

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6569/Del./2013
(ASSESSMENT YEAR : 2007-08)**

**ITA No.6570/Del./2013
(ASSESSMENT YEAR : 2008-09)**

**ITA No.6571/Del./2013
(ASSESSMENT YEAR : 2009-10)**

ACIT, Central Circle 9,
New Delhi.

vs. M/s. Vidhya Shankar Investment Pvt. Ltd.,
402, Amber Tower, Naniwala Bagh,
Azadpur, Delhi – 110 033.

(PAN : AAACV4336K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Salil Aggarwal, Advocate and
Shri Shailesh Gupta, CA

REVENUE BY : Ms. Poramita Tripathy, CIT DR

Date of Hearing : 07.09.2016

Date of Order : 28.09.2016

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since identical question of fact and law have been raised in the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The Appellant, Assistant Commissioner of Income-tax, Central Circle 9, New Delhi (hereinafter referred to as 'the revenue') by filing the present appeals sought to set aside the impugned orders dated 30.09.2013 passed by the Commissioner of Income-tax (Appeals)-XXXII, New Delhi qua the assessment years 2007-08, 2008-09 and 2009-10 on the grounds inter alia that :-

“AY 2007-08

1. The Commissioner of Income Tax (Appeals) erred in law and on facts in deleting the addition of Rs.4,78,21,800/- made by the AO by treating the bogus share application money and share premium as unexplained cash credit.
2. (a) The order of the CIT (A) is erroneous and not tenable in law and on facts.
(b) The appellants craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

“AY 2008-09

1. The Commissioner of Income Tax (Appeals) erred in law and on facts in deleting the addition of Rs.7,75,00,000/- made by the AO by treating the bogus share application money and share premium as unexplained cash credit.
2. (a) The order of the CIT (A) is erroneous and not tenable in law and on facts.
(b) The appellants craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

“AY 2009-10

1. The Commissioner of Income Tax (Appeals) erred in law and on facts in deleting the addition of Rs.9,73,37,500/- made by the AO by treating the bogus share application money and share premium as unexplained cash credit.

2. (a) The order of the CIT (A) is erroneous and not tenable in law and on facts.
- (b) The appellants craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand in these appeals are : during the search and seizure operation under section 132/133A of the Income-tax Act, 1961 (for short ‘the Act’) conducted on 14.09.2010 at the business and residential premises of M/s. Jagat Agto Commodities Pvt. Ltd., 802, Amba Deep Building, K.G. Marg, New Delhi, numerous documents were recovered containing balance sheet and trial balance of M/s. Vidhya Shankar Investments Pvt. Ltd. (assessee) for the period 01.04.2010 to 04.09.2010 belonging to the assessee company. After recording satisfaction note u/s 153C, notices were issued for the Assessment Years 2005-06 to 2010-11 on 13.02.2013 to which assessee raised objections vide letter dated 21.02.2013 inter alia that documents do not belong to the assessee company. Assessee opted to treat the return filed u/s 139(1) as reply to the notice issued u/s 153C. Then, the assessee was served with notice u/s 143 (2) and 142 (1) and in response thereto, Shri Ravinder Goel, CA/AR put in appearance, filed necessary details and explanation.

3. From the documents seized during search and seizure operation from M/s. Jagat Group and S.K. Jain Group, it was noticed that Shri S.K. Jain Group was indulged into providing entries under the garb of share capital etc. through its sham companies and M/s. Jagat Group was found to rerouting its unrecorded and unaccounted income by way of taking entries of loan and share capital from such sham companies. Revenue also noticed that Shri Satish Pawa and Shri Sant Lal Agrawal, head of M/s. Jagat Group have acquired/purchased various such companies having huge net worth by purchasing their shares at very low prices in the name of their family members or their employees and the assessee company is also one of such company.

4. During the year under assessment i.e. 2007-08, the assessee company had received share capital of Rs.47,90,000/- and share premium of Rs.4,30,31,800/- from 32 investors; for AY 2008-09, the assessee company had received share capital of Rs.77,50,000/- and share premium of Rs.6,97,50,000/- from 29 investors; for AY 2009-10, the assessee company had received share capital of Rs.97,40,000/- and share premium of Rs.8,75,97,500/- from 26 investors; assessee company filed necessary documents which the AO has not found to be genuine; AO also came to the conclusion that these documents do not prove the capacity of the investors to

provide share capital/share premium allegedly invested by them and companies are appearing not into any business and having income to make such an investment.

5. AO also noticed that all the purchases of the shares of M/s. Jagat Group are connected and controlled by owner of M/s. Jagat Group, Shri Satish Kumar Pawa and Shri Sant Lal Agrawal and it has come on record that shares of assessee company were sold by M/s. Jagat Group at the price of Rs.3.5 per share against the face value of Rs.10 and book value of Rs.90.25 per share which shows that the assessee company is a main company to introduce undisclosed income of M/s. Jagat Group under the garb of share capital and share premium routed through various companies mentioned in the detailed assessment order. AO also noticed that sale of share @ Rs.3.50 per share as against the book value of the share of the assessee company at Rs.90.25 per share makes the entire transaction doubtful. Therefore, how M/s. Jagat Group purchased entire company for a consideration of Rs.87,44,750/- when in the month of transfer, share capital and reserve and surplus of the assessee company were Rs.22,54,99,727/-. AO also noticed that so called invoices have merely sold their investment at throw away prices inspite of the fact that there was no business exigency or market factors to sell their investment at throw away prices. AO

treated the same as accommodation entries and thereby treated the same as unexplained cash u/s 68 of the Act by making an addition to the tune of Rs.4,78,21,800/- (Rs.47,90,000/- + Rs.4,30,31,800/-) qua AY 2007-08; Rs.7,75,00,000/- (Rs.77,50,000/- + Rs.6,97,50,000/-) qua AY 2008-09; and Rs.9,73,37,500/- (Rs.97,40,000/- + Rs.8,75,97,500/-) qua AY 2009-10.

6. Assessee carried the matter before the Id. CIT (A) by way of filing the appeals who has allowed all the appeals qua AYs 2007-08, 2008-09 and 2009-10 vide impugned orders. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeals.

7. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

8. The Id. DR for the revenue challenging the impugned orders contended inter alia that the Id. CIT (A) has erred in law as well as on facts that the AO has no jurisdiction u/s 153C of the Act; that the AO issued notice u/s 153C after recording the satisfaction note on the basis of incriminating material against the assessee company seized during search and seizure operation on M/s. Jagat Group of companies and relied upon the orders passed by the AO.

9. However, on the other hand, Id. AR for the assessee to repel the contentions raised by the Id. DR contended inter alia that the AO has no jurisdiction in this case to make an assessment u/s 153C as the documents seized pertains to the period 01.04.2010 to 04.09.2010 and not qua the assessment years under consideration; that the income-tax return of all the entities/invoices treated as ingenuine invoices by the AO have been confirmed by the AO; that only list of shareholders were seized which does not find mention in the satisfaction note.

10. Undisputed facts necessary to adjudicate upon the controversy at hand are inter alia that search and seizure operation was conducted at the business and residential premises of M/s. Jagat Group on 14.09.2010 and numerous documents were seized; that balance sheet and trail balance of M/s. Vidhya Shankar Investments Pt. Ltd., the assessee company, pertaining to the period 01.04.2010 to 04.09.2010 were seized; that the assessee had filed return u/s 139 (1) declaring income at Rs.17,466/- on 04.09.2007 qua AY 2007-08; at Rs.14,410/- on 23.03.2009 qua AY 2008-09; and at Rs.16,120/- on 10.10.2009 qua AY 2009-10.

11. In the backdrop of the aforesaid undisputed facts and circumstances of the case, the first question arises for determination in this case is :-

“as to whether AO who has recorded the satisfaction that the documents relate to the assessee company, that is other than the searched person, had the jurisdiction to pass the assessment order in question?”

12. Identical issue has come up before the Hon’ble jurisdictional High Court in case entitled as ***SSP Aviation Ltd. vs. DCIT – (2012) 346 ITR 177 (Delhi)***. The ratio of the judgment in ***SSP Aviation Ltd.*** (supra) is that the AO who has recorded satisfaction qua the documents seized during search and seizure operation pertaining to some third party i.e. other than the searched person has no power except to forward the documents to the AO having jurisdiction over the said third person. The ratio of the judgment in ***SSP Aviation Ltd.*** (supra) is applicable to the facts and circumstance of the case wherein the AO who has passed the impugned assessment order, set aside by the Id. CIT (A), after recording his satisfaction u/s 153C, has no jurisdiction whatsoever. He was merely empowered to forward the seized document pertaining to the assessee to the concerned AO having the jurisdiction over the assessee company.

13. For ready perusal, operative part of the judgment in ***SSP Aviation Ltd.*** (supra) is reproduced as under :-

“Section 153C of the Income-tax Act, 1961, merely enables the Revenue authorities to investigate into the contents of the document seized, which belongs to a

person other than the person searched so that it can be ascertained whether the transaction or the income embedded in the document has been accounted for in the case of the appropriate person. It is aimed at ensuring that income does not escape assessment in the hands of any other person merely because he has not been searched under section 132 of the Act. It is only a first step to the enquiry, which is to follow. The Assessing Officer who has reached the satisfaction that the document relates to a person other than the searched person can do nothing except to forward the document to the Assessing Officer having jurisdiction over the other person and thereafter it is for the Assessing Officer having jurisdiction over the other person to follow the procedure prescribed by section 153A in an attempt to ensure that the income reflected by the document has been accounted for by such other person. It will be seen that whereas section 158BD refers to the satisfaction of the Assessing Officer that any "undisclosed income" belongs to any person other than the searched person, section 153C(1) in contrast refers merely to the satisfaction of the Assessing Officer that the valuable article or books of account or document "belongs" to a person other than the searched person. The latter provision does not refer to any undisclosed income at all. The machinery provided in section 153C read with section 153A merely facilitates an enquiry regarding the existence or otherwise of undisclosed income in the hands of the person other than the searched person. The starting point of the enquiry is the seizure of the valuable article or books of account or document, which according to the satisfaction reached by the Assessing Officer, belongs to a person other than the searched person. At the time when the Assessing Officer having jurisdiction over the searched person reaches the satisfaction that the document belongs to a person other than the searched person, it is not necessary for him to also reach a firm conclusion/opinion that the document shows undisclosed income belonging to such other person. This is a matter for enquiry, which is to be conducted in the manner prescribed by section 153C. The fact that the procedure envisaged by section 153C is somewhat cumbersome and that the person other than the

searched person is put to some inconvenience cannot be an argument to hold that the entire proceedings are bad in law. There can be some inconveniences in a case where the income had already been disclosed by the other person who has not been searched. However, there is no cause for any apprehension that the income-tax authorities will exploit the situation to harass assessee where there is evidence adduced by them to and establish that the income reflected by the valuable article or books of account or document seized during the search has already been disclosed by them. Even if they tend to act unreasonably or under misplaced enthusiasm, there are adequate safeguards which can be availed of by those persons.”

14. Not only this, the revenue vide its circular no.24/2015 dated 31.12.2015 further clarified the position as to mandatorily recording of satisfaction for the purpose of section 158BD/153C as under :-

“CIRCULAR NO.24/2015 [F.NO.279/MISC./140/2015/ITJ], DATED 31-12-2015

The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitwears in its detailed judgment in Civil Appeal No. 3958 of 2014 dated 12-3-2014 [2014] 43 taxmann.com 446 (SC) (available in NJRS at 2014-LL-0312-51) has laid down that for the purpose of section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person U/S 158BD. The Hon'ble Court held that "the satisfaction note could be prepared at any of the following stages:

- (a) at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; or
- (b) in the course of the assessment proceedings under section 158BC of the Act; or
- (c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person."

3. Several High Courts have held that the provisions of section 153C of the Act are substantially similar/pari-materia to the provisions of section 158BD of the Act and therefore, the above guidelines of the Hon'ble SC, apply to proceedings U/S 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.

4. The guidelines of the Hon'ble Supreme Court as referred to in para 2 above, with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgment. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BDI153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court."

15. Bare perusal of the circular (supra) goes to prove that in the cases at hand, satisfaction u/s 153C has been recorded during the search and seizure operation by the AO having no jurisdiction over the assessee company whereas it was required to be recorded by

the AO, having the jurisdiction which is missing in this case as such the assessment u/s 143 (3) read with section 153C is not sustainable as has been rightly held by the Id. CIT (A). Moreover, no document belonging to the assessee company was found from the premises of M/s. Jagat Group.

16. When undisputedly satisfaction note pertaining to the documents available at pages 85 to 87 of A-2 found and seized from the residential premises of Shri Satish Kumar Pawa has not been recorded, the assessment order is not sustainable. Moreover, the AO has not enquired into the aforesaid documents by putting enquiries to the assessee.

17. AO also proceeded on the premise that it is beyond comprehension to believe that a share having face value of Rs.10 has been sold for Rs.3.50 per share but has not preferred to bring on record any material that the aforesaid invoices are concerned/ connected with the assessee company. Moreover, its accounts are not in dispute, because from the return filed by the assessee on 23.03.2009 qua AY 2008-09 and return filed by assessee on 04.09.2007 qua 2007-08, treated u/s 153C, it is clear that share capital amounting to Rs.77,50,000/- and share premium of Rs.6,97,50,000/- for AY 2007-08, share capital amounting to Rs.47,90,000/- and share premium of Rs.4,30,31,800/- for AY

2008-09 and Rs.97,40,000/- and share premium of Rs.8,75,97,500/- for AY 2009-10 tallied with Documents-II having been declared by the assessee even prior to the search and seizure operation.

18. Even otherwise, AO has not conducted investigation/inquiry regarding the transactions in question on the basis of which addition has been made nor the documents relied upon have ever been put to the assessee nor the same have even figured in the satisfaction note.

19. Now, the next question arises for determination in this case is:-

“as to whether the CIT (A) has erred in facts and law in deleting the addition of Rs.4,78,21,800/- qua AY 2007-08, Rs.7,75,00,000/- qua AY 2008-09 and Rs.9,73,37,500/- qua AY 2009-10, by treating the bogus share application money / share premium as unexplained cash credit?”

20. Undisputedly, the assessee company has supplied confirmation letter from the share applicants; copies of bank accounts of a day or week of the share applicants; copy of acknowledgement of ITRs and copy of balance sheets etc. for scrutiny by the AO, which the AO has declared ingenuine on the basis of conjectures and surmises inter alia that these documents do not prove the capacity of these persons to give the share capital/ share premium for investment; that these companies appear to be

not doing any business and drawing such income to justify their investment; and that most of the investors sold their shares to the person connected or controlled by Shri Sant Lal Agrawal and Shri Satish Kumar Pawa at the price of 1/4th of the face value of the share.

21. When undisputedly AO has perused the relevant details pertaining to the share capital / share premium qua the year under assessments as furnished by the assessee company and has not minced a word to question the validity of those documents nor the AO has given any findings regarding the summons issued u/s 131 of the Act for personal deposition and furnishing of details by the investors in the assessee company. Even no statement of these investors was recorded by the AO.

22. So, when all the shareholders appear before the AO and filed confirmations, bank statements, copy of ITRs for the AY 2007-08 to 2011-12, copy of PAN, name of directors, copy of audited accounts, etc. to establish the investment made by them in the assessee's company, their identity cannot be questioned on the basis of conjectures and surmises. In the absence of any adverse material on record that cash receipt/deposits were noticed in the bank accounts of these companies in question, the capacity of these investors cannot be questioned. Moreover, the assessee company

has received the subscription of these shareholders through banking transactions.

23. So, the assessee company has duly discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants who have subscribed to the shares during the years under assessment, u/s 68 of the Act, the assessee company cannot be faulted merely on the basis of conjectures and surmises particularly in the absence of any cogent material.

24. Moreover, documents i.e. balance sheets and trial balance seized from the premises of M/s. Jagat Group pertains to the period 01.04.2010 to 04.09.2010, hence not relevant for the years under assessment. To apply the provisions contained u/s 153C, the seized material is required to be of relevant assessment year.

25. In view of what has been discussed above, we find no illegality or perversity in the findings returned by the Id. CIT (A). Consequently, the appeals under consideration are hereby dismissed.

Order pronounced in open court on this day 28th of September, 2016.

**Sd/-
(G.D. AGRAWAL)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 28th day of September, 2016
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXXII, New Delhi.
- 5.CIT(ITAT), New Delhi.

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