

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No.: 2635/CHNY/2018

निर्धारण वर्ष/Assessment Year: 2015-16

The DCIT,
Central Circle-2,
Coimbatore – 641 018.

M/s. Sakthi Constructions,
vs. 102, 2nd Floor,
Sheikh Dawood Street,
Erode – 638 001.

PAN: ABNFS 9165J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by
प्रत्यर्थीकीओरसे/Respondent by

: Shri R. Clement Ramesh Kumar, CIT
: Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 10.10.2023

घोषणा की तारीख/Date of Pronouncement : 18.10.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-18, Chennai in ITA Nos.226 to 230/17-18 dated 10.05.2018. The assessment was framed by the Assistant Commissioner of Income Tax, Central Circle-2, Coimbatore for the assessment year 2015-16 u/s.153C r.w.s. 143(3) of the

Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 30.12.2017.

2. At the outset it is noticed that this appeal is time barred by 12 days. The Revenue received the impugned appellate order on 02.07.2018 and appeal was to be filed on or before 31.08.2018 but actually it was filed on 12.09.2018 thereby there was a delay of 12 days. The Revenue has filed condonation petition stating the reason that the assessment records from higher authorities were received only on 06.09.2018 and thereafter immediately appeal was filed. When this was confronted to Id.counsel for the assessee, he has not objected for condonation of delay. Hence, we condone the delay and admit the appeal.

3. The only issue in this appeal of Revenue is as regards to the order of CIT(A) holding that the assessment order passed u/s.153C r.w.s. 143(3) of the Act dated 30.12.2017 is void ab initio and invalid as the same is without jurisdiction. For this Revenue has raised various ground which are argumentative and hence, need not be reproduced.

4. Brief facts are that a search was conducted u/s.132 of the Act on RRP Infra Projects Ltd., on 24.03.2016. Consequent to this search, premise of the assessee i.e., Sakthi Constructions was also searched on 24.03.2016. Consequent to these search proceedings of RPP Infra Projects Ltd., books of accounts and documents pertaining to assessee i.e., Sakthi Constructions was seized. Consequently notice u/s.153C of the Act was issued to the assessee for the assessment year 2011-12 to 2015-16 on 23.08.2017. In response to these notice u/s.153C of the Act, assessee filed its return of income for the relevant assessment year 2015-16 on 15.12.2017 and accordingly, assessee's case was scrutinized after issuance of notice u/s.143(2) of the Act dated 18.12.2017. Accordingly, assessment was completed vide assessment order dated 30.12.2017 u/s.153C r.w.s. 143(3) of the Act. Aggrieved against the order, assessee preferred appeal before CIT(A).

5. Before CIT(A), assessee challenged the issue of assumption of jurisdiction for issuance of notice u/s.153C of the Act and stated that once search has been conducted on the business premises of assessee, assessment should have been framed u/s.153A r.w.s. 143(3) of the Act. The CIT(A) after going through the submissions

of the assessee and the provisions of section 153C of the Act held that the assumption of jurisdiction by the AO u/s.153C of the Act and consequent framing of assessment order is not legally correct and he quashed assessment on this issue by observing in para 5 as under:

5. I have perused the Asst. Order, statement of facts, grounds of appeal, written submissions and case laws relied on by the appellant. After going through the same, the issues are decided accordingly. Before going into the issues, a relevant point is to be mentioned, In that the appellant objected to the issuance of notice u/s. 153C, on the ground that a separate search has been conducted at its premises consequent to which, only notice u/s. 153A should have been issued. In this regard, it is considered essential to elaborate the facts of the case to understand as to how far the objection of the appellant is tenable.

As per the AO, a search was conducted in the case of M/s. RPP Infra Project Limited, Erode on 24.3.2016. The premises of M/s. Sakthi Constructions has also been searched on the same day as they are sub-contractor to M/s. RPP Infra Project Limited, Erode. In continuation of the search proceedings, on 12.4.2016 in the premises of M/s.Sakthi Constructions Erode, certain loose sheets numbering 1 to 47 have been found and seized and marked as ANN/RB/SC/LS/S, Page 1 to 47, On perusal of loose sheets marked as ANN/RB/SC/LS/S, it is found to belong to M/s, Sakthi Constructions No. 102, Sheikh Davood Street, Erode. These loose sheets contain details of bogus sub-contract payments made by M/s. Sakthi Constructions during the FYs, 2010-11 to 2015-16 relevant to AYs 2011-12 to 2016-17. These are having a bearing on determination of the total income of the appellant for the AYs. 2011 -12 to 2016-17.

From the above, it can be seen that the appellant is not the "other person" as enunciated in Sec. 153C. This is because there were two search proceedings separately one at M/s. RPP Infra Project Limited and the other at the premises of the appellant. Nothing incriminating was found at the premises of M/s. RPP Infra Project Ltd which can be said to relate to the

appellant. Even the loose sheets seized from the appellant's premises are the ones maintained in the course of regular business only and they cannot be termed as "incriminating materials".

From the above facts it is clear that during search at the premises of M/s.RPP Infra Project Limited, no incriminating documents relating to M/s.Sakthi Constructions , the appellant were found, So, there is no question of writing any satisfaction note by the AO who conducted the search at the main person i.e. M/s. RPP Infra Project Limited. Even In the proforma for recording satisfaction u/s. 153C, it has been mentioned as under:

The contents of the tabular statements clearly show that the alleged seized material were recovered only from the appellant's premises and this being the case issuance of notice u/s. 153C is legally not correct and he should have issued notice u/s153A.

A reading of Sec. 153C clearly shows that the Impugned assessments made u/s. 153C rws 143(3) are not legally tenable, In order to assimilate the same, important features of Sec. 153C are given below:

- (i) It covers cases of persons where no search is initiated u/s. 132.....*
- (ii) For the purpose of initiating proceedings against such other person, the AO is now required to be satisfied about two conditions these are*
 - a) That money, bullion, jewellery and other assets seized or requisitioned belong to the third party not covered by the search.*
 - b) That the books of account documents seized during search are taken possession u/s. 132A "pertain to" another person, the information contained therein relates to such other person.....*
- (iii) Upon satisfaction of either or both the requirements, the AO is required to handover such assets and books and books to the jurisdictional AO to initiate the proceedings u/s. 153C.*
-*
- (iv) The provisions as they stand now have put beyond doubt that satisfaction is required to be recorded at two stages - once, before handing over the seized assets and books by the AO of the searched party and secondly by the jurisdictional AO before he embarks upon the exercise of making the assessment.....*

In the circumstances, the assumption of jurisdiction by the AO u/s. 153C and consequent framing of assessments are not legally correct.

Aggrieved, now Revenue is in appeal before Tribunal.

6. Before us, the Id.CIT-DR Shri R. Clement Ramesh Kumar first of all assailed the order of CIT(A) stated that the CIT(A) has not gone into the legal provisions of search u/s.132 of the Act as well as the provisions for framing of search assessment u/s.153A and 153C of the Act. The Id.CIT-DR first of all produced before us a search warrant issued by Director of Income-tax (DIT), Coimbatore i.e., warrant of authorization u/s.132 of the Act r.w.s. 112(1) of the Income Tax Rules, 1962 (hereinafter the 'Rules') issued in Form No.35, by virtue of which the searched person u/s.132 of the Act vide dated 24.03.2016 is M/s. RPP Infra Projects Ltd. The Id.CIT-DR took us through the search warrant issued in Form No.35 and stated that consequent to this search warrant issued in the name of M/s. RPP Infra Projects Ltd., the premises of the office of M/s. Sakthi Constructions located at 102, Sheik Davood Street, Erode 638 001 was covered because the documents and books of accounts pertaining to M/s. RPP Infra Projects Ltd., was kept in the premises of M/s. Sakthi Constructions. He stated that once the main search is conducted and warrant of authorization in Form No.35 is issued in the name of RPP Infra Projects Ltd., and consequent to this

premises of M/s. Sakthi Constructions was covered, the AO is obliged to issue notice u/s.153C of the Act only. For this, the Id.CIT-DR took us through the provisions of section 132 & 153A & 153C of the Act. The Id.CIT-DR explained the provisions of assessment in the case of search assessment u/s.153A & 153C of the Act. He explained that whenever a search is conducted under section 132 of the Act or books of account or other documents or any assets are requisitioned under section 132A, provision of section 153A of the Act comes into operation. This section, inter alia, provides for assessment or reassessment of total income in respect of each assessment year falling within a period of six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or books of account, etc. are requisitioned. Time limit for completion of such assessment or reassessment is provided in section 153B of the Act. He further explained that sub-section (1) of section 153C provides that where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to

the Assessing Officer having jurisdiction over such other person. The Assessing Officer shall then proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A. Accordingly, the provisions of newly inserted sub-section (2) of section 153A of the Act shall also apply in case of annulment of assessment order or proceeding under section 153C of the Act. Apart from this, the Id.CIT(A) also filed a satisfaction note that issuing notice u/s.153C of the Act in the case of the assessee M/s. Sakthi Constructios because the premises of Sakthi Constructions has also been search as a consequent to authorization warrant issued u/s.132 of the Act in the case of RPP Infra Projects Ltd., and hence, the AO has rightly framed assessment u/s.153C of the Act and there is no infirmity or illegality in the assessment conducted u/s.153C r.w.s. 143(3) of the Act. Hence, he argued before the Bench to uphold the assessment order.

7. On the other hand, the Id.counsel for the assessee again referred to Form No.35 and stated that search has been conducted in the premises of M/s. Sakthi Construcitons i.e, the assessee and in page 2 of Form No.35, it is very categorical that the authorization

issuing authority has suspected that the books of accounts, other documents, money, bullion, jewellery or other valuable articles or things have been kept or to be found in the office of M/s. Sakthi Constructions located at 102, Sheik Davood Street, Erode 638 001 and this assessee was covered u/s.132 of the Act vide authorization u/s.132 of the Act dated 24.03.2016. The Id.counsel for the assessee also drew our attention to Panchanama which is enclosed in assessee's paper-book at pages 49 to 101 and relevant page No.49 indicates that warrant to search was in the case of Sakthi Constructions. He referred to the first two clauses i.e., clause (A) & clause (B) of the Panchanama which reads as under:-

- (A) Warrant in the case of -- M/s. RPP Infra Projects Ltd., Erode
- (B) Warrant to search (Details & --- M/s. Sakthi Constructions
Ownership of place of search) No.102, Sheik Dawood Street, Erode
Telephone Numbers

As per this Panchanama, income-tax search party has seized the books of accounts and other documents vide Panchanama dated 12.04.2016. In view of the above, the Id.counsel stated that once the authorization issued and search took place in the premises of the assessee i.e., Sakthi Constructions, assessment has to be framed u/s.153A of the Act and not u/s.153C of the Act and CIT(A) has rightly annulled the assessment. Apart from that, the

Id.counsel for the assessee relied on the decision of Hon'ble High Court of Madras in the case of A.V.S. Sivaraj vs. CIT, [2013] 213 Taxman 61 (Mad), wherein the issue of limitation was discussed.

8. We have heard rival contentions and gone through facts and circumstances of the case. We have gone through the provisions of section 132, 153A & 153C of the Act. We noted that the provisions of section 153A of the Act, very categorically states that whenever a search is conducted u/s.132 of the Act, the provisions of section 153A of the Act comes into operation and the provisions of section 153C of the Act provides that where an AO is satisfied with any money or bullion, etc., seized or requisitioned belongs or belonging to a person other than a person referred to in section 153A of the Act, then the books of accounts or documents or assets seized or requisitioned shall be handed over to the AO of such other person having jurisdiction of assessment and AO will accordingly make assessment u/s.153A r.w.s. 143(3) of the Act. We are also of the view, after analyzing the provisions of section 153A & 153C of the Act that the opening portion of section 153A of the Act makes it clear that it applies to a person in respect of search is initiated u/s.132 of the Act, while section 153C refers to a person in respect

of whom any money, bullion, etc., seized or requisitioned belongs and hence, the persons mentioned in section 153A are specifically excluded from section 153C of the Act. The provisions of section 153C of the Act explains and relates to assessment of income of any person other than the person in whose case search has been initiated or requisition is made. The provisions contained in sub-section (1) of section 153C of the Income-tax Act, before its amendment by the Act, provided that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the said Act, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to any person, other than the person referred to in section 153A of the said Act, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A of the Income-tax Act. Section 153C of the Income-tax Act has been amended to provide that notwithstanding anything contained in

section 139, section 147, section 148, section 149, section 151 and section 153 of the said Act, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to any person, other than the person referred to in section 153A of the said Act, then books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A if he is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A of the Income-tax Act.

8.1 The case law cited by Id.counsel for the assessee of Hon'ble High Court of Madras in the case of A.V.S. Sivaraj, *supra*, we are of the view that the same is distinguishable on facts as the Hon'ble High Court was seized with the matter of limitation and it is not

applicable to the present facts of the case as the same is disputed on whether assessment is to be completed u/s.153A or 153C of the Act. In the present case, there is no dispute about limitation whereas, before Hon'ble High Court of Madras dispute is only of limitation. Hence, this decision is clearly distinguishable on facts. In the present case, from facts we reach to a conclusion that the searched person as per the provisions of section 132 of the Act, issuance of warrant of authorization in Form No.35 is in the name of RPP Infra Projects Ltd., and consequent action was carried out in the premises of the assessee M/s. Sakthi Constructions for recovering the suspected books of accounts, other documents, money, bullion, jewellery, etc. Hence once warrant of authorization is issued in the name RPP Infra Projects Ltd., it cannot be concluded that search has been conducted in the premises of the assessee u/s.132 of the Act, which is primary condition for framing assessment u/s.153A of the Act. It is other person other than the searched person. Therefore, assessee's case clearly falls under the provision of section 153C of the Act and the AO has rightly framed assessment u/s.153C r.w.s. 143(3) of the Act and we uphold the order of the AO and reverse the order of CIT(A) on this issue. This issue of Revenue's appeal is allowed.

9. As regards to the merits of the case, the CIT(A) has simply made a passing reference and without speaking and discussing anything on facts held that there is no incriminating material except the regular books of accounts. For this, he referred as under:-

Further, the materials seized are also nothing but regular books of account maintained during the course of business only and cannot be termed as "incriminating material". It may also be mentioned here that the appellant's claim that contract works were entrusted to sub-contractors is genuine which is evident from the fact that the sub-contractors have filed their individual returns of income and offered the same to tax. While coming to the conclusion that the sub-contractors are benamles of the appellant, the AO had not made any attempt to strengthen his conclusion by making independent enquiries with the sub-contractors or by recording their sworn statements. Having not done this exercise, the AO's conclusion cannot be held to be correct or based on any concrete evidence, Had the AO contacted these sub-contractors, they would have corroborated the submissions of the appellant.

The appellant relies on the following decisions in support of its claim:

- a. Principal Commissioner of Incometax Vs Smt. Sunita Bai (78 Taxmann.com 274), Karnataka*
- b. CIT Vs Singhad Technical Education Society (Civil Appeal 11081 to 11083 of 2017 dated 29.8.2017)*

In all these decisions it was emphasized that the invoking of provisions of Sec. 153C without seizure of any incriminating material is not valid.

Viewing from all these, the appellant's main ground questioning the jurisdiction of the AO is correct and accordingly allowed.

In the circumstances, I am of the considered view that since the assessments themselves have no legs to stand, the other grounds raised by the appellant against additions/disallowances, have become infructuous and hence are dismissed.

The Revenue has rightly raised the issue that the CIT(A) has not decided the issue on merits and hence, we set aside the order of CIT(A) and remand the matter back to the file of the CIT(A) on merits only and direct him to decide the issue on merits afresh after giving reasonable opportunity of being heard to the assessee.

10. In the result, the appeal filed by the Revenue is partly-allowed for statistical purposes.

Order pronounced in the open court on 18th October, 2023 at Chennai.

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA.G)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 18th October, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|-------------------------|--------------------------|--------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त /CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्ड फाईल/GF. | |