

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU “C” BENCH, BENGALURU**

**Before Shri George George K., Judicial Member
and**

Ms. Padmavathy S., Accountant Member

ITA No. 1064/Bang/2022 (Assessment Year: 2014-15)		
Shri Vikash Sethia No. 102, Kalpak Arcade 19 Church Street Bangalore 560001 PAN – AMJPS0361H (Appellant)	vs	ACIT, Central Circle - 1(2) C R Building, Queens Road Bengaluru 560001 (Respondent)

Assessee by:	Shri S.V. Ravishankar, Advocate
Revenue by:	Ms. Neera Malhotra, CIT-DR

Date of hearing:	16.02.2023
Date of pronouncement:	20.02.2023

ORDER

Per: George George K., J.M.

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 12.10.2022. The relevant assessment year is 2014-15.

2. The brief facts of the case are as follows: -

The assessee is an individual deriving salary and interest income. For AY 2014-15 return of income was filed on 12.06.2014 declaring income of Rs.2,88,470/-. Consequent to a search in the premises of Mahaveer Medicare and also the assessee on 19.12.2014 assessment was completed under Section 153C r.w.s 153A r.w.s 143(3) of the Income Tax Act, 1961 (the Act) on 30.11.2016 determining the total income at Rs.1,02,88,470/- instead of Rs.2,88,470/- declared in the return of income. The AO made solitary addition

of Rs.1,00,00,000/- for the reason that the assessee offered the said income during the course of search proceedings.

3. Aggrieved, assessee preferred appeal before the First Appellate Authority. The assessee raised several grounds on legal issues as well as merits. All the issues raised by the assessee were rejected and the appeal of the assessee was dismissed.

4. Aggrieved by the order of the CIT(A) the assessee filed the present appeal before the Tribunal. The learned A.R. has filed two sets of paper books, serially numbered (pages 33) enclosing therein computation of income for AY 2014-15, Panchanama in the case of the assessee as well as in the case of Mahavir Medicare, copy of statement recorded under Section 132(4) of the Act, notices issued, copy of retraction statement, copy of assessment order completed in the case of the assessee for AY 2015-16, copy of satisfaction recorded by the AO of the searched person for initiating proceedings under Section 153C of the Act in the case of the assessee, case law relied upon, etc. The assessee has raised several grounds on legal issue as well as on merits. As regards legal issues are concerned the primary contention is that the assessment order passed under Section 153C of the Act is bad in law as the assessee has been searched and the order, if any, ought to have been passed only under Section 153A of the Act instead of Section 153C of the Act passed in the instant case. The learned A.R. in this context relied on the decision of the Delhi Bench of the Tribunal in the case of S.P.S. Ahluwalia vs. ACIT in ITA No. 2429 to 2432/Del/2012 dated 30.01.2020.

5. The learned D.R., on the other hand, submitted that in the assessment order, Section 153A is also mentioned and if at all there is a defect in the assessment order in mentioning the relevant section the same is curable defect by virtue of Section 292B or Section 292BB of the Act.

6. We have heard the rival contentions and perused the material on record. There was a search in the premises of the assessee as well as in the case of Mahaveer Medicare on 19.12.2014. During the course of search in the residential premises of the assessee cash amounting to Rs.1,50,20,000/- was found. The assessee was asked to explain the source of cash found during the course of search. The assessee in a statement recorded under Section 132(4) of the Act submitted that the cash belongs to Shri Uttam Reddy and assessee is not in a position to prove the same. Therefore assessee voluntarily agreed to disclose income of Rs.1 crore for AY 2014-15 and another sum of Rs. 1 crore for AY 2015-16 to cover up any discrepancy in the books of the assessee and other material found in the premises (including backup of phones and computers). The assessment for AY 2015-16 was completed vide order dated 30.11.2016 under Section 143(3) of the Act r.w.s. 153D of the Act by bringing to tax Rs. 1 crore as declared by the assessee during the course search. The assessee in the meanwhile, on 21.10.2016 filed a retraction statement for assessing Rs. 1crore declared for the relevant assessment year 2014-15.

7. Admittedly, in this case the assessment has been completed under Section 153C r.w.s. 153A r.w.s. 143(3) of the Act for AY 2014-15. It is a fact that search was carried out also in the residential premises of the assessee on 19.12.2014. It was during the course of search, cash amounting to Rs.1,50,20,000/- was found. The assessee in his statement recorded under Section 132(4) of the Act, admitted to return Rs. 1 crore for assessment year 2014-15. The fact that there is an authorisation of search warrant in the case of assessee is evident from the copy of the Panchanama which is dated 20.12.2014 and the same, for ready reference, is reproduced below: -

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GOVERNMENT OF INDIA
INCOME - TAX DEPARTMENT, BANGALORE

PANCHANAMA

- A) Warrant in the case of : VIKASH SETHIA Party No. HAM-16
- B) Warrant to search : No. 9A, GULMOHAR MANSION, No. 20,
(Details & Ownership of the search) CONVENT ROAD, RICHMOND TOWN,
BEN GALURU - 560025
Telephone Number : 9886001248
- C) (A) and (B) assessed at : PAN: AMJPS036^H (A) ITO-ward-1 (B)
Balurghat, West Bengal.
- D) Search Party Consisting of :

Name of the Authorised Officers - Shri / Smt Designation

1. Shri T S Khalsa ADIT

Other Officials who assisted the officers - Shri / Smt

1. Shri N Raghavendra Rao ITO (OSD)

2. Shri Samantaray NK ITI

3. Shri Mukesh Kumar ITI*

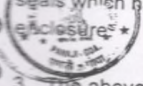
- E) Name and Complete address of Panchas :
1. Sh. Bhaavesh S. Shaah 2. Sh. Narendra Kumar Mehta
H-305, Snow drop Block, 67/35, 12C Main Road, 6th Block
ETA Garden Apartment, Rajaji Nagar, Bangalore-560010
Magadi Road, Bangalore-560023

1. On being called by Shri. T. S. Khalsa on 19/12/2014 at 10.00 A.M.
a.m./p.m. we, the above named panchas, presented ourselves at the above place of search.
The Authorised Officer, Shri. T. S. Khalsa
The Authorised Officer, Shri. T. S. Khalsa showed the warrant of
authorisation dated 19/12/2014 issued under section 132 of the income tax Act, 1961/
~~37 A~~ of the W.T. Act, 1957 in the case of (A) above, to search the place mentioned at (B) above and duly
signed and sealed by the Director General of Income - Tax (Inv) / Director of Income Tax (Inv)
Commissioner of Income Tax / Addl. Joint Director of Income - Tax (Inv), Range / Unit 2, Tax (Inv) 4/1/20
to Shri/ Smt. Vikash Sethia who was present in the said place at the time and who after
reading the said authorisation after the authorisation was explained in local language
by Shri/ Smt. T. S. Khalsa
signed it, in our presence and along with us, in token of having perused the same.

2. As today's search was in continuance of the proceedings on 19/12/2014 we, along
with the aforesaid authorised officers, before the commencement of proceedings today, inspected the
seals which has been placed on that date and found them to be intact/ tampered with as narrated in the

3. The above mentioned search party offered themselves for personal search before commencing the
search, which was taken/declined.

Bhaavesh S. Shaah Narendra Kumar Mehta Vikash Sethia
19/12/2014 19/12/2014 19/12/2014



-2-

4. A search of the above mentioned place was carried out by the said party in our presence in an orderly manner without hurting the sentiments of any of the occupants of the premises. Nothing untoward/ the events narrated in the enclosure, happened in the course of the search.

(5)

5. In the course of the search.

a) The following were found and seized

- i) Books of account and documents as per annexure 'A' (..... One sheets)
- ii) Bullion i.e. Gold, Silver etc. as per annexure 'B' (..... sheets)
- iii) Cash as per annexure 'C' (..... 01 (one) sheets)
- iv) Jewellery, Ornaments etc. which have been inventorised separately for each place from where recovered, as per annexure 'J' (..... sheets)
- v) Silver articles and Silverware as per annexure 'S' (..... sheets)
- vi) Other valuables, Locker keys, FD.s etc. as per annexure 'O' (..... sheets)
- vii) Other valuables, Stock-in-trade etc. seized under second provision to Sec. 132 (1) of the I.T. Act as per annexure 'CS' (..... sheets)

b) The following were found but not seized :-

- i) Books of account and documents as per annexure '1' (..... sheets)
- ii) Bullion i.e. Gold, Silver etc. as per annexure '2' (..... sheets)
- iii) Cash as per annexure '3' (..... 2 (two) sheets)
- iv) Jewellery, Ornaments, Silver articles etc. which have been inventorised separately for each place from where recovered as per annexure '4' (..... sheets)
- v) Other valuables, Locker keys, FD.s / Stock in trade etc. as per annexure '5' (..... sheets)

→ At the quishanama (D-6) - 5 items found not recorded here

6. In the course of the search, the authorised officer Shri. / Smt. T. S. Khalsa recorded the statement (s) of Shri. / Smt. Vikash Sethia on solemn affirmation / oath, in our presence. No coercion, threat, inducement, promise or other undue influence was brought to bear on the above deponent. The statement was read over/ explained in the local language viz. to the deponent who signed the statement in token of having understood its contents and of agreeing that it had been correctly recorded.

7. The following other important persons were present in the place of search and either took an active part in or helped the search proceedings:

Name	Relationship	Signature
—	—	—

8. The search commenced on 19/12/2014 at 10.30 a.m./p.m. The proceedings were closed on 20/12/2014 at 02.00 a.m./p.m. as finally concluded / as temporarily concluded for the day to be commenced subsequently for which purpose seals were placed on the entire place / on wall fitted wooden Admirals in one left side at entry gate of the search premises. in our presence.

9. The order (s) under section 132 (3) of the I.T. Act 1961 in respect of, the sealed premises at No. 9A, Eudopher Mansion, No. 20, Convent Road, Richmond Town, Bangalore - 560025 was / were served on Shri. / Smt. Vikash Sethia by the Said authorised officer/s.

10. Before leaving the above mentioned place of search the entire search party again offered themselves for personal search which was taken / declined. The panchanama has been read by us / explained to us in local language by Shri. / Smt. T. S. Khalsa and it is certified that it has been correctly recorded.

Signature of the Panchas with date:

1. Bhaavesh 20/12/14 2. Ravendra Kumar 20/12/2014

Signature of the authorised Officer:

Signature of the person receiving the copy of Panchanama

T. S. Khalsa
Name: टी. एस. खालसा / T. S. KHALSA
Designation: सहायक आयकर निदेशक (अन्वे)
Assistant Director of Income Tax (Inv)
Date: पणजी गोवा, / Panaji, Goa



Name: Vikash Sethia
Position / relationship to 'A':
Date: 20/12/14
VIKASH SETHIA

8. The AO in the case of Mahaveer Medicare has recorded satisfaction for initiating proceedings under Section 153C of the Act in the case of the assessee. The reasons for initiating action under Section 153C of the Act is reproduced for ready reference: -

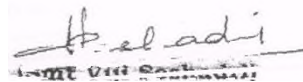
***“Reasons for Initiating action u/s. 153C of Income Tax Act, 1961
in the case of Shri Vikash Sethia***

Search & seizure action u/s 132 of the Income Tax Act, 1961 was carried out in the case of Mahaveer Medicare on 19-12-2014. The residence of Shri Vikas Sethia, No.9A, Gulmohar Mansion, No.20, Convent Road, Richmond Town, Bangalore 560 025 was also searched and various documents as per Panchanama dated 13-01-2015 were seized.

*2. During the course of assessment proceedings u/s. 153A in the case of Mahaveer Medicare upon examining the documents seized from the residence of Vikas Sethia, the undersigned in the capacity of Assessing Officer of Mahaveer Medicare was satisfied in terms of section 153C of the Income-tax Act, 1961 that certain documents described in the **Annexure A** relate to and pertain to Shri Vikas Sethia
(emphasis supplied)*

3. Now, in the capacity of Assessing Officer of Shri Vikas Sethia, I have examined the seized material mentioned in Annexure-A. During the search, whatsapp messages between Vikash Sethia and Uttam Kumar P Jain indicating cash transfers were found in the iphone of Vikash Sethia, Cash of Rs. 1,15,20,000/- was .also found in his residential premises. Shri Vikash Sethia was queried about the same. As he had no satisfactory explanation to offer regarding the cash and the messages in his iphone, he voluntarily admitted to undisclosed income of Rs. 2 crores - Rs. 1 crore for A Y 2014-15 and Rs, 1 crore for AY 2015-16 to cover up any discrepancies in his books of accounts and any other material found in his premises including his phone and computers. It is .possible that part of the cash found during the search may pertain to AY 2014-15 thereby having a bearing on the computation of his income for A Y 2014-15.

4. Issue notice u/s. 153C for A.Y 14-15.



(SmtViJi Seshadri)

Assistant Commissioner of Income Tax Central
Circle 1(2), Bengaluru

9. The seizure of cash of a sum of Rs.1,50,20,000/- from the residence of Shri Vikash Sethia is also born out from Annexure A of the said recording of satisfaction which was the triggering point for initiation of Section 153C of the Act. The Annexure A reads as follows: -

ANNEXURE A

Sr No	Annexure	Page No.	Remarks	Asst Yrs involved
1.	A/VS/ 1	1	During the course of search, cash 1,50,20,000 was found at the residence Sethia. Further, the SMSs and Whatsapp in the Blackberry 0095 belonging to Vikas examined. Vikas Sethia was questioned same. Vikas Sethia in his statement recorded on -19-12-2014, in reply to that since he had no satisfactory in respect of the cash found and the iphone, and to cover the discrepancies books of accounts and other material premises including back up of his computers,* was offering Rs. 1 crore as over and above his accounted income for 15.	14-15

10. Reading of the above Annexure A, we fail to understand how the same is document seized in the premises of Mahaveer Medicare and how same pertains to the assessee. It is not disputed by the parties that Annexure A is nothing but narration of what had happened in premises of assessee during the course of search. In other words Annexure A cannot be considered as a document seized in premises of Mahaveer Medicare for initiation of proceedings under Section 153C of the Act in the case of the assessee.

11. As mentioned earlier, admittedly there is warrant of authorisation to conduct search in the premises of the assessee and the cash was found in the premises of the assessee. The impugned addition in the case of the assessee is made on the basis of cash found and statement recorded from the assessee

during the course of search in his residential premises. Therefore, the assessment in our view ought to have been completed under Section 153A r.w.s. 143(3) of the Act and not under Section 153C of the Act. We are also unable to appreciate the contention of the learned D.R. that both Sections 153A & 153C are mentioned in the order and therefore there is no infirmity. From the notices issued and satisfaction recorded it is clear that the AO has completed the assessment under Section 153C and not under Section 153A of the Act. Since the assessment has been completed under Section 153C of the Act, we are of the view that the assessment framed suffers from infirmity and it is an incurable defect. Hence, we quash the impugned assessment order. In taking the above view, we are fortified by the judgement of Hon'ble Jurisdictional High Court in case of Kumar Sharma vs. DCIT reported in (2023) 146 taxmann.com 553 (Kar.) and case for S.P.S. Ahluwalia vs. ACIT in ITA No. 2429 to 2432/Del/2012 dated 30.01.2020. The Hon'ble High Court was considering an identical submission that of the submission that was raised in this case. The submission of the counsel for the assessee at para 3 of the judgement reads as follows;

“3. The main grievance of the petitioners is that impugned notices’ under section 153C of the Act is to be issued on “other person” and the petitioners being “searched person”, the impugned notice under section 153C of the Act is not maintainable.”

12. The Hon'ble High Court while considering the above submission of the petitioner had observed as:

“18. The petitioner being “searched person” and not “Other person” as required under section 153C of the Act and in this regard, I find force in the submission made by the learned Senior Counsel appearing for the petitioners”

13. The relevant finding of the Delhi Bench of the Tribunal (supra) reads as follows: -

“9. We have heard the rival contentions and perused the record. The jurisdictional issue which is raised by the assessee by way of ground of appeal no. 1 goes to the root of the jurisdiction invoked by the AO in the present set of appeals. Admittedly, the premises of the assessee were searched on 16.12.2003. Consequent thereto, the requirement of law is that in case the premises of the persons have been searched, then the proceedings to be initiated are by way of issue of notice under section 153A of the Act. The AO in such facts and circumstances has to issue, the aforesaid notice under section 153A of the Act and requisition the assessee to furnish the return of income for the captioned assessment years. In case any document relating to person other than the person searched were found, then the notice is to be issued to such other person under section 153A read with section 153C of the Act.

10. In the facts of the present case, the AO for Assessment Years 1998- 99, 1999-2000 & 2001-02 had issued notice dated 7.3.2006 under section 153A read with section 153C of the Act. The initiation of the proceedings thus are under section 153C of the Act i.e. in respect of person other than the person searched, which is not the case. The assessee is the person searched and requirement of law is to issue the notice under section 153A of the Act. The copy of the aforesaid notice have been filed on record and have been perused by us. Though in the assessment order, the AO mentions that the notice had been issued under section 153A of the Act on 7.3.2006, but infact the notice which is issued on 7.3.2006 was the notice under section 153A read with section 153C of the Act. The said notices were invalid and the consequent assessment framed under section 153A of the Act suffers from infirmity, because of lack of jurisdiction invoked by the AO under section 153A of the Act. Consequently, the assessment orders framed in the case are bad in law and we hold so. We thus cancel the assessment orders passed in the case against the assessee being bad and invalid in law. The ground of appeal no. 1 stands thus allowed in favour of the assessee.”

14. In the light of the aforesaid reasoning and the judicial pronouncements cited supra, we allow the legal ground No. 3. Since the assessment order has been quashed for AY 2014-15, other legal grounds and issues raised on merits are not adjudicated and are left open. Ordered accordingly.

15. In the result, the appeal filed by the assessee is partly allowed.

Dictated and pronounced in the open Court on 20th February, 2023.

Sd/-
(Padmavathy S.)
Accountant Member

Sd/-
(George George K.)
Judicial Member

Bengaluru, Dated: 20th February, 2023

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -11, Bangalore*
4. *The Pr. CIT - Central, Bangalore*
5. *The DR, ITAT, Bengaluru*
6. *Guard File*

By Order

//True Copy//

Assistant Registrar
ITAT, Bengaluru

n.p.