

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH
COCHIN**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

ITA No.497/Coch/2023 and Stay petition number-127/Coach/2023 Assessment Year : 2010-11

Shri. K. K. Mohandas, Mohandhara House, Melmuringodi, Peravoork Kannur – 670 673. PAN : AFPPM 7197 G	Vs.	DCIT, Central Circle – 2, Kozhikode.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Pavav Ved, Adv
Revenue by	:	Shri. K. Jayaganesh, Senior AR.

Date of hearing	:	07.08.2024
Date of Pronouncement	:	19.08.2024

ORDER

Per Prakash Chand Yadav, Judicial Member:-

Present appeal of the assessee is arising from the order of CIT(A) dated 16/06/2023 having DIN No. ITBA/APL/S/2023-24/1053769065(1) for the Assessment Year (AY) 2010-11.

2. Relevant facts necessary to decide the present appeal are that a search under section 132 of the Act was conducted at the business premises of Rajadhani Restaurant and on the residential premises of the assessee on 26.09.2012. The AO has resorted to the provisions of section 153C of the Act on the basis that certain material pertaining to assessee has been found from the premises of the searched person. Thereafter, the AO concluded the assessment and assessed the income of the assessee at Rs.1,63,74,638/-.

3. Aggrieved with the Order of the AO, assessee filed appeal before the CIT(A) and challenged the Order of the AO both on the legal grounds as well as

merits of the case. However, he could not get any relief from the CIT(A) and hence come up in appeal before us.

4. Before the Tribunal, assessee has raised around 5 grounds. However, at the time of hearing, learned Counsel for the assessee has pressed ground No.1 and contended that if the Bench would decide this legal ground, then no further adjudication of the matter is required. Ld DR also acceded to the request of Ld Counsel for the assessee. Ld Counsel also pointed out that this legal ground was also raised before the CIT-(A). Therefore, we are deciding the legal aspect of the matter without touching the merits of additions.

4. Ground No.1 raised by the assessee read as follows:

“The learned CIT(A) erred in upholding the validity of proceedings under section 153C of the Act which was illegal for various reasons.”

5. Contending this ground, learned Counsel for the assessee firstly averred that in this case no satisfaction has been recorded by the AO of the searched person. Second contention of the learned Counsel for the assessee is that even if it is presumed that the satisfaction note which is available with the Department have some bearing on the assessee, copy of which has been supplied to the assessee, is perused carefully, then also it is not a case where action under section 153C of the Act could have been taken by the Department. Ld Counsel pointed out that this satisfaction is devoid of any discussion vis-a-vis any material much less incriminating material found during the course of search. As per Ld Counsel the settled position of law is that satisfaction note must exhibit the details of some incriminating material and this condition is *sine-qua-non* for assuming jurisdiction of section 153C of the Act. Learned DR relied upon the orders of the authorities below i.e., AO and CIT(A) and also admitted that there is no other satisfaction note with the Revenue except the one which has been produced by the assessee.

6. After considering the rival submissions, we observe that there are two contentions of the assessee (a) that no satisfaction has been recorded by the AO of the searched person. (b) the so called satisfaction note would not suggest any incriminating material against the assessee which is a condition precedent for 153C matters.

7. For the sake of convenience, we would like to quote satisfaction note recorded by the Department in the case of the present assessee :-

ORDER SHEET

PAN: AFPPM7197G A.Y.:2010-11


Shri Mohandas K K
Kolanthara House
Melmuringodi, 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. They are engaged in the business of civil engineering contract, real estate, bar hotel, quarry, stone crusher unit, commercial complex, readymade garments, ice-cream parlor etc.

M/s. K.K. Builders is formed by late Shri K. K. Kunhiraman of pravoor and presently run by his four sons Shri K.K. Mohandas, Shri K.K. Radhakrishnan, Shri K.K. Premkumar, Shri K.K. Rajan and his son-in-law Shri Shanmugham.

The search revealed that the above assessee has substantial income through various business concerns which was not disclosed to the department. The assessee Shri K.K. Mohandas being one of the partner/director has made huge accounted investment during the last six years unaccounted money for the purchase of land.

Therefore the income of the assessee is to be assessed u/s.153A r.w.s. 153C of the I.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(a) 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. 2010-11 put up.

8. A perusal of this note would suggest that it has been recorded by the AO acting as the AO of the present assessee and hence it cannot be termed to be a satisfaction note recorded by the AO of the searched person and the assessee are the same. As per the guidelines of Hon'ble Supreme Court in the case of Calcutta knitwear 362 ITR reported in and the **CBDT circular number 24 of 2015** dated 31.12.2015, the AO has to record satisfaction in the capacity of the searched person before handing over the material to the AO of the searched person even where the AO of searched person and other person is same person. Now, coming to the second aspect of the matter, perusal of the satisfaction note would clearly show that there is nothing in this satisfaction note which could suggest that any incriminating material has been found against the assessee. Mentioning of the material in the satisfaction note is a condition precedent for assuming the jurisdiction of section 153C of the Act as held by Hon'ble Delhi High Court in the case of Index Securities reported in 304 CTR 67. The relevant observation of the Hon'ble High Court is reproduced hereunder for the sake of convenience :

“31. As regards the second jurisdictional requirement viz., that the seized documents must be incriminating and must relate to the AYs whose assessments are sought to be reopened, the decision of the Supreme Court in Commissioner of Income Tax-III, Pune v. Sinhgad Technical Education Society (supra) settles the issue and holds this to be an essential requirement. The decisions of this Court in CIT-7 v. RRJ Securities (2016) 380 ITR 612 (Del) and ARN Infrastructure India Limited v. ACIT [2017] 394 ITR 569 (Del) also hold that in order to justify the assumption of jurisdiction under Section 153 C of the Act the documents seized must be incriminating and must relate to each of the AYs whose assessments are sought to be reopened. Since the satisfaction note forms the basis for initiating the proceedings under Section 153 C of the Act, it is futile for Mr Manchanda to contend that this requirement need not be met for initiation of the proceedings but only during the subsequent assessment.

32. In the present case, the two seized documents referred to in the Satisfaction Note in the case of each Assessee are the trial balance and balance sheet for a period of five months in 2010. In the first place, they do not relate to the AYs for which the assessments were reopened in the case of both assessees. Secondly, they cannot be said to be incriminating.

Even for the AY to which they related, i.e. AY 2011-12, the AO finalised the assessment at the returned income qua each Assessee without making any additions on the basis of those documents. Consequently even the second essential requirement for assumption of jurisdiction under Section 153 C of the Act was not met in the case of the two Assesseees”

9. Recently coordinate Bangalore Bench in the case of Anand Basspa ITA number 2222/Bang/2016 and 2223/Bang/2016 vide order dated 9.02.2022 has observed as under:-

*A plain reading of the amended provisions of section 153C(1) of the Act, would show that the AO is required to arrive at a satisfaction that the seized assets, books of account or documents belongs to or relates to a person other than the person was subjected to search. For arriving at such a satisfaction, it is necessary for the AO to prima facie spell out the **nature of seized documents and how it belongs to or relates to the assessee**. Before the Hon'ble High Court of Karnataka in the case of IBC Knowledge Park, 385 ITR 346 [Kar] the issue for consideration and adjudication was whether the Tribunal was right in holding that it was not necessary to record a satisfaction to the effect that seized material shows undisclosed income. While deciding this issue, the High Court came to the conclusion at para 50 thereof, that "the detection of seized material leading to an inference of undisclosed income is a sine qua non for invocation of section 153C of the Act". The Hon'ble Court came to the above conclusion after considering the decision of the Hon'ble Apex Court in the cases of Manish Maheshwari Vs. ACIT (289 ITR 341) and CIT Vs. Calcutta Knitwears (2014) 362 ITR 673 and other judgments of the Hon'ble Apex Court and other Hon'ble High Courts and CBDT, Circular No. [24/2015](#) dated 31.12.2015. The Hon'ble High Court also took the view that the AO is expected to spell out as to how the documents were incriminating in nature and prima facie represent undisclosed income*

10. When we examine the satisfaction note of this present assessee as reproduced above, we observe that there is no reference to any material at all in the satisfaction note. Respectfully following the above judgments, we find that in the present case, the AO has wrongly assumed jurisdiction and hence we quash the assessment proceeding on this ground alone. Since we have already

adjudicated on the legal ground, we are not deciding the other grounds as these grounds become academic. Since we have already decided the main appeal the stay petition number 127 become infructuous.

11. In result the appeal of the assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(WASEEM AHMED)
Accountant Member

Sd/-

(PRAKASH CHAND YADAV)
Judicial Member

Bangalore.

Dated: 19.08.2024.

/NS/*

Copy to:

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|---------------|------------------------|
| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR,ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.