

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI
BEFORE SHRI G. D. AGRAWAL, VICE PRESIDENT**

AND

SMT SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A .No. 3186/DEL/2013 (A.Y 2005-06)

I.T.A .No. 3188/DEL/2013 (A.Y 2006-07)

I.T.A .No. 3189/DEL/2013 (A.Y 2004-05)

I.T.A .No. 3190/DEL/2013 (A.Y 2004-05)

I.T.A .No. 3191/DEL/2013 (A.Y 2005-06)

I.T.A .No. 3192/DEL/2013 (A.Y 2006-07)

I.T.A .No. 3193/DEL/2013 (A.Y 2007-08)

I.T.A .No. 3194/DEL/2013 (A.Y 2005-06)

Narsi Creations 12, Ring Road Lajpat Nagar-IV New Delhi AAEFN5520G (APPELLANT)	Vs	DCIT Central Circle-12 ARA Centre, E-2, Jhandewalan Extension New Delhi (RESPONDENT)
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Appellant by	Sh. Pankaj Gargh, Adv
Respondent by	Ms. Sulekha Verma, CIT DR

Date of Hearing	18.04.2016
Date of Pronouncement	10.05.2016

ORDER

PER BENCH

These appeals are filed against the order dated 30/03/2013 passed by CIT (A) XXXI, New Delhi.

2. The main ground challenged in these appeals is that “*the notice issued u/s 153C and the assessment order passed u/s 153C/143(3) is illegal, bad in law and without jurisdiction.*” First we will take up this ground.

3. In this case, search and seizure action was conducted at assessee’s premises on 30/7/2008 as part of Rajdarbar Group. Notice u/s 153C of Income Tax Act 1961 dated 23/07/2010 was issued to the assessee firm requiring it to file the return for the various assessment years. The satisfaction was recorded by the same Assessing Officer on 23/7/2010. The satisfaction recorded in A.Y. 2005-06 is as under:-

23.07.2010 Satisfaction note for proceedings u/s. 153C of the Income Tax Act, 1961

A search operation was conducted on Raj Darbar Group of cases on 31.07.2008. During the course of search operations at the premises of

(i) Party A-7, Global Reality Venturese Pvt. Ltd.

Various papers were found and seized belonging to M/s. Narsi Creations. The annexure are marked as under:

Party A-7

Annexure A-45, Hard Disc containing Books of Accounts of M/s. Narsi Creations.

Thus the proceedings u/s. 153C r.w. section 153A of the Income Tax Act, 1961 are being initiated in the above case.

Deputy Commissioner of Income Tax,

Central Circle-12. New Delhi.

4. The Ld. AR submitted that the satisfaction note recorded is similar in all the assessment year as relates to the premises and the search party. The Ld. AR further pointed out though there was search, however, the same took place at premises which was not belonging to assessee company. The assessee was asked to file its return and accordingly assessee filed its return declaring income stated therein. The same was filed on 05.08.2010 similar to the returns filed by the assessee firm u/s 139 of the Act at the relevant due dates of respective assessment years.

5. The Ld. AR submitted various case laws of the Hon'ble Delhi High Court which was in support of the assessee's company and related to the same Rajdarbar Group. The case laws cited are as follows:

i) M/s. Natural Product Biotech Ltd. (ITA No. 3089/DEL/2013) ITAT New Delhi confirmed by the Hon'ble Delhi High Court in ITA No. 569/2015.

ii) M/s. Nageshwar Investment Ltd. (ITA No. 5393/DEL/2012) passed by ITAT New Delhi confirmed by the Hon'ble Delhi High Court in ITA No. 406/2015.

6. The Ld. AR submitted that in case of M/s Nageshwar Investment Ltd. the Hon'ble ITAT has allowed the appeal on the ground that the Assessing Officer was not having jurisdiction to initiate Section 153C proceedings against the assessee and, therefore, the issuance of notice itself is null and void and, therefore, the same may be quashed. The Ld. AR submitted that the same A.O on the strength of identical satisfaction and not only that on the very same date recorded the satisfaction to proceed u/s 153C against the assessee. In case of Nageshwar Investment Ltd also the same A.O on the same date on which the satisfaction recorded u/s 153C against the assessee. And in the instant case before us also the same is repeated i.e on 23/7/2010 made a ditto copy of satisfaction except in the change of name of the assessee. The satisfaction is already reproduced hereinabove. The Ld. AR also submitted that the ITAT, New Delhi Bench judgment has been confirmed by the jurisdictional High Court.

7. The Ld. DR tried to distinguish the judgments but was not able to answer whether the Assessing Officer for the search party has recorded his satisfaction or not. Merely recording satisfaction by the Assessing Officer of the assessee in question will not amount it as a satisfaction. The Ld. DR submitted that since the Assessing Officer of both the persons was the same, there was no question of handing over and taking over of the documents.

8. We have carefully considered the arguments of both the sides and perused the material placed before us. Section 153C of the Income-tax Act, 1961 reads as under:-

“153C. [(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, 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, 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 such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A:.”

9. From the above, it is evident that action under Section 153C can be taken in respect of any other person than the person searched, if the Assessing Officer of the person searched is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents belong to a person other than the person searched. In such circumstances, he shall hand over to the Assessing Officer of such other person money, bullion, jewellery or other valuable article or thing or books of account or documents. Thereafter, the Assessing Officer of such other person shall proceed

against the said person to assess or reassess his income in accordance with the provisions of Section 153A. Therefore, recording of satisfaction by the Assessing Officer of the person searched that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized belong to the person other than the person searched is a *sine qua non* for initiating action under Section 153C.

10. The condition for recording satisfaction by the Assessing Officer of the person searched has to be present. In the case of Section 153C, the Assessing Officer of the person searched is to be satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents belong to a person other than the person searched. Thereafter, the Assessing Officer of the person searched has to hand over the books of account, documents or asset seized to the Assessing Officer having jurisdiction over such other person and thereafter, the Assessing Officer of such other person has to proceed to assess such other person. Thus, the basic condition of recording the satisfaction by the Assessing Officer of the person searched as well as handing over of books of account, other documents or assets seized to the Assessing Officer of such other person has to be present. But in the present case the same is missing.

11. From a perusal of the said satisfaction note, it is evident that this paper does not indicate in whose case this satisfaction was

recorded and who is the officer recording the satisfaction. There is no mention of name of the assessee. There is no mention of the name of the Assessing Officer. During the search of whose premises it was found, is not mentioned. The last line of the satisfaction note reads "Thus the proceedings u/s. 153C r.w. section 153A of the Income Tax Act, 1961 are being initiated in the above case." A plain reading of the above sentence indicates that it is recorded by the Assessing Officer who is taking action under Section 153C. Thus, it seems that the satisfaction note is recorded by the Assessing Officer of the assessee. If the Assessing Officer is assessing the person searched as well as other person whose assets, books of account or documents were found at the time of search, then also, first while making the assessment in the case of the person searched, he has to record the satisfaction that the money, bullion, jewellery or other valuable article or thing or books of account or documents belong to the person other than the person searched. Then, the copy of this satisfaction note is to be placed in the file of such other person and the relevant document should also be transferred from the file of person searched to the file of such other person. Thereafter, in the capacity of the Assessing Officer of such other person, he has to issue the notice under Section 153A read with Section 153C. The Assessing Officer of the person searched and such other person may be the same but these are two different assesseees and, therefore, the Assessing Officer has to carry out the dual exercise, first as the Assessing Officer of the person searched in which he has to record the

satisfaction, during the course of assessment proceedings of the person searched. After recording such satisfaction note in the file of the person searched, the same is to be placed in the file of such other person. Then, in his capacity as the Assessing Officer of such other person, he should take cognizance of such satisfaction note and thereafter issue notice under Section 158BC. In this case, this exercise of recording the satisfaction during the assessment proceedings of the person searched has not been carried out. On the other hand, the Assessing Officer recorded the satisfaction in the case of such other person which does not satisfy the condition of assuming jurisdiction under Section 153C. Therefore, the above satisfaction note cannot be said to be a valid satisfaction note within the meaning of Section 153C.

12. Apart from above, we find that jurisdiction under Section 153C has been assumed only on the basis that during the course of search of one of the persons of. It is not in dispute that the assessee had filed the return for AY 2004-05 alongwith the original copy of the audited profit & loss account and balance sheet. Search had taken place on 31.07.2008 while the return of income alongwith the original profit & loss account and balance sheet was already filed more than three and a half years before the date of search. In the remand report dated 23.07.2010, the Assessing Officer has also not disputed the above fact but he tried to justify action under Section 153C on the ground that for issue of notice

under Section 153C, it is not necessary that the document found and seized should be of incriminating nature. Therefore, we hold that the underlying condition for invoking the jurisdiction under Section 153C is not satisfied in the case of the assessee.

13. Since we have quashed the assessment order itself, the additional grounds challenged by the assessee does not survive.

14. In result, the appeal is allowed.

The order is pronounced in the open court on 10th of May, 2016.

**Sd/-
(G. D. AGRAWAL)
VICE PRESIDENT**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 10/05/2016

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	18/04/2016	PS
2.	Draft placed before author	19/04/2016	PS
3.	Draft proposed & placed before the second member	.2016	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	10.05.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	10.05.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		