

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ‘ A ‘ Bench, Hyderabad
(Through Video Conferencing)

Before Shri A.M. Alankamony, Accountant Member and
Shri S.S. Godara, Judicial Member

ITA Nos.497 & 498/Hyd/2020		
Assessment Years: 2008-09 & 2009-10		
A.C.I.T Central Circle 3(1) Hyderabad (Appellant)	Vs.	Gehna Projects (P) Ltd Hyderabad PAN:AACCG6213G A (Respondent)
Assessee by:	Sri P.Murali Mohan Rao,CA	
Revenue by:	Sri K. Madhusudan, CIT(DR)	
Date of hearing:	10/01/2022	
Date of pronouncement:	21/03/2022	

ORDER

Per S. S. Godara, J.M.

These two Revenue’s appeals for the A.Ys 2008-09 & 2009-10 rise against the CIT (A)- 12, Hyderabad’s orders dated 13.3.2020 passed in case Nos.10328 & 10329/2019-20 involving proceedings u/s 143(3) r.w.s. 153C of the Income Tax Act, 1961, in short, “the Act”.

Heard both the parties. Case files perused.

2. Coming to the Revenue’s identical sole substantive grievance that the CIT (A) has erred in law and on facts in quashing the impugned assessment order for want of a valid satisfaction recorded u/s 153C of the Act, we note that the corresponding lower appellate discussions to this effect reads as under:

“4.0 The appellant has raised 13 grounds. While Ground nos.1 to 6 are against the order passed u/s.143(3) r.w.s

153C of the Act, on the grounds that it is erroneous, as the provisions of section 153C were invoked without recording satisfaction of the AO, the other grounds are general and consequential in nature, which do not require any separate adjudication.

5.0 The facts of the case, in brief are that, there was a Search and Seizure Operation in the case of M/s.MBS Jewellers Pvt. Ltd., and its group of cases on 11-03-2010. During the course of search, certain documents pertaining to the appellant were found and seized. Based on the said documents, the AO invoked the provisions u/s 153C and completed the assessment u/s. 153C on 26-12-2011.

5.1 During the course of the appellate proceedings, the AR of the appellant stated that, the appellant filed the present appeal on the ground that notice u/s.153C was issued without recording the satisfaction note by

the Assessing Officer, as well as by the AO having jurisdiction over the searched party, and as such, the assessment order becomes invalid as per the per the decision of Hon'ble AP High Court in the case of CIT vs. M/s.Shettys Pharmaceuticals & Biologicals Ltd., The relevant portion of the submissions made by the appellant are reproduced below:

"3.1 Invalid Assessment completed u/s 153C without recording Satisfaction for A. Y.2007-08:

In this regard, reliance is placed on the decision given by Hon'ble ITAT, Hyderabad - B Bench in the assessee's group case for the AY 2006-07 dated 09-12-2015 in the ITA No's 1082jHj2014 to 1087jHj2014, 1090jHj2014 &1091jHj2014 wherein it is held that:

"since the very basis i.,e the assessments under section 143(3) read with section 153C of the IT Act have been quashed, the order passed by the A.O u/s 154 has no legs to stand. Therefore the appeals against the order of the CIT(A) confirming the order of the AO under section 154 are also quashed as having no basis" .

..... assessing officer has erred in not recording any satisfaction with respect to issue of notice u/s 153C of the Act which is a pre-condition to make any assessment u/s 153C of the Act. .

..... We would like to submit that the assessing officer has recorded the following Para in the order sheet:

Search & Seizure operations were conducted in the MBS Jewelers Pvt Ltd group of Cases on 11.03.2010. During the Course of search, books of accounts, documents & other loose sheets were found and seized. As per the seized documents, pages. 18 to 23 of A/PCG/Res/01 relates to M/s Aashi PlyWood Industries proceedings U/s 153C is initiated.

As can be seen from the above, the assessing officer has merely issued notice u/s 153C of the Act by quoting seized material found during the course of search without recording any satisfaction.

Hence, it is requested before your goodselves to annul the Assessment Orders passed.

Also, we would like to submit before your goodselves, the decision given by the Honorable Income tax Appellate Tribunal, Hyderabad in the case of M/s Shetty's Pharmaceuticals & Biological Limited vs DCIT in ITA No. 930-931/H/2013 ...

The Hon'ble ITAT in the case of Shetty's Pharmaceuticals & Biologicals Limited (Cited Supra) have decided that the above recorded order sheet entry does not tantamount to satisfaction as required by the provisions of the Act. Accordingly, the Hon'ble ITAT quashed the assessment order passed u/s 153C of the Act in view of absence of recording of satisfaction.

It is not out of place to mention herein that the said order of ITAT was further challenged before High Court. The Hon'ble Jurisdictional High Court vide their judgement reported in CIT vs. Shetty Pharmaceuticals & Biologicals Limited in 57 Taxmann.com 282 has upheld the order of Hon'ble ITAT and held that recording of reason is a pre-condition for invoking of provisions of section 153C of the Act. "

5.2 I have carefully considered the submissions made by the appellant as well as the observations of the AO in the impugned order. The copy of the order sheet recorded by the AO has also been called for, and it is seen that the reasons recorded in the case for issuing notice u/s.153C are as under:

" Search & Seizure operations were conducted in the MBS Jewellers Pvt. Ltd., group of cases on 11.03.2010. During the course of search, books of accounts, documents & other loose sheets were found and seized. As per the seized documents, pages 12/33 to 20/42 of Annexure A/MBS/04 relates to M/s. Gehna Projects Pvt. Ltd. proceedings u/ s. 153C is initiated.

Put up notices u/s.153C & 142(1) of the IT Act."

5.3 From this noting, it is seen that the proceedings under section 153C are initiated only because there were certain material documents seized during the course of search in the case of MBS Jewellers P. Ltd., and certain pages therein related to the assessee herein. There is no satisfaction recorded by the A.O of MBS Jewellers P. Ltd., that the income mentioned in the documents belongs to the assessee herein.

5.3.1 *Similar issue has been decided by my predecessor in the case of Mjs.Aashi Plywood Industries for the AY 2007-08 on identical reasons recorded in ITA No.0080j2015-16, dated 25-05-2017 wherein the relevant portion of the decision is reproduced as under:*

"5.2 I have carefully considered the submissions made by the appellant as well as the observations of the AD in the impugned order. The copy of the order sheet recorded by the AD has also been called for, and it is seen that the reasons recorded in the case for issuing notice u/s.153C are as under:

" Search & Seizure operations were conducted in the MBS Jewellers Pvt. Ltd., group of cases on 11.03.2010. During the course of search, books of accounts, documents & other loose sheets were found and seized. As per the seized documents, pages 03 to 09 of Annexure A/PCG/Res/01 relates to Mrs. Reena Peterson w/o. R. Peterson proceedings u/ s. 153C is initiated .

Put up notices u/s.153C & 142(1) of the IT Act."

5.3 From this noting, it is seen that the proceedings under section 153C are initiated only because there were certain material documents seized during the course of search in the case of MBS Jewellers P. Ltd., and certain pages therein related to the assessee herein. There is no satisfaction recorded by the A.D. in the case of MBS Jewellers P. Ltd., that the income mentioned in the documents belongs to the assessee herein.

The Hon'ble A.P. High Court in the case of CIT-III, Hyderabad vs. Shettys Pharmaceuticals & Biologicals Ltd., (supra) has held as under:

"Held: It is clear from section 153C 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. Thereafter, the Assessing Officer having jurisdiction over third party on receipt of the seized material or books of account 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. Satisfaction of two officers is missing. In this connection the text of the order of the Assessing Officer is that a search and seizure operation under section 132 was carried out in the group case of TYG and others on 25-32010. During the course of search operation documents belonging to the assessee have been seized. Hence, it is considered to initiate proceeding under section 153C. [Para 6J

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 153A.

It was contended that the same Assessing Officer 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 matter under law this has to be done in that manner alone and not other way. The Tribunal has correctly followed the principle. There was no element of law to be decided. [Para 7]

The appeal was dismissed accordingly. [para 9]"

Respectfully following the judgment of the jurisdictional High Court on similar set of facts, I have no hesitation in holding that the A.D. of the person searched has not recorded any satisfaction that the income relatable to the seized material belongs to the assessee herein. Therefore, the assessment is quashed".

6.0 It is evident from the above that the Assessing Officer has simply recorded that certain seized pages pertain to the appellant and hence notice u/s.153C is to be issued. Nowhere there is a recording of satisfaction by the AO. The CBDT vide Circular No.24/2015 dated 31/12/2015 has clearly stated that even when the AO of the searched person and the other person is the same, then also recording of satisfaction is mandatory. In view of the above, and also the decision of the jurisdictional High Court in Shetty Pharmaceuticals & Biologicals Limited (cited supra), I have no hesitation in holding that the AO of the searched person has not recorded any satisfaction that the income relatable to the seized material belongs to the assessee herein. Therefore the assessment is quashed. The appeal of the assessee is ALLOWED".

3. Learned DR could hardly rebut the fact that the Assessing Officer herein had only recorded the corresponding seized material as "relates to" the assessee whereas the said statutory expression could be inserted in the Act w.e.f.1.6.2015 only. We wish to reiterate here that we are dealing with the search in question dated 11.03.2010 in M/s. MBS Jewellers (P) Ltd. And that the corresponding satisfaction on the Assessing Officer's part had to be to the effect that the specified incriminating seized

material “belongs to” a person other than the searched party. Coupled with this, learned Counsel has already filed a copy of the tribunal’s order in M/s Ashi Plywood Industries is the very search that the Assessing Officer had not recorded a valid satisfaction u/s 153C as well. We thus follow the judicial consistency to affirm the CIT’s identical lower appellate findings in the absence of any distinction on facts and circumstances involved herein.

4. These Revenue’s appeals are dismissed in above terms. A copy of this common order be placed in the respective case files. Order pronounced in the Open Court on 21st March, 2022.

Sd/- (A.M.ALANKAMONY) ACCOUNTANT MEMBER	Sd/- (S.S. GODARA) JUDICIAL MEMBER
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Hyderabad, dated 21st March, 2022.

Vinodan/sps

Copy to:

S.No	Addresses
1	ACIT, Central Circle 3(1) 7 th Floor, Aayakar Bhavan, Hyderabad
2	Gehna Projects (P) Ltd., 8-2-277/13 IInd Floor, UBI Colony, Road No.3 Banjara Hills, Hyderabad
3	CIT (A)-12, Hyderabad
4	Pr. CIT – Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order