

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD “B” BENCH: HYDERABAD

BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT
AND
SHRI MANJUNATHA G, ACCOUNTANT MEMBER

ITA.No.515/Hyd./2022
Assessment Year 2009-2010

The ACIT, Central Circle-3(1), Hyderabad. PIN - 500 004. Telangana.	vs.	Smt. Shakila Baig, Hyderabad – 500 016. PAN ACEPB4099E
(Appellant)		(Respondent)

For Revenue :	Ms. M. Narmada, CIT-DR
For Assessee :	Shri Abhishek Garg, Advocate

Date of Hearing :	27.03.2025
Date of Pronouncement :	30.04.2025

ORDER

PER MANJUNATHA G. :

This appeal has been filed by the Assessee against the order dated 28.07.2022 of the learned CIT(A)-11, Hyderabad, relating to the assessment year 2009-2010.

2. Brief facts of the case are that, a search and seizure operation u/sec.132 of the Income Tax Act, 1961 [in short “the Act”] was carried-out in the case of M/s. MBS Jewellers Pvt Ltd., and its group of cases on 11.03.2010.

During the course of search, certain documents were found and seized relating to Smt. Shakila Baig. Accordingly, notice u/sec.153C of the Act was issued to the assessee on 31.10.2011 and served on the assessee. In response to the notice, the assessee filed return of income for the assessment year 2009-2010 on 22.12.2011 declaring a total income of Rs.4,19,306/-. The case of the assessee was selected for scrutiny. During the course of assessment proceedings, the Assessing Officer noted that, during the course of search, a copy of the sale deed No.6268/08 dated 25.07.2008 was found and seized as per pages 174 to 197 of Annexure-A/MBSPL/PJT/PO-1/04 relating to sale of land admeasuring Ac.05-04 guntas, part of Sy. No. 172 of Hydernagar Mandal, Ranga Reddy District by the assessee in favour of Dr. P.S. Prasad for a total consideration of Rs.10 lakhs, whereas, the fair market value of the property as per the Registration Authority for levying stamp duty was at Rs.16,29,14,400/-. Further, as seen from the return of income filed by the assessee, she has not offered to tax capital gain arising out of the said sale of property.

Therefore, the Assessing Officer called-upon the assessee to explain as to why the capital gain arising out of sale of property shall not be computed. In response, the assessee submitted that the impugned property has been assigned to her in the year 1995 through the Court Decree C.S.No.14/1958 as per the Hon'ble High Court of Andhra Pradesh, Hyderabad for a consideration of Rs.3,60,000/-. The above property was in dispute for several years and the cases were filed in the Court and during the court trial, there was an expenditure up-to Rs.2.50 lakhs incurred and that still the assessee could not get proper rights over the land in question as on the date of re-assignment of the property. However, under these circumstances, the assignor had requested that the land to be re-assigned back in the event of legal issues undergoing. The said property was agricultural land and was re-assigned to the assignor from whom the land was assigned to her for which a sum of Rs.10 lakhs has been paid towards compensation considering the amount paid at the time of assigning and also for the legal expenses incurred, but, it was shown as

'sale consideration' as per the sale deed dated 25.07.2008 which is actually not a sale. She further submitted that the cases are still pending for disposal before the Hon'ble Supreme Court and hence, the re-assigned amount received is not to be considered for the purpose of neither calculating for the profit nor calculating for capital gain. The Assessing Officer after considering the submissions of the assessee and also taken note of the documents found during the course of search observed that, although, the assessee contended that she has re-assigned the land to the assignee and the said land is subject matter of various disputes, but, the fact remains that she has extinguished her right to the extent of ac.5.04 gts in the un-divided land of ac.198.20 gts through a sale deed and the fair market value of the said land as per the registering authority for levying stamp duty was Rs.16,29,14,400/-. Since the assessee has not disclosed any capital gains arising out of the transfer of land, the Assessing Officer has re-computed the long term capital gains and made addition of Rs.16,25,16,630/- to the total income of the assessee vide assessment order dated

26.12.2011 passed u./sec.143(3) r.w.s.153C of the Income Tax Act, 1961 [in short “the Act”].

3. On being aggrieved, the assessee carried the matter in appeal before the learned CIT(A). Before the learned CIT(A), the assessee challenged the validity of notice issued u/sec.153C of the Act in light of satisfaction note recorded by the Assessing Officer before issuing notice and contended that in absence of proper satisfaction note, the notice issued u/sec.153C of the Act is invalid and consequent assessment order passed by the Assessing Officer is null and void. The learned CIT(A) after considering the relevant submissions of the assessee and also by following the decision of ITAT in the group cases pertaining to various persons including Mrs. L. Reena Peterson, related-search party in the case of M/s. MBS Jewellers in ITA.Nos.1082 to 1087/Hyd./2014 and ITA.Nos.1211 to 1218/Hyd./2014, quashed the assessment order passed by the Assessing Officer on the ground that the satisfaction which was drawn to initiate the proceedings u/sec.153C merely records that the documents pertaining the appellant

has been seized, but, nothing incriminating has been recorded in the satisfaction regarding those documents. The order sheet noting in the case of the appellant is more or less identical to material terms to that of Mrs. L. Reena Peterson and, therefore, following the order of the ITAT (supra) held that notice issued u/sec.153C has not been issued in a proper manner and procedure, thus, renders it invalid and, therefore, the consequent assessment order passed by the Assessing Officer u/sec.143(3) r.w.s.153C was also quashed.

4. Aggrieved by the order of the learned CIT(A), the Revenue is now in appeal before the Tribunal.

5. Ms. M. Narmada, learned CIT-DR submitted that, the learned CIT(A) has erred in not following the decision of Hon'ble Supreme Court in the case of Super Malls (P.) Ltd., vs., PCIT-8, New Delhi reported in [2020] 115 taxmann.com 105 (SC) wherein it has been held that, in case Assessing Officer of searched person and other person is same, it is sufficient by Assessing Officer to record in satisfaction note that documents seized from searched person belonged to

other person and, there is no requirement of transmitting documents so seized from searched person to other person. In the present case, going by the satisfaction note recorded by the Assessing Officer of the searched person, it is very clear that the documents so seized belonged/relates to the assessee. Therefore, the notice issued u/sec.153C on the basis of the said satisfaction is valid. The learned CIT(A) without considering the relevant points simply quashed the notice u/sec.153C and consequent assessment order passed by the Assessing Officer. Therefore, she submitted that the order of the learned CIT(A) should be set aside and the addition made by the Assessing Officer should be upheld. She further submitted that, in the alternative, since the learned CIT(A) has not discussed the issue on merits and the learned CIT(A) has quashed the assessment order passed by the Assessing Officer on legal issue, the matter may be restored back to the file of learned CIT(A) to decide the appeal on merits.

6. Shri Abhishek Garg, Advocate-Learned Counsel for the Assessee, on the other hand, supporting the order of

the learned CIT(A) submitted that, this issue is squarely covered in favour of the assessee by the order of the ITAT, Hyderabad in appellant group case where under similar satisfaction note recorded by the Assessing Officer, the ITAT has quashed the assessment order on the ground that the satisfaction note recorded by the Assessing Officer is not as per the provisions of sec.153C of the Act and consequently, the assessment order passed by the Assessing Officer is null and void. Learned Counsel for the Assessee further referring to various judicial precedents including decision of Hon'ble Supreme Court in the case of CIT vs., Sinhgad Technical Education Society [2017] 397 ITR 344 (SC) submitted that, it is the incumbent upon the Assessing Officer to record satisfaction *qua* each assessment year in light of material found during the course of search and thus, the Assessing Officer ought to have record satisfaction note on the basis of material found during the course of search which belonged/pertains to the other person and had a bearing on the total income of particular assessment year. In the present case, going by the satisfaction note recorded by the

Assessing Officer, the Assessing Officer merely stated that the documents relating to the assessee-respondent, but has not arrived at a correct satisfaction that the said document had a bearing on the total income of the assessee. Therefore, in absence of proper satisfaction note recorded by the Assessing Officer, the issue of notice u/sec.153C and consequent assessment order is in valid and liable to be quashed. The learned CIT(A) after considering relevant facts has rightly quashed the assessment order passed by the Assessing Officer.

6.1. The Learned Counsel for the Assessee, further relying on the decision of Hon'ble Supreme Court in the case of Super Malls (P.) Ltd., vs., PCIT-8, New Delhi (supra), submitted that, there is no dispute with regard to the ratio laid down by the Hon'ble Supreme Court in the above case that if the Assessing Officer of the searched person and the other person is one and the same, it is sufficient, if the Assessing Officer record satisfaction that the material belonged to other person, but, the fact remains it is not a case whether the Assessing Officer of the searched person

or other person, has recorded satisfaction, but, it is a case where there is no proper satisfaction recorded by the Assessing Officer in accordance with the provisions of the Law. Since the Assessing Officer has not recorded proper satisfaction, the learned CIT(A) has rightly quashed the assessment order passed by the Assessing Officer and, therefore, the order of the learned CIT(A) should be upheld. The Learned Counsel for the Assessee in the alternative, submitted that, if at all the issue is decided against the assessee, then, the matter may be remanded back to the learned CIT(A) to decide the issue on merit.

7. We have heard both the parties, perused the material on record and the orders of the authorities below. There is no dispute with regard to the fact that, during the course of search in the case of M/s. MBS Jewellers Pvt. Ltd., and its group cases on 11.03.2010 certain documents were found and seized relating to the assessee viz., Smt. Shakila Baig. The Assessing Officer has recorded satisfaction as required under the provisions of sec.153C of the Act in light of seized documents found during the course

of search and observed that, the said documents relates to the assessee Smt. Shakila Baig and accordingly, issued notice u/sec.153C of the Act and completed the assessment u/sec.143(3) r.w.s.153C of the Act. The learned CIT(A) quashed the assessment order passed by the Assessing Officer on the ground that the Assessing Officer issued notice u/sec.153C on the basis of improper and incorrect satisfaction note because, the Assessing Officer has not arrived at correct satisfaction as to whether the said documents belongs to the assessee and had a bearing on the total income of the relevant assessment year and in absence of correct satisfaction note, issuance of notice u/sec.153C is invalid and consequent assessment order passed by the Assessing Officer is liable to be quashed. Thus, the learned CIT(A) quashed the assessment order passed by the Assessing Officer.

8. We find that, in the present case, the Assessing Officer of the searched person and the Assessing Officer of the assessee are one and the same. The Assessing Officer has recorded satisfaction note in the case of the assessee as

'other person' and observed that, documents found during the course of search on 11.03.2010 relates to Smt. Shakila Baig-Assessee. The provisions of sec.153C deals with assessment of 'other person'. As per the provisions of sec.153C of the Act stood before 01.10.2014, where a search had been taken place and the Assessing Officer is satisfied that, any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A. In otherwords, during the course of search in a case any document belonged to other person is found, then, the Assessing Officer shall handover such documents

to the Assessing Officer having jurisdiction over other person and the Assessing Officer shall proceed to issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A of the Act. The above provision has been substituted by Finance Act No.2 of 2014 w.e.f. 01.10.2014 and as per the amended provision, the Assessing Officer of the other person is also required to satisfy that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person. In other words, before amendment to sec.153C by the Finance Act No.2 of 2014 w.e.f. 01.10.2014, the requirement of law is that, the Assessing Officer of the searched person shall handover the documents belonged to other person to the Assessing Officer having jurisdiction over such other person to proceed with in accordance with the provisions of section 153A of the Act. This provision has been examined and explained by the Hon'ble Supreme Court in the case of Super Malls (P.) Ltd., vs., PCIT-8, New Delhi (supra) wherein it has been clearly held that when

Assessing Officer of searched person and other person is same, it is sufficient by Assessing Officer to record in satisfaction note that documents seized from searched person belonged to other person and, there is no requirement of transmitting documents so seized from searched person. The sum and substance of ratio laid down by the Hon'ble Supreme Court is that, in case the Assessing Officer of the searched person and third person is one and the same, then, it is sufficient by the Assessing Officer to note in the satisfaction note that the documents seized from searched person belonged to other person. Once the note says so, then, the requirement of sec.153C of the Act is fulfilled. In case, where the Assessing Officer of the searched person and the other person is the same, there could be one satisfaction note prepared by the Assessing Officer as he himself is the Assessing Officer of the searched person and also the Assessing Officer of the other person. However, as observed hereinabove, he must be conscious that the documents seized/recovered from the searched person belonged to other person. In such a situation, the

satisfaction note would be *qua* the other person. The second requirement of transmitting the document so seized from the searched person would not be there as he himself will be the Assessing Officer of the searched person and the other person and, therefore, there is no question of transmitting such seized documents to himself.

9. In the present case, going by the facts available on record, there is no dispute with regard to the fact that, during the course of search on 11.03.2010 in the case of M/s. MBS Jewellers Pvt. Ltd., and its group cases, a document was found and seized which contain copy of the sale deed no.6268/2008 dated 25.07.2008 for sale of land admeasuring ac.5.04 gts in Sy.no.172 of Hydernagar Mandal, Ranga Reddy District in favour of Dr. P.S. Prasad and the said document belongs to the assessee and having a bearing on the total income of the assessee for the assessment year 2009-2010. Therefore, in our considered view, the satisfaction note recorded by the Assessing Officer is in accordance with the provisions of sec.153C of the Act and consequently, notice issued u/sec.153C is valid and,

therefore, in our considered view, the learned CIT(A) erred in quashing the assessment order passed by the Assessing Officer u/sec.143(3) r.w.s.153C of the Act order dated 26.12.2011.

10. Coming back to the arguments of the Learned Counsel for the Assessee in light of the decision of Hon'ble Supreme Court in the case of Super Malls (P.) Ltd., vs., PCIT-8, New Delhi (supra) that, the satisfaction note recorded by the Assessing Officer is improper and not in accordance with the provisions of sec.153C of the Act. In our considered view, the law does not specify how to record a satisfaction and the manner in which such satisfaction note is to be recorded. The law only specifies the satisfaction of the Assessing Officer that, the documents found during the course of search belonged to other person. In the present case, the Assessing Officer of the searched person and the assessee is one and the same and the Assessing Officer of the assessee has recorded satisfaction in clear words and stated that, the said document found during the course of search belongs to the assessee. Therefore, in our

considered view, there is no lacuna in the satisfaction note recorded by the Assessing Officer and, therefore, the observation of the learned CIT(A) that the satisfaction recorded by the Assessing Officer is improper and invalid is incorrect. We, therefore, reject the arguments of the Learned Counsel for the Assessee in light of Judgment of Hon'ble Supreme Court in the case of CIT vs., Sinhgad Technical Education Society (supra) and also other case law referred to by the Learned Counsel for the Assessee.

11. In this view of the matter and considering the facts of the case, we are of the considered view that the learned CIT(A) is erred in quashing the assessment order passed by the Assessing Officer u/sec.143(3) r.w.s.153C of the Act without considering the binding decision of Hon'ble Supreme Court in the case of Super Malls (P.) Ltd., vs., PCIT-8, New Delhi (supra) where the Hon'ble Supreme Court has explained the law and also the satisfaction note required to be recorded by the Assessing Officer of the searched person and the other person. Therefore, we are of the considered view that, there is merit in the arguments of

the Learned DR and thus, we reverse the order passed by the learned CIT(A) and upheld the order passed by the Assessing Officer.

12. We find that the learned CIT(A) has allowed relief to the assessee by quashing the assessment order passed by the Assessing Officer u/sec.143(3) r.w.s.153C of the Act. However, the learned CIT(A) has not discussed the issue on merits, since he has allowed the relief to the assessee on legal ground. It was the argument of the Learned Counsel for the Assessee that in case the issue is decided against the assessee, the matter may be remitted back to the learned CIT(A) to decide the issue on merits. The Learned DR present for the Revenue, has no objection for setting-aside the issue to the file of learned CIT(A) to decide the issue on merits. Thus, considering the arguments of both the sides, we reverse the order of the learned CIT(A) and restore the issue back to the file of learned CIT(A) with a direction to decide the issues involved in the appeal on merits, in accordance with law, by providing adequate opportunity of being heard to the assessee.

13. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 30.04.2025

Sd/-
[VIJAY PAL RAO]
VICE PRESIDENT

Sd/-
[MANJUNATHA G]
ACCOUNTANT MEMBER

Hyderabad, Dated 30th April, 2025

VBP

Copy to

1.	The ACIT, Central Circle-3(1), 7 th Floor, Aaykar Bhavan, Basheerbagh, Hyderabad – 500 004. Telangana.
2.	Smt. Shakila Baig, H.No.6-3-1119, Flat No.403, Aditya Elite, Begumpet, Hyderabad – 500 016.
3.	The CIT(A)-11, 6 th Floor, Aaykar Bhavan, Opp. LB Stadium, Basheerbagh, Hyderabad – 500 004.
4.	The Pr. CIT (Central), Hyderabad.
5.	The DR ITAT “B” Bench, Hyderabad.
6.	Guard File.

//By Order//

//True Copy//