

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : C : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No.3263/Del/2015
Assessment Year: 2010-11

ACIT,
Central Circle-07,
ARA Centre, Jhandewalan Extn.,
New Delhi.

Vs SRG Infrastructure Pvt. Ltd.,
8-A/3, WEA, Karol Bagh,
New Delhi.

PAN: AAJCS1335C

(Appellant)

(Respondent)

Assessee by	:	Shri Rakesh Kumar Khiwani, CA
Revenue by	:	Mrs. Naina Soin Kapil, Sr. DR
Date of Hearing	:	01.07.2019
Date of Pronouncement	:	15.07.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the Revenue is directed against the order dated 24th March, 2015 of the CIT(A)-24, New Delhi, relating to assessment year 2010-11.

2. Facts of the case, in brief, are that the assessee is a private limited company. A search and seizure operation u/s 132 of the Income Tax Act was carried out on M/s Satya Parkash & Brothers group of cases on 28.10.2010 headed by Sh. Satya Prakash Gupta. M/s S.R.G. Infrastructures P. Ltd. is one of the associate companies of the group. During search on the group, certain documents relating to M/s S.R.G.

Infrastructures P. Ltd. were found and seized. The Assessing Officer accordingly issued notice u/s 153C of the Act on 8th May, 2012 requiring the assessee to file return of income within 15 days from the service of notice u/s 153C of the IT Act, 1961. The assessee, vide letter dated 27.11.2012, submitted that the return already filed on 30th March, 2012 declaring total income of Rs.8,270/- may be treated as return filed in response to notice u/s 153C of the IT Act. During the course of assessment proceedings, the assessee objected to the notice issued u/s 153C terming the same as illegal. The Assessing Officer disposed of that objection and, thereafter, proceeded to complete the assessment. Rejecting various explanations given by the assessee from time to time, the Assessing Officer determined the total income of the assessee at Rs.1,43,23,550/-.

3. Before the CIT(A), the assessee challenged the illegality of the proceedings u/s 153C of the IT Act. Based on the arguments advanced by the assessee, the Id.CIT(A) quashed the proceedings u/s 153C of the IT Act on the ground that the satisfaction note in respect of section 153C proceedings was not recorded by the Assessing Officer of the searched person. According to him, the jurisdiction u/s 153C was assumed by the Assessing Officer without fulfilling the requirement of section 153C. For the above proposition, he relied on the decision of the Hon'ble Delhi High Court in the case of *M/s Pepsi Food (P) Ltd. vs. ACIT*, reported in 52 *taxmann.com* 220 (Del), *DSL Properties Pvt. Ltd. vs. DCIT*, reported in 33 *taxmann.com* 420 (Del-Trib.) and the

decision in the case of Pepsico India Holdings Pvt. Ltd. vs. ACIT, reported in 270 CTR 467 (Del).

4. Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:-

- “1. The order of Ld. CIT(A) is not correct in law and facts.
2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in quashing the order passed by the Assessing Officer by treating the assumption of jurisdiction u/s 153C bad in law by relying on the ratio of judgment of the Hon'ble High Court in the case of M/s Pepsi Foods (P) Ltd. (supra) and M/s Pepsico India Holdings Pvt. Ltd. (Supra).
3. On the fact and circumstances of the case the Ld. CIT(A) has erred in law in deciding the case without going into merits of the case.
4. The appellant craves leave to add, amend any/all grounds of appeal before or during the course of hearing of the appeal.”

5. The Id. DR strongly challenged the order of the CIT(A). She submitted that the Assessing Officer of the searched person and the Assessing Officer of the assessee was one and the same. As the Assessing Officer of the assessee, he has recorded his satisfaction in respect of initiation of proceedings u/s 153C. Therefore, the proceedings u/s 153C were validly initiated. Referring to the decision of the Hon'ble Delhi High Court in the case of *PCIT vs. Sheetal International Pvt. Ltd., 2017-TIOL-1355-HC-DEL-IT*, she submitted that the Hon'ble High Court in the said decision has followed another decision of the Hon'ble High Court in the case of *Ganpati Fincap Services Pvt. Ltd. vs. CIT, 2017-TIOL-1033-HC-DEL-IT*, where it has been held as under:-

"....Where the AO of the searched person and the other person is the same, such a satisfaction note qua the other person has to be recorded by the AO of the searched person prior to the initiation of the proceedings against the other person. This is a sine die non for triggering the proceedings against the other person under Section 153C of the Act. Further, there do not have to be two separate satisfaction notes prepared by the AO of the searched person even where he is also the AO of the other person. In such event, the AO need make only one satisfaction note. That satisfaction note is qua the other person. Further, it is sufficient that such satisfaction note is placed in the file of the other person by the AO in his capacity as the AO of such other person...."

6. Referring to the decision of the Hon'ble Delhi High Court in the case of *PCIT vs. Nau Nidh Overseas (P) Ltd.*, 394 ITR 753 (Del), she submitted that the Hon'ble High Court in the said decision has held that the statement made by the Director of the assessee company during the course of search at his premises that some of the cash seized from his premises belonged to the assessee was sufficient material to initiate proceedings u/s 153C in case of the assessee. The Hon'ble High Court in the said decision has considered the decision in the case of *Pepsico India Hoding Ltd.* (supra). There also the Assessing Officer of the search person and the assessee were the same and the satisfaction note was recorded by the Assessing Officer of the assessee. The Hon'ble High Court held that the issue of notice u/s 153C is valid. Referring to the decision of Hon'ble Delhi High Court in the case of *PCIT vs. Super Malls (P) Ltd.*, 393 ITR 557, she submitted that the Hon'ble Delhi High Court in that case has held that where an Assessing Officer has issued satisfaction note u/s 153C, after satisfying himself with the contents of documents seized, the Tribunal could not declare it as invalid on hyper technical ground of incorrect terminology used in such note. Satisfaction note recorded u/s 153C in respect of the assessee, being the third party

could not be said to be invalid on a hyper technical ground of interpretation of the expression 'belonging to' too literally. She accordingly submitted that the order of the CIT(A) being not in accordance with law, should be set aside. However, since he has not decided the appeal on merit, she has no objection if the matter is restored to his file for deciding the issue on merit.

7. The Id. counsel for the assessee, on the other hand, strongly supported the order of the CIT(A). He submitted that during the course of search, no incriminating material was found. The assessment also is not based on any incriminating material found during the course of search belonging to the assessee. Even the Id. DR also has not pointed out any incriminating material which has been used for making the assessment. For the above proposition, he relied on the decision of the Hon'ble Supreme Court in the case of *CIT vs. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC)*.

8. We have considered the rival arguments made by both the sides and perused the orders of the Assessing Officer and CIT(A). We have also considered the various decisions relied on by both the sides. We find the Assessing Officer in the above case has passed the order u/s 153C read with section 143(3) and determined the total income of the assessee at Rs.1,43,23,550/- wherein he disallowed the expenses of Rs.1,70,280/- and made addition of Rs.1,41,45,000/- as 'Income from other sources.' We find the Id.CIT(A) quashed the proceedings u/s 153C on the ground that the satisfaction note in respect of 153C proceedings was not recorded by the Assessing

Officer of the searched person. While doing so, he relied on the decision of the Hon'ble Delhi High Court in the case of *Pepsi Food (P) Ltd. (supra)*, *Pepsico India Holdings Pvt. Ltd. (supra)* and *DLS Properties Pvt. Ltd. (supra)*. However, he has not decided the issue on merit. It is the submission of the Id. DR that the Assessing Officer of the searched person and the assessee was one and the same. As the Assessing Officer of the assessee, he recorded his satisfaction in respect of initiation of proceedings u/s 153C and, therefore, the proceedings u/s 153C were validly initiated.

9. We find merit in the above argument of the Id. DR. We find the Hon'ble Delhi High Court in the case of *PCIT vs. Sheetal International Pvt. Ltd., vide ITA Nos. 375 to 379/2017, order dated 10th July, 2017*, has decided an identical issue in favour of the Revenue by observing as under:-

“5. From the impugned order dated 28th October 2016, it is seen that the short ground on which it was held by the ITAT that the proceeding was not validly initiated under Section 153C of the Act since there was no satisfaction note recorded by the Assessing Officer (‘AO’) of the searched person

6. In the present case, the AO of the searched person and the other person (the Assessee) was the same. In similar circumstances, the Court has recently in the decision dated 25th May, 2017 in WP (C) No. 525 of 2015 (*Ganpati Fincap Services Pvt Ltd. v. Commissioner of Income Tax*) held, inter alia, as under:

“(iv) Where the AO of the searched person and the other person is the same, such a satisfaction note qua the other person has to be recorded by the AO of the searched person prior to the initiation of the proceedings against the other person. This is a sine die non for ITA Nos. 375, 376, 377, 378, 379/2017 Page 3 of 4 triggering the proceedings against the other person under Section 153C of the Act.

(v) There do not have to be two separate satisfaction notes prepared by the AO of the searched person even where he is also the AO of the other person. In such event, the AO need make only one satisfaction note. That satisfaction note is qua the other person. Further, it is sufficient that such satisfaction note is placed in the file of the other person by the AO in his capacity as the AO of such other person.”

7. In that view of the matter, the impugned order of the ITAT which proceeds to invalidate the proceedings under Section 153C of the Act only for the reason that the AO of the searched who was also that of the Assessee, did not record a separate satisfaction note cannot be sustained in law.

8. The question framed is, accordingly, answered in the negative i.e., in favour of the Revenue and against the Assessee. The impugned order of the ITAT is hereby set aside.

9. Learned counsel for the Assessee, however, urges that this is a case where there were no incriminating materials available to proceed against the Assessee under Section 153C of the Act.

10. The above issue has not been examined on merits by the ITAT. In the circumstances, the Court considers it appropriate to direct that, for the above purpose, the aforementioned appeals shall stand restored to the file of the ITAT and the ITAT will hear them on merits.

11. The appeals aforementioned will now be listed before the ITAT on 4th September, 2017. The ITAT is requested to endeavour to dispose them of on merits within a period of six months thereafter.

12. The appeals are disposed of in the above terms.”

10. Since this is the latest order of the Hon'ble Delhi High Court and since the Assessing Officer of the searched person and the other person is same, therefore, respectfully following the decision cited (supra), we hold that the Id.CIT(A) was not justified in quashing the 153C proceedings merely on the ground that the satisfaction note in respect of 153C proceedings was not recorded by the Assessing Officer of the searched person.

11. Since the Id.CIT(A) has not decided the issue on merit, therefore, we deem it proper to restore the issue to the file of the CIT(A) with a direction to decide the issue on merit after giving due opportunity of being heard to the assessee. He shall decide

the issue as per fact and law. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

12. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

The decision was pronounced in the open court on 15.07.2019.

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 15th July, 2019

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi