

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER**

**ITA Nos. 1116, 1117, 1118 & 1119/Hyd/2016
Assessment Years: 2005-06, 2006-07, 2007-08 & 2008-09**

Bondugula Krishna Reddy,
R.R. District.

vs. Dy. Commissioner of Income-
tax, Central Circle – 7, Hyd.

PAN – ALNPB 3541 R

(Appellant)

(Respondent)

Assessee by : Shri K.A. Sai Prasad
Revenue by : Shri AGV Prasad

Date of hearing : 09/05/2018
Date of pronouncement : 11/05/2018

ORDER

PER S. RIFAUH RAHMAN, A.M.:

These four appeals filed by the assessee are directed against the orders of CIT(A) – 1, Guntur, all dated 30/03/2017 for AYs 2005-06 to 2008-09. In all these appeals, the assessee is contesting mainly on the validity of assessments made u/s 153C of the Income-tax Act, 1961 (in short 'the Act') by raising the following grounds of appeal:

1. The learned Commissioner of Incometax (Appeals) is not justified in:

(a) dismissing the appellant's contention that, in the facts and circumstances of the case, the provisions of section 153C are not applicable in the appellant's case and the assessment made u/s 153C is not valid; and

(b) holding that the CBDT circular No.24/2015 has no relevance in the appellant's case since the assessment was completed on 31-12-2010, which was before the issue of the circular.

Without prejudice to the above:

2. The learned Commissioner of Incometax (Appeals) is not justified, in the facts and circumstances of the case, in confirming the addition u/s 68, of Rs.33,00,000/-representing alleged investment.

3. The appellant reserves his right to add, alter, or substitute any ground or grounds during the course of hearing.”

2. With regard to the above grounds of appeal, the relevant facts are, a search and seizure operation u/s 132 was conducted in the case of M/s B. Ramdas Goud and Desagoni Raghupathi Goud Group on 15/09/2008. In consequent to search and seizure operation, notice u/s 153C of the Act was issued to the assessee on 04/10/2010 calling for the returns of income for the AYs 2003-04 to 2008-09. In response to the above notice, assessee filed returns of income for the AYs 2005-06, 2006-07, 2007-08 and 2008-09 on 14/12/2010. The relevant assessments were completed u/ 143(3) r.w.s. 153C of the Act, dated 31/12/2010. While doing so, AO has made additions towards unexplained investment.

3. Aggrieved with the above order, the assessee preferred an appeal before the CIT(A) – 1, Guntur and objected to the validity of the assessments made u/s 143(3) r.w.s. 153C of the Act.

4. Ld. CIT(A) after considering the submissions of the assessee and assessment order, confirmed the assessments made u/s 143(3) r.w.s. 153C of the Act in all the AYs under consideration.

5. Aggrieved with the above order, assessee is in appeal before us contesting the validity of the assessments made u/s 143(3) r.w.s. 153C of the Act.

6. Ld. AR submitted that this is the assessment completed by the AO u/s 143(3) r.w.s. 153C of the Act, but, due process of law in completing 153C proceedings were not followed by not recording satisfaction before initiating the proceedings u/s 153C of the Act. Further, he submitted that the proceedings were initiated mainly based on the diary found during the search proceedings in the case of M/s B. Ramdas Goud and Desagoni Raghupathi Goud Group and there is no iota of evidence neither in the assessment order nor the information submitted to assessee contains any evidence found during the search belongs to assessee. He relied on the following cases:

1. Pr. CIT Vs. Vinita Chaurasia [2017] 394
2. CIT Vs. Sinhgad Technical Education Society [2017] 397 ITR 344 (SC).
3. Canyon Financial Services Ltd Vs. ITO, [2017] 399 ITR 202
4. Shri Ch. Damodar Rao in ITA Nos. 948 to 951/Hyd/2013 27/04/2018.

7. Ld. DR, on the other hand, filed a paper book during the hearing, which contains copy of questionnaire issued to the assessee, and details of seized material. In reference to the above paper book, he submitted that he could fetch only the above information as search material was in the Central Circle and it involves assessments of various assessees and he could not trace the relevant records pertaining to proceedings under search of assessee from the Central Circle. Further, he was also unable to bring any evidence in the assessment order or in the questionnaire which leads to any direct evidence, which was found in the possession of M/s B. Ramadas Goud, which relates to assessee or any satisfaction note in the file of the assessment records. In the absence of above relevant information, he submitted that he is relying on the orders of revenue authorities. He also relied on the following case law:

1. Kamleshbhai Dharamshibi, 214 Taxman 558
2. Raja Mohammed Amir Ahmed Khan Vs. Municipal Board of Sitapur, AIR [1965] SC 1923

8. Considered the rival submissions and perused the material on record as well as the case law submitted by both the parties.

8.1 In the case of Pr. CIT Vs. Vinita Chaurasia (supra), it was held that for the purpose of initiating proceedings u/s 153C of the Act, the seized documents had to be shown to be belonging to the other person and not merely pertaining to such other person. The change brought about in this regard in section 153C of the Act by way of amendment has been given prospective effect from June 1, 2015. The amended provision therefore has no application to the cases on hand.

8.2 In the case of CIT Vs. Sinhgad Technical Education Society [2017] (supra), the Hon'ble Supreme Court held that a document seized should belong to a person other than the person referred to in section 153A of the Act.

8.3 In the case of Canyon Financial Services Ltd. Vs. ITO (supra), the Court held that at the stage of initiation of proceedings u/s 153C of the Act, it is sufficient if the seized document pertained to the other person and it is not necessary to show that the seized material belonged to the other person.

8.4 In case of Shri Ch. Damodar Rao in ITA Nos. 948 to 951/Hyd/2013 (supra), the coordinate bench has held as under:

“7. Having regard to the fact that the additional grounds filed on 15.05.2017 are legal grounds and do not need any fresh verification of the facts, and also respectfully following the judgment of Hon'ble Supreme Court in the case of NTPC Limited (cited supra), we are inclined to admit the additional grounds of appeal filed on 15.05.2017. The Revenue has also filed its objections to the additional grounds of appeal and has stated that the satisfaction note for issuing a notice

u/s 153C of the IT Act in the case of the assessee is not available on record but that the concerned officer who has passed the order, is confirming that the same might be available on record itself. It is further submitted that the fact that satisfaction has been made part of the assessment order dated 09.12.2010 in the first para itself, authenticates that the A.O had been fully satisfied before issuance of notice u/s 153C of the Act. Further, it is also argued that the assessee appeared in response to the notice and has co-operated in the assessment proceedings and therefore u/s 292BB(C) of the IT Act, the validity of the proceedings cannot be challenged by him at this stage. The Ld. DR, also filed the copy of the order sheet in the case of Shri OSS Prasad, wherein on 12.10.2009, it was recorded that there was a search and seizure operation u/s 132 of the IT Act in the case of Ahuja Group of cases and that the assessee (i.e OSS Prasad) is one of the cases connected to the group and sought to put up the notice u/s 153A of the Act. On perusal of the same, we find that there is no reference, whatsoever, to the assessee before us even in the order sheet of Shri OSS Prasad. As per Sec. 153C of the IT Act, A.O of the person searched has to record a finding that the income relating to the documents found during the course of search, relates to any other person and thereafter has to handover the documents to the A.O of such other person. On such reference, the A.O of such other person has to record a satisfaction before issuing the notice u/s 153C of the Act. Admittedly in the case before us, there is no satisfaction recorded by the A.O of the person searched nor is the satisfaction recorded by the A.O of the assessee for issuance of notice u/s 153C of the act, is available on record. Therefore it is presumed that the satisfaction in the necessary form is not recorded before issuance of the notice u/s 153C of the Act. The Hon'ble jurisdictional High Court in the case of CIT Vs Shetty Pharmaceuticals and Biological Ltd., reported in 57 taxmann.com 282 (A.P) has confirmed the order of the ITAT in ITA Nos. 930 & 931/Hyd/2013 dated 28.05.2014 wherein it was held as under:

“30. From a plain reading of these sections, we find that [section 153A](#) is procedural section which deals with

the mode of assessment. A notice u/s. [153A of the Act](#) can only be issued to such person where a search is initiated u/s. 132 of the Act or books of account or other documents or any assets are requisitioned u/s. [132A of the Act](#) after 31st day of May, 2003, requiring him to furnish within such period as may be specified in the notice, return of income in respect of each assessment year following within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisitioned is made. Thereafter assessment would be framed as per the provisions of [section 143](#) of the Act. [Section 153C](#) deals with the situation where the AO is satisfied that any money, bullion, jewellery or other valuable articles or things or books of account or documents seized or requisitions belongs or belong to a person other than the person referred to in [section 153A](#) of the Act, then the books of account or documents or assets seized or requisitioned shall be handed over to the AO having jurisdiction over such other person and that the AO shall proceed against each of such other person and issue such other person notice and assess or re-assess income of such other person in accordance with the provisions of [section 153A](#) of the Act. Meaning thereby that action u/s. 153C of the Act always depends upon the action u/s. [153A of the Act](#) upon some other person. The AO of such person in whose case search was conducted is satisfied that the money bullion, jewellery or other valuable articles or things or books of account or documents seized or requisitioned belong to some other person, he after forming the belief to that extent regarding the same shall hand over the relevant material to the concerned AO having jurisdiction over such other person. In other words, we say that before initiating proceedings u/s 153C, the AO who has initiated proceedings for completion of assessment u/s. [153A of the Act](#) should be satisfied that there is no undisclosed income which has been traced out when a person was searched u/s. 132 of the Act or the books of account were requisitioned u/s. [132A of the Act](#). Thus, in contrast to the provisions of [section 148](#) of the Act where recording a reason in writing are sine qua non. Under [Section 153C](#) the existence of cogent and demonstrative material is germane to the assessing officers' satisfaction in concluding that the seized documents belong to a person other than the searched person is necessary for initiation of action under [Section 153C](#) of the Act. The bare reading of the provision of [section 153C](#) indicates that the satisfaction note could be prepared by the assessing officer either at the time of initiating proceedings for completion of assessment of a searched person under [Section 153A](#) of the Act or during the stage of the assessment proceedings. It does not mean that after completion of the assessment, the

assessing officer who has passed the assessment order u/s. 153A in the case of searched person cannot prepare the satisfaction note to the effect that there exists income tax belonging to any person other than the searched person in respect of whom a search was made under [Section 132](#) or requisition of books of accounts were made under [Section 132A](#) of the Act. In other words, the person who has passed the order in the case of the searched person u/s. [153A of the Act](#) is required to record the satisfaction note before completion of assessment u/s. [153A of the Act](#). In the present case the Bench categorically asked the DR to produce the satisfaction notes recorded in this case so as to issue notice u/s. 153C to the present assessee. To the query of the Bench the DR produced the order sheet entries for both the assessment years as mentioned in para 26 (*supra*).

31. The order sheet entries are said to have been recorded by the AO who has passed the order u/s. 153C of the Act in the case of the assessee and it is also satisfaction note to that effect that there exists income-tax belonging to any person other than the searched person in respect of whom search was made u/s. 132 of the Act or requisition of books of account were made u/s. [132A of the Act](#). The satisfaction note is to be recorded by the AO who has initiated proceedings for completion of assessment u/s. [153A of the Act](#) and also it should be recorded. It is also to be noted that for the purpose of [s. 153C](#) a satisfaction note is sine qua non and must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person. The satisfaction note could be prepared at either of the following stages:

- (a) At the time of or along with initiation of proceedings against the searched person u/s. [153A of the Act](#);
- (b) Along with the assessment proceedings u/s. [153A of the Act](#);
- (c) Immediately after the assessment proceedings are completed u/s. [153A of the Act](#) of the searched person.

32. Thus, the condition precedent for issuing notice u/s.

153C and assessing or re-assessing income of such other person is that, the money, bullion, jewellery or other valuable articles or things or books of account or documents seized or requisitioned should belong to such other person. If the said requirement is not satisfied recourse cannot be made to the provisions of [section 153C](#) of the Act. Thus, the provisions contained u/s. 153C of the Act can only be invoked where there was

satisfaction by the AO having jurisdiction over the person searched or requisitioned u/s. 132A during the course of assessment proceedings. Therefore, the proceedings u/s. 153A of the Act always precede the proceedings u/s. 153C of the Act and without recording satisfaction note by the AO initiating proceedings for completion of assessment u/s. 153A of the Act cannot be proceeded u/s. 153C of the Act in the case of such other person not searched. Same view was taken by the Supreme Court in the case of CIT vs. Calcutta Knitwears, Ludhiana in civil appeal Nos. 3958 of 2014 (SLP) (C) No. 10542 of 2011 dated 12th March, 2014. Further it was also held by the Supreme Court in the case of Manish Maheswari vs. JCIT (289 ITR 341) as under:

"Held, Sec. 158BD provides for taking recourse to a block assessment in terms of s. 158BC in respect of any other person, the conditions precedent wherefor are : (i) satisfaction must be recorded by the AO that any undisclosed income belongs to any person, other than the person with respect to whom search was made under s. 132; (ii) the books of account or other documents or assets seized or requisitioned had been handed over to the AO having jurisdiction over such other person; and (iii) the AO has proceeded under s. 158BC against such other person. The conditions precedent for invoking the provisions of s. 158BD, thus, are required to be satisfied before the provisions of Chapter XIV-B are applied in relation to any person other than the person whose premises had been searched or whose documents and other assets had been requisitioned under s. 132A.

The impugned notice does not record any satisfaction on the part of the AO. Documents and other assets recovered during search had not been handed over to the AO having jurisdiction in the matter. No proceeding under s. 158BC had been initiated. There is, thus, a patent non-application of mind. A prescribed form had been utilized. Even the status of the assessee had not been specified. It had only been mentioned that the search was conducted in the month of November, 1995. No other information had been furnished. The provisions contained in Chapter XIV-B are drastic in nature. It has draconian consequences. Such a proceeding can be initiated, it would bear repetition to state, only if a raid is conducted. When the provisions are attracted, legal presumptions are raised against the assessee. The burden shifts on the assessee. Audited accounts for a period of ten years may have to be reopened. As the AO has not recorded his satisfaction, which is mandatory; nor has he transferred the case to the AO having jurisdiction over the matter, the impugned judgments of the High Court cannot be sustained.

33. The above two judgments were delivered u/s. 158BD. We have carefully gone through the language used in [section 153C](#) and [158BD](#) of the Act. The main difference in the language is that in [section 158BD](#) the scope of jurisdiction of AO is only with respect to the undisclosed income found during the course of search. Whereas in [section 153C](#) the scope of jurisdiction of the AO is with respect to any money, bullion, jewellery, other valuable articles or things or books of account or documents with respect to which the AO is satisfied that it belongs to such other person. But so far as the reference to word "satisfaction" is made it is same as available in [section 158BD](#) of the Act. Therefore, we are of the view that the ratio laid down in the above cases in respect to the point of satisfaction will apply for initiation of action u/s. 153C of the Act. In view of this, we are inclined to hold that initiation of proceedings u/s. 153C of the Act in the case of the assessee for these two assessment years is not proper as there is no satisfaction recorded by the AO having jurisdiction over the person searched or requisitioned u/s. [132A of the Act](#) during the course of assessment proceedings of searched party or later before issue of notice u/s. 153C of the Act. Accordingly, we quash the assessment framed u/s. 153C of the Act in both the assessment years in this case.

8. Similar finding has also been given by the Coordinate 'A' Bench of this Tribunal in the case of Smt Sarnala Jayalaxmi Vs. ACIT in ITA No. 1329 of 2014 dated 10.08 2016. The relevant paras are as under:

"8. Similar view is also taken by the Hon'ble Delhi High Court in the case of Pepsico India Holdings (P.) Ltd., [50 Taxmann.com 299] (Delhi) wherein on the following facts, it was held as under:

A search and seizure operation under [section 132\(1\)](#) was conducted on the Jaipuria Group during which certain documents 'belonging' to the petitioner were found.

Consequently, the Assessing Officer of the Jaipuria Group prepared a satisfaction note to the effect that the documents mentioned therein belonged to the petitioner. Three kinds of documents were mentioned in satisfaction note. First were the photocopies of Cumulative Redeemable Preference Shares purchased by the petitioner from TDL and SMV. The second set of documents were unsigned cheques found in the cheque books of the Jaipuria Group companies, which had been written in favour of the petitioner. The third document was a

photocopy of a supply and loan agreement made between PDL and petitioner.

Thereafter, the Assessing Officer issued notices to the petitioner under [section 153C](#) seeking to reopen the assessments of the petitioner for the assessment years 2006-07 to 2011-12 and to follow the procedure prescribed under [section 153A](#).

In response to the said notices, the petitioner submitted its objections which were rejected by the Assessing Officer and the petitioner was directed to comply with the assessment proceedings under [section 153C](#).

On writ:

HELD In order that the Assessing Officer of the searched person comes to the satisfaction that documents or materials found during the search belong to a person other than the searched person, it is necessary that he arrives at the satisfaction that the said documents or materials do not belong to the searched person.

In the instant case, it is nobody's case that the Jaipuria Group had disclaimed those documents as belonging to them. Unless and until it is established that the documents do not belong to the searched person, the provisions of [section 153C](#) do not get attracted because the very expression used in [section 153C](#) is that '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](#) ' In view of this phrase, it is necessary that before the provisions of [section 153C](#) can be invoked, the Assessing Officer of the searched person must be satisfied that the seized material (which includes documents) does not belong to the person referred to in [section 153A](#), i.e., the searched person. In the satisfaction note, which is the subject- matter of these writ petitions, there is nothing therein to indicate that the seized documents do not belong to the Jaipuria Group. This I.T.A. No. 1329/Hyd/2014 :- 10 -: Smt. Sarnala Jayalaxmi is even apart from the fact that there is no disclaimer on the part of the Jaipuria Group insofar as these documents are concerned.

Secondly, the finding of photocopies in the possession of a searched person does not necessarily mean and imply that they 'belong' to the person who holds the originals. Possession of documents, and possession of photocopies of documents are two separate things. While the Jaipuria Group may be the owner of the photocopies of the documents, it is quite possible that the originals may be owned by some other person. Unless it is established that the documents in question, whether they be photocopies or originals, do not belong to the searched person, the question of invoking [section 153C](#) does not arise.

Thirdly, the Assessing Officers should not confuse the expression 'belongs to' with the expressions 'relates to' or 'refers to'. A registered sale deed, for example, 'belongs to' the purchaser of the property although it obviously 'relates to' or 'refers to' the vendor. In this example if the purchaser's premises are searched and the registered sale deed is seized, it cannot be said that it 'belongs to' the vendor just because his name is mentioned in the document. In the converse case if the vendor's premises are searched and a copy of the sale deed is seized, it cannot be said that the said copy 'belongs to' the purchaser just because it refers to him and he (the purchaser) holds the original sale deed. In this light, it is obvious that none of the three sets of documents - copies of preference shares, unsigned leaves of cheque books and the copy of the supply and loan agreement - can be said to 'belong to' the petitioner.

In view of the foregoing discussion, the ingredients of [section 153C](#) have not been satisfied in this case. Consequently, the notices issued under [section 153C](#) are quashed. Accordingly, all proceedings pursuant thereto stand quashed".

9. As can be seen from the satisfaction recorded by the AO while initiating proceedings u/s. 153C, there is neither any linking up of the documents nor any finding that certain seized documents pertain to assessee. Moreover, AO also has not recorded any satisfaction while initiating proceedings u/s. 153C. In view of this, we are of the opinion that there is no satisfaction recorded by the AO, as required under the provisions.

9.1. Consequently, the proceedings u/s. 153C are not as per the provisions of the law. Following the principles laid down on this issue and on the facts of the case, we

uphold the additional grounds raised. We, accordingly hold that the proceedings initiated u/s. 153C are bad in law. Since the very proceedings are held to be bad in law, there is no need to adjudicate all other grounds raised on merits. However, they are also considered allowed for statistical purposes.”

9. *The facts and circumstances in the case before us being similar, respectfully following the above precedents, we allow the additional ground of appeal No. 2 dated 15.05.2017 raised by the assessee and hold that the assessment framed u/s 153C of the IT Act r.w.s 143(3) of the IT Act is void ab-initio. The DR’s argument on the applicability of Sec. 292BB of the IT Act cannot be accepted, because Sec. 292BB is applicable only to procedural irregularities but not to jurisdictional issues as is held in a catena of decision, particularly of the Hon’ble Delhi High Court in the case of Pr. CIT Vs. Silver Line [2016] 383 ITR 455 (Del).*

10. *Since, we have held that assessment u/s 153C of the Act to be void ab-initio, the other grounds of appeal being on merits of the additions made by the A.O, are not adjudicated at this stage, as it would only result in an academic exercise. In the result, the assessee’s appeals are treated as partly allowed. The facts and circumstances in the other years are also the same. Therefore, the appeals for the A.Ys 2006-07 to 2009-10 are also partly allowed.”*

Respectfully following the ratios laid down in the aforesaid cases and since the assessment records do not contain any satisfaction note by the AO and also the whole addition was made based on the diary belonging to M/s B. Ramdas Goud, there is no evidence which directly relates to the assessee was found during the search proceedings. Therefore, we set aside the orders of CIT(A) in all the AYs under consideration and hold that the assessments framed u/s 153C of the Act rws 143(3) of the Act are void ab-initio in all the AYs under consideration. Hence, the additions made in such assessments

cannot stand in the eye of law. Accordingly, the grounds raised by the assessee are allowed in all the years under consideration.

9. In the result, all the appeals under consideration are allowed.

Pronounced in the open Court on 11th May, 2018.

Sd/-

**(P. MADHAVI DEVI)
JUDICIAL MEMBER**

Sd/-

**(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Hyderabad, Dated: 11th May, 2018

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- 6) Guard File