

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

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

ITA Number	A.Y	Order under section	DIN Number
459/Coch/2016	2003-04	153C	NA
460/Coch/2016	2004-05	153C	NA
461/Coch/2016	2005-06	153C	NA
462/Coch/2016	2006-07	153C	NA
98/Coch/2023	2003-04	271(1)(c)	ITBA/APL/S/250/2022-23/1043994932(1)
99/Coch/2023	2004-05	271(1)(c)	ITBA/APL/S/250/2022-23/1043995111(1)
100/Coch/2023	2005-06	271(1)(c)	ITBA/APL/S/250/2022-23/1043995190(1)
101/Coch/2023	2006-07	271(1)(c)	ITBA/APL/S/250/2022-23/1043995480(1)

Shri. Mohammed Sherief, Koncheril Vegetable, Karunagappally, Kollam. PAN : ANBPS 7771 G	Vs.	DCIT, Central Circle, Kollam.
APPELLANT		RESPONDENT

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

Date of hearing	:	08.08.2024
Date of Pronouncement	:	21.08.2024

ORDER

Per Bench-

ITA number 459 to 462 of 2016 of the assessee, challenging the Order under section 153C of the Act, are arising from the Order of CIT(A) dated 30/06/2016 and relates to the Assessment Years as mentioned in the cause title. Before we adjudicate the matter, it is relevant to mention here that assessee has come up in appeal before the Tribunal against the Order of CIT(A) supra in 2016. The Tribunal vide its Order dated 30.01.2018 has dismissed the appeal of the assessee.

2. Aggrieved with the Order of the Tribunal, assessee went in appeal before the Hon'ble Kerala High Court and challenged the Order of the Tribunal. Hon'ble Kerala High Court vide its Order dated 02.11.2022 restored the matter to the Tribunal for deciding the ground of section 153C of the Act in accordance with law. The relevant observations of the Hon'ble High Court are as under:-

3. Now we will adjudicate the grounds of appeal raised by the assessee in Form-36 filed originally. In ground Nos.1 to 5, assessee has challenged the jurisdiction of the AO under section 153C of the Act on the ground that no satisfaction as envisaged under section 153C of the Act has ever been recorded by the AO of searched person. Alternatively, the assessee contended that even if it is presumed that the satisfaction note dated 14.05.2017 as extracted herein below would be considered as a valid satisfaction note then also assumption of jurisdiction under section 153C of the Act is bad in law as the AO has not referred to any material, much a less incriminating material, found during the course of search relating to assessee, which condition is sine-qua-non for assuming jurisdiction under section 153C of the Act.

4. Learned DR has made only one submission that the AO of the assessee and the searched person are one and the same and hence the contention of the assessee that the AO of searched person has not recorded any satisfaction note is devoid of any merit.

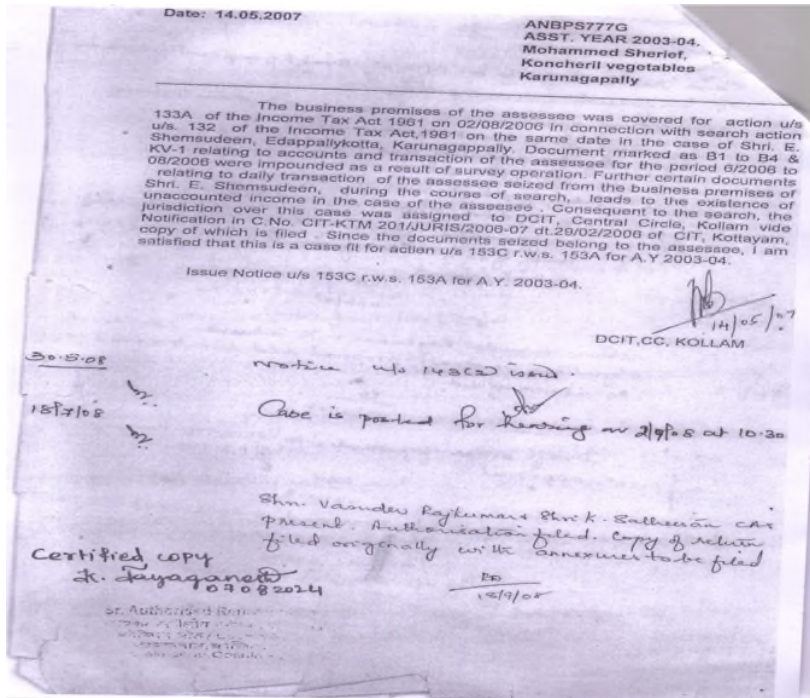
5. Facts as emanating from the Orders of authorities below are that assessee is engaged in the business of trading of vegetables and fruits carrying out its business under the name and style of M/s. Koncheril Vegetables a proprietorship concern of assessee. On **02.08.2006**, a search and seizure action were conducted at the premises of the father of the assessee. Simultaneously on the same date on 02.08.2006, survey under section 133A of the Act was also carried out at the premises of the assessee. However, it is an admitted fact that from the premises of the assessee no such document as has been referred to by the AO while framing the assessment, has been found and that is why the AO has not

resorted to the provisions of section 143(3) of the Act rather invoked the provisions of section 153C on the ground that some material belonging to the assessee has been found during the course of search at the premises of the father of the assessee.

6. Aggrieved with the Order of the AO, assessee preferred appeal before the CIT(A) and challenged the jurisdiction of AO under section 153C of the Act but remained unsuccessful. Thereafter events as mentioned in para 2 above occurred and this is how the present proceedings are emanating.

7. We have considered the rival submissions and perused the material on record. The short controversy in this case which requires our consideration is as to whether the AO has correctly assumed jurisdiction under the provisions of section 153C of the Act.

8. We would like to extract the satisfaction note as available with us, copy of which notes have been provided to the assessee under the RTI proceedings.



ORDER SHEET

Date: 14.05.2007

ANBPS777G
ASST. YEAR 2004-05.
Mohammed Sherief,
Koncheril vegetables
Karunagappally

The business premises of the assessee was covered for action u/s 133A of the Income Tax Act 1961 on 02/08/2005 in connection with search action u/s. 132 of the Income Tax Act, 1961 on the same date in the case of Shri. E. Shemsudeen, Edappallykotta, Karunagappally. Document marked as B1 to B4 & KV-1 relating to accounts and transaction of the assessee for the period 9/2005 to 08/2006 were impounded as a result of survey operation. Further certain documents relating to daily transaction of the assessee seized from the business premises of Shri. E. Shemsudeen, during the course of search, leads to the existence of unaccounted income in the case of the assessee. Consequent to the search, the jurisdiction over this case was assigned to DCIT, Central Circle, Kollam vide Notification in C.No. CIT-KTM 201/JURIS/2006-07 dt.29/02/2006 of CIT, Kottayam, copy of which is filed. Since the documents seized belong to the assessee, I am satisfied that this is a case fit for action u/s 153C r.w.s. 153A for A.Y. 2004-05.

Issue Notice u/s 153C r.w.s. 153A for A.Y. 2004-05.

14/05/07
DCIT, CC, KOLLAM

30-508
15/7/08
Notice u/s 143(2) issued.
Case posted for hearing on 21/7/08 at 10.30 AM

Shri. Varadach Rajkumar & Shri. K. Sathesaran CA
present on behalf of the assessee. Authorisation filed.
Copy of return filed originally to be filed -
Cash flow etc & etc to be filed.
15/7/08

Shri. Varadach Rajkumar & Shri. K. Sathesaran CA

certified copy
K. Jayaganesh
07/08/2004

Sr. Authorized Representative
Name of the assessee
Address
Signature
Date

ORDER SHEET

Date: 14.05.2007

ANBPS777G
ASST. YEAR 2005-06.
Mohammed Sherief,
Koncheril vegetables
Karunagappally

The business premises of the assessee was covered for action u/s 133A of the Income Tax Act 1961 on 02/08/2006 in connection with search action u/s. 132 of the Income Tax Act, 1961 on the same date in the case of Shri. E. Shemsudeen, Edappallykotta, Karunagappally. Document marked as B1 to B4 & KV-1 relating to accounts and transaction of the assessee for the period 9/2005 to 08/2006 were impounded as a result of survey operation. Further certain documents relating to daily transaction of the assessee seized from the business premises of Shri. E. Shemsudeen, during the course of search, leads to the existence of unaccounted income in the case of the assessee. Consequent to the search, the jurisdiction over this case was assigned to DCIT, Central Circle, Kollam vide Notification in C.No. CIT-KTM 201/JURIS/2006-07 dt.29/02/2006 of CIT, Kottayam, copy of which is filed. Since the documents seized belong to the assessee, I am satisfied that this is a case fit for action u/s 153C r.w.s. 153A for A.Y. 2005-06.

Issue Notice u/s 153C r.w.s. 153A for A.Y. 2005-06.

14/05/07
DCIT, CC, KOLLAM

30-508
15/7/08
Notice u/s 143(2) issued.
Case posted for hearing on 21/7/08 at 10.30 AM

Shri. Varadach Rajkumar CA & K. Sathesaran CA
present on behalf of the assessee. Authorisation filed
Copy of return filed before AO Alappuzha filed
15/7/08

certified copy
K. Jayaganesh
07/08/2004

Sr. Authorized Representative
Name of the assessee
Address
Signature
Date

ORDER SHEET

Date: 14.05.2007

ANBPS7773
ASST. YEAR 2006-07.
Mohammed Sherief,
Koncheril vegetables
Karunagapally

The business premises of the assessee was covered for action u/s 133A of the Income Tax Act 1961 on 02/08/2006 in connection with search action u/s 132 of the Income Tax Act, 1961 on the same date in the case of Shri. E. Shemsudeen, Edappallykotta, Karunagapally. Document marked as B1 to B4 & KV-1 relating to accounts and transaction of the assessee for the period 6/2006 to 08/2006 were impounded as a result of survey operation. Further certain documents relating to daily transaction of the assessee seized from the business premises of Shri. E. Shemsudeen, during the course of search, leads to the existence of unaccounted income in the case of the assessee. Consequently to the search, the jurisdiction over this case was assigned to DCIT, Central Circle, Kollam vide Notification in C.No. CIT-KTM 201/JURIS/2006-07 dt.29/02/2006 of CIT, Kottayam, copy of which is filed. Since the documents seized belong to the assessee, I am satisfied that this is a case fit for action u/s 153C r.w.s. 153A for A.Y 2006-07.

Issue Notice u/s 153C r.w.s. 153A for A.Y. 2006-07.

14/05/07
DCIT, CC, KOLLAM

20.5.06 Notice u/s 143(3D) issued.

18/10/06 Case posted for hearing on 10.2.2006.

Letter to JCIT requesting for permission to call for u/s 153C.

Shri. Varadachari Rajkumar K. Sathyan CS pres on behalf of a. Authentication filed. cert. flowert
S.H. of Assessee's liability to be filed.

certified copy,
Ch. Jayaganesh
01/08/2004
Dr. Authorised Representative

9. Perusal of the satisfaction notes would show that they are recorded on **14.05.2007**. It is pertinent to note here that search in the premises of the father of the assessee was conducted on **02.08.2006**. Then material pertaining to the assessee was received by the AO of assessee on **29.12.2006** (inadvertently mentioned as 29.02.2006 in satisfaction note). These three dates i.e., date of search which is on 02.08.2006, date of transferring of the material pertaining to assessee i.e., on 29.12.2006 and recording of satisfaction on 14.05.2007 would prove beyond doubt that the impugned satisfaction note has been recorded by the AO in the capacity of the AO of assessee and not in the capacity of the AO of the searched person. Otherwise, the AO could have recorded the satisfaction note before 29.12.2006 i.e the date of transferring the material belonging to assessee for assuming jurisdiction over assessee as per the mandates of section 153C of the Act. It is now settled position of law that recording of satisfaction before transferring of material to the AO of other person is sine-qua-non for assuming jurisdiction under section 153C of the Act.

10. Notwithstanding this, we also observe that the satisfaction note could not depict any material pertaining to / belonging to assessee which would be incriminating in nature for assuming jurisdiction under section 153C of the Act. What the satisfaction note mentions is that document marked as Annexures B1 to B3 and KVI were impounded in survey operation. However, on the basis of these documents impounded in survey action of 153C is not permissible. Therefore, they do not have any relevance for the mandatory provisions of section 153C of the Act. In rest of the satisfaction note there is no mention of any incriminating material unearthed during search.

11. So far as the contention of the learned DR that AO of the assessee and searched person was the same person, we observe that it is of no relevance because under the provisions of section 153C of the Act, it is not the identity of the AO which has to be considered rather it is the capacity of the AO, which is to be examined for judging whether the AO has acted in the capacity of the searched person or in the capacity of other person. A reference can be made to the judgment of the Co-ordinate Bench in the case of Tanvir Collections Pvt. Ltd., in ITA No.2421/Del/2014 wherein the Co-ordinate Bench has dealt with same argument and held as follows:

“15. The ld. DR vehemently accentuated on the point that since the AO of the persons searched and the assessee is same, it does not make any difference whether the satisfaction is recorded in the case of the persons searched or other person. She emphasized on the factum of recording satisfaction by the AO, which condition in her opinion stood satisfied, by virtue of it having been recorded by the common AO.

16. In our considered opinion, this contention advanced on behalf of the Revenue is devoid of merit. We fail to comprehend as to how the requirement of recording satisfaction by the AO of the person searched provided by the statute can be substituted with anything else. There is an underlying rationale in providing for recording of such satisfaction by the AO of the person searched. As the money, bullion, jewellery, books of account or documents etc. always come to the possession of the AO of the person searched who has to frame assessment, it is only he who can find out that which of such documents etc. do not belong to the person

searched and are relevant for the assessment of the other person. It is not as if all the books of account and documents etc. found during the course of a search are evaluated by a separate authority to figure out that which of these documents belong to the person searched and to the others and thus handed over to the concerned AOs of the person searched and others for making assessment. As it is only the AO of the person searched who can reach a conclusion that some of the documents etc. do not belong to the person searched but to some other person, the legislature has provided for recording of such satisfaction by the AO of the person searched. It is not permissible under the law to require the AO of the other person to record such satisfaction by the AO.

17. As regards the other argument of the Id. DR that since the AO of both the persons searched and the assessee is the same person, hence the requirement of recording satisfaction by the AO of the persons searched should be deemed to have been fulfilled with the recording of satisfaction by the AO of the assessee. We are again unable to appreciate this contention that the commonness of the AO would make no difference in so far as the recording of satisfaction in the case of the persons searched is concerned. What is relevant for this purpose is not the identity of the person assessing but his position and the capacity. When the law requires the AO of the person searched to record the necessary satisfaction, it is the AO having jurisdiction over the person searched who is obliged to record such satisfaction in the capacity of that AO and that too in the case of the person searched. The mere fact that the AO of the person searched and the assessee is the same person, does not, in any manner, obliterate the requirement of law necessitating the recording of satisfaction in the case of the person searched that money, bullion, jewellery, etc., found from the person searched belongs to the 'other person.' What is crucial to note is capacity of the AO and not his identity. In view of the fact that when the statutory stipulation is for recording the satisfaction by the AO of the person searched, then, it cannot be substituted with the satisfaction of the AO of the 'other person.' This contention also fails."

12. We further observe that revealing of the incriminating 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”

13. 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"

14. 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. Therefore, 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

15. Since we have already quashed the assessment on the jurisdiction aspect, the penalty appeals in ITA Number 98 to 101 of 2023 become infructuous and hence the same are dismissed as infructuous.

16. In result the, appeals of the assessee are 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: 21.08.2024.
/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.