

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "A", NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER

	I.T.A. Nos. 1242 & 1243/DEL/2021	
	A.Yrs.: 2013-14 & 2014-15	
M/S BHUSHAN FINANCE PRIVATE LIMITED, CABIN NO. 1, 1205, HEMKUNTH CHAMBERS, NEHRU PLACE, NEW DELHI – 110 019 (PAN: AAECB2920K) (ASSEESSEE)	VS	DY. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-3, ARA CENTRE, JHANDEWALAN EXTENSION, NEW DELHI – 110 005 (RESPONDENT)

Assessee by : S/Sh. S.K. Tulsian, Adv., Lakshay Budhiraja, CA, Abhimanyu Singh, Adv. & Ms. Bhoomija Verma, Adv.
Department by : Shri Sujit Kumar, CIT(DR)
Date of hearing : 26.07.2024
Date of pronouncement : 21.08.2024

ORDER

PER SHAMIM YAHYA, AM :

The Assessee has filed these appeals against a common Order dated 09.08.2021 passed by the Ld. Commissioner of Income Tax (Appeals-23), New Delhi relating to assessment years 2013-14 & 2014-15 respectively. Since

common Grounds have been raised in both the appeals of the Assessee, therefore, for the sake of convenience, the appeals are being disposed off by passing a common order, by dealing with the facts of ITA No. 1242/Del/2021 (AY 2013-14) and the decision thereof will apply *mutatis mutandis* to other Assessee's Appeal No. 1243/Del/2021 (AY 2014-15). The common grounds of appeals have been raised in both the appeals, except the difference in figures, hence, for the sake of convenience, we are only reproducing the Grounds of Appeals relating to AY 2013-14 raised in ITA No. 1242/Del/2021 as under:-

1. "That the order dated 09-08-2021 passed u/s 250(6) of the Income-tax Act, 1961 (hereinafter called the "Act") by the Learned Commissioner of Income-Tax (Appeals) - 23, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Ld. Assessing Officer in making an addition of Rs. 21,80,28,782/- on account of Long Term Capital Gains allegedly claimed as exempt u/s 10(38) of the Act by unjustifiably and arbitrarily holding the same to be the result of an alleged sham transaction and a bogus accommodation entry without comprehending the facts and circumstances of the case, underlying nature of the transaction, position of law and the facts and circumstances of the case since the Appellant Company has not earned any Long-Term Capital Gains but has earned Short-term Capital Gains on which it has duly paid tax @ 15% as per the provisions of S. 111A of the Act.

2. That the order dated 09-08-2021 passed u/s 250(6) of the Income-tax Act, 1961 (hereinafter called the "Act") by the Learned Commissioner of Income-Tax (Appeals) - 23, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Ld. Assessing Officer in making an addition of Rs. 1,23,41,252/- on account of, alleged, unaccounted Commission Expenses @ 6% on the Short-Term Capital Gains on sheer presumptive basis when there is no evidence of any form whatsoever to support such an action.

3. That the order dated 09-08-2021 passed u/s 250(6) of the Income tax Act 1961 (hereinafter called the "Act") by the Learned Commissioner of Income-Tax (Appeals) 23, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of Ld. Assessing Officer in framing the order without jurisdiction by ignoring the basic principles of natural justice by relying on statements of various persons and data / information in as much as :

(a) the name of the Appellant Company does not figure directly or even indirectly in any of the said statements/documents/information:

(b) the Appellant Company was not confronted with the information / data / findings / statements on which the findings of the Ld. AO are based;

(c) The Appellant Company was not given opportunity to cross-examine the persons on whose statement reliance has been placed by the Ld Assessing Officer while passing the order.

4. That the order dated 09-08-2021 passed u/s. 250(6) of the Income tax Act 1961 (hereinafter called the "Act) by the Learned Commissioner of Income-Tax (Appeals) 23, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of Ld. Assessing Officer in passing the order without jurisdiction and bad in law in as much as the jurisdiction u/s. 153A of the Act is vitiated since no incriminating document pertaining to AY 2013-14 had been found during the course of search."

2. Briefly stated, facts are that a search and seizure proceedings under section 132 of the Income Tax Act, 1961 (hereinafter referred as the Act) were conducted in the case of M/s Bhushan Steel Limited (BSL) Group and its group concerns and residential / factory premises of partners, directors and proprietors of the group on 13.6.2014. AO noted that during the course of search proceedings incriminating documents pertains to M/s Bhushan Finance

Private Limited at Bhushan Centre, MG Marg, Bhikaji Cama Place, New Delhi and at the premises of Shri Raj Kumar Kedia, D-45, Back office Saraswati Garden, New Delhi. The Assessing Officer of M/s Bhushan Steel Ltd. & Shri Raj Kumar Kedia has handed over the documents which pertain to M/s Bhushan Finance Private Limited. After recording satisfaction, by the AO of the assessee, notice u/s. 153C r.w.s. 153A of the Act dated 12.9.2016 has been issued and duly served. In response to the same, letter dated 19.9.2016 was filed asking to treat the original return of income u/s. 139 of the Act filed by the assessee for AY 2013-14 on 28.9.2013 declaring income of Rs. 30,56,45,980/- as return of income filed in compliance to notice u/s. 153C of the Act. Notice u/s. 143(2) of the Act was issued on 20.9.2016 and duly served, case was fixed for hearing on 27.9.2016. Notice u/s. 142(1) of the Act alongwith questionnaire was issued on 30.9.2016 and duly served. The case was fixed for hearing on 13.10.2016. The assessee had filed a letter dated 02.11.2016 and requesting to provide copy of satisfaction recorded to issue notice u/s. 153C of the Act. AO further noted that copy of satisfaction note was provided to the assessee on 21.8.2017. The copy of Satisfaction Note reads as under:-

SATISFACTION NOTE

Name of the assessee	:	M/s Bhushan Finance Ltd.
PAN	:	AAECB2920K
Status	:	Company
Assessment Year	:	2009-10 to 2014-15

The assessing officer of M/s Bhushan Steel Ltd and Shri Raj Kumar Kedia has handed over the documents which relates to M/s Bhushan Finance Ltd. The brief description of the document is as under:-

S. No.	Premise/ Annexure/ No.	Party/ Page	Description of document seized
1	Page No.28 to 31 Annexure-A-10 seized by Party CBO-1		This page contain details of transaction related to payment of some settlement agreement made by M/s Bhushan Finance Pvt. Ltd.
2.	Ledger NP of Annexure A-29, Seized by Party MNS		This annexure has tally in which details related to sale purchase of shares of various beneficiaries is maintained by Shri Raj Kumar Kedia. This tally has ledger in name of NP which has share transaction detail of Bhushan Finance Ltd.

The said document contains the information of investment/ expenditure made and detail of bogus share transaction of the assessee in penny stock companies arranged by Shri Raj Kumar Kedia. After examining the documents, I am satisfied with the meaning of Section 153C r.w.s. 153A of the Act. That the documents have bearing on the determination of the total income of M/s Bhushan Finance Ltd. for the A.Y. 2009-10 to 2014-15.

Hence, a notice u/s 153C r.w.s. 153A is being issued to the assessee for the A.Ys. 2009-10 to 2014-15.

Sudhakar Verma
(Dr. Sudhakar Verma)
Asstt. Commissioner of Income Tax,
Central Circle-3, New Delhi

In response to the said notices, the AR of the assessee appeared from time to time, filed written submissions in response to the queries raised, which were duly examined by the AO. AO noted that it has been established that the explanation offered by the assessee regarding claim of exempt LTCG is found to be false, hence, he made the additions and completed the assessment at Rs. 42,36,74,762/-.

3. Aggrieved with the aforesaid order of the Assessing Officer, assessee preferred appeal before the Ld. CIT(A). Upon assessee's appeal, Ld. CIT(A), confirmed the action of the AO.

4. Against the aforesaid order of the Ld. CIT(A), Assessee is in appeal before us. At the time of hearing, Ld. AR for the assessee submitted that a search and seizure operation u/s 132 of the Act was carried out concerning M/s Bhushan Steel Ltd. and its affiliated entities on 13.6.2014 and AO noted that certain incriminating materials were discovered during the search at the premises of M/s Bhushan Steels Ltd. and Mr. R.K. Kedia. Ld. Counsel for the Assessee took a ground that no satisfaction note was recorded by the AO of the searched person before handing over the documents and was therefore not provided to the assessee before initiating proceedings under section 153C of the Act. It was the further contention that since jurisdiction u/s. 153C r.w. 153A of the Act has been wrongly invoked by the AO as no incriminating document pertaining to Assessment Year in question were found during the course of the third party search. He further submitted that as per settled law, when no satisfaction by Assessing officer of the searched person is recorded, the requirement of section 153C was not fulfilled. He further submitted that the recording of satisfaction by the AO of the searched persons is necessary precondition for the initiation of proceedings under section 153C and when the same was not fulfilled, assessment proceedings are liable to be quashed as illegal. It was the further contention that a perusal of the Satisfaction Note dated 12.09.2016 written by AO of the assessee comprises of block assessment period between AY 2009-10 to 2014-15 which does not specify how the incriminating material that was seized pertains to a particular assessment year qua the assessee's undisclosed income. Further, the assessee company was incorporated only on 21.9.2010, thus AY 2009-10 and 2010-11 are the period when the Company was not even in existence, yet – the years have been specified in the satisfaction note. Further, it was submitted that in view of

Circular No. 24/2015 dated 31.12.2015 issued by the CBDT wherein, it was instructed that the withdrawal of all pending appeals in instances where satisfaction has not been recorded by the AO of the searched person. In view of above, Ld. AR for the assessee prayed that the impugned proceedings be declared *ab initio void* and devoid of jurisdiction u/s. 153C of the Act.

4.1 Ld. DR relied upon the orders of the authorities below. But he could not controvert that the satisfaction note has not been prepared by the Assessing Officer of the searched person.

5. We have heard both the parties and perused the records. We find that a search and seizure operation under section 132 of the Act was carried out concerning M/s Bhushan Steel Ltd. and its affiliated entities on 13.6.2014. It was alleged by the AO that certain incriminating materials were discovered during the search at the premises of M/s Bhushan Steels Ltd. and Mr. R.K. Kedia. We find considerable cogency in the contention of the Ld. AR that no satisfaction note was recorded by the AO of the searched person before handing over the documents to Assessing officer of the assessee. The satisfaction note is prepared by the AO of the assessee. Thus, jurisdiction u/s. 153C r.w. 153A of the Act has been wrongly invoked by the AO.

5.1 We find that ITAT, Delhi Coordinate Bench in the case of DCIT vs. Aakash Arogya Mindir (P) Ltd. (2015) 58 taxmann.com 293, has noted that the recording of satisfaction by the AO of the searched persons is necessary precondition for the initiation of proceedings under section 153C and when the same was not fulfilled, the assessment proceedings are liable to be quashed. On careful consideration of the Satisfaction Note dated 12.09.2016 written by AO of the assessee comprises of block assessment period between AY 2009-10 to 2014-15 which does not specify how the incriminating material that was seized pertains to a particular assessment year qua the assessee's undisclosed income. Further, the assessee company was incorporated only on 21.9.2010, thus AY

2009-10 and 2010-11 are the period when the Company was not even in existence, yet – the years have been specified in the satisfaction note. Further, the Circular No. 24/2015 dated 31.12.2015 issued by the CBDT had instructed that the withdrawal of all pending appeals in instances where satisfaction has not been recorded by the AO of the searched person. We may refer to the said CBDT's Circular as under:-

“CIRCULAR NO. 24/2015

F.No.279/Misc./140 /2015/ITJ Government of India

*Ministry of Finance
Department of Revenue
Central Board of Direct Taxes*

New Delhi, 31st December, 2015

Subject: Recording of satisfaction note under section 158BD/153C of the Act - reg.-

The issue of recording of satisfaction for the purposes of section 158BD/I 53C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitwears in its detailed judgment in Civil Appeal No.3958 of 2014 dated 12.3.20 14(available in NJRS at 2014-LL-03 12-51) has laid down that for the purpose of Section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person u/s 158BD. The Hon'ble Court held that "the satisfaction note could be prepared at any of the following stages:

*(a) at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; or
(b) in the course of the assessment proceedings under section 158BC of the Act; or
(c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person.”*

3. Several High Courts have held that the provisions of section substantially similar/pari-materia to the provisions of section

158BD of the above guidelines of the Hon'ble SC, apply to proceedings u/s 153C of the IT of assessment of income of other than the searched person. This view has been accepted by CBDT.

4. The guidelines of the Hon'ble Supreme Court as referred to in para 2 above, with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

5 In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgement. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD /153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court.

Sd/-

(Ramanjit Kaur Sethi) DCIT \OSD) (ITJ).

CBDT, New Delhi.”

5.2 We further find that ITAT, Delhi Coordinate Bench in the case of DCIT vs. Satkar Roadlines (2015) 62 taxmann.com 327 has noted that in the event the AO of the searched person and the “other person” are one and the same individual, the AO is still required to record their satisfaction.

5.3 The Hon’ble Supreme Court in the case of CIT vs. Calcutta Knitweaves (2014) 43 taxmann.com 446 (SC), has noted that a satisfaction note is sine qua non and must be prepared by the AO before he transmits the records to the other AO who has jurisdiction over such other person.

5.4 Furthermore, as per the decision in the case of CIT vs. Singad Technical Education Society (2015) 120 DTR (Bom.) 79, as affirmed by the Hon’ble Supreme Court of India, wherein, it was noted 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*

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 correlation, 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.” This decision is squarely applicable in this case for AY 2013-14.

6. Keeping in view the aforesaid facts and circumstances and respectfully following the aforesaid precedents, we quash the assessment on the legal grounds itself, the other grounds on merit became academic, hence, need not be adjudicated. Accordingly, the Assessee’s Appeal being ITA No. 1242./Del/2021 (AY 2013-14) stands allowed in the aforesaid manner.

7. Following the consistent view as taken in Assessee’s ITA No. 1242/Del/2021 (AY 2013-14) as aforesaid, the other Assessee’s ITA No. 1243/Del/2021 (AY 2014-15) also stands allowed in the aforesaid manner.

8. In the result, both the Appeals filed by the Assessee are allowed as aforesaid.

Order pronounced in the Open Court on 21/08/2024.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar