

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF MARCH 2016

PRESENT

THE HON'BLE MR.JUSTICE JAYANT PATEL

AND

THE HON'BLE MRS.JUSTICE B.V.NAGARATHNA

ITA No.447/2010

C/W

ITA Nos.446/2010, 454/2010, 449/2010, 448/2010

&

ITA Nos.450/2010, 455-56/2010

IN ITA No.447/2010:

BETWEEN:

M/S.ARIHANT ALUMINIUM CORPORATION
REP.BY ITS MANAGING PARTNER
SRI.BABULAL NAGOPI,
NO.91, N.R ROAD,
BANGALORE - 560 002

... APPELLANT

(BY SRI.A.SHANKAR & M.LAVA, ADVOCATES)

AND:

THE ASSISSTANT COMMISSIONER OF INCOME-TAX
CENTRAL CIRCLE 2(2)
C.R.BUILDING,
QUEENS ROAD,
BANGALORE - 560 001

... RESPONDENT

(BY SRI.K.V.ARAVIND, ADVOCATE)

IN ITA NO.446/2010:**BETWEEN:**

M/S.ARIHANT ALUMINIUM CORPORATION
 REP. BY ITS MANAGING PARTNER
 SRI.BABULAL NAGORI
 NO.91, N.R.ROAD,
 BANGALORE - 560 002

...APPELLANT

(BY SRI.A.SHANKAR, ADVOCATE)

AND:

THE ASSISTANT COMMISSIONER OF INCOME-TAX
 CENTRAL CIRCLE 2(2)
 C.R.BUILDING, QUEENS ROAD,
 BANGALORE - 560 001

...RESPONDENT

(BY SRI.K.V.ARAVIND, ADVOCATE)

IN ITA NO.454/2010:**BETWEEN:**

M/S.ARIHANT ALUMINIUM CORPORATION
 REP. BY ITS MANAGING PARTNER
 SRI.BABULAL NAGORI
 NO.91, N.R.ROAD,
 BANGALORE - 560 002

...APPELLANT

(BY SRI.A.SHANKAR, ADVOCATE)

AND:

THE ASSISTANT COMMISSIONER OF INCOME-TAX
 CENTRAL CIRCLE 2(2)
 C.R.BUILDING, QUEENS ROAD,
 BANGALORE - 560 001

...RESPONDENT

(BY SRI.K.V.ARAVIND, ADVOCATE)

IN ITA NO.449/2010:**BETWEEN:**

M/S.ARIHANT ALUMINIUM CORPORATION
 REP. BY ITS MANAGING PARTNER
 SRI.BABULAL NAGORI
 NO.91, N.R.ROAD,
 BANGALORE - 560 002

...APPELLANT

(BY SRI.A.SHANKAR, ADVOCATE)

AND:

THE ASSISTANT COMMISSIONER OF INCOME-TAX
 CENTRAL CIRCLE 2(2)
 C.R.BUILDING, QUEENS ROAD,
 BANGALORE - 560 001

...RESPONDENT

(BY SRI.K.V.ARAVIND, ADVOCATE)

IN ITA NO.448/2010:**BETWEEN:**

M/S.ARIHANT ALUMINIUM CORPORATION
 REP. BY ITS MANAGING PARTNER
 SRI.BABULAL NAGORI
 NO.91, N.R.ROAD,
 BANGALORE - 560 002

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 CENTRAL CIRCLE 2(2)
 C.R.BUILDING, QUEENS ROAD,
 BANGALORE - 560 001

...RESPONDENT

(BY SRI.K.V.ARAVIND, ADVOCATE)

IN ITA NO.450/2010:**BETWEEN:**

M/S.ARIHANT ALUMINIUM CORPORATION
 REP. BY ITS MANAGING PARTNER
 SRI.BABULAL NAGORI
 NO.91, N.R.ROAD,
 BANGALORE - 560 002

...APPELLANT

(BY SRI.A.SHANKAR, ADVOCATE)

AND:

THE ASSISSTANT COMMISSIONER OF INCOME-TAX
 CENTRAL CIRCLE 2(2)
 C.R.BUILDING, QUEENS ROAD,
 BANGALORE - 560 001

...RESPONDENT

(BY SRI.K.V.ARAVIND, ADVOCATE)

IN ITA NOS.455-456/2010:**BETWEEN:**

M/S.ARIHANT ALUMINIUM CORPORATION
 REP. BY ITS MANAGING PARTNER
 SRI.BABULAL NAGORI
 NO.91, N.R.ROAD,
 BANGALORE - 560 002

...APPELLANT

(BY SRI.A.SHANKAR, ADVOCATE)

AND:

THE ASSISSTANT COMMISSIONER OF INCOME-TAX
 CENTRAL CIRCLE 2(2)
 C.R.BUILDING, QUEENS ROAD,
 BANGALORE - 560 001

...RESPONDENT

(BY SRI.K.V.ARAVIND, ADVOCATE)

THESE APPEALS ARE FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED: 30-07-2010 PASSED IN ITA NO.175/BANG/2010, 174/BANG/2010, 179/BANG/2010, 177/BANG/2010, 176/BANG/2010, 178/BANG/2010, 180/BANG/2010 AND 373/BANG/2010 FOR THE ASSESSMENT YEAR 2002-03, 2001-02, 2006-07, 2004-05, 2003-04, 2005-06 AND 2007-08 PRAYING TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE TRIBUNAL IN ITA NO.175/BANG/2010, 174/BANG/2010, 179/BANG/2010, 177/BANG/2010, 176/BANG/2010, 178/BANG/2010, 180/BANG/2010 AND 373/BANG/2010 DATED 30/07/2010.

THESE APPEALS COMING ON FOR HEARING THIS DAY, **JAYANT PATEL J.**, DELIVERED THE FOLLOWING:

J U D G M E N T

As in all the appeals common questions are to be considered, they are considered simultaneously.

2. All the appeals, preferred by the assessee are directed against the common order passed by the Tribunal in Appeal Nos.174-180/Bang/2010, whereby the Tribunal has passed a common order for the respective assessment years as concluded in the operative portion of the impugned order.

3. The brief facts of the case are that a search was conducted under Section 133A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") in the case of **M/s. Arihant**

Aluminium Corporation decided on 20/4/2006. The Assessing Officer initiated action and issued notice under Section 153A read with Section 153C of the Act for the purpose of re-assessment of the income under Section 153A of the Act. The appellant had filed return of income in response to the notice under Section 153A of the Act and declared the income for the respective assessment year. The Assessing Officer issued notices under Section 153C of the Act for the respective assessment years. In response to the notices received under Section 153C of the Act the appellant filed a letter to be treated as the return filed in response to the notices under Section 153A of the Act. On 11/3/2008 the case was taken up for scrutiny and the notices under Sections 143(2) and 142(1) were issued. Ultimately, the Assessing Officer completed the assessment filed under Sections 143 and 142 as well as 153C of the Act and determined the income for the respective assessment years vide different assessment orders. The matter was carried in appeal by the appellant before the Commissioner of Income Tax (Appeals) and various contentions were raised, including that the order passed under Section 143(3) read with Section 153-C of the Act by the Assessing Officer was not in accordance with the provisions of law laid down. The additional contentions were also raised for

erroneous consideration of profit ratio of 7% against 6% and further addition made by the Assessing Officer, the liability to pay interest under Sections 234-C and 234-D of the Act was also denied and the same was also challenged. CIT(Appeal) vide order dated 15.1.2010 dismissed the appeals by common order.

4. The appellant further carried the matter before the Tribunal and reiterated the same contentions as were raised before the first appellate authority (CIT-A). The Tribunal vide common order dated July 30, 2010 partly allowed the appeal. Under the circumstances, the present appeals are filed before this Court.

The appeals have been preferred by raising the following substantial questions of law:

“1. Whether the authorities below justified in law in holding that the assessment made under section 143(3) read with section 153C of the Act is valid in law and further whether the notice issued under Section 153C of the Act is valid in law without recording satisfaction on the facts and circumstances of the case?

2. Whether the authorities below are justified in law in holding that there was valid assessment when notice under Section 143(2) was not issued within twelve

months from the end of the month in which the return is furnished pursuant to 153A notice further the dropping of 153A proceeding and initiating 153C proceedings are not in accordance with law?

3. Whether the authorities below are justified in law in issuing notice under section 153C on the appellant without valid search initiated against the main person under section 132 of the Act on 20.04.2006 on the facts and circumstance of the case?

4. Whether the Tribunal was justified in law in confirming the addition of Rs.17,171/- being net profit at 7% determined by the Assessing Officer against 6% offered by the appellant on the facts and circumstance of the case and consequently gave a perverse finding?"

5. We have heard Mr.Shankar, learned counsel for the appellant in all the appeals and Mr.K.V.Arvind, learned counsel appearing for respondent-revenue in all the appeals.

6. During the course of hearing, it has been brought to our notice by the learned counsel appearing for both the sides, that a circular has been issued by CBDT vide No.24/2015 dated 31.12.2015 regarding recording of the satisfaction note Section 158BD/153-C of the Act, based on the decision of the Apex Court

in case of M/s.Calcutta Knitwears in Civil Appeal No.3958/2014 decided on 12.3.2014. The relevant extract of the circular for ready reference can be reproduced as under:

“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 Knitwears 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 judgment. 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."
7. As per the aforesaid circular, at the time of or along with the initiation proceedings against the search under Section

158C or in the course of assessment proceedings under Section 158BC of the Act or immediately after the assessment proceedings are completed under Section 158BD of the Act recording of satisfaction is required. Further, even in respect of “all other persons than the searched person” such recording of satisfaction by AO is required.”

8. The circular further goes to the extent that, if in the pending matters, the guidelines laid down by the Apex Court of recording of satisfaction note is not met with, such litigation should be withdrawn or not pressed or the appeal should also not be filed.

9. As all the appeals are pending before this Court, learned counsel appearing for respondent-Revenue could not dispute the applicability of the circular even in the present cases. The resultant effect would be that, the requirements of recording of satisfaction note for exercise of power under Section **153-C** is a mandatory requirement and cannot be given a go-bye, either at the stage of initiation or during the course of assessment or at the conclusion of the assessment. If the order of the Tribunal is examined in light of above, more particularly in the context of question no.1 referred to

hereinabove, the discussion by the Tribunal is at paragraph Nos.5, 5.1 and 5.1:1 is as under:

“5. We have duly considered the rival submissions, diligently perused the relevant case records and also the documentary evidences advanced by either party in the shape of paper book, case law etc.

5.1 The First ground being common for all the AYs under dispute [except for the AY 2007-08 wherein the assessment was concluded u/s.143(3) of the Act] that the CIT (A) erred in confirming the orders passed u/s.143(3) rws 153C of the Act which were not in accordance with the provisions of the act and bad in law and, thus, liable to be quashed etc.,

5.1.1. However, the assessee had not come up with any credible documentary evidence to substantiate its claim that the assessment orders under dispute have not been passed in accordance with the provisions of the Act. On the other hand, the stand of the authorities below on this score was conformity with the provisions of the Act and, thus, we are of the firm view that there is no case for the assessee to agitate on this court. This ground is, accordingly, dismissed for all the AYs under dispute including for the AY 2007-08.”

10. The aforesaid shows that, there is no examination by the Tribunal on the aspects of satisfaction note as referred to above which is insisted by the circular based on the decision of the Apex Court.

11. Learned counsel appearing for the Revenue however did contend that, as per some noting available in the file, it is possible to discern that the satisfaction note is recorded. In furtherance to his submission, he did rely upon the notings in the file. In order to make it as a part of the record in the present appeal, we have directed learned counsel appearing for respondent-revenue to put the so-called 'note' on record, for which, learned counsel appearing for the revenue has undertaken to do so. However, learned counsel appearing for appellant-assessee contended that so-called notes are no satisfaction notes in the eye of law and therefore cannot be the basis in any case for confirmation of the assessment already made nor can be said as the mandatory procedure is followed in the instant case.

12. In our view, as the Tribunal has neither examined the records of all the cases before the AO nor any finding is recorded on the aspects of the satisfaction note and, as the

Tribunal is the final fact finding authority, we find that the matter should be relegated to the Tribunal for examining the said aspect, namely whether there was compliance of the requirement of satisfaction recording before final conclusion was drawn and as to whether the assessment made under Section 153C is in accordance with the provisions of the Act or bad in law or liable to be quashed or not. As observed earlier, since there is no consideration by the Tribunal on the said aspects, it would be just and proper to relegate the matter to the Tribunal for reconsidering the matter on the aforesaid aspect.

13. We do notice that, the Tribunal has, after dismissing the contention of the assessee regarding the assessment not being in accordance with the provisions of the Act under Section 143(3) read with Section 153C, has examined the other aspects namely of the estimated gross profit at the rate of 7% or 6% and further addition of the amount of liability to pay interest to appellant-assessee. Based on the aforesaid findings of the Tribunal, the assessee has preferred the present appeals and has also raised the questions for which, appeals were admitted. But, considering the facts and circumstances, it appears to us that, the requirements of satisfaction note at the time of initiation of assessment or during

the assessment or at the time of conclusion of the assessment would go to the root of the matter and if ultimately found by the Tribunal that aforesaid requirement was not complied, everything would fall to the ground and the assessments made would be rendered illegal. But, at the same time, if the Tribunal finds that, all requirements were met under Section 153-C, then the question may further arise for consideration on the aspects of percentage of gross profit or addition to be made or the liability to pay interest.

14. Considering the facts and circumstances, it appears to us when we are inclined to relegate the matter to the Tribunal on the issue which goes to the root of the matter, it would be premature on our part to address ourselves on the aspects of the assessment already made and considered by the Tribunal in the impugned order. Hence, we find that, when the matter has to be relegated to the Tribunal, on the main aspect which goes to the root of the matter, other two aspects of the assessment if ultimately arise for consideration namely, as that of for estimated gross profit or for addition or to pay interest may also be considered afresh by the Tribunal without being in any manner influenced by the observations made and the conclusions recorded in the impugned order.

15. Suffice it to observe that the Tribunal would consider the matter even on the said aspects, if need arises, afresh and in accordance with law, after giving sufficient opportunity of hearing to both the sides.

16. In view of the aforesaid observation and discussion, the impugned orders passed by the Tribunal are set aside with a further direction that all appeals shall stand restored to the Tribunal. The Tribunal shall examine the aspects of satisfaction note if any, and whether the same can be termed sufficient compliance or not for the assessment to be initiated or to be made or finalized under Section 153C of the Act. It is further observed and directed that, thereafter, if need arises, the Tribunal may also examine the assessment made on merits for the purpose of gross profit or for the purpose of addition if any or for the purpose of liability to pay interest if any afresh in accordance with law.

17. The aforesaid exercise shall be complied by the Tribunal preferably within six months from the receipt of order of this Court.

Appeals are allowed to the aforesaid extent.

Considering the facts and circumstances, there is no order as to costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Sk/-