IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'C', NEW DELHI

BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. AMIT SHUKLA, JUDICIAL MEMBER

(THROUGH VIDEO CONFERENCING)

ITA No.6414/Del/2018
(Assessment Year : 2012-13)

DCIT Central Circle – 1, Noida PAN : AADCG 5239 R	Vs.	Golf Link Hospitality P. Ltd. F-302, Aditya Commercial, Plot No.12, Preet Vihar Community Centre, New Delhi
(APPELLANT)		**(RESPONDENT)**

Assessee by	--None--
Revenue by	Shri Sanjay Kumar, CIT (DR)

Date of hearing:	07.12.2021
Date of Pronouncement:	07.12.2021

ORDER

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the Revenue against the impugned order dated 27.07.2018, passed by Commissioner of Income Tax - IV, Kanpur for the quantum of assessment passed u/s 153C r.w.s 143(3) of the Act for the Assessment Year 2012-13.

2. None appeared on behalf of the assessee despite service of notice. Accordingly, we have heard the Learned DR on the issues raised in the Grounds of appeals, which reads as under:

> *"1. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that there was no incriminating material for the issuance of notice u/s 153C, without appreciating that in the satisfaction note the AO had clearly brought out all the facts and circumstances, which indicated that the names of the entities including the assessee, appearing on seized documents were in the nature of accommodation entries only for routing the undisclosed income of M/s Golf Link Hospitality Pvt. Ltd. and hence such documents constituted "incriminating material" for the purpose of the issue of notice u/s 153C in the context of assessee.*
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> *2. Whether on facts and circumstances of the case and in law, the Ld. C1T(A) erred in law while holding that the seized balance sheet of M/s. Golf Link Hospitality Pvt. Ltd. did not constitute "incriminating material" on grounds that the balance sheet was part of regular books, without appreciating that since all the searched entities of M/s Golf Link Hospitality Pvt. Ltd. were found to be engaged in routing the unaccounted funds by layering through various entities including assessee, controlled by them as mentioned in the satisfaction note, therefore 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 i.e. assessee*
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> *3. Whether on facts and circumstances of tire case and in law, the Ld. CIT(A) erred in law while holding that the seized balance sheet of M/s. Golf Link Hospitality Pvt. Ltd. did not constitute "incriminating material" on grounds that the balance sheet was part of regular books, without appreciating that whether the material is incriminating or not, is to be seen in context of totality of facts and circumstances and in the context of the person in whose*

hands such entries in the documents have a bearing on assessment on income of such other person u/s 153C.

4. *Whether on facts and circumstances of the case and in law, the Ld. C1T (A) erred in law while holding that there was no incriminating material for the issuance of notice u/s 153C, without appreciating that while recording the satisfaction for issue of 153C the test for "incriminating material" has to be only in 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.*

5. *Whether on facts and circumstances of the case and in law, the Ld. CIT (A) erred in applying the decision of the Hon'ble Supreme Court in the case of M/s Sinhgad Technical Education Society, which was distinguishable on the facts of the present case as the same pertained to period prior to 01.04.2005 whereas the provisions of 153C have undergone material change w.e.f. 01.04.2005 whereby 153C notice can be issued when A.O. is satisfied that seized material has a bearing on the assessment of income of other person.*

6. *The order of the CIT (A) is erroneous in law and on facts of the case and is liable to be set aside and the order of the AO be restored."*

3. The facts, in brief, qua the issue involved, are that a search and seizure operation u/s 132 of the Act was conducted on 27.11.2014 in the case of Maconns, Meenu and Yadav Singh Group where certain incriminating documents were found & seized. Thereafter, notice u/s 153C of the Act was issued on 29.02.2016 for A.Y. 2010-11 to A.Y. 2013-14. In response, assessee filed its return showing income of Rs. Nil, Rs.95,48,405/- (loss), Rs. Nil and Rs.57,76,599/- (loss) for A.Y. 2010-11 to A.Y. 2013-14 respectively. Thereafter, the assessment has been completed after making addition of Rs.12,71,00,000/-

on account of unsecured loan and on account of unexplained investment in construction of hotel.

4. Before the Learned CIT(A), assessee took a specific plea that additions made in the assessment framed u/s 153C of the Act to be bad in law, because none of the additions were based on any incriminating document found or seized during the course of search as per the very specific notice u/s 153C of the Act. Learned CIT(A) had called for the remand report from the AO with specific request to comment on the contention of the assessee which is evident from Para – 5.2 of the impugned appellate order. In response, the AO has submitted his report vide letter dated 14.05.2018, the content of which has been reproduced in Para – 5.3 running from Pages 4 to 6 of the appellate order. After calling the assessee's counter, the Learned CIT(A) first of all has incorporated 'satisfaction note', scanned copy of which has been reproduced from pages 9 to 13 of the appellate order and thereafter, he categorically noted that satisfaction note recorded by the AO has not brought out any seized material belonging to the assessee-company, in fact, there is no incriminating document. Apart from that, he also noted that in the satisfaction note there is no assessment year which has been mentioned and accordingly concluded that notice issued u/s 153C of the Act is legally invalid as it does not contain any incriminating, seized document belonging to the assessee company for relevant

assessment years. For the sake of ready reference the relevant observation of Learned CIT(A), reads as under:

> *"Thus, satisfaction note recorded by A.O. has not brought out any seized material belonging to the appellant company, what to talk of the incriminating document. Also, it is not clear, which assessment year this satisfaction note belong to. Thus, it is concluded that, notice issued by the A.O. u/s 153C of the Act is legally invalid as it does not contain any incriminating seized document belonging to the appellant company for these relevant assessment years. In fact, there does not exist any incriminating document as a result of search which 'belong to' or 'pertaining to' or 'relate to' the appellant. The investments reflected in the balance sheet of M/s. Golflink Hospitality Pvt. Ltd. cannot be taken as incriminating because these are the part of its regular Books of account and already disclosed by the investing company as well as M/s. Golflink Hospitality Pvt. Ltd. in the return of income. All additions made by the Assessing Officer are either from balance sheet or from profit & loss account. For which no incriminating document was found ad seized during search action. Thus, there is clear absence of incriminating material; hence, it is concluded that there exist no incriminating seized material for these relevant assessment year to justify issue of notice u/s 153C of the Act. Further, it is settled preposition of law that notice u/s 153C of the Act is bad in law in absence of any undisclosed assets or incriminating documents found as a result of search. Findings of Hon'ble Supreme Court given in the case of PCIT-3, Pune Vs. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC) is squarely applicable in present cases. The AO has not made any addition on the basis of any incriminating document found and also, additions made by AO does not co-relate with satisfaction noted by him. In absence of incriminating seized material relating to assessment year under consideration, action u/s 153C of the Act cannot be treated as valid in the eye of law.*
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> *5.6 The proceedings u/s 153C of the Act are very specific and clearly explained in the Act. For the sake of clarity, relevant provisions of Act is as under;*
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> > ***"153C. [(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,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) 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 assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person] [70] [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]:] "

A plain reading of provision u/s 153C makes it abundantly clear that the some imperative condition need to be satisfied by the AO, prior to the issue notice u/s 153C of the Act. This pre-condition includes:

(i) Existence of undisclosed/unexplained asset or incriminating seized documents against the appellant, as a result of search.
(ii) This undisclosed assets or incriminating document found as a result of search should "belongs to" or "pertain to" or "relate to" the appellant, for relevant assessment year.
(iii) Proper satisfaction is to be recorded by the AO for the relevant assessment year for issuance of notice u/s 153C.

All the above three conditions are to be satisfied cumulatively and simultaneously as per provisions of section 153C of the Act. Non satisfaction of any of the pre-conditions mentioned here in above,

would result in notice u/s 153C legally unsustainable or invalid. In the present facts of the case no incriminating documents or undisclosed assets were found as a result of search. Hence, imperative jurisdictional condition for issue of notice 153C of the Act is not Satisfied.

5.7 Hon'ble Supreme Court in the case of PCIT-3, Pune Vs Sinhgad Technical Education Society (2017) 397 ITR 344 (SC) has held that the nexus between issue of notice u/s 153C and the incriminating material found as a result of search must exist. Hon'ble Supreme Court in para 13 of the order has observed 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." The observation of the Supreme Court in para 18 of the order mentioned here in above is reproduced below:

> ***"The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document- wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that***

notice in respect of Assessment Years 2000-01 and 2001-02 even time barred."

Thus, facts of the instant case are squarely covered by the ratio of the judgment mentioned here-in-above.

5.8 Hon'ble Delhi High Court in para 31 has held in the case of Index Security Pvt. Ltd [86 taxmann.com 84 (Del)] as follows:

> ***"As regards the section jurisdictional requirement viz., that the seized documents must be incriminating and must relate to the A.Ys. whose assessments are sought to be reopened, the decision of the Supreme Court in Commissioner of Income Tax-III, Pune Vs. Sinhgad Technical Education Society (Supra) settles the issue and holds this to be an essential requirement. The decision of this Court in CIT-7 Vs RRJ Securities (2016) 380 ITR 612 (Del) and ARN Infrastructure India Ltd. Vs ACIT [2017] 394 ITR 569 (Del) also held that in order to justify the assumption of jurisdiction under section 153C of the Act the documents seized must be incriminating and must relate to each of the AYs whose assessments are sought to be reopened."***

Thus, by now, it is a settled law that notice u/s 153C of the Act is ab-initio-invalid in absence of incriminating seized material. Thus, from the plain reading of language of section 153C of the Act and various judicial pronouncement ; cited here-in-above, it is abundantly clear that in order to reopen the assessment of other person u/s. 153C of the Act for the assessment year earlier to the year of search, direct correlation must exist between existence of incriminating material and relevant assessment years. In the instance case, admittedly, additions are not based on any incriminating document found as a result of search. In fact, no seized or incriminating document is mentioned in the satisfaction recorded by Assessing Officer for the assessment years involved in these appeals. Further, AO has not recorded the satisfaction for these relevant assessment years, as envisaged u/s 153C of the Act.

5.9 In view of the detailed discussion mentioned here in above and respectfully following the judgement of the Supreme Court in the

case of Sinhgad Technical Educational Society notice it is concluded that notice u/s 153C issued by the AO need to be treated as ab-initio invalid and legally not sustainable and quashed, therefore, assessment framed on the basis of legally unsustainable notice is hereby annulled. Therefore, ground of appeal of the appellant is decided in favour of the appellant. Though, addition made by AO was not justified in terms of provisions u/s 153C of the Act. However, it is open for AO to take remedial action in accordance with the: provisions of income tax Act, to assess/reassess the income escaping assessment, if any. Therefore- assessment framed u/s 153C of the Act on the basis of legally unsustainable notice is hereby quashed and annulled. Thus, these legal grounds of appeals i.e. for A.Y. 2010-11 to A.Y. 2013-14 are decided in favour of the appellant.

6. Since order u/s 153C of the Act is treated as annulled for all-assessment years, remaining grounds of appeal for each assessment year consequently become infructuous. Therefore; same are not being adjudicated and treated as dismissed.

5. Learned CIT-DR strongly relied upon the order of AO and submitted that, once notice u/s 153C of the Act has been issued for making assessment and re-assessment, thus AO is empowered to examine the issues arising during the course of assessment proceedings. Accordingly, the matter deserves to be decided on merits and Learned CIT(A) quashing the assessment be set aside.

6. After considering the aforesaid submissions of the Learned CIT-DR and perusal of the AO order, we find that it is an admitted fact that, firstly, the satisfaction note recorded by the AO does not mention or is based on any seized material belonging to the assessee company and consequently, the additions made by the AO has no co-relation with any seized material. The aforesaid

finding of the Learned CIT(A) has not been rebutted by any material placed on record. Therefore, the aforesaid findings of Learned CIT(A) is based on legal principles upheld by the Hon'ble Jurisdictional High Court as well as Supreme Court in the case of PCIT vs. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC). **Thus the ground of Revenue is dismissed.**

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 07.12.2021

Sd/-	**Sd/-**
(ANIL CHATURVEDI)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Date:- 07.12.2021

*PY**Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI