

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

ITA No.997/Bang/2022 : Asst.Year 2017-2018

The Assistant Commissioner of Income-tax, Central Circle Mysuru.	v.	Sri.Shroff Krishnarajasetty Satheesha, Kaveri Textiles Ratha Beedi, Mullusoge Kodagu - 571 234. PAN : ACRPs1937P.
(Appellant)		(Respondent)

Appellant by : Sri.Manjunath Karkihalli, CIT-DR
Respondent by : Sri.Akkal Dudhwewala, FCA

Date of Hearing : 17.11.2022	Date of Pronouncement : 16.12.2022
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ORDER

Per Laxmi Prasad Sahu, AM :

This is an appeal filed by the Revenue against the order passed by the CIT(A)-2, Panaji, dated 28th July, 2022. The relevant assessment year is 2017-2018. The revenue has raised following grounds:-

"1. The order of CIT(A) is opposed to law and facts of the case.

2. The Ld.CIT(A) has erred in not appreciating the fact that the proceedings u/s.153C of the Act in the assessee's case is valid as the seized material are co-related to each other and in fact a continuity of one another in sequence.

3. The Ld.CIT(A) has erred in holding that the assessment order passed u/s.153C rws.143(3) of the Act is unsustainable when incriminating materials were found against the assessee and satisfaction note was recorded.

4. The Ld.CIT(A) has erred in deleting the additions on the ground that there was no incriminating material found and

seized whereas during the search proceedings the documents found in possession of searched person clearly shows the transactions done with assessee.

5. *The Ld.CIT(A) has erred in not appreciating the fact that the very loose sheet, contained notings of the cheque transaction and cash transaction. Hence accepting the cheque transaction to be genuine while rejecting cash transaction is erroneous.*

6. *The Ld.CIT (A) has erred in not appreciating the fact that mere non-appearance of the assessee's name on a particular page or sheet of the seized material does not amount to the material being irrelevant and not pertaining to the assessee.*

For these and such other grounds that may be urged at the time of hearing with the plea that the orders of the CIT(A) may be set aside and that assessment order may be restored.”

2. The brief facts of the case are that the assessee is a partner in a firm filed his return of income u/s 139(1) of the I.T.Act for the impugned assessment year on 25.10.2017 declaring income of Rs.35,28,450 and agricultural income of Rs.2,29,954. A search action u/s 132 of the Act was conducted on 26.04.2017 in the case of M/s. C.P.Exports, Plot No.12, KIADB Industrial Area, Kushalnagar, Kudlure, Kodagu. During the course of search proceedings some documents were found and seized related to the purchase of property by the assessee from Sri.E.Jawahar, partner of M/s.C.P.Exports on 31.01.2020 after recoding satisfaction in the file of M/s.C.P.Exports in which proceedings u/s 153A had been initiated that the seized documents were belonged to the assessee and the information contained therein relates to the assessee and having bearing on the determination of total income of the assessee, the satisfaction along with the

material on which the satisfaction was based, was sent to the Income-tax Officer, who had jurisdiction over the assessee, which was received by the jurisdictional A.O. on 03.02.2020. The jurisdictional A.O. after recording satisfaction that the information contained therein relates to the assessee and has bearing on the determination of the income of the assessee. Proceedings u/s 153C of the Act were initiated and notice u/s 153C was issued on 11.02.2020. In response to the notice u/s 153C of the Act, the assessee filed return of income on 16.03.2020 declaring the same income as declared in the original return filed u/s 139(1) of the Act. Thereafter, statutory notices were issued to the assessee. In response to the notices, the AR of the assessee appeared and filed written submissions. The copy of the seized materials were also provided to the AR of the assessee. During the course of search proceedings, three documents were found and on that basis of proceedings u/s 153C of the Act was initiated. The first document is Annexure A/CPE/17-18/25 (page No.36 to 39). It was a copy of sale agreement dated 17.03.2016 between Sri.E.Jawahar and the assessee for sale of property for a sum of Rs.1,69,57,500 for 8 acre 37 guntas (2 acre + 3 acre 32 guntas + 3 acre 0.05 guntas) land bearing Sy.No.26/1, Sy No.26/2 and Sy No.27/3 at Manchadevanahalli Village, Kasaba Hobli, Periyapatna Taluk, respectively. The next document was marked as A/CPE/17-18/25 (page 29-35). It was a sale deed dated 09.04.2017 executed between Sir.E.Jawahar and the

assessee. The sale consideration as per sale deed was Rs.49.00/- lakhs and the payment was shown as under:-

On 03.03.2016 Rs.5,00,000
On 04.06.2016 Rs.34,00,000
On 19.11.2016 Rs.10,00,000
Stamp duty paid Rs.3,26,280.

The next document marked as A/CPE/17-18/33 page 161. These documents were seized from the business premises of M/s.C.P.Exports at KIADB Industrial Area. The third document marked as A/CPE/17-18/33 page 161 is the ledger copy of the account of sale of land at Manchadevanahalli for 9 acres, in which debit and credit entry has been made for cash and cheque and two other transactions interest and commission are appearing. From the above documents, the A.O. inferred that the documents were related and pertains to the assessee and having bearing of the determination of the total income in the hands of the assessee. The AO noted from the sale deed and sale agreement that the assessee has got registered the property at less than the value fixed in the sale agreement, whereas, the assessee had paid on-money of Rs.1,20,57,000 over and above the registered consideration to Sri.E.Jawahar. A statement was also recorded from Sri. E. Jawahar (vendor of the property question answer No.59, 60,61 and 62) on the date of search in which he had accepted that out of Rs.1,69,57,500, an amount of Rs.1,20,57,500 was received in cash and not recorded in the books of account and the balance amount of Rs.49 lakh was received in cheque.

3. In the return of income for assessment year 2016-2017, the assessee had offered Rs.20 lakh as additional income. The A.O. issued notice u/s 142(1) of the Act on 02.02.2021 for explaining the source for the cash payment totaling to Rs.1,00,57,000. In response, the assessee filed reply on 02.03.2021 and various case laws, which read as follows:-

6. In the notice u/s 142(1) dated 02.02.2021, the contents of the seized material were discussed and the assessee was required to explain the sources for the cash payments totaling to Rs. 1,00,57,000 made during the year to Sri Jawahar. In his response filed on 02.03.2021, the assessee has made the following points:

a. It is submitted that the assessee was looking to expand his agricultural operations and was therefore looking to buy land As Shri Jawahar was intending to sell his agricultural lands located at Manchadevanahalli Village, the assessee expressed interest to acquire the same and paid an initial sum of Rs 25,00,000 (Rs. 5,00,000 by cheques and Rs. 20,00,000 by cash) as per clause 3 of the agreement. The said clause further provided that the agreed sale consideration would be paid only if (a) seller furnishes all title deeds and sketches and all other documents within the prescribed time (b) the seller shall clear all encumbrances over the scheduled property) the seller shall further make sure that there are no other documents or agreements executed by him with any other person other than the purchaser. It is submitted that the impugned land is situated at hinder region without proper access from the pucca road and Shri Jawahar had impressed on the assessee that he has entered into an agreement with the owner of the land which is situated in between the impugned land and the pucca road and eventually before transfer of the impugned land , that other land will also be transferred to the assessee. The assessee states that it was in this background that the higher price was agreed on, but when consequent to the agreement for sale, he undertook verification of the title of the documents, inspected the property and identified encumbrances thereon, it was found that there were several infirmities in the aforesaid documents and that the prevailing market rate was significantly lower for such properties in the surrounding area. The assessee submits that he did not proceed with the agreement to sell which required that the deed of conveyance should be executed within 5 months from date of the said agreement i.e on or before 17.08.2016. He further states that the unregistered agreement was never acted upon and therefore ultimately stood as void, but the seller did not refund the earnest money of Rs. 25,00,000 paid pursuant to the agreement.

b. It is further stated that after protracted negotiations , the assessee and Shri Jawahar found common ground and the deal was finalized in the month of February 2017 and the final sale deed was executed

on 09.02.2017 where the final negotiated price was Rs. 49,00,000 which was commensurate with the prevailing circle rate

c. The assessee submits that he did not have any other transactions with Sri E Jawahar. The assessee filed a copy of an affidavit executed by Shri Jawahar. In the affidavit which bears the signature of Shri Jawahar and which has been notarized by one Sri S K Manjunatha, Advocate and notary, Kushalnagar, Kodagu District. In the affidavit, Sri Jawahar states that he had entered into the agreement for sale of land for a sum of Rs. 1,69,57,500 and had received advance of Rs. 25,00,000 in cash and cheque. But due to some events thereafter and to prevent transaction not going through, he had to renegotiate the sale consideration for impugned dry lands and the amount was fixed at Rs. 69,00,000. The sale deed was executed and registered for Rs. 49,00,000 only. He has stated that he has declared consideration of Rs. 69,00,000 in his income tax return and he affirms that he has not received a single rupee more than that amount.

d. The assessee further denies that he made interest payment to Shri Jawahar and alleges that he has not been provided with the material on the basis of which it is alleged that he has made cash payments totaling to Rs. 1,20,57,000 to Sri Jawahar. The assessee stated that he has not been provided with an opportunity to cross examine Sri Jawahar.

d. The assessee has quoted that decisions in the following cases in support of his contentions that the AO cannot rely on statement of the seller to make additions and requested to complete the assessment without further additions:

CIT vs PV Kalyanasundaram (282 ITR 259) Madras High Court

KP Varghese vs ITO (131 ITR 597) Apex Court

294 ITR 49 Apex Court

MM Financiers P Ltd vs DY Cit (17 SOT 5) Chennai bench of ITAT

4. The written submission filed by the assessee was examined by the A.O., but the A.O. did not accept the same. During the course of assessment proceedings, the assessee sought for cross-examination of Sri.E.Jawahar, which was arranged by the A.O., but the assessee did not appear on the scheduled date & time. Thereafter, the A.O. recorded the statement of Sri.E.Jawahar on 12.03.2021. During the course of assessment proceedings, the assessee filed an affidavit executed on 13.03.2020 by Sri.E.Jawahar, which was

notarized by Sri.S.K.Manjunatha, Advocate and Notary, Kushalnagar showing the transaction has been done and paid Rs. 69,00,000/- only . In this regard, during the course of recording of statement of Sri.E.Jawahar, he stated that - yes, the affidavit was signed by me in a hurry and signed it in my office without reading the contents, but took the precaution of taking a copy of the same before Sri.Sateesha left. When I went through the contents of the affidavit as evidenced by my copy, I realized that Sri Satheesha has mentioned only an amount of Rs.69,00,000 as the total consideration as against Rs.1,69,57,500. I immediately whatsapped him that the affidavit was wrong on 18.03.2020. On 19th March, 2020, I consulted my advocate and I executed a rectification affidavit on the same day and whatsapped the same to Sri SK Satheesha on 20.03.2020. Copy of the whatsapp conversion is provided to the Assessing Officer. The facts were stated in full in the rectification affidavit and the rectification affidavit was filed by Sri.E.Jawahar. A copy of the statement recorded by Sri.E.Jawahar was provided to the assessee. In response, the assessee filed reply on 19.03.2021.. The copy of cash register contents at page 161 of A/CPE/17-18 which is part of a register found in the premises of CP Exports and the scanned copy is as under:-

of the property. It was also noted by the Revenue Authorities that Sri.E.Jawahar was maintaining records of his personal transaction in the register which were maintained in the premises of M/s.C.P.Exports, in which he is a partner. The A.O. further noted from the contention of the assessee that the land was full of encumbrances resulting and reduction of the sale price and that the agreement required conveyance within 5 months which did not happen rendering it void and that Sri E.Jawahar could not ensure transfer of other land which is situated between the pucca road and the impugned land and that the selling price was renegotiated is not supported by any evidences and has been denied by Sri.Jawahar. The A.O. further observed that Sri.Jawahar was also denied that there was an arrangement to transfer some other land and stated that one side of the boundary of the impugned land was the land belonging to the assessee and access to the property was easy to the assessee. During the course of assessment proceedings, the assessee also relied on various case laws, which was not accepted by the A.O. He made addition u/s 69B of the I. T. Act. for cash payments observed by him over and above the stamp duty of the property at Rs.1,00,57,500 and determined the income u/s 115JBE of Rs.1,22,57,500.

6. Aggrieved by the order of the A.O., the assessee filed an appeal before the CIT(A). Before the CIT(A), the assessee has filed a detailed written submissions. The learned CIT(A) called for remand report from the A.O. The A.O. submitted his

remand report on 22.06.2022 vide letter dated 23.06.2022 and the same was also conveyed to the assessee for filing rejoinder. In response, the assessee filed his rejoinder on 29.06.2022. The learned CIT(A) after considering the detailed submissions and remand report submitted by the A.O, allowed the appeal of the assessee by observing as under:-

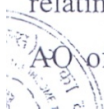
5.4 The aforesaid submissions of the appellant are considered in light of the facts reported by the AO in the remand report dated 23.06.2022 that has been reproduced in para 4.0 of this order.

5.5 AO, in the remand report, has affirmed that the seized material does not contain the name of the appellant anywhere. He has also mentioned that while in the assessment order, the amount paid in cash has been assessed as undisclosed income of the appellant based on seized material and statement given by Mr. E Jawahar, however, the seized document marked as A/CPE/17-18/33 Page 161, only indicates the date wise receipt but the name of the appellant or the seller of the land is not written in the document. He has also mentioned that the submissions of Mr. E. Jawahar before the Settlement Commission only admit capital gains for the subjected property without mentioning the name of the buyer. Statement of Mr. E. Jawahar was retracted and thereafter re-retracted. Based on above facts, it now needs to be decided whether sufficient material existed in this case to pass order u/s 153C of the Act in the case of the appellant.

5.6 Prior to amendment by Finance Act 2015 *i.e.* before 1-06-2015, section 153C (1) of the Act provided that if AO of the person searched is satisfied that valuable assets (any money, bullion, jewellery or other valuable article or thing) or books of accounts or documents seized/requisitioned belongs or belong to a person other than person searched, the AO of the person searched will hand over the valuable assets/books of accounts/documents to the AO of the other person. Thus, the criteria for arriving satisfaction by the AO of the person searched was that the valuable assets/books of accounts/documents belong to the other person. After amendment by the Finance Act w.e.f. 1-06-2015, "valuable assets" and "documents etc." are separated and the qualifying expressions "belongs to" is retained only with "valuable assets" as contained in clause (a) of section 153C(1). The other part relating to "documents etc." contained in clause (b) has been divided into two parts by putting different qualifying expressions against both the parts as under-

- (i) any books of account or documents, seized or requisitioned, pertains or pertain to-
- (ii) or any information contained therein, relates to-

The legislature considered it necessary to provide different qualifying expressions against books of accounts/documents and information contained therein because there were certain Court decisions in which action u/s 153C was quashed as documents/books prepared by person searched but containing information about undisclosed income of the other person could not be said to belong to the other person. Therefore, the qualifying term "belongs to" was diluted to "pertains to" and in case it is held that documents/books of accounts do not pertain to other person, at least information contained in them and relating to other person could become the basis for arriving satisfaction by the AO of the person searched and, on that basis, AO of the other person could



initiate action u/s 153 C against the other person. In pre-amendment provision the qualifying expression used was "belongs to" and in post-amendment provision of 153C(1), qualifying expressions used are "belongs to", "pertains to" and "relates to". The three expressions are explained in brief as under-

- (i) Scope of "belongs to"- It refers to dominion, control and possession. It also refers to ownership though not absolute ownership. In the Advance Law Lexicon (page no. 501 of 2005 edition), belong to has been explained as "the words belonging to refers owner". It is defined as "to be in rightful possession of". As per **CWT v. Vishwanath Chatterjee AIR 1976 SC 1492, 1494**, if there is mere possession unaccompanied by rights to ownership, it would not be said to belonging to the assessee. The words 'belonging to' are of wider import than the narrower concept of 'ownership' of the assets which is more rigid and narrower in its meaning than the words 'belonging to'. The 'ownership' of a property continues to be with the owner, even if the property is under some charge or even litigation about the title and possession

In the context of section 153C the expression would indicate that the income arising from the seized articles or documents is assessable in the hands of the other person.

Therefore, under clause (a) of section 153C(1) of the Act, satisfaction of the AO of person searched, in respect of valuable assets seized from the person searched can be arrived at only if some kind of exclusivity about domain and control leading to ownership of other person on the valuable assets is indicated either from the documents about valuable assets seized/produced, or from the statement on oath of the person searched or of other person or other connected persons.

Scope of "pertains to":

(ii)

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Expression "pertain to" brought in the Statute by Finance Act, 2015 w.e.f. 1-06-2015 would normally indicate a reference in the seized document to the other person. However, merely from the name of other person appearing in the seized documents, it cannot be inferred that it would pertain to the other person. The general meaning of the term is "to have reference, relation, or relevance or association or connectivity". thus, in the expression "pertain to" some kind of belongingness is inbuilt. Before drawing inference as to whether document pertains to other person, the AO has to record some kind of belongingness of the document to the other person. since, this qualifying term is suffixed with books of accounts and documents, at least contents of the books or documents should belong to the other person so as to infer that books/documents pertains to the other person.

(iii) Scope of expression "relates to" (as used in the expression "any information contained therein "relates to"):

This expression has a wider scope as compared to the meaning of expression "belongs to" or "pertains to". It is sufficient for the AO of the person searched to establish connectivity of the information culled out from the books of accounts/documents, with the other person.

It may be seen that a document/book pertaining to other person would have contents/information relating to the other person. Converse is not true. A book or document containing information relating to the other person may not necessarily pertain to the other person; it may pertain to person searched also. Therefore, when a finding is given that books/documents pertain to other person would also cover finding that information contained therein relates to the other person. It can be said that the satisfaction in respect of second limb of section 153C(1)(b)

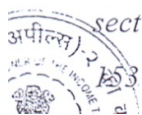
goes along with satisfaction in respect of first limb thereof.

5.7 The Government provided following Explanatory notes while amending section 153C(1) by Finance Act 2015 w.e.f 1-06-2015.

Assessment of income of a person other than the person in whose case search has been initiated or books of account, other documents or assets have been requisitioned.

39.1 Section 153C of the Income-tax Act relates to assessment of income of any person other than the person in whose case search has been conducted or requisition has been made. The provisions contained in sub-section (1) of the section 153C, before amendment made by the Act, provided that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the Income-tax Act, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to any person, other than the person referred to in section 153A of the Income-tax Act, 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 income of such other person in accordance with the provisions of section 153A.

39.2 Disputes have arisen as to the interpretation of the words "belong to" in respect of a document as for instance when a given document seized from a person is a copy of the original document. Accordingly, section 153C has been amended so as to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the Income-tax Act, where the Assessing Officer is satisfied that any



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money, bullion, jewellery or other valuable article or thing belongs to, or any books of account or documents seized or requisitioned pertain to, or any information contained therein, relates to, any person, other than the person referred to in section 153A of the Income-tax Act, 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 income of such other person in accordance with the provisions of section 153A.

39.3 Applicability: This amendment has taken effect from the 1st day of June, 2015.

Thus, it may be seen that the legislature intended that AO of the person searched should arrive at satisfaction on the basis of information relating to other person, contained in the documents seized (may be a photocopy of original) and thereafter handover the same to the AO of other person to take action u/s 153C against the other person.

5.8 3. Subsequent expression after clause (b) in section 153C reads as under:

"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 six assessment years immediately preceding the assessment year relevant to the previous year in

which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153A.

5.9 The conditions for invoking section 153C as laid down in the above expression are-

- i. After recording satisfaction as contained u/s 153C(1), either under clause (a) or under clause (b) or under both, the AO of the person searched shall handover the books of accounts or documents or valuable assets to the AO of the other person.
- ii. The AO of the other person needs to be satisfied that books of accounts or documents or assets seized have a bearing on the determination of total income of other person for six assessment years and relevant assessment year.
- iii. After having satisfied that books of accounts or documents or information containing therein have a bearing on the determination of total income for one year, some years or all the years falling under six preceding assessment years and relevant assessment year, then the AO of the other person then can issue notice u/s 153 C only for those assessment year/years. It means if books of accounts or documents or assets handed over to him by the AO of the person searched, or information contained therein supplied to him by the AO of the person searched, has no bearing on the determination of total income of other person for any assessment year, then he cannot issue notice u/s 153C for that assessment year/years.

Analysis of section 153C(1) (b) of the Act shows that legislature visualized two situations under which AO of person searched can derive satisfaction- one where books of accounts/documents seized from person searched pertain to

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other person and second (at least) information contained therein relates to the other person. Both these situations are separated by disjunctive "or" and therefore, it is apparent that the legislature considered that if either of the situation is existing, AO can initiate action u/s 153C against the other person. However, where books/documents seized pertain to person searched and also information contained therein relates to person searched, while undoubtedly, it will be a case u/s 153A against person searched but no action u/s 153C will arise against the other person.

5.10 There is clearly a demarcation drawn in section 153C *i.e.*, if books of accounts or documents pertain to person searched, then they will not pertain to the other person and if they pertain to the other person, they will not pertain to person searched. It is necessary for the AO of the person searched to record satisfaction that documents/assets do not pertain/belong to person searched and thereafter he has to determine to whom it belong/pertain. It is because by virtue of section 292C presumption goes that whatever is found from the possession and control of the person searched, it will belong to person searched. There has to be some cogent material to discharge the burden for holding that documents/assets so seized do not belong to person searched. Once, it is decided by the AO of the person searched that book of accounts/documents do not belong to person searched, then he has to be satisfied that it belongs/pertain to the other person. Once, this satisfaction as contained in first limb of clause (b) of section 153C(1) is arrived at by the AO of person searched, he has necessarily to handover the originals to the AO of the other person.

5.11 To sum up, for provisions of section 153 C of the Act to take effect, firstly during the course of the search some incriminating material must be found. The incriminating material should be one which has impact on determination of total income *i.e.*, if such material is considered, then total

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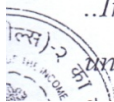
income assessed (in case of completed assessment) or assessable (in case of other pending assessment) would be higher than what is disclosed or already assessed. Then the AO of the "person searched" must be satisfied that the incriminating material does not belong to the "person searched" but belongs to "other person" who has to be identified by the AO. If "other person" is not identified and AO is satisfied that incriminating material does not belong to the "person searched", then such material cannot be utilized any-where for the purposes of assessment. The third step is that after such satisfaction is arrived at, the documents need to be handed over to the AO of the "other person". Thereafter, the AO of the "other person" has to segregate the incriminating material, year wise and has to satisfy himself that there is year specific incriminating material which will have impact on the determination of total income of the "other person" for that assessment year. Notice u/s 153C can be issued only in respect to those assessment years for which incriminating material is identified. If there is no incriminating material for any particular assessment year, then no notice u/s 153C needed to be issued for that assessment year.

5.12 However, in this case, remand report of the AO mentions as under: -

'The seized material of Page 161 of register marked and seized as A/CPE/17-18/33 from the office premises of M/s CP Exports at Kushalnagar contains details of amount received both by cheque and cash. On verification of the seized material, it is found that this page contains only site name of the land but does not contain the name of the appellant anywhere in the page.

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..In the assessment order, the amount paid in cash has been assessed as undisclosed income of the assessee/appellant based on seized material and



statement given by Mr. E Jawahar. It is submitted that in the seized document marked as A/CPE/17-18/33 Page 161, datewise receipt had been mentioned however the name of the appellant or the seller of the land is not written in the document. Further it is noticed from the submissions of Mr. E. Jawahar before the Settlement Commission that Shri Jawahar has admitted capital gains for the subjected property without mentioning the name of the buyer.'

5.13 The remand report clearly shows that no cause existed with either of the AOs to reasonably believe that the concerned document pertained to the appellant and therefore rigours of section 153 C of the Act could not justifiably have been invoked in this case. Ld. AR of the appellant, vide his submissions dated 15.07.2022 (reproduced at para 5.2 of the order supra) has submitted judgments of the Hon'ble Supreme Court and the jurisdictional Court being the Hon'ble High Court of Karnataka holding that power under section 153C could not be invoked against assessee when there was no incriminating document or evidence discovered during search of third party under section 132. These judgments are fully applicable in the instant case.

5.14 Following other case laws are also of relevance in this case: -

Where no inquiry was made by the AO to substantiate the veracity of loose paper to collect cogent material/ evidence to establish that cash was received by the assessee, the "other person" (there should be evidence of actual cash transaction to support the entries in the loose paper) no addition can be made in the hands of "other person" **Dy. CIT v. ANGEL INFRA [I.T. (85) A. No. 94/AHD/2018, dated 6-3-2020]**.

The AO has to prove with corroborative evidence that on-money was received as recorded in the loose paper, or the entries in the seized documents actually represented the sales made by the assessee, before he



acquires jurisdiction to make assessment u/s 153C **CIT v. Maulikkumar K.Shah[2008] 307 ITR 137 (Gujarat).**

Where writer of the document (or of the loose paper found from the premises of searched person) is not known and if they are not signed by any partner or any employee of the assessee firm, the person from whose possession the document was found was not questioned, then they would be dumb document and no addition on that basis can be made **CIT v. Kulram Rai [2007] 75 CCH 0149 (Delhi HC); CIT v. S.M. Agrawal (2007) 293 ITR 0043/162 Taxman 3 (Delhi).**

The AO cannot get the benefit of section 132(4A) or section 292C for making addition in the case of "other person" as ownership of the document cannot be attributed to "other person" by raising presumption under those sections. If on the computer sheets seized from the premises of "person searched" does not mention the name of "other person", there is no statement that computer sheets would belong to "other person" and thus, having no nexus with the "other person", proceedings u/s 153C could not be initiated **Dy. CIT v. STC DEVELOPERS OTHER PERSONS (P.) LTD. [IT Appeal No. 2738 (Delhi) of 2016, dated 28-2-2020].**

In case where a list showing receipt of money on sale of flats was found in the search of person searched, then if list did not mention the name of other person, no action u/s 153C against other person can be taken **Dy. CIT v. National Standard India Ltd[2017] 85 taxmann.com 87/166 ITD 426 (Mum.- Trib.)**

Where loose papers found in the search of "person searched" related to only estimation and not to any income or expenditure or investment which would have bearing on the computation of income of "other

person", and thus, there being no incriminating material against "other person", initiation of proceedings u/s 153C would not be justified. **Asstt. CIT v. K.V.V.S.N. ASSOCIATES AND (VICE-VERSA) [IT Appeal No. 107 (Niz) 2018, dated 28-2-2020]; ACIT v. ADVANTAGE HOUSING (P.) LTD. [IT Appeal No. 1951(Delhi) of 2015, dated 27-2-2020].**

Since there was no seized incriminating seized material so as to frame assessment for the relevant assessment years u/s. 153C, therefore the assessment is liable to be annulled and the addition cannot be sustained. **SHRI D. DASAPPA VERSUS THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 1 (3), BENGALURU. 2022 (2) TMI 1246 - ITAT BANGALORE**

In the present case, it is not possible for the AO to assume jurisdiction u/s. 153C of the Act since the pre-requisite is that any money, bullion, jewellery or other valuable article or things or books of account or documents seized or requisitioned belong or belongs to a person other than the person in whose case search is conducted u/s. 132 of the Act. Therefore, initiation of section 153 of the Act for framing assessment u/s. 153C r.w.s. 143(3) of the Act is not satisfied. **SHRI ANAND NADIG VERSUS THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 7 (2) (1), BANGALORE 2021 (12) TMI 921 - ITAT BANGALORE**

5.15 In view of the aforesaid, this is a case where provisions of section 153C of the Act could not have been applied. Accordingly, the assessment order passed u/s 153C r.w.s.143 (3) of the Act is unsustainable and ground 1 of the appeal is allowed.

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7. Aggrieved by the order of the CIT(A), the Revenue has filed this appeal before the Tribunal.

8. The learned Departmental Representative relied on the order of the A.O. and submitted that during the course of search, statement was recorded from Sri.E.Jawahar, who is the vendor of the property. Page No.161 which is copy of register and it relates to the assessee. Therefore, it is an incriminating document for invoking provisions of section 153C of the Act. The sale deed was executed on 17.03.2016 for a sum of Rs.1,69,57,500 and Rs.25 lakh was paid and the balance amount was paid by the assessee on different dates. The statement of Sri.E.Jawahar was also recorded during the course of search proceedings, wherein three documents were found, which have been marked as incriminating material and has been used for making addition. Page No.161 marked as A/CPE/17-18/33 is closely linked with value of property as agreed in the sale agreement. Therefore, page No.161 is part and parcel of the seized material. The size of land is also mentioned. There is direct nexus of ledger marked as page No. 161 with the payments received by the vendor of the land. Sri.E.Jawahar immediately filed retraction through rectification affidavit when he came to know that the affidavit earlier submitted was wrong and in the statement he has also accepted that the payments have been received through cash, which is evident from the answer to question. As per the statement recorded, Sri. Jawahar has stated that the he was knowing the assessee since 2010 and made agreement for

sale of 8 acres 37 guntas to the assessee for a consideration of Rs.1,69,57,500. Out of which, Rs.20 lakh was paid in cash and Rs.5 lakh was also paid through cheque immediately and the balance amount was paid on different dates, which is tallied with the copy of ledger account found during the course of search. During the course of assessment proceedings, the A.O. gave more than one opportunity to the assessee for cross-examining of Sri.Jawahar, but the assessee did not avail the same. Therefore, it is wrong to say that cross-examination was not granted by the A.O. He further submitted that Sri.Jawahar has admitted capital gain of Rs.1,00,57,000 during the impugned assessment year before the settlement commission. Therefore, there is direct nexus with the on-money received as evident from the ledger and the sale agreement made by Sri.Jawahar. The A.O. has clearly established that the on-money received by the vendor on sale of property has been received from the assessee. Therefore, according to the DR, the A.O. has rightly made addition u/s 69B of the I.T.Act and the learned CIT(A) has wrongly allowed the appeal of the assessee.

11. The learned AR reiterated the submissions made before the lower Authorities. The learned AR also supported the order of the CIT(A). In support of his argument, the learned AR filed written submission, which reads as follow:-

“5. In the appellate proceedings, the assessee contended that, none of the above seized material referred to by the AO in his

satisfaction note could be said to contain any incriminating material against the assessee which had bearing on his total income and therefore the assessee challenged the assumption of jurisdiction u/s 153C of the Act by the Assessing Officer. The summarized explanation put forth by the assessee [Submissions placed at **Page 25 to 46 of PB**] is as follows:

- **Document bearing ID Mark A/CPE/17-18/25 Pages 36-39**
- This was a copy of a sale agreement dated 17.03.2016 between Shri E Jawahar and Sri S K. Satheesha which contained alleged cash noting of Rs.20,00,000/- dated 03.03.2016 i.e. relating to AY 2016-17. The said document did not relate to the relevant AY 2017-18 and therefore it could not have any legal bearing on the total income for AY 2017-18.
- **Document bearing ID Mark A/CPE/17-18/25 Pages 29-35**
- This was the final sale deed dated 09.02.2017 between Shri E Jawahar and Sri S K. Satheesha. It contained the terms and conditions agreed upon sale of land which binded both the parties. The consideration mentioned in the final conveyance was Rs.49,00,000/- which formed part of the regular books of accounts. Although the said document related to AY 2017-18, but it did not contain anything which incriminated the appellant or suggested earning of any undisclosed income to have bearing on the total income of the appellant for AY 2017-18. Instead this conveyance deed recording consideration of Rs.49,00,000/-, which was executed and registered with stamp duty authorities, supported the case of the appellant and substantiated that the appellant, in connection with the sale of land, made no further payments to Mr. E Jawahar.
- **Document bearing ID Mark A/CPE/17-18/33 Page 161** -
According to AO, this page was a part of register found from the office of M/s C P Exports which contained several notings for sale of nine (9) acres of land at Manchadevanahalli. The AO assumed that since two notings against dated 04.03.2016 i.e. Rs.5,00,000/- in cheque and Rs.20,00,000/- in cash correlated with the two payments made by the assessee to Shri E Jawahar on 03.03.2016, all other cash notings on the same page related to or pertained to the assessee. It shall however be noted that, **(a)** this document did not contain or refer to the name of the assessee, **(b)** although the name of site was same but the size of land mentioned on this Page was different that the agreement to sell/conveyance deed, **(c)** although the figures of Rs.5,00,000/- & Rs.20,00,000/- was the same as agreement to sell but the dates were different and therefore it could not be assumed to be the same, **(d)** the total sum on this Page was Rs.1,02,57,000/- whereas in terms of agreement to sell, the balance sum purportedly payable was Rs.1,44,57,500/- and therefore the amounts also did not correlate. Even if the sale consideration of Rs.49,00,000/- is ignored, the net amount as per

agreement to sell worked out to Rs.1,00,57,500/-. Hence this seized document also could not be said to be relating to or pertaining to the assessee so as to invoke the rigors of Section 153C of the Act.

6. In furtherance to the above, the appellant filed another rejoinder on 19.05.2022 in which it was categorically averred that the document **A/CPE/17-18/33 Page 161** did not contain the name of the assessee and therefore the AO could not validly assume that this document pertained to the assessee. It was further stated that there was no statement of Shri E Jawahar recorded u/s 132(4) of the Act in the possession of the AO at the time of recording of satisfaction note which in any manner incriminated the assessee [Refer **Page 47 to 48 of PB**]. It was further explained that even the subsequent statement dated 12.03.2021 given by Shri E Jawahar u/s 131 of the Act was not only self-serving but also fraught with factually infirmities and false assertions and therefore his testimony was unreliable. These infirmities were elucidated in detail before the Ld. CIT(A), which is available at **Pages 47 to 64 of PB**.

7. In view of the above, the Ld. CIT(A) had sought for a **remand report** from the Assessing Officer, who furnished his comments under the cover of letter dated 23.06.2022, which is placed at **Pages 65 to 92 of PB**. In this remand report the AO after considering the objections put forth by the assessee has categorically admitted that the name of the assessee was nowhere mentioned in the seized material. The AO was also not able to dispute that, the rectification affidavit dated 19.03.2020 of Mr. E Jawahar wherein he had alleged that the assessee had compelled him to furnish this affidavit dated 13.03.2020 (in which had declared that he had not received any monies from the assessee) was clearly unreliable in light of the whatsapp conversation evidencing that it was Mr. E Jawahar who had suo moto furnished the original affidavit dated 13.03.2020 on his own volition and that the assessee never compelled him to do so. The AO was thus unable to dispute the averments made by the assessee that Shri E Jawahar was an unreliable witness and therefore his testimony had no relevance. The Assessing Officer also noted that the figure of Rs.2,00,000/- appearing on the document **A/CPE/17-18/33 Page 161** was not admitted to be pertaining to the assessee by Shri E Jawahar. The Assessing Officer further furnished the report of the Settlement Commission in the matters of M/s CP Exports and stated that Mr. E Jawahar in his application before the Settlement Commission had admitted to capital gains for the subjected property without mentioning the name of the buyer.

8. Upon receipt of the copy of the remand report, the assessee furnished further rejoinders on 12.07.2022 & 15.07.2022 [**Pages 93 to 105 of PB**] wherein it was submitted that when the AO

himself had admitted that the document **A/CPE/17-18/33 Page 161** which formed the basis of the satisfaction neither contained the name nor reference to the assessee, the said document could not be said to be incriminating material relating or pertaining to the assessee so as to invoke Section 153C of the Act. After considering the submissions of the assessee and the remand report of the AO, the Ld. CIT(A) held that no cause existed with the AO to reasonably believe that the concerned seized material pertained to the assessee and therefore the rigors of Section 153C of the Act could not have been justifiably invoked and accordingly the impugned order passed u/s 153C/143(3) was held to be unsustainable.

9. Being aggrieved by the above order, the Revenue is in appeal before the Hon'ble Tribunal. Our rebuttals to the averments made by the Ld. CIT, DR in support of the grounds raised in the appeal are as under:

SUBMISSIONS

10. The Ld. DR had contended that the seized material i.e. (i) agreement to sell, (ii) conveyance deed and (iii) page 161 of the register of CP Exports should be read in tandem. According to him, although the name of the assessee is not mentioned in Page 161 in which cash notings were found but if one reads it with the agreement to sell, it shows similarities between these documents and thus alleged that this Page 161 pertained to the assessee.

10.1 The assessee submits that the aforesaid contention of the Ld. DR is factually as well as legally unjustified for the following reasons:

– Ordinarily, in terms of Section 132(4A)(i) of the Act, when any document is found in the possession or control of any person in the course of a search, it is presumed that such document belongs to such person i.e. M/s C P Exports. In order to rebut this presumption, it is necessary to come to a conclusion or 'satisfaction' that the document in fact pertains to or relates to somebody else. Both the AO and the Ld. CIT, DR clearly admit to the fact that the document bearing ID Mark A/CPE/17-18/33 Page 161 does not refer to or contains the name the assessee. In that view of the matter, the ordinary presumption is that the document belongs to searched person and also the notings on this Page relates to the searched person i.e. CP Exports and not the assessee. Hence, on this score alone, the **Page 161** cannot be said to relate to the assessee.

– Coming to the purported correlation between this document bearing ID Mark A/CPE/17-18/33 Page 161 with the Agreement to Sell found at A/CPE/17- 18/25 Page 36-39, the apparent inconsistencies are as follows:

- *The agreement to sell only mentioned payment of cash of Rs.20,00,000/- on 03.03.2016 and it does not refer to any other cash payment. It is to be particularly noted that, the date of payment is 03.03.2016 whereas cash noting on Page 161 is on 04.03.2016. Similarly the agreement states that the cheque of Rs.5,00,000/- was paid on 03.03.2016 whereas Page 161 mentions cheque of Rs.5,00,000/- on 04.03.2016. Hence, these notings does not fully match. The inference of the AO that these notings are the same are based on pure conjecture and is not demonstrated by these documents.*

- *Further, as per the agreement to sell, the balance sum of Rs.1,44,97,500/- was to be paid within five months from the date of agreement viz., 17.03.2016 and even the conveyance was to be executed with the same time frame. The contemporaneous facts on record shows that the terms of the agreement was never acted upon as the conveyance was not executed within five months. This shows that the agreement to sell stood rescinded. Moreover, the purported cash notings on Page 161 bears dates which are beyond the agreed time frame of five months. This fact further proves that the cash notings found on Page 161 does not pertain/relate to the agreement dated 17.03.2016.*

- *Also, the size of land mentioned on top of this Page 161 is 9 acres whereas the size of land transacted by the assessee with Mr. E Jawahar was 8.32 acres. Hence, it is evident that even the subject matter of this Page does not fully correlate.*

– *The above apparent infirmities clearly show that there were no similarities between Page 161 and the agreement to sell as claimed by the Ld. CIT, DR. The aforesaid averments coupled with the material fact that the Page 161 (in which cash notings are found) does not refer to or name the assessee puts it beyond doubt that this seized material did not relate to or pertain to the assessee so as to invoke the rigors of Section 153C of the Act for the relevant AY 2017-18.*

11. *The Ld. DR also relied on the statement dated 12.03.2021 of Shri E Jawahar to support the satisfaction note which was recorded by the AO prior to issue of notice u/s 153C of the Act. In this regard, at the onset it is submitted the satisfaction note in support of the action initiated u/s 153C of the Act has to be read on stand-alone basis and the contents of this note alone has to establish the link between the seized material found at the premises of the searched person with the assessee which leads an inference of income having escaped assessment so as to initiate proceedings u/s 153C of the Act. It is well settled in law that the contents of the*

satisfaction note cannot be improved or supplemented with new facts found at a later date which were admittedly lacking at the time of issuance of the impugned notice. The assessee thus submits that the Ld. CIT, DR's reliance on the subsequent statement dated 12.03.2021, which was not available at the time of recording of satisfaction, to support the basis of initiation of proceedings u/s 153C of the Act is fundamentally flawed and erroneous.

11.1 Even otherwise it is submitted that the assessee has clearly evidenced both before the Ld. CIT(A) and the AO that the statement of Mr. E Jawahar was unreliable and self-serving for the following reasons:

– Shri E Jawahar at his Answer to Q No. 5 [Page 8 of asst order] had clearly stated that he had only offered the sale consideration of Rs.49,00,000/- in the return of income filed by him for AY 2017-18 and that the purported cash receipt of Rs.1,20,57,500/- was only offered before the Settlement Commission. It is to be noted that, the return of income for AY 2017-18 was filed subsequent to the search which was conducted on 09.04.2017. The fact that Shri E Jawahar had only offered the actual sale consideration of Rs.49,00,000/- in his return of income shows that he had originally never admitted to have received on-monies on sale of land and that his subsequent offer before the Settlement Commission was clearly an after-thought.

– It is also material to mention that Shri E Jawahar had furnished an affidavit dated 13.03.2020 to the assessee wherein he had clearly stated that he had not received any on-monies from the assessee. The Whatsapp conversation [**Page 63 to 64 of PB**] shows that he had suo moto furnished this affidavit to the assessee and had advised him to file it with the Assessing Officer. Hence his Answer to Q No. 9 & 13 [Page 10 & 11 of asst order] that he was compelled to give the original affidavit dated 13.03.2020 without reading it for which he had also executed rectification affidavit dated 19.03.2020 is also ex-facie false and misleading.

– As far as his offer before Settlement Commission is concerned (based on which the AO has drawn adverse inference against the assessee), it was explained both before the AO & Ld. CIT(A) that, it was an admitted fact that this document was found from the business premises of M/s C P Exports and that too in the office register maintained by the employee, Smt Kalaimathi. Hence, ordinarily it would have been presumed that the cash notings aggregating Rs.1,00,57,500/- belonged to the partnership firm, M/s C P Exports and not to the partner, Shri E Jawahar. Ordinarily therefore, these notings would have been presumed to be the undisclosed income of the partnership firm and taxed u/s 68 read

with 115BBE of the Act at the rate of 77.25%. According to the assessee, M/s CP Exports and Mr. E Jawahar ought to have been aware of this position of law. Hence, taking advantage of the fact that this Page did not contain any name, a self-serving theory was narrated by Shri E Jawahar that, this Page 161 belonged to Shri E Jawahar and not M/s CP Exports and the notings therein represented monies received by him on sale of agricultural land. This averment was not backed by any corroborative evidence. However by this, the searched persons were able to mitigate the higher incidence of tax u/s 115BBE by admitting tax liability u/s 112 of the Act. Also, M/s CP Exports was able to avoid the rigors of penalty u/s 269ST for receiving payments in cash in excess of Rs.2 lacs and other implications under indirect tax laws. This theory of the assessee further stands fortified by the copy of the report of Settlement Commission [**Para 4.11.2 - Page 91 of PB**] which reads as under:

“The applicant firm has also shown, on the inflow side, capital contribution from E Jawahar of Rs.1,00,57,000 which is derived out of on money received on sale of land and offered for tax by him in his application before Settlement Commission for AY 2017-18. Further, the firm has also shown inflow of capital contribution from Shri Jawahar of Rs.25,00,000 on 13.11.2016 and Rs.7,74,259 on 15.11.2016. These amounts do not appear in the cash flow statements of Shri Jawahar which have been filed with his Settlement Application.”

– From the above it is clear this sum of Rs.1,00,57,500/- was taken as capital contribution by Mr. E Jawahar to M/s CP Exports and thereafter it was further telescoped against other incriminating notings/amounts found in the course of search so as to mitigate further overall tax liability of the Group. It is material to mention that, even the AO in his remand report has taken note of the fact that Shri E Jawahar has conspicuously not named the buyer in his application before Settlement Commission. On overall conspectus of these facts, such self-serving and unreliable statement of Shri E Jawahar cannot be used against the appellant.

11.2 In addition to the above, it is also submitted that the assessee was never afforded opportunity to cross examine Shri E Jawahar and therefore his statement cannot be treated as an admissible evidence. The averment of the AO that opportunity of cross examination was given is factually misleading. At the material time when the AO issued summons u/s 131 of the Act to the assessee on 02.03.2021 to be present on 12.03.2021, it is to be noted that neither the AO was in possession of any adverse statement of Shri E Jawahar nor did he provide any such statement

of Shri E Jawahar to which cross examination was required to be undertaken by the assessee. Instead at that material time, the only statement on record was the affidavit dated 13.03.2020 wherein Shri E Jawahar had affirmed that he had not received any monies from the assessee. The assessment order clearly shows that Mr.E.Jawahar, for the first time, was examined by the AO himself only on 12.03.2021 and his statement was forwarded to the assessee only on 13.03.2021. Hence, the so-called opportunity to cross examine given to the A/R of the assessee on 02.03.2021 was an empty formality in as much as no cogent opportunity was afforded to the assessee. For this, reliance is placed on the following decisions:

- Prakash Chand Nahta vs Union of India (247 ITR 274) (SC)
- Dhakeswari Cotton Mills Ltd Vs CIT (26 ITR 775)
- CIT v. Odeon Builders (P.) Ltd. (418 ITR 315) (SC)
- Andaman Timber Industries Ltd. v. CCE (62 taxmann.com 3) (SC)
- CIT v. Reliance Industries Ltd. (421 ITR 686) (Bom HC)

12. For the reasons set out above therefore, it is thus submitted that the contentions put forth by the Ld. CIT, DR deserves to be rejected. The facts on record clearly show that the seized material did not relate/pertain to the assessee and therefore the assumption of jurisdiction u/s 153C of the Act was invalid. In that view of the matter, the order of the Ld. CIT(A) may kindly be upheld.

13. Gainful reference in this regard is made to the decision of the Hon'ble Supreme Court in the case of **CIT vs Singhad Technical Education Society (84 taxmann.com 290)** which involved similar facts and circumstances as involved in the present case. In the decided case, search operations were conducted on one Mr. N, who was the president of the assessee society. From the documents seized in the course of search, the revenue found certain cash notings which according to them pertained to the capitation fees received by the assessee society. Referring to these documents a satisfaction note was recorded and proceedings u/s 153C was initiated against the assessee. On appeal, the assessee challenged the validity of the proceedings u/s 153C in as much as none of the seized documents established any correlation with the assessee society. The Hon'ble Supreme Court found merit in the case of the assessee and held that when the loose papers found in the course of the search of the president of the assessee society did not in any manner denote or suggest any correlation with the assessee society, the revenue could not have inferred that such notings constituted incriminating material relating to the assessee society. Accordingly since the condition precedent for invocation of Section 153C was not met, the Hon'ble Supreme Court upheld the orders of the lower appellate authorities, quashing the notice issued u/s 153C of the Act.”

The AR of the assessee further submitted that the retraction filed by Sri.E.Jawahar is not correct and his action seems to be directed towards saving his own skin from further harassment from the Revenue and instead passing on the blame on to the assessee. He also submitted that the documents were found from the business premises of M/s.C.P.Exports and the same was maintained by the employee of the firm, Smt.Kalaimathi, hence, the basic presumption u/s 132(4A)(i) of the Act, which would have been drawn by the Revenue Authorities is that the notings belonged to the firm and not to Sri. E Jawahar in his personal capacity and Sri Jawahar was well aware that the cash notings found on the firms cash register and it should be taxed in the hands of the partnership firm. The statement is also unreliable.

12. The learned AR has also relied on following judicial pronouncements:-

Sl. No.	Particular
1.	CIT vs Singhad Technical Education Society [SC] (397 ITR 344)
2.	Smt Saroj Kumari vs ACIT [ITAT Amritsar] (1 SOT 290)
3.	CIT vs Motors & General Stores (P.) Ltd. [SC] (66 ITR 692)
4.	Bai Hira Devi vs Official Assignee of Bombay [SC] (1958 AIR 448)
5.	Paramjit Singh vs. ITO [Punj. & Har. HC] (323 ITR 588)
6.	CIT vs Satinder Kumar [Punj. & Har. HC] (120 Taxman 470).
7.	CIT vs Eastern Commercial Enterprises [Cal FIC] (210 ITR 103)
8.	Apeejay Education Society vs ACIT [ITAT Amritsar] (81 taxmann.com 289)
9.	CIT vs P.V. Kalyanasundaram [Mad HC] (282 ITR 259).
10.	M.M. Financers (P) Ltd vs DCIT [ITAT Chennai] (17 SOT 5)
11.	CIT vs M/s Calcutta Knitwears [SC] (43 taxmann.com 446)
12.	CIT Vs IBC Knowledge Park (P) Ltd. [Kar HC] (385 ITR 346)
13.	Pr. CIT Vs Sunita Bai [Kar HC] (78 taxmann.com 274)
14.	Pr.CIT Vs Smt Lakshmi Singh [Kar HC] (78 taxmann.com 207)

13. After hearing both the parties and perusing the entire materials available on record and the orders of the authorities below, we noted that during the course of search and seizure proceedings in the business premises of M/s.C.P.Export, the A.O. noted that three documents were found which relates to/ pertains to the assessee. One document is marked as A/CPE/17-18/25 is the sale agreement. On going through the sale agreement, we noticed that the sale consideration for the sale of land is Rs.1,69,57,500, out of which Rs.25 lakh was paid on or before of the date of agreement. As per the contents of the agreement, this was to be completed on fulfillment of certain conditions within five months, but the sale deed was executed on 09.02.2017 at Rs.49 lakh after expiry of five months. The sale deed is also marked as A/CPE/17-18/25 pages 29 to 35. On going through para 3 of the sale agreement, we noted that the before execution of this agreement (dated 17.03.2016) the assessee paid to the seller a sum of Rs.20 lakh cash and Rs.5 lakh through cheque on 03.03.2016, but the copy of ledger, which is marked as A/CPE/17-18/33, page 161, the date has been marked as 04.03.2016, thus the dates are not matching. We further noted that the validity of the period of the document was five months and no extension was granted beyond five months and no further new agreement has been executed after expiry of five months . We further noted from the copy of the ledger that the name of the assessee are not noted and this has also been accepted by the A.O. during the course of assessment proceedings and the remand proceedings also. Further, the

area of land was mentioned as 9 acres, whereas the actual land sold by Sri.E.Jawahar are 8 acres and 37 guntas. Therefore, the area of land is also not matching with the page No. 161 marked. On perusal of the rectification affidavit filed by Sri.Jawahar dated 19.03.2020, the size of land has also mentioned as 8 acres 37 guntas. Page No.161 was found in the business premises of C.P.Exports, which is the partnership firm, therefore, as per the presumption of section 292C of the Act, the documents shall belong to the person from whose premises it was found. For the sake of convenience, we reproduce section 292C of the I.T.Act:-

“[Presumption as to assets, books of account, etc.

292C. ⁹⁹[(1)] Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under [section 132](#) ¹[or survey under [section 133A](#)], it may, in any proceeding under this Act, be presumed—

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and
(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.]

²[(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of [section 132A](#), then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of [section 132A](#), had been found in the possession or control of that person in the course of a search under [section 132](#).]”

14. From the above section, it is clear that the documents page no. 161 marked does not belong to the assessee but it

belongs to the searched person i.e. M/s.C.P.Exports. The name of the assessee is also not contained.

15. During the course of assessment proceedings, seized documents were available with the Assessing Officer. In page No.161, the area of land is mentioned as 9 acres and the land sold by Sri.E.Jawahar is 8 acres 37 guntas. The Assessing Officer did not ask about the difference of the lands sold whether it is correct or not? He has presumed that the entry made in the register is relates / pertains to the sale of land and payment has been made by the assessee, which is not correct. We also noted from the assessment order that during the course of search proceedings, the statements were also recorded from Sri.E.Jawahar. Sri.E.Jawahar has accepted capital gain before the Settlement Commission without mentioning the name from whom the money has been received and it has been accepted.

16. The sole basis for making addition by the A.O. u/s 69(B) of the Act for unexplained investment is based on the page 161 marked as A/CPE/17-18/33, but it cannot be said that this document belongs or pertains to / or any information contained therein relates to the assessee, therefore, the same does not come within the purview of definition of section 153C(1)(a) & (b) of the Act, because there is no name of assessee . In view of the foregoing reasons, we do not find any infirmity in the order of the CIT(A), the same is upheld. It is ordered accordingly.

17. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on this 16th day of December, 2022.

Sd/-
(George George K)
JUDICIAL MEMBER

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Bangalore; Dated : 16th December, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-2, Panaji.
4. The Pr.CIT (Central), Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore