

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: G: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND

SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA Nos. 3999 to 4004 /Del/2018

Assessment Years: 2008-09 & 2010-11 to 2014-15

M/s. Shri Vishnu Overseas (P) Ltd. Jind Road, Kaithal, Haryana 136027 C/o Vinod Kumar Bindal & Co. Chartered Accountants, Shiv Sushil Bhawan, D-219, Vivek Vihar, Phase-1, New Delhi 110095 PAN AAFCS 0585 A	vs.	The DCIT, Central Circle, Karnal
(Appellant)		(Respondent)

ITA Nos. 1440 to 1444 /Del/2021
Assessment Years: 2008-09 to 2013-14

Shri Vishnu Eatables India Ltd., C/o Vinod Kumar Bindal & Co. Chartered Accountants, Shiv Sushil Bhawan, D-219, Vivek Vihar, Phase-1, New Delhi 110095 PAN AAABCS 4831 R	vs.	The DCIT, Central Circle, Karnal
(Appellant)		(Respondent)

For Assessee :	Shri V K Bindal, CA Ms. Rinky Sharma, Adv.
For Revenue :	Shri H.K Choudhary, CIT(DR)

Date of Hearing :	27.06.2023
Date of Pronouncement :	27.06.2023

ORDER

PER BENCH:-

These appeals have been filed against the orders of CIT(A)-2 & CIT(A)-3, Gurgaon dated 16.03.2018, 28.06.2021, 29.06.2021 & 30.07.2021 for AYs 2008-09 to 2014-15 arising from respective assessment orders passed under section 153C of the Act.

2. When the matter was called for hearing in these group cases, the learned counsel for the assessee at the outset pointed out that all the assessment orders in different appeals captioned above are vitiated in law for the reason that notice under section 153C issued in these cases precedes the corresponding satisfaction recorded in these cases. For instance in the case of Shri Vishnu Overseas P Ltd. cases, the notice under section 153C has been issued on 17.12.2015, whereas the corresponding satisfaction contemplated under section 153C has been recorded on 21.12.2015. Similarly, in the cases pertaining to Shri Vishnu Eatables India Ltd., the notice for assumption of jurisdiction under section 153C has been issued on 04.12.2015, whereas the satisfaction contemplated under section 153C has been recorded subsequently on 21.12.2015. The learned counsel thus contends that the jurisdiction assumed under section 153C by issuance of notice thereon stands vitiated owing to absence of satisfaction on the date of issuance of notice under section 153C. The learned counsel submits that subsequent recording of satisfaction under section 153C is of no consequence and is not capable of making good the inherent jurisdictional defect. The learned counsel thus submits that consequent assessment orders passed based on such non-est notices issued under section 153C in respective cases are clearly bad in law and no cause of action arises to the revenue in pursuance of such non-est assessment orders in all the captioned appeals.

3. On being confronted to the revenue on the aforesaid contention, the learned DR for the revenue presented the assessment records for the perusal of the bench to appreciate the factual position. The learned DR for the revenue also referred to the respective order sheets duly signed by the Assessing Officer and submitted that as per these order sheets, the Assessing Officer has asserted that the requisite satisfaction note was duly recorded prior to the issue of notice under section 153C of the Act. The learned DR thus assessee submitted that the actual date supposedly put on the satisfaction note are merely a typographical error and should be read in conjunction with the assertions made in the respective order sheets.

4. We have carefully considered the rival submissions on the point in issue. At the outset, we refer to a tabular statement filed by the assessee showing the factual matrix ITA wise.

Shri Vishnu Overseas (P) Ltd.							
AY	2008-09	2010-11	2011-12	2012-13	2013-14	2014-15	
Appeal No.	3999/Del/2018	4000/Del/2018	4001/Del/2018	4002/Del/2018	4003/Del/2018	4004/Del/2018	

S.No.	Particulars						
1.	Panchanama dated	17.01.2014					
2.	Notice issued u/s. 153C of the Act	17.12.2015	17.12.2015	17.12.2015	17.12.2015	17.12.2015	17.12.2015
3.	Satisfaction recorded by the A.O. of the person search and of the assessee (common satisfaction)	21.12.2015					21.12.2015
4.	Grounds to challenge the impugned assessment order as invalid because of non est notice issued u/s. 153C of the Act where satisfaction was recorded later as above.	Gr. No.2 to 4	Gr. No.2 to 4	Gr. No.2 to 4	Gr. No.2 to 4	Gr. No.2 to 4	Gr. No.2 to 4

Shri Vishnu Eatables (India) Ltd						
AY	2008-09	2009-10	2010-11	2011-12	2013-14	
Appeal No.	1440/Del/2021	1441/Del/2021	1442/Del/2021	1443/Del/2021	1440/Del/2021	
S.No.	Particulars					
1.	Panchanama dated	17.01.2014				
2.	Notice issued u/s. 153C of the Act	04.12.2015	04.12.2015	04.12.2015	04.12.2015	04.12.2015
3.	Satisfaction recorded by the A.O. of the person search and of the assessee (common satisfaction)	10.12.2015	10.12.2015	10.12.2015	10.12.2015	10.12.2015
4.	Grounds to challenge the impugned assessment order as invalid because of non est notice issued u/s. 153C of the Act where satisfaction was recorded later as above.	Gr. No.2	Gr. No.2	Gr. No.2	Gr. No.2	Gr. No.2

5. On behalf of the assessee reference was made to the judgment rendered in the case of ***Pepsi Food P. Ltd., vs. ACIT (2014) 52 taxmann.com 220 (Del.)*** for the proposition that conclusive satisfaction that documents belongs to or pertain to as the

case may be to a person other than such person, is paramount and a condition precedent for assumption of jurisdiction under section 153C of the Act. On facts, the satisfaction for the purposes of assumption of jurisdiction was recorded subsequent to issue of notice under section 153C of the Act and thus conclusive satisfaction was not available on the date of assumption or jurisdiction. It is further contended that subsequent recording of satisfaction after assumption of jurisdiction cannot act as supplement to cure the jurisdictional defect.

6. In the light of facts brought on record, it is straightway noticed that satisfaction notes have been recorded under section 153C subsequent to the issuance of respective notices to the assessee under section 153C of the Act. This factual position remains unassailed. As a corollary, on the date of assumption of jurisdiction under section 153C by issuance of notice under section 153C, there was no satisfaction note available on the records of the revenue to enable the AO to put the provision of section 153C in motion. The issuance of notice under section 153C is therefore a complete non starter. The jurisdiction assumed by virtue of such notice is therefore clearly vitiated. The consequent assessment orders in pursuance of such vitiated notices are thus clearly bad in law. On this score alone, all the assessment orders requires to be quashed. We do so accordingly.

7. In the light of observations made in the preceding paras, we do not consider it necessary to examine other grounds of appeal and other points of contention.

8. Resultantly, all the appeals of the assessee captioned above are allowed.

Order dictated and pronounced in the open court on 27.06.2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: 13th June, 2023.

NV/-

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ITA Nos. 3999 to 4004 /Del/2018
ITA Nos. 1440 to 1444 /Del/2021

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi