

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 113 to 115/VIZ/2017
(Asst. Year: 2005-06 to 2007-08)**

Smt. Kamala Devi,
W/o Sri Mahendra Kumar Jain,
D.No. 37-2-19, Market Street,
Kakinada (E.G. District).

vs.

ACIT, Central Circle,
Rajahmundry.

PAN No. AHDPK 3736 F
(Appellant)

(Respondent)

Assessee by : ShriP. Prabhakara Murthy –Adv.
Department By : ShriDeba Kumar Sonawal, CIT DR

Date of hearing : 25/07/2018.
Date of pronouncement : 03/08/2018.

ORDER

PER D.S. SUNDER SINGH, JUDICIALMEMBER

These appeals by the assessee are directed against the separate orders of Commissioner of Income Tax (Appeals)-3, Visakhapatnam, all dated 21/11/2016 for the Assessment Years 2005-06 to 2007-08. Since, facts are identical and the issues are common, they are clubbed, heard together and disposed of by way of this common order for the sake of convenience.

2. The common ground of appeal raised by the assessee in all the appeals is with regard to validation of notice issued under section 153C of the Income Tax Act, 1961 (hereinafter referred to as "Act").

3. In this case, assessment is completed under section 143(3) r.w.s. 153C of the Act. A search under section 132 was carried out in the group cases on 03/02/2008. Consequent to the search conducted under section 132 in the group cases, notices under section 153C of the Act was issued to the assessee on 03/03/2010 calling for the returns of income for the Assessment Years 2005-06 to 2007-08. The assessee filed returns of income on 17/05/2010 and subsequently, the Assessing Officer completed the assessments under section 143(3) r.w.s. 153C of the Act by orders dated 30/12/2010. The details of the date of filing of the original return of income and time limit for issuance of notice under section 143(2) of the Act are as under: -

Assessment Year	Date of filing of return of income	Time limit for issuance of notice u/s 143(2)
2005-06	06/12/2005	31/12/2006
2006-07	13/03/2007	31/03/2008
2007-08	30/03/2008	31/03/2009

Assessments are completed by assessing the total income under section 143(3) r.w.s. 153C of the Act are as under: -

Assessment Year	Assessed income
2005-06	Rs. 1,88,990/-
2006-07	Rs. 4,21,350/-
2007-08	Rs. 2,35,600/-

4. Aggrieved by the order of the Assessing Officer, the assessee went on appeal before the Ld.CIT(A) and challenged the validity of issuance of notice under section 153C of the act.

5. The Id. counsel for the assessee argued before the Id. CIT(A) that during the course of search, no incriminating material was found by the Assessing Officer. In the Assessment Years 2005-06 to 2007-08, no addition was also made based on the seized material. The time limit of issuance of notice under section 143(2) was expired by the time search conducted in this case, hence, assessment must be treated as completed assessments. In the completed assessments, no notice under section 153C can be issued, unless there is an incriminating material evidencing the escapement of income or under statement of income and also argued that no addition can be made u/s 153C without the incriminating material. Ld. AR submitted before the Id. CIT(A)

that since the time limit for issuance of notice u/sec. 143(2) got expired, by the time, search was conducted. The assessment needs to be treated as completed assessment and the notice issued under section 153C without the incriminating material is invalid and required to be quashed and the addition made in the orders to be deleted. The Id. CIT(A) not being convinced with the argument of the assessee placing heavy reliance on the two loose sheets found during the course of search which were annexed to the appellate order, upheld the validity of issuance of notice.

6. Aggrieved by the order of the Assessing Officer, the assessee is in appeal before the Tribunal and again challenged the validity of notice under section 153C of the Act and the additions made without incriminating material.

7. Ld. counsel for the assessee reiterated the submissions made before the Id. CIT(A).

8. *Per contra*, Id. Departmental Representative relied on the order of the Id. CIT(A).

9. We have heard both the sides, perused the material available on record.

10. A search under section 132 was carried out in the group cases on 03/02/2009. During the course of search, two loose sheets were found relating to the assessee, which became the

foundation of issuance of notice under section 153C of the Act. The said two documents were annexed in the appellate order and the same are a letter dated 18/10/2006 addressed by the assessee & others to the Municipal Commissioner, Kakinada and affidavit dated 01/01/2008. We have carefully gone through both the loose sheets relied upon by the Id. CIT(A) which reads as under: -

(a) Letter dated 18/10/2006

"We have purchase an old building baring door no. 4-7 in TempleStreet, an extent of 753 6 sq. yards and approached the municipality for reconstruction of anew building permission was granted for the construction of the building in B.A.No. 773/2002/G2 dated 25-2-2002. We have started reconstruction of the building as per the plan sanctioned by the municipality. While the construction is in progress we have purchase the neighboring building baring door no. 27-4-8 with an extent of area 1287.22 sq yards on dated 5-2-2004. Here we have applied forarevised, fresh plan forreconstruction/redevelopment of a residential apartment. And the matter was referred to the director of the town planning (Hyderabad). There upon the DTP in his letter D.D. is no. 4647/06/R dated 1-6-2006 as asked the Commissioner of Kakinada municipality to the collect the proportionate 10% open placecost for the remaining area of which the buildingpermission approved by the municipal commissioner of Kakinada.

In this connection we submit that the proposed reconstruction of the building is located in the builtup and well developed area where all wise amenities were provided by the municipality and no further development is necessary. The proposed revised plan for redevelopment of stilt + ground+ four residential floors. Reconstruction is made by removing the two existed building to which all the amenities were provided and house taxes and water taxes and current taxes were paid.

I further submit that were please to issue instruction in similar case in Amalapuram municipalities that 10% open place

charges may not be levied in the existing builtup area where the applicant coming forward for redevelopment/reconstruction only and where all the amenities are provided by the municipalities(vide government memo no.15929/MI/2005/1. Dated 24-6-2006 and government memo.....dated 4-7-2006 copies enclosed).

In the above circumstances you to exempt the levy or 10% open place charges and permission given to reconstruction/redevelopment the building as per the revised plansubmitted to your on date _____2006.

(b) Affidavit

We independently and jointly purchased sites at JawaharStreer, Kakinada relating to Door No.27-4-7. The adjacent sites purchased by Sri Rajesh Kumar, W/o Shantilal, Smt. Lalitha, W/o.Bhawarlal and Smt. VasanthiBai, W/o. babulaiji, Sri Vikram Kumar Jam, Sb. Shantilal and sujitkumar Sb. Babulal.

For the sake of convenience, we got approved a consolidated plan by the Municipal Corporation Kakinada under BA No. 129/06/G2. Dated 29-12-2006.

Sri Vikramkumarjain, Sujit Kumar, Smt.Lalitha and Smt.Vasanthi Bai have separated their site to the extent of 985 sq. yards (from out of the site covered under the plan) and they propose to sell away the same to different persons. We have no objection. If they sell their property of the said 985 sq.yards where a building consisting of flats under the name Rajendra towers which is under construction. We have no right or title to the said 985 sq.yards.

- 11.** Careful scrutiny of the letter dated 08/10/2006 shows that the letter is with regard to the purchase of house site on 05/02/2004 requesting the Municipal Commissioner not to levy the tax on open place. As per the letter dated 08/10/2006, the assessee had purchased 1287.22 sq. yds of site along with others, on 05/02/2004 which is relevant to the Assessment Year 2004-05, but not relevant to the Assessment Years 2005-06 to 2007-08.

Therefore, there is no impact on income or investment made by the assessee from the documents seized in the relevant assessment years. Similarly, the affidavit dated 01/01/2008 related no objection of the co-owners of the land for selling their shares 985 sq. yds independently. The affidavit also does not indicate any financial transaction leading to escapement of income or suppression of the receipt or unexplained investment to the year under consideration. Scrutiny on both the documents clearly indicates that they are not pertaining to under-statement of income by the assessee, hence, they cannot be treated as incriminating material for issuance of notice u/s 153C. In the assessment orders also, the Assessing Officer did not make any addition on the basis of above documents. All the additions were made as per the information already available in the assessment record.

12. In the instant case, the Assessing Officer issued notice under section 153C on 03/03/2010 and search was conducted in the group cases on 03/03/2009. By the time of search conducted in the group cases, the time limit for issuance of notice under section 143(2) got expired for the A.Ys. 2005-06 and 2006-07. In the case of A.Y. 2007-08 the notice was issued on 03/10/2009 and by the time the notice issued the time limit for issue of notice u/s

143(2) got expired. The Assessing Officer has neither furnished the satisfaction recorded for issue of notice nor the date requisition made u/s 132A. During the appeal hearing the revenue failed to furnish the details of the date of requisition made u/s 132A. In the absence of date of requisition made under section 132A, the date of issuance of notice u/s. 153C dated 03/10/2010 held to be the date of requisition made under section 132A. As per section 153C the date of initiation of search in such other person is to be reckoned from the date of requisition made u/s 132A. For ready reference we extract the relevant part the proviso to section 153C which reads as under:

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person.

13. As per the provisions of section 153C of the Act the A.O. is required to initiate the proceedings and issue the notice only on the basis of money, bullion, jewellery, other article or thing seized or requisitioned belonged to or any books of accounts or documents seized or requisitioned pertains to or pertain to the

assessee. For ready reference we extract section 153C of the Act, which 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 notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied 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 for the relevant assessment year or years referred to in sub-section (10 of section 153A)."

It is settled law that in the case of completed assessments, no addition under section 153C is permitted to be made without having the seized material. On an identical facts, this Tribunal in the case of *Lalitha Devi vs. Assistant Commissioner of Income Tax*, (2018) 52 CCH 0472 Visakhapatnam (Trib.) held that invoking provisions of section 153C of the Act without having incriminating material is bad in law. This view is supported by the decision of the Hon'ble Supreme Court in the case of *CIT vs. Singhad Technical Education Society* (2017) 397 ITR 344. Hon'ble Supreme Court in the case cited supra held as under:

"18. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this

behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges there from is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred

19. We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy.

20. Insofar as the judgment of the Gujarat High Court relied upon by the learned Solicitor General is concerned, we find that the High Court in that case has categorically held that it is an essential condition precedent that any money, bullion or jewellery or other valuable articles or thing or books of accounts or documents seized or requisitioned should belong to a person other than the person referred to in Section 153A of the Act. This proposition of law laid down by the High Court is correct, which is stated by the Bombay High Court in the impugned judgment as well.

14. In the instant case the Ld DR did not place the satisfaction recorded by the AO for issuing the notice u/s 153C. From the

Ld.CIT(A) order foundation for the issue of notice u/s 153C was the letter dated 08/10/2006 and the affidavit executed on 01/01/2008 which were scanned by us and found that there was no indication of any financial transaction leading to understatement of income except the mention of purchase of property on 05/02/2004 which is relevant to the Assessment Year 2004-05 and are not relevant to the assessment years under consideration. Therefore, the said documents cannot be held to be the incriminating material for the purpose of initiating the proceedings under section 153C of the Act. As discussed earlier the assessments in this case are completed, since, the time limit for issue of notice u/s 143(2) got expired before the date of search, the AO did not make any addition in the assessment orders on the basis of the seized material. Therefore respectfully following the view taken by the coordinate bench of the tribunal in the case of Lalitha Devi (*supra*) and the decision of the Hon'ble Supreme Court in the case of ***Singhad Technical Education Society (supra)***, we hold that the AO cannot disturb the completed assessments without having the seized material and the notice issued under section 153C without having any incriminating material is invalid and unsustainable. Accordingly, we set aside

the orders of lower authorities and allow the appeal of the assessee.

15. Since, we have held that the notice under section 153C is invalid and allowed the appeals of the assessee, we considered it is not necessary to adjudicate the remaining grounds raised by the assessee in the appeal.

16. In the result, all the appeals filed by the assessee are allowed.

Order Pronounced in open Court on this day of 03rd August, 2018.

Sd/-
(V. DURGA RAO)
Judicial Member

sd/-
(D.S. SUNDER SINGH)
Accountant Member

Dated : 03rd August, 2018.

vr/-

Copy to:

1. **The Assessee** - Smt. Kamala Devi, W/o Sri Mahendra Kumar Jain, D.No. 37-2-19, Market Street, Kakinada.
2. The Revenue – ACIT, Central Circle, Rajahmundry.
3. The Pr.CIT (Central), Visakhapatnam.
4. The CIT(A)-3, Visakhapatnam.
5. **The D.R., Visakhapatnam.**
6. **Guard file.**

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.