

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "B", BANGALORE**

**Before Shri George George K, JM & Shri B.R.Baskaran, AM**

ITA No.326/Bang/2018 :Asst.Year2008-2009

ITA No.327/Bang/2018 :Asst.Year 2007-2008

The Asst.Commissioner of Income-tax, Circle 3(1)(1) Bangalore.	v.	M/s.IBC Knowledge Park Private Limited, No.150,Diamond District, Tower B, Penthouse Old Airport Road Bangalore – 560 008. <b>PAN : AABCI0816L.</b>
(Appellant)		(Respondent)

CO No.73/Bang/2018 :Asst.Year 2008-2009

CO No.74/Bang/2018 :Asst.Year 2007-2008

M/s.IBC Knowledge Park Private Limited, Bangalore – 560 008.	v.	The Asst.Commissioner of Income-tax, Circle 3(1)(1) Bangalore.
(Cross Objector)		(Respondent)

Revenue by :Sri.Muzaffar Hussain, CIT-DR

Assessee by :Sri.S.Ramsubramaniam, CA

<b>Date of Hearing : 18.03.2021</b>	<b>Date of Pronouncement : 18.03.2021</b>
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**ORDER**

**Per Bench :**

Both the appeals filed by the Revenue and both the cross objections filed by the assessee are directed against the orders dated 15.11.2017 passed by the learned CIT(A)-3, Bangalore and they relate to the assessment years 2007-2008 and 2008-2009.

2. In both the years, the Revenue is challenging the decision of the learned CIT(A) in holding that the proceedings initiated u/s 153C of the Act is not valid.

3. In its cross objections filed for both the years, the assessee is aggrieved by the decision of the learned CIT(A) in not disposing the issues urged on merits.

4. The facts relating to the case are stated in brief. The Revenue carried out search and seizure operations u/s 132 of the Act, in the hands of a group concern of the assessee named M/s. India Builders Corporation on 17.06.2008. During the course of search certain documents belonging to the assessee were found. Accordingly, proceedings u/s 153C of the Act was initiated in the hands of the assessee for assessment years 2004-2005 to 2008-2009 on the strength of those documents. The assessee challenged the validity of initiation of proceedings u/s 153C of the Act for all the five years before the CIT(A). However, the learned CIT(A) delinked the assessment years 2007-2008 and 2008-2009 from the rest of the three years. The learned CIT(A), in assessment years 2004-2005 to 2006-2007, upheld the validity of proceedings initiated u/s 153C of the Act and his decision was affirmed by the ITAT also. Hence the assessee filed appeals before the Hon'ble High Court of Karnataka, challenging the decisions so rendered by the Tribunal for assessment years 2004-2005 to 2006-2007. The Hon'ble High Court of Karnataka in its decision dated 28.04.2016, reported in (2016) 385 ITR 346, held that it is necessary that the satisfaction recorded by the AO should mention that the incriminating material found during the course of search showed undisclosed income of another assessee. In the absence of specific observation about the existence of undisclosed income in the satisfaction note

recorded u/s 153C of the Act, the Hon'ble High Court of Karnataka held that the proceedings initiated u/s 153C of the Act for assessment years 2004-2005 to 2006-2007 are not valid.

5. In the appeal filed for assessment years 2007-2008 and 2008-2009 before Ld CIT(A), the assessee challenged the validity of initiation of proceedings u/s 153C of the Act by placing reliance on the decision rendered by the Hon'ble High Court of Karnataka in its own case referred above. The assessee filed a detailed written submission before the learned CIT(A) and hence the learned CIT(A) called for a remand report from the Assessing Officer. After considering the remand report, the learned CIT(A) took the view that the issue of validity of proceedings initiated u/s 153C of the Act is covered by the decision rendered by the Hon'ble High Court of Karnataka in assessee's own case referred, supra, and accordingly allowed the ground of the assessee. Since the entire assessment proceedings of both the years under consideration were quashed by the learned CIT(A), he did not adjudicate the grounds urged on merits on the reasoning that they become academic in nature. Against the order so passed by the learned CIT(A), the Revenue has filed appeals in both the years and the assessee has filed cross objections contending that the learned CIT(A) ought to have adjudicated the grounds urged on merits.

6. We heard the parties and perused the records. For the sake of convenience, we extract below the order passed by the learned CIT(A) on this legal issue:-

*"4.3 A copy of the remand report along with the comments of JCIT was provided to the appellant and it filed its rejoinder on the same vide letter dt 15.11.2012. The reply of the appellant and reports of the AO and JCIT have duly been considered. It is important to note that assessment proceedings of the appellant for the Assessment Year 2003-04 to Assessment Year 2009-10 were pending at that point of time when these reports were called for. Of course, AY 2003-04 to AY 2008-09 involved the identical issue of challenge to the validity of assessment proceeding initiated under section 153C of the Act. The appeals of the appellant for A Y 2004-05, 2005-06, 2006-07 and 2009-10 were decided by CIT(A) vide his order dt 21.03.2013. The ground of the appeal of the appellant relating to invoking of the provisions of under Section 153C and consequent assessment u/s 153C read with section 143(3) in relation to A Ys 2004-05, 2005- 06 and 2006-07 were dismissed by the CIT(A) and thus assumption of the jurisdiction by the AO and consequent passing of assessment order was upheld. The order of the CIT(A) for A Y 2004-05 to A Y 2006-07 was challenged by the appellant before ITAT in CO Nos. 103 to 105/Bang/ 2013 (in ITA Nos. 903 to 905/Bang/20 13) and the appellant raised the issue of validity of proceedings u/s 153C of the Act in its case. However, this ground of appeal of the appellant was dismissed by the ITAT in its order dt 25.04.2014. The said order was challenged by the appellant before High Court in ITA Nos. 410-412/2014. Following was one of the substantial questions of law before the High Court:*

*"Whether the tribunal was correct in holding that the assessment under Section 153C was valid despite there being no satisfaction recorded that the documents found during the search on 17. 06. 2008 were incriminating in nature and prima facie represented undisclosed income. "*

*4.4 While deciding the above substantial question of law, the High Court relied upon the decision of Apex Court in the case of CIT vs M/s Calcutta Knitwears (2014) 362 ITR 673 (SC) and consequent circular no. 24/2015 dt 31.12.2015 issued by CBDT and decided the issue in favour of the appellant. The High Court held as follows:*

*" We answer substantial question of law no. 2 by holding that the tribunal was not correct in holding that the assessment under section 153C was valid despite there being no satisfaction recorded to the effect that the documents found during the search on 17.06.2008 were incriminating in nature and prima facie represented undisclosed income. "*

*4.5 It is noted that the issue of validity of issue of notice under Section 153C and consequent validity of assessment order under section 153C r.w.s.143(3) as raised by the appellant vide letter dt 19.09.2011 in the additional ground of appeal 1 is same as decided by the jurisdictional High Court in its order in appellant's own case in ITA Nos. 410-412/2014 (as reproduced supra). So the ratio of the above said decision would apply to the case of the appellant for the year under consideration also. So following the decision of jurisdictional High Court in appellant's own case for A Y 2004-05 to A Y 2006-07, the additional ground of appeal 1 raised vide letter dt 19.09.2011 is allowed.”*

7. Before us, the learned CIT- DR reiterated that the Assessing Officer has recorded satisfaction for initiation of proceedings u/s 153C of the Act. He also took us through the satisfaction note. The Ld A.R, on the contrary, submitted that similar kinds of satisfaction note was available in AY 2004-05 to 2006-07 also and the High Court has decided the legal issue in favour of the assessee, since there is no mention about availability of undisclosed income.

8. We notice that the Hon’ble jurisdictional Karnataka High Court has considered the provisions of sec.153C relevant for AY 2004-05 to 2006-07 and the relevant observations made by the High Court are extracted below:-

**“45.** Sections 153A, 153B and 153C were inserted by the Finance Act, 2003, with effect from 1/6/2003. They have replaced the post-search block assessment scheme in respect of any search or requisition made after 31/5/2003. Sub-section (1) of Section 153A inter alia deals with assessment in case of search or requisition. It begins with a non-obstante clause and states that notwithstanding anything contained in Sections 139, 147, 148, 149, 151 and 153, in the case of a person where a search is initiated under Section 132 or books of account, other documents or any valuable assets are requisitioned under Section 132A, the Assessing Officer shall issue notice to such person requiring him to furnish within such period, as may be specified in the notice, return of income in respect of each assessment year falling within six assessment years referred to in clause (b) of Section 153(1) in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of the Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139. The Assessing Officer can assess or reassess the

total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. However, assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate. The explanation states, save as otherwise provided in Sections 153A, 153B and 153C, all other provisions of the Act shall apply to the assessment made under Section 153A. Section 153B speaks about time-limit for completion of assessment under Section 153A.

**46.** 153C is relevant for the purposes of this case. Sub-section (1) of Section 153C begins with a non-obstante clause and it states that notwithstanding anything contained in Sections 139, 147, 148, 149, 151 and 153, where the Assessing Officer is satisfied that any valuable assets, seized or requisitioned, belongs to, or any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to a person other than the person referred to in Section 153A, then, the books of account or documents or valuable 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 valuable 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.

Sub-section (2) of Section 153C states that where books of account or documents or valuable assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under Section 132 or requisition is made under Section 132A and in respect of such assessment year - (a) no return of income has been furnished by such other person and no notice under sub-section (1) of Section 142 has been issued to him, or (b) a return of income has been furnished by such other person but no notice under sub-section (2) of Section 143 has been served and limitation of serving the notice under sub-section (2) of Section 143 has expired, or (c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or valuable assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue notice and assess or reassess total income of such other person of such assessment year in the manner provided in Section 153A."

Then the Hon'ble High Court has examined the erstwhile provisions of sec.158BD dealing with search cases. Accordingly it has come to the conclusion that that the satisfaction should record that the material found during the course of search is incriminating one and further it represented undisclosed income of the assessee.

9. We noticed that the learned CIT(A) has followed the decision rendered by the Hon'ble High Court of Karnataka in assessee's own case. For the sake of convenience, we extract the relevant portion of the decision rendered by the Hon'ble jurisdictional High Court on the legal issue:-

*"54. On a consideration of the relevant sections as well as judicial precedent referred to above, what emerges is that, section 158BD of the Act deals with undisclosed income of a third party. However, in so far as the incriminating material of the searched person or other person detected during the course of search is concerned, the same can be considered during the course of assessment. Further, such incriminating material must relate to undisclosed income which would empower the Assessing Officer to upset or disturb a concluded assessment of the other person. Otherwise, a concluded assessment would be disturbed without there being any basis for doing so which is impermissible in law. Even in case of a searched person, the same reason would hold good as in case of any other person. As observed by us, detection or the existence of incriminating material is a must for disturbing the assessment already made and concluded. But, at the same time, such can be at three stages : one, at the stage when the reassessment is initiated, the second, at the stage during the course of reassessment and third, at a stage where the reassessment is altered by a different assessment in respect of searched person or in respect of third party. In this regard, reference may be made to the decision of the apex court in the case of Calcutta Knitweaves (supra) and based on the said decision, the Central Board of Direct Taxes has also issued circular dated December 31, 2015, vide No. 24 of 2015. The relevant extract of the circular for ready reference can be extracted as under (see [2016] 380 ITR (St.) 32 ) :*

*"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 March 12, 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/parimateria 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 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."

As per the aforesaid circular, at the time of or along with initiation of the proceedings, against the searched person or third party under section 153C or in the course of assessment proceedings under section 153C of the Act or immediately after the assessment proceedings are completed under section 153C of the Act, recording of satisfaction is required.

55. If the observations made by the Tribunal are considered in this regard, it is noted by the Tribunal that it is not necessary that satisfaction should be recorded that documents or valuable assets found in the course of search showed undisclosed income. In view of the aforesaid discussion, we do not think that such can be the correct position of law.

56. Further, in the judgments referred to by the learned counsel for the Revenue, where incriminating material leading to undisclosed income of another assessee was detected in a search operation, in those cases, reopening of the concluded assessment have taken place. There has been no single decision cited by the learned counsel for the Revenue where the assumption of jurisdiction of the Assessing Officer is in the absence of any incriminating material or undisclosed income having been detected during the course of search leading to reopening of a concluded assessment. In the instant case, though documents belonging to the assessee were seized at the time of search operation, there was no incriminating material found leading to undisclosed income. Therefore, assessment of income of the assessee was unwarranted. Consequently, no satisfaction was recorded in the case of the assessee.

We answer the substantial question of law No. 2 by holding that the Tribunal was not correct in holding that the assessment under section 153C was valid despite there being no satisfaction recorded to the effect that the documents found during the search on June 17, 2008 were incriminating in nature and prima facie represented undisclosed income."

10. There is no dispute that there is parity of facts between the years decided by the Hon'ble jurisdictional Karnataka High Court and the years under consideration. Further the same provisions of sec.153C are applicable to the years under consideration. Admittedly, no specific observation has been made in the satisfaction recorded by the Assessing Officer that the incriminating material shows availability of any undisclosed income. Hence the decision rendered by Hon'ble Karnataka High Court in the assessee's own case (referred supra) shall squarely apply to both the years under consideration.

11. In view of the foregoing discussions and further, since the Ld CIT(A) has followed the binding decision rendered by Hon'ble jurisdictional Karnataka High Court, we do not find any reason in interfering with the order passed by Ld CIT(A) cancelling the initiation of proceedings u/s 153C of the Act. Accordingly, we uphold the order passed by the learned CIT(A) in both the years under consideration.

12. Since we have upheld the decision of the learned CIT(A) on the legal issue, we are of the view that the learned CIT(A) was justified in not adjudicating the grounds urged by the assessee before him on merits, since they would be rendered academic in nature. Accordingly, we decline to adjudicate the grounds urged in the cross objection filed by the assessee for both the years on very same reason.

13. In the result, both the appeals filed by the Revenue and both the cross objections filed by the assessee are dismissed.

Order pronounced on this 18<sup>th</sup> day of March, 2021.

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(B.R.Baskaran)**  
**ACCOUNTANT MEMBER**

Bangalore; Dated : 18<sup>th</sup> March, 2021.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-3, Bangalore.
4. The Pr.CIT-3, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore