

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.6330/Del/2015
Assessment Year: 2007-08

M/s. Snerea Developers Pvt. Ltd., C/o- BGJC & Associates, Raj Tower, G-1, Alaknanda Community Centre, New Delhi	Vs.	ACIT, Central Circle-9, New Delhi
PAN:AAJCS5849K		
(Appellant)		(Respondent)

With

ITA No.6237/Del/2015
Assessment Year: 2007-08

DCIT, Central Circle-18, New Delhi	Vs.	M/s. Snerea Developers Pvt. Ltd., 301, Bakshi House, 40-41, Nehru Place, New Delhi
PAN:AAJCS5849K		
(Appellant)		(Respondent)

With

ITA No.6381/Del/2015
Assessment Year: 2010-11

DCIT, Central Circle-18, New Delhi	Vs.	M/s. Sohna Technobuild Pvt. Ltd., 301, Bakshi House, 40-41, Nehru Place, New Delhi
PAN:AAKCS8148N		
(Appellant)		(Respondent)

With

ITA Nos.6375 & 6376/Del/2015
Assessment Years: 2006-07 & 2008-09

M/s. Khemka Stuart Leisure Ltd., C/o- BGJC & Associates, Raj Tower, G-1, Alaknanda Community Centre, New Delhi	Vs.	ACIT, Central Circle-9, New Delhi
PAN:AAACK4630P		
(Appellant)		(Respondent)

With

ITA Nos.6383 & 6215/Del/2015
Assessment Years: 2006-07 & 2008-09

DCIT, Central Circle-18, New Delhi	Vs.	M/s. Khemka Stuart Leisure Ltd., 301, Bakshi House, 40-41, Nehru Place, New Delhi
PAN:AAACK4630P		
(Appellant)		(Respondent)

Assessee by	Sh. Rajeshwar Painuly, CA Sh. Mohit Giri, Adv.
Department by	Sh. Surender Pal, CIT(DR)

Date of hearing	25.02.2025
Date of pronouncement	25.02.2025

ORDER

PER BENCH

The instant batch of six cases involves three assessees herein, namely, M/s Snerea Developers Pvt. Ltd., M/s Sohna Technobuild Pvt. Ltd. and M/s. Khemka Stuart Leisure Ltd. All other relevant details thereof are tabulated as under:

Sl. No.	Appeal No.	Appellant	Respondent	Order Appealed against
1.	6330/Del/2015 for AY: 2007-08	M/s. Snerea Developers Pvt. Ltd.	ACIT, Central Circle-9, New Delhi	CIT(A)-27, New Delhi's order dated 29.09.2015 passed in case no. 213/14-15 involving proceedings under Section 153C r.w.s. 143(3) of the Act.
2.	6237/Del/2015 for AY: 2007-08	DCIT, Central Circle-18, New Delhi	M/s. Snerea Developers Pvt. Ltd.	CIT(A)-27, New Delhi's order dated 29.09.2015 passed in case no. 213/14-15 involving proceedings under Section 153C r.w.s. 143(3) of the Act.
3.	6381/Del/2015 for AY: 2010-11	DCIT, Central Circle-18, New Delhi	M/s. Sohna Technobuild Pvt. Ltd.	CIT(A)-27, New Delhi's order dated 29.09.2015 passed in case no. 247/14-15 involving proceedings under Section 153C r.w.s. 143(3) of the Act.
4.	6375/Del/2015 for AY: 2006-07	M/s. Khemka Stuart Leisure Ltd.	ACIT, Central Circle-9, New Delhi	CIT(A)-27, New Delhi's order dated 29.09.2015 passed in case no. 223/14-15 involving proceedings under Section 153C r.w.s. 143(3) of the Act.
5.	6383/Del/2015 for AY: 2006-07	DCIT, Central Circle-18, New Delhi	M/s. Khemka Stuart Leisure Pvt. Ltd.	CIT(A)-27, New Delhi's order dated 29.09.2015 passed in case no. 223/14-15 involving proceedings under Section 153C r.w.s. 143(3) of the Act.
6.	6376/Del/2015 for AY: 2008-09	M/s. Khemka Stuart Leisure Ltd.	ACIT, Central Circle-9, New Delhi	CIT(A)-27, New Delhi's order dated 29.09.2015 passed in case no. 222/14-15 involving proceedings under Section 153C r.w.s. 143(3) of the Act.
7.	6215/Del/2015 for AY: 2008-09	DCIT, Central Circle-18, New Delhi	M/s. Khemka Stuart Leisure Ltd.	CIT(A)-27, New Delhi's order dated 29.09.2015 passed in case no. 222/14-15 involving proceedings under Section 153C r.w.s. 143(3) of the Act.

2. Heard all the three assesseees and department through their respective learned representatives. Case files perused.

3. It emerges during the course of hearing that there arises the first and foremost issue of validity of the impugned section 153C

assessments itself in all these cases. This is for the precise reason that the search herein had admittedly taken place on 17.08.2011 in M/s. AEZ Group of cases, which lead to initiation of proceedings against these three assessees on the ground that the corresponding seized material in fact “belongs/relates” to them as are identical facts emanating from para 3 in the assessment(s) dated 31st March, 2014 herein. It is in this factual backdrop that we invited the learned CIT(DR)’s attention to section 153C(1) 1st proviso envisaging “the reference to the..... jurisdiction over such other person”.

4. Learned CIT(DR) vehemently argues that going by the date of search herein falling on 17.08.2011, all these assessment years AYs 2006-07, 2007-08, 2008-09, 2010-11, as the case may be, are duly covered thereunder under section 153A(b) read with 1st and 2nd proviso thereto.

5. We have given our thoughtful consideration to the assessee’s and Revenue’s foregoing vehement pleadings. We are of the considered view that the statutory block of six assessment years under section 153(A1) (a) and (b) read with 1st and 2nd proviso, stipulating assessment or reassessment of the total income of six

assessment years, year of search, has to be computed under section 153C(1) 1st proviso going by the date(s) of corresponding satisfaction as per various judicial precedents i.e. CIT-7 Vs. RRJ Securities Ltd. (2016) 380 ITR 612 (Del), PCIT Vs. Ojjus Medicare (P) Ltd., (2024) 465 ITR 101 (Del) and CIT Vs. Jasjit Singh (2024) 465 ITR 101 (SC)

6. That being the case, we are of the considered view that the relevant block of six assessment years counted backwards from the date of satisfaction herein i.e. 18.12.2013; does not admittedly cover the former twin assessment years 2006-07 & 2007-08. Learned CIT(DR), at this stage, seeks to buttress the point that the statutory amendment inserting “and for the relevant assessment year or years” would apply herein since these twin assessment years AY: 2006-07 and 2007-08; admittedly come within the amended two assessment years.

7. We find no merit in the Revenue’s instant latter argument as well in light of PCIT Vs. Ojjus Medicare (P) Ltd. wherein their lordships have settled the issue in assessee’s favour in para 119(B) that there should be a clear-cut indication in the satisfaction note qua the amount of income is likely to be that of Rs.50 lakhs or more

which admittedly has not been complied with herein. We thus quash the impugned assessments forming subject matter of our adjudication in assessment years 2006-07 and 2007-08 in very terms.

8. There arises a yet another legal issue herein once the learned Assessing Authority had recorded its identical section 153C satisfaction(s) that the corresponding seized material “belongs/relates” to these assessees. We deem it appropriate to observe that we are admittedly dealing with the search in question carried out on 17.08.2011 followed by the relevant satisfaction(s) recorded in December, 2013. The same undisputedly had to be recorded under the unamended section 153C(1) applicable up to 01.06.2015 before getting substituted vide amendment by the Finance Act, 2015 w.e.f. 01.06.2015 onwards. We further note that the above unamended provision applicable at the time of section 153C satisfaction stipulated that such seized material; be it valuables or documents etc., as the case may be, could only “belong” to the other person as the legislature had incorporated “pertain or relates”, by way of the foregoing substitution only.

9. It is in this factual backdrop that we are of the considered view that the learned Assessing Officer had erred in law and on facts in using both the foregoing twin expression “belongs/relates” (supra) against these assesseees as the same does not satisfy the test of legal scrutiny by following the principles of stricter interpretation in CIT Vs. Dilip Kumar and Co. & Ors. [2018] 9 SCC 1 (SC) (FB)

10. Learned CIT(DR), at this stage, sought to buttress the point that the seized documents could very well be held as belonging to the assesseees in the given facts. We find no merit in the Revenue’s instant stand in light of The Senate vs. DCIT, ITA No. 1475 to 1481/Bang/2013, dated 18.03.2016 that the word “belonging” used for such a third party could be held as having ownership of the corresponding seized documents as follows: -

“9.2 Further, the term ‘belonging to’ has been interpreted by the Hon’ble Supreme Court in the case of CWT vs. Bishwanath Chatterjee (103 ITR 536) and late Nawab Sir Mir Osman Ali Khan (162 ITR 888) wherein the Hon’ble Supreme Court held as under:

“The apex court in the case of Bishwanath Chatterjee [1976] 103 ITR 536 (page 539):

“The expression ‘belong’ has been defined as follows in the Oxford English Dictionary :—‘To be the property or rightful possession of.’

So it is the property of a person, or that which is in his possession as of right, which is liable to wealth-tax. In other words, the liability to wealthtax arises out of ownership of the

asset, and not otherwise. Mere possession, or joint possession, unaccompanied by the right to, or ownership of property would therefore not bring the property within the definition of 'net wealth' for it would not then be an asset 'belonging' to the assessee."

The apex court in the case of (Late) Nawab Sir Mir Osman All Khan [1986] 162 ITR 888 has observed (page 899):

"In all these cases, as was reiterated by the Calcutta High Court in S. B. (House and Land) P. Ltd. v. CIT [1979] 119 ITR 785 the question of ownership had to be considered only in the light of the particular facts of a case. The Patna High Court in Addl. CIT v. Sahay Properties and Investment Co. P. Ltd. [1983] 144 JTR 357 was concerned with the construction of the expression 'owner' in section 22 of the Income-tax Act, 1961. There, the assessee had paid the consideration in full and had been in exclusive and absolute possession of the property, and had been empowered to dispose of or even alienate the property. The assessee had the right to get the conveyance duly registered and executed in its favour, but had not exercised that option. The assessee was not entitled to say that because of its own default in having a deed registered in its name, the assessee was not the owner of the property. In the circumstances, it was held that the assessee must be deemed to be the owner of the property within the meaning of section 22 of the Income-tax Act, 1961, and was assessable as such on the income from the property."

9.3 Again, the Hon'ble Delhi High Court in the case of *Pepsico India Holdings P. Ltd. vs. ACIT (370 ITR 295)* following its earlier decision in the case of *Pepsi Foods P. Ltd (supra)* held that unless it is established that the documents in question do not belong to the searched person, the question of invoking the provisions of sec.153C of the Act does not arise. It was also held that unless searched person disclaims the documents as belonging to him, provisions of sec.153C do not get attracted. It is also further laid down that in the satisfaction note there should be something to indicate that the seized document do not belong to the searched person. The Hon'ble Delhi High Court held as follows:

"Having set out the position in law in the decision of this Court in the case of Pepsi Foods Pvt. Ltd. (supra), it must be seen as to whether the Assessing Officer of the searched person (the Jaipuria Group) could be said to have arrived at a satisfaction that the documents mentioned above belonged to the petitioners.

First of all, we may point out, once again, that it is nobody's case that the Jaipuria Group had disclaimed these documents as belonging to them. Unless and until it is established that the documents do not belong to the searched person, the provisions of Section 153C of the said Act do not get attracted because the very expression used in Section 153C of the said Act is that "where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A" In view of this phrase, it is necessary that before the provisions of Section 153C of the said Act can be invoked, the Assessing Officer of the searched person must be satisfied that the seized material (which includes documents) does not belong to the person referred to in Section 153A (i.e., the searched person). In the Satisfaction Note, which is the subject matter of these writ petitions, there is nothing therein to indicate that the seized documents do not belong to the Jaipuria Group. This is even apart from the fact that, as we have noted above, there is no disclaimer on the part of the Jaipuria Group insofar as these documents are concerned.

Secondly, we may also observe that the finding of photocopies in the possession of a searched person does not necessarily mean and imply that they „belong“ to the person who holds the originals. Possession of documents and possession of photocopies of documents are two separate things. While the Jaipuria Group may be the owner of the photocopies of the documents it is quite possible that the originals may be owned by some other person. Unless it is established that the documents in question, whether they be photocopies or originals, do not belong to the searched person, the question of invoking Section 153C of the said Act does not arise.

Thirdly, we would also like to make it clear that the assessing officers should not confuse the expression "belongs to" with the expressions "relates to" or "refers to". A registered sale deed, for example, "belongs to" the purchaser of the property although it obviously "relates to" or "refers to" the vendor. In this example if the purchaser's premises are searched and the registered sale deed is seized, it cannot be said that it "belongs to" the vendor just because his name is mentioned in the document. In the converse case if the vendor's premises are searched and a copy of the sale deed

is seized, it cannot be said that the said copy “belongs to” the purchaser just because it refers to him and he (the purchaser) holds the original sale deed. In this light, it is obvious that none of the three sets of documents – copies of preference shares, unsigned leaves of cheque books and the copy of the supply and loan agreement – can be said to “belong to” the petitioner.

In view of the foregoing discussion, we do not find that the ingredients of Section 153C of the said Act have been satisfied in this case. Consequently the notices dated 02.08.2013 issued under Section 153C of the said Act are quashed. Accordingly all proceedings pursuant thereto stand quashed.”

9.4 Similarly, the Hon’ble Gujarat High Court in the case of *Vijaybhai N.Chandrani vs. ACIT (333 ITR 436)* held that even if there is a reference to the assessee in the seized documents, it does not mean that the assessee is the owner of those documents unless the revenue proves conclusively that the assessee is the owner of those documents. The Hon’ble Gujarat High Court held as follows:

“Thus a condition precedent for issuing notice under s. 153C and assessing or reassessing income of such other person, is that the money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned should belong to such person. If the said requirement is not satisfied, resort cannot be had to the provisions of s. 153C of the Act.

Examining the facts of the present case in the light of the aforesaid statutory scheme, it is an admitted position as emerging from the record of the case, that the documents in question, namely the three loose papers recovered during the search proceedings do not belong to the petitioner. It may be that there is a reference to the petitioner in as much as his name is reflected in the list under the heading 'Samutkarsh Members Details' and certain details are given under different columns against the name of the petitioner along with other members, however, it is nobody's case that the said documents belong to the petitioner. It is not even the case of Revenue that the said three documents are in the handwriting of the petitioner. In the circumstances, when the condition precedent for issuance of notice is not fulfilled any action taken under s. 153C of the Act stands vitiated. ”

9.5 *The ratio that can be culled out from the above decisions is that unless revenue establishes that the assessee is the owner of the seized documents, provisions of sec.153C cannot be invoked. Even the Hon'ble Delhi High Court as well as the Hon'ble Gujarat High Courts held that merely because there is a reference to the name of the assessee in the seized documents, it does not mean that the assessee is the owner of those documents. In the satisfactory note recorded by the AO there should be something to indicate that the searched person had disclaimed those documents and therefore, AO of the searched person reached a conclusion or satisfaction that the documents do not belong to the searched person but other third person. The High Courts, even went to the extent of holding that possession of documents and possession of photo copies of documents are two separate things. It may be quite possible that photo copies may be belonging to the searched person and whereas the original may be owned by some other person.*

10. *Applying the above legal position to the facts of the present case, satisfaction note recorded by the AO reads as under:*

“Satisfaction Note for initiating action u/s 153C

Action u/s 132 was conducted in the case of India Builders Corporation and its Group based on the authorization issued by the Addl.CIT (Inv)-I, Bangalore vide warrant No.1017 dated 17.06.2008.

During the course of search in the case of Indian Builders Corporation the following book/documents were found and seized u/s 132

Exhibit I.D

A/YZS 10

A/YZS/15

On a scrutiny of the above documents seized it is seen that the above materials belong to M/s.The Senate. I am satisfied that action U/s 153C has to be initiated in the case.

Notice u/s 153C issued calling for return of income within 20 days.”

The satisfaction note recorded by the AO is identical for all the years except for difference in the assessment year. From the material seized, though there was a reference to the name of the assessee-firm, equally there are some documents which do not even contain name of the assessee-firm but there is nothing to indicate that these documents were disclaimed by Indian Builders

Corporation in whose case search was conducted. The AO has not referred to any material to indicate that the assessee is the owner of those seized documents. Therefore, the presumption cast under provisions of section 132(4A) of the Act, comes into play. The said provision stipulates that where any document is found in the possession or control of any person in the course of search it may be presumed that such document belongs to such person. Further, even the provisions of section 292C(1) also provide the same. This presumption was not rebutted by the AO of the searched person. Therefore, it cannot be said that assessee-firm is the owner of the seized material based on which the impugned additions were made. Furthermore, even in terms of law laid down by the Hon'ble Supreme Court in the cases of Bishwanath Chatterjee and late Nawab Sir Mir Osman Ali Khan cited supra, assessee-firm cannot be said to be the owner of the document seized. Therefore, it cannot be said that the requirements of sec.153C are fulfilled in the present case in terms of law laid down by the Hon'ble Delhi High Court in the cases cited supra as well as by the Hon'ble Gujarat High Court in the case cited supra. Therefore, we hold that the AO was not justified in exercising jurisdiction u/s 153C of the Act. Hence, the assessments made pursuant to issue of notice u/s 153C are hereby cancelled for the assessment years 2003-04 to 2008-09.

11. We lastly note with the able assistance coming from both the parties that the learned Assessing Officer had obtained a common approval under section 153D of the Act from the prescribed authority. That being the case, we hereby quote CIT Vs. Anuj Bansal, (2024) 165 taxmann.com 3 (SC) that the same indeed vitiates the assessment itself as such an approval has to be obtained separately in each assessee's case for every assessment year. We conclude in light of our foregoing detailed discussion that all these assessments deserve to be quashed in very terms. Ordered accordingly.

12. All other pleadings on merits stand rendered academic.

13. To sum up, these assessee's appeals ITA Nos.6330, 6375 & 6376 are allowed and Revenue's cross-appeals ITA Nos.6383, 6237, 6215 and 6381/Del/2015 are dismissed in the above terms.

A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 25th February, 2025

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 25th February, 2025.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi