

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI
BEFORE,
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.8985/Del/2019
(ASSESSMENT YEAR 2012-13)

ITA No.8986/Del/2019
(ASSESSMENT YEAR 2013-14)

ITA No.8987/Del/2019
(ASSESSMENT YEAR 2014-15)

Dy.CIT Central Circle-1 Gurugram	Vs.	Sh. Jethmal Mehta J-398, Indian Overseas Bank Building] New Rajender Nagar New Delhi PAN-AETPM 7817A
(Appellant)		(Respondent)

Cross Objection No.160/Del/2022
(Arising out of ITA No.8985/Del/2019)
(ASSESSMENT YEAR 2012-13)

Cross Objection No.161/Del/2022
(Arising out of ITA No.8986/Del/2019)
(ASSESSMENT YEAR 2013-14)

Cross Objection No.162/Del/2022
(Arising out of ITA No.8987/Del/2019)
(ASSESSMENT YEAR 2014-15)

Sh. Jethmal Mehta J-398, Indian Overseas Bank Building] New Rajender Nagar New Delhi PAN-AETPM 7817A	Vs.	Dy.CIT Circle-9(1), New Delhi
(Cross Objector)		(Respondent)

Appellant by	Mr. Anuj Garg, Sr. DR
Respondent by	Mr. Rajat Jain and Mr. Akshat Jain, CAs
Date of Hearing	16/06/2023
Date of Pronouncement	19/07/2023

ORDER

PER M. BALAGANESH AM:

This appeal of the Revenue arises out of the common orders of the Learned Commissioner of Income Tax (Appeals)-3, Gurugaon, [hereinafter referred to as 'Ld. CIT(A)'] in Appeal No. 292,293,294 & 295/CIT(A)-3/GGN/2016-17 dated 06/09/2019 against the order passed by the Deputy Commissioner of Income Tax, Central Circle-I, Gurugaon, (hereinafter referred to as the 'Ld. AO') u/s 153A(1) (b) of the Income Tax Act (hereinafter referred to as 'the Act') on 28/03/2016 for the Assessment Years 2012-13, 2013-14 & 2014-15 respectively. Whereas, the assessee also filed Cross Objections in all these appeals.

2. The common grounds raised by the Revenue in these three appeals i.e. ITA No.8985, 8986, 8987/Del/2019 for AYs 2012-13 to 2014-15 respectively.

“i) The AO has recorded his satisfaction note that incriminating documents seized possession of Sh. Rakesh Yadav and Sh. Rajbir Goyat reveals that Sh. Jethmal Mehta had en into various cash transactions with them. Further, during the course of assessment proceedings AO has established that the said documents belong to Sh. Jethmal Mehta and accordingly add was made in the hands of the assessee.

ii) Section 153C has been amended by the Finance Act, 2015 w.e.f. 01.06.2015. Being procedural provisions, these will apply to all the proceedings u/s 153C initiated after 01.06.2015. Also satisfaction note in the instant case was recorded on 18.02.2016. As per substituted section 153C proceedings u/s 153C can be initiated on the basis of satisfaction of the AO that any books of accounts or documents, seized or requisitioned, pertains or pertain to, or any information contained the relates to a person other than the person referred to in section 153A.

iii) During the post search enquiries, the assessee submitted an excel sheet which confirmed genuineness and authenticity of the transactions mentioned in seized documents. The fact regard these financial transaction was also accepted by the assessee before the DDIT (Inv.)-II. Gurgaon which is also mentioned in para 4 of the assessment order.

iv) In the satisfaction note, it is clearly mentioned by the AO that the documents have been handed over to the concerned jurisdictional AO of the person i.e. Sh. Jethmal Mehta.”

3. The common grounds has been raised by the assessee except with variance in figures in Cross Objections i.e. C.O. No.160, 161 & 162/Del/2022:-

“1. That on the facts and circumstances of the case and provisions of law, the satisfaction note recorded by Ld AO is illegal and bad in law as single satisfaction for all the years (2008-09 to 2014-15) has been recorded by the AO.

2. That on the facts and circumstances of the case, the order passed under section 153C is bad and liable to be quashed, as no opportunity was given to be appellant regarding transfer/change of jurisdiction as having been passed by the AO having no proper jurisdiction consequently the order passed by the AO having no proper jurisdiction.

3. *That on the facts and circumstances of the case, the learned AO has erred, both on facts in law, in making addition of Rs. 6,75,17,615/- to the returned income on account of alleged cash receipts by invoking the provisions of section 68.*

4. *That on the facts and circumstances of the case, the learned AO has erred, both on facts in law, in making addition of Rs 2,82,020/ to the returned income on account of unexplained investment in jewellery.*

5. *Assessee craves leave to add alter modify any ground of cross objection at the time of hearing.”*

4. Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience. With the consent of both the parties, the appeal by the Revenue for Asst. Year 2012-13 is taken up as the lead case and the decision rendered thereon shall apply with equal force for AYs 2013-14 and 2014-14 except with variance in figures.

5. The Revenue has raised the revised grounds of appeal for AY 2012-13 which are as under:

i. Whether on facts and circumstances of the case and in law, the Ld CIT(A) while allowing the appeal on grounds that the conditions for issue of notice u/s 153C were not satisfied in absence of seized documents belonging to the assessee erred and misread the relevant facts and circumstances as well as legal provisions of section 153C.

ii. Whether on facts and circumstances of the case, the Ld CIT(A) erred in holding that the seized material did not belong to the assessee but Sh. Rakesh Yadav and Sh. Rajbir Goyat.

iii. Whether on facts and circumstances of the case the Ld CIT(A) failed to appreciate that section 153C has been amended by the Finance Act, 2013 w.e.f 01.06.2015 and as per amended section 153C, proceedings u/s

153C can be initiated on the basis of satisfaction of the AO that any books of account or documents, seized or requisitioned, pertains or pertain to, or any Information contained therein relates to a person other than the person referred to in section 153A. Being procedural provisions, these will apply to all the proceedings u/s 153C initiated after 01.06.2015 and the satisfaction note in the instant case was recorded on 18.02.2016.

iv. The appellant craver to add amend alter or modify any grounds of appeal at the time of hearing.”

6. We have heard the rival submissions and perused the materials available on record. The assessee is having income from business of profession. The search and seizure operation u/s 132 of the Act was carried out in the residential and business premises of Antriksh Group of cases on 05/02/2014. Pursuant to this search, the jurisdiction of the assessee was transferred to Central Circle vide order passed by the Principal Commissioner of Income Tax u/s 127 of the Act dated 15/02/2016. The Ld. Assessing Officer (“AO” for short) records in para 2 page-1 of the assessment order that a notice u/s 153A(1) r.w.s. 153C of the Act dated 18/02/2016 was issued and served upon the assessee, requiring the assessee to file return of income for AY 2012-13. In response to the said notice, the assessee submitted copy of its return of income originally filed on 10/09/2012 declaring total income of Rs.62,04,570/-. From these facts it could be safely concluded that assessment in the hands of

the assessee was actually framed u/s 153C of the Act and not u/s 153A of the Act. Sh. Rakesh Yadav, belonging to Antriksh Group was subjected to search u/s 132 of the Act on 05/02/2014. The Assessing Officer of the searched party recorded satisfaction that certain documents were found and seized from the premises of Sh. Rakesh Yadav, belongs to assessee herein. Accordingly, proceedings were sought to be initiated in the hands of the assessee u/s 153C of the Act. On receipt of such satisfaction, the Assessing Officer of the assessee also recorded satisfaction note stating that documents seized from the premises of Rakesh Yadav during the course of his search belongs to assessee and initiated proceedings u/s 153C of the Act in the hands of the assessee. This satisfaction was recorded by the Ld. AO on 18/02/2016. In the search assessment framed u/s 153C of the Act, the Ld. AO made addition on account of jewellery amounting to Rs.2,80,020/- and Rs.6,75,17,615/- on account of unaccounted cash receipts and determined the total income of the assessee for AY 2012-13 at Rs.7,40,02,205/-.

7. Before the Ld. CIT(A), the assessee submitted that a perusal of the satisfaction note reveals that the seized documents were found from the possession as well as from the premises of Sh. Rakesh Yadav and Sh. Rajbir Goyat and the same did not belong to the assessee. The satisfaction note merely mentions that some pages in the seized materials indicate various cash transactions carried out by Sh. Rakesh Yadav ; that some documents are incriminating in nature and that those transactions were carried out by the assessee with Sh. Rakesh Yadav and accordingly proceedings u/s 153 C of the Act ought to be initiated in the hands of the assessee. It was argued that the presumption in terms of section 132(4A) r.w.s. 292C of the Act would be that seized documents seized from the premises of the person should be presumed to be belonging to that searched person, unless it is rebutted and otherwise by the AO with cogent materials. It was specifically submitted as under:

- * *The seized materials on the basis of which the Ld AO has recorded satisfaction and made addition were found from the premises of Rakesh Yadav and Rajbir Goyat.*
- * *The assessee is not the owner of the seized materials.*
- * *These are handwritten extracts which have no evidentiary value.*

- * *Assessee has no control over the intention of the person who has written the seized documents.*
- * *During the course of search proceedings, no one has stated that the said diary belongs to the assessee.*
- * *The Ld. AO has not produced any conclusive evidence on the basis of which can claim that the seized diary belongs to the assessee.*

Accordingly, it was pleaded that the Ld. AO had failed to establish the fact that seized materials are belonging to the assessee. Hence, the very assumption of jurisdiction u/s 153C of the Act in the hands of the assessee was patently illegal. Further, it was also pleaded that the contents of the seized materials and pages mentioned in the satisfaction note do not contain the name of the assessee. The said materials are only having the surname of the person. The details of the same are tabulated in pages 3 & 4 of the assessment order. The Ld. AO in page 5 of the assessment order categorically admits the following facts:-

- (a) Various cash receipts and payments were found from the possession of the Mr. Rakesh Yadav and Sh. Rajbir Singh Goyat.
- (b) Such receipts and payments which were found from the possession of Mr. Rakesh Yadav and Mr. Rajbit Goyat are in

their hand writing and bearing their signatures which they have admitted during the course of investigation.

Later, the Ld. AO in page 6 of the assessment order records that the assessee did not bring any material on record which prove that assessee has nothing to do with such documents. The Ld. AO records that the said seized documents contain the name of the assessee and accordingly, proceeded to treat the cash transactions of receipts thereon as income of the assessee. On the contrary, the assessee has been categorically denying right from the assessment stage that the said seized documents does not contain the name of the assessee and does not belong to the assessee. It was also submitted before the Ld. CIT(A) that the satisfaction note recorded by the Ld. AO to initiate proceedings u/s 153C of the Act on the assessee, did not contain concrete satisfaction that the said seized document contains the name of the assessee and thereby belongs to the assessee. It was also pleaded before the Ld. CIT(A) that assessment for the AY 2012-13 had become final as on the date of search as time limit for issuance of notice u/s 143(2) had expired and that the said assessment becomes concluded assessment as on

date of search. Since, no incriminating material pertaining to the assessee qua the additions made by the Ld. AO were found during the course of search of Sh. Rakesh Yadav and Sh. Rajbir Singh Goyat, no additions ought to have been made in the hands of the assessee while framing the assessment u/s 153C of the Act.

8. The Ld. CIT(A) summarized the entire contentions of the assessee and sought for remand report from the Ld. AO. The Ld. AO submitted the remand report vide letter dated 29/05/2019 before the Ld. CIT(A) through proper channel. The Ld. CIT(A) reproduced the satisfaction note recorded by the Ld. AO for initiating proceedings u/s 153C of the Act on the assessee which reads as under:

"Captioned assessee's main source of income is salary as he happens to be the direct company of the Antriksh group of companies. By virtue of the authorization of the Director of Income Tax (Investigation, Chandigarh, a search & seizure operation u/s 132(1) of the A carried out on 05.02.2014 at the residential/business premises of the persons associated wi Antriksh group.

Perusal of the incriminating documents appearing at page no. 12 of Annexure-15, Page no. 285-288, 69, 17, 110 16, 18 & 19 of Annexure-11 and Page no. 74,129,137,13 44, 45, 95, 120, 123,124, 127 & 129 of Annexure-12 as also various other incriminating documents which were seized from the premises or Sh. Rakesh Yadav revealed that Sh. Jethmal Mehta had entered into various cash transactions with Sh. Rakesh Yadav. With reference to the above mentioned pages, there are huge number of cash receipts and payments found to been made. The aforesaid incriminating documents were seized from the possession of Sh. R. Yadav

& Sh. Rajbir Goyat as per documents seized the total unexplained cash transactions o Antriksh group with sh. Jethmal Mehta amounts to receipts of Rs 19,63,95,000/- and payments of Rs 16,90,67,615/-.

In view of the above and as per the provisions of sub-section (1) of section 153C of the am satisfied that the documents seized from the business premises of M/s Antriksh group be to a person other than the person referred to in section 153A. I have thus reason to believe income chargeable to tax in respect of Sh. Jethmal Mehta has escaped assessment for the a mentioned assessments years. In order to bring such concealed income within the ambit of taxation, it is necessary to issue notice to such other person viz. Sh. Jeth Mal Mehta, 1-398 Rajinder Nagar, New Delhi and assess or reassess his income in accordance with the provisions of section 153C r.w.s. 153C of the Act.”

9. The Ld. CIT(A) quashed the assessment framed u/s 153C of the Act in the hands of the assessee by observing as under:

“6.10. (i) It is apparent from the satisfaction note recorded in the case of appellant that documents seized in the search of M/s Antriksh Group do not belong to Sh. Jeth Mal Mehta but some other person, Sh. Rakesh Yadav and Sh. Rajbir Goyat in this case.

(ii) In this connection, it is pertinent to mention section 292C of the Act places presumption that the material found during the course of search belongs to the searched person and the contents of such books of account and other documents are true. So it is the obligation of the AO as well as the searched person to prove that the incriminating material found during the course of search in fact does not belong to the searched person, but belonged to the other person. Therefore, unless there is satisfaction recorded with valid reasons it cannot be simply presumed that the seized material does not belong to the searched person, but in fact belonged to the other person. Therefore, satisfaction of the assessing officer of the searched person is mandatory requirement to transfer the records and to hold that the incriminating material found in the premises of the searched person in fact belonged to such other person.

(iii) The AO in the satisfaction note has not listed the documents which were to be handed over to the AO of the person (appellant in this case) to whom the said document "belongs" as per provisions of section 153C of the Act.

(iv) Unless and until, it is established that the documents do not belong to the searched person, the provisions of section 153C of the Act do not get

attracted as the satisfaction note itself must display the reasons or basis for the conclusion that the AO of the searched person is satisfied that the seized documents belong to a person other than the searched person. These conditions have not been established in the satisfaction note of the appellant recorded by the AO for the years under consideration.

(v) The contention of the JCIT, Central Range in the remand report during the appellate proceedings that the provision of section 153C of the Act has been amended with effect from 01.06.2015 and the issue may be considered as per the amended provision cannot be accepted as the search in Antriksh Group of cases was conducted on 05.02.2014 and the change brought about by the prospective amendment in section 153C of the Act w.e.f. 1 June 2015 is that for initiating proceedings under section 153C arising from searches after that as held by Hon'ble Delhi High Court in the case of Canyon Financial Services. In the present case, since the proceedings u/s 153C of the Act arises from search conducted before 1 June 2015, AO had the burden of showing that the seized document in fact belongs to (and not merely pertain to) the appellant.”

Keeping in view the facts and circumstances of the case as discussed above and respectfully following the decision of Hon'ble Courts as discussed in the order and Hon'ble Supreme Court in the case of CIT v/s Singhad Technical Education Society, wherein it was held that document seized 'should belong to a person other than person referred to in section 153A of the Act', it is held that assumption of jurisdiction u/s 153C of the Act is not in accordance with law and hence held to be erroneous.

6.11 Further, in view of the above discussion, the additions which have been made by the AO on the basis of documents related to the appellant and not belonging to him during the year(s) under consideration in case of the appellant are discussed as hereunder:-

AY 2011-12

Addition of Rs. 59,50,000/- on account of unaccounted transactions has not been made on the basis of any document belonging to the appellant. It has been done on the basis of documents found during search at the premises of Sh. Rakesh Yadav & Sh. Rajbir Goyat, wherein cash transactions with appellant were recorded. It has further been mentioned in the satisfaction note that these documents are in their (Sh. Rakesh Yadav & Sh. Rajbir Goyat) hand writing and bearing their signatures, which they have admitted during the course of investigation.

AY 2012-13

(i) Addition of Rs. 2,80,020/- u/s 69A of the Act on account of unexplained investment in silver jewellery is not based on any incriminating material found during the search.

(ii) Addition of Rs. 6,75,17,615/- on account of unaccounted transactions has not been made on the basis of any document belonging to the appellant. It has been done on the basis of documents found during search at the premises of Sh. Rakesh Yadav & Sh. Rajbir Goyat, wherein cash transactions with appellant were recorded. It has further been mentioned in the satisfaction note that these documents are in their hand writing and bearing their signatures, which they have admitted during the course of investigation.

AY 2013-14

(i) Addition of Rs.7,98,000/- u/s 69A of the Act on account of unexplained investm in jewellery is not based on any incriminating material found during the search.

(ii) Addition of Rs. 2,50,00,000/- on account of unaccounted transactions has not be made on the basis of any document belonging to the appellant. It has been done the basis of documents found during search at the premises of Sh. Rakesh Yada Sh. Rajbir Goyat, wherein cash transactions with appellant were recorded. It further been mentioned in the satisfaction note that these documents are in th hand writing and bearing their signatures, which they have admitted during course of investigation.

AY 2014-15

(i) Addition of Rs. 7,06,00,000/- on account of unaccounted transactions has not made on the basis of any document belonging to the appellant. It has been don the basis of documents found during search at the premises of Sh. Rakesh Yada Sh. Rajbir Goyat, wherein cash transactions with appellant were recorded. It further been mentioned in the satisfaction note that these documents are in t hand writing and bearing their signatures, which they have admitted during course of investigation.

7. As the appeal has been decided on legal grounds with regard to assumption of jurisdiction by the AO to issue notice u/s 153C r.w.s 153A, other grounds are not adjudicated.

8. As a result, the appeal(s) of the appellant are allowed for the years under consider i.e. AY 2011-12, 2012-13, AY 2013-14 and AY 2014-15.”

10. It is not in dispute that the document containing certain cash entries (both receipts and payments) which are tabulated in pages 3 & 4 of the assessment order were seized from the premises of Sh. Rakesh Yadav and Sh. Rajbir Goyat belonging to Antriksh Group, during the course of their search on 05/02/2014. It is not in dispute that the said tabular form contained a surname called 'Mehta', which was suspected by the Department to be representing Sh. Jethmal Mehta, the assessee herein. The assessee had categorically denied in his reply that these transactions were not at all related to him and he has nothing to do with the same. This goes clearly to prove that assessee had categorically disowned seized document as not belonging to him or pertaining to him or relating to him. Admittedly these seized documents were seized from the premises of Sh. Rakesh Yadav and Sh. Rajbir Kumar Goyat during the course of their search and hence the presumption in terms of section 292C of the Act would be that the said document belongs/pertains/relates to the searched person. It is not in dispute that the seized documents were in the handwriting of searched person. However, the aforesaid presumption could be

rebutted by the AO of the searched person with cogent material by recording a satisfaction note that the said material does not belong/pertain/relate to the searched person but instead belongs/pertains/relates to some other person (a 3rd party). The only material available with the Revenue is the surname 'Mehta' used in the said seized document which is assumed by the Revenue to be Jethmal Mehta i.e., the assessee herein. He had categorically denied right from the inception that his name is not at all mentioned in the seized document. No cogent evidence has been brought on the record by the Revenue to prove that the surname mentioned in the seized document in fact refers to Jethmal Mehta i.e., the assessee herein. The entire seized documents that is the subject matter of the addition were placed on record by the Ld. AR before us. On perusal of the same, we find that nowhere the name of Jethmal Mehta is mentioned and only the surname Mehta is mentioned. We find that the Revenue was not able to collaborate the seized document with any other transactions belonging/pertaining/ relating to the assessee to give weightage to these seized documents. Hence, the said seized document becomes

merely dumb documents in the hands of the assessee. In our considered opinion, the assessee cannot be held to be having control over what the third person records in his regular books of accounts or in the parallel books of account. Here the seized documents are merely loose sheets not forming part of the books of account of the assessee and that they do not constitute admissible evidence and are to be merely discarded as dumb documents as there are no other corroborative material or evidence to link those documents.

11. Before us, the Ld. DR vehemently relied on the letter dated 16/06/2014 filed before the DDIT-II, Investigation, Gurugaon, accepting the financial transactions mentioned in the seized document in this regard. It is pertinent to note that the letter dated 16/06/2014 was not filed by the assessee before the Investigation Wing. Instead, this letter dated 16/06/2014 was filed by Antriksh Group before the DDIT, Investigation, Gurugaon. The assessee does not belong to Antriksh Group. The assessee also filed an affidavit clearly affirming that the letter dated 16/06/2014, accepting the financial transactions recorded in the seized documents was not

filed by the assessee herein. This fact is further confirmed from pages 13 to 14 of the PB filed by the Revenue before us which contains the letter dated 16/06/2014 filed before the DDIT, Investigation, wherein Antriksh Group of companies had owned up the entire transaction and had come forward to offer Rs 13.95 Crores as their undisclosed income for AY 2014-15 spread over six companies belonging to the said group. We are conscious of the fact that the Hon'ble Supreme Court in the recent decision in the case of ITO vs. Vikram Sujitkumar Bhatia reported in [2023] Live Law (SC) 274 dated 06/04/2023 in Civil Appeal No.911/2022 had held that the amendment brought in Section 153C of the Act w.e.f 01/06/2015 ought to be construed retrospectively and would apply in respect of searches conducted prior to 01/06/2015 also. Respectfully relying on the said decision, the observation made by the Ld. CIT(A) in para 6.10(v) is hereby reversed. However, the other observations made by the Ld. CIT(A) that the satisfaction note recorded by the Ld. AO for initiating proceedings u/s 153C of the Act did not specify the nature of transactions; did not contain the name of the assessee in clear terms and said seized documents did

not belong/pertain/relate to the assessee remains un-controverted by the Revenue before us with cogent evidences. The Revenue right from the inception has been assuming that the surname Mehta mentioned in the seized documents refers to Jethmal Mehta i.e., the assessee herein. We have already given our observations in this regard (supra) that assessee had categorically denied the contents of the seized materials when they were confronted to him. The assessee cannot be expected to prove the negative. On the contrary, the Ld. AO is supposed to bring on record with cogent evidences while recording the satisfaction note that a particular seized document which was seized from the premises of Rakesh Yadav does not belong to/pertain/relate to them and that the said documents belongs/pertains/relates to the assessee herein by duly mentioning the nature of transactions carried thereon and duly bringing on record with other cogent/collaborative evidences implicating the assessee thereof. This has not been done by the Revenue in the instant case. This conclusion of ours is further fortified from the fact that neither Sh. Rakesh Yadav nor Sh. Rajbit Goyat during the course of statement recorded from them u/s

132(4) of the Act had mentioned even the name of the assessee anywhere. The copy of the statements recorded from them are enclosed pages 1 to 40 of the Paper Book filed by the Department before us. Hence, no proceedings per se could be initiated on the assessee u/s 153C of the Act based on the seized documents found in the premises of Rakesh Yadav and Rajbir Goyat. Accordingly, we do find any infirmity in the observations made by the Ld. CIT(A) in para 6.10 from (i) to (iv) in page 26 of his order. Accordingly, revised grounds (i) & (ii) raised by the Revenue are dismissed and revised ground (iii) raised by the Revenue is allowed.

12. During the course of hearing, the Ld. AR stated that the Cross Objections preferred by the assessee are not pressed. This is reckoned as statement made from the Bar and, accordingly, the Cross Objections preferred by the assessee are hereby dismissed as not pressed.

13. In the result, appeals of the Revenue for AYs. 2012-13, 2013-14 & 2014-15 are partly allowed and Cross Objections of the assessee for these three years are dismissed.

Order pronounced in the open court on 19th July, 2023.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated:19/07/2023

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI