

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई <b>IN THE INCOME TAX APPELLATE TRIBUNAL</b> <b>'C' BENCH: CHENNAI</b>		
श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं श्री मंजूनाथा.जी, माननीय लेखा सदस्य के समक्ष <b>BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND</b> <b>SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER</b>		
आयकर अपील सं./ITA No.437/Chny/2021 निर्धारण वर्ष/Assessment Year: 2016-17		
M/s.KP Construction, 19/10 F2, Rangarajapuram, 4 <sup>th</sup> Street, Saidapet, Chennai-600 015. <b>[PAN: AAIFK 7611 H]</b>	<b>v.</b>	The Asst. Commissioner – of Income Tax, Central Circle-1(4), Chennai.
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>
अपीलार्थी की ओर से/ Appellant by	:	Shri G. Baskar, Advocate & Shri Kathir, Advocate & Ms.S.Revathy, CA
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	21.03.2024
घोषणाकीतारीख /Date of Pronouncement	:	05.04.2024

**आदेश / ORDER**

**PER V. DURGA RAO, JM:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-18, Chennai, dated 31.08.2021, and pertains to assessment year 2016-17.

**2.** The assessee has raised the following grounds of appeal:

1. *The order of the CIT(A) is wrong, contrary to facts and against the principles of natural justice.*

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2. *The CIT(A) failed to note that there being no show cause notice sent to the Appellant proposing the disallowance of Rs.53,20,320/-, nor an opportunity given to respond, and the order being passed in a hurry at the fagend resulting in non-application of mind at the assessment and Approving Authority level the order of assessment is liable to be annulled as being in violation of the principles of natural justice.*

3. *The CIT(A) erred in not deleting the addition of undisclosed income made to the extent of Rs.53,20,320/- u/s 115BBE.*

4. *The CIT(A) erred in upholding the taxation of same income in the hands of the Appellant, which had already been offered by the partner in his return of income, resulting in double taxation.*

5. *The CIT(A) failed to appreciate the explanation provided by the Appellant in respect of the undisclosed income in a proper perspective.*

**3.** The assessee has also raised the following additional grounds of appeal:

1. *The order of the CIT(A) is erroneous as the same is opposed to the facts of the case and provisions of law.*

2. *Lack of Satisfaction:*

2.1. *The order of assessment passed by the AO is illegal and void as the same has been initiated without recording proper satisfaction as mandated by the Act.*

2.2. *The AO having failed to record satisfaction as per section 153C of the Act, the order of assessment is illegal, without jurisdiction and the CIT(A) erred in upholding the same.*

3. *Absence of incriminating material:*

3.1. *The addition of Rs.53,20,320/- upheld by the CIT(A) is unsustainable in law as the same has been made in the absence of incriminating material. Therefore, the CIT(A) erred in upholding the addition Rs.53,20,320/-.*

4. *Approval U/S.153D of the Act:*

4.1. *The order of assessment u/s.153C r.w.s. 143(3) of the Act is illegal and the CIT(A) ought to have annulled the same as no proper approval was obtained by the AO as mandated u/s.153D of the Act.*

4.2. *The CIT(A) erred in failing to properly adjudicate the ground raised by the appellant regarding the approval.*

5. *Incorrect addition:*

5.1. *The CIT(A) erred in upholding the addition of Rs.53,20,320/- stated to be the undisclosed income of the appellant by the AO.*

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*5.2. The addition having been made contrary to the facts of the case and law and without provision of proper opportunity, the CIT(A) ought to have deleted the same in full.*

*5.3. The CIT(A) ought to have deleted the addition in full as the register on the basis of which the addition was made, does not relate to the appellant at all.*

*5.4. The appellant having submitted that the register was maintained by one of the deceased partners in his individual capacity, the CIT(A) erred in stating that the appellant had defaulted in discharging the burden of proof.*

*5.5. The CIT(A)'s expectation for the appellant to prove the negative is impossible to perform and thus the addition is bad in law.*

*5.6. The impugned addition of Rs.53,20,320/- having been made in the absence of any evidence and verification / examination, the CIT(A) ought to have deleted the same in full.*

*5.7. The AO having neither assigned any reason nor section for the impugned addition, the CIT(A) erred in failing to delete the same.*

**4.** In response to the notice u/s.153C of the Act dated 10.09.2018, the assessee filed a return of income on 02.10.2018 by declaring the same income of Rs.8,39,395/- as per the original return of income filed earlier on 25.03.2017. The AO issued notice u/s.143(2) of the Act, and u/s.142(1) of the Act, were sent to the assessee on 01.11.2018 seeking the assessee to provide details of the claims made in the return of income along with other details as required in the questionnaire based on the seized materials. The assessee filed reply on 12.12.2018. The AO also obtained a statement which has been recorded u/s.131(1A) of the Act, from Smt.J.Shanti, a partner of the assessee's firm.

**5.** After analyzing the facts and circumstances of the case along with material evidences on record, the AO completed the assessment by

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making an addition of Rs.36,51,000/- by disallowing the sundry creditors for want of confirmations from the corresponding persons.

**6.** Further, based on register seized from the premise of M/s.K.P.Construction vide Annexure-Ann/RB/KPC/B&D/S/10 in which number of transaction entries made with one Shri D.Siva amounting to Rs.53,20,320/- during the FY 2015-16, made an addition to the returned income as undisclosed income u/s.115BBE of the Act. The AO also stated that specific question was asked for notice u/s.142(1) of the Act, dated 01.11.2018 to clarify the transactions and furnish the details of payment made along with TDS details thereon for an amount of Rs.53,20,320/-. The AO stated that, in response to notice, the assessee has stated that the note book was maintained by Shri P. Narasimhan, partner of the firm, wherein, he has recorded the details of weekly labour/other payments in respect of works undertaken/supervised by him regarding his consultation and the details noted in the above seized documents has no relation with the firm, is not acceptable. Hence, the AO has considered that the register containing payment entries relating to labour/works executed which the assessee himself admitting in the reply, were seized from the business premise of M/s.KP Construction, which clearly establishes that these payments for having incurred by the firm and hence, the expenditure of Rs.53,20,320/- added to the income of the assessee for want of evidence.

**7.** As regards addition of Rs.53,20,320/- towards unrecorded expenditure in the incriminating material found during the course of

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search at the premise of M/s.K.P. Constructions, the Ld.CIT(A) has confirmed the additions made by the AO by holding that the assessee claims that the documents found during the course of search relates to Shri P.Narasimhan, but could not substantiate its claim with necessary details. The assessee clearly defaulted in not discharging the burden of proof and thus, opined that there is no error in the reasons given by the AO to make additions towards unrecorded satisfaction as per seized documents during the course of search. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

**8.** The Ld.Counsel for the assessee, referring to additional grounds filed by the assessee submitted that notice issued u/s.153C of the Act, is invalid, because, the AO has not recorded satisfaction as required under law with reference to seized materials found during the course of search in respect of additions made on the basis of Annexure No.ANN/RB/KPC/B&D/S/10, because, in the satisfaction note recorded by the AO, there is no reference to said seized material and thus, from the above, it is undisputedly clear that there is no live link between incriminating material and satisfaction recorded by the AO. The Ld.Counsel for the assessee further referring to the decision of the Hon'ble Karnataka High Court in the case of CIT v. IBC Knowledge Part (P) Ltd., reported in [2016] 385 ITR 346 (Karnataka) submitted that as provisions of Sec.153C of the Act, is ***para materia*** to Sec.158 conferring jurisdiction to a search providing certain conditions before the AO having

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jurisdiction of a third party can assume jurisdiction materials, books of accounts, documents and other valuable assets found during search, who belong to a third party, which would lead to inference of undisclosed income of such third party, such inference should be recorded by the AO having jurisdiction over the searched persons. In the present case, if you go through the satisfaction note recorded by the AO of a searched person, there is no reference to materials, on which, the AO has based his findings to make additions towards unrecorded expenditure. Therefore, he submitted that notice issued u/s.153C of the Act and consequent assessment proceedings on the basis of invalid or incorrect satisfaction, is illegal **ab initio** and liable to be quashed.

**9.** The Ld.DR, Shri P.Sajit Kumar, JCIT, on the other hand, referring to the satisfaction note recorded by the AO of the searched person submitted that the law does not state that there should be a material for each addition in a particular assessment, but what is to be seen, is there any incriminating material found during the course of search pertains to a particular assessee and on the basis of said material, the AO has recorded satisfaction that the materials found during the course of search relates or belongs to a third person having bearing on the determination of the total income of searched person. In the present case, the AO has recorded satisfaction based on materials found during the course of search and as per satisfaction during the course of search in the case of M/s.KP Constructions, incriminating material was found which is having a bearing

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determination of total income of the assessee. Therefore, the Ld.DR submitted that there is no merit on legal ground taken by the assessee and same should be rejected.

**10.** We have heard both the parties and perused materials available on record and gone through the orders of the authorities below. The assessee has filed additional grounds challenging validity of assessment proceedings initiated u/s.153C of the Act and claimed that said grounds are purely a legal ground which can be taken at any stage of proceedings including pending proceedings before the Tribunal. As held by the Hon'ble Supreme Court in the case of CIT v. National Thermal Power Co. Ltd., reported in [1998] 229 ITR 383 (SC), wherein, it has been clearly held that the powers of appellate authorities are not limited only to adjudicate the grounds raised by the assessee before the AO and also it can be adjudicated along with any other legal issues that may be raised by a party during pending proceedings. Therefore, by following the decision of the Hon'ble Supreme Court in the case of CIT v. National Thermal Power Co. Ltd., (supra), we admit additional grounds filed by the assessee for adjudication. As per provisions of Sec.153C of the Act, any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to or relates to a person other than the person searched to in Sec.153A of the Act, then the books of accounts or documents, etc., shall be handed over to the AO having jurisdiction over such other person and

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that the AO shall proceed against each such other person and issue notice and assess or re-assess income of the other persons in accordance with the provisions of Sec.153A of the Act. The AO of the searched person before handing over books of accounts or other documents to the AO of the other person has recorded satisfaction as required u/s.153C of the Act, with reference to seized books of accounts or other documents and satisfied that seized materials is bearing on the determination of total income of other person for the relevant assessment year. In other words, the satisfaction recorded by the AO of the searched person should specifically referred to the incriminating material found during the course of search of said satisfaction note and also explain how such material having a bearing on the total income of the other persons, unless the AO of searched persons brings out the reasons for his satisfaction with reference to seized materials, then, it can be said that the satisfaction note recorded by the AO of searched person not in accordance with law or incorrect satisfaction and thus, on the basis of said satisfaction, the proceedings u/s.153C of the Act, cannot be initiated. This legal position is supported by the decision of the Hon'ble Karnataka High Court in the case of CIT v. IBC Knowledge Part (P) Ltd., reported in [2016] 385 ITR 346 (Karnataka), wherein, the Hon'ble Karnataka High Court categorically held that where no material belonging to a third party is found during the course of search but only an inference of an undisclosed income is drawn during the course of search or based on such enquiry u/s.153C of the Act,

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would have no application. In the present case, on perusal of satisfaction note recorded by the AO of a searched person, we find that there is no reference to the seized materials considered by the AO to frame assessment and make additions for relevant AY 2016-17 which is clearly evident from the seized materials referred to by the AO in Page No.4 of the order where he referred Annexure No.ANN/RB/ISPC/B&D/10, but said material did not find mention by the AO in the satisfaction note. From the above, it is undisputedly clear that there is no live link between the satisfaction arrived at by the AO and incriminating material found during the course of search and thus, in our considered view, the satisfaction note recorded by the AO as required under provisions of Sec.153C of the Act, is not in accordance with law and further, notice issued by the AO on the basis of said incorrect satisfaction is illegal **ab initio** and liable to be quashed. The assessee has relied upon the decision of the Hon'ble Karnataka High Court in the case of CIT v. IBC Knowledge Part (P) Ltd.(supra). The Hon'ble Karnataka High Court under identical set of facts held as under:

*".....Section 153C is in pari materia with Section 158BD conferring jurisdiction over third parties to a search providing certain conditions before the Assessing Officer having jurisdiction over a third party can assume jurisdiction. Materials such as books of accounts, documents or valuable assets found during a search should belong to a third party which would lead to an inference of undisclosed income of such third party. Such an inference should be recorded by the Assessing Officer having jurisdiction over the searched persons and communicated to the Assessing Officer having jurisdiction over such third party along with the seized documents and other incriminating materials on the basis of which the Assessing Officer having jurisdiction over such third party would issue notice under Section 153C. On receipt of the aforesaid material, the Assessing Officer having jurisdiction over such third party would proceed against the said third party. Thus, where no material belonging to a third party is found during a search, but only an inference of an undisclosed income is drawn during the course of enquiry, during search or during post search enquiry, Section 153C would have no application. Thus, the detection of incriminating material leading to an*

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*inference of undisclosed income is a sine qua non for invocation of Section 153 of the Act....”.*

**11.** In this view of the matter and by respectfully following the decision of the Hon'ble Karnataka High Court in the case of CIT v. IBC Knowledge Part (P) Ltd. (supra), we are of the considered view that proceedings initiated by the AO u/s.153C of the Act on the basis of invalid satisfaction is illegal **ab initio** and liable to be quashed and thus, we quashed assessment order passed by the AO u/s.143(3) r.w.s.153C of the Act.

**12.** In the result, appeal filed by the assessee in ITA No.437/Chny/2021 is allowed.

Order pronounced on the 05<sup>th</sup> day of April, 2024, in Chennai.

**Sd/-**  
(मंजूनाथा.जी)

**(MANJUNATHA.G)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**  
(वी. दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 05<sup>th</sup> April, 2024.

**TLN**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्डफाइल/GF