

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1839/DEL/2016 [A.Y. 2010-11]

M/s Great Value Infra Promoters Pvt Ltd Vs. The A.C.I.T
38, 1st Floor, Chetan Medical Complex Central Circle
Chippi Tank, Meerut Meerut

PAN: AADCG 4364 R

(Applicant)

(Respondent)

Assessee By : Shri Sandeep Sapra, Adv

Department By : Shri H.K. Choudhary, CIT- DR

Date of Hearing : 17.01.2023

Date of Pronouncement : 20.01.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - IV, Kanpur dated 10.02.2016 pertaining to Assessment Year
2010-11.

2. The grievances of the assessee read as under:

"1. The appellant is a private limited company incorporated on 08.04.2009. A search was conducted on Godwin group of companies and their directors at their various premises on 09.09.2010. During the relevant year the appellant filed its return of income on 19.03.2012, declaring a loss of Rs.13,479/-. The appellant was issued notice dated 11.01,2013 u/s 153C read with section 153A of the income Tax Act, 1961.

2. The Assistant commissioner of Income Tax, Central Circle, Meerut (hereinafter referred to as Ld. A.O.) completed the assessment proceedings vide order dated 28.03.2013 passed u/s 153C/143(3) of the Act. In the said order the Ld. A.O, made the additions of Rs.5,97,50,000/- to the returned income of the appellant company on the following grounds:-

Addition u/s 69 towards alleged unexplained investment in property at Chandigarh	Rs. 5,75,00,000/-
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Addition u/s 69 towards alleged unexplained investment in payment of commission for purchase of aforesaid property	Rs. <u>22,50,000/-</u>
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Total	<u>Rs. 5.97.50.000/-</u>
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3. Aggrieved by the above, the appellant filed an appeal before the Hon'ble Commissioner of Income Tax (Appeals)-IV, Kanpur (hereinafter referred to as 'Ld. CIT (A)') who vide order dated 10.02.2016, has dismissed the appeal of the appellant by confirming the addition of Rs.4.65,00,000/- in the hands of appellant as against the addition of Rs.5,75.00,000/- and

directing the A.O. to make addition of Rs.1,10,00,000/- in the hands of the director of the company Shri Bhupendra Singh Bajwa, who was a party to the alleged agreement for purchased seized by the department and has confirmed the addition of Rs.22.50.0Q0/- in the hands of appellant company.

4. Appellant being aggrieved is filing this appeal before the Hon'ble ITAT."

3. Vide letter dated 27.10.2022, the assessee sought permission to raise the following additional grounds of appeal:

"1. That on the facts and in the circumstances of the case and in law, the notice issued u/s 153C, is bad in law, without jurisdiction and also the impugned assessment order passed on the foundation of such notice and consequential order passed by the Ld. CIT(A) are liable to be quashed.

1.1. That on the facts and in the circumstances of the case and in law, the proceedings initiated u/s 153C and consequential orders are liable to be struck down for want of fulfillment of mandatory jurisdictional conditions, stipulated u/s 1530 of I T. Act.

1.2. That on the facts and in the circumstances of the case and in law, the seized incriminating material/document which is edifice of impugned assessment order passed by Ld. AO and Ld. CITA by no standard of reasoning can be said to be "belonging to Appellant Co." within the meaning of section 153C of I.T. Act".

3. The ld. DR did not object for admission of aforementioned additional grounds as it is purely a question of law and requires no verification of any facts.

4. Briefly stated, the facts of the case are that a search and seizure action under section 132 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") was carried out on 09.09 2010 in Godwin group of cases, which included the assessee. Certain incriminating documents relating to the assessee were found and seized and the Assessing Officer formed a belief that the case of the assessee falls within the four walls of section 153C of the Act and, accordingly, after recording satisfaction, issued statutory notices to the assessee.

5. During the course of assessment proceedings, the Assessing Officer referred to Annexure LP-10 which was seized from the site office at Greenwood City Colony on Meerut-Partapur Bypass Road, Meerut. Page no. 19 of Annexure LP-10 is the Receipts cum Agreement to Sell dated 28.03.2009. The relevant extract of the said Receipts cum Agreement as mentioned by the Assessing Officer in his assessment order at page 2 reads as under:

“//we Amarjeet Singh Randhawa S/o Sh. H.S. Randhawa for himself and GPA others mentioned in the Registry (hereinafter referred to as the seller) received a sum of Rs. 1,10,00,000/- (Rupees one crore ten lacs only) vide cash from S. Bhupender Singh Bajwa s/o late Sh. Gurbachan Singh r/o A-151, defence Colony, Meerut(U.P) (hereinafter referred to as the purchaser) as an earnest money against sale of house no. 11, Sector 9, Chandigarh measuring 1800 sq. yards RP. No. 332. That the total sale price of the above mentioned property has been fixed at Rs. 11,25,00,000/- (Rupees eleven crores twenty five lacs only).

This Receipts cum Agreement to Sell a signed by Amarjeet Singh Randhawa (on revenue stamp) on behalf of sellers and Sh. Bhupender Singh Bajwa on behalf of purchasers. It also bears signature of two witnesses.”

6. A further receipt is exhibited at page 4 of the assessment order which bears no signature of the purchaser and the same is as under:

RECEIPT

Received a sum of Rs. 3,14,00,000/- (Rs Three Crore Fourteen Lacs only) through 35 Demand draft No s 436958 to 436991 each of Rs 9,00,000/- (Rs Nine lacs only) And Draft No. 436992 of Rs 8,00,000/- (Rs Eight Lacs only), issued by Allahabad Bank, Meerut Cantt, Merrut, from Sh. Bhupinder Singh Bajwa S/O Late Sh. Gurbachan singh. Bajwa R/O A 151, Defence Colony, Merrut, (UP), as part payment against the sale of H.NO. 11, Sector - 9, Chandigarh, measuring 1000Sq. yards, on 25-05-2009. I have already received a sum of Rs 4,60,00,000/- (Rs Four Crore And Sixty lacs only). Now total Advance payment becomes Rs 7,74,00,000/- (Rs Seven Crore seventy four lacs only). The last date for full and final payment has been extended to 03-06-2009 That the all other terms and condition as per agreement to sell dated 28-03-2009, will remain same.

WITNESS NO. 1

[Signature]
 24/7/22
[Signature]

WITNESS NO. 2

[Signature]
 24/7/22
[Signature]

SELLERS

[Signature]


Amarjit Singh Randhawa

R/o Kothi No 82 Sector 27 A Chandigarh

PURCHASER

7. Based on the afore-stated seized documents, the Assessing Officer was convinced that actual sale consideration paid for the impugned property being House No. 11, Sector 9, Chandigarh was Rs. 11.25 crores instead of Rs. 5.5 crores claimed by the assessee and by the sellers and treated the difference of Rs. 5.75 crores as expenses out of undisclosed sources u/s 69 of the Act and added the same to the income of the assessee.

8. The Assessing Officer was also of the opinion that the assessee must have paid commission @ 2% on Rs. 11.25 crores to the brokers and accordingly, made addition of Rs. 22.50 lakhs as commission expenses.

9. The assessee carried the matter before the Id. CIT(A) and strongly contended that the impugned seized documents used by the Assessing Officer neither belonged to the assessee nor they were seized from the premises of the assessee. It was strongly contended that the stamp valuation as on the date of execution of purchase deed on 05.05.2009 was only Rs. 4.51 crores as against which property was purchased at a total consideration of Rs. 5.50 crores, and therefore, consideration value taken by the Assessing Officer at Rs. 11.25 crores

is without any basis. It was further contended that the Assessing Officer did not enquire about the actual market value of the property neither from the alleged brokers nor from the sellers of the property independently and no action is taken in the hands of the sellers.

10. After considering the facts and the submissions, the ld. CIT(A) observed that since the appellant company was incorporated on 08.04.2009, it cannot earn undisclosed income as it was not in existence on 28.03.2009. The ld. CIT(A), accordingly, deleted the addition of Rs. 1.10 crores but confirmed the balance.

11. Before us, the ld. counsel for the assessee vehemently stated that the seized documents do not belong to the assessee and it is a settled proposition of law that the seized documents on the basis of which assessment is completed u/s 153C of the Act must belong to other persons.

12. The ld. counsel for the assessee drew our attention to the receipt cum agreement to sell dated 28.03.2009 and pointed out that such receipt cum agreement neither bears the name of the appellant company nor is mentioned therein that the same was executed by Shri

Bhupinder Singh Bajwa in the capacity of Director of the appellant company.

13. The ld. counsel for the assessee once again stated that the receipt cum agreement to sell is dated 28.03.2009 whereas the appellant company came into existence on 08.04.2009 as per the Certificate of Incorporation. Therefore, it cannot be a party to the said receipt cum agreement dated 28.03.2009.

14. Strong reliance was placed on the decision of the Hon'ble Supreme Court in the case of Singhad Technical Education Society 397 ITR 344, Dreamcit Buildwell Pvt Ltd 417 ITR 617 of the Hon'ble High Court of Delhi and also in the case of Ankit Gupta ITA No. 41/2017 dated 05.09.2017.

15. Per contra, the ld. DR stated that since subsequently the property was purchased by the assessee, therefore, it can be safely concluded that the impugned documents belonged to the assessee and there is no error or infirmity in application of section 153C of the Act.

16. We have given thoughtful consideration to the orders of the authorities below. We have carefully perused the impugned seized documents which are at pages 3 and 4 of the assessment order. Page 3 is the receipt cum agreement to sell wherein a consideration of Rs. 1.10 crores is mentioned. It is true that the name of the assessee is not mentioned in the said receipt. In our considered opinion, assuming that the said receipt pertained to the assessee but does not belong to the assessee as per section 153C of the Act as they stood at that point of time.

17. The said receipt is dated 28.03.2009 and as per the Certificate of Incorporation, the appellant company came into existence on 08.04.2009. Therefore, ld. CIT(A) has rightly deleted the addition of Rs. 1.10. crores holding that a non existing person cannot earn undisclosed income. However, at the same time the ld. CIT(A) fell into error by not realizing that the receipt exhibited at page 4 of the assessment order is in continuation of receipt cum agreement to sell dated 28.03.2009 as mentioned in the receipt itself that “all other terms and conditions as per agreement to sell dated 28.03.2009 will remain same”.

18. This receipt also does not bear the name of the assessee. Therefore, in our considered opinion, the seized document referred to by the Assessing Officer in his assessment order and which are made basis for the impugned addition do not belong to the assessee. It would be pertinent to refer to the observations of the Hon'ble High Court of Delhi in the case of Ankit Gupta [supra]. The relevant observations /findings read as under:

“7. Learned counsel for the Respondents-Assessees, on the other hand, pointed out that this Court has, in Principal Commissioner of Income Tax (Central-2) v. Vinita Chaurasia [2017] 394 ITR 758 (Del), after considering the aforementioned three decisions, reiterated the settled legal position as explained in Pepsico India Holdings P. Ltd. v. ACIT [2015] 370 ITR 295 (Del), that for the purpose of initiating proceedings under Section 153C of the Act, the seized documents had to be shown to belong to the other person and not merely pertaining to such other person. The change brought about in this regard in Section 153 C of the Act by way of amendment has been given prospective effect from 1st June 2015. The amended provision therefore has no application to the cases on hand.

7. The recent decision of the Supreme Court in Commissioner of Income Tax, Pune v. Sinhgad Technical Education Society [2017] 84 taxmann.com 290 (SC) settles the legal position in favour of the Assessees. The Supreme Court, while affirming the judgment of the Bombay High Court, approved the decision of the

Gujarat High Court in Kamleshbhai Dharamshihhai Patel v. Commissioner of Income Tax-III, (2013) 263 CTR (Guj) 362 that a document seized 'should belong to a person other than the person referred to in Section 153A of the Act'. It has been categorically observed by the Supreme Court that the above position of law laid down by the Gujarat High Court is correct.

8. *Consequently, this Court rejects the contention of the learned counsel for the Revenue that even prior to 1st June 2015 at the stage of initiation of proceedings under Section 153C of the Act, it is sufficient if the seized document 'pertained to' the other person and it is not necessary to show that the seized material 'belonged to' the other person. This legal position has been explained by this Court in its recent decision dated 10th July 2017 ir. W.P. (C) No. 3241/2015 (Canyon Financial Services Ltd. v. Income Tax Officer).*

19. Similar view was taken by the Hon'ble High Court of Delhi in the case of Dreamcit Buildwell Pvt. Ltd 417 ITR 617. The relevant findings read as under:

"In the present case the search took place on 5th January 2009. Notice to the Assessee was issued under Section 153 C on 19th November 2010. This was long prior to 1st June, 2015 and, therefore, Section 153C of the Act as it stood at the relevant time applied. In other words, the change brought about prospectively with effect from 1st June, 2015 by the amended Section 153C (1) of the Act did not apply to the search in the instant case. Therefore, the onus was on the Revenue to show that the

incriminating material/documents recovered at the time of search belongs' to the Assessee. In other words, it is not enough for the Revenue to show that the documents either pertain' to the Assessee or contains information that relates to' the Assessee”.

20. Considering the facts of the case in totality, in light of the decisions referred to hereinabove [supra], the additional ground of the assessee is allowed. Assessment order is quashed and, accordingly, subsequent order becomes non-est.

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

22. In the result, the appeal of the assessee in ITA No. 1839/DEL/2016 is allowed.

The order is pronounced in the open court on 20.01.2023.

Sd/-

**[ANUBHAV SHARMA]
JUDICIAL MEMBER**

Sd/-

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

Dated: 20th January, 2023.

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	
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