



IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI ANIKESH BANERJEE, JM

ITA No.4621/MUM/2023
(Assessment Year 2016-17)

ITA No. 4622/MUM/2023
(Assessment Year 2017-18)

Amardeep Constructions,
7/08, Patidar Complex,
KannamwarNagar,
Vikhroli (E), Mumbai
PAN AAUFA3513A

Vs.

ACIT,
Central Circle 1(3),
Mumbai

(Appellant)
Assessee by

Revenue By

Date of hearing

Date of pronouncement

(Respondent)

Sh. J.P. Bairagra & Ms. Rupa
Nanda
Sh. Amol Kirtane (CIT-
DR)

10th July 2024

21st August 2024

O R D E R

PER PRASHANT MAHARISHI, AM:

01. These appeals are preferred by M/s Amardeep Constructions [Assessee/ Appellant] against consolidated appellate order passed by the Commissioner of Income Tax (Appeal)-47, Mumbai [the Id. CIT (A)] dated 20.10.2023 for Assessment Years (A.Y.) 2016-17 and 2017-18 wherein the appeal filed by the assessee for A.Y. 2016-17 against the assessment order passed u/s. 143(3) r.w.s. 153C of the Income Tax Act, 1961 (the Act) by the Assistant Commissioner of Income Tax, Central Circle-1(3), Mumbai (the AO) was dismissed.
02. For AY 2016-17 The assessee is aggrieved and has preferred an appeal raising the following grounds of appeal:



“1. The Hon. CIT (A) erred in not appreciating that proceedings initiated against the appellant by issue of notice u/s 153C of the I. T. Act, 1961 on 25.09.2020, was not in accordance with the provisions of law and as the notice issued u/s 153C was bad-in-law, the assessment framed in pursuance thereof u/s 143(3) rws 153C of the I. T. Act, 1961 was also bad-in-law, being void-ab-initio and therefore the said assessment was required to be quashed on the above account.

2. The Hon. CIT (A) erred in upholding addition of Rs.51,60,000/- made by the id AO, u/s 69C of the LT Act 1961, as unexplained expenditure, holding the appellant to have made payment of the said amount in cash to Mis. Jago Enterprises does not appreciate the contentions of the appellant that no such payment in cash was made by the appellant and that the addition was not warranted and therefore may kindly be deleted.

3. The Hon. CIT (A) erred in upholding the addition on the basis of information from third party, without affording the appellant with adequate opportunity to cross examine the source of such adverse information, thereby breaching the salient principles of equity, fair play and natural justice. The order framed in breach of the principles of natural justice is bad-in-law and void-ab-initio.

4. The appellant craves leave to add, alter, amend, delete and/or vary any of the above grounds of appeal at any time before the decision of the appeal.”



03. Similarly, for A.Y. 2017-18, the appeal was filed against the assessment order passed u/s. 143(3) r.w.s. 153C of the Act was also dismissed following the order by the learned CIT(A) for A.Y. 2016-17.
04. The assessee is aggrieved has preferred this appeal raising the following grounds of appeal:

"1. The Hon. CIT (A) erred in not appreciating that proceedings initiated against the appellant by issue of notice u/s 153C of the I. T. Act, 1961 on 25.09.2020, was not in accordance with the provisions of law and as the notice issued u/s 153C was bad-in-law, the assessment framed in pursuance thereof u/s 143(3) rws 153C of the 1. T. Act, 1961 was also bad-in-law, being void-ab-initio and therefore the said assessment was required to be quashed on the above account.

2. The Hon. CIT (A) erred in upholding addition of Rs.1,13,25,000/- made by the id AO, u/s 69C of the LT Act 1961, as unexplained expenditure, holding the appellant to have made payment of the said amount in cash to Mis. Jago Enterprises does not appreciate the contentions of the appellant that no such payment in cash was made by the appellant and that the addition was not warranted and therefore may kindly be deleted.

3. The Hon. CIT (A) erred in upholding the addition on the basis of information from third party, without affording the appellant with adequate opportunity to cross examine the source of such adverse information, thereby breaching the salient principles of equity, fair play and natural justice. The order framed in breach of the principles of natural justice is bad-in-law and void-ab-initio.

4. The appellant craves leave to add, alter, amend, delete and/or vary any of the above grounds of appeal at any time before the decision of the appeal."



05. Facts as culled out from orders of lower authorities shows that.
- i. For A.Y. 2016-17, the assessee filed return of income on 12.10.2016 at a total income of Rs.44,72,310/-.
 - ii. Search u/s. 132(1) of the Act was conducted in case of Jago Enterprises being one of the entities of Bhagwati Group on 17.10.2018. During the course of search an excel sheet named Amardeep Construction was found from the drive of computer of Jago Enterprises. Shri Jayant Somani partner of Jago Enterprises stated in statement recorded u/s132(4) of the Act on 18.10.2018 that the transaction in excel sheet were receipts from M/s Amardeep Construction in the form of Cash and cheque.
 - iii. Based on this ACIT Central Circle 1 (3), Mumbai recorded his satisfaction as AO of searched person that material belongs to Assessee M/S Amardeep Constructions as per satisfaction note dated 24/09/2020. Hence, the information along with the relevant documents were passed on to the AO of the assessee being Deputy Commissioner of Income Tax, Circle-26/1, Mumbai.
 - iv. The DCIT Mumbai issued a notice u/s153C of the Act dated 25.09.2020 to the assessee.
 - v. The assessee reiterated its return of income on 18.02.2021. The necessary notice u/s143(2) of the Act was issued on 23.02.2021 and notice u/s142(1) of the Act was also issued thrice.
 - vi. The assessee is a partnership firm engaged in the business of Real Estate Development. On the basis of documents found from the premises of computer of Jago Enterprises the excel sheet where name of the assessee is mentioned was questioned and a show cause notice was issued that



why the payment made by the assessee to Jago Enterprises should not be treated as unexplained expenditure.

- vii. The assessee submitted that assessee has not made any payment to Jago Enterprises in cash, the AO rejected the explanation of the assessee based on the statement of the Director of Jago Enterprises who in Question No.22 has confirmed that the total amount received from Amardeep Construction is about 1.64 crores on various dates as mentioned in excel sheet.
 - viii. Accordingly, summons was once again issued to Mr. Jayant Somani to explain the entries in the excel sheet. In reply to Question No.12, he once again confirmed that the above cash payment is paid by Amardeep Construction.
 - ix. Therefore, the summons was issued to the partner of the company on 18.02.2021 wherein assessee denied having made any cash payment to the above party.
 - x. The learned AO rejected the explanation and held that the statement recorded of partner of Jago Enterprises clearly says that money has been paid by the assessee, but assessee has denied the same. He referred to the excel sheet found from premises of Jago Enterprises who was contractor of the assessee. He also noted that the cash and cheque payments are mentioned in the same excel sheet wherein cheque payments and RTGS payments are not denied but cash payments are denied.
06. Accordingly, for A.Y. 2016-17 and addition of Rs.51,60,000/- was made to the total income of the assessee u/s. 69C of the Act. The total income of the assessee was assessed u/s143(3) r.w.s. 153C of the Act at Rs.96,32,310/-.
07. Similarly, for A.Y. 2017-18, the return of income filed by the assessee at Rs.50,37,980/- on 27.10.2017, assessed u/s143(3) of



the Act on 27.12.2019 at Rs.59,72,927/- was disturbed u/s143(3) r.w.s. 153C of the Act by assessment order dated 23.03.2021 on identical documents an identical excel sheet by making addition of Rs.1,13,25,000/-.

08. Against both these above orders, the assessee preferred to appeal before the learned CIT (A). The assessee challenged that the assessment order passed u/s153C of the Act as bad in law and not sustainable.
09. The claim of the assessee was that.
 - i. Search took place on Bhagwati Developers Group on 17.10.2018. Proceedings u/s153A was initiated against M/s Jago Enterprises.
 - ii. AO of searched person recorded satisfaction as mandated by Section 153C of the Act on 24.09.2020.
 - iii. Assistant Commissioner of Income tax , Circle 26 (1), Mumbai issued Notice u/s153C of the Act on 25.09.2020.
 - iv. It was contested that according to Section 153C of the Act, the AO of the searched person, on being satisfied that the information contained therein related to the person other than searched person then he has to handover to the AO of such other person relevant documents along with the satisfaction note. Thereafter, the Assessing Officer of the other person has to apply his mind as to whether the documents received has any impact on the determination of total income of the assessee for impugned year and based on that he has also to record the satisfaction and thereafter the notice u/s153C of the Act can be issued.
 - v. It was submitted that there is no satisfaction of the AO of the searched person and, therefore, based on the decision of the Hon'ble Delhi High Court in 64 taxmann.com 309 the assessment is bad in law.



10. The learned CIT (A) held that in the case of Rajesh Vaswani Hon'ble Gujarat High Court on identical set of facts confirmed the proceedings and, therefore, this ground of appeal was dismissed. On the issue of addition on the merits, the learned CIT(A) confirmed the addition for the reason that the assessee has given a contract to Jago Enterprises from whom an excel sheet was found wherein the sums received through cash and in cheque were confirmed by the recipient. As assessee has confirmed the payment of cheque available on the same documents but has denied the payment in cash recorded in the same document, therefore, the addition was confirmed. Accordingly, the appeal of the assessee was dismissed. Identically the appeal for A.Y.2017-18 was also dismissed by that consolidated order.
11. Assessee aggrieved with the above appellate order for both the years has filed this appeal before us.
12. The only contention of the assessee is that assessment order passed u/s. 153C of the Act is not valid. The contention of the assessee is that the satisfaction note should be recorded first by the AO of searched person and, thereafter, the AO of the assessee. He referred to Page No.49 being the notice u/s153C of the Act wherein the notice for A.Y. 2016-17 is recorded. He also referred to Page No.47 of the paper book wherein the satisfaction note in case of the assessee is recorded by ACIT, Central Circle-1/3, Mumbai [AO of searched person] for A.Y.2013-14 to A.Y. 2019-20. He also referred to Column No.7 which specifically speaks about satisfaction of the Assessing Officer of the persons referred to in Section 153A of the Act wherein the facts are mentioned about the issue of satisfaction to issue of notice u/s153C of the Act. It is the claim of the learned A.R. that the Assessing Officer of the searched person is also required to record his satisfaction that such material has impact on assessment of income of the other person . He submits that the satisfaction note placed at Pages 47-48 is of the ACIT, Central Circle 1/3 Mumbai is the Assessing Officer of Jago Enterprises.



Therefore, his claim is that satisfaction note of the persons searched was recorded by the Assessing Officer on 24.09.2020 and immediately on 25.09.2020, the Assessing Officer of the assessee i.e., ACIT, Circle 30/1 Mumbai issued notice u/s153C of the Act. Thus, the AO of the assessee i.e., ACIT, Circle-26/1, Mumbai has not recorded any satisfaction before issue of notice u/s153C of the Act. He referred to Circular No.24/2015 dated 31.12.2015 wherein it is compulsory for the AO to record satisfaction note u/s153C of the Act. He referred to the decision of the Hon'ble Supreme Court in 362 ITR 673. Therefore, his argument is that the absence of any satisfaction recorded by the Assessing Officer of the assessee before issuing of notice u/s153C of the Act makes the assessment order invalid. It was further stated by the learned A.R. that assessee specifically asked for this satisfaction note on 20.04.2021 and 18.12.2023 but same has not been supplied. Therefore, he submits that the assessment order is invalid. He further submitted that the decision of the Hon'ble Gujarat High Court [76 taxman 311] relied upon by the learned CIT(A) was on facts that whether there was any prima facie material to suggest the satisfaction u/s153C of the Act or not. It was not the case that the AO of the assessee did not record any satisfaction u/s153C of the Act.

13. Therefore, the claim of the assessee was that in absence of such satisfaction by the Assessing Officer, the assessment order u/s153C of the Act becomes invalid.
14. He further referred to the assessment order and referred to Para No.1 stating that the DCIT, Mumbai 26(1) after recording reasons issued a notice u/s153C of the Act on 25.09.2020. He submits that he has not record the reasons but prepared a satisfaction note. Thus, the assessment order it has also does not show any satisfaction note. He further referred to the Paragraph No.6.4 of the appellate order to state that the learned CIT(A) has wrongly considered the arguments of the assessee and did not state that whether any satisfaction is recorded by the Assessing



Officer before issue of notice u/s153C of the Act. The learned Authorized Representative of the assessee pressed only Ground No.1 of the appeal.

15. The learned CIT Departmental Representative supported the orders of the learned lower authorities and stated that there is nothing wrong in the assessment order and jurisdiction assumed. However, with respect to the satisfaction note of the Assessing Officer he submitted that he would submit such satisfaction note from the Assessing Officer.
16. On the basis of the above, the Bench granted time for ten days to the learned Departmental Representative to submit satisfaction note recorded by the Assessing Officer before issuance of notice u/s153C of the Act to the assessee. To this learned Departmental Representative agreed. Till date no such satisfaction note has been submitted. Therefore, it is presumed that no satisfaction note is recorded by the AO of the Other person i.e., Assessee.
17. We have carefully considered the rival contention and have perused the orders of the learned lower authorities. The fact clearly showsthat :-
 - i. There was search on Bhagwati Group on 17.10.2018. During the course of search an 'excel sheet' was found from the hard disk of M/s Jago Enterprises. During the course of assessment proceedings of M/s. Jago Enterprises, its Assessing Officer, ACIT, Central Circle 1(3), Mumbai, (AO of searched person), recorded satisfaction on 24.09.2020 that the excel sheet found from M/s Jago Enterprises computer disk titled as 'Amardeep Construction' as per Panchnama dated 18.10.2018 and admitted in statement of Mr. Somani u/s132(4) of the Act was receipt from the assessee and, therefore, for A.Y.2013-14 to A.Y. 2019-20 the unaccounted income was required to be brought to tax in the hands of the assessee.



- ii. Based on this satisfaction note of the AO of the searched person i.e., ACIT central Circle 1 (3) Mumbai, ACIT, Circle-26(1), Mumbai [AO of the Assessee i.e., Searched Person] issued notice to the assessee u/s153C of the Act. The assessee on the assessment being framed u/s153C of the Act challenged the assessment order before the learned CIT (A) stating that the Assessing Officer has not recorded any satisfaction u/s153C of the Act. The assessee on 20.04.2021 and 08.12.2023 has demanded the copy of the satisfaction note prepared by the Assessing Officer for both the assessment years. Admittedly, it has not been provided to the assessee till now. Even before us also no such satisfaction note of the Assessing Officer of the assessee was provided for.
- iii. Though there is no separate requirement of recording of satisfaction for initiating proceedings u/s 153A, as no search u/s 132(1) can be initiated without a satisfaction note by "conducting officer" of the "searched person". However, in the case of assessment of "other person" u/s 153C, the satisfaction is of paramount importance.
- iv. According to the provisions of Section 153C of the Act where on the search on a person, he is a Assessing Officer is satisfied that material or some other books of account etc. or information contained therein relates to some other person then such documents, books of account for assets shall be handover to the Assessing Officer of such other person and thereafter that Assessing Officer shall proceeds against such other person by issuing notice u/s153C of the Act. He can do so provided he is satisfied that such material has a bearing on the determination of total income of such other person. Therefore, it is apparent that in this case, the Assessing Officer of the searched person must recorded satisfaction and further the satisfaction of the Assessing



Officer of the assessee is also required to make further satisfaction. Therefore, there are two satisfaction notes required to be made if Provisions of Section 153C of the Act needs to be applied.

- v. Thus, Section 153C of the Act, broadly requires Satisfaction on two counts prior to commencement of income tax proceedings in the hands of the person other than the one searched: (1) Satisfaction by the Assessing Officer of the searched entity that some of the material gathered (incriminating material) relates to a person other than the person searched and (2) Satisfaction by the Assessing Officer of such other person (third person) that the incriminating material have bearing on the determination of the total income of the other person.
 - vi. Formation of Satisfaction emanating from the Incriminating Material having a bearing on the determination of the total income can be suggested as jurisdictional pre-requisite for the purposes of initiation of proceedings in the hands of such other person under the Scheme of the Act.
 - vii. Therefore, one satisfaction is to be recorded by the AO of the "searched person" that the books of accounts/documents belong to/relates/ pertains to "other person" and the second satisfaction is to be recorded by the AO of "other person" that the books of accounts/assets have bearing on the total income of other person.
18. In the present case, satisfaction note of the Assessing Officer of the searched person is available. However, the satisfaction note of the Assessing Officer of the assessee is not available. In view of this, we find that jurisdiction u/s153C of the Act assumed by the learned AO is not correct. Accordingly, the orders passed u/s153C of the Act for both the years are quashed in absence of satisfaction of the AO of the "other Person" i.e., this assessee.



19. In view of our decision on Ground No.1 of the appeal for A.Ys. 2016-17 and 2017-18 other grounds of appeal are not adjudicated and left open.
20. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 21/08/2024.

Sd/-

(ANIKESH BANERJEE)
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: .2108.2024
Aks/-

Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai