

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

ITA No.	A.Y.	Appellant	Respondent
1871/Hyd/13	2002-03	Shri Sudhir Kumar D.Shah- HUF, HYDERABAD [PAN: AAGHS6336H]	Deputy Commissioner of Income Tax, Central Circle-2, HYDERABAD
1872/Hyd/13	2003-04		
1873/Hyd/13	2004-05		
1874/Hyd/13	2005-06		
1875/Hyd/13	2006-07		
1876/Hyd/13	2007-08		
1877/Hyd/13	2008-09		

For Assessee : Shri K.C.Devdas, AR
For Revenue : Shri Y.V.S.T.Sai, CIT-DR

Date of Hearing : 21-10-2019
Date of Pronouncement : 25-10-2019

ORDER

PER BENCH :

These appeals of the assessee are directed against the orders of the Commissioner of Income Tax(Appeals)-1, Hyderabad, for the respective assessment years. Since the facts and issues involved in all these appeals are common and identical, except the amounts mentioned therein, all these

appeals were heard together and are being disposed-of by way of this common order.

ITA Nos.1871/Hyd/2013 1872/Hyd/13, 1873/Hyd/13, 1874/Hyd/13, 1875/Hyd/13 & 1876/Hyd/13:

2. The assessee filed various additional grounds during the filing of appeal before the Tribunal. The common issue raised by the assessee in all these appeals by way of additional grounds are as under:

- (i) *Since the seized material referred to by the Assessing Officer does not belong to the appellant, the initiation of proceedings under section 153C is bad in law.*
- (ii). *The learned Commissioner of Income Tax (Appeals)-1, Hyderabad [Ld.CIT(A)] failed to appreciate that there was no incriminating material found belonging to the Appellant as envisaged in Section 153C of the Act during the course of 132 operations in the case of Sudhir Shah (Individual). Therefore, the notice issued under section 153C of the Act is invalid, bad in law and without jurisdiction.*
- (iii). *The Ld.CIT(A) failed to appreciate that entire assessment was framed based on the revenue records obtained from MRO, Rajendranagar Mandal during the course of assessment proceedings which was never put to the Appellant for rebuttal and therefore to assess the income already disclosed by the Appellant in the return filed under section 139 of the Act before the date of search without any incriminating material is invalid, bad in law and without jurisdiction.*
- (iv). *Without prejudice to the above grounds, the assessment framed is without complying with the procedures prescribed under section 153C of the Act vis - a - vis recording of satisfaction as enjoined in Section 153C of the Act in the assessment file of the searched party i.e, Sudhir Shah (Individual) that the seized material belonged to the appellant and it had undisclosed income arising from such material. Therefore, the assessment under 153C of the Act is bad in law, invalid and without jurisdiction.*

- (v). *The Ld.CIT(A) failed to note that the income assessed at Rs.1,50,000 was disclosed in the original return filed under section 139 of the Act much before the date of search. Thus, the assessment for the AY.2002-03 stands abated on the date of search and therefore, to assess the same income under section 153C of the Act without any incriminating material is invalid, bad in law and without jurisdiction.*
- (vi). *Without prejudice to the above grounds, the entire assessment order passed under section 143(3) r.w. section 153C of the Income Tax Act, 1961 ('the Act') assessing the income arising on Agricultural lands situated in Vatinagulapally Village in the hands of the Appellant HUF is invalid, bad in law and without jurisdiction as the income/assets does not belong to Sudhir Kumar D.Shah (HUF). Therefore, the income returned and assessed at Rs.1,50,000 must be deleted”.*

2.1. The common issues raised by the assessee in these appeals is the validity of initiation of proceedings u/s.153C of the Act, without having incriminating material and without recording the reasons for initiation of proceedings in the case of the searched person.

2.2. The brief facts of the case are that, the assessee is HUF and has not filed its returns of income. A search and seizure operation u/s.132 of the Act was carried out in the residential premises of the assessee on 09-10-2007. The assessee is stated to be one of the co-owners and the landlords of Shah Group, who entered into development agreement with M/s.Dakshin Shelters Pvt. Ltd., where the assessee and the family members handed over the properties for the purpose of development. During the course of search and seizure operations, certain documentary evidences belonging to Shri Sudhir Kumar D.Shah (HUF) was stated to have been found and seized as per the assessment order. Hence, notice

u/s.153C of the Act was issued to the assessee. In response to which, the assessee filed its returns of income for the impugned assessment years.

3. The AO taken up the case for scrutiny and notices u/s.143(2) and 142(1) of the Act were issued to the assessee and completed the assessment u/s.143(3) r.w.s.153C of the Act on total income of Rs.2,22,100/- by order dated 31-12-2009 for the AY.2002-03. The details of the assessed income for the various assessment years under consideration:

S.No	A.Y.	Assessed Income (Rs)	Date of order u/s.143(3) of the Act
1	2002-03	2,22,100	31-12-2009
2	2003-04	48,12,960	
3	2004-05	4,12,130	
4	2005-06	4,20,530	
5	2006-07	2,64,26,335	
6	2007-08	13,99,26,290	
7	2008-09	3,32,580	

3.1. During the assessment proceedings, the AO made the additions representing the sale of landed properties situated at Vattinagulapally village. The AO assed the sale consideration for capital gains purposes and also treated the agricultural income as 'income from other sources'. Against the order of AO, the assessee went on appeal before the CIT(A) and challenged the validity assessment order on merits. During the appeal hearing before the First Appellate Authority (FAA), the Ld.AR also argued that initiation of proceedings u/s.153C of the Act, without having the incriminating material is invalid. The Ld.CIT(A) considered the arguments made by the Ld.AR,

during the appeal hearing and referred the seized material marked as annexure – A/SDS/2, wherein she observed that the complete details were available with regard to the sale consideration of the property at Chilkoor Village, which was confirmed and admitted by Shri Apoorva Shah, nephew of the assessee in the statement recorded from him u/s.132A of the Act on 09-10-2007. Therefore held that the proceedings u/s.153C of the Act were rightly initiated and dismissed the contentions raised by the assessee. Similarly, on merits the Ld.CIT(A) dismissed the appeals of the assessee for the AYs. 2002-03 to 2005-06, 2007-08 & 2008-09 and for the AY.2006-07 partly allowed the appeals of the assessee. Against the orders of Ld.CIT(A), the assessee preferred appeals before the Tribunal.

4. During the appeal hearing, Ld.AR raised additional grounds with regard to validity of initiation of proceedings u/s.153C of the Act, without having the seized material and validity of assessment framed u/s.153C of the Act, without recording the reasons in the case of searched person. Requesting for admission of additional grounds, the Ld.AR submitted that the search was conducted in the case of Shri Sunil D.Shah and Shri Sudhir D.Shah individuals. Referring to Panchanama and its Annexures from Pg.3 to 10 of the Paper Book. Ld.AR argued that neither the Panchanama nor the Annexures indicate that the material seized belonging to the assessee. The Ld.AR further submitted that from the Paper Book filed by the Department, it is found that there were no reasons recorded in the case of the searched person for

initiation of proceedings u/s.153C of the Act in the case of assessee. Therefore, submitted that there is no case for initiation of proceedings u/s 153C and submitted that the additional grounds goes to the root of the assessment, hence requested to admit the additional grounds raised before the Tribunal.

5. On the other hand, Ld.DR vehemently opposed for admission of additional grounds. Referring to Pg.1 of the Paper Book filed by the Department, the Ld.DR shown us that the AO had recorded the reasons in assessee's case for initiation of proceedings u/s.153C of the Act. Similarly, Ld.DR submitted that though there was no separate books of accounts and the documents available in the Annexures of Panchanama, ample material and evidences are available in the seized material marked as A/SDS/2 and the contents of the material is supported by the statement recorded from Shri Apoorva Shah, the nephew of the assessee, who is handling all the accounts of the Group. Thus, submitted that there is incriminating material found and seized from the searched person, hence argued that the additional grounds raised by the assessee does not qualify for admission, hence requested to reject the same.

6. We have heard both the parties and gone through the material placed on record. *Prima-facie*, from the Panchanama and the annexures, we find that there was no seized material found and seized during the course of search from the premises of the searched persons, i.e., Shri Sunil D.Shah and

Shri Sudhir D.Shah belonging to the assessee. The material found and seized from the searched person requires further verification for identifying the relevant assessment years. The Department also did not place any evidence to show that the satisfaction was recorded in the case of searched person as required u/s.153A/153C of the Act. Therefore, we are of the considered opinion that the additional grounds need to be admitted and adjudicated. Hence, we admit the additional grounds.

6.1. Advancing the arguments during the appeal hearing, the Ld.Counsel for the assessee taken our attention to the Panchanama and the annexure in Pg.1 of assessee's Paper Book and submitted that there were three annexures found and seized during the course of search i.e., Pgs. 1 and 2 are being Books of account and the third one is cash of Rs.5.00 Lakhs found and seized. Pg.No.6 of the Paper Book is inventory of cash belonging to Shri Sunil D.Shah but not belonged to the assessee. The books of account found and seized during the course of search marked as Annexure: A/SDS/2 were stated to be belonging to Shri Apoorva Shah, S/o. Sunil D Shah. Similarly, Pg.4 is related to Sunil D.Shah and Pg.5 is found from the room of Shri Apoorva Shah, S/o.Sunil D.Shah and none of the seized material belonged to the assessee. Ld.AR further argued that the assessee is a HUF but not an individual. Since the search was conducted in the premises of the individuals, for initiating proceedings u/s.153C of the Act, the incriminating material belonging to assessee is required. Since there is no incriminating material

found during the course of search in the premises of the searched person belonging to the assessee, there is no case for initiation of proceedings u/s.153C of the Act and hence argued that the assessment framed u/s.153C r.w.s. 143(3) of the Act, without having seized material required to be cancelled.

6.2. The second proposition made by the Ld.AR is that there was no satisfaction recorded by the AO in the case of searched person. As per the provisions of Section 153C of the Act, where the AO of the searched person satisfied that money, bullion, jewellery, books of account or any other material relate to a person other than the searched person referred to Section 153A of the Act, then the books of account and other document receipts seized shall be handed over to the AO, having jurisdiction over such other person. Thus, it is mandatory requirement of the AO of the searched person to record the satisfaction with regard to the ownership of the correct person in the file of the searched person. On this issue, he also taken the support of the CBDT Circular No.24/2015 dated 31-12-2015. The Ld.AR further argued that the Hon'ble Supreme Court in the case of CIT Vs. Sinhgad Technical Education Society (2017) 397 ITR 344 / (2017) [84 taxmann.com 290] (SC) held that – *without having incriminating material, the assessment framed u/s.153C of the Act required to be set aside.* The Hon'ble Delhi High Court in the case of Pepsico India Holdings (P) Ltd., Vs. ACIT (2014) [50 taxmann.com 299] (Delhi) held that – *unless and until it is established that the documents seized do not belong to searched person, the provisions of Section 153C do not get*

attracted. The Ld.AR also relied on the following decisions to support his arguments with regard to validity of initiation of proceedings, without having seized material and without recording the reasons in the hands of the searched person.

- i. CIT Vs. Sinhgad Technical Education Society [397 ITR 344] (SC);
- ii. Pepsico India Holdings (P) Ltd., Vs. ACIT [370 ITR 295] (Delhi);
- iii. VijaybhaiN.Chandrani Vs. ACIT [333 ITR 436] (Gujarat);
- iv. CIT Vs. Late J.Chandrasekar (HUF) [338 ITR 61] (Madras);
- v. Pr.CIT Vs. Smt.Sunita Bai [78 taxmann.com 274] (Karnataka);
- vi. CIT Vs. IBC Knowledge Park (P) Ltd., [385 ITR 346] (Karnataka);
- vii. CIT Vs. Shettys Pharmaceuticals & Biologicals Ltd., [232 taxman 268] (AP);
- viii. Pr.CIT Vs. Rajeev Behi [398 ITR 615] (Delhi);
- ix. Pepsi Foods (P) Ltd., Vs. ACIT [231 taxman 58] (Delhi);
- x. Avinash Estates & Resorts Ltd., Vs. DCIT [151 ITD 399];

6.3. Per contra, the Ld.DR supported the initiation of proceedings u/s.153C of the Act. Ld.DR submitted that Shri Sunil D.Shah and Shri Sudhir D.Shah are brothers and Shri Apoorva Shah is son of Shri Sunil Shah, who is the nephew of the assessee. Both the brothers have acquired large track of land at Vattinagulapalli village and entered in to development agreement with M/s.Dakshin Shelters Pvt. Ltd. Shri Apoorva D

Shah, maintained the books of account of the entire Group. Referring to Pg.19 and 20 of the Paper Book, Ld.DR submitted that (annexure A/SDS/2) there were recordings of the amounts received from RCR, (Abbreviation relates to Shri Rama Chandra Reddy), to whom the lands were sold. Pg.21 shows the amounts paid to Mr.Sudhir, who is none other than the assessee on various occasions totalling to Rs.75.00 Lakhs. Referring to Pg.22 of the Paper Book submitted that there were notings recorded against the name of Mr.Sudhir Shah, white and black components of payments made to him. Ld.DR also referred to Pg.23 of the Paper Book, wherein it shows the payments made to Mr.Sudhir D.Shah in cash and cheque. Ld.DR argued that page.19 to 33 of the paper book shows the payment of huge amounts to the assessee. These payments were confirmed by the statements recorded from Shri D.Aporrva Shah also. Referring to Pg.9 of statement recorded from Shri Apoorva Shah on 09-10-2007 Ld.DR taken our attention to Question No.9, wherein Shri Apoorva Shah, replied that the transaction in respect of receipts from Mr.Rama Chandra Reddy and Shri G.Chandra Sekhar Reddy. Ld.DR further submitted that all the family members are staying in the same house in different rooms and they are having shareholding in land of Vattinagulapally, which was given for development to M/s.Dakshin Shelters Pvt. Ltd., and the assessee is also one of the family members. Being assessee is one of the parties to development agreement, it cannot be said that there was no incriminating material relating to assessee. Ld.DR taking reference to the notings in Pg.19 to 33 as well as the statements recorded from Shri Apoorva D.Shah

and Shri Sunil D.Shah submitted that, it is clearly evident that there was incriminating material, which is available in the searched premises, belonging to assessee. Hence, there is no merit in the argument advanced by the Ld.Counsel for the assessee that there assessment u/s.153C of the Act was initiated without having the incriminating material.

6.4. Ld.DR referring to Pg.1 of the Paper Book, submitted that the AO had recorded the satisfaction in the case of Shri Sudhir D.Shah (HUF) and merely because of the reason that the details of incriminating material was not specifically mentioned it is unjustified to hold that the initiation of proceeding are invalid and hence argued that the AO has rightly initiated the proceedings, and reasons were recorded, therefore, argued that the validity of assessments required to be upheld. In this connection, Ld.DR relied on the following decisions:

- i. CIT Vs. Continental Warehousing Corporation (Nhava Sheva) Ltd.,(2015) [64 taxmann.com 34] (SC);
- ii. V.H.Yahiya Vs. DCIT (2015) [56 taxmann.com 169] (Kerala);
- iii. CIT Vs. RRJ Securities Ltd., (2017) [79 taxmann.com 115] (SC);
- iv. Co-ordinate Bench decision of the ITAT in the case of Bharat Ginning & Pressing Factory Vs. ITO (2013) [32 taxmann.com 322] [Ahmedabad – Trib.];
- v. CIT Vs. Panchajanyam Management Agencies and Services (2012) [20 taxmann.com 584] (Kerala);

6.5. Responding to the argument of Ld.DR, Ld.Counsel for the assessee referred to Para 4.2 of the order of Ld.CIT(A), submitted that the Ld.CIT(A) upheld the initiation of proceedings under the impression that Chilkoor lands were belonging to HUF. He submitted that Chilkoor lands were not belonging to assessee and they are belonging to the individuals, therefore, reliance placed by the Ld.CIT(A) with regard to sale of Chilkoor lands is misplaced for upholding the validity of issue of notice u/s.153C of the Act. Though all the brothers are staying in the same house, they are differently placed in different floors, thus, the assumption that the premises is one and the same for all the members of family is also incorrect. Since the search was conducted in the case of individual assessee, the satisfaction required to be made in the case of searched person for transfer of incriminating material for assumption of jurisdiction to initiate the proceedings u/s 153C of the Act. Ld.Counsel for the assessee further argued that the statement recorded u/s.132(4) of the Act does not constitute incriminating material as held by the Hon'ble Delhi High Court in the case of 84 taxmann.com 287 in Principal Commissioner of Income-tax, Delhi-2. Vs. Best Infrastructure (India) (P.) Ltd., Merely on the statement recorded from Shri Apoorva Shah, the proceedings u/s.153C of the Act cannot be initiated by assuming the jurisdiction incorrectly. The statements recorded from Shri Apoorva Shah required to be confronted with the assessee to elicit the fact with regard to the incriminating material. The Ld.AR further argued that the lands situated at Vattinagulapally are related to the individuals but not belonged to the HUF. Similarly,

Ld.AR argued that the findings given by the Ld.CIT(A) with regard to initiation proceedings for sale of Chilukur lands is a valid finding as per Section 114(e) of the Indian Evidence Act.

6.6. Ld.AR further argued that the AO of the searched person has not recorded the reasons to hold that the material found during the course of search in case of searched person belonged to the assessee. Assumption of jurisdiction without having recorded the reasons was considered by the Hon'ble Jurisdictional High Court in the case of CIT Vs. Shettys Pharmaceuticals & Biologicals Ltd., (2015) 57 taxmann.com 282) (Andhra Pradesh) and the Hon'ble Jurisdictional High Court held that recording satisfaction of the AO of the searched person is the pre-condition for assuming jurisdiction u/s.153C of the Act. Referring to Pg.116 of the Paper Book, Ld.AR argued that the Hon'ble AP High Court in the case of CIT-III Vs. Sri Rao Subba Rao (HUF) in ITTA No.254 of 2014, dt.15-04-2014 upheld the order of the ITAT and decided the issue in favour of assessee for not recording the satisfaction in the case of searched person.

6.7. Therefore, argued that in the instant case, there is no dispute that there was no satisfaction recorded in the case of searched persons, hence AO had incorrectly assumed the jurisdiction, therefore requested to quash the notice issued u/s.153C of the Act and cancel the orders of the lower authorities.

7. We have heard both the parties and gone through the material placed on record. In the instant case, there is no dispute that no satisfaction was recorded by the AO of the searched person. The department did not place any evidence to controvert the submission made by the assessee. As per the material placed before us, the AO has recorded the satisfaction in assessee's case. While handing over or transferring the seized material to the AO having jurisdiction of such other person it is mandatory obligation of the AO of the searched person to record the reasons and satisfaction, since, the act presumes that the material found during the course of search belongs to the person who is searched. Though the search u/s.132 of the Act was conducted in individual cases, the assessments re-opened pertains to HUF who is different person in the eye of Income tax law. The presumption is available for the searched person u/s.292C or 132 of the Act that the material found during the course of search belonged to the searched person. Therefore, it is necessary to give a finding with regard to any other material found during the course of search and does not stated to be belong to the searched person pertains to whom. In the instant case, the search was conducted in the case of individual and the Department is of the view that some material found during the course of search was related to assessee. However, the AO of searched person did not record his satisfaction. Unless the AO come to the conclusion that the material does not belonging to the searched person, the same cannot be treated as belonging to the assessee to assume jurisdiction against the assessee to initiate the proceedings u/s.153C of the Act. The Co-ordinate

Bench of ITAT, Visakhapatnam has considered the Judgements Hon'ble Jurisdictional High Court in the case of CIT Vs. Shettys Pharmaceuticals & Biologicals Ltd., (2015) (57 taxmann.com 282) (Andhra Pradesh) and the case of CIT-III Vs. Sri Rao Subba Rao (HUF) in ITTA No.254 of 2014, dt.15-04-2014 and held that the assumption of jurisdiction without having recorded the reasons in the case of searched person is invalid in Sri Padmavathi Venkateswara Constructions in ITA No.47/Viz/2019 dated 26-06-2019. For the sake of clarity and convenience we, reproduce the relevant part of the order of the Tribunal as under:

“9. We have heard both the parties and perused the material placed on record. In the instant case, the contention of the assessee is that the AO has not recorded satisfaction in the case of the searched person for transferring the incriminating material to the AO of the assessee. The Ld.CIT(A) has called for the remand report, in the remand report also, the AO mentioned regarding recording of satisfaction in the case of the assessee, but no mention was made in respect of the satisfaction recorded in the case of searched person i.e. R.Venkatramaiah. The department also did not place any evidence to show that satisfaction was recorded in the case of searched person, R.Venktramaiah, while transferring the incriminating material. As observed from the CBDT Circular No.24/2015 dated 31.12.2015 which is placed in page No.9B of the paper book, the CBDT has given guidelines to all the AOs to record satisfaction even if the AO of the searched person and the other person is one and the same. For the sake of clarity and convenience, we extract para No.4 and 5 of the Circular which reads as under :

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

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above

judgement. 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."

9.1. *Hon'ble High Court of Andhra Pradesh in the case of CIT Vs. Shettys Pharmaceuticals & Biologicals Ltd. supra held that recording of satisfaction by both the AOs is a pre condition for invoking jurisdiction u/s 153C of the Act. For the sake of clarity and convenience we extract para No. 5 to 7 of the Hon'ble Jurisdictional High Court which reads as under:*

5. *The argument apparently is very attractive, but the law is otherwise and the learned Tribunal has correctly applied. We therefore appropriately set out Section 153C of the Act.*

"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, Jeweller)' 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 153k 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 notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year - or years referred to in sub-section (1) of section 153A (Emphasis Supplied)

6. *It is therefore clear that firstly satisfaction has to be recorded by the Assessing Officer who conducted search, 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 of the Act. Thereafter, the Assessing Officer having jurisdiction over third party on receipt of the seized material or books of accounts or document being handed over to him shall record his own satisfaction after examining the same independently without being influenced by the satisfaction of the Seizing Officer. In other words it is not an automatic action. We find satisfaction of two officers is missing. In this connection we set out the text of the order of the Assessing Officer which is as follows:*

“A search and seizure operation u/s. 132 was carried out in the group case of Dr. T. Yadhiah Goud and others on 25.3.2010. During the course of search operation documents belonging to SHETTY PHARMACEUTICALS & BIOLOGICAL LTD., has been seized. Hence it is considered to initiate proceedings u/s. 153C of the I.T. Act.’

7. The aforesaid Section mandates recording of satisfaction of the Assessing Officer(s) is a pre-condition for invoking jurisdiction and it is not a mere formality because recording of satisfaction postulates application of mind consciously as the documents seized must be belonging to the any other person other than the person referred to in Section 153-A of the Act It is contended that the same Assessing Officer is involved in the matter. This fact does not dispense with above requirement. It is settled position of law that when a thing is to be done in one particular manner under law this has to be done in that manner alone and not other way (See Nazir Ahmed & King Emperor). We think the learned Tribunal has correctly followed the principle. We do not find any element of law to be decided.”

9.2. Similar issue has come up before this Tribunal in the case of Sri Seshasai Township P.Ltd. Vs. ACIT in I.T.A. No.301 & 302/Viz/2015 dated 11.01.2019, wherein the coordinate bench of ITAT, Visakhapatnam has taken the similar view. For the sake of clarity and convenience we extract relevant part of the order of this Tribunal which reads as under:

“10. We have heard both the parties and perused the material placed on record. As per the information placed in the paper book, the assessee has requested for supply of reasons and satisfaction of the AO of the searched person and the AO has replied vide letter dated 23.11.2017, stating that the AO of the Sai Teja Housing & Estates has recorded the satisfaction that there were documents found / impounded during the course of search belonged to the assessee. In response to question No. 2 and 3 relating to providing the copies of the satisfaction recorded by the AO of Sai Teja Housing & Estates for initiating the proceedings u/s 153C of the Act, in the case of the assessee stating that the query is similar to that of the earlier query and enclosed Annexure –‘A’, copy of the order sheet of the Sri Seshasai Township Pvt. Ltd., relating to the assessee. The AO did not supply the satisfaction note of the Assessing Officer of the searched person, i.e. Sai Teja Housing & Estates Ltd.. As the order sheet pertains to the assessee but not pertaining to the AO of the searched person, it is clear that the AO of the searched person has not recorded a separate satisfaction for transfer of the material found during the course of search and the department did not place any material to substantiate that the AO of the searched person has recorded separate satisfaction for transferring the material to the AO of

the assessee and to initiate proceedings u/s 153C. The Ld.DR contended that if the AOs of both the searched person and the assessee are one and the same no separate satisfaction is required to be recorded and relied on the decision Hon'ble Delhi High court in case of Instronics Ltd and Ganapati Fincap Services Pvt. Ltd. In the case of Instronics Ltd the Hon'ble High Court of Delhi restored the matter back to the file of the ITAT since there is no discussion on whether the documents referred to in the ITAT's order in fact incriminating and the AO of the searched person has recorded the satisfaction that the seized documents belonged to the assessee. The decision of Hon'ble High Court of Delhi in the case of Ganapati Fincap Services Pvt. Ltd. Vs. CIT (supra) is against the writ petition and the facts of the assessee's case are distinguishable, therefore, the case laws relied upon by the Ld.DR are not applicable in the assessee's case.

11. *In this connection, it is pertinent to mention section 292C of the Act places presumption that the material found during the course of search belongs to the searched person and the contents of such books of account and other documents are true. So it is the obligation of the AO as well as the searched person to prove that the incriminating material found during the course of search in fact does not belong to the searched person, but belonged to the other person. Therefore, unless there is satisfaction recorded with valid reasons it cannot be simply presumed that the seized material does not belong to the searched person, but in fact belonged to the other person. Therefore, satisfaction of the assessing officer of the searched person is mandatory requirement to transfer the records and to hold that the incriminating material found in the premises of the searched person in fact belonged to such other person.*

12. *Similar view is expressed by the Coordinate Bench of ITAT, Hyderabad in the case of Shri Srinivas Babu, Hyderabad Vs. ACIT supra relied upon by the assessee. For ready reference, we extract para No.6 of the order of the Coordinate Bench of ITAT in the case of Shri Srinivas Babu cited supra.*

"6. Having regard to the rival submissions and in the light of the decision of the jurisdictional High Court in line with the view taken by the Apex Court and the binding Circular issued by the CBDT(binding upon the Revenue), we are of the view that the proceedings initiated under S.153C of the Act for these two years deserve to be quashed in as much as the concerned Assessing Officer has admittedly not recorded any satisfaction before forwarding the files to the Assessing Officer in whose charge, the

assessee herein is assessed. In other words, the assessments made under S.153C of the Act are hereby quashed. In this view of the matter, the other grounds urged by the Revenue as well as the assessee have no legs stand, since the assessments for both the years are quashed.”

The assessee also relied on the decision of coordinate bench of ITAT, Delhi in the case of Narsi Creations Vs. Deputy Commissioner of Income Tax, (2016) 70 Taxmann.com 156, wherein, the Coordinate Bench of ITAT held that the satisfaction of the AO of searched person has to record satisfaction even if he is also the AO of the other person u/s 153C.

13. *Similar issue was considered by the coordinate bench of ITAT Ahmedabad in Parshwa Corporation. v. Deputy Commissioner of Income-tax, Central Circle2, Baroda [2017] 88 taxmann.com 43 (Ahmedabad - Trib.) and held that*

“18. From the above, it is clear no satisfaction is recorded by the Assessing Officer of person searched. The Assessing Officer of assessee did not record any satisfaction prior to issue of notice u/s 153C. The so-called satisfaction recorded in the notice u/s 153C is totally vague. It has not specified which valuable articles/things/books of accounts/documents were found from Shri Rameshbhai B. Shah which belongs to the assessee. In the assessment order the Assessing Officer has mentioned that in the laptop of Shri Rameshbhai B. Shah the data pertaining to the assessee were found and on that basis notices u/s 153C have been issued. However, in the notice u/s 153C, wherein the Assessing Officer is claimed to have been recorded the satisfaction for issue of the notice, there is no mention about such laptop or the alleged data in such laptop which is claimed to be belonged to the assessee. In view of above, we have no hesitation to hold that the basic condition for issue of notice u/s153C has not been satisfied.”

14. *The departmental circular dated 31.12.2015 also directed the AO to record the satisfaction, even if the AO of the searched person and the other person is one and the same and the Circular is binding on the assessing officers. **Non recording of satisfaction of the assessing officer of the searched person renders the assessment proceedings u/s 153C as invalid.** This view is supported by the decision of Hon’ble High court of Delhi in Pepsi Foods (P.) Ltd.v. Assistant Commissioner of Income-tax,*

[2014] 52 taxmann.com 220 (Delhi).Hon'ble High court of Delhi held as under:

“6. On a plain reading of Section 153C, it is evident that the Assessing Officer of the searched person must be "satisfied" that inter alia any document seized or requisitioned "belongs to" a person other than the searched person. It is only then that the Assessing Officer of the searched person can handover such document to the Assessing Officer having jurisdiction over such other person (other than the searched person). Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or re-assess his income in accordance with the provisions of Section 153A. Therefore, before a notice under Section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is - after such satisfaction is arrived at - that the document is handed over to the Assessing Officer of the person to whom the said document "belongs". In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to examine the provisions of presumptions as indicated above. Section 132(4A)(i) clearly stipulates that when inter alia any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in Section 292C(1)(i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or "satisfaction" that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of "satisfaction".

11. It is evident from the above satisfaction note that apart from saying that the documents belonged to the petitioner and that the Assessing Officer is satisfied that it is a fit case for issuance of a notice under Section 153C, there is nothing which would indicate as to how the presumptions which are to be normally raised as indicated above, have been rebutted by the Assessing Officer.

Mere use or mention of the word "satisfaction" or the words "I am satisfied" in the order or the note would not meet the requirement of the concept of satisfaction as used in Section 153C of the said Act. The satisfaction note itself must display the reasons or basis for the conclusion that the Assessing Officer of the searched person is satisfied that the seized documents belong to a person other than the searched person. We are afraid, that going through the contents of the satisfaction note, we are unable to discern any "satisfaction" of the kind required under Section 153C of the said Act.

12. This being the position the very first step prior to the issuance of a notice under Section 153C of the said Act has not been fulfilled. Inasmuch as this condition precedent has not been met, the notices under Section 153C are liable to be quashed. It is ordered accordingly."

***Hon'ble supreme court dismissed the SLP** filed by the revenue against decision of Hon'ble High Court ruling that before issue of notice under section 153C, Assessing Officer is required to arrive at a conclusive satisfaction that documents belongs to a person other than searched person in [2018] 89 taxmann.com 10 (SC). Therefore, the courts held that the satisfaction not only should be recorded but also should be written in detail with valid reasons and it should not be vague. In the instant case, there is no dispute that the department could not establish that the AO of the searched person has recorded satisfaction before issue of notice u/s 153C of the Act. Therefore, respectfully following the view taken by the decisions Hon'ble courts cited supra and as per the discussion in preceding paragraphs, we hold that the notice issued u/s 153C is unsustainable."*

9.3. Since the facts are identical, respectfully following the decision of Hon'ble High Court of Andhra Pradesh and the view taken by this Tribunal in the case cited supra, we hold that the issue of notice u/s 153C without recording the reasons in the case of searched person renders the notice issued u/s 153C as invalid. Accordingly, we quash the notice issued u/s 153C and the cancel the consequent assessment made u/s 143(3) r.w.s. 153C. Since we have quashed the notice issued u/s 153C and cancelled the consequent assessment, we consider it is not necessary to adjudicate the revenue's appeal which is on quantum of additions and the remaining grounds of appeal raised by the assessee in this appeal. Accordingly, the appeals of the assessee is allowed and the revenue's appeal is dismissed

7.1. In the instant case, there is no dispute that there is no satisfaction recorded by the AO of the searched person. No material was placed before us to show that the satisfaction was recorded by the AO of searched person before transfer of the material to the officer having jurisdiction over such other person in this case, the assessee. Since the facts are identical, respectfully following the decisions of Hon'ble Jurisdictional High Court and other High Courts supra and the decision of the Co-ordinate Bench of the ITAT, Visakhapatnam, we hold that the assumption of jurisdiction without recording the reasons in the case of searched person is invalid. Accordingly, we quash the notices issued u/s.153C of the Act and cancel the assessments framed u/s.143(3) r.w.s. 153C of the act. The assessee's appeals on this ground is allowed.

8. Since, we have allowed the appeal of the assessee on the ground of non-recording of reasons, we consider it is not necessary to adjudicate the other grounds raised by the assessee in these appeals.

9. In the result, the appeals in ITA Nos.1871/Hyd/13, 1872/Hyd/13, 1873/Hyd/13, 1874/Hyd/13, 1875/Hyd/13 & 1876/Hyd/13 are allowed.

ITA No.1877/Hyd/2013 (AY.2008-09):

10. In this case, the AO made regular assessment u/s.143(3) of the Act. In the assessment proceedings, the AO made an addition of Rs.1,60,000/- relating to agricultural income as 'income from other sources'. The AO found during the course

of assessment proceedings that the assessee along with other brothers are having lands situated at Vattinagulapally village and the lands were vacant lands. The land revenue records also shows that such lands were vacant lands and no agricultural activities were carried out. The AO further observed that majority of the lands were transferred by the assessee to M/s.Dakshin Shelters Pvt. Ltd., for the purpose of development. Therefore, there is no agricultural income derived by the assessee from the said lands. Accordingly, made the addition of Rs.1,60,000/-, treating the agricultural income as 'income from other sources'.

11. Against the order of the AO, assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the addition made by the AO. Against which, the assessee preferred an appeal before the Tribunal.

12. During the appeal hearing, the Ld.AR argued that from the AYs.1983-84 to 2001-02, assessee carried on agricultural activity and declared agricultural income, which was also accepted by the AO. Therefore, merely for not carrying out any agricultural activity or keeping the lands vacant for some time, the income derived by the assessee from the said land cannot be treated as non-agricultural income. In this connection, the assessee relied on the decision of Hon'ble Bombay High Court in the case of 331 ITR 59. Referring to Pgs.39 to 41 of the Paper Book Ld.AR argued that the lands situated at Vattinagulapally village were acquired by the Government and as per the acquisition order, the lands were characterized as

‘agricultural lands’ for which government also paid the compensation, therefore, argued that the authorities erred in treating the agricultural income as non-agricultural income and requested to allow the appeal of assessee.

13. On the other hand, Ld.DR submitted that the Ld.AR had argued that the lands situated at Vattinagulapally village, does not belong to HUF, and was received by individual by way of gift from his mother. Since the lands were not transferred to the hotchpotch of HUF, the income thereon should not be treated as ‘income of the HUF’. Ld.DR further submitted that the Hon'ble ITAT in its order in the case of M/s.Dakshin Shelters Pvt. Ltd., Vs. DCIT, in ITA Nos.1983 to 1985/Hyd/2011, dt.04-05-2012 given finding that the said lands were already handed over to the developer and the business of real estate project was already commenced and the developer had incurred the cost of Rs.76,42,493/- for development of lands situated at Vattinagulapally village. Thus, he submitted that there is no case of cultivating the land and the lands were mountainous lands, where there is no possibility of cultivation. Therefore, he argued that the AO rightly treated the same as ‘non-agricultural income’ and taxed under ‘income from other sources’ and requested to uphold the orders of the lower authorities.

14. We have heard both the parties and gone through the material placed on record. In the instant case, assessee stated before us that the lands situated at Vattinagulapally village does not belong to HUF and belonged to individual and

acquired by inheritance through gift deed from his mother. Therefore, there is no case for considering the same as agricultural income in the hands of the HUF. Further it is seen from the orders of ITAT that the said lands were given to M/s.Dakshin Shelters Pvt. Ltd., for the purpose of development and the assessee came to know that the developer already started real estate project and incurred substantial expenditure for development of the same. The lands were stated to be mountainous lands. This fact finding was given by the ITAT in its order (supra). Except the land revenue authorities, no other evidence brought by the assessee for establishing the agricultural income. Therefore, we find no reason to interfere with the orders of the authorities below and accordingly, we, dismiss this appeal of assessee.

Order pronounced in the open court on 25th October,2019

Sd/-

**(V. DURGA RAO)
JUDICIAL MEMBER**

Sd/-

**(D.S. SUNDER SINGH)
ACCOUNTANT MEMBER**

Hyderabad, Dated: 25-10-2019

TNMM

Copy to :

1. Sri Sudhir Kumar D.Shah – HUF, 4-3-345, 1st Floor, RBH Lane, Koti,Hyderabad.

2.The Deputy Commissioner of Income Tax, Central Circle-2, Hyderabad.

3. CIT(Appeals)-1, Hyderabad.

4. The CIT(Central), Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.