

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DLEHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA Nos. 5166, 5167 & 5168/Del/2018
Assessment Years: 2010-11, 2011-12 & 2014-15**

DCIT, Central Circle,
Noida.

vs.

Sundaram IT Parks Pvt. Ltd.,
5D, Plaza, M-6, District Centre,
Jasola, New Delhi

PAN : AAKCS 1961P
(Appellant)

(Respondent)

Appellant by : Sh. H.K. Choudhary, CIT/DR

Respondent by: None

Date of hearing: 26.08.2021

Date of order : 09.09.2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by a common order dated 17.05.2018 passed by the Commissioner of Income Tax (Appeals)-IV, Kanpur ("Ld. CIT(A)") in the cases of Sundaram IT Parks Pvt. Ltd., ("the assessee") for the assessment years 2010-11, 2011-12 and 2014-15, the Revenue preferred these appeals.

2. Brief facts of the case are that the assessee is a part of Tirupati Sun-World Group of Companies (TSGC) engaged in the business of pharmaceutical manufacturing, formulation of tablets, capsules, oral

powder, oral liquids, manufacturing of cylinders and construction business at various sites of Gautam Budh Nagar, Paonta Sahib (HP), Muzaffarnagar etc. A search and seizure operation u/s. 132 of the Income-tax Act, 1961 ("the Act") was conducted on 11.11.2014 on the premises of the assessee comprising TSGC, which is a diversified group with multiple business interests, established in 1980. Notice u/s. 153C of the Act was issued on 02.07.2016, pursuant to which, the assessee filed the return of income showing nil income for the assessment year 2010-11 and 2011-12 and Rs.65,15,870/- for the assessment year 2014-15. During the assessment proceedings, the Assessing Officer found certain unsecured creditors to the tune of Rs.12.5 lacs for the assessment year 2010-11 and Rs.2,25,58,850/- for the assessment year 2011-12 and non-refundable security deposit to the tune of Rs.16 cores for the assessment year 2014-15. Assessing Officer recorded that all these sums are to be added to the income of the assessee and accordingly added the same.

3. Aggrieved by such additions for all these three years, the assessee carried the matter in appeal to the Id. CIT(A) and the Id. CIT(A) by way of a common order dated 17.05.2018 deleted the same holding that such additions were made in absence of any incriminating material seized during the course of search and seizure operation. Aggrieved by such finding of the Id. CIT(A), the Revenue preferred these appeals before us.

4. When the matter was called, there was none on behalf of the assessee to represent the case. It could be seen from the record that the notice was sent to the address given in form No. 36. If the assessee is available in such address, such notice should have been served on the assessee. If for any reason, the assessee is not available there, it is for the

assessee to make arrangements for service of such notice by furnishing the address where the assessee would be available, or to deliver it to some authorised person, or by making request to the postal department to detain the mail till the assessee claims the same. Since the assessee does not seem to have adopted any of these methods, we are of the considered opinion that no time could be granted. Basing on the record we proceed to hear the counsel for Revenue and decide the matter on merits.

5. It is the argument on behalf of the Revenue that in the satisfaction note, the learned Assessing Officer had clearly brought out all the facts and circumstances, which indicated the names of the entities including the assessee, appearing on seized documents were in the nature of accommodation entries only for doubting the undisclosed income of the Tirupati Sunworld Group Companies and hence such documents constituted incriminating material for the purpose of assessment under section 153C of the Act. Ld. DR further submitted that since all such identities of the Tirupati Sonworld Group were found to be engaged in routing the unaccounted funds by laying through various entities including assessee, controlled by them as mentioned in the satisfaction note, the mere fact that the entries were recorded in regular Balance Sheet of the beneficiary could not by itself allow the treatment of such seized documents as non-incriminating in the context of entities providing accommodation entries, namely, assessee, as the expression used under section 153C of the Act is in relation to person other than the searched person. According to the Ld. DR, whether or not the material is incriminating has to be seen in the context of totality of facts and

circumstances and in the context of the person in whose hands such entries in the documents represent the unexplained income. Further according to him, incriminating documents would include the entries recorded in books of accounts, which are fabricated, manipulated or camouflaged and has a bearing on the determination of total income of the assessee. Lastly he submitted that while recording the satisfaction for issue of notice under section 153C of the Act, the test to determine the incriminating material has to be only in the nature of prima facie belief based on some material having live nexus and not in the nature of absolute evidence established after detailed investigation of facts or law.

6. Before learned CIT(A), argument of the assessee was that the satisfaction is not recorded by the Assessing Officer, as envisaged in section 153, seized documents do not belong to the assessee, no incriminating document was found and seized, inasmuch as, the alleged seized documents are part and parcel of regular books of accounts and cannot be treated as incriminating documents, and that the decision of the Hon'ble Apex Court in the case of CIT vs. Sinhgadh Education Society (2017) 84 taxman.com 290 (SC) is applicable to the facts of the case, inasmuch as, there is no co-relation of the reopening of the matter with the seized documents qua the assessment year under consideration.

7. We have gone through the record. The note of satisfaction recorded by the learned Assessing Officer is referred to by the Ld. CIT(A) in the impugned order and it reads as follows: –

"M/s Sundram I.T. Parks Private Limited, 5D, Plaza M6, District Centre, Jasola, New Delhi -25.

A search & seizure operation was carried out in the case of Tirupati-Sunworld Group Of Companies' on 11.11.2014. The 'Tirupati-Sunworld Group Of Companies' (TSGC) is a diversified group with multiple business interests and was established in 1980 as Tirupati Group of Companies. The group is presently engaged in the business of pharmaceutical manufacturing, formulation in tablets, capsules, oral powder, oral liquids, manufacturing of cylinders, and construction business at various sites of Gautam Budh Nagar (at Noida & Greater Noida), Paonta Sahib (Himachal Pradesh), Muzaffarnagar etc.

Information have been received that the Tirupati-Sunworld Group Of Companies are engaged in huge generation of cash in their real estate and other businesses. It is alleged that several companies of group of companies having share premium account worth several crores are funding their bogus capital account as well as unsecured loans from non-existing, bogus companies/concerns of Kolkata, Delhi & Muzaffarnagar providing accommodation entries into the group companies. In the process, the out of books cash generated is being infused in these group companies which in-turn is being used to provide unsecured loans to other group companies.

During the course of search at A-4, Ground Floor, Sector-4, Noida, UP in the case of M/s Sunworld Developers Pvt, Warrant u/s. 132 (1) of the Act was executed and during the course of search incriminating documents were found and seized such as A-4 page No-43, A-5 Page No-96, 98, A-6, Page 52, to 54 & A-12, page 52 to 58 etc.

During the course of Search at the residential premise of Mukul Gupta & YK Gupta at A-76 Sector 76,Noida ,A-2 Page No-10 etc.

The cases of this group are interconnected and required deep investigation to arrive at a logical conclusion. As such for taking a logical conclusion in this group of cases, every single seized document and entry appearing in the seized documents requires deep scrutiny and has its impact on the other cases of the group.

Considering the above facts, I am satisfied that it is a fit case for initiation of proceedings u/s 153C of IT Act for proper deep investigation and to plug the leaked revenue. ”

8. From the above satisfaction note, it is clear that the Revenue is referring to certain documents, namely, A-4 page No-43, A-5 Page No-96, 98, A-6, Page 52, to 54 & A-12, page 52 to 58 etc. In respect of these documents, Id. CIT(A) recorded the following findings :

i) "A06/Page 53 to 54:

Page 53 is a print out of unsecured loans Group summary from 1.4.2014 to 4.10.2014 for the following parties:

1. *Smartest corporate Services (P) Ltd.*
2. *Spire Techpark Pvt. Ltd.*
3. *WTC Noida Development Co. Pvt. Ltd.*

The transaction of these parties have been properly reflected in the regular books of account maintained by the assessee company. Since it is a print out of regular books of account and have been properly reflected in the balance sheet/income tax return, the document is not incriminating.

ii) *A-6/Page 54:*

This is summary of unsecured loans for 31.3.2009 which is reflected in the regular books of account of assessee company. Since all the parties and their transactions are properly recorded in the books of account, the loose paper seized cannot be treated as incriminating document.

iii) *A-12/Page 52 to 58;*

Page 52 to Page 58 is trial balance from 1.4.2013 to 31.3.2014. This is trial balance print out as on 31.3.2014 of regular books of account maintained by assessee company. It reflects opening balance of different a/c, transaction Debit/Credit and closing balance as on 31.3.2014. All the transaction are recorded in the regular books of accounts.

iv) *A-4/Page 43:*

A-4 Page 43 contains long term advances from related parties as on 31.3.2014 of list of annexure forming part of notes of M/s Sundaram IT Parks Pvt. Ltd. It is part of balance sheet set for 31.3.2014 which is submitted to income tax department/Registrar of Companies. There is nothing incriminating at all.

v) *A-5/Page 96:*

It is a drafted computation of income before finalization of balance sheet and Profit & Loss a/c for 31.3.2014 and there is nothing incriminating. On

finalization of balance sheet 31.3.2014 again the computation was prepared by Auditors and submitted to Income Tax Deptt with the return of income.

vi) A-5/Page 97:

Depreciation is claimed in the balance sheet as per Companies Act and then chart is prepared for depreciation as per Income Tax Act 1961. There is nothing incriminating in the calculation of depreciation. In the computation for 31.3.2014, Depreciation as per Companies Act was added to income and depreciation as per IT Act 1961 was deducted. There was nothing incriminating in this document.

vii) A-5/Page 98:

It is again a draft of computation of income for AY 2014- 15 before finalization of balance sheet for 31.3.2014. It is just a draft and nothing incriminating in this.

9. On an appraisal of the contents of the documents, Id. CIT(A) recorded that undisputedly certain documents were seized, but the contents thereof are reflected in the books of account and financial statements maintained and submitted by the assessee to the authorities and therefore, they cannot be dubbed as incriminating material.

10. Before us also, though the Id. DR submitted that certain documents were found and they have co-relation to the additions made, Id. DR could not demonstrate that the information contained in these documents was, for the first time, unearthed only during the search and seizure proceedings. The observations of the Id CIT(A) that the contents of these documents are reflected in the regular books of accounts and financial statements maintained and submitted by the assessee, goes unchallenged and un-impeached.

11. In CIT vs. Sinhghadh Education Society (supra), Hon'ble Supreme Court held that one of the jurisdictional conditions precedent to the issue of a notice u/s. 153C of the Act is that money, bullion, jewellery or other

valuable article or thing or any books of account or document must be seized or requisitioned for the relevant assessment year for issue of notice u/s. 153C of the Act. Learned CIT(A), therefore, observed that in order to reopen the assessment of other person u/s. 153C of the Act for any assessment year earlier to the year of search, not only a direct correlation with the document is required, but also that such documents must be incriminating in nature, namely, such documents found as a result of search and belongs to or pertains to or relates to the assessee qua the assessment year.

12. Learned CIT(A) properly appreciated the effect of the documents and rightly applied the binding precedent rendered by Hon'ble Apex Court in the case of CIT vs. Sinhgadh Education Society(supra). We, therefore, do not find anything illegality or irregularity in the findings of the Id. CIT(A) and as a result, decline to interfere with the same. We, accordingly, find the grounds of appeal as devoid of merit and dismiss the same.

13. In the result, the appeals of the Revenue are dismissed.

Order pronounced in the open court on this the 9th day of September, 2021.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 09/09/2021

'aks'

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER