

आयकर अपीलिय अधीकरण, खंडपीठ गुवाहाटी ,
*IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI*

Before **Shri S.S.Godara, Judicial Member** and
Dr. A.L. Saini, Accountant Member

ITA No.374/Kol/2018
Assessment Year :2011-12

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| Sukhamani Hotels Pvt. Ltd., B.K. Road, Banmalipur, Agartala-799001 [PAN No.AAMCS 5948 N] | V/s. | ACIT, Circle-Agartala Agartala |
| अपीलार्थी /Appellant | .. | प्रत्यर्थी/Respondent |

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|--------------------------------------|-----------------------------|
| अपीलार्थी की ओर से/By Appellant | Shri Sanjay Mody, FCA |
| प्रत्यर्थी की ओर से/By Respondent | Shri A.K. Bhardwaj, JCIT-DR |
| सुनवाई की तारीख/Date of Hearing | 12-07-2019 |
| घोषणा की तारीख/Date of Pronouncement | 01-10-2019 |

आदेश /ORDER

PER BENCH:-

This assessee's appeal for assessment year 2011-12 arises against the Commissioner of Income Tax (Appeals)-Shillong's order dated 24.10.2018 passed in case No.CIT(A)/Shg/10312/2016-17, involving proceedings u/s 153C r.w.s. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. It transpires at the outset that the assessee's first and foremost substantive grievance raised in the instant appeal challenges correctness of provision of 153C on the ground that the Assessing Officer had not recorded a valid satisfaction that any money, bullion or jewellery; as the case may be,

belonged to him as stipulated u/s 153C(1) of the Act. Our attention is invited to the fact that the Assessing Officer had recorded his alleged satisfaction in the year 2014 i.e. much earlier than the relevant amendment in sec. 153C vide Finance Act, 2015 with effect from 01.06.2015. The relevant satisfaction against the assessee reads as under:-

“SATISFACTOIN NOTE

The assessee is an individual in status and derives his income from Carriage Contract and trading of agro products. A search and seizure operation was conducted on 23-08-2013 at office premises of Rajarshi Motors Pvt Ltd and also in residence of Shri Swapan Kumar Paul and warrant executed on Shri Swapan Paul and Rajarshi Motors Pvt. Ltd. the assessee is a son of Shri Swapan Kumar Paul and also a Director of Rajarshi Motors Pvt. Ltd. During search operation various books of account in the name of assessee were found and seized pertaining to the Swapan Kumar Paul group of companies where substantial inter group transactions detected. Also Shri Swapan Kumar Paul made disclosures of undisclosed income in the hands of assessee. Consequently, notice u/s. 153C was issued to the assessee.”

3. We notice in this backdrop of facts that the Assessing Officer has nowhere recored as to whether the impugned seized materials belonged to the assessee or not as per the unamended statutory provision. This tribunal's co-ordinate bench's order in *Manju Devi Agarwal vs. ACIT Circle-4 Guwahati* in **ITA No.155-158/Gau/2013** decided on 12.07.2019 holds that such a satisfaction note does not fulfill the relevant statutory conditions incorporated sec. 153C of the Act as follows:-

*“3. We now come to the basic relevant facts. It is not in dispute the department has carried out the search in question at 19.11.2009 in case of Poddar Group, Shri Anup Poddar and Shri Sudhir Agarwal (assessee's husband). Her residential premises formed subject-matter. The authorized officer appears to have come across various postal pass book(s) in the names of employees of his former two assessees. It is this material that has been taken to be “**belonging**” to the assessee for the purpose of initiating the impugned satisfaction u/s 153C of the Act.*

4. We have given our thoughtful consideration to rival contentions. The first moot question before us as to whether postal pass books in issue (*supra*) could be treated to be belonging to the assessee or not for the purpose of recording a valid satisfaction u/s 153C of the Act. We make it clear that we are dealing with a satisfaction dated 21.06.2011 requiring the relevant category of asset to be “**belonging**” to the taxpayer than merely “**pertaining**” or “**relating**” stood introduced subsequently vide the Finance Act, 2015

containing sec. 153C(1)(b) applicable with effect from 01.06.2015. We proceed in this factual backdrop to notice that the said documents nowhere contained even the assessee's name much less than "**belonging**" to her are taken as to demand belonging to her. This question came up before wherein it was held that this "**belonging**" has to be treated as having ownership of sized material. Various judicial precedents CWT vs. Boshwanath Chatterjee 103 ITR 531, Late Nawab Sri Mir Osman Ali Khan (1986) 162 ITR 888, SB (House & Land) Pvt. Ltd. vs. CIT (1979) 119 ITR 786, Addl. CIT vs. Sahay Properties & Investment Pvt. Ltd. (1983) 144 ITR 357 (Pat) hold that this clinching expression of "**belongs**" to implies ownership of an assessee which is nowhere the Revenue before us.

5. Next argument raised at Revenue's behest is that the assessee admitted before the DDIT(Inv) that she had derived commission income earned as a postal agent. It emerges from the case record(s) that the corresponding commission income already stood disclosed in the regular books of accounts. Couple with this, we wish to emphasize that the CBDT's dated 10.03.2003 reiterated on 18.12.2014 makes it clear that such an admission in absence of any cogent evidence does not carry any significance. It has already come on record that the relevant postal pass-books did not belong to the assessee. We thus decline the Revenue's second arguments as well.

6. Lastly comes yet another equally important aspect regarding validity of impugned proceedings. There is no dispute that this assessee as well as the searched assessee her husband (supra) are assessed by the same Assessing Officer. We notice in this backdrop that the Assessing Officer nowhere recorded a separate satisfaction in the said that the seized material did not belong to him but to this taxpayer followed by a similar corresponding satisfaction in her case. Mr. Haokip at this stage invites our attention to the Assessing Officer's satisfaction in case of assessee's husband dated 15.12.2011. We find that the Assessing Officer's said satisfaction to this effect merely holds that the corresponding increment documents seized from the searched premises '**relate**' to the assessee whereas bank pass books belonged to her clients. We conclude in view of these clinching facts that this crucial satisfaction forming foundation of the Revenue's argument does not fulfill the said legal criteria. We further quote hon'ble Gujarat high court's decision in CIT vs. Lalit Kumar M Patel (2014) 222 Taxmann.96 (Guj) dealt with a similar sec. 158BD satisfaction is on instance of the same. Assessing Officer conclude that the foregoing twin satisfaction principle quite well applies for the assessee's case if they are assessed in his same assessing authority's jurisdiction. We take into account all these foregoing legal position to conclude that the learned lower authorities have erred in initiating Sec. 153C proceedings in absence of a valid satisfaction. These assessments are accordingly quashed.

The assessee's other grounds on merits are rendered infructuous."

We adopt the above detailed reasoning *mutatis mutandis* to that the impugned assessment is liable to be quashed since not taken recourse by the Assessing Officer after recording a valid satisfaction u/s 153C of the Act. The assessee's other grounds on merits are rendered infructuous.

4. This assessee's appeal is allowed in above terms.

Order pronounced in accordance with Rule 34(3) of the ITAT Rules by putting on Notice Board 01/10/2019

Sd/-
(लेखा सदस्य)
(A.L.Saini)
(Accountant Member)
Guwahati,

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

*Dkp

दिनांक:- 01/10/2019 गूवाहाठी ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Sukhamani Hotels Pvt. Ltd. B.K. Road, Banmalipur, Agartala-799001
2. प्रत्यर्थी/Respondent-ACIT, Circle-Agartala,
3. संबंधित आयकर आयुक्त गूवाहाठी / Concerned CIT Guwahati
4. आयकर आयुक्त- अपील / CIT (A) Guwahati
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, गूवाहाठी खंडपीठ / DR, ITAT, Guwahati
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary (on tour)
आयकर अपीलीय अधिकरण,
गूवाहाठी ।