

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

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No. 109/DEL/2019 [A.Y 2012-13]

Shri Amit Goyal
House No. E-10, 4th Floor
Near Avantika Chowk
Sector - 1, Rohini, New Delhi

Vs.

The A.C.I.T
Central Circle - 13
New Delhi

PAN: ABSPG 9017A

(Applicant)

(Respondent)

Assessee By : Shri Ajay Wadhwa, Adv
Ms. Bharti Sharma, CA

Department By : Shri Praveen Sidharth, CIT- DR

Date of Hearing : 08.12.2022

Date of Pronouncement : 15.12.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - XXVI, New Delhi dated 30.10.2018 pertaining to A.Y. 2012-
13.

2. The assessee has raised the following grounds of appeals:

“1. That the order passed by the Id. CIT(A) confirming the additions of Rs. 1,01,50,000/- is erroneous and bad in law and on facts.

2. That the Assessing Officer has erred in passing the order u/s 144 r.w.s 153C of the Act without even the knowledge of the appellant that he was under assessment.

3. That the assessment proceedings initiated and thereafter order passed u/s 153C of the Act are not valid and hence bad in law.

3.1 That the assessment proceedings u/s 153C were not justified as neither the proper satisfaction as required u/s 153C in case of both; the search party as well as the assessee, was recorded nor was the same communicated to the assessee before issuance of notice u/s 153C of the Act.

4. That the Id. AO has erred in law and on facts in making all the impugned additions in hands of the assessee despite the fact that no incriminating material/document belonging to the assessee which indicates his undisclosed income was found and seized during the course of search on Minda Group.

4.1 That the Id. AO as well as Id. CIT(A) both have erred in not considering the fact that assessment year in question was a completed assessment and it is a settled law that in case of completed assessments, addition can be made only on the basis incriminating material belonging to the assessee.

5. The Id. CIT (A) has erred in confirming the addition of Rs. 39,50,000/- being capital introduced in M/s Kaashvi Industries , a

partnership firm through bank, made by the Id. AO u/s 68 of the Act.

5.1 That the Ld. CIT (A) has sustained the addition on erroneous presumption that all the deposits of Rs. 39,50,000 /- were made in the bank accounts of the assessee through cash book which according to Id. CIT(A) was unreliable. confirming the addition ui 60,00,000/- made by the Id. AO under section 68 of the Act

6.1 That the Id. AO has made the addition despite the fact that no credit has been found in the books of the assessee thereby basic condition to invoke section 68 of the Act was not satisfied by the assessing officer.

6.2 Without prejudice to the aforesaid, the Id. AO has erred in making the addition merely on the basis of hand written entry on a loose sheet/paper found and seized from the premises of a third party.

6.3 That the Id. AO has exceeded his power in adding word "cash" to the alleged handwritten entry "60 lacs to JP Mindaji" thereby presuming that assessee had paid cash of Rs. 60 lakh to J.P Minda without any corroborative evidence.

6.4 That the Id. CIT(A) has confirmed the addition without appreciating and considering the bank statements and cash book filed by the assessee where in no such alleged entry was reflected.

7. The Id. CIT (A) has erred in confirming the addition of Rs. 2,00,000/- being capital introduced to M/s Ace Motors, made by the Id. AO under section 68 of the Act.

8. *The Appellant craves leave to alter, amend or any other grounds of appeal either before or during the course of hearing.*"

3. Vide letter dated 31.08.2022, the assessee sought permission to raise the following additional grounds of appeal:

"i. That the assessment proceedings initiated u/s 153C of the Act are illegal and void ab initio since the Id. AO of the assessee while recording his satisfaction u/s 153C, failed to meet a sine qua non condition of "belongs to" and did not state as to how the ledger accounts of the assessee in the books of independent third parties, seized from the premises of another third party belong to the assessee.

ii. That the assessment order passed u/s 153C read with section 143(3] of the Act is illegal, bad in law and ought to be quashed since the approval granted u/s 153D was devoid of any application of mind and without considering the materials on record. This is evident from the fact that the approval was granted on the same day when the draft assessment order was sent for approval u/sl 53D to the Id. JCIT, Central range-4, New Delhi.

iii. The Id. AO has erred in law and on facts in making additions under section 68 of the Act without considering the provisions of the section itself and without appreciating the settled legal position that if the assessee is not required to maintain books of account u/s 44AA of the Act, no addition u/s 68 can be made.

iv. The Id. AO has also failed to consider that section 68 cannot be invoked in case of payments made by the assessee."

4. The ld. DR did not raise any objection for admission of additional grounds.

5. We find that the additional grounds raised are purely legal issues which require no verification of any new facts. Therefore, the same are admitted.

6. The representatives of both the sides were heard at length, the case records carefully perused and we have duly considered the relevant documentary evidences brought on record in light of Rule 18(6) of ITAT Rules.

7. Since the additional grounds mentioned elsewhere go to the root of the matter, we decided to adjudicate the additional grounds first.

8. The bone of contention is the 'Satisfaction Note' dated 29.11.2016 recorded by the Assessing Officer of the assessee pursuant to the search and seizure proceedings carried out in the case of Minda Group of cases on 20.09.2013. On examining the material seized from the premises of Minda Group of cases, the Assessing Officer was

satisfied that the following seized documents belonged to the persons other than Minda Group of cases:

Name of the assessee: Amit Goyal

A.Y. 2008-09 to 2013-14

Roll No. ABSPE9017A

Search and seizure action u/s 132 of the Income Tax Act was carried out on 20.09.2013 in the case of Minda Group of cases. During the course of pendency of assessment proceedings in the case of Minda Group of cases for A.Y. 2008-09 to 2013-14 [u/s 253A/143(3)] the material seized from the premises of the assessee has been examined. After examining such seized material, I am satisfied that the following seized documents belong to persons other than Minda Group of cases. The details of such paper is as under:

Party No./ seized from	Annexure No./	Page No. of Annexure	Brief description of documents	Person to whom the documents belong	F.Y. involved
S-9/A-6 JAY ACE TECHNOLOGIES LIMITED, KHASRA NO 92-95, RAIPUR INDUSTRIAL AREA, BHAGWANPUR ROORKEE 247667		09-20	Ledger of Shri J P Minda & Shri Amit Goyal for FY 2008-09 in the Books of Kaashvi Industries.	Amit Goyal	2008-09
S-9/A-6 JAY ACE TECHNOLOGIES LIMITED, KHASRA NO 92-95, RAIPUR INDUSTRIAL AREA, BHAGWANPUR ROORKEE 247667		11-13	Ledger of Shri J P Minda, Ashwani Minda & Shri Amit Goyal for FY 2009-10 in the Books of Kaashvi Industries.	Amit Goyal	2009-10
S-9/A-6 JAY ACE TECHNOLOGIES LIMITED, KHASRA NO 92-95, RAIPUR INDUSTRIAL AREA, BHAGWANPUR ROORKEE 247667		14-17	Ledger of Shri J P Minda, Ashwani Minda & Shri Amit Goyal for FY 2010-11 in the Books of Kaashvi Industries.	Amit Goyal	2010-11
S-9/A-6 JAY ACE TECHNOLOGIES LIMITED, KHASRA NO 92-95, RAIPUR INDUSTRIAL AREA, BHAGWANPUR ROORKEE 247667		18-20	Ledger of Shri J P Minda, Ashwani Minda & Shri Amit Goyal for FY 2011-12 in the Books of Kaashvi Industries.	Amit Goyal	2011-12
S-9/A-6 JAY ACE TECHNOLOGIES LIMITED, KHASRA NO 92-95, RAIPUR INDUSTRIAL AREA, BHAGWANPUR ROORKEE 247667		31	Ledger of Amit Goyal for FY 2006-07 in the Books of Ace Motors.	Amit Goyal	2006-07
S-9/A-6 JAY ACE TECHNOLOGIES LIMITED, KHASRA NO 92-95, RAIPUR INDUSTRIAL AREA, BHAGWANPUR ROORKEE 247667		32-35	Ledger of Jyotsna Ayya, Shri Amit Goyal, Shri Amit Goyal, Shri Ravinder Bansal for FY 2007-08 in the Books of Ace Motors.	Amit Goyal	2007-08
S-9/A-6 JAY ACE TECHNOLOGIES LIMITED, KHASRA NO 92-95, RAIPUR INDUSTRIAL AREA, BHAGWANPUR ROORKEE 247667		36-37	Ledger of Shri J P Minda & Shri Amit Goyal for FY 2008-09 in the Books of Kaashvi Industries.	Amit Goyal	2008-09
S-9/A-6 JAY ACE TECHNOLOGIES LIMITED, KHASRA NO 92-95, RAIPUR INDUSTRIAL AREA, BHAGWANPUR ROORKEE 247667		38-39	Ledger of Shri J P Minda & Shri Amit Goyal for FY 2008-09 in the Books of Ace Motors.	Amit Goyal	2008-09

S-9/A-6 DAY ACE TECHNOLOGIES LIMITED, KHASRA NO 92-95, RAIPUR INDUSTRIAL AREA, BHAGWANPUR ROORKEE 247667		Minda & Shri Amit Goyal for FY 2009- 10 in the Books of Ace Motors.		
S-9/A-6 DAY ACE TECHNOLOGIES LIMITED, KHASRA NO 92-95, RAIPUR INDUSTRIAL AREA, BHAGWANPUR ROORKEE 247667	42-43	Ledger of Shri J P Minda & Shri Amit Goyal for FY 2010- 11 in the Books of Ace Motors.	Amit Goyal	2010-11
S-9/A-6 DAY ACE TECHNOLOGIES LIMITED, KHASRA NO 92-95, RAIPUR INDUSTRIAL AREA, BHAGWANPUR ROORKEE 247667	44-45	Ledger of Shri J P Minda & Shri Amit Goyal for FY 2011- 12 in the Books of Ace Motors.	Amit Goyal	2011-12 →
S-9/A-6 DAY ACE TECHNOLOGIES LIMITED, KHASRA NO 92-95, RAIPUR INDUSTRIAL AREA, BHAGWANPUR ROORKEE 247667	46	Hand written sheet showing expenses. The back side of the page shows that Shri Amit Goyal has introduced capital of ₹ 8,50,000/- with remark "To fill the gap of negative balance"	Amit Goyal	2008-09, 2009-10, 2010-11, 2011-12 →
S-9/A-6 DAY ACE TECHNOLOGIES LIMITED, KHASRA NO 92-95, RAIPUR INDUSTRIAL AREA, BHAGWANPUR ROORKEE 247667	49-52	These pages show the capital accounts of Amit Goyal, Anil Goyal and CL goyal.	Amit Goyal	2008-09, 2009-10, 2010-11, 2011-12, 2012-13 →

I have examined the above mentioned documents/papers and as the undersigned is the jurisdictional assessing officer of Shri Amit Goyal, I am satisfied that the provisions of section 153C are invokeable in this case for A.Y. 2008-09 to 2013-14 and these documents seized have a bearing on the determination of the total income of such person u/s. 153C of the IT Act. Issue notice u/s. 153C for A.Y. 2008-09 to 2013-14. This satisfaction note is placed in the file before issuing notice u/s. 153C.

ACIT CC-13 New Delhi

Dated: 29/11/2016

9. The documents which are responsible for the impugned quarrel are:

(i) JAY ACE Technologies Limited, Khasra No. 92-95, Raipur Industrial Area, Bhagwanpur, Roorkee being the ledger of Shri J.P. Minda and Shri Amit Goyal for F.Y. 2011-12 in the books of Ace Motors.

(ii) JAY ACE Technologies Limited, Khasra No. 92-95, Raipur Industrial Area, Bhagwanpur, Roorkee being handwritten sheet showing expenses. The backside of pages show that Shri Amit Goyal has introduced capital of Rs. 6.50 lakhs with remark "To fill the gap of negative balance".

(iii) JAY ACE Technologies Limited, Khasra No. 92-95, Raipur Industrial Area, Bhagwanpur, Roorkee being the pages showing the capital accounts of Shri Amit Goyal, Shri Anil Goyal and Shri C.L. Goyal.

10. These documents were seized from the premises of JAY ACE Technologies Limited and since the name of Shri Amit Goyal was written in these documents, the Assessing Officer was satisfied that

provisions of section 153C of the Act are invokable and the documents seized belonged to the assessee.

11. A close perusal of the Satisfaction Note vis a vis documents referred therein clearly show that these documents were found and seized during the course of search on JAY ACE Technologies Limited, a Minda Group Company.

12. Based upon the Satisfaction Note considered in light of seized documents, the Assessing Officer initiated proceedings u/s 153C of the Act and made the additions on the basis of two ledger accounts of the assessee in the books of Kashvi Industries and Ace Motors.

13. In our understanding of the law, prior to 01.06.2015, in the case of searches conducted u/s 153C of the Act, proceedings could only be undertaken if documents seized from the person searched was shown /proved to be belonging to the person in whose case section 153C proceedings were sought to be initiated.

14. The Hon'ble Delhi High Court in the case of Index Securities Pvt Ltd 86 Taxmann.com 84 has laid down the following ratio:

- The essential jurisdictional requirement for assumption of jurisdiction under Section 153 C of the Act (as it stood prior to its amendment with effect from 1st June 2015) qua the 'other person' (in this case the assessees) is that the seized documents forming the basis of the satisfaction note must not merely 'pertain' to the other person but must belong to the 'other person'.
- In the present case, the documents seized were the trial balance and balance sheets of the two Assessees for the period 1st April to 13th September 2010 (for ISRPL) and 1st April to 4th September 2010 (for VSIPL). Both sets of documents were seized not from the respective Assessees but from the searched person i.e. Jagat Agro Commodities (P) Ltd. In other words, although the said documents might 'pertain' to the Assessees, they did not belong to them. Therefore, one essential jurisdictional requirement to justify the assumption of jurisdiction under Section 153 C of the Act was not met in the case of the two Assessees.
- As regards the second jurisdictional requirement viz., that the seized documents must be incriminating and must relate to the AYs whose assessments are sought to be reopened, the decision of the Supreme Court in [Commissioner of Income Tax-III, Pune v. Sinhgad Technical Education Society](#) (supra) settles the issue and holds this to be an essential requirement."

15. In fact, before invoking the provisions of section 153C of the Act, the Assessing Officer has to rule out that the documents seized do not belong to the searched person, but, in fact, belonged to some other person. This has been clearly explained by the Hon'ble Delhi High Court in the case of Pepsico India Holdings [P] Ltd 370 ITR 295. The relevant paras read as under:

“Three kinds of documents were mentioned in satisfaction note. First were the photocopies of Cumulative Redeemable Preference Shares purchased by the petitioner from TDL and SMV. The second set of documents were unsigned cheques found in the cheque books of the Jaipuria Group companies, which had been written in favour of the petitioner. The third document was a photocopy of a supply and loan agreement made between PDL and petitioner.

Held

In order that the Assessing Officer of the searched person comes to the satisfaction that documents or materials found during the search belong to a person other than the searched person, it is necessary that he arrives at the satisfaction that the said documents or materials do not belong to the searched person.

Para 81

- In the instant case, it is nobody's case that the Jaipuria Group had disclaimed those documents as belonging to them. Unless and until it is established that the documents do not belong to the searched person, the provisions of*

section 153C do not get attracted because the very expression used in section 153C is that '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 belongs or belong to a person other than the person referred to in section 153A....' In view of this phrase, it is necessary that before the provisions of section 153C can be invoked, the Assessing Officer of the searched person must be satisfied that the seized material fwhich includes documents does not belong to the person referred to in section 153A. i.e.. the searched person. In the satisfaction note, which is the subject-matter of these writ petitions, there is nothing therein to indicate that the seized documents do not belong to the Jaipuria Group. This is even apart from the fact that there is no disclaimer on the part of the Jaipuria Groun insofar as these documents are concerned. [Para 141]

- *Secondly, the finding of photocopies in the possession of a searched person does not necessarily mean and imply that they 'belong' to the person who holds the originals. Possession of documents, and possession of photocopies of documents are two separate things. While the Jaipuria Group may be the owner of the photocopies of the documents, it is quite possible that the originals may be owned by some other person. Unless it is established that the documents in question, whether they be photocopies or originals, do not belong to the searched person, the question of invoking section 153C does not arise. [Para 15]*
- *Thirdly, the Assessing Officers should not confuse the expression 'belongs to' with the expressions 'relates to' or 'refers to'. A registered sale deed, for example, 'belongs to' the purchaser of*

the property although it obviously 'relates to' or 'refers to' the vendor. In this example if the purchaser's, premises are searched and the registered sale deed is seized, it cannot be said that it 'belongs to' the vendor just because his name is mentioned in the document. In the converse case if the vendor's premises are searched and a copy of the sale deed is seized, it cannot be said that the said copy 'belongs to' the purchaser just because it refers to him and he (the purchaser) holds the original sale deed. In this light. it is obvious that none of the three sets of documents - copies of preference shares, unsigned leaves of cheque books and the copy of the supply and loan agreement - can be said to 'belong to' the petitioner.

16. In view of the above, ingredients of section 153C of the Act have not been satisfied in the case in hand and, therefore, notice issued u/s 153C of the Act is liable to be quashed.

17. Though the ld. DR had vehemently stated that in the Satisfaction Note itself, the Assessing Officer, while giving brief description of the documents has specifically mentioned to whom these documents belonged to.

18. In our considered opinion, this may be only a passing reference as there is no finding given by the Assessing Officer that the documents seized from the premises of JAY ACE Technologies do not belong to JAY

ACE Technologies which is, sine qua non condition as held by the Hon'ble Delhi High Court in the case of Pepsico Holding [supra].

19. Considering the facts in totality, in light of provisions of section 153C of the Act as it stood prior to 01.06.2015, in our considered opinion, requirement of “belonging to” has not been satisfied for initiating proceedings u/s 153C r.w.s 153A of the Act. Therefore, assumption of jurisdiction by issue of notice u/s 153C of the Act deserves to be quashed.

20. Since we have quashed the assessment proceedings, we do not find it necessary to dwell into the merits of the case.

21. Additional Ground (i) is allowed making the other grounds otiose.

22. In the result, the appeal of the assessee in ITA No. 109/DEL/2019 is allowed.

The order is pronounced in the open court on 15.12.2022.

Sd/-

**[C.M. GARG]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 15th December, 2022.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	