IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
Ms. PADMAVATHY S, ACCOUNTANT MEMBER

ITA Nos. 13 to 17/Bang/2021
Assessment years : 2008-09 to 2012-13

M/s. Global Associates, No.14, 6th floor, Geneva House, Cunningham Road, Bangalore – 560 001. **PAN: AAGFG 0074L**	Vs.	The Deputy Commissioner of Income Tax, Central Circle 1(4), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Tata Krishna, Advocate
Respondent by	:	Ms. Neera Malhotra, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	06.02.2023
Date of Pronouncement	:	09.02.2023

O R D E R

Per Bench

These appeals at the instance of the assessee are directed against separate orders of the CIT(Appeals)-11, Bengaluru all dated 24.11.2020 for assessment years 2008-09 to 2012-13. Common issues are raised in these appeals, which were heard together and disposed of by this consolidated order.

2. The assessee is an Association of Persons [AOP] created by virtue of a Joint Venture Agreement dated 19.03.2004 by and between Shri P. Dayanand Pai, Shri H J Siwani and Shri M J Siwani, engaged in the business of real estate and development of properties. A search was conducted u/s 132 of the Income-tax Act, 1961 [the Act] in the premises of M/s.H.M. Construction and group concerns on 30.06.2011. Consequent to the search action, the case of the assessee was centralized from Income Tax Officer, Ward 8(1), Bangalore to the office of the DCIT, Central Circle 1(4), Bangalore, vide order dated 25.11.2011.

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3. Notice u/s 153C of the Act was issued to the assessee for assessment years 2008-09 to 2011-12. In response, the assessee filed returns of income for the said assessment years. The details of the returns of income filed pursuant to the notice u/s 153C of the I.T.Act, are detailed below:-

Sl. No.	Assessment year	Declaration of income pursuant to notice issued u/s 153C of the I.T.Act.
1.	2008-09	Nil
2.	2009-10	Nil
3.	2010-11	Rs.40,728 (as declared in the original return of income)
4.	2011-12	Rs.87,39,010 (as declared in the original return of income)

4. The Assessing Officer issued notices us 143(2) and 142(1) of the I.T.Act. The assessee in response to the said notices, furnished details called for. The A.O. completed the assessment orders u/s 153C r.w.s. 143(3) of the I.T.Act vide orders dated 30.03.2014 for the assessment years 2008-09 to 2011-12 where the AO made additions as per below given details by denying the deduction u/s 80IB of the I.T.Act

Sl. No.	**Assessment year**	**Addition made in the order u/s.153C r.w.s 143(3)-Rs.**
1	2008-09	2,21,85,131
2	2009-10	16,08,09,123
3	2010-11	1,10,68,993
4	2011-12	7,08,86,574

5. Aggrieved by the orders of the assessment for assessment years 2008-2009 to 2011-2012, the assessee preferred appeals before the first appellate authority. The CIT(A) disposed of the appeals vide the impugned orders dated 24.11.2020. Aggrieved by the orders of the CIT(A), the assessee has filed the present appeals before the Tribunal.

6. For the assessment years 2008-2009 to 2011-2012, identical grounds are raised, except for variance in figures in ground 7 for levy of interest. The common issues contented are

(i) Ground Nos. 1 and 2 – General
(ii) Ground No.3 – Non applicability of section 153C
(iii) Ground No.4 – Assessment not being based on incriminating materials
(iv) Ground No.5 – Method of accounting
(v) Ground No.6 – Denial of deduction u/s.80IB(10)
(vi) Ground No.7 – Levy of Interest

7. The assessee has raised a legal ground, namely ground 3.2, which is common for all the six appeals. The learned AR, first made submission with reference to the issue raised in ground 3.2. The ground 3.2 reads as follows:-

> "3.2 The notice issued under section 153C of the I.T.Act is bad in law, for want of requisite jurisdiction especially when the pre-requisites to assume jurisdiction did not exist and the mandatory requirements to assume jurisdiction under section 153C of the I.T.Act have not been complied with and consequently the assessment is liable to be cancelled on the facts and circumstances of the case."

8. By raising the above grounds, the learned AR contends that there is no valid satisfaction recorded by the A.O. of the search person. Further, it was stated that the satisfaction recorded in the case of the assessee (other than the searched person) is vague and does not satisfy the requisite conditions, for initiation of proceedings u/s 153C of the I.T.Act. Hence, it was submitted that the assessment completed is void ab initio and bad in law. In this context, the learned AR by referring to the satisfaction note (in the case of the assessee), which is placed on record from pages 298 to 300 of the paper book submitted by the assessee, stated that the list of books / documents that are seized are not mentioned and with the same, how A.O. is satisfied that what is found belongs to the assessee. In support of the contention, the learned AR relied on various judicial pronouncements and CBDT Circular No.24/2015 dated 31.12.2015.

9. The learned Departmental Representative submitted that the AO of the searched person namely, M/s.H.M. Construction and the assessee's AO are one and the same. Therefore it is submitted that it would be sufficient if the AO is conscious and satisfied that the documents seized / recovered from the searched person belonged to the other person and in this regard the ld DR relied on the decision of Supreme Court in the case of Super Malls Private Ltd vs PCIT (SC) Civil Appeal Nos.2006-2007 of 2020. When the bench queried the ld DR whether there is any record to show that the satisfaction is recorded in the case of M/s.H.M. Construction the ld DR orally conceded that there is no record to this effect. The learned DR, however, submitted that in assessment order of assessee (page 2 of A.O. for A.Y. 2008-2009), it is clearly stated what are the seized material that belong to the assessee.

10. We have heard rival submissions and perused the material on record. As mentioned earlier, search was conducted in the case of M/s.H.M.Construction on 30.06.2011. The relevant extract from the assessment order in the case of M/s. H M Constructions, reads as follows:

> "The assessee Firm belongs to M/s. H.M. Constructions & group of cases. A search action u/s. 132 of the Income-tax Act, 1961 was conducted on 30.06.2011 at the office premises of M/s. H.M. Constructions, 6th Floor, Geneva House, No. 14, Cunningham Road, Bangalore. Consequent to the search action, the case was notified from ACIT, Circle-8(1), Bangalore to DCIT CC-1(4), Bangalore by the Commissioner of Income-tax, Bangalore-IV, Bangalore vide order No.6A/Centralization/ CIT.IV/2011-12, dt., 25.11.2011."

11. As per the paragraph 1 of the assessment order in the case of the assessee was centralized on 25.11.2011. The relevant extract reads as follows:

> "2. The assessee belongs to M/s. H.M. Constructions & group of cases. A search action u/s. 132 of the Income-tax Act, 1961 was conducted in the case of M/s. H.M. Constructions on 30.06.2011. Consequent to the search action, the case was notified from ITO Ward 8(1), Bangalore to this Circle by the Commissioner of Income-tax, Bangalore-IV, Bangalore vide order No. 6A/Centralization/CIT.IV/2011-12, dated 25.11.2011, with effect from 25.11.2011."

12. Therefore, vide Centralization Order dated 25.11.2011, the case of the searched person (i.e., H M Construction) and case of other than the searched person (i.e., assessee) were centralised to Central Circle, Bangalore with effect from 25.11.2011. Thereafter, the Assessing Officer issued notice under section 153A of the I.T.Act, dated 30.11.2011 on H M Constructions (i.e., searched person) and notice under section 153C of the I.T.Act dated 02.03.2012 on the assessee (i.e., other than the searched person). The copies of the notices dated 30.11.2011 issued under section 153A of the I.T.Act are placed on record at pages 290 to 293 of the paper book. The copies of the notices dated 02.03.2012 issued under section 153C are also enclosed from pages 294 to 297 of the paper book. The satisfaction recorded by the Assessing Officer (in case of the assessee) before issuing notice under section 153C is enclosed from pages 298 to 300 of the paper book filed by the assessee.

13. The Hon'ble Apex Court in the case of Calcutta Knitwears reported in (2014) 362 ITR 673 (SC) had laid down that for the purpose of section 153BD of the I.T.Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the Assessing Officer before he transmits the record to the other A.O. who has jurisdiction over such other person u/s 155BD of the I.T.Act. The Hon'ble Apex Court held that satisfaction note could be prepared at any of the following stages:-

> (a) at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; or
>
> (b) in the course of the assessment proceedings under section 158BC of the Act; or
>
> (c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person.

14. The relevant finding of the Hon'ble Apex Court in the case of Calcutta Knitwears (supra), reads as follows:-

> "41. We would certainly say that before initiating proceedings under Section 158BD of the Act, the assessing officer who has initiated proceedings for completion of the assessments under Section 158BC of the Act should be satisfied that there is an undisclosed income which has been traced out when a person was searched under Section 132 or the books of accounts were requisitioned under Section 132A of the Act. This is in contrast to the provisions of Section 148 of the Act where recording of reasons in writing are a sine qua non. Under Section 158BD the existence of cogent and demonstrative material is germane to the assessing officers' satisfaction in concluding that the seized documents belong to a person other than the searched person is necessary for initiation of action under Section 158BD. The bare reading of the provision indicates that the satisfaction note could be prepared by the assessing officer either at the time of initiating

> proceedings for completion of assessment of a searched person under Section 158BC of the Act or during the stage of the assessment proceedings. It does not mean that after completion of the assessment, the assessing officer cannot prepare the satisfaction note to the effect that there exists income tax belonging to any person other than the searched person in respect of whom a search was made under Section 132 or requisition of books of accounts were made under Section 132A of the Act. The language of the provision is clear and unambiguous. The legislature has not imposed any embargo on the assessing officer in respect of the stage of proceedings during which the satisfaction is to be reached and recorded in respect of the person other than the searched person."

15. Several High Courts have held that provisions of section 153C of the I.T.Act are substantially similar / *pari material* to the provisions of section 158BD of the I.T.Act, and therefore, the guidelines of the Hon'ble Apex Court in the case of Calcutta Knitwears (supra) would apply to the proceedings u/s 153C of the I.T.Act, for the purpose of assessment of income other than the search person. This view was accepted by the Board Circular No.24/2015 dated 31.12.2015. The relevant extracts of the Circular reads as follows:-

> "The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.
>
> 2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitwears in its detailed judgment in Civil Appeal No. 3958 of 2014 dated 12-3-2014 [2014] 43 taxmann.com 446 (SC) (available in NJRS at 2014-LL-0312-51) has laid down that for the purpose of section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person u/s 158BD. …….

> 3. Several High Courts have held that the provisions of section 153C of the Act are substantially similar/pari-materia to the provisions of section 158BD of the Act and therefore, the above guidelines of the Hon'ble SC, apply to proceedings u/s 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.
>
> 4. The guidelines of the Hon'ble Supreme Court as referred to in para 2 above, with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.
>
> 5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgment. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD/153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court."

16. Further, the Hon'ble Apex Court in the case of super Malls (P) Ltd. v. PCIT reported in (2020) 423 ITR 281 (SC) had held that recording satisfaction before initiation of proceedings u/s 153C of the I.T.Act is a condition precedent. The relevant finding of the Hon'ble Apex Court, reads as follows:-

> "6. This Court had an occasion to consider the scheme of Section 153C of the Act and the conditions precedent to be fulfilled/complied with before issuing notice under section 153C of the Act in the case of Calcutta Knitwears (supra) as well as by the Delhi High Court in the case of Pepsi Food (P.) Ltd. (supra). As held, before issuing notice under section 153C of the Act, the Assessing Officer of the searched person must be "satisfied" that, inter alia, any document seized or requisitioned "belongs to" a person other than the searched person. That thereafter, after recording such satisfaction by the Assessing Officer of the searched person, he may transmit the records/documents/things/papers etc. to the Assessing Officer

having jurisdiction over such other person. After receipt of the aforesaid satisfaction and upon examination of such other documents relating to such other person, the jurisdictional Assessing Officer may proceed to issue a notice for the purpose of completion of the assessment under section 158BD of the Act and the other provisions of Chapter XIV-B shall apply.

6.1 It cannot be disputed that the aforesaid requirements are held to be mandatorily complied with. There can be two eventualities. It may so happen that the Assessing Officer of the searched person is different from the Assessing Officer of the other person and in the second eventuality, the Assessing Officer of the searched person and the other person is the same. Where the Assessing Officer of the searched person is different from the Assessing Officer of the other person, there shall be a satisfaction note by the Assessing Officer of the searched person and as observed hereinabove that thereafter the Assessing Officer of the searched person is required to transmit the documents so seized to the Assessing Officer of the other person. The Assessing Officer of the searched person simultaneously while transmitting the documents shall forward his satisfaction note to the Assessing Officer of the other person and is also required to make a note in the file of a searched person that he has done so. However, as rightly observed and held by the Delhi High Court in the case of Ganpati Fincap Services (P.) Ltd.(supra), the same is for the administrative convenience and the failure by the Assessing Officer of the searched person, after preparing and dispatching the satisfaction note and the documents to the Assessing Officer of the other person, to make a note in the file of a searched person, will not vitiate the entire proceedings under section 153C of the Act against the other person. At the same time, the satisfaction note by the Assessing Officer of the searched person that the documents etc. so seized during the search and seizure from the searched person belonged to the other person and transmitting such material to the Assessing Officer of the other person is mandatory. However, in the case where the Assessing Officer of the searched person and the other person is the same, it is sufficient by the Assessing Officer to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, then the requirement of section 153C of the Act is fulfilled. In case, where

> the Assessing Officer of the searched person and the other person is the same, there can be one satisfaction note prepared by the Assessing Officer, as he himself is the Assessing Officer of the searched person and also the Assessing Officer of the other person. However, as observed hereinabove, he must be conscious and satisfied that the documents seized/recovered from the searched person belonged to the other person. In such a situation, the satisfaction note would be qua the other person. The second requirement of transmitting the documents so seized from the searched person would not be there as he himself will be the Assessing Officer of the searched person and the other person and therefore there is no question of transmitting such seized documents to himself."

17. The Bangalore Bench of the Tribunal in the case of ACIT v. T.H.Suresh Babu in ITA No.1890/Bang/2018 (order dated 06.04.2022), after considering the judgment of the Hon'ble Apex Court in the case of CIT v. Calcutta Knitwears (supra) and Super Malls (P) Ltd. v. PCIT (supra) had held that recording satisfaction before issuing notice u/s 153C of the I.T.Act is mandatory and provisions of section 153A / 153C have to be strictly adhered to before initiating the proceedings thereunder. The relevant finding of the Bangalore Bench of the Tribunal in the case of ACIT v. T.H.Suresh Babu (supra), reads as follows:-

> "26. Now the controversy in this appeal is limited to applicability of section 153C of the Act. On a plain reading of the above provisions, it is clear that the provisions of section 153A, 153B & 153C of the Act lay down the scheme of assessment in the case of search and requisition u/s. 132 & 132A of the Act. The provisions of section 153A is with regard to searched person u/s. 132 of the Act where books of account or other documents or assets are requisition u/s. 132A of the Act after 31st May, 2003. The provisions of section 153B lay down the time limit for completion of assessment u/s. 153A. The provisions of section

153C provide that where AO is satisfied that any money, bullion, jewellery or other valuable or article or thing or books of account or documents seized are requisition belong to or belonged to person other than the person searched, the AO shall proceed against such other person by issuing notice and assess or reassess the income of such other person.

27. From a bare reading of the provisions of sec.153C, it is crystal clear that the condition precedent for issue of notice u/s 153C is that money, bullion, jewellery or other valuable article or thing or books of account or document seized or requisitioned should belong to such person. If this requirement is not satisfied, recourse cannot be had to the provisions of sec.153C. The very same provisions had come for interpretation before the Hon'ble Delhi High Court in the case of Pepsi Foods (P.) Ltd. (367 ITR 112) wherein the Hon'ble Delhi High Court observed at page 117 as follows:—

……

32. The ratio that can be culled out from the above decisions is that unless revenue establishes that the assessee is the owner of the seized documents, provisions of sec.153C cannot be invoked. Even the Hon'ble Delhi High Court as well as the Hon'ble Gujarat High Courts held that merely because there is a reference to the name of the assessee in the seized documents, it does not mean that the assessee is the owner of those documents. In the satisfactory note recorded by the AO there should be something to indicate that the searched person had disclaimed those documents and therefore, AO of the searched person reached a conclusion or satisfaction that the documents do not belong to the searched person but other third person. The High Courts, even went to the extent of holding that possession of documents and possession of photo copies of documents are two separate things. It may be quite possible that photo copies may be belonging to the searched person and whereas the original may be owned by some other person.

37. Coming to the facts of the present case, the AO recorded the satisfaction in the case of assessee as follows:-

"14.11.2011

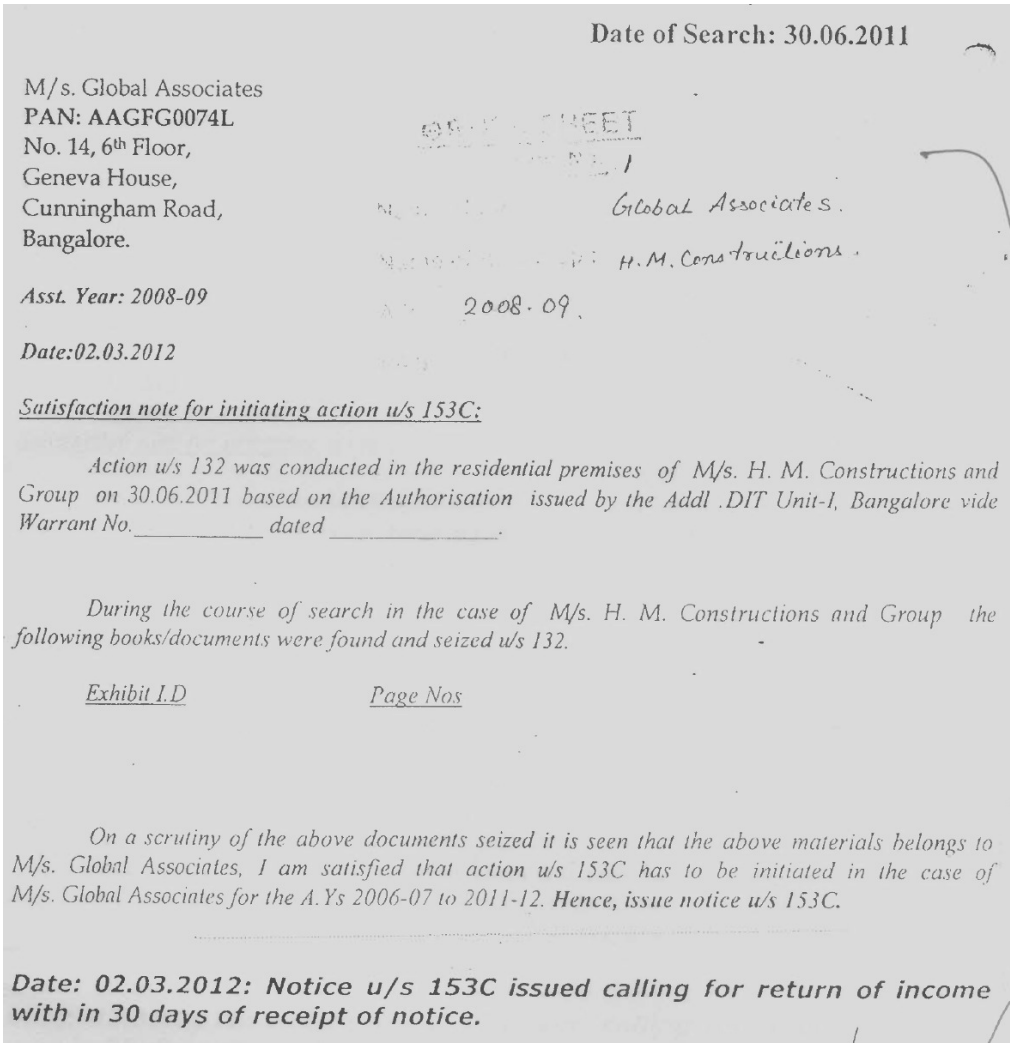
A search action u/s. 132 was initiated in the case of Sri B. Nagendra and in connection with the same, the premises of Sri T.H. Suresh Babu, Laxmi Narasimha Swamy Nilaya, Near Railway Quarters, Bamboo Bazar, Siraguppa Road, Bellary was also searched and documents / assets were seized as per inventory A-1/THS annexed to the panchanama dated 03.11.2010 for the search conducted in the premises of Sri T.H. Suresh Babu, Laxmi Narasimha Swamy Nilaya, Near Railway Quarters, Bamboo Bazar, Siraguppa Road, Bellary. Hence, a notice calling for the returns of the income for the Asst. Year 2010-11 as envisaged u/s. 153C issued."

38. As seen from the above, in the satisfaction note recorded by the AO there was no mention that he was satisfied about the undisclosed income belonging to the assessee on the basis of seized material as held by the Supreme Court in the case of Super Malls Pvt. Ltd. v. PCIT (supra) in terms of section 153C of the Act that where the AO of the searched person and the third person is the same, it is sufficient by the AO to record in the satisfaction note that the documents seized from the searched person belonged to other person and there is no requirement of transmitting documents so seized from searched person.

39. In the light of the above observations of the Supreme Court, if we go through the above order sheet entry of the AO of the searched person, we cannot make out a case that to whom the seized document marked as inventory A-1/THS belongs to and what is the undisclosed income related to assessee mentioned in it. Further, the AO does not even say "I am satisfied" or "belonged to unsearched person" i.e., the assessee. Hence there is no compliance with the provisions of law laid down by the Supreme Court in the case of Super Malls P. Ltd. (supra). Being so, in our opinion, there is no satisfaction recorded by the AO of the searched person to indicate that the searched person had disclaimed the seized document as it belonged to him before reaching the conclusion/satisfaction that document did not belong to searched person, but to other third person i.e., the present assessee. More so, in the present case, it is also brought on record by the assessee that the impugned addition was already subject matter of assessment in the case of Sri B. Sreeramulu and the

> expenditure relating to assessee's marriage at Rs.101,96,322 has been disclosed in his capital account for the period ending 31.3.2010, copy of which is kept on record filed before this Tribunal on 3.3.2022. Hence, on the basis of the above order sheet entry, the assessment of present assessee has been reopened so as to frame the assessment u/s. 143(3) r.w.s. 153C of the Act. The AO who searched the premises of B. Nagendra on whose case warrant u/s. 132 was issued, has not recorded his satisfaction that documents found in the course of search of the premises of present assessee viz., T.H. Suresh Babu belonged to present assessee and AO has not recorded his satisfaction in his order sheet entry to this effect. As such, the mandatory requirement u/s. 153C of the Act in the facts and circumstances of the case have not been complied with. The satisfaction note in the form of order sheet entry by the AO of Sri B. Nagendra who was searched has not recorded the finding that the document seized belonged to Shri T.H. Suresh Babu. Being so, the requirement of section 153C of the Act has not been fulfilled. On these facts, we are in clear agreement with the view taken by the CIT(Appeals) in quashing the assessment framed u/s. 143(3) r.w.s. 153C of the Act and accordingly uphold the order of the ld. CIT(Appeals). The grounds taken by the revenue are dismissed."

18. In the instant case, satisfaction as has been admitted by the ld DR was not recorded by the A.O. in the case of search person, namely, M/s.H.M.Construction. The satisfaction recorded by the Assessing Officer in the case of the assessee before issuing notice u/s 153C of the I.T.Act is enclosed from pages 298 to 300 of the paper book filed by the assessee. The satisfaction recorded for assessment year 2008-2009, reads as follows:-



Date of Search: 30.06.2011

M/s. Global Associates
PAN: AAGFG0074L
No. 14, 6th Floor,
Geneva House,
Cunningham Road,
Bangalore.

Global Associates.
H.M. Constructions.
2008-09.

Asst. Year: 2008-09

Date:02.03.2012

Satisfaction note for initiating action u/s 153C:

Action u/s 132 was conducted in the residential premises of M/s. H. M. Constructions and Group on 30.06.2011 based on the Authorisation issued by the Addl .DIT Unit-I, Bangalore vide Warrant No._____ dated _____.

During the course of search in the case of M/s. H. M. Constructions and Group the following books/documents were found and seized u/s 132.

Exhibit I.D *Page Nos*

On a scrutiny of the above documents seized it is seen that the above materials belongs to M/s. Global Associates, I am satisfied that action u/s 153C has to be initiated in the case of M/s. Global Associates for the A.Ys 2006-07 to 2011-12. ***Hence, issue notice u/s 153C.***

Date: 02.03.2012: Notice u/s 153C issued calling for return of income with in 30 days of receipt of notice.

19. Similar is the satisfaction note for the other assessment years also. The above satisfaction note is bad and invalid for the following reasons:-

(i) The satisfaction note is just a standard format;

(ii) The satisfaction note is in a printed format with all the blanks being kept unfilled;

(iii) The satisfaction note does not give list of documents seized from M/s. H M Constructions. In the absence of such list, it is not known how any person properly instructed would derive satisfaction. It is amazing to note that it is written that 'on a scrutiny of the above documents….', in the above note. When the so called above documents are not even listed, it is not known what scrutiny has been carried out.

(iv) The satisfaction note does not give list of documents which 'belong to' the assessee. Neither the documents seized are listed nor the documents found to belong to the assessee are listed. It is not known what was seized, what was scrutinised and what was found to belong to the assessee.

(v) The satisfaction note does bear the name, designation and full signature of the Assessing Officer.

(vi) The satisfaction note states that the search was conducted at the residential premises of M/s. H M Constructions. There cannot be residential premise for M/s. H M Constructions which is a partnership firm. As per Panchanama dated 01.07.2011, the search was conducted at # 14, 6th Floor, Geneva House, Cunningham Road, Bengaluru - 560 001 which is an office complex and not residential premise of any person. In the assessment order of M/s. H M Constructions in AYs 2006-07 to 2011-12, it is clearly stated that the search was conducted at the office premises of # 14, 6th Floor, Geneva House, Cunningham Road, Bengaluru - 560 001.

(vii) The satisfaction note is vague;

20. The above omissions are not just minor deviations but are material in nature. These omissions are so material that they reduce the so called satisfaction note to nullity in the eyes of law. In the instant

case, there is no satisfaction recorded in the case of the search person, stating that the seized material does not belong to him but to other persons. Further, even assuming that the A.O. of the searched person and the assessee is the same, there is no valid satisfaction recorded in the files of the assessee as mentioned above before initiating proceedings u/s 153C of the I.T.Act. The learned DR had stated that in the impugned assessment order, it is clearly mentioned what are the seized material that belongs / pertains to the assessee (i.e., the person other than the searched person). Therefore, it was contended by the learned DR that there is a valid satisfaction. This content of the learned DR cannot be accepted, since the judicial pronouncements, cited supra, and Board Circular No.24/2015 (supra) has clearly stated that satisfaction has to be recorded, prior to initiation of proceedings u/s 153C of the I.T.Act. Therefore, the very initiation of proceedings u/s 153C of the I.T.Act is held to be invalid and void ab initio. Hence, the legal ground 3.2 is allowed. The grounds regarding merits is left open and not adjudicated.

21. Before concluding, it is to be mentioned that the Revenue could take a plea for protection u/s 292B of the I.T.Act. Section 292B of the I.T.Act reads as follows:-

> "No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice,

summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

22. Section 292B of the I.T.Act states that no ROI, assessment, notice, summons issued in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice if such is in substance and effect in conformity with or according to the intent and purpose of this Act. Section 292B of the I.T.Act can be relied upon for resisting a challenge to the notice, etc., only if there is a technical defect or omission in it. For section 292B of the I.T.Act, there should be mistake, defect or omission in an otherwise valid ROI, assessment, notice, summons which is in substance and effect in conformity with or according to intent and purpose of the IT Act. In the instant case, the provisions of section 292B of the I.T.Act do not come to the rescue of the Revenue for the following reasons:

(i) The section 292B is applicable ROI, assessment, notice, summons and does not apply to satisfaction note;

(ii) As mentioned earlier, recording of satisfaction through satisfaction note is mandatory. This jurisdictional requirement goes to the root of the assumption of jurisdiction for making assessment under section 153C. Not recording or blank satisfaction note cannot conceivably be said to be in conformity with or according to intent and purpose of the IT Act.

(iii) When a satisfaction note does not record any satisfaction, there is no question of noticing any mistake or defect or omission therein.

23. As per Circular No. 24/ 2015, dated 31.12.2015, the Board has stated that "In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgment. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD /153C of the I.T.Act should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court." In the instant case, as stated above, the satisfaction note recorded by the Assessing Officer does not meet the guidelines laid down by the Apex Court in Calcutta Knitwears (Supra) and Board Circular No. 24/ 2015 (supra). Hence, the Assessment Orders passed under section 153C of the I.T.Act for assessment years 2008-2009 to 2011-2012 is quashed.

24. Since we have allowed the appeal in favour of the assessee on the legal issue of validity of notice u/s.153C the grounds contending the impugned addition on merits have become academic not warranting separate adjudication.

ITA Nos. 17/Bang/2021 (AY 2012-13)

25. In this appeal for AY 2012-13, the assessee raised grounds with regard to legal issue as well as on merits. During the course of hearing the ld AR presented arguments only with regard to Ground No.4 and submitted that if this ground is adjudicated in favour of the assessee the rest of grounds will become academic. The relevant Ground no.4 reads as under –

> "4. Without prejudice, the assessment order is bad in law and void ab initio as the mandatory notice under section 143(2) has been issued beyond six months from the end of the financial year in which the return of income is filed."

26. The assessee filed the return of income for AY 2012-13 on 29.09.2012 declaring an income of Rs.33,44,070. A search was conducted u/s. 132 of the Act in the premises of H.M. Constructions on 30.6.2011 and notice u/s. 143(2) issued. The AO completed the assessment u/s. 143(3) of the Act on 30.3.2014 denying the deduction u/s. 80IB(10) of the Act and made an addition of Rs.87,36,883. The CIT(Appeals) dismissed the appeal and upheld the order of the AO. Aggrieved, the assessee is in appeal before the Tribunal.

27. The ld AR submitted that the assessee filed the return of income on 29.09.2012 i.e. within the due date for filing the return of income u/s.139(1) of the Act. The ld AR drew our attention to the fact as mentioned in para 3 of the assessment order that the notice u/s.143(2) was issued on 11.12.2013. The ld AR submitted that the notice u/s.143(2) should be issued within six months from the end of the year in which the return of income is filed and accordingly the same should have been issued on or before 30.09.2013. The ld AR further submitted that the notice u/s.143(2) in assessee's case is issued on 11.12.2013 and therefore barred by limitation. The ld AR also submitted that the order u/s.143(3) is bad in law and liable to be quashed. The ld AR in this regard relied on the decision of the coordinate bench of the Tribunal in the case of *Shri Cherian Abraham vs DCIT (ITA No.1575/Bang/2016 dated 21.11.2017)* which is affirmed by the

Hon'ble Karnataka High Court *(2022) 137 taxmann.com 73 (Karnataka)*. The ld DR did not present any counter arguments against this factual submissions.

28. We heard the rival submissions and perused the material on record. We notice that the Hon'ble jurisdictional High Court in the case of Shri Cherian Abraham (supra) has considered similar issue where it is held that –

> "16. The parameters set out in section 292BB of the Act are that the notice was :
>
> (a) not served upon assessee; or
>
> (b) not served in time; or
>
> (c) served upon assessee in an improper manner.
>
> Thus, what is significant is service of notice. It is obvious that the issuance of notice is a pre-condition to cure the defects in service of notice.
>
> 17. In the case of Lakshman Das Khandelwal (supra), the Hon'ble Apex Court has considered the law laid down by the Hon'ble Apex Court in the case of Asstt. CIT v. Hotel Blue Moon [2010] 188 Taxman 113/321 ITR 362 regarding the question whether notice under section 143(2) of the Act would be mandatory for the purpose of making an assessment under the said provision and thereafter, considered the question whether section 292BB which came into effect on and from 1-4-2008 has effected any change. It has been held that the law on the point as regards applicability of notice under section 143(2) of the Act is quite clear in the decision in the case of Hotel Blue Moon (supra). However, considering the impact of section 292BB on the issue, it has been held thus :
>
> "According to section 292BB of the Act, if the assessee had participated in the proceedings, by way of legal fiction, notice

would be deemed to be valid even if there be infractions as detailed in the said section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on part of the assessee. It is, however, to be noted that the section does not save complete absence of notice. For section 292BB to apply, the notice must have emanated from the Department. It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure complete absence of notice itself."

18. This judgment has a direct bearing on the facts of the present case. In the light of this judgment, it is clear that the infirmities in the manner of service of notice alone would be amenable to under section 292BB of the Act, but not the complete absence of notice itself. Notice issued beyond the period of limitation partakes the character of absence of notice itself in the eye of law. As such, section 292BB would not save such a notice de hors the limitation prescribed.

19. Though the learned counsel for the Revenue contended that Hotel Blue Moon (supra) was rendered in the regime prior to the insertion of S. 292BB of the Act, the said judgment has been considered by the Hon'ble Apex Court in the case of Lakshmandas Khandelwal (supra) as aforesaid, which is squarely applicable to the facts of the present case.

20. The Tribunal has rightly observed that the foundation process of reassessment is under section 148 of the Act, but such jurisdiction is subject to further compliance as being stipulated in the statute itself and thus, quashed the assessment being invalid. It is a well settled legal principle that issuance of notice beyond period of limitation or absence of notice goes to the root of the matter and is the jurisdiction aspect, not a procedural irregularity and the same is not curable.

21. Thus, we are of the view that the failure of the assessing officer in issuing the notice within the period of limitation under section 143(2) of the Act which is a notice giving jurisdiction to the assessing officer to frame assessment cannot be condoned by referring to S.292BB of the Act. We find no ground to interfere with the impugned order of the Tribunal.

> 22. For the reasons aforesaid, we answer substantial question of law in favour of the assessee and against Revenue."

29. The facts in assessee's case is similar to the above case wherein the notice u/s.143(2) is issued on 11.12.2013 which is beyond the time limit for issuing the notice which expires on 30.09.2013. Therefore respectfully following the decision of the Hon'ble High Court, we hold that the notice u/s.143(2) is issued beyond the period of limitation and accordingly the consequent assessment is not valid and liable to be quashed. Accordingly, the assessment order is quashed. It is ordered accordingly.

30. Since we have quashed the assessment as invalid, the other grounds raised by the assessee have become academic, not warranting any adjudication.

31. The appeal for AY 2012-13 is partly allowed.

32. In the result, the appeals filed by the assessee for AYs 2008-09 to 2011-12 and the appeal for AY 2012-13 are partly allowed.

Pronounced in the open court on this 9th day of February, 2023.

Sd/-	Sd/-
(GEORGE GEORGE K.)	(PADMAVATHY S.)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Bangalore,
Dated, the 9th February, 2023.

/*Desai S Murthy /*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.