

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B' CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND DR. B.R.R.KUMAR, ACCOUNTANT MEMBER

ITA No. 401/CHD/2012
Assessment Year: 2007-08

M/s Vision Promoters & Vs The CIT,
Builders (P) Ltd., (Central),
House No. 123, Gurgaon.
Phase 3B1,
Mohali.

PAN: AACCV1050E

&

ITA No. 483/CHD/2013
Assessment Year: 2007-08

The DCIT, Vs M/s Vision Promoters &
Central Circle-1, Builders (P) Ltd.,
Chandigarh. House No. 123,
Phase 3B1,
Mohali.

PAN: AACCV1050E

(Appellant)

(Respondent)

Assessee by : Shri Parikshit Aggarwal
Respondent by : Shri Ravi Sarangal, CIT-DR

Date of Hearing : 20.09.2017
Date of Pronouncement : 28.09.2017

ORDER

Per Sanjay Garg, Judicial Member:

The above captioned are two appeals, one by the assessee against the order of the Ld. Commissioner of Income Tax (hereinafter referred to as CIT) dated 06.02.2012 passed under section 263 of Income Tax Act

and the other is by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals) hereinafter referred to as CIT(Appeals) dated 28.02.2013 in relation to quantum assessment. Since the present appeals are relating to the same assessee and the same assessment year i.e. assessment year 2007-08, hence these were heard together and are being disposed off by this common order. For the sake of convenience, facts have been taken from assessee's appeal ITA No. 401/CHD/2012.

2. The brief facts relating to the matter under consideration are that a search & seizure action under section 132 of Income Tax Act was carried out at the premises of one M/s S.L. Arora Group on 10.08.2006. During the course of search, certain documents were found and seized. It was noticed that some of the documents which were seized from the premises of M/s S.L. Arora Group of cases were also related to the assessee M/s Vision Promoters & Builders Pvt. Ltd. relating to certain sale and purchase of property by the assessee. Thereafter, assessee's case was covered under section 153C of the Act and accordingly, assessment was completed in the case of the assessee by the Assessing Officer (in short AO) vide order dated 13.12.2009 under section 143(3) read with Section 153C of Income Tax Act. It is pertinent to mention here that in the said assessment proceedings under section 153C of the Act,

no addition on capital gains was made by the Assessing Officer in relation to the sale and purchase of properties. However, certain other additions were made on account of disallowance of certain expenditure. Thereafter, the ld. CIT (Central) exercising his revision jurisdiction under section 263 of the Act, passed an order under section 263 of the Act directing the Assessing Officer to make certain additions on account of capital gains and on account of deemed dividend under section 115 of the Act. The assessee preferred the present appeal against the order of CIT under section 263 of the Act.

3. However, in the meantime, the Assessing Officer passed a fresh assessment order giving effect to the order of Ld. CIT passed under section 263 of the Act. The assessee also preferred an appeal before the First Appellate authority against the said order dated 22.02.2012 passed by the Assessing Officer giving effect to the order of the CIT u/s 263 of the Act. It was contended in the said appeal before the Ld. CIT (Appeals) that no opportunity of hearing was given to the assessee while making the fresh assessment while giving effect to the order of the CIT passed under section 263 of the Act. The ld. CIT(Appeals), after considering the submissions of the assessee observed that the principles of natural justice were violated while framing the fresh assessment. Even no notice was issued to the assessee by the Assessing Officer while framing the said assessment. He,

therefore, held that the order passed by the Assessing Officer was not in conformity with the law; he, accordingly, quashed the said assessment order dated 22.02.2012. The Revenue has come in appeal against the said order of the Ld. CIT (Appeals).

ITA No. 401/2012 (Assessee's Appeal)

4. Now coming to the assessee's appeal relating to the validity of the order passed under section 263 of the Act, the assessee has not only contested the validity of the impugned order passed under section 263 of the Act but also the very validity of the assessment order passed under section 153C of the Act in relation to which the impugned order u/s 263 has been passed by the CIT. Apart from that, the assessee has also contested the directions of the CIT for making additions into the income of the assessee on account of capital gains and deemed dividend, as discussed above.

5. Both the Ld. Representatives of the parties have submitted that the legal issue regarding the validity of invoking of revision jurisdiction by the CIT under section 263 of the Act be heard and decided first before proceeding to decide the merit of the additions so directed by the CIT to be made into the income of the assessee. Hence, we proceed to decide the legal issue regarding the validity of the invocation of jurisdiction by Ld. CIT under section 263 of the Act.

6. The ld. counsel for the assessee in this respect has stated that the ld. CIT has invoked the jurisdiction under section 263 of the Act in respect of order passed by the Assessing Officer under section 153C of the Act pursuance to the search action in the case of certain other persons namely M/s S.L. Arora group of cases, Ld. Counsel has contended that as required under the provisions of Section 153C of the Act, the Assessing Officer of the assessee could not have assumed the jurisdiction under section 153C of the Act without recording a satisfaction in the case of searched person. He, in this respect has relied upon the letter dated 28.07.2016 of the Dy. CIT which is a reply to the application dated 29.06.2016 moved by the assessee under Right to Information Act, 2005. In his application dated 29.06.2016, the assessee had requested to provide the information as to whether a satisfaction note was recorded in the case of the searched person i.e. M/s S.L. Arora Group before initiating proceedings under section 153C of the Act in the case of the assessee. The said query was replied by the Dy. CIT vide letter dated 28.07.2016, the contents of which for the purpose of ready reference are hereby reproduced as under:

“3. The application of the applicant has been considered. In view of this pointwise reply is as under:-

(i) It is to convey that the satisfaction note recorded before initiating proceedings u/s 153C have already been provided to you vide order dated 16.6.2016. On examination of

satisfaction note it is clear that the documents referred in satisfaction note were seized from the residential premises of Sh. S.L. Arora resident of #123, Phase-3B1, Mohali and H. No. 4918 Panchnama Society, Sector 68, Mohali. Further it is also clear that Shri S.L. Arora is also one of the major director / share holder in assessee company M/s Vision Land Promoter & Builders Pvt Ltd.

(ii) Further it is convey that the Assessing officer of Shri S.L. Arora and M/s Vision Land Promoters & Builders Pvt Ltd were the same and Shri S.L. Arora is one of the director of Assessee Company. There was no need to transfer the documents to any other officer and to record a separate a satsifciton note in the case of Shri S.L. Arora.”

7. A perusal of the above reproduced letter reveals that no separate satisfaction note was recorded in the case of searched person that the seized documents belonged to the assessee and that the same will have a bearing on the determination of the total income of the assessee. However, it has been further pointed out that a satisfaction note was recorded in the case of the assessee, copy of which has already been provided to the assessee. Further, that since the Assessing Officer of the searched person ‘M/s S.L. Arora Group of cases’ and of the assessee were the same, hence, there was no need to transfer the documents to any other officer of searched person. The ld. Counsel at this stage has relied upon the decision of the Hon'ble Supreme Court in the case of CIT Vs M/s Calcutta Knitwears (2014) 362 ITR 673 (S.C) wherein the Hon'ble Supreme Court has held that before initiating proceedings under section 158BD of the Act,

the Assessing Officer who has initiated proceedings for completion of the assessment under section 158BC of the Act, should be satisfied that there is an undisclosed income which has been traced out when a person was searched under section 132 of the Act or the books of account were requisitioned under section 132A of the Act with Section 158BD, existence of cogent and demonstrative material is germane to the Assessing Officer's satisfaction in concluding that the seized documents belonged to a person other than the searched person is necessary for initiation of action under section 158BD of the Act.

8. The Id. Counsel has further relied upon the following decisions wherein it has been held by various High Courts that the provisions of Section 153C of the Act are substantially similar/pari-materia to the provisions of Section 158BD and therefore, the proposition of law laid down by the Hon'ble Supreme Court in relation to the provisions of Section 158BD read with Section 158BC shall also apply to the proceedings under section 153C of the Act for the purpose of assessment of income of a person other than the searched person :

1. *CIT vs M/s Mechmen 11-C (2016) 380 ITR 591 (MP HC)*
2. *CIT vs M/s RRJ Securities Ltd (2016) 380 ITR 612 (Del HC)*

3. *P.R.CIT-Central II vs. Aakash Arogya Mandir P.Ltd
ITA 509/2015 dated 28.07.2015 (Del HC)*

9. The ld. Counsel has further relied upon Circular No. 24 of 2015 dated 31.12.2015 of CBDT which reads 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/153C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitweaves in its detailed judgment in Civil Appeal No.3958 of 2014 dated 12.3.2014(available in NJRS at 2014-LL-0312-51) 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 153C of the Act are substantially similar/pari-materia to the provisions of section 158BD of the Act and therefore, the above guidelines of the Hon'ble SC, apply to proceedings u/s 153C of the IT Act, for the purposes 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.

*(Ramanjit Kaur Sethi)
DCIT (OSD) (ITJ), CBDT, New Delhi.”*

10. The ld. Counsel, thereafter has stressed that the circulars issued by CBDT are binding on the Assessing Officer. That since no satisfaction note was recorded in the case of searched person, therefore, in the light of the proposition of law laid down by Hon'ble Supreme Court in the case of Calcutta Knitwears (supra) and as laid down by various High Courts and also as per the CBDT Circular(supra), the very initiation of assessment proceedings under section 153C of the Act in the case of the assessee were invalid and the assessment order passed under section 153C of the Act in the case of the assessee was illegal and nullity in the eyes of law. He, thereafter, has contended that any subsequent order passed in context or in relation to or modifying the said null and void order would also be illegal and void and further that the jurisdiction or the legality of the primary / base proceedings can also be challenged in the subsequent/collateral proceedings also. He, accordingly, has contended that the subsequent order passed under section 263 of the Act by the ld. CIT modifying or directing to pass a fresh order under section 153C making certain additions was also null and void. He, in this respect has relied upon the following case laws :

- i) *M/s Westlife Development Ltd vs Pr.CIT (2016) 49 ITR 406 (Mum Trib)*
- ii) *Valiant Glass Works vs. ACIT ITA 1612/Mum/2013 dated 27.07.2016*
- iii) *Steel Strips Ltd vs ACIT (1995) 53 ITR 553 (Chd Trib)*
- iv) *P V Doshi vs CIT (1978) 113 ITR 0022 (Guj HC)*

- v) *CIT vs Income Tax Appellate Tribunal & Ors (2012) 78 DTR 113 (Del HC)*
- vi) *Mavany Brothers vs CIT Tax Appeal No. 8 of 2007 dated 17.04.2015*

11. The ld. DR, on the other hand, has relied upon the findings of the ld. CIT and has submitted that the Ld. CIT has rightly invoked the revision jurisdiction u/s 263 of the Act.

12. We have considered the rival submissions and have also gone through the record. So far as the question as to whether the legality or validity to the original order passed u/s 153C of the Act can be challenged by the assessee in this appeal contesting the exercise of revision jurisdiction u/s 263 of the Act is concerned, the issue is no more res integra in the light of the various case laws relied upon by the Ld. counsel of the assessee as mentioned in para 10 above. Now coming to the question of validity of original proceedings carried out u/s 153 of the Act, admittedly, in this case the search action was carried out under section 132 of the Act in the case of M/s S.L. Arora Group. As per the law, laid down by Hon'ble Supreme Court in the case of M/s Calcutta Knitwears (supra), the Assessing Officer of the searched person is required to record satisfaction; the relevant part of the order is reproduced as under:

“We would certainly say that before initiating proceedings under Section 158BD of the Act, the assessing officer who has initiated proceedings for completion of the assessments under Section 158BC of

the Act should be satisfied that there is an undisclosed income which has been traced out when a person was searched under Section 132 or the books of accounts were requisitioned under Section 132A of the Act. This is in contrast to the provisions of Section 148 of the Act where recording of reasons in writing are a sine qua non. Under Section 158BD 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 (T) necessary for initiation of action under Section 158BD."

13. Further, various High Courts, as discussed above, have held that the provisions of Section 153C are identical and are in pari-materia to that of Section 158BD of the Act and that the proposition of law laid down by Hon'ble Supreme Court regarding satisfaction note as per the provisions of Section 158BD would also apply to the provisions of Section 153C of the Act. Reliance in this respect can also be placed on the decision of the Madhya Pradesh High Court in the case of CIT Vs M/s Mechmen (supra). Further, it is also now settled proposition of law that in a case where the Assessing Officer of the searched person as well as that other person, in case of whom the assessment u/s 153C is contemplated, is one and the same, the satisfaction would have to be recorded separately qua the searched person. Even assuming that no handing over of documents is required, recording of satisfaction is a must, as, that is the foundation, upon which subsequent proceedings against other person are initiated. The handing over of documents etc. in such a case may or may not be of much relevance but the recording of

satisfaction is still required and in fact is mandatory. It has also been categorically held so in the CBDT circular No. 24/2015 (supra.) Even the CBDT has directed the concerned officers that pending litigation with regard to recording of satisfaction note under section 158BD/under section 153C should be withdrawn/not pressed, if it does not meet the guidelines laid down by the Apex Court. The circular of the Board, though is not binding on this Tribunal but same is binding on the department.

14. In view of the proposition of law as laid down by Hon'ble Supreme Court and various High Courts as discussed above, and also in view of the CBDT Circular No. 24 of 2015 (supra), we have no hesitation to hold that because of the legal proposition laid down by the various courts and in the light of CBDT circular, the very assuming of jurisdiction and initiation of assessment proceedings in the case of the assessee under section 153C of the Act was bad in law and subsequent assessment order passed under section 153C of the Act is null and void and is to be treated as nonest in the eyes of law. Since the base order passed u/s 153C of the Act has been held to be null and void, the subsequent revision order passed by the CIT u/s 263 of the Act is also accordingly held to be void. The assessee, therefore, succeeds on the legal issue.

15. Now coming to the appeal of the Revenue in **ITA no. 483/Chd/2013** relating to assessment year 2007-08. The same is the offshoot of the assessment proceedings carried out by the Assessing officer while giving effect to the order of the Ld. Commissioner of Income Tax u/s 263 of the Act. Since we have already quashed the order of the CIT u/s 263 of the Act, hence, the subsequent proceedings carried out in compliance of the said order have no legs to stand and accordingly the same are hereby quashed. The appeal of the Revenue, thus, having become infructuous, is hereby dismissed.

16. In the result, the appeal of the assessee is hereby allowed and that of the Revenue is hereby dismissed.

Order pronounced in the Open Court 28.09.2017.

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-

(SANJAY GARG)
JUDICIAL MEMBER

Dated: 28 Sept, 2017.

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Copy to:

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

Assistant Registrar,
ITAT/CHD