

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 684/DEL/2020 [A.Y. 2013-14]

M/s Bhanvi Buildtech Pvt Ltd
Shop No. 19, G/F, Pocket - E
DDA Market, Phase - 2

Vs.

The Dy. C.I.T.
Central Circle
Noida

PAN - AAFCB 1860 R

(Applicant)

(Respondent)

Assessee By : Shri Gautam Jain, Adv
Shri Lalit Mohan, CA

Department By : Shri Sanjay Pandey, CIT-DR

Date of Hearing : 03.04.2024
Date of Pronouncement : 05.04.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 2, New Delhi dated 11.11.2019 pertaining to A.Y. 2013-14.

2. The grievances of the assessee read as under:

"1. That both the orders passed by the Ld. CIT(Appeal-2), New Delhi dated 11.11.2019 and the assessment order passed by the Ld. Assessing Officer, Dy. Commissioner of Income Tax, Central Circle, Noida dated 31.03.2016 u/s.144 are bad in law, suffer from serious defects and are against the facts of the case.

2. That the Assessing Officer was wrong to make an addition of Rs.20,00,00,000/- and the CIT(A) was wrong to have decided the appeal before her without appreciation of facts and records.

3. That the CIT(A) has passed the appellate orders without considering the objections, submissions raised by the appellant ignoring the evidences filed at the time of hearing.

4. That the assessment proceedings and the orders passed are defective and deserves to be quashed.

5. That none of the notices, assessment order or demand notice u/s.156 of the Act have ever been served upon the appellant and the appeal before the CIT(A) was filed after obtaining certified copies of the notices, assessment orders only on 26.02.2019. That no demand notice u/s.156 of the Act has been served upon the appellant till date.

6. That the notice u/s.153C dated 16.02.2016 has not been served upon the appellant.
7. That the notice u/s.153C dated 16.02.2016, suffers from serious lapses and the procedure as mandated for issue of the notice has not been followed
8. That the notice u/s.153C dated 16.02.2016 is barred by limitation.
9. That the order passed by the CITCA) suffers from jurisdiction and the matter should have been transferred to the correct CIT(A) that is the CITCA), Kanpur.
10. That the assessment has been framed purely on the basis of the information *provided* by the Investigation wing, without having possession of the assessment records, at the time of recording the reasons as required u/s.153C and the Assessing Officer has not made any independent enquiry in the matter or brought any evidence on records to substantiate and to make addition.
11. That detailed statement of facts shall be filed at the time of hearing before your Hon'ble Court.
12. That the appellant *craves leave* to add, amend, alter, file, *remove* or correct all or any ground of appeal with the permission of the Hon'ble Court.

3. Ground Nos. 1, 11 and 12 are general in nature and need no separate adjudication.

4. The ld. counsel for the assessee did not press Ground Nos. 8 and 9 and, therefore, dismissed as not pressed.

5. At the very outset, the ld. counsel for the assessee addressed the Bench Ground Nos. 7 and 10. Therefore, we heard the representatives on the grounds argued by the ld. counsel for the assessee. Case records carefully perused and relevant documentary evidences brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

6. Vide Ground Nos. 7 and 10, the assessee has challenged the assumption of jurisdiction u/s 153C of the Act claiming that satisfaction note for initiation of proceedings u/s 153C of the Income-tax Act, 1961 [the Act, for short] in itself is against the facts and bad in law.

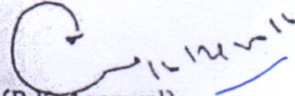
7. Satisfaction note is dated 16.02.2016 and reads as under:

Satisfaction Note for initiation of proceedings u/s 153C of I.T. Act- M/s Bhanvi Buildtech Pvt. Ltd. -PAN: AAFCB1860R

During the course of search and seizure operation in the case of Sh. Mukesh Khurana and Smt. Babita Khurana, B-7/100, Extention, Safdarjung Enclave, New Delhi, incriminating documents were found and seized. On pages 24 to 31 of Annexure LP-20, an MOU was found and seized regarding sale of land measuring 20,000 sq. meters at plot no. SC-01/B, Sector 150, Noida for a sale consideration of Rs. 82 crores. Out of Rs. 82 crores the purchaser M/s Bhanvi Buildtech Pvt. Ltd. made payment of Rs. 20 crores to the seller M/s Sun Shine Infratech Pvt. Ltd. through cash. The sources of investment made in the purchase of the said property is to be examined. These papers/documents pertain to M/s Bhanvi Buildtech Pvt. Ltd. and the information contained therein relates to M/s Bhanvi Buildtech Pvt. Ltd.

The cases of this group are interconnected and required deep investigation to arrive at a logical conclusion. As such for taking a logical conclusion in this group of cases, every single seized document and entry appearing in the seized documents requires deep scrutiny and has its impact on the other cases of the group.

Considering the above facts, I am satisfied that it is a fit case for initiation of proceedings u/s 153C of I.T. Act for proper deep investigation and to plug the leaked revenue.


(R.K. Agarwal)

Deputy Commissioner of Income Tax
(Central Circle), Noida

8. Vide order dated 15.02.2016, framed u/s 127(2) of the Act, the PCIT, Delhi - 2, New Delhi transferred the jurisdiction of the assessee to the ACIT/DCIT, Central Circle, Noida pursuant to which the Income tax Officer, Ward -4(4), New Delhi, transferred the record of the assessee on 19.02.2016.

9. As mentioned elsewhere, satisfaction note for initiation of proceedings u/s 153C of the Act is dated 16.02.2016 whereas the record of the assessee was transferred on 19.02.2016, which conclusively proves that the Assessing Officer assumed jurisdiction without having any access to the record of the assessee thereby conclusively proving that satisfaction note has been drawn without any application of mind and without any access to the record of the assessee.

10. Facts on record show that search and seizure operation was conducted at the residential premises of various persons, two of them being Shri Mukesh Khurana and Smt. Babita Khurana B-7/100, Extension Safdarjung Enclave, New Delhi from whose premises alleged documents were found and seized and one of such alleged incriminating document was a Memorandum of Understanding regarding sale of land measuring 20000 sq. Mtr for a sale consideration of 82 crores, out of which the purchaser, i.e. the assessee, made payment of Rs. 20 crores to the seller M/s Sunshine Infratech Pvt Ltd through cash. To examine the source of investment, the Assessing Officer recorded the satisfaction note and initiated proceedings u/s 153C of the Act.

11. Pertinent facts to be considered for adjudication are that search was conducted on 09.10.2013 and satisfaction note was drawn on 16.02.2016 and, that too, without having any access to the assessment record of the assessee. Secondly, and most importantly, the persons who were searched, i.e., Shri Mukesh Khurana and Smt. Babita Khurana from whose premises alleged incriminating documents were found were never examined by the Revenue authorities.

12. While assuming jurisdiction and without even looking into the records, the Assessing Officer assumed that the assessee has paid Rs. 20 crores outside its books of account. In fact, in the Memorandum of Understanding itself, it is mentioned that Rs. 20 crores have been paid in cash and in Post Dated Cheques. It is not coming out how much cash was paid and how much was paid by post dated cheques. There is no evidence whatsoever to conclusively show that the land sale mentioned in the Memorandum of Understanding actually took place. The Assessing Officer did not make any investigation from the Noida authorities to verify whether actual sale took place or not.

13. Interestingly, there is nothing on record to show any action taken against the seller M/s Sunshine Infratech Pvt Ltd, because the alleged incriminating document if belongs/pertains to the assessee, then, equally belongs /pertains to M/s Sunshine Infratech Pvt Ltd. Without recording any finding that what is mentioned in the alleged incriminating document was never disclosed in the books of account of the assessee and the Assessing Officer without even demonstrating /or drawing any nexus of the seized documents with the undisclosed income of the assessee, cannot assume jurisdiction u/s 153C of the Act.

14. For this proposition, we draw support from the decision of the Hon'ble Jurisdictional High Court, Delhi in the case of Prominent Real Tech [P] Ltd 451 ITR 371.

15. It would be pertinent to refer to another decision of the Hon'ble Jurisdictional High Court of Delhi which is in the case of Nikki Drugs and Chemicals [P] Ltd 386 ITR 680. The relevant findings read as under:

"16. It is apparent from the above that the first step for initiation of proceedings under [Section 153C](#) of the Act is for the assessing officer of the searched person to be satisfied that the assets or documents seized do not belong to the searched person but to the assessee sought to be assessed under [Section 153C](#) of the Act. Once the assessing officer of the searched person is so satisfied, he is required to transfer the assets or documents, which he believes belongs to the assessee, to the assessing officer having jurisdiction over that assessee. The assessing officer of the assessee on receipt of such asset or document seized would have jurisdiction to commence proceedings under [Section 153C](#) of the Act. The assessing officer has, thereafter, to apply his mind as to whether the assets and documents received have a bearing on the determination of the total income of the Assessee and if he is so satisfied that the same have a bearing on the determination of the income of the assessee, he has to issue notice and assess or reassess the income of the assessee in accordance with the provisions of [Section 153A](#) of the Act. [Section 153A](#) of the Act requires that a notice be issued to the person sought to be assessed, calling upon the said assessee to file his return of income in respect of each year falling within the specified six AYs. It is further specified that the provisions of the Act shall, so far as may be, applied as if such returns were returns required to be furnished under [Section 139](#) of the Act. Thus, the assessing officer has to, thereafter, proceed with the assessment/reassessment in accordance with the provisions of the Act; that is, accept the return with or without such adjustments as permissible under [Section 143\(1\)](#) of the Act or if the claims made by the assessee are considered as inadmissible and/or it is considered necessary and expedient to

subject the returns to further scrutiny, issue the requisite notice under [Section 143\(2\)](#) of the Act and frame the assessment in accordance with the Act."

16. Coming to the facts of the case, which have not been properly appreciated by the Assessing Officer before assuming jurisdiction are that the said MOU, which is alleged to be incriminating document is dated 30.11.2012 and has been prepared by the Director without having complete sign of the persons mentioned therein cannot be considered as a legally enforceable document.

17. Interestingly, the document was found from the premises of Shri Mukesh Khurana and Shri Mukesh Khurana himself has not signed that document. There is mere mention of Rs. 20 crores in cash and PDC but neither date is mentioned nor any dates of post dated cheques have been mentioned. Such error goes on to show that the Assessing Officer has recorded the satisfaction in haste and without application of mind for the year under consideration.

18. In our considered opinion, mere seizure of illegal unauthorized MOU found from the premises of third party whose statement was never recorded by the INV Wing nor by the Assessing Officer and reference to the entries in the MOU does not reflect the date of

payment and bifurcation of the amount in cash and post dated cheques could not be basis to initiate proceedings u/s 153C of the Act.

19. Considering the facts discussed hereinabove, we are of the opinion that the assumption of jurisdiction by recording the aforementioned satisfaction note is bad in law. Since the proceedings have been initiated on wrong assumption, the entire assessment proceedings get vitiated and deserve to be quashed.

20. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case.

21. In the result, the appeal of the assessee in ITA No. 684/DEL/2020 is Partly Allowed.

The order is pronounced in the open court on 05.04.2024.

Sd/-

**[SAKTIJIT DEY]
VICE PRESIDENT**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 05th APRIL, 2024.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	