

**आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“C” BENCH, CHENNAI**

**माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI V. DURGA RAO, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकर अपील सं./ ITA No.553/Chny/2022**  
**(निर्धारण वर्ष / Assessment Year: 2010-11)**

&

**आयकर अपील सं./ ITA No.554/Chny/2022**  
**(निर्धारण वर्ष / Assessment Year: 2011-12)**

&

**आयकर अपील सं./ ITA No.555/Chny/2022**  
**(निर्धारण वर्ष / Assessment Year: 2012-13)**

&

**आयकर अपील सं./ ITA No.556/Chny/2022**  
**(निर्धारण वर्ष / Assessment Year: 2013-14)**

<b>Smt. L. Ammini</b> 24/13-A, Mariamman Kovil Street, Salem-636 003.	<b>बनम</b> / Vs.	<b>ACIT</b> Central Circle, Salem.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No.	<b>ABUPA-1999-F</b>	
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी/ <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Appellant by</b>	:	Shri T.S.Lakshmi Venkataraman (FCA)-Ld.AR
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	Shri R.Clement Ramesh Kumar (CIT)- Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	08-08-2023
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	23-08-2023

**आदेश / ORDER**

**Per BENCH:**

1. Aforesaid appeals by assessee for Assessment Years (AY) 2010-11 to 2013-14 arises out of common order passed by learned

Commissioner of Income Tax (Appeals)-18, Chennai, [CIT(A)] dated 31-05-2022 in the matter of separate assessments framed by Ld. DCIT, Central Circle, Salem (AO) u/s.143(3) r.w.s 153C of the Income Tax Act on 14-03-2014. The assessment for AY 2013-14 has been framed u/s. 143(3) vide order dated 18-12-2015.

2. For AYs 2010-11 to 2012-13, Ld. AR, drew our attention to ground No.2 and submitted that in the absence of any satisfaction note recorded by Ld. AO of searched person, framing of assessment u/s 153C is bad in law. For the same, Ld. AR relied on the decision of Hon'ble Supreme Court in the case of **M/s. Super Malls Pvt. Ltd. Vs. PCIT-8 (115 Taxmann.com 105)** dated 05-03-2020 which has considered its earlier decision passed in **CIT vs. Calcutta Knitwears (43 Taxmann.com 446)**. The Ld. AR also relied on CBDT Circular No.24/2015 dated 31-12-2015 which state that for the purpose of Sec.158BD, the recording of satisfaction is prerequisite and satisfaction note must be prepared by AO before he transmits the record to the other AO who has jurisdiction over such person. The CBDT has also accepted the position that this principle would apply to proceedings u/s 153C also. The Ld. CIT-DR, on the other hand, submitted that AO of searched person as well as the present assessee is same and satisfaction note has been recorded in the case of the assessee which is sufficient compliance of law. The Ld. CIT-DR referred to the observations made by Hon'ble Apex Court in the cited decision of **M/s. Super Malls Pvt. Ltd. (supra)**. Having heard rival submissions and upon perusal of case record, our adjudication for these three years would be as under. The assessee being resident individual is

stated to be engaged in business under proprietorship concern by the name M/s Jayakumar Textiles.

### **Proceedings before lower authorities**

3.1 From perusal of case records of AY 2010-11, it transpires that a search was conducted by the department on 10-01-2012 at residential premises of one Shri Madanlal D. Chawla of Salem. During the search, a copy of Sale Agreement was found which was entered into between Shri Sanjay M. Chawla s/o Shri Madanlal D. Chawla and the assessee. The document was seized. Upon perusal of this document, Ld. AO arrived at a conclusion that real estate profit of Rs.17 Lacs was unaccounted income of the assessee. Accordingly, notice u/s 153C was issued and the assessee was directed to file the requisite details. After considering assessee's submissions, Ld. AO made certain addition on account of income from land sale and property sale. Similar assessments were framed for AYs 2011-12 and 2012-13.

3.2 During appellate proceedings, the assessee assailed impugned additions by way of elaborate written submissions which have been extracted in the impugned order. One of the legal grounds raised by the assessee was that the order of Ld. AO was opposed to facts and not maintainable. The assessee submitted that no satisfaction note was recorded by AO of searched person i.e., Shri Madanlal D. Chawla and therefore, jurisdiction acquired by Ld. AO u/s 153C stood vitiated. However, Ld. CIT(A) rejected the same on the ground that AO of the searched person and the assessee was one and the same and satisfaction note was recorded in the case of the assessee which was sufficient compliance of provisions of Sec.153C. The issue, on merits,

was also adjudicated against the assessee by following first appellate order in the case of Shri Sanjay M. Chawla. Aggrieved, the assessee is in further appeal before us wherein Ld. AR submit that the jurisdiction acquired by Ld. AO in all these years is bad in law.

### **Our findings and Adjudication**

4. From the facts, it is amply clear that no satisfaction note has been recorded by AO of searched person i.e., Shri Madanlal D. Chawla but the same has been recorded only in case of assessee for whom an assessment has been framed u/s 153C. This fact has also been observed by Ld. CIT(A) in para-9 of the order. The same is further substantiated by department's reply against assessee's RTI application wherein, in reply dated 30.03.2021, it has been stated as under: -

Consequent to the search conducted in the case of Shri Madanlal Chawla, the Assessing officer, based on the documents found during the course of search, believed that there was an income that escaped assessment in the case of the applicant. Smt. L. Ammini. A satisfaction note to that effect is recorded in the case of the Applicant and assessment proceedings were initiated subsequently.

The Assessing officer being same for both the cases, there was no requirement to record a satisfaction note pertaining to the applicant in the file of Shri. Madanlal Chawla,

Thus, the undisputed position that emerges is that no satisfaction note has been recorded by AO in case of searched person i.e., Shri Madanlal D. Chawla. The argument of Ld. CIT-DR is that since AO of searched person as well as the AO of the assessee is one and the same person, it is sufficient compliance of law if the satisfaction note is recorded in either of the case. However, we find that the same run contrary to CBDT circular No. 24/2015 which read as under: -

#### **CIRCULAR NO.24/2015 [F.NO.279/MISC./140/2015/ITJ], DATED 31-12-2015**

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 Knitweaves 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. The Hon'ble Court held that "the 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. "

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.

(emphasis supplied by us)

It could thus be seen that recording of satisfaction note by AO of searched person is mandatory but vice versa may not be true. The primary requirement is that AO of the searched person should record satisfaction before transmitting the record to other person having jurisdiction over such other person u/s 158BD. This requirement would apply even if AO of searched person as well as other person is one and the same. From para-2 as extracted above, it is quite clear that such a satisfaction note could be prepared by AO of searched person at various stages of framing of assessment u/s 158BC. Therefore, in our considered opinion, in the absence of satisfaction note in the case of searched person, the proceedings u/s 153C would be vitiated by law.

The recording of satisfaction note in the case of present assessee is not sufficient compliance of law.

5. The case law of Hon'ble Supreme Court in the case of **M/s. Super Malls Pvt. Ltd. Vs. PCIT-8 (115 Taxmann.com 105)** also supports this view. The adjudication of Hon'ble Court was as under: -

3.2 That in the present case there was no satisfaction note by the Assessing Officer of the searched party. That as per the scheme of section 153C of the Act, the Assessing Officer of searched person, i.e., the Directors in this case has to be firstly "satisfied" that any money, jewellery or other valuable articles, books of account or documents seized or requisitioned "belong to", i.e., in this case, the assessee company, a person other than the person referred to under section 153A of the Act. It is submitted that thereafter and on being satisfied that the books of account or documents or assets so seized or requisitioned shall be handed over by the Assessing Officer of searched person, i.e., the Directors in this case to the Assessing Officer having jurisdiction over such other person i.e., the assessee company. That the aforesaid requirements before issuing notice under section 153C of the Act are held to be mandatory by this Court in catena of decisions. Reliance is placed upon the decision of this Court in the case of CIT v. Calcutta Knitwears [2014] 43 taxmann.com 446/223 Taxman 115 (Mag.)/362 ITR 673 (SC); decision of the Delhi High Court in the case of Pepsi Food (P.) Ltd. v. Asstt. CIT [2014] 367 ITR 112 (Delhi); decision of the Gujarat High Court in the case of CIT v. Bipinchandra Chimanlal Doshi [2017] 79 taxmann.com 211/395 ITR 632; and the decision of the Delhi High Court in the case of Ganpati Fincap Services (P.) Ltd. v. CIT [2017] 82 taxmann.com 408/395 ITR 692.

3.3 That even the CBDT also issued a Circular explaining the requirements to be followed by the Assessing Officer before issuing notice under section 153C of the Act. That the said Circular has been referred to and considered by the Delhi High Court in the case of Ganpati Fincap Services (P.) Ltd. (supra) and after considering the various decisions of different High Courts, it is observed that when proceedings are proposed to be initiated under section 153C of the Act against the "other person", it has to be preceded by a satisfaction note by the Assessing Officer of the searched person. It is further observed that he will record in his satisfaction note that the seized documents belong to "other person". That in the present case there was no satisfaction note by the Assessing Officer of the searched person. That there is a non-compliance of the provisions of Section 153C of the Act as well as even the Circular issued by the CBDT and therefore the learned ITAT rightly set aside the assessment order.

3.4 Making the above submissions and relying upon the aforesaid decisions, it is prayed to allow the present appeals.

4. Shri Arijit Prasad, learned Senior Advocate appearing on behalf of the Revenue, while opposing the present appeal/s has vehemently submitted that in the facts and circumstances of the case and after considering the satisfaction note recorded by the Assessing Officer, the High Court has rightly observed and held that there is a

sufficient compliance of section 153C of the Act. In support he has made the following submissions:

4.1 That in the present case, the Assessing Officer of the assessee and the Assessing Officer of the searched person was the same and therefore if one looks at the satisfaction note, it can be seen that there is a satisfaction note by the Assessing Officer of the searched person also. It is submitted that as the Assessing Officer was the same, there was no question of thereafter transmitting the documents so seized from the searched person to another Assessing Officer as he himself was the Assessing Officer of the searched person as well as the Assessing Officer of the assessee. Therefore, there was a sufficient compliance of the requirements under section 153C of the Act.

4.2 That even as observed and held by the Delhi High Court in the case of Ganpati Fincap Services (P.) Ltd.(supra), in case the Assessing Officer of the searched person and the other person is the same, there need not be two separate satisfaction notes recorded by the Assessing Officer of the searched person, where he is also the Assessing Officer of the other person.

4.3 Making the above submissions and relying upon the aforesaid decision, it is prayed to dismiss the present appeals.

5. We have heard the learned counsel for the respective parties at length.

5.1 As observed hereinabove, the short question which is posed for the consideration of this Court is, whether there is a compliance of the provisions of Section 153C of the Act by the Assessing Officer and all the conditions which are required to be fulfilled before initiating the proceedings under section 153C of the Act have been satisfied or not?

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.

6.2 Now let us consider from the satisfaction note recorded by the Assessing Officer, in the present case. Whether there is a sufficient compliance of section 153C of the Act or not. The satisfaction note reads as under:

.....

From the aforesaid satisfaction note, it emerges that the Assessing Officer is satisfied that the documents containing the details of the cash receipts on sale of shop/offices at M/s. Super Mall, Karnal belonged to the other person - assessee - M/s. Super Mall. He is also satisfied that the documents/pen drive are seized from the searched person. He is also satisfied that the documents so seized from the residence of the searched person/Ved Prakash Bharti belonged to the assessee the other person. Therefore, the Assessing Officer was satisfied and it is specifically mentioned that the documents so seized belonged to the assessee-the other person. Therefore, it cannot be said that the mandatory requirements of section 153C of the Act, in the facts and circumstances of the case, have not been complied with. The satisfaction note by the Assessing Officer clearly states that the documents so seized belonged to the other person - the assessee and not the searched person. Thus, the High Court is justified in observing that the requirement of section 153C has been fulfilled. On facts, we are in complete agreement with the view taken by the High Court on the requirement of section 153C of the Act being fulfilled by the Assessing Officer before initiating the proceedings under section 153C of the Act.

7. In view of the above and for the reasons stated above, all these APPEALS fail and the same deserve to be dismissed and are accordingly dismissed. Now, the learned ITAT shall decide and dispose of the appeals afresh on merits, at the earliest, in accordance with law, as observed by the High Court in the impugned Judgment(s) and Order(s).

From the aforesaid decision, it clearly flows that satisfaction note in case of searched person is mandatory requirement before acquiring jurisdiction u/s 153C of the Act. In this note, AO has to reach a conclusion that the documents seized / recovered belonged to the other person. Thereafter, this satisfaction note along with documents may be transmitted to Assessing Officer having jurisdiction over such other person. Thus, when proceedings are proposed to be initiated u/s 153C against the "other person", it has to be preceded by a satisfaction note by the Assessing Officer of the searched person. Without fulfilling this requirement, no jurisdiction could be acquired u/s 153C.

6. In the case law of Hon'ble High Court of Madras in **R.K.M. Powergen (P.) Ltd. (146 Taxmann.com 68)**, as referred to by Ld. CIT-DR, AO of the searched person has recorded the requisite satisfaction. The same is not the case here. Similar is the case law of Indore Tribunal in **Yogesh Jhingan (135 Taxmann.com 351)** wherein AO of searched person has recorded the satisfaction. Therefore, these case laws are distinguishable.

7. In the present case, undisputedly, no satisfaction has been recorded by AO of search person i.e. Shri Madanlal D Chawla. Therefore, the jurisdiction acquired for AYs 2010-11 to 2012-13 u/s 153C stood vitiated by law and liable to be quashed. We order so. The corresponding grounds raised by the assessee stand allowed. The other

grounds have been rendered academic in nature. All three appeals stand allowed.

8. In AY 2013-14, the short point urged by Ld. AR is that adjudication done by Tribunal in the case of Shri Sanjay Chawla vide ITA Nos.394 to 396/Chny/2021 & ors. order dated 31.05.2023 may be applied. The copy of the order has been placed on record. The brief facts are that the assessee admitted Long Term Capital Gains of Rs.39.09 Lacs on sale of 19976 Sq. ft. of land. The said land was purchased jointly with Shri Sanjay Chawla, a real estate dealer. The assessee admitted sale consideration @352/- per sq. ft. whereas Ld. AO proposed rate of 1152/- per Sq. ft. After considering assessee's objections, Ld. AO adopted rate of Rs.750/- per Sq. ft. and re-computed gains of Rs.127.82 Lacs and held that the same would be assessable as business income. The Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us.

9. Upon perusal of para-12 of Tribunal order in the case of Shri Sanjay Chawla (supra), it could be seen that the Tribunal has estimated sale rate of Rs.400/- per sq. ft. on sale of land. The assessee has purchased the plots in joint ownership with Shri Sanjay Chawla. Therefore, we direct Ld. AO to adopt sale rate of Rs.400/- per Sq. ft. So far as the head of income is concerned, we find that the assessee has consistently developed and sold plot of lands. The intention was to develop and sell the land as real estate dealer. The assessee has also incurred development expenses for plotting out the land and selling the same. The land has been sold as vacant house sites and not as single tract of land. The land has been purchased jointly with Shri Sanjay

Chawla who is into real estate business. For all these reasons, the income has rightly been assessed as 'Business Income'. We order so. The appeal stand partly allowed.

10. The appeals for AYs 2010-11 to 2012-13 stands allowed whereas the appeal for AY 2013-14 stands partly allowed.

*Order pronounced on 23<sup>rd</sup> August, 2023*

**Sd/-**

**(V. DURGA RAO)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

**Sd/-**

**(MANOJ KUMAR AGGARWAL)**

**लेखासदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 23-08-2023  
DS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF