

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

ITA Nos.5164 & 5165/Del/2018  
Assessment Years: 2010-11 & 2011-12

DCIT, Central Circle, Sector-33, Noida	<b>Vs.</b>	M/s. Balajee Banquets Pvt. Ltd., 206, Hans Bhawan, Bahadur Shah Zafar Marg, New Delhi
<b>PAN :AACCB8851H</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Sh. Ishtiyaque Ahmed, CIT
Respondent by	None

Date of hearing	31.03.2022
Date of pronouncement	12.04.2022

**ORDER**

**PER SAKTIJIT DEY, JM:**

Captioned appeals by the Revenue arise out of a common order, dated 17.05.2018, of learned Commissioner of Income Tax (Appeals)-IV, Kanpur. Though, learned Commissioner (Appeals) in his order has disposed of the appeals relating to assessment years 2009-10, 2010-11, 2011-12 and 2014-15, however, presently, we are concerned with assessment years 2010-11 and 2011-12.

**2.** The common grounds raised by the Revenue in both the appeals read 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 Tirupati Sunworld Group companies and hence such documents constituted 'incriminating material' for the purpose of the issue of notice u/s 153C in the context of assessee.*
2. *Whether on facts and circumstances of the case and in law, the Ld. CU(A) erred in law while holding that the seized balance sheet of Tirupati Sunworld Group companies 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 the Tirupati Sunworld Group 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 as the expression used in 153C is "in relation to' person other than the searched person.*
3. *Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that the seized balance sheet of Tirupatin Sunworld Group companies 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 represent the unexplained income.*
4. *Whether on facts and circumstances of the case and in law, the Ld. CIT (A) erred in law while holding that seized material did not constitute "incriminating material on grounds that entries mentioned in the seized documents are reflected in seized books of accounts without appreciating that incriminating documents would include the entries recorded in books of accounts which are*

*fabricated manipulated or camouflaged which have bearing on the determination of total income of the Assessee.*

5. *Whether on facts and circumstances of the case and in law, the Ld. CIT (A) erred in holding that there was no incriminating material for the issuance of notice u/s 153C of the Act 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 base on some material having live nexus and not in nature of absolute evidence established after detailed investigation of facts or law.*
6. *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 Sinhaad Technical Education Society, which was distinguishable on the facts of the present case.*
7. *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.*

**2.** When the appeals were called out for hearing none appeared for the assessee. However, the assessee has furnished letter dated 15.12.2021 submitting that the appeals may be decided in terms with the order passed by the Tribunal for assessment year 2009-10. In view of the aforesaid, we proceed to dispose of the appeals with the assistance of learned Departmental Representative and based on materials available on record.

**3.** Briefly the facts are, the assessee is a resident company. A search and seizure operation under section 132 of the Act was conducted in case of Tirupati – Sunworld Group of Companies on 11.11.2014. Consequent to search and seizure operation, proceedings under section 153C of the Act were initiated against

the assessee. In response to notices issued under section 153C of the Act, the assessee filed its return of income offering the same income as were declared in the original return of income. In course of assessment proceeding, the Assessing Office noticed that during the years under consideration, the assessee had availed unsecured loans from certain entities. Therefore, he called upon the assessee to furnish the necessary details of the loans availed alongwith supporting evidence. As alleged by the Assessing Officer, the assessee furnished confirmation of account and balance-sheet but did not furnish the bank statement. On verifying the balance-sheet, he found that the income shown by the lenders are meager. Therefore, holding that the lenders did not have the creditworthiness, he treated the unsecured loans as unexplained cash credit under section 68 of the Act and added back to the income of the assessee the in the respective assessment years.

**3.1** Being aggrieved with the additions made by the Assessing Officer, assessee preferred appeals before learned Commissioner (Appeals). After considering the submissions of the assessee in the context of facts and materials on record and applying the ratio

laid down in the judicial precedents cited before him, learned Commissioner (Appeals) deleted the additions.

**4.** We have heard learned Departmental Representative and perused the materials on record. For deciding the issue, following observations of learned Commissioner (Appeals) would be relevant:

*“5.9 Appellant has raised another legal challenge pertaining to non-existence of incriminating document; for issuance of notice u/s. 153C of the Act. To come to conclusion whether the\*seized document is incriminating or not, it is worthwhile to examine the nature of seized document mentioned by the Assessing Officer in the satisfaction note. The seized document and its nature and the relevant assessment year are as follows:*

- i) TW-09: A-6, Page 80, 81 and 95: Pages 80, 81 and 95 are part of the balance sheet of Banquet Private Ltd. Page-80 pertains to AY 2012-13 and 81, 95 are for AY 2014-15, i.e., Balance sheet as at 31.03.2014. There is nothing incriminating.*
- ii) TW-1: A-12, pages 74 to 77: These are the print out of books of account maintained by BBPL, assessee company. Page 74 & 75 are trial balance print out taken from tally books maintained by the assessee company for the financial year 2013-14. Nothing is incriminating in these documents. P.76 is profit A loss account print of Tally for, the period 1.4.2014 to 1 Dec. 2014. It has nothing incriminating. It is part of regular books of account maintained on tally by assessee company. P.77 is balance sheet print of tally for the period 1.4.2013 to 31.3.14.*
- iii) TW-1: A-104 & 105 at the residential house of Mukul Supta: Page 104 & 105 is Bank of India, B.S. Zafar Marg a/c no.64 for the period 15.05.2007 to 13-06-2007, which is relevant to AY 2008-09. This is part of regular books of account of M/s. Balaji Banquets Pvt. Ltd., being a disclosed regular bank account. The' document is for the A.Y. 2008-09, which is time barred period and further not incriminating at all.*

- iv) TW-11, found and seized from 117, Hans Bhawan, 1 BSZ Marg, New Delhi, which is the registered; office of Sunworld, page 97 to 100, 102, 112 to 138 and 139; p P.97-98-99 are the part of regular books of account of New Track Dresses Private Ltd. maintained in the regular course of business. P.97-98 reflects the account of Balaji BPL in the books of account of New Track Dresses Pvt. Ltd. for the period 1.4.2007 to 31.3.2008, which is barred by time. P. 100 is balance sheet print of Balaji BPL, Tally print for 31.3.2008 which is time barred. P. 102 is cash book for the period 1.4,2007 to 31.3.2008 which is also time barred. P.112 to 139 are print out of regular books of account maintained by assessee company M/S. BBPL for the period 1J4.2007 to 31.3.2008 and there is nothing incriminating at all. P. 112 to 138 are ledger account from Alphabet-A to the end, i.e. Z alphabet and page-139 is Journal Register.
- v) TW-11, 117, seized from Hans Bhawan, 1-BSZ Marg, New Delhi. LP16 p.41, 82 to 91 and P.121: P.41 is a print out of BBPL for the period 1.4.12 to 31.3.2014 in the books of Smartest Corporate Services Pvt. Ltd. It is part of regular books and there is nothing incriminating. Page 82 is print out of ledger account of Interest accrued and due for N-21, Sector-18 in the books of BBPL. P.83 to 89 are ledger accounts. P.83 ledger account of N-23, Sector-18; P.84 ledger account of Rajan Garg; P.85 ledger account of Sunworld Residency PL; P.86 group summary of loans.

Thus, from the analysis of the seized document it is seen that the seized document are the copies of the financial statements pertaining to the appellant company and relating to A.Y. 2014-15 or A.Y. 2012-13 or A.Y. 2008-09. What is depicted in the seized document is also reflected in the regular books of account and the financial statement maintained and submitted by the appellant. Thus, there is no incriminating material as such in the seized document. In fact, A.Y. 2008-09 is not even reopened u/s. 153C of the Act, also no seized document is found for the A.Y. 2009-10, A.Y. 2010-11, A.Y.-2011-12, what to talk about the incriminating document for these relevant assessment year. Even for the A.Y. 2014-15 and A.Y. 2012-13, what is seized is reflected in the regular books of account of the appellant. Hence, it is concluded that there exist no seized document for all these relevant assessment year under appeal. All additions made by the Assessing Officer are from balance sheet. Further, no addition is made by the Assessing Officer on the seized document. 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 Assessing Officer has not made any addition on the basis of any incriminating document found and also, additions made by Assessing Officer 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.*

*5.10 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 are as under;*

*“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] "[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 of years referred to in sub-section (1) of section 153AJ:]”*

*A plain reading of provision u/s 153C makes it abundantly clear that the some imperative condition need to be satisfied by the Assessing Officer, 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 Assessing Officer 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.*

*5.11 It has been submitted by the learned AR of the appellant that the addition made by Assessing Officer does not have any co-relation with any incriminating document because addition made by Assessing Officer is not based on any incriminating material found as a result of search. Undoubtedly, no incriminating document was found. Therefore, decision of Hon'ble Supreme Court in the case of *Sinhgad Technical Educational Society (Supra)* is clearly applicable to the facts of the present case, wherein it is held that existence of incriminating material is imperative pre-condition for issue of notice u/s 153C of the Act for the relevant assessment years.*

*5.12 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 was even time barred'. ”

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

5.13 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) 3SO 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. ”

5.14 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 incriminating document is mentioned in the satisfaction recorded by Assessing Officer. In view of the detailed discussion mentioned here in above and respectfully following the judgment of the Supreme

*Court in the case of Sinhgad Technical Educational Society, it is concluded that notice u/s 153C of the Act issued by the Assessing Officer need to be treated as void ab-initio, invalid and legally not sustainable and hereby quashed. Therefore, assessment framed on the basis of legally unsustainable notice is hereby annulled. Thus, these legal grounds of appeals i.e. for A.Y. 2009-10 to A.Y. 2014-15 are decided in favour of the appellant.*

*5.15 Though, addition made by Assessing Officer was not justified in terms of provisions u/s 153C of the Act. However, it is open for Assessing Officer to take remedial action in accordance with the provisions of income tax Act,\* to assess/reassess the income escaping assessment, if any.”*

**5.** As could be seen from the aforesaid observations of learned Commissioner (Appeals), on detailed analysis of the seized documents, he has recorded a categorical finding that not a single piece of seized document found in course of search and seizure operation pertain to assessment years 2009-10, 2010-11 and 2011-12. In other words, neither any seized material, nor any incriminating material relating to assessment years 2009-10, 2010-11 and 2011-12 were found during the search and seizure operation to enable the Assessing Officer to make the additions. On a thorough and careful reading of the assessment order, we are unable to locate any observation of the Assessing Officer to demonstrate that the disputed additions were made with reference to any seized/incriminating materials found as a result of search and seizure operation. In fact, in course of hearing of

these appeals before us, learned Departmental Representative fairly accepted the aforesaid factual position. Now, it is fairly well settled that where on the date of search and seizure operation assessment for the concerned assessment years have not abated, additions, if any, have to be made strictly with reference to seized/incriminating material found as a result of search and seizure. In this context, we rely upon the decision of the Hon'ble Jurisdictional High Court in case of CIT vs. Kabul Chawla (2016) 380 ITR 0573 (Del) and the decision of Hon'ble Supreme Court in case of PCIT Vs. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC). It is further relevant to observe, while deciding the appeal filed by the Revenue for assessment year 2009-10 arising out of the very same common order of learned Commissioner (Appeal), the Coordinate Bench has upheld the decision of learned Commissioner (Appeals) holding as under:

*“5. After hearing the Id. DR and on perusal of the impugned order as well as the assessment order, it is an uncontroverted fact that the seized documents as mentioned in the impugned appellate order, none of these pertains to Assessment Year 2009-10; and secondly, the seized documents are only financial statement that to be for the Assessment Years 2008-09, 2012- 13 and 2014-15 and nothing is for Assessment Year 2009-10. Even the additions made by the Assessing Officer are based on the balance sheet and not on any seized documents or any incriminating material. Admittedly, the assessment for the Assessment Year 2009-10 had attained finality at the time of recording of satisfaction/issuance of notice u/s.153C, and therefore, any addition which could have been made by framing the assessment u/s.153C/153A, the same could have been only on*

*the basis of incriminating document. The aforesaid detailed finding of the Id. CIT(A) is inconsonance with the judgment of Hon'ble Supreme Court in the case of PCIT vs. Singhad Technical Educational Society (2017) 397 ITR 344 (SC) and also by the Hon'ble Jurisdictional High Court as noted by the Id. CIT(A). Thus, we do not find any infirmity in the order of the Id. CIT(A), the same is confirmed. Accordingly, the appeal of the Revenue is dismissed."*

**6.** Since, no distinguishing facts have been brought to our notice in the impugned assessment years, respectfully following the decision of Coordinate Bench in assessment year 2009-10 rendered in identical facts and circumstances, we uphold the decision of learned Commissioner (Appeals) by dismissing the grounds raised.

**7.** In the result, both the appeals are dismissed.

***Order pronounced in the open court on 12<sup>th</sup> April, 2022***

***Sd/-***  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

***Sd/-***  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 12<sup>th</sup> April, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi