

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

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| ITA No.498/Bang/2021 |
| Assessment Year: 2016-17 |

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| Deputy Commissioner of Income-tax Circle-2(1) Bengaluru | Vs. | M/s. Chaitanya Properties Pvt. Ltd. No.17, Sankey Road Bengaluru PAN NO : AAACC5900A |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Shri Narendra Sharma, A.R. |
| Respondent by | : | Dr. Manjunath Karkihalli, D.R. |

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| Date of Hearing | : | 30.06.2022 |
| Date of Pronouncement | : | 15.07.2022 |

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by revenue is raised against order of CIT(A) dated 31.3.2021. The revenue has raised following grounds of appeal:-

- 1. “The order of the CIT(A) is opposed to law and facts of the case.*
- 2. The CIT(A) has erred in holding that there is no incriminating material to support initiation of proceedings u/s 153C of the I.T. Act.*
- 3. The CIT(A) has failed to appreciate the fact that the reassessment proceedings were initiated consequent to separate search action on 23.9.2016 in the group case of M/s Srinivasa Trust at the office of M/s KBD*

Sugars and Distilleries during which incriminating evidences were found against the assessee which were seized.

4. *The CIT(A) failed to appreciate that satisfaction was recorded in the case of the assessee on 14.9.2018 in pursuance to the provisions of Section 153C of the I.T. Act.*

5. *The CIT(A) has failed to consider the decision of Hon'ble High Court of Karnataka in the case of M/s Canara Housing Development Co. Ltd. Vs. DCIT 48 [Taxmann.com](#) 98 wherein it is held that the assessing authority can take note of the income disclosed in the earlier return or which is not unearthed before the search in order to find out what is the total income of the year.*

6. *For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order to be restored.”*

2. Facts of the case are that there was a search in the case of Srinivas Trust on 23.9.2016 vide warrant of authorisation dated 22.9.2016. As per the information received from the Assessing Officer of the searched person i.e. M/s. Srinivasa Trust it is found that during the course of search operation, the following documents were seized:

| SI.No. | Annexures | Page No. |
|--------|-------------|------------------|
| 1 | A/DAS/01 | 129-133, 213-242 |
| 2 | A2/SUN/133A | 2-6 |
| 3 | A2/SUN/133A | 16-42 |

3. The Assessing Officer of M/s. Srinivasa Trust (PAN: AABTS8147B) found that the above seized documents mentioned belongs to the present assessee and has a bearing on the total income of the assessee M/s. Chaitanya Properties Pvt Limited, handed over the above seized material to this office. Upon receipt of the seized material it was satisfied that the above-mentioned seized

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documents belong to the assessee and have a bearing on the total income of the assessee, M/s. Chaitanya Properties Pvt Limited, in accordance with the provisions of section 153C of the Income-Tax Act, 1961 for A.Y.2016-17.

4. Subsequently, after recording satisfaction as described above in the order sheet, a notice u/s 153C of the Income Tax Act,1961 dated 14.09.2018 was issued and duly served on the assessee. Further, a Summons u/ s.131 of the I.T. Act, 1961 dated 07.11.2018 and 19.11.2018 were issued as the assessee did not file return of income in the stipulated time period and the assessee did not submit the explanation for the seized material.

5. Finally the assessment was framed by adding undisclosed income by house property at Rs.4,49,75,039/- and by invoking the provisions of section 43CA of the Act at Rs.4,25,02,232/-. Against this assessee carried the appeal before Ld. CIT(A) challenging the validity of framing assessment u/s 153C of the Act. The Ld. CIT(A) cancelled the assessment by observing that there was no incriminating material to support the initiation of proceedings u/s 153C of the Act in assessment year 2016-17. Accordingly, by placing reliance on the judgement of apex court in the case of Singhad Technical Education Society, CA No.11080 of 2017 arising out of SLP(C) No.2527 of 2015, he cancelled the assessment. Against this revenue is in appeal before us by way of this appeal.

6. We have heard the rival submissions and perused the materials available on record. The main contention of the Ld. A.R. is that in the case of Srinivasa Trust, search was took place on 23.9.2016. The time limit to issue notice u/s 143(2) of the Act in

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case of present assessee for assessment year 2016-17 was on or before 30.9.2017. According to him, as per first proviso to section 153C of the Act, which provides that these assessment year for which assessments or reassessments could be made u/s 153C of the Act have to be considered with reference to the date of handing over of the assets or documents to the AO of the assessee. According to him, date of handing over of the assets or documents was on 14.9.2018. By that time, due date for issue of notice u/s 143(2) of the Act was already lapsed (30.9.2017). As such, the assessment proceedings had already been completed and in this case there is no seized material and no notice u/s 153C of the Act could be issued to the assessee. For this purpose, he relied on the order of the Tribunal Bangalore bench in the case of Lakshmi Venkatesha Minerals Vs. DCIT 186 ITD 695. In our opinion, this argument of the assessee's counsel have no merits. The assessee mentioning the date of issue of notice u/s 153C of the Act dated 14.9.2018 as the date of handing over of the assets or documents to the AO of the present assessee. However, it is not so. The assessee has not brought on record the exact date of handing over of the assets or documents to the present AO. Further, on the basis of facts on record, it cannot be concluded that assessment proceedings for assessment year 2016-17 has been already completed prior to the date of handing over of the assets or documents to the present AO. Further, it is also not clear whether AO in the case of present assessee and in the case of Srinivasa Trust was the same, if the AO of the searched person and the third person who is in this case is the present assessee was same, thus there was no question of handing over of the documents, to any other assessing officer as provided in section 153C(1) of the Act. In that event, there is no illegality or infirmity in framing assessment u/s 153C of the Act.

Reference:

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a) CIT Vs. Smt. Prabhat Jot Kaur Chabra 419 ITR 94 (SLP dismissed) 416 ITR 78 (Statute) (SC).

b) Super Malls (P) Ltd. Vs. PCIT 423 ITR 281

7. Further, Tribunal in assessee's own case in ITA No.617 & 618/Bang/2017 dated 23.5.2022 held as under:-

16. *"We have heard the rival submissions and perused the record. There was a search in the case of Srinivasa Trust on 6.8.2012. In the course of search documents belonging to the assessee were found. The documents seized and marked as Annexure 14/ST/132 comprised Joint Development Agreement dated 5.2.2005 between the assessee and PEPL and related documents. The related document marked as 18/ST/132 consisted of loan sanction details of the assessee. After duly recording the reasons, notice u/s. 153C of the Act dated 30.8.2013 was issued and served on the assessee requiring the assessee to file return of income in the prescribed form by 10.9.2013. In this case, search took place on 6.8.2012. Now the dispute is with regard to the framing of assessment u/s 153C of the Act. There was seized material marked as 14-ST/132 & 18-ST/132. The contention of the Ld. A.R. is that these seized materials are already on record relevant to proceedings u/s 148 of the Act on 6.3.2012 for the assessment year 2005-06. According to the A.R., they are not incriminating material. In our opinion, this argument of the Ld. A.R. holds no merit since the provisions of section 153C of the Act do not discuss that seized material should be incriminating in nature or undisclosed in nature for pending assessment. It says only about any material, articles, things, books of accounts, documents seized or requisitioned that belongs to or pertains to person other than the searched person. In our opinion, there were seized material procured during the course of search action in the case of Srinivasa Trust on 6.8.2012. Therefore, framing assessment thereafter u/s 153C of the Act is valid and the question of abatement or non-abatement do not arise since there are seized material. Accordingly, the argument of the assessee's counsel that the assessment for the assessment year 2010-11 & 2011-12 do not abate on 30.8.2013 is incorrect and the ratio laid down by the Hon'ble Karnataka High Court in the case of Delhi International Airport Ltd. cited (supra) do not come into assistance of assessee since there is seized material.*

17. *Accordingly, the issue of framing of assessment u/s. 153C of the Act is upheld and order of the CIT(Appeals) is reversed on this issue.*

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9. In view of this we remit the issue to the file of CIT(A) to adjudicate this legal issue after considering entire case records in the light of our above observations. Thereafter, if required he has to adjudicate the issue on merits.

10. In the result, the appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 15th Jul, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 15th Jul, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.