

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**Before Sh. N. S. Saini, Accountant Member
And**

Sh. N. K. Choudhry, Judicial Member

ITA No. 337/Asr./2017 : Asstt. Year : 2007-08

ITA No. 338/Asr./2017 : Asstt. Year : 2008-09

ITA No. 339/Asr./2017 : Asstt. Year : 2009-10

ITA No. 340/Asr./2017 : Asstt. Year : 2010-11

ITA No. 341/Asr./2017 : Asstt. Year : 2013-14

Jaswinder Singh Bains Alia Jazzy B, 10, Seiyu Complex, Model Town, Jalandhar	Vs	Dy. Commissioner of Income Tax, Central Circle-II, Jalandhar
(APPELLANT)		(RESPONDENT)
PAN No. AMZPS7517F		

Assessee by : Sh. J. S. Bhasin, Adv.

Revenue by : Sh. M. P. Singh, CIT DR

Date of Hearing :21.02.2019

Date of Pronouncement : 28.03.2019

ORDER

Per N. S. Saini, Accountant Member:

These are the appeals filed by the assessee against the order of CIT(A)-1, Jalandhar all dated 14.03.2017 for the assessment years 2007-08, 2008-09, 2009-10, 2010-11 and 2013-14.

2. The assessee has raised additional ground of appeal in the assessment years 2007-08 and 2008-09 which reads as under:

"That the notice issued u/s 153C for this year, not being consistent with the first proviso to section 153C, is illegal and the consequential order under appeal, passed thereupon is also illegal."

3. At the time of hearing, the Id. Authorized Representative of the assessee submitted that this is a legal ground which goes to the root of the assessment order and therefore, the same should be admitted for hearing. For this, he relied on the decision of the Hon'ble Supreme Court in the case of CIT Vs Singhad Technical Education Society (2017) 397 ITR 344 (SC) and in the case of National Thermal Power Co. Ltd. Vs CIT (SC).

4. The Id. Departmental Representative had no objection to the admission of the above additional ground of appeal of the assessee. Hence, the same was admitted and the parties were allowed to make their submission thereon.

5. The common ground of appeal in ground no. 1 in all the assessment years under appeal taken by the assessee reads as under:

"1. That the very initiation of proceedings under section 153C, sans proper satisfaction recorded in the case of person searched, is illegal and therefore, all proceedings, flowing from such illegal assumption of jurisdiction, are void ab initio."

6. We have heard the rival submissions and perused the orders of the lower authorities and materials available on record. The undisputed facts of the case are that a search and seizure operation u/s 132 of the Act was conducted at the residential premises of Sh. Dinesh Kumar Auluck on 05.12.2012. In pursuance to the said search notices u/s 153C of the Act was issued in the name of the assessee on 12.01.2015 for the assessment years under consideration,

namely, assessment years 2007-08, 2008-09, 2009-10 and 2011-12.

7. The impugned assessment orders for all the said four years were passed in pursuance to the said notice u/s 153C of the Act.

8. The contention of the assessee is that the initiation of proceedings u/s 153C of the Act was void in absence of recording of any satisfaction by the Assessing Officer of the searched person and in absence of recording of any valid satisfaction by the Assessing Officer of the assessee.

9. We find on a perusal of Section 153C of the Act as was in force at the material time that two satisfaction notes were required before notice u/s 153C of the Act can be issued and valid jurisdiction to make assessment can be assumed.

10. The first satisfaction note is to be recorded by the Assessing Officer of the searched person to the effect that any money, bullion, jewellery, or other valuable articles or things or books of account or documents seized belonged to a person other than the searched person.

11. Thereafter, the second satisfaction note is to be recorded by the Assessing Officer of the other person (non searched person) to the effect that the seized assets or documents, etc. has a bearing on the determination of income of such other person for the relevant year.

12. It is an established position of law that even when the Assessing Officer of the searched person and the other person

is one and same then also the legal requirement of recording of two satisfaction notes have to be fulfilled, the first satisfaction note has to be prepared in the capacity of the Assessing Officer of the searched person and the second satisfaction note is to be prepared in the capacity of the Assessing Officer of the other person. The above view has been accepted by the CBDT vide its Circular No. 24/2015 dated 31.12.2015 wherein it has been opined that even if the Assessing Officer 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 including the Hon'ble Supreme Court in the case of CIT Vs Calcutta Knitwears (2014) 362 ITR 673 (SC)

13. The Id. Departmental Representative was directed to furnish copy of satisfaction note prepared before assuming jurisdiction in the instant case u/s 153C of the Act and hearing was adjourned to 21.02.2019.

14. On the appointed date, the Id. Departmental Representative filed copy of one satisfaction note and submitted that this common satisfaction note was recorded for all the years under consideration and no other satisfaction note was available in records. The satisfaction note produced before us reads as under:

"In the file of Sh. Dinesh Kumar Auluck for the A.Yrs. 2007-08 to 2012-13

Name & Address of the assessee

*Sh. Jaswinder Singh Bains
Alias Jazzy B, 1st Floor,
Opp. Lucky Marble, Avtar Nagar,
Jalandhar/ (10-Seiyu Complex),
Model Town, Jalandhar.*

*PAN
Status*

*AMZPS7517F
Individual*

Satisfaction note

A search and seizure operation u/s 132 of the Income Tax Act, 1961, was carried out at the residential premises of Sh. Dinesh Kumar Auluck, 136- Seth Hukum Chand Colony, Near DAV College, Jalandhar on 05.12.2012. During the course of search, certain loose documents were found and seized as per Annexure A-1 to A-5 to the Panchnama drawn at the conclusion of the search operation. On perusal of the seized documents, it is noticed that as per the description of the documents and statements recorded during the course of search proceedings, the following documents belonged to the mentioned above i.e. Sh. Jaswinder Singh Bains Alias Jazzy B.

Annex. No	Page No.	Description of Document
A-1	1-3	Original agreement dated 16.03.2007 between Anju Behal w/o Subhash Chander Behal, 849, Urban Estate, Jalandhar (First party) and Jaswinder Singh Bains s/o Gurmail Singh Bains, 87A, Seth Hukum Chand Colony, Jalandhar (second party) regarding land situated at Kapurthala Road, Jalandhar, Flat No. 301, 3 rd Floor Jalandhar for Rs. 17 lacs by second party.
A-1	88-92	Registration deed dated 16.01.2008 between Rajan Chopra and Jaswinder Singh Bains for purchase of Flat No. 302-B, 3 rd Floor, measuring 1490 sq.ft. for Rs.14.0 lac in-Silver Palm.
A-1	107-109	Original Agreement dated 08.03.2009 between Dinesh Aulukh (Company M/s Speed Records bringing Musical alive) and Jaswinder Singh Bains (Jaizy B)
A-1	154-162	Copy of Regn. Deed dated 02.07.1999 regarding Property No.87-88 measuring 20 marla 25 ft. situated at Vill. Maqsudpur, Tehsil & Distt. Jalandhar for Rs.3,23,000/- . Seller : Ram Parkash Sikka, Bansi Lal Sikka & Kishan Lal S/o Ram Lai r/ o WF-145, Ali Mohalla, Jalandhar. Purchaser : Jaswinder Singh Bains s/o Gurnail Singh, r/o Durga Pur, Distt. Nawanshehar

A-1	163-167	Original Regn. Deed dated 21.03.2002 regarding Plot No. LR-189, measuring 1 marla 123 sq.ft. situated at 2 nd floor, Model Town, Jalandhar for Rs. 1,50,000/- . Seller : Jasraj Singh, s/o Joginder Singh, r/o Preet Nagar, Jalandhar Purchaser : Jaswinder Singh Bains s/o Gurnail Smgh, r/o NK-4, Bazar Nauhrian, Jalandhar
A-1	168-170	Original Agreement dated 16.03.2007 between Lalit Kumar s/o Girdhari Lal, r/o WG-312, Islamabad Mohalla, Jalandhar and Jaswinder Singh Bains s/o Gurnail Singh, r/o 87-A, Seth Hukam 3hand Colony, Jalandhar regarding Plot No. 10, measuring 19 marla 232 sq.ft. situated at Vill. Waryana, Distt. Jalandhar for Rs.4,50,000/- .
A-1	204-206	Original agreement dated UNDATED (Stamp paper dated 21.03.2007) made by Pardeep Gupta s/o Karam Chand Gupta r/o 5, Church Road, Civil Lines, Hoshiarpur in the name of Jaswinder Singh Bains s/o Gurnail Singh Bains, 87A, Seth Hukam Chand Colony, Jalandhar regarding Flat No. 302, Silver Apartment, Block-B, Jalandhar Kunj, Kapurthala Road, Jalandhar for Rs. 17,75,000/-.
A-2	42-48	Papers relating to stage show programme booked by Jazzy B by different persons/parties in the year 2009, totaling Rs. 15,06,000/-.
A-2	49	Letter dated 15.12.2010 of Jullundur Gymkhana Club addressed to Dinesh regarding Booking of Artist Jazzy B for Live Show for consideration of Rs. 5.76 lacs.
A-2	50-79	Papers relating to stage show programme booked by Jazzy B by different persons/parties from 2011 upto 2013, totaling Rs. 1,37,20,000/-.
A-2	91-94	These are small slips showing some expenses, Pay-in-slip and also slips under the head show expenses, video shoots and Jazzy, totaling Rs. 39,62,304/-.
A-2	98-99	This page contains various misc. expenses. However this page contains some major entries to Jazzy B-3,00,000-dollar(page 98), Dinesh-Rs. 5 lac-Page 99 and Jazzy's Papa-Rs. 15 lacs & Rs.1 lac to Jazzy's Relative (also backside of 99 page)
A-2	101	Backside of this page contains entries of Rs. 53,47,900/- and Rs. 28,64,300/- under the head Jazzy Account (written on the left side of the page)
A-2	102	This page contains detailed calculations of amount in Indian Currency of Rs. 11,27,800/- and detail of cash m hand in Indian Currency of Rs. 8,78,000/- as on 31 st August. The page is written under the head 'Jazzy in UK'.

A-2	104	Backside of this page contains entries under the head Dinesh, such as :- 30000 lac - Cash 3 30000 - Jazzy 100000 - Mummy 150000 - Bank Account
A-2	114	This page relates to Jazzy B Video Shows of 2008 showing cash transaction of Rs. 40 lacs & 80 lacs
A-2	117	This page shows some bank transactions for Rs. 53,80,000/- of Jazzy B.
A-2	119-140	These pages show heavy transactions of Jazzy B for the different period in foreign currency.
A-3	53-56	Original Booking Agreement dated 10.04.2006 of Silver Pam Apartments, Kapurthala Road in the name of Jaswinder Singh Bains for booking the flat No. 302, 3* floor, Block-B for Rs. 17 lacs alongwith payment details.
A-3	57	Handwritten paper having some amounts in the name of Jazzy B. & Others totaling Rs.1,73,100/-
A-3	72	Policy account statement in respect of Aviva Life Insurance in the name of Jaswinder Singh as on 07.04.2010
A-3	93	Handwritten paper containing detail of amount of Rs. 43,99,500/- in the name of Jazzy B, Veena a/c, Elec. Bills, ICICI etc.
A-3	100	Copy of cheque dated 18.04.2010 No. 192947 for Rs. 1,80,000/- of Indusind Bank a/c No. 0020-190429-050 in the name of Jaswinder Singh Bains. On the bottom of this page, there is handwritten detail of transactions in r/o Kelly Cash for Rs. 2 lac, Navjeet AUS for Rs. 90000/- etc.
A-3	133-138	Papers showing Total in hand amount at Rs. 76,02,000/-, expenses for 2009-10 at Rs. 42,57,641/- and balance Rs. 33,44,359 in the name of Dinesh alongwith applications of the amount under various heads, one of which contains payment shift to Canada, amounting to Rs. 10,20,000/- on pages 136-138. Page No. 135 also contains entries totaling at Rs. 76,02,000/-, which includes 19 lacs as shown, as given to Speed and Rs. 23,87,000/-, as cash in hand Jazzy B.
A-3	147	Detail of NRO A/c No. 12631010000200 in the name of Jaswinder Singh Bains

A-3	171, 174 & 178	<i>This page under the head Total in head + account contains different entries of amounts of different nature like PTC Show, Big Show, PTC Punjab etc., totaling Rs. 79,51,000/-. Major entries are detailed below:- Rs. 21,31,000/- against flat payment Rs. 4 lacs Jaswinder account Rs. 4,75,000/- Dinesh Productions Rs. 10 lacs PTC channel etc.</i>
A-3	172 & 181	<i>This page is under the head Total amount in hand Speed+ad+flat and more, showing total amount of Rs. 1,11,13,418/- and its final disbursement under the name Dinesh Productions account, Jaswinder Singh account, Cash in Jazzy B, Cash in hand etc.</i>
A-3	173	<i>Handwritten papers showing calculations of Rs. 54,65,000/-, which appears to be meant for some Flat. There is also another calculation of totaling Rs. 55,00,000/-, which appears to be receipt from different persons, such as Jazzy B, Jassi Lonwali Home, Sethi Pick same day Faridabad</i>
A-3	183	<i>Receipt dated 23.12.07 for Rs. 1,50,000/- as advance in the name of Jaswinder Singh Bains</i>

I am satisfied that these documents belong to Sh. Jaswinder Singh Bains, Alias Jazzy B, 1st Floor, Opp. Lucky Marble, Avtar Nagar, Jalandhar/(10- Seiyu Complex), Model Town, Jalandhar. The transactions as recorded in these documents have a bearing on determination of total income of Sh. Jaswinder Singh Bains Alias Jazzy B for the relevant A.Ys. 2007-08 to 2012-13 owing to the nature of documents as described above.

As per the provisions of section 153C of the I.T. Act, 1961, where the A.O. is satisfied that any money, bullion, jewellery or other valuable articles or things or books of accounts or documents seized...belongs or belong to a person other than the person referred to in section 153A (where a search was initiated) then the A.O. having jurisdiction over such person shall proceed against and issue notice to each such other person and assess or reassess such other person in accordance with the provisions of section 153A of the I.T. Act, 1961.

Since no search was conducted in the case of the assessee, provisions of section 153C of the I.T. Act, 1961

are applicable to the assessee. Accordingly, this is a fit case where notice u/s 153C of the I.T. Act, 1961 is required to be issued to assess/reassess the income of the assessee for the assessment years 2007-08 to 2012-13 i.e. six assessment years immediately prior to the assessment year relevant to the previous year in which search was conducted.

In view of the above discussion, I proceed in the case of Sh. Jaswinder Singh Bains, Alias Jazzy B, 1st Floor, Opp. Lucky Marble, Avtar Nagar, Jalandhar/(10-Seiyu Complex), Model Town, Jalandhar for the A.Y. 2007-08 to 2012-13, falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted & issue notice u/s 1523C of the I.T. Act, 1961."

Sd/-
(Aditya Shukla)
Deputy Commissioner of Income Tax,
Central Circle-II, Jalandhar

Dated: 12.01.2015

15. The language employed in the above recording shows that the above was recorded in the capacity of the Assessing Officer of the assessee. Thus, we find that no satisfaction note was recorded by the Assessing Officer of the searched person or in capacity of the Assessing Officer of the searched person.

16. As discussed earlier, recording of satisfaction by the Assessing Officer of the searched person or in the capacity of the Assessing Officer of the searched person is a condition precedent for assuming jurisdiction u/s 153C of the Act. Therefore, in our considered view, no valid jurisdiction to issue notice u/s 153C of the Act and to make assessment u/s 153C of the Act was assumed in the instant case. Consequently, the impugned order of assessment passed u/s 153C of the Act for all the four years i.e. assessment years 2007-08, 2008-09, 2009-10 and 2011-12 under consideration is *void ab initio*. We accordingly quash the

same. Therefore, this ground of appeal of the assessee for all the years under consideration is allowed.

17. In view of our above decision, the other grounds of appeal have become infructuous and therefore, not adjudicated upon.

18. In the result, the appeals of the assessee for the assessment years 2007-08, 2008-09, 2009-10 and 2011-12 are allowed.

Assessment Year 2013-14

19. Ground No. 1 of the appeal of the assessee reads as under:

"1. That the very initiation of proceedings under section 153C, sans proper satisfaction recorded in the case of person searched, is illegal and therefore, all proceedings, flowing from such illegal assumption of jurisdiction, are void ab initio."

20. We have heard the rival submissions and perused the orders of the lower authorities and materials available on record. In the instant case, the assessee filed his return of income on 29.11.2014. As per the impugned order of assessment notice u/s 142(1) of the Act was issued on 12.01.2015 and notice u/s 143(2) of the Act was issued on 05.02.2015.

21. No material could be brought before us by the Authorized Representative of the assessee to show that the impugned order of assessment was passed in pursuance of any proceedings initiated u/s 153C of the Act for the year under consideration. In absence of the same, we do not find any

merit in this ground of the appeal of the assessee and accordingly, the same is dismissed.

22. Ground Nos. 2 & 3 of the appeal of the assessee reads as under:

"2. That there being no incriminating document found in search of a third person, identified as belonging to or pertaining to this assessee, in strict terms of section 153C, the reliance placed by Id.AO on some loose documents found in the search of M/s Speed Records and M/s Movie Box Records P Ltd, Jalandhar, to justify addition of Rs.11,00,000/- made in this case, is grossly misplaced and contrary to law and facts of the case.

3. That without prejudice to above, in the given facts of the case, the Id.CIT(A) was not justified in mechanically confirming the addition of Rs.11,00,000/-, on a premise different from the one taken by Id.AO, towards the alleged undisclosed receipt for working in a movie, based on an unsubstantiated documents, found from a third parties."

23. The Assessing Officer observed as under:

"3. Issue of undisclosed receipts as per documents seized in search: During the course of the search proceedings at the office of M/s Speed Records and M/s Movie Box Records Pvt. Ltd. EK-216, Phagwara Gate, Jalandhar loose documents were found and seized as page nos. 488, 489 of Annexure A-8. The document no. 489 is one of the core documents of the search. It is a detail of the expenses incurred by various partners and investors in M/s SSS Movies for the production of the movie 'Best of Luck' till the date 11.07.2012. As per this document, there is an entry which mentions payment of second installment to Jazzy B of Rs. 11,00,000/-. The assessee Sh. Jazzy B was an actor in the movie. However, when the receipts account of the assessee for the year is examined, it is seen that this entry has not been reflected in his receipts as income. The assessee was

therefore, vide order sheet entry dated 23.03.2015 asked to explain as under:

"Refer to page no.489 Annexure A-8 seized from the office premises of M/s Movie Box Pvt. Ltd. EK-216, Phagwara Gate, Jalandhar. As per this document you have received an amount of Rs.11,00,000/- as second installment for the film Best of Luck. However, you are receipt account does not show this receipt. Why the same be not treated as unaccounted income during the year."

The assessee has not submitted any reply to this query except for stating that the receipts are as per books of accounts. The reply of the assessee has been considered and is found to be unacceptable. The document page 489 clearly mentions the total expenditure on the movie till 11.07.2012 is Rs.2,28,18,472/-. The breakup of this expenditure incurred by each of the partners is as under:

<i>Kataria</i>	<i>:</i>	<i>Rs. 58,97,000/-</i>
<i>Sunny</i>	<i>:</i>	<i>Rs. 69,59,320/-</i>
<i>Gunbir</i>	<i>:</i>	<i>Rs. 46,85,000/-</i>
<i>Speed</i>	<i>:</i>	<i>Rs. 52,77,152/-</i>

It has been found in the cases of partners mentioned above that a part of the above mentioned investments have been unaccounted and made outside the books of accounts. Since the investments were unaccounted, a number of payments were made in cash outside the books of accounts. The page clearly mention's an amount of Rs.11,00,000/- paid to the assessee. This amount has not been reflected by the assessee in his receipts.

In view of the discussion above, an amount of Rs.11,00,000/- is being added to the income of the assessee on account of undisclosed receipts for working in the movie 'Best of Luck'."

24. On appeal, the Commissioner of Income Tax (Appeals) held as under:

"9. During the course of appellate proceedings, the assessee submitted that since these notings were by Sh. Dinesh Auluck seized from him in the course of search and seizure action, the assessee is unaware about the same and has corrected reflected his receipts in his P & L account. The assessee has relied upon judgment of the Supreme Court in case of Common Causes Vs UOI and others. However the judgment is easily distinguishable on the facts inasmuch as it was for setting aside the appointment of Sh. K.V. Chaudhary as CVC on the basis of some action taken in Income Tax searches related to the Aditya Birla Group and some other parties, stating that allegations against Sh. Chaudhary were required to be enquired into. I find that this judgment is far removed from the facts of the instant case.

10. Sh. Dinesh Auluck has been regularly looking after the business of the assessee. In fact the assessee resides outside India most of the times and it is Sh. Dinesh Auluck who manages his business affairs including booking of shows, contracts for various events etc. therefore the notings found and seized at the residence of Sh. Dinesh Auluck cannot be brushed aside by the assessee as not pertaining to him. The notings are very specific inasmuch as dates, names of the shows and amounts received are clearly mentioned. Further the assessee himself has requested for deduction in hands of assessee on payments made to Sh. Dinesh Auluck for managing assessee's business. This further buttresses the fact that Sh. Dinesh Auluck was looking after the business of assessee. This confirms that these are serious notings and reflect the income of the assessee. I therefore see no reason to interfere in the order of the Assessing Officer and the addition is confirmed."

25. We have heard the rival submissions and perused the orders of the lower authorities and material available on record. The Assessing Officer observed that a search and seizure operation was conducted in the office premises of M/s

Speed Records and M/s Movie Box Records Pvt. Ltd. During the course of the search, certain documents were found and seized by the department. The seized document marked as A-8 at page no. 489 contains details of expenses incurred by various partners and investors in M/s SSS Movie for production of the movie 'Best of Luck' till the date 11.07.2012. As per this document, there is an entry which mentions payment of second installment to Jazzy B of Rs.11,00,000/-. The Assessing Officer inferred that Jazzy B stands for Jaswinder Singh Bains, the assessee. The assessee was an actor in the movie "Best of Luck". The assessee in his account has not shown the said amount of Rs.11,00,000/- as its receipt. Therefore, the Assessing Officer concluded that the said amount of Rs.11,00,000/- was undisclosed receipt of the assessee and therefore, he added the same to the income of the assessee.

26. On appeal, the Commissioner of Income Tax (Appeals) confirmed the action of the Assessing Officer.

27. Before us, the Authorized Representative of the assessee reiterated the submissions made before the authorities below and the Departmental Representative relied on the orders of the lower authorities.

28. We find that the addition was solely based upon a document found during the course of the search in the possession of M/s Speed Records and M/s Movie Box Records Pvt. Ltd. The said document was admittedly not found in possession or control of the assessee. Therefore, no legal assumption or presumption can be drawn on the basis of the said seized document against the assessee.

29. Further, it is not in dispute that the assessee is not the author or writer of the said seized document. It is also not in dispute that after thorough search, no document written or signed by the assessee wherein the assessee acknowledged the receipt of amount in consideration was found. No other corroborative material which was found during the course of search has been brought on record by the revenue to show that the entries recorded in the seized document was true and authentic.

30. It is also not in dispute that the seized document was not a regular books of account maintained by any person during the course of its business.

31. In the above circumstances, in our considered opinion, the said seized document cannot be treated as an evidence against the assessee.

32. Our above view finds support from the decision of the Hon'ble Supreme Court in the case of Common Cause (A Registered Society) and Others Vs Union of India and Others (2017) 394 ITR 220 (SC) has held as under:

"22. In case of Sahara, in addition we have the adjudication by the Income- tax Settlement Commission. The order has been placed on record along with I. A. No. 4. The Settlement Commission has observed that the scrutiny of entries on loose papers, computer prints, hard disk, pen drives, etc. have revealed that the transactions noted on documents were not genuine and have no evidentiary value and that details in these loose papers, computer print outs, hard disk and pen drive, etc. do not comply with the requirement of the Indian Evidence Act and are not admissible evidence. It further observed that the Department has no

evidence to prove that entries in these loose papers and electronic data were kept regularly during the course of business of the concerned business house and the fact that these entries were fabricated, non-genuine was proved. It held as well that the Principal Commissioner of Income-tax/Departmental representative have not been able to show and substantiate the nature and source of receipts as well as the nature and reason of payments and have failed to prove evidentiary value of loose papers and electronic documents within the legal parameters. The Commission has also observed that the Department has not been able to make out a clear case of taxing such income in the hands of the applicant-firm on the basis of these documents.

23. It is apparent that the Commission has recorded a finding that transactions noted in the documents were not genuine and thus has not attached any evidentiary value to the pen drive, hard disk, computer loose papers, computer printouts.

24. Since it is not disputed that for entries relied on in these loose papers and electronic data were not regularly kept during the course of business,

Page No : 0231

such entries were discussed in the order dated November 11, 2016 passed in Sahara's case by the Settlement Commission and the documents have not been relied upon by the Commission against the assessee, and thus such documents have no evidentiary value against third parties. On the basis of the materials which have been placed on record, we are of the considered opinion that no case is made out to direct investigation against any of the persons named in the Birla's documents or in the documents A-8, A-9 and A-10, etc., of Sahara."

33. In the above case, the Hon'ble Supreme Court has also quoted from its earlier decision in the case of CBI Vs V. C. Shukla wherein it has been observed as under:

"17. It has further been laid down in V. C. Shukla (supra) as to the value of entries in the books of account, that such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. It has been held even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

17. From a plain reading of the section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfil the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed.

19. With respect to evidentiary value of regular account book, this court has laid down in V. C. Shukla, thus:

"37. In Beni v. Bisan Dayal, it was observed that entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in

absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another. In Hira Lal v. Ram Rakha the High Court, while negating a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said that the rule as laid down in section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts."

20. It is apparent from the aforesaid discussion that loose sheets of papers are wholly irrelevant as evidence being not admissible under section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by this court."

34. In view of the above, the entry in the seized document was not an evidence against the assessee.

35. In the instant case as it is the allegation of the revenue that the assessee has received Rs.11,00,000/- more than the receipt recorded in his books of account, the onus was on the revenue to bring relevant and cogent material on record to prove that the assessee and no other person has actually

received the said Rs.11,00,000/- during the year under consideration.

36. In absence of any such material having been brought on record by the revenue, the addition made merely on the basis of said seized document is unsustainable. We, therefore, delete the addition of Rs.11,00,000/- and allow this ground of appeal of the assessee.

37. In the result, the appeals of the assessee are allowed.
(Order Pronounced in the Open Court on 28/03/2019)

Sd/-
(N. K. Choudhry)
Judicial Member

Sd/-
(N. S. Saini)
Accountant Member

Dated: 28/03/2019

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR