

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA Nos.8511 to 8516 /Del/2019
Assessment Years: 2011-12 to 2016-17

ACIT, Central Circle-II, Gurgaon	Vs.	Sh. Sanjay Jindal, S-34, Okhla Industrial Area, Phase-II, Delhi
PAN :ADKPJ3514F		
(Appellant)		(Respondent)

With

Cross Objection Nos. 17 to 22/Del/2020
[Arising out of ITA Nos.8511 to 8516 /Del/2019]
Assessment Years: 2011-12 to 2016-17

Sh. Sanjay Jindal, S-34, Okhla Industrial Area, Phase-II, Delhi	Vs.	ACIT, Central Circle-II, Gurgaon
PAN :ADKPJ3514F		
(Appellant)		(Respondent)

Assessee by	Dr. Rakesh Gupta, Advocate Sh. Somil Agarwal, Advocate Sh. Deepesh Garg, Advocate
Department by	Sh. Ashish Chandra Mohanty, CIT(DR)

Date of hearing	05.12.2023
Date of pronouncement	21.12.2023

ORDER

PER BENCH

Captioned appeals by the Revenue and corresponding cross objections by the assessee arise out of a consolidated order of learned Commissioner of Income Tax (Appeals)-3, Gurgaon, pertaining to assessment years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17.

2. Since common issues are involved in all these appeals and cross objections, they have been clubbed together and disposed of in a common order for the sake of convenience. At the outset, we propose to deal with the appeals of the Revenue. As the grounds raised by the Revenue in all the appeals are common, the grounds raised in ITA No. 8511/Del/2019 are reproduced as under for the sake of convenience:

1. *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 incriminating material belonging to the assessee erred and misread the relevant facts and circumstances as well as legal provisions of section 153C.*
2. *Whether on facts and circumstances of the case and in law the Ld. CIT(A) while allowing the appeal on the ground that*

there was no incriminating material erred in applying ratio of the decision in case of Sinhgad Technical Education Society without appreciating that the said decision was rendered with reference to the provisions of section 153C as they stood prior to 01.10.2014 where the nature of documents which could trigger issue of notice u/s 153C was not at all specified whereas after amendment with effect from 01.10.2014 specific condition has been prescribed for issue of notice w/s 153C stating that the material belonging/relating to assessee should have a "bearing on assessment of income of other person". Hence, the test of presence of incriminating material is not at all a pre-requisite for making assessment u/s 153C.

3. *Whether on the facts and circumstances of the case and in law, the CIT(A) failed to appreciate that the expression "bearing on the assessment of income" has very wide connotation and it envisages that seized material need not by itself indicate the undisclosed income at the time of recording satisfaction w/s 153C but it should only be in nature of prima facie material having live nexus to the belief of it having bearing on assessment of income and not in the nature of absolute evidence which by itself could suggest/divulge The examination of such undisclosed income without any further act of investigation /examination. material of having undisclosed income or not is a step envisaged only after issue of notice u/s 153C.*
4. *Whether on the facts and circumstances of the case and in law, the CIT(A)erred in allowing the appeal on ground that there was no incriminating material for the relevant assessment year, without appreciating that section 153C provides for issue of notices for block of six assessment years in the manner provided u/s 153A, meaning thereby if conditions for issue of notice w/s 153C are fulfilled, assessment year-wise identification/quantification of undisclosed income is not envisaged at the stage of issuance of notice w/s 153C r.w. section 153A.*
5. *Whether on the facts and circumstances of the case and in law, the CIT(A) failed to appreciate that the material seized*

during the search operation did constitute/fulfill the condition of having a bearing on assessment for purpose of issue of notice u/s 153C in context of the assessee because it was found that the assessee Sh. Sanjay Jindal prop. M/s Jindal Fashion was providing accommodation entries of bogus purchases to M/s Orient Craft Ltd. directly or through the bogus companies floated by the promoters of M/s Orient Craft group.

6. *The appellant craves to add, amend, alter or modify any grounds of appeal at the time of hearing.*

3. As could be seen from the grounds raised, the common issue arising for consideration is whether due to alleged lack of proper satisfaction recorded by the Assessing Officer under section 153C of the Act, the assessment orders passed for the assessment years under dispute are invalid.

4. Briefly the facts are, the assessee is a resident individual. On 29.04.2015, a search and seizure operation under section 132 of the Act was carried out on Orient Craft group. As alleged, in course of such search and seizure operation, certain incriminating materials belonging/pertaining to the assessee were found. Based on the aforesaid facts, proceedings under section 153C of the Income-tax Act, 1961 (in short 'the Act') were initiated in case of the assessee. The specific allegation is that during search and seizure operation, computerized books of account of

M/s. Orient Craft Ltd. were seized, wherein certain purchases effected from M/s. Jindal Fashion, a proprietary concern of the present assessee were found. It is alleged that from the premises of M/s. Orient Craft Ltd., the books of account of various other entities were also found, which revealed purchase from M/s. Jindal Fashions. In other words, it was found that M/s. Orient Craft Ltd. has booked purchases from M/s. Jindal Fashions directly or through the companies floated in name of its employees. Thus, based on the seized materials found at the time of search and seizure operations, the Assessing Officer called upon the assessee to furnish the necessary details of sales and purchases by M/s. Jindal Fashion and also to furnish the bank statements. On going through the bank statements, the Assessing Officer was of the view that the purchases effected by M/s. Jindal Fashions are non-genuine. Accordingly, he disallowed the purchases made by M/s. Jindal Fashions from various entities by treating them as bogus and added back to the income of the assessee. The assessee contested the aforesaid additions by filing appeals before learned first appellate authority.

5. Before the first appellate authority, the primary contentions of the assessee were to the effect that the proceeding initiated under section 153C of the Act is invalid, as, the Assessing Officer has not recorded proper satisfaction. Accordingly to assessee, the satisfaction recorded neither refer to any specific seized materials nor the assessment years, to which, the seized materials relate to. It was further contended by the assessee that the additions ultimately made by the Assessing Officer were not based on the seized materials. In support of such contention, the assessee relied upon various judicial precedents, such as, CIT Vs. Sinhgad Technical Education Society, (2017) 84 taxmann.com 290(SC) and CIT Vs. Kabul Chawla 380 ITR 573 (Del). After going through the materials on record, including the satisfaction note of the Assessing Officer and other materials and being convinced with the submissions of the assessee, learned first appellate authority ultimately concluded that assumption of jurisdiction under section 153C of the Act is not in accordance with law and, hence, erroneous. Accordingly, he allowed assessee's appeals.

6. Before us, learned Departmental Representative referring to the satisfaction note of Assessing Officer under section 153C of

the Act, submitted that the Assessing Officer has clearly recorded his satisfaction for initiation of proceedings under section 153C of the Act. He submitted, at the stage of recording of satisfaction, the Assessing Officer based on the materials available, has to form a *prima facie* opinion that the seized materials pertained to the person, other than the person, who has been searched. He submitted, the satisfaction recorded by the Assessing Officer is in accordance with the provisions of the Act. He submitted, after amendment of section 153C(1) of the Act by Finance Act, 2015 w.e.f. 01.06.2015, the Assessing Officer can initiate proceeding under section 153C of the Act, if he is satisfied that the seized materials pertain to a thirty party. He submitted, the decision of the Hon'ble Supreme Court in the case of CIT Vs. Sinhgad Technical Education Society (supra) would not apply to the facts of the present appeal, as, the said decision was rendered in the context of provision prior to the amendment made in 2015. Proceeding further, he submitted, the additions made are based on incriminating materials.

7. Per contra, drawing our attention to the satisfaction note, learned counsel for the assessee submitted that it neither refers

to any seized material nor the assessment years to which they relate to. Thus, he submitted, the satisfaction note is not based on any incriminating material found during search and seizure operation. Relying upon the decision of the Hon'ble Supreme Court in case of CIT Vs. Sinhgad Technical Education Society (supra), learned counsel submitted that it is the duty of the Assessing Officer to record in the satisfaction note, which are the documents belonging/pertaining to assessee and to which assessment years they relate to. He submitted, none of the above conditions have been fulfilled by the Assessing Officer while recording satisfaction note. He submitted, in the satisfaction note, the Assessing Officer has doubted the genuineness of purchases made by M/s. Orient Craft Ltd. and other group entities from M/s. Jindal Fashion, the proprietary concern of the assessee. Whereas, in case of the assessee, such sales have been accepted.

8. On the contrary, the purchases made by the assessee from various suppliers have been added back. Thus, he submitted, the additions made at the hands of the assessee are not with reference to any seized/incriminating materials found during the search. Therefore, such addition cannot be sustained in view of

the ratio laid down by the Hon'ble Supreme Court in case of CIT v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399.

9. Without prejudice, learned counsel submitted, while deciding the appeals of the searched person, viz., M/s. Orient Craft Ltd., the Tribunal has not only held the purchases made from M/s. Jindal Fashions, the proprietary concern of the assessee to be genuine, but also has recorded a factual finding that the books of account/materials seized in course of search and seizure operation conducted in case of M/s. Orient Craft Ltd. cannot be considered to be incriminating material found as a result of search, insofar as it relates to the purchase of fabric from M/s. Jindal Fashions, proprietary concern of the assessee. Thus, he submitted, learned first appellate authority was justified in deleting the additions. In support of such contention, he relied upon the following decisions:

1. *Pr. CIT Vs. M/s. Dreamcity Buildwell Pvt. Ltd. (2019) 417 ITR 617 (Del)*
2. *Pr. CIT Vs. Sarwar Agency Pvt. Ltd. (2017) 397 ITR 400 (Del.)*
3. *CIT & Ors. Vs. Renu Construction Pvt. ltd. & Ors. (2017) 399 ITR 262 (Del).*

4. *Orient Craft Ltd. Vs. DCIT, ITA Nos.3310/2019 and 5037/2019, dated 24.09.2021 for AY 2013-14 (Del)*
5. *Orient Craft Ltd. Vs. DCIT, ITA Nos. 3311/2019 and 5038/2019, dated 24.09.2021 for AY 2014-15 (Del.)*
6. *Orient Craft Ltd. Vs. DCIT, ITA Nos. 3312/2019 and 5039/2019, Dated 24.09.2021 for AY 2015-16 (Del.)*
7. *Orient Craft Ltd. Vs. DCIT, ITA Nos.3313/2019 and 5040/2019, dated 24.09.2021 for AY 2016-17 (Del.)*
8. *Sinhgad Technical Education Society Vs. ACIT (2011) 140 TTJ 233 (Pune)*
9. *CIT Vs. Sinhgad Technical Education Society (2015) 378 ITR 84 (Bom.)*
10. *CIT Vs. Sinhgad Technical Education Society, (2017) 397 ITR 344 (SC)*
11. *CIT Vs. Kabul Chawla, (2016) 380 ITR 573 (Del.)*
12. *Pr. CIT Vs. Meeta Gutgutia (2018) 257 Taxman 441 (SC)*
13. *Pr. CIT & Ors Vs. Meeta Gutgutia Prop. Ferns 'N' Petals & Ors. (2017) 395 ITR 526 (Del.)*

10. We have considered rival submissions in the light of the decisions relied upon and perused the materials on record. Learned first appellate authority has held the assumption of jurisdiction under section 153C of the Act as invalid on the following observations:

- (i) It is apparent from the satisfaction note recorded in the case of the appellant that documents seized in the

search of M/s Orient Craft Limited do not belong to M/s Orient Craft Ltd but some other person, Sh. Sanjay Jindal in this case.

- (ii) The AO in the satisfaction note has not listed the documents which were to be handed over to the AO of the person (same in this case) to whom the said document "belongs" as per provisions of section 153C of the Act.
- (iii) 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.
- (iv) In this case, the AO in the satisfaction note has not recorded any reason or established the nexus between the material seized from other person and the appellant in this case, so as to the appellant having "undisclosed income" during the year under consideration.
- (v) In the satisfaction note, the AO has not ever referred to the relevant assessment year to which documents pertained to and incriminating, which are essential for valid assumption of jurisdiction u/s 153 of the Act. This proposition of law has been upheld by Hon'ble Delhi High Court in the case of Pr.CIT Central-2 v/s Index Securities Pvt. Ltd 86 taxmann.com 84 (Delhi), CIT v/s RRJ Securities Ltd. 62 taxmann.com 391(Delhi), ARN Infrastructure Ltd. v/s ACIT 81 taxmann.com 260 (Delhi) and by the Hon'ble Supreme Court in the case of CIT v/s Singhad Technical Education Society 84 taxmann.com 290(SC)

- (vi) After perusing the "Satisfaction Note" recorded by the AO of the appellant, thus it is apparent that there is no mention of assessment years to which the documents relate and none of the documents even referred to are found to be incriminating.
- (vii) Further, no addition on basis of these documents has been made in the assessment order(s) for the year under consideration.

11. As could be seen from the observations of learned first appellate authority, he has held the assumption of jurisdiction under section 153C of the Act to be invalid for the following two reasons:

- (a) In the satisfaction note, the Assessing Officer has not listed the documents, which belongs to the assessee. Neither, he referred to the relevant assessment year, to which the seized documents pertain to and how they are incriminating in nature, and
- (b) No addition has been made at the hands of the assessee based on the seized documents.

12. Keeping in perspective the aforesaid finding of learned first appellate authority, let us examine the satisfaction note of the

Assessing Officer while assuming jurisdiction under section 153C of the Act, which is as under:

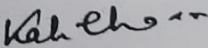
Reasons/ Satisfaction note for taking up the case of Sh. Sanjay Jindal Prop. M/s Jindal Fashion, S-34, Okhla Industrial Area, Phase-II, New Delhi - 110020, u/s 153C of the Income Tax Act, 1961.

By virtue of the authorization of the Principal Director of Income Tax (Investigation), Chandigarh, a search & seizure operation u/s 132(1) of the Act was carried out on 29.04.2015 at the residential/business premises of the persons associated with M/s Orient Craft group. During the course of search proceedings, it was noticed that the flagship company M/s Orient Craft Limited has booked purchases from M/s Jindal Fashion showing address as S-34, Okhla Industrial Area, Phase-II, New Delhi.

As per computerized books of accounts seized from the premises of M/s Orient Craft Ltd and information collected in response to the summons u/s 131 on M/s M/s Jindal fashion, it transpired that Sh. Sanjay Jindal Prop. M/s Jindal Fashion is providing bogus purchase bills to M/s Orient Craft Ltd and the bogus companies floated by the promoters of M/s Orient Craft Group on its employees name resulting into concealment of income.

In view of the above and as per the provisions of sub-section (1) of section 153C of the Act, I am satisfied that the documents seized from the business premises of M/s Orient Craft group belongs to a company other than the company referred to in section 153A., Sh. Sanjay Jindal Prop. M/s Jindal Fashion concealed income and evaded tax thereon. Accordingly, it is necessary to issue notice to such company Sh. Sanjay Jindal Prop. M/s Jindal Fashion, S-34, Okhla Industrial Area, Phase-II, New Delhi - 110020 and reassess its income in accordance and the provisions of section 153C r.w.s. 153A of the Act.

Date: 06.06.2017


(KALI CHARAN)
Deputy Commissioner of Income Tax
Central Circle-II, Gurgaon

13. On a careful scrutiny of the satisfaction note as reproduced above, it is quite clear that neither it refers to any particular seized material belonging or pertaining to assessee, nor the specific assessment years to which seized materials relate to. Even, assuming that certain materials were seized, however, the Assessing Officer has not mentioned how or in what way they are incriminating in nature. A reading of the satisfaction note clearly

shows that it is bereft of necessary and valid reasoning. The satisfaction note is bland, vague and contains general observations of the Assessing Officer. In case of Sinhgad Technical Education Society (supra), the Hon'ble Supreme Court has endorsed the view expressed by the Tribunal to the effect that the satisfaction note not only must contain the details of seized materials belonging to the assessee, but it must also contain the assessment years, to which they relate to and how they are incriminating in nature.

14. Though, learned Departmental Representative attempted to distinguish the aforesaid decision of the Hon'ble Supreme Court by referring to the amendment made to section 153C by Finance Act, 2015, however, we are not convinced.

15. In our view, the amendment to section 153C(1) of the Act by substituting the words "belonging to" with "pertaining to" would not negate the ratio laid down in the decision of the Hon'ble Supreme Court in case of Sinhgad Technical Education Society (supra). Therefore, we affirm the view of learned first appellate authority that the satisfaction note of the Assessing Officer under

section 153C of the Act is not in accordance with law, hence, the assumption of jurisdiction under the said provision is invalid.

16. Even otherwise also, the additions made would not be sustainable, as, they are not based on any incriminating materials found in course of search and seizure operations. As discussed earlier, proceedings under section 153C of the Act were initiated in case of assessee because of the reason that the purchases made by M/s. Orient Craft Ltd. from the assessee were in the nature of bogus purchases. Whereas, in case of the assessee, the Assessing Officer, while has not disturbed the sales effected to the Orient Craft group, but has treated the purchases made by the assessee's proprietary concern from various suppliers as non-genuine. Thus, it is evident, the additions made do not have any relation or nexus with the seized materials.

17. That being the case, it has to be held that the additions are not with reference to any incriminating material found as a result of search and seizure operations. That being the case, applying the ratio laid down by the Hon'ble Supreme Court in case of CIT Vs. Abhisar Buildwell (supra), the additions are unsustainable.

18. Lastly, we must observe, in case of M/s. Orient Craft Ltd., the Assessing Officer had made additions of the purchases made from the assessee by treating them as non-genuine. However, while deciding the appeals filed by M/s. Orient Craft Ltd. for various assessment years, viz., Assessment Years 2013-14 to 2016-17, the Tribunal has not only treated the purchases made from M/s. Jindal Fashions, assessee's proprietary concern, to be genuine but has also recorded a clear cut factual finding that the seized materials relating to purchases made from M/s Jindal Fashions cannot be considered to be incriminating in nature. In this context, we refer to the following decisions of the Tribunal:

1. *Orient Craft Ltd. Vs. DCIT, ITA Nos.3310/2019 and 5037/2019, dated 24.09.2021 for AY 2013-14 (Del)*
5. *Orient Craft Ltd. Vs. DCIT, ITA Nos. 3311/2019 and 5038/2019, dated 24.09.2021 for AY 2014-15 (Del.)*
6. *Orient Craft Ltd. Vs. DCIT, ITA Nos. 3312/2019 and 5039/2019, Dated 24.09.2021 for AY 2015-16 (Del.)*

19. Thus, looked at from any angle, no infirmity can be found in the decision of learned first appellate authority. Accordingly, we uphold the decision of learned first appellate authority in all these appeals by dismissing the grounds raised.

20. In the result, appeals are dismissed.

21. In view of our decision in the corresponding appeals filed by the Revenue, as above, the cross objections have become infructuous, hence, are dismissed.

22. In the result, all the appeals and cross objections are dismissed.

Order pronounced in the open court on 21st December, 2023

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 21st December, 2023.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi