

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 3264/MUM/2013
(ASSESSMENT YEAR: 2008-09)

Velji Rupshi Faria,
Mahavir General Store, 154,
Bora Bazar Street, Fort, Mumbai – 400001
[PAN: AAIPS5194D] Appellant

D.C.I.T-OSD-II, Central Range-7,
4th Floor, Aaykar Bhavan,
Maharishi Karve Road,
Churchgate, Mumbai Respondent

Vs

ITA No. 3263/MUM/2013
(ASSESSMENT YEAR: 2008-09)

Amarshi M. Nishar
3rd Floor, Jagdish Niwas,
Opp: Fire Brigade, Fort, Mumbai - 40001
[PAN: AABPN1100D] Appellant

D.C.I.T-OSD-II, Central Range-7,
4th Floor, Aaykar Bhavan,
Maharishi Karve Road,
Churchgate, Mumbai Respondent

Vs

Appearances

For the Appellant/Assessee : Shri Girish Dave,
For the Respondent/Department : Shri Achal Sharma

Date of conclusion of hearing : 21.06.2022
Date of pronouncement of order : 19.09.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are two separate appeals pertaining to Assessment Year 2008-09 filed by two individual assesseees which were heard

together since they arose from same factual matrix, and are, therefore, being disposed of by way of a common order.

ITA No. 3264/Mum/2013

2. We would first take up ITA No. 3264/Mum/2013. By way of this appeal the Appellant/Assessee has challenged the order, dated 18.02.2013, passed by the Ld. Commissioner of Income Tax (Appeals)-40, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2008-09, whereby the Ld. CIT(A) had dismissed the appeal filed by the Appellant against the Assessment Order, dated 28.12.2010 passed under Section 153C/143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. The Appellant has raised the following grounds of appeal:

"1. The learned CIT(A) has erred in law & on the facts & in the circumstances of the case, in upholding the action of the A.O. by which the learned A.O. issued Notice u/s 153C and subsequently completed the assessment u/s 153C r.w.s. 143(3) of the Income Tax Act, 1961 instead of annulling the assessment for want of jurisdiction of the AO.

2. The learned CIT(A) has erred in law & on the facts & in the circumstances of the case, in upholding the addition of Rs. 6,74,00,000 by way of unaccounted sale of galas (units) of High Speed Project owned by the Company, M/s Genelec Limited, on the basis of documents recovered from the possession of, and on the basis of statement made by one, Shri Vinod K Faria.

Your appellant respectfully submits that on facts and in law the addition of Rs. 6,74,00,000 is unjustified and should therefore be deleted.

3. *The learned CIT(A) has erred in upholding the addition of Rs. 60,30,411 by way of unexplained investment in shares u/s 69 of the Income Tax Act, 1961.*

Your appellant respectfully submits that on facts and in law the addition of Rs. 60,30,411 is unjustified and should therefore be deleted."

4. A search and seizure action under Section 132(1) of the Act and survey under Section 133(A) of the Act was carried out in the case of Milan Dalal Group on 30.05.2008 and on subsequent dates. Sh. Vinod K Faria, father of the Appellant, was a key person. The business and residential premises of Sh. Vinod K Faria were subjected to search. Sh. Vinod K Faria was also one of the Director of Genelec Limited a company which had obtained permission from to develop a project called 'Hi-Speed' Project'. The premises of Genelec Limited were also covered under survey conducted under Section 133A of the Act.
5. Various books of accounts, loose papers, registers and documents were seized/impounded during the search and survey operations as well as during the course of search enquiries. It is the contention of the Revenue that the aforesaid documentary evidences included documents giving details of sale of galas/units of Hi-Speed Project sold through the Appellant for INR 6.74 Crores in cash. Accordingly, notice under Section 153C of the Act was issued to the Appellant on 29.12.2009. In response to the same, the Appellant filed return of income on 18.01.2010 declaring total income of INR 5,74,367/-. The Assessing Officer completed assessment under Section 153C/143(3) of the Act vide order dated 28.12.2010 at total income of INR 7,40,06,296/- after making, inter alia,

addition of INR 6.74 Crores holding the same to be unaccounted proceeds from sale of galas/units of the Hi-Speed Project taxable in the hands of the Appellant.

6. Being aggrieved, the Appellant challenged the aforesaid addition in appeal before CIT(A). During the course of appellate proceedings vide letter dated 07.03.2011, the Appellant raised additional ground challenging the jurisdiction of the Assessing Officer to frame assessment under Section 153C/143(3) of the Act. The CIT(A) dismissed the appeal including the additional ground raised by the Appellant.
7. The Appellant is now in appeal before us challenging the jurisdiction of the Assessing Officer to frame assessment under Section 153C/143(3) of the Act as well as the additions made by the Assessing Officer on merits.
8. When the matter was taken up for hearing the Ld. Authorised Representative for the Appellant pressed into service Ground No. 1 raised in appeal and submitted that the Appellant has challenged the very jurisdiction of the Assessing Officer to frame assessment under Section 153C/143(3) of the Act in absence of valid satisfaction recorded by the Assessing Officer before initiating the aforesaid proceedings. He submitted that it is admitted position that there is no satisfaction note recording satisfaction that the materials/documents found during the course of search belong to the Appellant and/or that the aforesaid materials/documents have a bearing on determination of total income of the Appellant. The Ld. Authorised Representative for the Appellant submitted that even if the Assessing Officer for the searched person and the other person

is same, recording of satisfaction is necessary for issuing notice under Section 153C of the Act. Assessing Officer has not recorded any satisfaction before issuing notice under Section 153C of the Act and therefore, the issuance of notice under Section 153C of the Act and the subsequent assessment proceedings were invalid and null in the eyes of law.

9. Responding to the above submissions, the Ld. Departmental Representative vehemently contended that it is clear from the assessment order and the order passed by the CIT(A) that various papers/documents were found from the premises of Sh. Vinod K Faria during search under Section 132(1) of the Act. In the statements recorded under Section 132(4) and 131 of the Act, this fact has been admitted by Sh. Vinod K Faria and by the Appellant. The relevant facts to this effect have been discussed at great length in the Assessment Order, dated 28.12.2010, for the Assessment Year 2008-09 passed in the case of Sh. Vinod K Faria and this satisfies the requirement of recording satisfaction in terms of Section 153C of the Act. He submitted that the term 'satisfaction' has not been defined in the Act. There is no specific manner regarding the recording of satisfaction or the time when it is to be recorded. The Hon'ble Supreme Court, in the case of CIT-III vs. Calcutta Knitwear [2014] 362 ITR 673 (SC), has treated Sections such as 158BC, 158BD, 153C, etc. as machinery provisions which are required to be interpreted literally so as to achieve the objectives for which they were brought into the statute. There is nothing in the Act that the satisfaction should be recorded in a particular manner. It would, therefore, be substantial compliance if the Assessing Officer records his satisfaction in the assessment order itself. Referring

to findings recorded in the assessment order dated 28.12.2010 passed in the case of Sh. Vinod K Faria, he submitted that the aforesaid findings clearly amount to satisfaction within the meaning of section 153C of the Act. Emphasizing the fact that the term 'satisfaction' has not been defined in the Act, he submitted that satisfaction can certainly be gathered from the assessment order passed by the Assessing Officer of the searched person. The very fact that INR 17.46 Crores was added as undisclosed income of Sh. Vinod K Faria on protective basis clearly establishes satisfaction of the Assessing Officer to add the same substantively in the hands of Sh. Amarshi M Nisar (INR.10.72 crores) and Sh. Velji Rupshi Faria (INR.6.74 crore).

10. We have heard the rival submissions and perused the material on record. Both the sides agreed that recording of satisfaction is necessary for issuance of notice under Section 153C of the Act. While the contention of the Appellant/Assessee is that no satisfaction has been recorded, the contention of the Revenue is that the satisfaction can be clearly discerned from the assessment order passed in the case of searched person, i.e., Vinod K Faria. The Assessing Officer of the searched person (i.e., Vinod K Faria) and the 'other person' (i.e. the Appellant herein) are one and the same, and therefore, the fact that the Assessing Officer while passing assessment order in case of searched person has made protective assessment of unaccounted proceeds from sale of galas/units of Hi-Speed Project (INR 6.74 Crores) in the hands of searched person establishes that the Assessing Officer was satisfied that the relevant documents seized during search belong to the

Appellant and the aforesaid income was to be assessed substantively in the hands of the Appellant.

11. We note that in the case of Calcutta Knitwear (supra) the Hon'ble Supreme Court has held that for the purpose of Section 158BD of the Act a satisfaction note is sine qua non and it must be prepared by the assessing officer before he transmits the records to the other assessing officer who has jurisdiction over the 'other person'. The satisfaction note could be prepared at any of the following stages: (a) at the time of or along with the initiation of proceedings against the searched person under Section 158BC of the Act; (b) along with the assessment proceedings under Section 158BC of the Act; and (c) immediately after the assessment proceedings are completed under Section 158BC of the Act of the searched person.
12. Taking note of the above, on 31.12.2015, a Circular No. 24 of 2015 was issued by the Central Board of Direct Taxes (CBDT) which reads as under:

"1. The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitweaves in its detailed judgment in Civil Appeal No. 3958 of 2014 dated 12-3-2014 [2014] 43 taxmann.com 446 (SC) (available in NJRS at 2014-LL-0312-51) has laid down that for the purpose of section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person u/s 158BD. The Hon'ble Court held that "the satisfaction note could be prepared at any of the following stages:

- (a) *at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; or*
 - (b) *in the course of the assessment proceedings under section 158BC of the Act; or*
 - (c) *immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person. "*
3. *Several High Courts have held that the provisions of section 153C of the Act are substantially similar/pari-materia to the provisions of section 158BD of the Act and therefore, the above guidelines of the Hon'ble SC, apply to proceedings u/s 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.*
4. *The guidelines of the Hon'ble Supreme Court as referred to in para 2 above, with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.*
5. *In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgment. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD/153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court."* (Emphasis Supplied)
13. In our view, Circular No. 24 of 2015, though issued on 31.12.2015, would also apply to the present appeal as in Paragraph 5 of the aforesaid Circular, the CBDT had issued instructions that the Revenue should either withdraw or not

press the issue in pending litigation in cases where the recording of satisfaction did not meet the guidelines laid down by the Hon'ble Supreme Court referred to in paragraph 2 of the aforesaid Circular. Further, the Circular clearly states that the CBDT had accepted the position that the guidelines laid down by the Hon'ble Supreme Court in the case of Calcutta Knitwear (supra) while dealing with the provisions of Section 158DB of the Act, shall also apply to proceedings under Section 153C of the Act. Therefore, as per Paragraph 2 of the aforesaid Circular for the purposes of Section 153C of the Act the recording of a satisfaction note is a prerequisite and such satisfaction note must be prepared by the Assessing Officer before he transmits the record to the other Assessing Officer who has jurisdiction over such 'other person'.

14. The Hon'ble Delhi High Court had, while summarizing the legal position in the judgment delivered in the case of Ganpati Fincap Services (P) Ltd. vs. CIT: 395 ITR 692 (Delhi), held that where the Assessing Officer of the searched person and the 'other person' is the same, a satisfaction note *qua* the 'other person' has to be recorded by the Assessing Officer of the searched person prior to the initiation of the proceedings against the 'other person'. This is a *sine qua non* for triggering the proceedings against the 'other person' under Section 153C of the Act. However, there need not be two separate satisfaction notes. The Assessing Officer can make only one satisfaction note containing satisfaction *qua* the 'other person'. Where the Assessing Officer of the searched person records that the seized document in question belongs to the other person, and where

necessary, gives the reasons for the same, the requirement of Section 153C stands satisfied.

15. While dealing with the issue of validity of proceedings initiated under Section 153C of the Act, the Hon'ble Supreme Court had, in the case of Super Malls (P.) Ltd. vs. Pr.CIT-8 New Delhi (2020) 423 ITR 281 (SC), held as under:

"5.1 As observed hereinabove, the short question which is posed for the consideration of this Court is, whether there is a compliance of the provisions of Section 153C of the Act by the Assessing Officer and all the conditions which are required to be fulfilled before initiating the proceedings under section 153C of the Act have been satisfied or not?"

6. This Court had an occasion to consider the scheme of Section 153C of the Act and the conditions precedent to be fulfilled/complied with before issuing notice under section 153C of the Act in the case of Calcutta Knitwears (supra) as well as by the Delhi High Court in the case of Pepsi Food (P.) Ltd. (supra). has held, before issuing notice under section 153C of the Act, the Assessing Officer of the searched person must be "satisfied" that, inter alia, any document seized or requisitioned "belongs to" a person other than the searched person. That thereafter, after recording such satisfaction by the Assessing Officer of the searched person, he may transmit the records/documents/things/papers etc. to the Assessing Officer having jurisdiction over such other person. After receipt of the aforesaid satisfaction and upon examination of such other documents relating to such other person, the jurisdictional Assessing Officer may proceed to issue a notice for the purpose of completion of the assessment under section 158BD of the Act and the other provisions of Chapter XIV-B shall apply.

6.1 It cannot be disputed that the aforesaid requirements are held to be mandatorily complied with. There can be two eventualities. It may so happen that the Assessing Officer of the searched person is different from the Assessing Officer of the other person and in the second eventuality, the Assessing Officer

of the searched person and the other person is the same. Where the Assessing Officer of the searched person is different from the Assessing Officer of the other person, there shall be a satisfaction note by the Assessing Officer of the searched person and as observed hereinabove that thereafter the Assessing Officer of the searched person is required to transmit the documents so seized to the Assessing Officer of the other person. The Assessing Officer of the searched person simultaneously while transmitting the documents shall forward his satisfaction note to the Assessing Officer of the other person and is also required to make a note in the file of a searched person that he has done so. However, as rightly observed and held by the Delhi High Court in the case of Ganpati Fincap Services (P.) Ltd.(supra), the same is for the administrative convenience and the failure by the Assessing Officer of the searched person, after preparing and dispatching the satisfaction note and the documents to the Assessing Officer of the other person, to make a note in the file of a searched person, will not vitiate the entire proceedings under section 153C of the Act against the other person. At the same time, the satisfaction note by the Assessing Officer of the searched person that the documents etc. so seized during the search and seizure from the searched person belonged to the other person and transmitting such material to the Assessing Officer of the other person is mandatory. However, in the case where the Assessing Officer of the searched person and the other person is the same, it is sufficient by the Assessing Officer to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, then the requirement of section 153C of the Act is fulfilled. In case, where the Assessing Officer of the searched person and the other person is the same, there can be one satisfaction note prepared by the Assessing Officer, as he himself is the Assessing Officer of the searched person and also the Assessing Officer of the other person. However, as observed hereinabove, he must be conscious and satisfied that the documents seized/recovered from the searched person belonged to the other person. In such a situation, the satisfaction note would be qua the other person. The second requirement of transmitting the documents so seized

from the searched person would not be there as he himself will be the Assessing Officer of the searched person and the other person and therefore there is no question of transmitting such seized documents to himself.” (Emphasis Supplied)

16. Thus, the Hon’ble Supreme Court has clearly held that the before issuing notice under section 153C of the Act the Assessing Officer of the searched person must be ‘satisfied’ that the document seized or requisitioned ‘belongs to’ a person other than the searched person. The recording of the aforesaid satisfaction is a condition precedent for triggering the proceedings against the ‘other person’ under Section 153C of the Act as held by the Hon’ble Delhi High Court in the case of Ganpati Fincap Services (P) Ltd. (supra) and approved by the Hon’ble Supreme Court in the case of Super Malls (P.) Ltd. (supra) even in cases where the Assessing Officer of the searched person is same as the Assessing Officer of the ‘other person’. This position has also been accepted by the CBDT in the Circular No. 24 of 2015 issued on 31.12.2015 as can be gathered from Paragraph 2 of the aforesaid Circular which provides that recording of a satisfaction note is a prerequisite for issuance of notice under Section 158BD/153C of the Act
17. Reverting to the facts of the present case In the present case, even if the contention of the Revenue that the observations made by the Assessing Officer of the searched person in the Assessment Order, dated 28.12.2010, passed in the case of Sh. Vinod K Faria would constitute sufficient satisfaction, the case of the Revenue would still fall short of the requirements of Section 153C of the Act for the reason that such satisfaction cannot be said to have been recorded prior to issuance of notice under

Section 153C of the Act to the Appellant. It is admitted position that the assessment order in the case of Sh. Vinod K Faria for the Assessment Year 2008-09 was passed under Section 153A/143(3) of the Act on 28.12.2010 whereas notice under Section 153C was issued to the Appellant on 29.12.2009, Thus, the satisfaction, if any, recorded by the Assessing Officer does not fulfill the requirement of Section 153C of the Act.

18. In view of the above, the notice issued by the Assessing Officer under Section 153C of the Act and the consequent assessment proceedings culminating into the assessment order dated 28.12.2010 passed under Section 153C/143(3) of the Act are held to be invalid and therefore, set aside. Ground No. 1 raised by the Appellant is allowed. All the other grounds raised by the Appellant are, therefore, disposed off as being infructuous.

ITA No. 3263/MUM/2013

19. We would now take up ITA No. 3263/Mum/2013. By way of this appeal the Appellant/Assessee has challenged the order, dated 18.02.2013 passed by the Ld. Commissioner of Income Tax (Appeals)-40, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2008-09, whereby the Ld. CIT(A) had dismissed the appeal filed by the Appellant against the Assessment Order, dated 29.12.2010 passed under Section 153C/143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
20. In identical facts and circumstances assessment under Section 153C/143(3) was framed in the hands of this Appellant vide assessment order dated 29.12.2010 at total income of INR 10,90,99,770/- after making, inter alia, addition of INR 10.72

Crores holding the same to be unaccounted proceeds from sale of galas/units of the Hi-Speed Project taxable in the hands of the Appellant. The appeal preferred before CIT(A) against the aforesaid assessment order (including the additional ground raised by the Appellant vide letter dated 07.03.2011 challenging the jurisdiction of Assessing Officer to frame assessment under Section 153C of the Act) was dismissed by CIT(A) vide order dated 18.02.2013 which has been impugned by way of present appeal.

21. The Appellant has raised grounds identical to those raised in ITA No. 3263/Mum/2013 inviting identical argument from both the sides. In the case of this Appellant/Assessee notice under Section 153C was issued on 09.12.2009 whereas the assessment order in the case of Sh. Vinod K Faria for the Assessment Year 2008-09 was passed on 28.12.2010. Therefore, even if the contention of the Revenue that the findings made in the Assessment Order dated 28.12.2010 passed in the case of Sh. Vinod K Faria constitute satisfaction recorded by the Assessing Officer, it is clear that such satisfaction was not recorded prior to issuance of notice under Section 153C of the Act. The requirement of Section 153C of the Act is not fulfilled. Accordingly, in view of our finding in paragraph 10 to 16 above, the notice issued by the Assessing Officer under Section 153C of the Act and the consequent assessment proceedings culminating into the assessment order dated 29.12.2010 passed under Section 153C/143(3) of the Act are held to be invalid and therefore, set aside. Ground No. 1 raised by the Appellant is allowed. All the other grounds raised

by the Appellant are, therefore, disposed off as being infructuous.

In the result, both the appeals are allowed.

Order pronounced on 19.09.2022.

Sd/-

(B.R. Baskaran)
Accountant Member

Sd/-

(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 19.09.2022
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai