

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA Nos:- 590, 591, 592 & 593/Del/2023
(Assessment Years: 2013-14, 2014-15, 2015-16 & 2016-17)**

Bhavya Residency Pvt. Ltd., C/o Kapil Goel Adv F-26/124, Sector-7, Rohini, Delhi- 110085.	Vs.	Assistant Commissioner of Income Tax, Central Circle-13, New Delhi.
PAN No: AAFCB3612H		
APPELLANT		RESPONDENT

Revenue by : Shri Zatamal Haque Tanveer, CIT(DR)
Assessee by : Shri Kapil Goel, Adv.

Date of Hearing : 06.09.2023
Date of Pronouncement : 13.09.2023

ORDER

PER N.K. BILLAIYA, AM

ITA Nos.- 590/Del/2023, 591/Del/2023, 592/Del/2023 and 593/Del/2023 are four separate appeals by the Assessee preferred against four separate orders of the CIT(A)-28, New Delhi, dated 27.12.2022 pertaining to AYs 2013-14, 2014-15, 2015-16 & 2016-17. Since common issues are involved in the captioned appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

2. The common grievance in all the appeals read as under:

"1. That on the facts and in the circumstances of the case and in line, the Id CIT-A vide impugned first appellate order dated 27.12.2022 has grossly erred in sustaining the impugned action of Id. Assessing officer (AO) in invoking sec. 153C absent requisite mandatory jurisdictional facts as evident from undisputed fact that there is no adverse inference drawn qua so called "seized material" as vaguely referred in purported /impugned satisfaction note u/s 153C;

1.1 That on the facts and in the circumstances of the case and in law, the Id CIT-A vide impugned first appellate order dated 27.12.2022 has grossly erred in sustaining the impugned action of Id. Assessing officer (AO) in invoking sec. 153C without valid jurisdictional notice u/s 153C;

1.2 That on the facts and in the circumstances of the case and in law, the Id CIT-A vide impugned first appellate order dated 27.12.2022 has grossly erred in sustaining the impugned action of Id. Assessing officer (AO) in invoking sec. 153C on basis of invalid "satisfaction note" recorded which lack basic jurisdictional ingredients:

1.3 That on the facts and in the circumstances of the case and in law, the Id CIT-A vide impugned first appellate order dated 27.12.2022 has grossly erred in sustaining the impugned action of Id. Assessing officer (AO) in invoking sec. 153C without authority of law and acting in arbitrary/ irrational and mechanical manner;

2. That on the facts and in the circumstances of the case and in law, Ld. First appellate authority (CIT-A28) vide impugned first appellate order dated 27.12.2022 has grossly erred in dismissing the additional ground raised on jurisdictional issue of invalid approval u/s 153D which is evident from cursory look to impugned approval forwarding letter.

3. That on the facts and in the circumstances of the case and in law, Ld. First appellate authority (CITA 28) vide impugned first appellate order dated 27.12.2022 has erred in confirming partly the addition on merits (5,21,116) based on flawed / perverse reasoning.

4. That on the facts and in the circumstances of the case and in law, Id. CIT-A vide impugned appellate order dated 27.12.2022 has grossly erred in partly sustaining the impugned assessment order dated 24.12.2018, both based on patent / total non-application of mind and further suffers from apparent a) irrationality and b) arbitrariness. "

3. Representatives of both the sides were heard at length. The case records carefully perused and the documents brought on record duly considered in the light of Rule 18(6) of the ITAT Rules. Judicial decisions duly considered wherever necessary.

4. Briefly stated the facts of the case are that a search and seizure operation was conducted on 23.07.2015 and on subsequent dates in different business and residential premises of Shri Deepak Agarwal, Shri Mukesh Kumar & others Group of cases based at Delhi. Various incriminating papers/ documents were found and seized during the course of search & seizure operation in the group case. Since the assessee is "other person" in the search of Shri Deepak Agarwal, Shri Mukesh Kumar & others Group of cases, Satisfaction Note were drawn on 23.03.1018 which reads as under:

23.03.2018


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Satisfaction Note for Issue of notice u/s 153C of the Income Tax Act, 1961 in the case of M/s Bhavva Residency Pvt. Ltd.

Search and seizure action u/s 132 of the Income Tax Act was carried out on 23.07.2015 in the cases of Shri Deepak Agarwal, Shri Mukesh Kumar & Others. During the course of assessment proceeding and on the perusal of seized data/documents in the case Shri Deepak Agarwal, Shri Mukesh Kumar & Others Group, certain documents as appended below have been found to be related to M/s Bhavva Residency Pvt. Ltd. PAN: AAFCB3612H, Address: No-A, 3/73 Plot No. 12 Sector-9 Varun vihar Apartments Rohini Delhi 85. After going through the contents of those Pages/data, I am satisfied that such pages have bearing on the determination of the total income of such other person i.e. M/s Bhavva Residency Pvt. Ltd.

Annexure No.	Page No. of Annexure	Brief description of documents	Person to whom the documents belongs.
A-5	1-112	Copies of various Incriminating documents relating to M/s Panik Builders P Ltd. [AAGCP1086N].	Bhavva Residency Pvt. Ltd.
A-7	1-153	Copy of investment details of Mysore Finlease P Ltd. for FY 2011-12 showing investment of Rs. 114767100/- in the equity shares of Anamica Financial Services P. Ltd, Ballabhgarh Refractories Ltd, Diving Buildtech P Ltd, Jasmine Steel Trading P Ltd., Sukhmehar Finance P Ltd. and Vibhor Baibhav Infra P Ltd.	

In view of the facts, stated above, it is evident that documents belonging to the assessee have been seized from the person covered u/s 132 of the Income Tax Act, 1961. Hence, proceedings u/s 153C is being initiated for A.Y. 2010-11 to 2015-16.


(Sanjay Kumar Pandey)
Asstt. Commissioner of Income Tax
Central Circle-13, New Delhi.

5. We have given a careful consideration to the aforementioned Satisfaction Note drawn in the case of the assessee.

6. On carefully looking on the brief description of document show that various incriminating documents relate to M/s Panik Builders P. Ltd. having PAN Number AAGCP1086N. This incriminating material referred in the satisfaction note is not even remotely connected to the present assessee. The second observation is this in the copy of investment details of Mysore Finlease P. Ltd. for FY 2011-12 showing investment of Rs. 114767100/- in the equity shares of Anamica Financial Services P. Ltd. Firstly, this investment detail is also not connected with the assessee and secondly and more importantly it refers to FY 2011-12 not related to Financial Years under consideration.

7. On the basis of the aforementioned Satisfaction Note, the Assessing Officer initiated proceedings U/s 153C of the Act and completed proceedings by making addition on account of commission on accommodation entries and made further addition on account of disallowance of bogus expenses booked in profit and loss account.

8. Satisfaction Note which triggered the assessment proceedings U/s 153C of the Act has already been exhibited elsewhere. A perusal of the same vis-à-vis assessment completed by the Assessing Officer shows that what is noted in the Satisfaction Note has no bearing at all with the additions made by the Assessing Officer.

9. The Hon'ble Supreme Court in the case of Singhad Technical Education Society 397 ITR 344 has held that when the seized documents did not establish any co-relation

document wise with the assessment years in question, then the validity of the assessment so framed was legally unsustainable.

10. It would be pertinent to understand the scheme of assessment u/s 153C of the Act. Relevant provisions of the Act read as under:

"Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, 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 pertain to, or any information contained therein, relates 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 3 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 six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A.

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 6 sub-section (1) of 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:

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made⁴ and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub- section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year-

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made, before 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, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

11. The above provision needs to be read with the Circular No. 1/2015 dated 21.01.2015 by the CBDT being Explanatory Notes to the Provisions of the Finance [No. 2] Act, 2014 and the same reads as under:

"45. Assessment of income of a person other than the person who has been searched
45.1 Section 153C of the Income-tax Act relates to assessment of income of any person other than the person in whose case search has been initiated or requisition is made. The provisions contained in sub-section (1) of section 153C of Income-tax Act, before its amendment by the Act, provided that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the said Act, 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 belong to any person, other than the person referred to in section 153A of the said 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 and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A of the Income-tax Act. Page 50 of 59.

45.2 Section 153C of the Income-tax Act has been amended to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the said Act, 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 any person, other than the person referred to in section 153A of the said Act, then 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 such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A if he 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 subsection (1) of section 153A of the Income-tax Act.

45.3 Applicability:-This amendment takes effect from 1st October, 2014.”

12. In light of the above, we are of the considered opinion that, even after the amendment, the Assessing Officer can proceed only on the basis of incriminating material which has a bearing on determination of the total income of such other person. Nowhere in the Satisfaction Note it has been mentioned that the said description of shares is related to alleged business of providing accommodation entries by the captioned assessees.

13. In light of the decision of the Hon'ble Supreme Court [supra] we are of the considered view that the additions/disallowance, devoid of any incriminating material found during the course of search, cannot validate the assessment orders framed u/s 153C of the Act.

14. Considering the facts in totality additions / disallowances made by the Assessing Officer are devoid of any incriminating materials, therefore, such assessment order cannot be sustained and deserve to be quashed.

15. Since, we have quashed the assessment order; we do not find it necessary to dwell into the merits of the case and other issues raised and argued by the Counsel. All the captioned appeals are allowed on the challenge of validity of the assessment.

16. In the result, appeals are allowed.

Order pronounced in the Open Court on 13.09.2023

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 13/09/2023.
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	6/9/23
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	