IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DLEHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

ITA No. 4136/Del/2019
Assessment Year: 2010-11

Ambawatta Buildwell Pvt. Ltd., KH No. 267, 100 Feet Road, Chatterpur Enclave, Mehrauli, New Delhi.	vs.	DCIT, Central Circle-1, Gurgaon.
PAN : AAGCA 0991B (Appellant)		(Respondent)

Appellant by : Sh. P.C. Yadav, Advocate
Respondent by: Sh. Sanjay Tripathi, Sr. DR

Date of hearing: 31.08.2021
Date of order : 31.08.2021

ORDER

PER MAHAVIR PRASAD, J.M.

This appeal has been preferred by the assessee against the order of the ld. CIT(A) No. 744/CIT(A)-3/GGN/2016-17, arising out of penalty order dated 18.03.2016. Assessee has taken following grounds of appeal :

> "1. That on the facts and circumstances of the case and in law, the proceedings u/s 271(1)(c) of the Act have been initiated on the basis of incorrect facts and the impugned order passed pursuant thereto is illegal, invalid and bad in law.

2. That on the facts and circumstances of the case and in law, the Ld. CIT (A) - 3 Gurgaon has failed to appreciate that all the issues raised were fully examined and explained both during assessment proceedings and penalty proceedings and the reasons given for dismissing the appeal are contrary to the facts of the case.

3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) - 3 Gurgaon had erred in not accepting the contentions of the appellant, namely that (a) *"The collaboration agreement dated 2nd April, 2009 seized during the search specifies at para 15 that upon signing of the agreement, the developer has paid sum of Rs 1.00 crore to the owner (partly by cash and partly by cheque) as advance money. The receipt just supplements the agreement, wherein it has been acknowledged by the sellers in the undated receipt duly signed on stamp paper that they have received Rs 1.00 crore (partly by cash - Rs 50,00,000/- and party by cheque - Rs 50,00,000/-)"* whereas during the financial year 2009-10, no such payments were made for the reason that the land was learnt to be under acquisition and the facts needed to be verified and, for the first time, the payment of Rs 50,00,000/- has been made by cheque dated 08th October, 2010 under the said agreement in financial year 2010-11 which is duly reflected in the books of accounts. And (b) that *"The supplemental agreement dated 01-07-2010 has no evidentiary value as it is an afterthought after the search / survey in which the above referred document was seized"* whereas the fact is that supplemental agreement was made much before the date of search / survey operation which took place on 09-11-2011/ 15-11-2011 and therefore the reasons on the basis of which Ld CIT (A) -3 Gurgaon, has based his judgment are palpably incorrect, are unjust and contrary to the facts on record.

4. That in the facts and circumstances of the case, the order passed by the Ld. CIT (A) - 3 Gurgaon is perverse and bad in law as he has not considered and/or dealt with the detailed submissions made during the appellate proceedings relating to penalty under section 271(1)(c) of the Act and has gone by extraneous, irrelevant and incorrect facts and contrary to the material placed on record during proceedings u/s 143(3) and section 271(1)(c) of the Act. The action of the Ld. CIT(A)- 3 Gurgaon is wholly unreasonable, arbitrary, bad in law and contrary to the facts of the case.

5. That in this case the matter relating to the quantum addition of Rs 50,00,000/- as per the Order of Ld. Pr. CIT (OSD) - holding charge of CIT(A) - Gurgaon had already been heard by the Hon'ble ITAT Delhi on 14th March, 2019 and learned Tribunal's Order was awaited and, therefore, the Ld. CIT(A) - 3 Gurgaon was not justified in rejecting the Appellant's request for keeping the proceedings in abeyance for just a week or so and

dismissing the appeal of the Appellant in an arbitrary and uncalled for manner.

6. That the quantum appeal pending before the Hon'ble ITAT has since been disposed of vide order dated 9th April 2019 in ITA No. 2591 /Del/2015 and the addition of Rs. 50,00,000 has been deleted and there is absolutely no case for sustaining the penalty relating to addition which stands deleted.

7. That in the facts and circumstances of the case, the present appeal may be allowed with costs."

2. The facts of the case are that the assessee company is engaged in the business of real estate activities. A consequential survey action u/s. 133A of the Income-tax Act, 1961 was carried out on 15.11.2011 at the business premises of the assessee company M/s. Ambawatta Buildwell Pvt. Ltd. and its Director, Shri Vinod Kumar. During the search, several incriminating documents were seized by the department and on the basis of those documents, addition was made and penalty proceedings were initiated and penalty was imposed to the tune of Rs.15,45,000/- u/s. 271(1)(c) of the Act. The same was confirmed by the learned CIT(A).

3. At the outset, learned AR, Shri P.C. Yadav, Advocate submitted that in quantum proceeding, ITAT vide order dated 09.04.2019 has already granted relief to the assessee in ITA No. 2591/Del/2015 for A.Y. 2010-11 with the following observations :

"7. We have gone through the record in the light of the above submissions. In so far as the dates referred to by the learned AR are concerned, absolutely there is no dispute. Search in this matter was conducted on 9.11.2011 and the seized documents belonging to the assessee were received in the Central Circle on 29.8.2013. The satisfaction note was recorded by the ld. AO on 3.10.2013. Basing on this, as

contended by the learned AR, it is evident that the satisfaction note dated 3.10.2013 was recorded by the ld. AO of the assessee and certainly, it could not be by the AO of the searched person inasmuch as long prior to these dates, the ld. AO of the searched person parted with the documents which were received in the Central Circle on 29.8.2013. Even if the AO of the searched person and the AO of the assessee are one and the same, in view of the dates, namely, date of receipt of documents by the Central Circle being 29.8.2013 and the date of satisfaction note being 3.10.2013, the irresistible inference is that the satisfaction note dated 29.8.2013 was recorded by the ld. AO as the AO of the other person i.e. the assessee but not AO of the searched person. Had such a note been recorded by the ld.AO any date prior to 29.8.2013, there would have been a possibility of understanding that such a note could have been recorded by the ld. AO as the AO of the searched person. However, in view of the admitted dates of receipt of the seized documents by the Central Circle and the subsequent satisfaction note, there is no other way of understanding the same except as the satisfaction recorded by the other person. Now coming to the law applicable to these facts, both the assessee and the revenue are relying on the decision of the Hon'ble jurisdictional High Court in the case of Ganpati Fincap Services P. Ltd. (supra). This case is relied on by the Hon'ble jurisdictional High Court in a subsequent decision in the case of PCIT vs. Sheetal International P. Ltd. (supra) on which learned DR has placed reliance.

8. In the case Ganpati Fincap (supra), Hon'ble jurisdictional High Court, at para 41, summarized the law on this aspect as under:

> *"41. To summarise the legal position:*
>
> > *(i) No search under Section 132(1) of the Act can be initiated without a satisfaction note being recorded by the AO of such searched person. This is followed by issuance of a notice to such searched person under Section 153A of the Act. At that stage the AO does not have to record another satisfaction note qua the searched person.*
> >
> > *(ii) Where proceedings are proposed to be initiated under Section 153C of the Act against the 'other person', it has to be preceded by a satisfaction note by the AO of the searched person. He will record in this satisfaction note that the seized document belongs to the other person. Depending on the nature and contents of the document he may be required to give some reasons for such conclusion.*
> >
> > *(iii) Where the AO of the searched person is different from the AO of the other person, the AO will simultaneous with*

transmitting the documents along with his satisfaction note to the AO of the other person, make a note in the file of the searched person that he has done so. But this is for administrative convenience. The failure by the AO of the searched person, after preparing and despatching the satisfaction note and documents to the AO of the other person, to make a noting to that effect in the file of the searched person will not vitiate the proceedings under Section 153C against the other person.

(iv) Where the AO of the searched person and the other person is the same, such a satisfaction note qua the other person has to be recorded by the AO of the searched person prior to the initiation of the proceedings against the other person. This is a sine qua non for triggering the proceedings against the other person under Section 153C of the Act.

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

(vi) It is only in certain cases, where the document is such that it may belong to more than one person (including the searched person) that the AO will have to indicate in the satisfaction note the reasons why he is of the opinion that the document belongs to the other person and not the searched person.

(vii) Where the AO of the searched person records that the seized document in question belongs to the other person, and where necessary, gives the reasons therefor, the requirement of Section 153C stands satisfied. The failure by the AO in such case to record in the satisfaction note that such document does not belong to the searched person will not vitiate the proceedings under Section 153C against the other person."

9. It is, therefore, clear that the Hon'ble jurisdictional High Court in unequivocal terms held that recording of the satisfaction by the AO of the searched person qua the other person prior to the initiation of proceedings against the other person is a sine qua non for triggering the proceedings against the other person u/s 153C of the Act. No decision

contrary to this proposition is brought to our notice and on the other hand, in the case of Sheetal International (supra), Hon'ble jurisdictional High Court followed the same. However, in that case as could be seen from the judgment, theTribunal invalidated the proceedings u/s 153C of the Act only for the reason that the AO of the searched person who was also that of the assessee, did not record a separate satisfaction note. Such an approach of the Tribunal was reversed by the Hon'ble jurisdictional High Court in view of the fact that in Ganpati Fincap (supra) vide para 41(v), and it was held that there do not have to be two separate satisfaction notes prepared by the AO of the searched person even where he is also the AO of the other person.

10. In the case in hand, it is not the question of recording a separate note or a composite note. This is a case where altogether there is no satisfaction recorded by the AO of the searched person qua the other person prior to the initiation of the proceedings against the other person u/s 153C of the Act. Therefore, the case of Sheetal International (supra) has no application to the facts of the case.

11. In so far as the decision in the case of Instronics Ltd. (supra) is concerned, the AO of the searched person recorded a satisfaction note to the effect that seized documents belonged to the assessee and on such basis, notice u/s 153C was issued. On this set of facts, Hon'ble jurisdictional High Court held that the issuance of such a notice was justified. In the case of Super Malls P. Ltd. (supra), the issue involved was not recording of the satisfaction either separately or by way of composite order by the AO of the searched person qua the other person in order to impact the validity of the notice issued u/s 153C. The issue involved therein was post amendment to Section 153C brought into force w.e.f. 1.6.2015 by the Finance Act, 2015 deleting the reference to the expression "belonging to" and instead substituting it with "pertains or pertained to" and the impact of a validity of the notice recorded u/s 153C of the Act. This decision is also not applicable to the facts of the case. Likewise, no decision is brought to our notice where the decision of the Hon'ble jurisdictional High Court in the case of Ganpati Fincap Services ltd. (supra) was disturbed.

12. We are, therefore, of the considered opinion that the decision in the case of Ganpati Fincap Services ltd. (supra) holds the field and the recording of satisfaction not by the AO of the searched person qua the other person prior to the initiation of the proceedings against the other person is a sine qua non for triggering the proceedings against the other person u/s 153C of the Act and, therefore, in the absence of such recording of satisfaction by the AO of the searched person qua the other

person, assumption of jurisdiction by the AO by issuance of notice u/s 153C of the Act cannot be sustained.

13. It is pertinent to note that in the case of Ganpati Fincap Services Ltd;(supra), Hon'ble jurisdictional High Court stated that there do not have to be two separate satisfaction notes prepared by the AO of the searched person where such person happens to the AO of the other person but one satisfaction note by such AO qua the other person would meet this requirement. However, there is no such satisfaction recorded by the AO of the searched person qua the other person which the Hon'ble jurisdictional High Court laid sine qua non for initiation of proceedings against the other person. We, therefore, while respectfully 10 following the decision of the Hon'ble jurisdictional High Court in the case of Ganpati Fincap Services P. Ltd. (supra) hold that the assessment of jurisdiction for issuance of notice u/s 153C of the Act cannot be sustained and, on that ground, the assessee succeeds in this appeal. Since assessee succeeds on the question of law, we do not deem it necessary to delve deeper into the merits of the case. Appeal is accordingly allowed.

14. In the result, appeal of the assessee is allowed"

4. Since ITAT has already granted relief to the assessee in quantum proceedings, now there is no basis to hold penalty proceedings against the assessee.

5. Thus, in view of the above, we allow the appeal of the assessee and direct the Assessing Officer to delete the penalty.

6. In the result, the appeal filed by assessee is allowed.

Order pronounced in the open court on this 31st day of August, 2021.

Sd/-	Sd/-
(R.K. PANDA)	**(MAHAVIR PRASAD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 31st August, 2021

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