IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA Nos. 508 to 510/Coch/2023
& SA No. 138 to 140/Coch/2023
(Assessment Years: 2008-09 to 2010-11)

K.K. Leissure TourismInternational (P.) Ltd. KK Plaza, Peravoor Kannur 670673 [PAN:AADCK3339E]	vs.	Dy. CIT, Central Circle-II Aayakar Bhavan North Block Kozhikode 673001
(Appellant)		(Respondent)

Appellant by:	Shri Paven Ved, Advocate
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	25.01.2024
Date of Pronouncement:	13.02.2024

O R D E R

Per Bench

This is a set of three Appeals by the Assessee agitating the dismissal of it's appeals contesting it's assessments under section 153A read with section 153C of the Income Tax Act, 1961 (the Act) dated 31.03.2015 for three consecutive years, being Assessment Years (AYs.) 2008-09 to 2010-11, by the Commissioner of Income Tax (Appeals)-3, Kochi [(CITA] vide his separate orders of even date, i.e., 16.06.2023. The assessee has also filed stay applications *qua* it's captioned appeals.

2. The appeals raising a common issue/s, per identically worded grounds, except, of course, for the difference in the quantum of addition under appeal, the same were heard together, and are being adjudicated per a common order. The impugned assessments follow a search u/s. 132(1) of the Act on a firm 'K.K. Builders', Kannur, conducted at the assessee's – running two bar hotels, Hotel Broad Bean,

Chakkarackal, besides a survey u/s.133A at Hotel Broad Bean, Kakkayangad, on 26.09.2012. This explains the assessments being u/s. 153A r/w s. 153C of the Act.

3.1 Before us, Shri Ved, the learned counsel for the assessee, would assail the assessments, each of which stands completed by making an addition for unexplained expenditure on construction of the assessee's two hotel buildings, i.e., at Chakkarackal and Kakkayangad, u/s. 69C of the Act, to it's returned income at nil, on the basis of the validity of the satisfaction note prepared u/s. 153C of the Act. Towards this, he would take us through the satisfaction notes (PB pgs. 167-169), which, again, identically worded, read as under, each bearing reference to the relevant year:

'ORDER SHEET

PAN: AADCK3339E A.Y. 2008-09/2009-10/2010-11 (*)

M/s. K.K. Leisures and Tourism International Pvt. Ltd.
Room No. PP-V528 C
K.K. Plaza, Peravoor,
Kannur

A search u/s.132 of the I.T. Act 1961 was conducted at the business premises of M/s. K.K. Builders on 26-09-2012 on the strength of warrant of authorization issued by the Director of Income Tax(Inv.), Cochin on 19-09-2012.

M/s. K.K. Leisures and Tourism International Pvt. Ltd., is a Company *engaged in the business of Bar Hotel*. Shri K.K. Mohandas is the Managing Director of the Company. The incriminating documents seized *from the business premises of the assessee reveal that they have suppressed the sales turnover*.

Therefore the income of the assessee is to be assessed u/s.153A(a) r.w.s. 153C of the 1.T. Act for the A.Ys. 2007-08 to 2012-13, after obtaining the approval from the JCIT, Central Range, Ernakulam.

Approval received for the issue of Notice u/s.153A r.w.s.153C vide F.No.JCIT/CR-EKM/Exam Note/CIT(A)/2013-14 dated 21-05-2013.

Notice u/s.153A r/w s. 153C of the I.T. Act, 1961 for the A.Y.2008-09/2009-10/2010-11'
(*)put up.' [(*) separately] (emphasis, ours)

There is no reference therein, he would continue, to the document/s seized. There is further no reference to the 'suppressed turnover', as referred to in the

satisfaction note, in the *only* document referred to in the assessment order/s (reproduced as under/marked as CHN-12-13/AJ/B-4(8) – refer para 9 of the impugned order), common for all the years under reference; the figures mentioned therein being clearly in respect of construction of the two hotel buildings, *qua* which accordingly addition u/s. 69C stands made in assessment/s:

EXPENSES SHOWN FOR THE CONSTRUCTION OF BUILDINGS

	BROAD BEAN KAKAYANGAD	BROAD BEAN KAKAYANGAD	BROAD BEAN CHAKKARAKL	BROAD BEAN CHAKKARAKL	
	2009-10	2010-11	2009-10	2010-11	
PURCHASES	725044	4807898	1271069	634139	
LABOUR	1534858	1896150	3338876	1263349	
LOADING & UNLOADING	26940	15905	21298	15425	
MAINTENANCE	2920	298790	84987	39020	
MISCELLANEOUS	14128	6150	9172	596	
TRANSPORTING	17250	15835	15190	3495	
HIRE		19680		8630	
TRAVELLING	20417		9649		
BANK INTEREST					
	2341557	7060408	4795241	1964654	16161860

TOTAL TO BE BILLED IN K.K. BUILDERS 16161860

Expenditure shown in K.K. Leisures & Tourism International Pvt. Ltd.

Upto 31.03.2011	Kakkayangad	Chakkarakkal	
Interest Share	9942220	13690485	
	1764480	2417311	
TOTAL	11706680	16107796	27814476

TOTAL BUILDING COST 43976336

Broad Bean, Kakayangad	-	101,50,000/-	(written by hand)
Broad Bean, Chakkarakl	-	73,00,000/-	(written by hand)

What, then, he would question, is the incriminating material on the basis of which the satisfaction note stands recorded, and jurisdiction for assessment/s u/s. 153A r/ws. 153C of the Act assumed? Upon being questioned in this respect, he would explain that the assessee, a part of the K.K. Builder's group, had, for the purpose of it's hotel

business, given the contract for construction of it's two hotel buildings to M/s. K.K. Builders, in civil construction business, and which were under construction during the relevant years. The document found, admittedly in its respect, represents though a loose working. The construction, even as per the Revenue, he would continue, adverting to Tables 1 &2 (in the assessment order) indicating expenditure thereon as per the valuation report and as recorded in the books of K.K. Builders, continued up to f.y. 2012-13 (i.e., AY 2013-14), with the business commencing only thereafter. There was accordingly no question of any turnover, much less suppressed, for the relevant years. The same also explains the assessee returning nil income for the said years in response to notices u/s. 153A(a). There is thus a complete mismatch between the document found in search, being admittedly the only document found in search for the relevant years, and the satisfaction note/s, i.e., assuming it as based thereon.

3.2 Smt. Devi, the ld. Sr. D.R., upon being questioned in this respect, could not tell us of any document seized in search for the relevant years, i.e., other than that referred to in the assessment order, or even of any reference to suppressed turnover therein, i.e., as stated in the satisfaction note/s.

4. We have heard the parties, and perused the material on record.

4.1 The only issue raised before us, in pursuance of the assessee's Gd. 1, is if the satisfaction note/s recorded is in terms of, or as contemplated under, section 153C of the Act, and if not so, the consequence thereof. That is, does it render the ensuing assessment/s irregular or the same fails for want of jurisdiction.

4.2 Section 153C, as it stood for the relevant years, reads as under:

Assessment of income of any other person.

153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned belongs 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 and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, for the relevant assessment year or years referred to in sub-section (1) of section 153A:

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(*a*) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(*b*) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(*c*) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

4.3 The law in the matter, which would therefore need to be applied, is by now well-settled per a series of decisions by the Hon'ble Apex Court, viz., *Super Malls Pvt. Ltd. v. Pr.CIT* [2020] 423 ITR 281 (SC); *CIT v. Sinhgad Technical Education Society* [2017] 397 ITR 344 (SC); and prior thereto *CIT v. Calcutta Knitwears*[2014] 362 ITR 673 (SC) and *Manish Maheshwariv. Asst. CIT* [2007] 289 ITR 341 (SC); the latter two being in the context of s. 158BD, which, similarly, requires a satisfaction

note (SN) to be recorded by the Assessing Officer (AO) of the person searched where the seized material/s reflects undisclosed income of another person, followed by transmission thereof, along with the said material, to the AO of the said other person. The only difference thus, inasmuch as s. 153A (r/w s. 153C) assessment is of the 'total income', as against a sec. 153BC (r/w s. 153BD) assessment, which was only for the undisclosed income (as defined u/s. 158B), is that the scope of income gets now widened to include any income, i.e., unless shown to be tax-exempt and, thus, not forming part of the total income. Two, while section 158BD required satisfaction in respect of undisclosed income and, further, of the other person, sec. 153C merely requires the seized material *to have a bearing on the determination of his total income for the relevant year/s*. This is understandable inasmuch as the issue of notice u/s. 153A r/w s. 153C is only a first step in the enquiry which is to follow on the other person, even as explained in, inter alia, *SSP Aviation Ltd. v. Pr. CIT* [2012] 346 ITR 177 (Del). The provision, it may be noted, does not contemplate any enquiry with the 'other person' prior to the issue of notice to him. Again, understandably, while the asset/s seized, as specified in the SN, would be that belonging to the 'other person', the document/s seized must pertain to, or information therein, relate to him. Though this aspect gets clarified; the law prior to the amendment to s. 153C by Finance Act, 2015, w.e.f. 01.06.2015, using the words 'belongs to' in relation to both, the valuables and the documents, this is how the law has always been understood as. Reference in this context may be made to the decisions in *Calcutta Knitwears* (supra)(para 38); *Singhad TES* (supra) (para 20); and *Super Malls* (supra) (para/pgs. 288,290). In the latter two cases, notice u/s. 153A(a) on the assessee, being the person other than the person searched, was prior to 01.06.2015. The evidentiary value of a document, it may be appreciated, is w.r.t. the information *qua* the income of the other person therein, and not of the document *per se*. Such a reading only would make the provision intelligible and workable, which denotes the manner in

which it is to be therefore interpreted, understood and applied, for which reference be made to decisions in *L. Hazari Mal Kuthiala v. ITO*[1961] 41 ITR 12 (SC); *Gursahai Saigal v.CIT*[1963] 48 ITR 1 (SC); *Calcutta Knitwears* (supra), to cite some.The third requirement is that the jurisdictional fact of the material having a bearing on the determination of the total income of the other person must be satisfied for each of the years for which notice u/s. 153A is being issued, initiating thus proceedings there-under, i.e., the jurisdiction is to be assumed year-wise.

4.4 Coming to the facts of the instant case, the satisfaction note/s, to begin with, even as pointed out by Shri Ved, does not specify the seized material leading to, and on the basis of which the satisfaction stands drawn by the AO. This specification eliminates any ambiguity in the matter, even as, without doubt, the satisfaction is to be preliminary, which may, upon subsequent enquiry, stand either fortified and clarified further, leading to the assessment of the hitherto undisclosed income, or neutralized on being satisfactorily explained, so as to cause no adjustment to the returned income in its respect in assessment, or partly one and partly another. Further, a look at the document/s seized noted in the assessment order/s (see para 3.1 above), which we were given to understand as being the only material pertaining to the assessee for the relevant years, and which is also the understanding one gets on reading the assessment orders inasmuch as there is no reference to any other material therein, it discloses no turnover, raising a serious doubt as to if the satisfaction is drawn on the basis thereof, emphasizing once again the need to specify it in the SN. That is, being the only seized material in relation to the relevant years, on the basis of which therefore the satisfaction is drawn, it bears no reference to turnover, much less suppressed, for it to lead to any satisfaction in its respect, validating it. No wonder there is no discussion thereon nor any explanation by the assessee in its respect, much less any adjustment to income with regard thereto, in the assessment order/s.

We are alive to the aspect that the 'satisfaction note' is not to be elevated to the status of a 'reason recorded' u/s. 148, and where the document/s seized reflects any information which has a bearing on the assessee's total income, the requirement of law is satisfied, i.e., for the purpose of assumption of jurisdiction. But, then, this is precisely what the satisfaction note, a mandatory requirement of law, is to state, w.r.t. the material seized, exhibiting thus the nature of the document and the resultant satisfaction. *Is it then, that the AO deliberately did not refer to the seized material in the SN*? We may not go thus far, and suffice to state that the satisfaction/s under reference neither stands the test of scrutiny nor otherwise meets the requirement of law. When we speak of scrutiny, we may again clarify that we are not in any manner suggesting the satisfaction to be justiciable, which even the reason recorded u/s. 148(2) is not, but only that it must bear information signifying a relevance, with reference to the material on which it is based, on the determination of the total income for the relevant year/s. This is as otherwise the jurisdictional fact would not be established. In the instant case, for example, it would be a different matter, even as observed by the Bench during hearing, where the satisfaction note/s stated, instead, of (unaccounted) investment/expenditure on the construction of a hotel building/s. True, the seized material reflecting expenditure at variance with that accounted for, demonstrates this fact. So, however, we cannot read the words '(undisclosed) investment/expenditure', instead of the words 'suppressed turnover', in the satisfaction note, ascribing it to a 'mistake', as that would change the very nature of the satisfaction recorded, clearly impermissible. That is, to read either the satisfaction note or the material on which it is stated as based any differently than what it actually states where it has the effect of changing it's character. An appellate court sitting in review cannot read a document establishing jurisdiction other than as by what it expressly states or by necessary implication, retaining its essential character. It would again be a different matter if the said satisfaction, which is the basis of the

jurisdiction, is not required to be in writing; the sole purpose of which is to transfer the relevant material, but inferable/discernable there-from. *This is as, without doubt, we clarify, the seized document by itself satisfies the mandate of law inasmuch as it reflects expenditure on construction, which is apparently not in agreement with the accounts*. However, reducing it in writing is not merely preferable, but a mandatory requirement of law, in which case the reviewing authority has to necessarily confine itself thereto. If anything, the satisfaction note/s in the instant case reflects a complete non-application of mind, both by the AO recording it in the manner done, as well as by the competent authority approving it, as indeed the draft assessment order/s, u/s. 153D of the Act. *How could there be suppressed turnover, when there is nothing to suggest commencement of business*? The said approval, also challenged by the assessee per it's Gd. 2 before us on non-application of mind, was not pressed. That, however, would not detain us inasmuch as our finding in its respect, i.e., non-satisfaction of the condition of s. 153D, also flows from the same set of arguments and facts. There is accordingly no deficiency in procedure. It is, after all, the correct legal position that is relevant, and not the view that the parties may take of their rights in the matter (*CIT v. C. Parakh & Co. (India) Ltd*. [1956] 29 ITR 661 (SC); *Kedarnath Jute Mfg. Co. Ltd. v. CIT* [1971] 82 ITR 363 (SC)). The Tribunal, as explained in *CIT v. Walchand & Co. (P.) Ltd*. [1967] 65 ITR 381 (SC), is to deal with and determine all questions which arise out of the subject-matter of an appeal in the light of evidence, and consistently with the justice of the case. We are, in this context, conscious that it could be argued that an invalid approval may not fail an assessment *per se*, but render it liable to be set aside for curing the defect; the satisfaction being, as afore-noted, immanent from the material seized. Whatever be the merits of the argument, the same shall not apply in the instant case inasmuch as our finding *qua* non-application of mind only endorses our finding of want of jurisdiction in the absence of a valid SN/s.

4.5 Coming to the impugned order, the first plea, i.e., on the basis of a clear dichotomy between the satisfaction recorded, and the seized material on which it is ostensibly based, was assumed before us for the first time and, being legal, on the basis of admitted facts, allowed to be raised. The same, thus, does not form part of the adjudication by the ld. CIT(A). As regards the approval u/s. 153D, the same, though raised and argued before him, was on non-application of mind *qua* a different basis (refer para 10/pgs. 6-7 of his order), with which we are therefore not concerned. As afore-noted, our finding/s in its respect flow from the same set of pleadings and admitted facts. This explains our non-reference to the impugned order.

5. We are, in view of the fore-going, accordingly of the view that the satisfaction note/s in the instant case does not meet the requirement of law, which only would lead to issue of a valid notice/s u/s. 153A(a). The approval/s u/s. 153D is again not a valid approval/s in law. The impugned assessment/s, thus, suffers from want of necessary jurisdiction, as also a valid approval u/s. 153D. The same is therefore bad in law, and cannot be given effect to. It is, in view thereof, not necessary to travel to the merits of the addition/s, also agitated in appeal/s. Our adjudicating the instant appeals renders the stay applications as infructuous. We decide accordingly.

6. In the result, the assessee's appeals are allowed, and it's stay applications dismissed as infructuous.

Order pronounced on February 13, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-	Sd/-
(Manomohan Das)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin, Dated: February 13, 2024
n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin