

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "ए" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं, श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA Nos.2161 to 2166/PUN/2014
निर्धारण वर्ष / Assessment Years : 2005-06 to 2010-11

Ashoka Education Foundation,
S.No.861, Ashoka House,
Ashoka Marg, Wadala,
Nashik – 422011

.... अपीलार्थी/Appellant

PAN: AABTA3323M

Vs.

The Asst. Commissioner of Income Tax,
Central Circle 1, Nashik

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Pramod Shingte

प्रत्यर्थी की ओर से / Respondent by : Ms Shabana Parveen

सुनवाई की तारीख / Date of Hearing : 03 04.2019	घोषणा की तारीख / Date of Pronouncement: 17.05.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This bunch of appeals filed by assessee are against consolidated order of CIT(A)-I, Nashik, dated 10.10.2014 relating to assessment years 2005-06 to 2010-11 against respective orders passed under section 143(3) r.w.s. 153C of the Income-tax Act, 1961 (in short 'the Act').

2. This bunch of appeals relating to same assessee on similar issues were heard together and are being disposed of by this consolidated order for the sake of convenience. In order to adjudicate the issues, we refer to the facts

and grounds of appeal raised in ITA No.2161/PUN/2014, relating to assessment year 2005-06.

3. The assessee in ITA No.2161/PUN/2014, relating to assessment year 2005-06 has raised the following grounds of appeal:-

1. *The learned CIT(A) erred in upholding the issue of Notice u/s 153C and the consequent assessment proceedings u/s 153C, challenged on various grounds, including for the ground relating to photocopy of gift deed found in search action with the donors that cannot be said to be belonging to appellant. Therefore, it is prayed to hold that the assessment proceedings initiated by issue of such Notice u/s 153C and the consequent assessment order passed u/s 153C were both bad in law.*
2. *The learned CIT(A) erred in disallowing various expenses @ adhoc 5%. It is prayed to cancel the disallowance.*

4. The assessee has also raised additional grounds of appeal.

5. The assessee is aggrieved by exercise of jurisdiction by the Assessing Officer under section 153C of the Act, wherein vide ground of appeal No.1 the assessee has challenged notice issued under section 153C of the Act as not correct and hence, the consequent assessment order passed being bad in law. Vide ground of appeal No.2, the assessee has challenged disallowance of various expenses on adhoc basis @ 5%. The assessee has also raised additional grounds of appeal.

6. The learned Authorized Representative for the assessee at the outset pointed out that the issue which needs to be addressed as to when the proceedings can be initiated under section 153C of the Act. He further stated that during the course of search conducted on Ashoka group on 20.04.2010, copy of gift deed was found. As per the said gift deed, three Directors of Ashoka group gifted a piece of land to Ashoka Education Foundation i.e. assessee. The original of gift deed was with the trust and only copy of gift deed was seized document on which reliance was being placed to initiate proceedings under section 153C of the Act. The first point which was raised by

him was that the said document was not incriminating document, since the registered gift deed was not found and the transaction was duly recorded in the books of account. He stressed that basically when no incriminating document was found, so no question of initiating proceedings under section 153C of the Act. Further, he also stated that no addition was made on this count. He then, referred to proceedings under section 153C of the Act and pointed out that when the said proceedings were being carried on, registration under section 12A of the Act granted to the assessee was cancelled by CIT(Exemption) because of pendency of 153C proceedings and on cancellation of 12A registration, the Assessing Officer disallowed entire expenditure and treated the entire receipts as income. However, the CIT(A) on the technical issue, stated that since the document was found, though not incriminating, but the proceedings were correctly initiated. However, he holds the action of Assessing Officer was not correct and disallowed only 5% of expenses. The learned Authorized Representative for the assessee further referred to order of Tribunal ITA Nos.549 & 1294/PN/2009, order dated 31.12.2014, under which 12A recognition was restored back to the CIT.

7. The learned Authorized Representative for the assessee stressed that under earlier section 153C of the Act, expression was 'belongs to' but now w.e.f. 01.06.2015 expression is 'pertains to'. He thus, stressed that mere copy of document cannot be said to belong to assessee, where it is not even stated to be incriminating. Our attention was drawn to financial statements of assessee trust, wherein the gifted land was recorded in assessee's name. Since this transaction was already recorded and in the absence of any other document being found during the course of search, the learned Authorized Representative for the assessee stressed that there was no question of initiating proceedings under section 153C of the Act.

8. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the decisions of the Hon'ble High Court of Gujarat in *Rajesh Sunderdas Vaswani Vs. ACIT (2016) 76 taxmann.com 311 (Guj)* and *Kamleshbhai Dharamshibhai Patel Vs. CIT (2013) 263 CTR 362 (Guj)*.

9. We have heard the rival contentions and perused the record. The jurisdictional issue which is raised in the present bunch of appeals is whether the Assessing Officer has correctly invoked the jurisdiction under section 153C of the Act. Briefly, in the facts of the case, search and seizure operation under section 132 of the Act was conducted on Ashoka group of cases on 20.04.2010. The assessee had originally filed the return of income under section 139(1) of the Act on 14.12.2005 showing total loss of ₹ 93,158/-. Notice under section 153C of the Act was issued to assessee on 25.02.2011. The assessee in response, furnished return of income on 31.05.2011 declaring total loss of ₹ 93,158/-. The assessee during the course of assessment proceedings requested the Assessing Officer to provide copy of satisfaction note recorded for issue of notice under section 153C of the Act and also clarification on other points. The Assessing Officer replied to the same. It was also clarified that the Commissioner Nashik had cancelled registration certificate issued under section 12AA(1) of the Act and the same was subject matter of appeal before the Tribunal. The Assessing Officer noted that since as on the date registration certificate of assessee was not valid, hence, the assessee was not eligible to claim exemption under sections 11 and 12 of the Act. The assessee was also held to be not an educational institution existing solely for the purpose of education as it did not have any exemption under section 10(23C)(iiiad) of the Act. Hence, the Assessing Officer treated the assessee as AOP and taxed the income in its hands accordingly. The claim of expenses of establishment was allowed as such by the Assessing Officer. However, application of income on educational objects totalling ₹ 5,23,344/- was not allowed as no details were

available on record. The income was assessed in the hands of assessee at ₹ 4,30,190/-.

10. The CIT(A) first took up the issue of validity of issue of notice under section 153C of the Act and the resultant assessments made thereon. The first plea of assessee was that copy of gift deed dated 02.02.2010, which was found during the course of search under section 132(1) of the Act from the office premises of M/s. Ashoka Buildcon Ltd. on 20.04.2010, did not belong to it. The second plea was that the said transaction of purchase of land by donors and its subsequent gift to the assessee was duly recorded in the respective regular books of account. It was also stated that copy of gift deed was not incriminating material and could not have resulted in the issue of notice under section 153C of the Act and subsequent assessment under section 143(3) of the Act r.w.s. 153C of the Act. The CIT(A) vide para 11.2 observed that after going through satisfaction recorded by the Assessing Officer both in the case of person searched i.e. M/s. Ashoka Buildcon Ltd. as well as that of assessee, notice was issued on the basis of copy of gift deed in favour of assessee for an open plot of land worth ₹ 98,22,000/- donated by three person. The said copy of gift deed was found and seized during the course of search under section 132 of the Act from the premises of Ashoka group. Since the gift deed clearly mentions the assessee's name, gift deed was very much related to assessee. As regards its contention that the said gift deed was not incriminating in nature and hence, notice under section 153C of the Act was not valid, the CIT(A) observed that there was no mention of the word 'incriminating' in the provisions of section 153C of the Act. The only triggering factor is the issue of some asset or document belonging or having relation to the assessee, being found. The gift deed clearly established the relationship between the persons searched with the assessee and where the Assessing Officer had followed the procedure laid down in section 153C of the Act, the validity of notice under section 153C

of the Act was held to be not tenable. The CIT(A) further held that the Assessing Officer was justified in denying exemption under sections 11 and 12 of the Act for assessment years 2006-07 to 2010-11, since CIT-I, Nashik because of various violations had withdrawn the exemption granted as per order passed under section 12AA(3) of the Act.

11. Coming to ground of disallowance of various expenses, the CIT(A) noted that survey under section 133A of the Act was carried out at the assessee's office premises on 20.04.2010 and during survey, the books of account were found to be maintained on computer and the Assessing Officer issued detailed questionnaire. The Assessing Officer recasted the Income and Expenditure Account and disallowed various expenses. The CIT(A) at page 23 notes that the perusal of assessment order as well as assessment records reveals that no incriminating material with regard to genuineness of above expenses were brought on record by the Assessing Officer. It was further noted by him from the records that survey under section 133A of the Act on 20.04.2010 at the assessee's premises and search under section 132 of the Act in the case of Ashoka group of cases on 20.04.2010, had not resulted in recovery of any incriminating document with regard to above expenditure. He further observed that the Assessing Officer had clearly failed to bring on record any discrepancy with regard to books of account. The CIT(A) further notes that *during the course of survey/search, no material suggesting that the appellant trust had inflated expenses or suppressed receipts was found. The Assessing Officer had also failed to bring anything incriminating with regard to donations received by the appellant trust in pursuing its objects. The accounts of appellant trust are subject to audit and there is no specific doubt over the correctness of expenses claimed by appellant trust in various assessment years under reference.* The CIT(A) also noted that the Assessing Officer had made huge disallowances without rejecting books of account or bringing on record any

incriminating material whatsoever. Hence, the CIT(A) estimated disallowance @ 5% of total expenses under the head 'Establishment' and 'For object of trust' in the final analysis.

12. The assessee is in appeal against the order of CIT(A) both on legal issue and adhoc disallowance of 5% of expenses.

13. We have heard the rival contentions and perused the record. In order to adjudicate the issue, provisions of section 153C of the Act need to be looked into. The present section 153C of the Act was inserted by the Finance Act, 2005 with retrospective effect from 01.06.2003 which provides that notwithstanding anything contained in sections 139, 147, 148, 149, 151 and 153 of the Act, where the Assessing Officer is satisfied that (a) any money, bullion, jewellery or other valuable article or thing seized or requisitioned, belongs to; or (b) any books of account or documents seized or requisitioned pertains or pertained to or any information contained therein relates to, a person other than the person searched under section 153A of the Act, 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. It is further provided that the Assessing Officer shall proceed against each such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search was concluded or requisition was made. Under the said section, the first requirement is of the Assessing Officer of incharge of the person searched who would record satisfaction that any money, bullion, jewellery or any valuable article or books of account or documents seized or requisitioned belongs or belonging to a person other than the searched person; then such books of account, documents, assets seized would be handed over to the Assessing Officer having jurisdiction over such other person, who shall then proceed and issue notice and assess

income in the hands of such other person. Before proceedings with the same, the Assessing Officer of the searched person is to be satisfied that the books of account, documents and assets seized have a bearing on the determination of total income of such other person for six assessment years immediately preceding the assessment year in which search was conducted. In other words, satisfaction is first of the Assessing Officer incharge of the searched person that the documents or assets, belong to any other person and then the Assessing Officer incharge of the other person has also to record satisfaction that the books of account or assets seized would have a bearing on the determination of total income of such other person. Once the satisfaction exercise is completed, then the Assessing Office incharge of the other person has to issue notice under section 153C of the Act for a period of six assessment years immediately preceding the assessment year in which search was conducted in order to determine the total income of such other person. The machinery of assessment or re-assessment of six assessment years preceding the year of search would be initiated against such other person in case where any books of account, documents or assets relating to him/her/it are found and seized by the Assessing Officer incharge of the searched person. The whole exercise of assessment of such other person is to determine the income in the hands of other person on the basis of documents or assets seized. Admittedly, the word 'incriminating' is not mentioned or referred to in the said section but it is implied that trigger point for initiating assessment under section 153C of the Act is any document found or assets seized which admittedly belongs to such other person and also have bearing on determining the income in the hands of such other person.

14. The question which arises is that in case a document is found which transaction is recoded in the books of account regularly maintained by the assessee, can such a document be the basis for initiating proceedings against

the assessee under section 153C of the Act? The answer to the question is 'No'. In case the document which is found talks of a transaction which is duly recorded in the books of account, then such a document cannot be made the basis for initiating proceedings for about seven years in the hands of the person, on the premise that such a document belongs to him. The provisions of section 153C of the Act are special provisions of determination of income in the hands of assessee consequent to search being conducted on some person under section 132 of the Act. In case, we look at the said provisions of the Act (section 132), search and seizure proceedings are initiated where there is information in the possession of the Officer concerned and there is reason to believe that any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represent either wholly or partly income or property, which has not been or would not be disclosed, for the purpose of income tax, which income shall be referred to as 'undisclosed income or property'. The machinery section thus talks of undisclosed income which needs to be assessed in the hands of searched person and hence, the start of proceedings by way of search under section 132 of the Act. The assessment proceedings are initiated in case of the person searched under section 153A of the Act, wherein also assessment for six years immediately preceding the year of search are open for assessment or reassessment. Further proceedings can be initiated under section 153C of the Act against other person, in case any document or asset is found relating to him. So, there is no merit in the order of CIT(A) in holding that word 'incriminating' is not mentioned to the document found, seized or requisitioned in section 153C of the Act is an incorrect interpretation of law. Search and seizure machinery is to be initiated in order to detect the undisclosed income or property of the person searched and in case during the course of search of a person, any document relating to any other person is found, then such a transaction which is recorded in the books of

account of such other person cannot be the basis for initiating action under section 153C of the Act, which admittedly, are relation to the determination of undisclosed income / property in the hands of such other person. Accordingly, we hold so.

15. Now, coming to the facts of present case, search under section 132 of the Act was conducted on the premises of Ashoka group of cases on 20.04.2010. During the course of search what was found was the copy of gift deed dated 02.02.2010, under which property was gifted by three persons to the assessee trust. The said gift is of an asset which has been purchased by earlier parties and the investment is duly disclosed in their individual hands out of explained sources of income. Necessary documents in this regard are available at pages 131 to 151 of Paper Book along with purchase deed dated 24.01.2005. The gift deed dated 02.02.2010 is a registered gift deed, copy of which was seized from the office of Ashoka Buildcon Ltd.; copy of the same is placed at pages 100 to 128 of Paper Book. The assessee has also filed its financials for the years under consideration and the property is duly disclosed in the hands of assessee in financial year 2009-10, copy of which are placed at pages 1 to 17 of Paper Book-2. The donation is also disclosed in the individual hands; financial statements of three donors and the copy of financial statements for 2009-10 are placed at pages 37 to 52 of Paper Book-2. The assessee has also placed on record the evidence of purchasing the said property by three donors at pages 18 to 36 of Paper Book-2. First of all, the alleged undisclosed income was on account of gift deed which was executed on 02.02.2010 i.e. relevant for financial year 2009-10, which is the year before the year of search. Since the search took place in April, 2010, on the basis of copy of such gift deed, which is one time transaction, there is no merit in initiating proceedings under section 153C of the Act starting from assessment year 2005-06 onwards. No such gift deed was found for those years. While

referring to the decision of CIT(A) in the hands of assessee in the paras above, we have also referred to his observations at page 23 onwards, wherein he has perused the assessment records, which revealed that no incriminating material at all was found during the course of search or survey in Ashoka group. He also mentioned that the Assessing Officer has failed to bring anything incriminating with regard to donations received by the assessee trust in pursuing its various objects or with regard to inflated expenses, if any. He mentioned that there is no specific doubt over the correctness of expenses claimed by the assessee trust in various assessment years under reference. In such scenario, where no incriminating material at all was found against the assessee, there is no merit in initiating proceedings under section 153C of the Act for assessment years 2005-06 to 2009-10.

16. Coming to assessment year 2010-11 i.e. the year in which gift deed was executed, again the document which was found was in respect of transaction which was duly recorded in the books of account of both the donor and donee and such a document to be even though belonging to assessee, cannot be the basis for initiating proceedings under section 153C of the Act; since it has failed to fulfill the basic condition of it being an incriminating document which kick start from the search action being carried out under the provisions of section 132 of the Act. Accordingly, we hold that proceedings initiated under section 153C of the Act against the assessee for assessment year 2010-11 are without any basis and initiation is bad in law. Consequently, the assessment order passed under section 143(3) r.w.s. 153C of the Act for assessment years 2005-06 to 2010-11 do not stand and the same are held to be bad in law.

17. Before parting, we may also refer to reliance placed upon by the learned Departmental Representative for the Revenue on the ratio laid down by the Hon'ble High Court of Gujarat in Rajesh Sunderdas Vaswani Vs. ACIT (supra),

which was the case wherein a document was found and seized, evidencing certain cheque payments as well as cash payments by the assessee to a company and the facts of said case are at variance and are not applicable. Further, the ratio which is laid down by the Hon'ble High Court of Gujarat in Kamleshbhai Dharamshibhai Patel Vs. CIT (supra) is in respect of reply to the question raised whether the document can be said to be belonging to the assessee to justify action initiated under section 153C of the Act or not. We have already held that copy of gift deed found which records a transaction gift of property from three donors to the assessee, belongs to the assessee. Consequently, grounds of appeal raised by assessee on jurisdictional issue are allowed in favour of assessee and the other grounds of appeal raised on merits become academic in nature.

18. In the result, all the appeals of assessee are allowed.

Order pronounced on this 17th day of May, 2019.

Sd/
(D.KARUNAKARA RAO)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 17th May, 2019.

GCVSR

आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-I, Nashik;
4. The CIT(Central), Nagpur;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune