a matter of fact, the other Assessing Officer to whom the items are handed over, before issuing notice must himself be satisfied after due verification of the items received and the disclosures made by the other person in the returns for the relevant period already filed by the other person before him. For the same reason, we must reject the argument of the Department that the discretion of the



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Assessing Officer having jurisdiction will be impaired in any manner, if he were to hold a different view. Similarly, as there is no provision either express or implied (in the Act) to dispense with the requirement of satisfaction, if the Assessing Officer happens to be the same, as in this case, the argument of the Department must be negated.

19. After receipt of the materials, the Assessing Officer having jurisdiction is expected to conduct enquiry and due verification of the relevant facts; before forming his prima facie satisfaction. The Assessing Officer having jurisdiction will be well within his rights to form an independent view before issuing notice to the other person (person other than the person referred to in Section 153A) under his jurisdiction on the basis of his own enquiry. In our opinion, the view formed by the Assessing Officer after his own enquiry does not entail in seating in appeal over the satisfaction of the first Assessing Officer, who had handed over the items to him.”

11. In the given facts and circumstances of the case and the legal position clarified by CBDT and the case laws cited supra, we are of the view that the satisfaction in the case is not recorded by the AO of the searched party, which is a pre-condition for invoking jurisdiction u/s 153C of the Act and hence, the assessment framed u/s 153C read with Section



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u/s 143(3) of the Act is bad in law and hence, quashed. The jurisdictional issue of the assessee's appeal is allowed.

12. Since, we have already adjudicated the jurisdictional issue of assessee's appeals by quashing the Block Assessment; we need not to go into the merits of the case raised in Revenue's appeal as well as in assessee's appeal. Hence, the same has become academic and needs no adjudication.

13. In the result, all the three appeals of assessee are allowed and that of the Revenue are dismissed.

Order pronounced in the open court on 30-01-2019.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 30-01-2019.

सुदीप सरकार, व.निजी सचिव / *Sudip Sarkar, Sr.PS*



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**