

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'A', LUCKNOW**

**BEFORE SHRI A. D. JAIN, VICE PRESIDENT AND
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER**

ITA Nos.91 & 92/Lkw/2017
Assessment Years:2010-11 & 12-13

Smt. Putul Choubey, Vidyasagar Sarani, Kumarpur, Asansol. PAN:ACIPC 6086 A (Appellant)	Vs.	Dy.C.I.T., Central Circle, Noida. (Respondent)
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Appellant by	Shri Rakesh Garg, Advocate
Respondent by	Shri A. K. Bar, CIT, (DR)
Date of hearing	24/07/2019
Date of pronouncement	22/08/2019

ORDER

PER T. S. KAPOOR, A.M.

These two separate appeals have been filed by the assessee against the separate orders of learned CIT(A)-IV, Kanpur both dated 24/11/2016 pertaining to assessment years 2010-11 & 2012-13. Both the appeals involve similar issue which were heard together and therefore, for the sake of convenience a common and consolidated order is being passed.

2. The grounds of appeal taken by the assessee are reproduced below:

I.T.A. No.91/Lkw/2017

"1. That Ld. CIT(A) erred in law and on facts in passing ex-parte order dt. 24.11.2016 passed without giving reasonable opportunity of being heard by rejecting the adjournment application, thus denying natural justice, is bad in law and on facts.

2. *That the Ld.CIT(A) erred in law & on facts in passing order and rejecting the grounds of appeal before him is also bad in law and facts.*

3. *That the Ld. CIT(A) has erred in law and on facts in holding that the action initiated by the AO by notice u/s 153C and the assessment made by him u/s 153C is justified and valid in law, although there was no seizure of any incriminating material evidencing any undisclosed income of the assessee.*

4. *That the Ld.CIT(A) has erred in law and on facts in confirming the addition of Rs.36,00,00,000/- made by the AO u/s.68 of the Act although the same was received by the assessee on family arrangement after the death of father and also disclosed by the assessee in the original return.*

5. *That the Ld. CIT(A) has erred in law and on facts in confirming the AO's addition of Rs.1,34,90,706/- made u/s.69 being the difference between the stamp duty value and the deed value of a flat purchased by the assessee, although there is no evidence of the payment of difference amount by the assessee."*

I.T.A. No.92/Lkw/2017

"1. *That Ld. CIT(A) erred in law and on facts in passing ex-parte order dt.24.11.2016 passed without giving reasonable opportunity of being heard by rejecting the adjournment application, thus denying natural justice, is bad in law and on facts.*

2. *That the Ld.CIT(A) erred in law & on facts in passing order and rejecting the grounds of appeal before him is also bad in law and facts.*

3. *That the Ld. CIT(A) has erred in law and on facts in holding that the action initiated by the AO by notice u/s.153C and the assessment made by him U/S.153C is justified and valid in law, although there was no seizure of any incriminating material evidencing any undisclosed income of the assessee."*

3. At the outset, Learned A. R. submitted that he will not be pressing ground Nos. 1 & 2 in both the appeals therefore, these grounds may be dismissed as not pressed. Accordingly, these grounds are dismissed as not pressed.

4. Arguing ground No. 3, Learned A. R. submitted that the assessment was made in these cases u/s 153C of the Act although there was no seizure of any incriminating material evidencing any undisclosed income of the assessee and also there was no satisfaction recorded by the Assessing Officer. The Bench observed that this grievance was not specifically reflected in ground No. 3 and, therefore, Learned A. R. was asked to elaborate on this ground. In this respect Learned A. R. took us to order sheet entry dated 25/07/2017 recorded by the Hon'ble Tribunal where the Hon'ble Tribunal had directed D. R. to produce satisfaction note recorded in the case of the searched person. It was submitted by Learned A. R. that such direction by Hon'ble Bench on 25/07/2017 reflects that Hon'ble Tribunal had inferred from the contents of ground No. 3 that the assessee had also challenged the non recording of satisfaction in the case of searched person as well as in the case of the assessee and had therefore, directed Learned D. R. to produce the copy of satisfaction note. It was submitted that on further occasions, the matter got adjourned and vide order sheet entry dated 24/04/2018, the Hon'ble Tribunal, on the request of the Department, again granted another opportunity to Department to file satisfaction notes. It was submitted that again the Assessing Officer did not file the satisfaction note. Learned A. R. in this respect submitted that to be more specific to this grievance, he has filed petition for admission of additional ground wherein he has specifically taken the ground of non recording of satisfaction u/s 153C of the Act. It was submitted that since the ground raised by the assessee is a purely legal ground and, therefore, may be admitted and adjudicated and reliance was placed on the decision of

Hon'ble Supreme Court in the case of NTPC Ltd. vs. CIT 229 ITR 383 wherein Hon'ble Apex Court has held that assessee can take legal ground at any forum provided the same was coming from the facts of the case.

4.1 Learned D. R., on the other hand, stated that he had no objection to admission of additional ground and stated that in fact the cases were being adjourned continuously from 25/07/2017 only for the limited purpose of examination of satisfaction recorded by Assessing Officer. Learned D. R. in this respect filed a copy of letter dated 28/02/2018 written by Id. DCIT, Central Circle, Noida stating therein that the satisfaction note in the case of searched person and in the case of the assessee was not readily available and was being traced. Learned D. R. further filed a letter dated 18/05/2018 written by same Assessing Officer wherein the Assessing Officer had stated that despite best efforts, satisfaction note in the case of the searched person as well as in the case of the assessee could not be found. Learned D. R. however argued that non availability of satisfaction note does not mean that satisfaction was not recorded by the Assessing Officer.

4.2 Learned A. R. submitted that despite passing of a period of more than one year from the date of these letters, the Revenue has not been able to file the copy of satisfaction note, which implies that the satisfaction note was never recorded in the case of the searched person as well as in the case of the assessee. It was argued that in the absence of non recording of satisfaction, the assessment orders passed by the Assessing Officer becomes null and void, as has been held in a number of cases. Our specific attention was invited to an order of Hon'ble Allahabad High Court in the case of CIT vs. Gopi Apartment where, vide order dated 1st May, 2014, the Hon'ble court has held that recording of satisfaction by the Assessing Officer having jurisdiction over the person in respect of whom the search is conducted as well as on the other person, is necessary, even if the

Assessing Officer of both the persons was the same. Our attention was further invited to CBDT Circular No. 24/2015 where the CBDT itself had clarified that recording of satisfaction note u/s 158BD/153C was necessary. In view of these facts and circumstances, it was argued that in the absence of non recording of satisfaction, the assessment order is null and void and has to be quashed.

5. Learned D. R., on the other hand, relied on the findings of learned CIT(A). However, he could not controvert the contents of the letters received from the Assessing Officer wherein he has stated that no satisfaction note was found in the case of the searched person and in the case of the assessee.

6. We have heard the rival parties and have gone through the material placed on record. We find that in this appeal the assessee had taken ground No. 3, which reads as under:

3. That the Ld. CIT(A) has erred in law and on facts in holding that the action initiated by the AO by notice u/s 153C and the assessment made by him u/s 153C is justified and valid in law, although there was no seizure of any incriminating material evidencing any undisclosed income of the assessee.

As per order sheet entry of the Tribunal, the appeal was fixed for hearing on 14/07/2017. However, on an application by the learned counsel, the appeal got adjourned to 25/07/2017. On 25/07/2017, the order sheet entry recorded by Tribunal, reads as under:

"25/07/2017

From Department: Shri J. S. Minhas, D.R.

From Assessee : Shri K. K. Khemika, Advocate

Learned D. R. is directed to produce the satisfaction note recorded in the case of Abad Group in whose case, search has

taken place on 09/04/2012. The appeal be fixed when the next Bench functions. Hearing adjourned sine die."


From the above order of the Hon'ble Tribunal, it is apparent that Hon'ble Tribunal had directed Learned D. R. to produce satisfaction note recorded in the case of the person searched and the appeal was adjourned sine die. After that, on a number of occasions, the appeal got adjourned. Vide order sheet entry dated 24/04/2018, the Department again requested for more time to file satisfaction note. However, the Department could not file the satisfaction notes recorded in the case of the searched person as well as in the case of the assessee. Therefore, from these facts and orders recorded on the order sheet of Hon'ble Tribunal, it is apparent that matter was continuously getting adjourned because of the inability of the Department to file satisfaction note as was directed by the Tribunal. While hearing the appeal on 24/07/2019, the Bench observed that this specific grievance of the assessee was not coming out from ground No. 3 taken by the assessee and to this Learned A. R. explained the complete facts and also filed a petition for admission of additional ground, which was on legal issue and reads as under:

"1. Because there being no 'satisfaction' to initiate proceedings u/s 153C, the entire assessment framed u/s 153C is bad in law and be quashed."

The above ground taken by the assessee is purely a legal ground and is coming out from the facts of the case. The order sheet entries, recorded by Tribunal, demonstrate that Hon'ble Tribunal wanted to examine satisfaction note therefore, the grievance of the assessee coupled with the fact that additional ground is purely a legal issue and goes to the root of matter therefore, the same is being admitted and is being adjudicated as under.

7. Learned D. R., during the course of hearing, filed two letters written by Dy.C.I.T., Central Circle – Noida wherein the Assessing Officer has written that satisfaction note in the case of the searched person as well as in the case of the assessee was not readily available and was being traced. Vide letter dated 18/05/2018, the same Assessing Officer again wrote that despite best efforts, satisfaction note in the case of the searched person as well as in the case of the

assessee could not be found out. The above two letters, which were placed on record by Learned D. R. on the date of hearing, have been made part of this order and which are reproduced as under:


Government of India,
Office of the Dy. Commissioner of Income Tax,
Central Circle, Sector-33, Noida
Mobile-9599543274, Phone-0120-2504337
E-mail: AH.Ansari@incometax.gov.in

F. No. DCIT/CC/Noida/2017-18/ Dated: 28/02/2018

To,
The Commissioner of Income Tax, (DR)
Income Tax Appellate Tribunal - I
5th Floor, Picup Bhavan
Gomati Nagat Lucknow- 226010

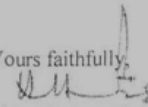
Sir,

Sub: -ITA-No91/L/2017&92L/2017 AY 2010-11&2012-13 IN THE CASE OF Putul Choubey, Asansol Kolkata - Reg.

As desired, the following details are submitted as under-

- a) Assessment Records in the case of Smt Putul Choubey for the AY 2010-11& 2012-13 (In two volumes)
- b) Satisfaction Note in the case of Smt. Putul Choubey for the AY 2010-11& 2012-13 is not readily available in the record and the same is being traced.
- c) Satisfaction Note in the case of AABAD BUILDWELL GROUP in search conducted in the case on 09/04/2012 is not readily available in the record and the same is being traced.

Encl- As above

Yours faithfully,

(Akhtar H. Ansari)
Deputy Commissioner of Income Tax,
Central Circle, Noida

Copy to -

1. The Pr. Commissioner of Income Tax, (C)7/81-B, Tilak Nagar, Kanpur-208002 for kind information
2. Joint Commissioner of Income Tax, Central Range, Bhansali Ground, Delhi Road, Meerut for kind information.

Deputy Commissioner of Income Tax,
Central Circle, Noida



Government of India,
Ministry Of Finance, Department Of Revenue,
Office of the Dy. Commissioner of Income Tax, Central Circle,
Sector-33, Noida
ah.ansari@incometax.gov.in

F. No. DCIT/CC/Noida/2017-18/ 185

Dated: 18.05.2018

To,

The Commissioner of Income tax (DR)
ITAT-1, 5th Floor, Pucup Bhawan
Gomati Nagar, Lucknow-226010

Sir,

**Sub- ITA-91/L/2017 & 921/2017 AY 2010-11& 2012-13 in the case of Putul Choubey ,
Vidya Sagar Sarani Asansol Kolkata- Reg-**

Ref- F.No.CIT(DR)-1/ITAT/ Case record/LKO/2017-18/05

With reference to above, this is to submit that the Case records for AY 2010-11& 2012-13 have already been sent to your good office vide this office letter dated 28/02/2018 for your kind perusal.

Further, it is submitted that despite best efforts, "*Satisfaction Note*" in the case of M/s Abad Buildwell as well as Putul Choubley could not be found out.

Submitted please.

(Akhtar H. Ansari)
Dy. Commissioner of Income Tax
Central Circle Noida

Copy to-

1. The Pr. Commissioner of income (Central)7/81-B, Tilak Nagar Kanpur, 208001 for kind information
2. The Joint Commissioner of income tax, Central Range Meerut Meerut for information

Deputy Commissioner of Income Tax
Central Circle, Noida

The above letters written by the Assessing Officer and filed by Learned D. R., coupled with the fact that even after more than one year from the date of these letters, the Department is not able to file satisfaction notes, clearly demonstrate that satisfaction note in the cases of the searched person and in the case of the assessee are not on record and therefore, in the cases of non recording of satisfaction note, the assessment becomes null and void as has been held by Hon'ble Jurisdictional High Court in the case of Gopi Apartment vide order dated 01/05/2014. The findings of Hon'ble court are reproduced below:

"10. We have heard Sri Bharat Ji Agrawal, learned senior counsel assisted by Sri Ashok Kumar, learned counsel for the appellant and Sri Ashish Bansal, learned counsel for respondent assessee, and have perused the records.

11. The contention of Sri Agrawal is two-fold. Firstly, he contends that, in the instant case, the Assessing Officer of the "searched person" and the "other person" being the same, there was no requirement of handing over of the books of account or documents or assets seized or requisitioned, as is mentioned in section 153C nor was there any necessity of recording a prior satisfaction before proceeding to assess the "other person". The satisfaction subsequently recorded in the assessment order in respect of the "other person" was sufficient compliance with the provisions of section 153C, which, in any case, was procedural in nature. The Assessing Officer of both the proceedings, being the same, he was neither required to handover the documents to another Assessing Officer nor he had to record any satisfaction for the purpose of any other Assessing Officer since the same Assessing Officer of the same designation is having jurisdiction over both the persons, i.e. "searched person" and the "other person" (not searched). Sri Agrawal relied upon a Division Bench judgment of this court rendered in the case of CIT v. Classic Enterprises [2013] [358 ITR 465](#) (All).

12. It was contended that the Tribunal was not justified in quashing the notice under section 153C, instead of deciding the question on the merits as to whether additions are to be made

and/or to what extent the income is to be assessed in the hands of Gopi Apartments.

13. Sri Agrawal also contended that by the Finance Act, 2003, the amendment in section 153A with effect from June 1, 2003, was made and sections 153A and 153C were added in place of sections 153BC and 153BD. Section 158BC is equivalent to section 153A and section 158BD is equivalent to section 153C.

14. He also contended that the reliance placed by the Income-tax Appellate Tribunal upon the judgment of the Supreme Court in Manish Maheshwari (supra) was misplaced and the case, at hand, was squarely covered by the Division Bench of this court in the case of Classic Enterprises (supra). In this regard, Sri Agrawal referred to the observation in Manish Maheshwari's case to the effect that "No proceeding under section 158BC had been initiated. There is, thus, a patent non-application of mind".

15. Sri Ashish Bansal, learned counsel for the respondent assessee, on the other hand, contended that the initiation of the proceedings under section 153C against the respondent-assessee itself was illegal, as no satisfaction was recorded by the Assessing Officer of the "searched person" prior to the initiation of such proceedings against the respondent-assessee as was mandatory. He invited the attention of the court to the specific finding recorded by the learned Commissioner of Income-tax (Appeals), as upheld by the Income-tax Appellate Tribunal, based on the admission by the Assessing Officer before it, which has already been taken note of by us in the earlier part of the judgment. Sri Bansal relied upon a recent judgment of the apex court in the case of CIT v. Calcutta Knitwears passed in Civil Appeal No. 3958 of 2014 decided on March 12, 2014—since reported in [2014] [362 ITR 673](#) (SC) in support of his contention.

16. Apart from the arguments, as noted above, no other argument was raised by the learned counsel for either of the parties nor any other judgment was cited before us in support of their respective contentions.

17. The relevant provision, in the instant case, i.e., section 153C, is as under :

*"153C. Assessment of income of any other person.—(1)
Notwithstanding anything contained in section 139, section*

147, section 148, section 149, section 151 and section 153, 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 or belong to a person other than the person referred to in section 153A, 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 each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A."

18. The aforesaid provision is contained in Chapter XIV of the Income-tax Act, which contains the procedure for assessment.

19. A somewhat similar provision exists in section 158BD under Chapter XIV-B, which contains the procedure for assessment of searched cases, which reads as under :

"158BD. Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other 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 under section 158BC against such other person and the provisions of this Chapter shall apply accordingly."

20. The meaning and scope of the aforesaid provision contained in section 158BD came up for consideration before the Supreme Court in the case of CIT v. Calcutta Knitweaves (supra).

21. The issue that fell for consideration before the Supreme Court, as mentioned in paragraph 3 of the judgment is being quoted herein below (page 679 of 362 ITR) :

"The issue that falls for our consideration and decision in all these appeals is : at what stage of the proceedings under Chapter XIV-B does the assessing authority require to record his satisfaction for issuing a notice under section 158BD of the Income-tax Act, 1961 ('the Act' for short)."

22. After considering the rival contentions, relevant provisions of the Income-tax Act and the authorities on the subject, their Lordships held as under (page 690) :

"We would certainly say that before initiating proceedings under section 158BD of the Act, the Assessing Officer who has initiated proceedings for completion of the assessments under section 158BC of the Act should be satisfied that there is an undisclosed income which has been traced out when a person was searched under section 132 or the books of account were requisitioned under section 132A of the Act. This is in contrast to the provisions of section 148 of the Act where recording of reasons in writing are a sine qua non. Under section 158BD the existence of cogent and demonstrative material is germane to the Assessing Officers' satisfaction in concluding that the seized documents belong to a person other than the searched person is necessary for initiation of action under section 158BD. The bare reading of the provision indicates that the satisfaction note could be prepared by the Assessing Officer either at the time of initiating proceedings for completion of assessment of a searched person under section 158BC of the Act or during the stage of the assessment proceedings. It does not mean that after completion of the assessment, the Assessing Officer cannot prepare the satisfaction note to the effect that there exists income-tax belonging to any person other than the searched person in respect of whom a search was made under section 132 or requisition of books of account were made under section 132A of the Act. The language of the provision is clear and unambiguous. The Legislature has not imposed any embargo on the Assessing Officer in respect of the stage of proceedings during which the satisfaction is to be reached and recorded in respect of the person other than the searched person.

In the result, we hold that for the purpose of section 158BD of the Act a satisfaction note is sine qua non and must be prepared by the Assessing Officer before he transmits the records to the other Assessing Officer who has jurisdiction over such other person. The satisfaction note could be prepared at either 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 ; (b) along with the assessment proceedings under section 158BC of the Act ; and (c)

immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person.

We are informed by Shri Santosh Krishan, who is appearing in seven of the appeals that the Assessing Officer had not recorded the satisfaction note as required under section 158BD of the Act, there fore, the Tribunal and the High Court were justified in setting aside the orders of assessment and the orders passed by the first appellate authority. We do not intend to examine the aforesaid contention canvassed by the learned counsel since we are remanding the matters to the High Court for consideration of the individual cases herein in light of the observations made by us on the scope and possible interpretation of section 158BD of the Act.

With these observations, the appeals are disposed of."

23. The provisions of section 158BD being in pari materia with the provisions of section 153C, the ratio of the aforesaid judgment clearly applies to the present case also.

24. The reference to the assessment proceedings under section 158BC by the Supreme Court in the extracts quoted above is with regard to the "assessment proceedings" in relation to the "searched person" and not the "other person" as referred to in section 158BD.

25. A bare perusal of the provision contained in section 153C of the Income- tax Act leaves no doubt that, as is provided under section 158BD, where the Assessing Officer, while proceeding under section 153A against a person who has been subjected to search and seizure under section 132(1) or has been proceeded under section 132A, is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, 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 the Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

26. Thus, there are two stages :

(1) The first stage comprises a search and seizure operation under section 132 or proceeding under section 132A against a person, who may be referred as "the searched person". Based on such search and seizure, assessment proceedings are initiated against the "searched person" under section 153A. At the time of initiation of such proceedings against the "searched person" or during the assessment proceedings against him or even after the completion of the assessment proceedings against him, the Assessing Officer of such a "searched person", may, if he is satisfied, that any money, document, etc., belongs to a person other than the searched person, then such money, documents, etc., are to be handed over to the Assessing Officer having jurisdiction over "such other person".

(2) The second stage commences from the recording of such satisfaction by the Assessing Officer of the "searched person" followed by handing over of all the requisite documents, etc., to the Assessing Officer of such 'other person', thereafter followed by issuance of the notice of the proceedings under section 153C read with section 153A against such "other person".

27. The initiation of proceedings against "such other person" are dependant upon a satisfaction being recorded. Such satisfaction may be during the search or at the time of initiation of assessment proceedings against the "searched person", or even during the assessment proceedings against him or even after completion of the same but before issuance of notice to the "such other person" under section 153C.

28. Even in a case, where the Assessing Officer of both the persons is the same and assuming that no handing over of documents is required, the recording of "satisfaction" is a must, as, that is the foundation, upon which the subsequent proceedings against the "other person" are initiated. The handing over of documents, etc., in such a case may or may not be of much relevance but the recording of satisfaction is still required and in fact it is mandatory.

29. In this regard, the ratio of the judgment of the Supreme Court in the case of CIT v. Calcutta Knitwears (supra), as noted above, clearly applies to the proceedings under section 153C also.

30. The "satisfaction" has to be in writing and can be gathered from the assessment order passed in respect of the "searched person", if it is so mentioned/recorded or from any other order,

note or record maintained by the Assessing Officer of the "searched person". The word "satisfaction" refers to the state of mind of the Assessing Officer of the person searched, which gets reflected in a tangible shape/form, when it is reduced into writing. It is the conclusion drawn or the finding recorded on the foundation of the material available. In this regard, reference may be made to the pronouncements in the case of CIT v. Radhey Shyam Bansal [2011] [337 ITR 217](#) (Delhi) and the Division Bench judgment of this court in the case of CIT v. Classic Enterprises [2013] [358 ITR 465](#) (All).

31. In the case of Manish Maheshwari v. Asst. CIT [2007] [289 ITR 341](#) (SC), their Lordships had the occasion to consider the provisions of sections 158BC and 158BD and held that the conditions precedent for taking recourse to a block assessment in terms of section 158BC and section 158BD were as under (page 348) :

"(i) Satisfaction must be recorded by the Assessing Officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 of the Act ; (ii) The books of account or other documents or assets seized or requisitioned had been handed over to the Assessing Officer having jurisdiction over such other person ; and (iii) The Assessing Officer has proceeded under section 158BC against such other person.

The conditions precedent for invoking the provisions of section 158BD, thus, are required to be satisfied before the provisions of the said Chapter are applied in relation to any person other than the person whose premises had been searched or whose documents and other assets had been requisitioned under section 132A of the Act."

32. The ratio of the judgment in Manish Maheshwari's case also applies to the provisions of section 153C and to the facts of this case.

33. In the instant case, a categorical finding has been recorded by the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal that there is no material showing the recording of satisfaction by the Assessing Officer of the "searched person" prior to issuance of notice under section 153C to the respondent-assessee, i.e. "the other person". It was the admitted case of the Revenue before the Commissioner of Income- tax

(Appeals) and the Income-tax Appellate Tribunal that though the Assessing Officer (of the other person) in the assessment order had stated that the satisfaction for issuing notice under section 153C was recorded, however, on examination, recording of such satisfaction alleged to be recorded by the Assessing Officer was not available.

34. In view of the legal position, as already discussed above and the admitted factual position as aforesaid, we are unable to accept the contentions of Sri Agrawal.

35. We are also of the view that the plea, which is being raised in this appeal, was not raised in the grounds of appeal before the Income-tax Appellate Tribunal, however, even otherwise such plea does not have any merit.

36. The contention of Sri Agrawal that section 153C is only procedural in nature, therefore, the non-recording of prior satisfaction does not vitiate the assessment order, as, such satisfaction, has been recorded in the assessment order passed subsequently with regard to the other person, is also not acceptable for the reason that the Supreme Court in the case of Calcutta Knitweaves (supra) has already considered this aspect of the matter in the context of section 158BD, and after taking note of the fact that the said provision is a machinery provision has interpreted the same. In the light of the interpretation given by it and in view of the ratio laid down therein, the contention of Sri Agrawal does not hold ground. A clear and plain reading of section 153C leaves no doubt that recording of satisfaction by the Assessing Officer of the person searched is mandatory and it has to precede the initiation of proceedings against the other person (not searched).

37. A specific query was put to Sri Agrawal as to whether, on the basis of the material collected during the search and seizure operation or during the assessment, proceedings against the "searched person" or thereafter, any proceeding could be initiated against the "other person" under any other provision of the Income-tax Act, he categorically replied that except section 153C, there was no other provision under which action could be initiated against him.

38. The reliance placed by Sri Agrawal upon the Division Bench judgment of this court in the case of CIT v. Classic Enterprises (supra) far from helping his cause goes against him. We have

already relied upon the said judgment to explain the concept of "satisfaction" under section 153C, which is required to be recorded in writing. However, on the other issues, the said judgment is distinguishable for the reason that in the said case, the Assessing Officer had recorded his "satisfaction" and after recording the satisfaction on the subject matter on August 2, 2006, handed over the books of account and seized material, thus, the issue, which falls for consideration in this appeal, in fact, did not arise for consideration in the said appeal. In any case, the case at hand being squarely covered by the pronouncements of the Supreme Court, as already referred, the reliance placed by Sri Agrawal on the aforesaid judgment does not cut much ice.

39. In view of the above discussion, we find that no substantial question of law arises in the instant appeal warranting interference with the impugned judgment under section 260A of the Income-tax Act, 1961. It is accordingly dismissed."

8. The findings of Hon'ble Allahabad High Court are very clear and exhaustive wherein it has been held that in the absence of non recording of satisfaction, the proceedings u/s 153C becomes null and void. The position has been further clarified by the CBDT itself which, vide Circular No. 24/2015 dated 31st December, 2015 has directed the Assessing Officer to withdraw the appeals u/s 158BD/153C where the satisfaction u/s 158BD/153C were not recorded. For the sake of completeness, the CBDT circular No. 24/2015 is reproduced below:

Circular No. 24 of 2015, dated December 31, 2015..

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 Calcutta Knitweaves in its detailed judgment in Civil Appeal No.3958 of 2014 dated 12th March, 2014 (available in [2014] 362 ITR 673 (SC) ; NJRS at 2014-LL-0312-51) 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 Assessing Officer before he transmits the record to the other Assessing Officer who has jurisdiction over such

other person under section 158BD. 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 Supreme Court, apply to proceedings under section 153C of the Income-tax Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by the Central Board of Direct Taxes.

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 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.

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.

(Sd.)

*Ramanjit Kaur Sethi,
DCIT (OSD) (ITJ),
CBDT, New Delhi.
[F. No. 279/Misc./140/2015/ITJ]*

9. The above circular is binding on the Department and therefore, any assessment order in absence of non recording of satisfaction has to be declared as null and void. In view of the judgment of Hon'ble Allahabad High Court in the case of Gopi Apartment and Circular issued by CBDT, the additional ground taken by the assessee is allowed and the assessment

orders framed by the Assessing Officer are quashed as these are void ab initio.

10. Since we have quashed the assessment orders therefore, nothing survives for adjudication, nor was anything else argued. Therefore, merits of the cases have not been adjudicated.

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

(Order pronounced in the open court on 22/08/2019)

Sd/.
(A. D. JAIN)
Vice President

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:22/08/2019
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow