

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.Nos.6817 & 6818/Del./2013
Assessment Year 2008-2009

The DCIT, Central Circle-22, New Delhi.	vs.,	1. M/s. Prominent Realtech Pvt. Ltd., E-582, Greater Kailash-II, New Delhi. PAN AAACP6096N 2. M/s. Sunway Realtech Pvt. Ltd., E-582, Greater Kailash-II, New Delhi. PAN AALCS7883D
(Appellant)		(Respondent)

Cross Objection Nos. 258 & 259/Del./2014
Arising out of
ITA.Nos.6817 & 6818/Del./2013 - Assessment Year 2008-2009

1. M/s. Prominent Realtech Pvt. Ltd., E- 582, Greater Kailash- II, New Delhi. PAN AAACP6096N 2. M/s. Sunway Realtech Pvt. Ltd., E-582, Greater Kailash-II, New Delhi. PAN AALCS7883D	vs.,	The DCIT, Central Circle-22, New Delhi.
(Appellant)		(Respondent)

For Revenue :	Shri J.K. Mishra, CIT-D.R.
For Assessee :	Shri K. Sampat, Advocate.

Date of Hearing :	14.10.2019
Date of Pronouncement :	14.10.2019

ORDER

PER BHAVNESH SAINI, J.M.

Both the Departmental Appeals as well as Cross Objections by Assessee are directed against the different Orders of the Ld. CIT(A)-3, New Delhi, Dated 17.10.2013 and 15.10.2013 for the A.Y. 2008-2009.

2. We have heard the Learned Representatives of both the parties and perused the material on record. Both the parties mainly argued in the case of M/s. Prominent Real-Tech Pvt. Ltd., and have submitted that the issue is same in other case also, therefore, the Order in the case of M/s. Prominent Real-Tech Pvt. Ltd., may be followed in other appeals. Therefore, we decide appeal of M/s. Prominent Real-Tech Pvt. Ltd., as under.

ITA.No.6817/Del./2013 – A.Y. 2008-2009

And

CO.No.258/D/2014 – A.Y. 2008-2009

[In the case of M/s. Prominent Real-Tech Pvt. Ltd.,]

3. Briefly the facts of the case are that A.O. passed the assessment order under section 153C read with section 143(3) of the I.T. Act, 1961, Dated 22.03.2013. In this year, as against the returned income of Rs.NIL, the A.O. assessed the assessee company at an income of Rs.9,70,40,500/- by making the addition on account of investment made from the source not disclosed to the Revenue Department. The A.O. noted that in the year under consideration, the assessee had purchased following shares from Triveni Infrastructure Development Co. Ltd., [“TIDCL”] on 28.03.2008 –

- (i) 20,000 shares of Ramada Hospitality Pvt. Ltd., for a sum of Rs.50 lakhs.
- (ii) 24,000 shares of Better Homes Build-Tech Pvt. Ltd., for Rs.89,59,500/-.

3.1. The A.O. found that TIDCL had purchased both the above shares from the promoter company at a much

higher price i.e., for Rs. 5 crores for Ramada Hospitality Pvt. Ltd., and for Rs.6.10 crores for Better Homes Build-Tech Pvt. Ltd. The A.O, therefore, came to the conclusion that since assessee company purchased the same shares just after 05 days from TIDCL at a much lower price, therefore, assessee must have paid the sale consideration outside the books of account. Accordingly, A.O. in the assessment order held that assessee has paid to TIDCL outside books of account and made addition of Rs.9,70,40,500/-.

4. The assessee challenged the assumption of jurisdiction under section 153C of the I.T. Act as well as addition on merits before the Ld. CIT(A). The Ld. CIT(A) rejected the ground relating to assumption of jurisdiction under section 153C of the I.T. Act. The assessee on merit contended that addition can be made under section 153C only on the basis of the incriminating material found during the course of search. However, no incriminating material was there, therefore, no addition can be made. It was further submitted that there is no evidence that assessee

has made investment outside the books of account. There has to be some evidence for the undisclosed investment allegedly made by the assessee. Since there is no evidence available on record, therefore, whole addition is unjustified. It was further submitted that the shares were subsequently sold by the assessee company in F.Y. 2010-2011 for a sum of Rs.1,39,59,500/- and this fact has been accepted by the A.O. in the assessment under section 143(3) for A.Y. 2011-2012. The Ld. CIT(A) accepted the explanation of assessee that there is no evidence on record with the A.O. to come to the conclusion that any payment over and above the stated price of shares have been paid to TIDCL. Further, these shares have been sold in subsequent A.Y. 2011-2012 and sale consideration have been accepted by the A.O. Therefore, there was no basis to make any addition. The addition was accordingly deleted. The Ld. CIT(A) also noted that since loss is booked by TIDCL, therefore, it needs investigation at the level of the A.O. in that case. The addition was accordingly deleted.

5. In the Departmental Appeal, the Revenue challenged the deletion of addition of Rs.9,70,40,500/-.

6. After considering the rival submissions, we are of the view that no interference is called for in the matter. It is an admitted fact that during the course of search no incriminating material found which may belong to assessee to prove that assessee paid over and above what is stated in the books of account for purchase of shares of TIDCL. In the absence of any evidence on record, there were no basis for the A.O. to make any addition against the assessee. A.O. made addition merely on the basis of presumption of certain facts, for which, there is no evidence available on record. Further the same shares have been sold by assessee in subsequent A.Y. 2011-2012 at a lesser price as against the addition made by the A.O. which is accepted by the A.O. under section 143(3) of the I.T. Act. In these circumstances and in the absence of any evidence on record, no interference is called for. The Departmental Appeal is accordingly dismissed.

7. In the Cross Objections the assessee challenged the assumption of jurisdiction under section 153C of the I.T. Act. Learned Counsel for the Assessee referred to satisfaction note, copy of which is filed at page-1 of the paper book of the Department, which reads as under :

“INCOME TAX DEPARTMENT

*NAME OF THE ASSESSEE : M/s Prominent Realtech Pvt
STATUS : Company
PAN : AAEC6096N*

*Satisfaction note for initiating proceedings u/s 153C of the
Income Tax Act, 1961*

A search & seizure operation u/s 132 of the Income Tax Act, 1961 was carried out on 28.09.2010 in Triveni Group by the ADIT (Inv.), Unit-III(3), New Delhi. During the course of search, documents as per Annexure A-7 and A-1 were found and seized as per panchanama dated 29.09.2010. I have carefully examined these documents and it is found that these documents belong to M/s Prominent Realtech Pvt Ltd.

The contents of these documents are as under :

<i>Annexure No.</i>	<i>Page No.</i>	<i>Description/Detail of paper.</i>
<i>A-7/party TA-3</i>	<i>1 and 2</i>	<i>Balance sheet of the company as on 31.03.2008 dully signed by the Director of company and Chartered Accountant.</i>
<i>A-1/party TA-3</i>	<i>34 and 35</i>	<i>Trial balance and sundry creditors of company 01.04.2010 to 28.09 2010.</i>

I have carefully examined and found that these documents belongs to M/s Prominent Realtech Pvt Ltd

In view of above facts, I am satisfied that this is a case of a person other than the person referred to in section 153A covered under section 132 of the Income Tax Ac. 1961. Accordingly, I am satisfied that this is a fit case for initiation of proceedings u/s 153C r w. section 153A of the Income Tax Act, 1961 in the case of M/s Prominent Realtech P. Ltd.

Issue notice u/s 153C of the Income Tax Act. 1961 in the case of M/s Prominent Realtech Pvt Ltd accordingly for A.Y 2008-09 and A.Y. 2010-11 separately.

*Sd/-Subhash Verma,
Deputy Commissioner of Income Tax,
Central Circle – 22, New Delhi.”*

7.1. In this satisfaction note A.O. has referred to the balance-sheet of the assessee which is already in public domain. Learned Counsel for the Assessee, therefore, submitted that satisfaction is not as per Law and no incriminating material is found against the assessee. He has relied upon Judgment of Hon'ble Supreme Court in the case of Commissioner of Income Tax vs., Sinhgad Technical Education Society [2017] 397 ITR 344 (SC). He has also relied upon Judgment of Hon'ble Delhi High court in the case of Commissioner of Income Tax vs., Radhey Shyam Bansal [2011] 337 ITR 217 (Del.) and Amity Hotels Pvt. Ltd., vs. CIT [2005] 272 ITR 75 (Del.).

8. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

9. We have considered the rival submissions. Since addition on merit have already been deleted and confirmed by us, therefore, this issue is left with academic discussion only. However, briefly, we may point-out that in this case satisfaction note have been recorded in the case of assessee

instead of recording it in the case of person searched by A.O. of the assessee which is invalid. Further balance-sheet of the assessee have been referred to which was found during the course of search in the case of Triveni Group. Therefore, no satisfaction have been recorded in the case of the person searched and that no incriminating material have been found to connect the assessee with the impugned addition. It is balance-sheet of the assessee only which is already on the record of the Department as well in public domain. The ITAT, Agra Bench in the case of ACIT, Circle-I, Gwalior vs., Global Estae [2013] 142 ITD 740 (Agra) held as under :

- *The assessee had a case for quashing of proceedings under section 153C. No material is produced to prove that the Assessing Officer in the case of person searched was satisfied that any money, bullion, jewellery or other valuable article or things or books of account or documents seized or requisitioned belongs to or belong to a person other than the person referred to in section 153A.*

- *No material is produced before to show if any satisfaction was recorded by the Assessing Officer in that case that the material belongs to any person other than the person with respect to whom search was made under section 132. Department did not produce any material to show if any such satisfaction as required under section 153C was recorded by the Assessing Officer in the case of person searched. No material is produced in reference to above requirement.*
- *No material is also produced before to show that books of account or documents or assets seized had been handed over to the Assessing Officer having jurisdiction over such other person. In the absence of any adequate material produced by the department contention of the assessee was justified that in this case, the Assessing Officer had not recorded any satisfaction that any seized document or material belongs to any person other person searched.*

- *Since the revenue is in appeal, therefore, burden was upon them to prove that necessary ingredients of section 153C have been complied with in this case before invoking jurisdiction under section 153C.*
- *It is added further here that the Assessing Officer has not referred to any seized document or material in the assessment orders on the basis of which, additions on merit have been made. Therefore, the conditions of section 153C as noted above are also not satisfied in this case. Therefore, there is no infirmity in the order of the Commissioner (Appeals) in quashing the proceedings under section 153C.”*

9.1. The Hon'ble Supreme Court in the case of CIT vs.,
Sinhgad Technical Education Society (supra), held as under:

“Held, dismissing the appeals, (i) that the Tribunal permitted the assessee to raise the additional ground on the ground that it was a jurisdictional

issue taken up on the basis of facts already on record, that under section 153C of the Act, incriminating material which was seized had to pertain to the assessment years in question, and that the documents which were seized did not establish any co-relation, document-wise, with these four assessment years. The Tribunal found that the material disclosed in the satisfaction note belonged to assessment year 2004-05 or thereafter. The Tribunal rightly permitted this additional ground to be raised and correctly dealt with the ground on the merits as well. The High Court was right in affirming this view of the Tribunal.

Decision of the Bombay High Court in CIT v. Sinhgad Technical Education Society [2015] 378 ITR 84 (Bom) affirmed.

(ii) That the assessment order passed by the Assessing Officer covered eight assessment years.

For six assessment years the assessment was under section 153C of the Act. The assessment order was set aside only in respect of four of those assessment years and on a technical ground. The objection pertaining to the four assessment years in question did not relate to the other tax assessment years, namely, 2004-05 and 2005-06. Nor did this decision have a bearing in respect of assessment for assessment year 1999-2000 or assessment year 2006-07. The necessary consequence would be that the conclusions of the Assessing Officer in his assessment order regarding the activities of the trust not being genuine and not carried out in accordance with the trust deed or cancellation of registration, denial of benefits of sections 11 and 12 would not be affected by this judgment.”

9.2. In view of the above, there was no justification to assume jurisdiction under section 153C of the I.T. Act, 1961. In view of the above, we set aside the Orders of the

authorities below and quash the assumption of jurisdiction under section 153C of the I.T. Act. C.O.No.248/Del./2014 of the Assessee is allowed.

10. In the result, appeal of the Department dismissed and Cross Objection of the Assessee allowed.

ITA.No.6818/Del./2013 – A.Y. 2008-2009

C.O.No.259/Del./2014 – A.Y. 2008-2009

[In the case of M/s Sunway Realtech Pvt. Ltd., New Delhi.]

11. In the Departmental Appeal, Revenue challenged the deletion of addition of Rs.7,71,24,500/- on account of unexplained investment. The assessee in the Cross Objection has challenged the assumption of jurisdiction under section 153C of the I.T. Act, 1961.

12. Since issues are identical in both the matters, therefore, following the decision in the case of M/s. Prominent Realtech Pvt. Ltd., New Delhi in ITA.No.6817/Del./2013 (supra), we dismiss the Departmental Appeal and allow the Cross Objection.

13. In the result, ITA.No.6818/Del./2013 of the Revenue dismissed and C.O.No.259/Del./2014 of the Assessee allowed.

14. To sum-up, both the appeals of the Department are dismissed and both the Cross Objections of the Assessee are allowed.

Order pronounced in the open Court.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 14th October, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "D" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.