

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 03.12.2015

+ **ITA 422/2015**

PR. COMMISSIONER OF INCOME TAX-06 Appellant

versus

NIKKI DRUGS & CHEMICALS PVT. LTD. Respondent

WITH

+ **ITA 524/2015**

PR. COMMISSIONER OF INCOME TAX – 06 Appellant

versus

NIKKI DRUGS & CHEMICALS PVT. LTD. Respondent

WITH

+ **ITA 381/2015**

PR. COMMISSIONER OF INCOME TAX - 06 Appellant

versus

NIKKI DRUGS & CHEMICALS PVT. LTD. Respondent

WITH

+ **ITA 389/2015**

PR. COMMISSIONER OF INCOME TAX - 06 Appellant

versus

NIKKI DRUGS & CHEMICALS PVT. LTD. Respondent

WITH

+ **ITA 410/2015**

PR. COMMISSIONER OF INCOME TAX - 06 Appellant

versus

NIKKI DRUGS & CHEMICALS PVT. LTD. Respondent

WITH

+ **ITA 419/2015**

PR. COMMISSIONER OF INCOME TAX - 06 Appellant

versus

NIKKI DRUGS & CHEMICALS PVT. LTD. Respondent

WITH

+ **ITA 653/2015**

PR. COMMISSIONER OF INCOME TAX - 06 Appellant

versus

NIKKI DRUGS & CHEMICALS PVT. LTD. Respondent

WITH

+ **ITA 720/2015**

PR. COMMISSIONER OF INCOME TAX-06 Appellant

versus

NIKKI DRUGS & CHEMICALS PVT. LTD. Respondent

WITH

+ **ITA 735/2015**

PR. COMMISSIONER OF INCOME TAX-06

..... Appellant

versus

NIKKI DRUGS & CHEMICALS PVT. LTD.

..... Respondent

AND

+ **ITA 793/2015**

PR. COMMISSIONER OF INCOME TAX-06

..... Appellant

versus

NIKKI DRUGS & CHEMICALS PVT. LTD.

..... Respondent

Advocates who appeared in these cases:

For the Appellant : Ms. Suruchi Aggarwal, Senior Standing counsel
with Ms. Lakshmi Gurung.

For the Respondent : Mr. C.S. Aggarwal, Senior Advocate with
Mr. Prakash Kumar and Mr. Gautam Jain.

CORAM:

DR. JUSTICE S.MURALIDHAR

MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The Revenue has filed these appeals under Section 260A of the Income Tax Act, 1961 (hereafter the 'Act') impugning a common order dated 29th October, 2014 passed by the Income Tax Appellate Tribunal (hereafter the 'ITAT') in a batch of two hundred and eighty-four appeals including ten appeals pertaining to the Assessee in respect of five

Assessment Years ('AY') being 2003-04, 2004-05, 2005-06, 2008-09 and 2009-10. The aforesaid ten appeals included five appeals preferred by the Assessee and five appeals preferred by the Revenue. The said appeals, respectively, impugned five separate orders passed by the Commissioner of Income Tax (Appeals) [CIT(A)] – all dated 22nd February, 2012 - disposing of the respective appeals preferred by the Assessee against the assessment orders dated 31st December, 2010 passed in respect of the aforementioned AYs.

2. The Revenue has projected the following questions of law in each of the aforesaid appeals:-

- “(i) Whether in the facts and circumstances of the case, ITAT could have held that there was no valid search since the impugned additions have been made under section 153C/143(3) of the Act without reference to any material found as a result of search?
- (ii) Whether in the facts and circumstances of the case, ITAT could have held that additions made in non-abated assessments, are invalid?
- (iii) Whether on the facts and circumstances of the case, findings of the ITAT are perverse?”

3. Since the issues involved and the questions of law projected by the Revenue are common, these appeals were heard together.

4. The above proceedings emanate from the search and seizure operations under Section 132 of the Act, which commenced on 14th October, 2008 in respect of “SVP Group of companies”.

5. According to the Revenue, the core of SVP Group of companies consisted of four companies, namely, SVP Builders India Ltd., SVP Developers (India) Pvt. Ltd., SVP Liquors India Limited and Five Vision Promoters Pvt. Ltd, which were engaged in the business of construction of residential, commercial and business complexes as well as in sale and purchase of land. It was found that the aforesaid four companies had received share capital from 106 companies during the AYs 2003-04 to 2009-10. It is the case of the Revenue that the aforesaid four companies forming core of the SVP Group, had been charging on-money on sale of flats and shops which was not accounted for in the regular books of accounts. According to the Revenue, usually this on-money was taken in cash and was routed back into the Group companies in the form of share application/unsecured loans, share capital, etc. These funds were further invested by the SVP Group of companies to purchase lands for new projects as well as for booking bogus expenses, as site development charges, for inflating the cost of construction. In addition to the four

companies forming the core of the SVP Group, warrants for search and seizure operations were also issued in respect of twenty other companies.

6. The assessing officer categorized the 106 companies, which had invested in the share capital of the aforesaid four companies of the SVP Group during the AYs 2003-04 to 2009-10 into 3 groups tabulated in Table-I, II and III. Table-I shareholders consisted of 20 companies which had been subjected to search and seizure operations under Section 132 of the Act; Table-II shareholders comprised of 12 companies against whom proceedings were initiated under Section 153C of the Act consequent to the search conducted on SVP Group and other Table-I shareholders; and Table-III shareholders comprised 74 companies. The Assessee, in the present case, is one of the 12 companies that was not subjected to search but was assessed under Section 153C of the Act.

7. The assessment order records that a notice under Section 153C of the Act was issued by the Assistant Commissioner of Income Tax, Meerut ('ACIT, Meerut') on 14th May, 2010, but this is disputed by the Assessee. Thereafter, on 15th September, 2010, notices under Section 153A of the Act were issued by the ACIT, Meerut for the AYs 2003-04, 2004-05, 2005-06 and 2008-09. Further, on the said date, notice under Section 142(1) of the

Act was also issued for AY 2009-10. On 23rd September, 2010, another notice under Section 153C of the Act was issued by the ACIT, Meerut. On 8th November, 2010, yet another notice under Section 153C of the Act alongwith a notice under Section 142(1) of the Act was issued by the Assistant Commissioner of Income Tax, Central Circle, Ghaziabad (hereafter the 'AO'). In response to the aforesaid notices, the Assessee filed its returns of income for the respective five AYs in question. Subsequently, on 15th November, 2010, a letter was issued by the AO in respect of AYs 2003-04 to 2009-10, which referred to the notice dated 8th November, 2010 issued under Section 142(1) of the Act.

8. Thereafter, various notices were issued by the AO. According to the AO, the said notices were not fully complied with. However, this is disputed by the Assessee and the paper book filed by the Assessee in these proceedings indicates that the notices were responded to. On 31st December, 2010, the AO passed assessment orders in respect of each of the AYs in question assessing the amounts credited in the books of the Assessee as income under Section 68 of the Act. The AO observed in the assessment orders that the details with regard to the sources of investment in unquoted shares alongwith the names and addresses of the investors were

called for but the same were not complied with. The AO further recorded that even in instances where details were filed, the same were incomplete and without the addresses of the investors. The AO also adverted to certain facts relating to other companies and held that the Assessee Company was only involved in receipts of share application money and other funds and transmitting the same to other un-quoted companies as investment in their share capital. He observed that the Assessee had not invested in any listed company for earning any income. According to the AO, the Assessee did not carry on any genuine business activity but was involved only in money laundering.

9. The Assessee, being aggrieved by the assessment orders, preferred appeals before the CIT(A), *inter alia*, challenging the assumption of jurisdiction under Section 153C of the Act. The Assessee alleged that the initial notice claimed to have been issued on 14th May, 2010 had not been issued and that was the reason why a notice was subsequently issued on 8th November, 2010. It was further claimed that the Assessee was not afforded sufficient time to respond to the notices. However, despite paucity of time, the Assessee had responded to the questionnaires and the AO's observation that the Assessee was not co-operative or had not provided the details asked

for, was incorrect. The Assessee also contested the jurisdiction of the AO to frame an assessment under Section 153C of the Act as it was contended that the assessing officer of the searched person had not recorded his satisfaction that any money, bullion, jewellery or other valuable article or thing or books of accounts or documents, seized or requisitioned belonged to the Assessee. It was contended that in the absence of such satisfaction, the AO could not have assumed jurisdiction to commence proceedings under Section 153C of the Act. The Assessee further contended that the amounts received by it were duly recorded in its books of accounts and, thus, no addition could be made under Section 68 of the Act. The CIT(A) called for a remand report on the submissions made by the Assessee. The AO submitted the remand report, *inter alia*, enclosing a satisfaction note recorded by the AO, which reads as under:-

“A search operation u/s 132(1) of the Income Tax Act, 1961 was conducted in the case of SVP Group of cases and concerned persons at various offices and residences by issuing warrants of authorization u/s 132(1) of the Income Tax Act, 1961 on 14-10-08 and various documents, books of account, other valuable articles and other things were found and seized from various premises. On verification of various documents and books of accounts found and seized from some documents including following documents belong- to M/s SVP Builders India Ltd. 17, Kiran Enclave, G.T. Road, Ghaziabad, I am satisfied that some documents including

following documents belongs to Ms Nikki Drugs & Chemicals P. Ltd., L-119, Shastri Nagar, Delhi-110052.

- 1. Annexure A-84 (Bunch No. 31) which are various documents like share application form, balance sheet and minutes of meeting of directors in respect of share application money in the shares of M/s SVP Builders India Ltd.*
- 2. Annexure A-5. (Page 118-128) which are various documents like resolution, affidavit, share application form, acknowledgement receipt of return and P&L A/c / balance sheet in respect of investment for purchase of shares of Ws SVP Builders India Ltd.*
- 3. Annexure A-15 (Pages 8-14 & 151-155) which are share certificates of M/s SVP Builders India Ltd. In the name of M/s Nikki Drugs & Chemicals P. Ltd.*
- 4. Annexure A-35 (pages 1-10) which are share certificates of M/s SVP Builders India Ltd. In the name of M/s Nikki Drugs & Chemicals P. Ltd.*
- 5. Annexure A-52 (pages 272-276) which are share certificates of M/s SVP Builders India Ltd. In the name of M/s Nikki Drugs & Chemicals P. Ltd.*

Therefore, in view of the provision of section 153C (1) read with section 153A of the Income Tax Act, 1961, I am satisfied that proceedings u/s 153C read with section 153A is required to be initiated in the case of M/s Nikki Drugs & Chemicals P. Ltd., L-119, Shastri Nagar, Delhi-110052. Accordingly, notice u/s 153C read with section 153A of the Income Tax Act, 1961 is being issued for the assessment years 2003-2004 to 2008-2009.”

10. The Assessee disputed that the documents referred to in the satisfaction note belonged to the Assessee. It was submitted that although

some of the documents emanated from the Assessee, the same were forwarded to SVP Builders India Ltd. in connection with the investment made by the Assessee in the share capital of that company. Therefore, the said documents no longer belonged to the Assessee. Insofar as the share certificates are concerned, it was contended that some of the documents alleged to be share certificates were not share certificates but counter foils of the share certificates issued by SVP Builders India Ltd. and the other share certificates seized pertained to shares that had already been sold by the Assessee and, therefore, the certificates no longer belonged to the Assessee.

11. During the course of the proceedings before the CIT(A), the Assessee also furnished affidavits of various persons who had invested in the Assessee Company either by applying for shares or by lending money as short term loans.

12. The CIT(A) observed that the balance sheet of the Assessee did not reflect any physical assets and the Assessee was not engaged in any actual business activity. The shares sold and purchased by the Assessee were not saleable in the open market and were not tradable commodities. It is further observed that the profit or loss shown from the activity of sale and purchase

of shares by private limited companies was a “fake attempt to give semblance of genuineness of a functional company”. The CIT(A) further held that the Assessee was carrying on business only on paper and its sole purpose was to benefit others. It was also noticed that the shares of SVP Group were purchased by the Assessee at a higher price and the same were subsequently sold to individuals/concerns of SVP Group at a throwaway price, which was a fraction of the purchase price. According to the CIT(A), the same evidenced that the transaction was done only for the purposes of benefiting SVP Group. The CIT(A) concluded that the Assessee was only a conduit for transferring money to SVP Group and based on the aforesaid conclusion, directed deletion of the addition made by the AO alongwith a direction to add the same in the hands of the beneficiaries. In addition to the above, the CIT(A) gave further directions, *inter alia*, for proceeding under Section 269SS of the Act and to impose penalty under Section 271D of the Act on account of sums received by the Assessee in cash from various persons.

13. The Assessee as well as the Revenue preferred appeals against the orders passed by the CIT(A). Whilst the Assessee was mainly aggrieved by the decision of the CIT(A) in rejecting its contention that the proceedings

under Section 153C of the Act were without jurisdiction; the Revenue challenged the deletion of the additions made under Section 68 of the Act.

14. The ITAT upheld the Assessee's contention that the documents found during the search and seizure operation conducted with respect to the SVP Group did not belong to the Assessee and, therefore, the assumption of jurisdiction under Section 153C of the Act was unsustainable. The ITAT also held that a satisfaction note had not been recorded by the assessing officer of the searched person and, therefore, initiation of proceedings under Section 153C of the Act were invalid. Insofar as the addition under Section 68 of the Act is concerned, the ITAT held that the sources of money received by the Assessee were duly explained, and therefore, deleted the additions made under Section 68 of the Act. Accordingly, the ITAT allowed the appeals preferred by the Assessee and rejected the appeals preferred by the Revenue. The Revenue being aggrieved by the same has preferred the present appeals.

15. The principal controversy involved in the present appeals relate to the question of assumption of jurisdiction by the AO under Section 153C of the Act. Admittedly, the Assessee was not one of the entities that were subjected to the search and seizure operation under Section 132 of the Act.

The assessments were also framed under Section 153C of the Act; although the assessment orders reflect that the assessments were framed under Section 143(3)/153A(b) of the Act, the orders passed by the CIT(A) indicates the same to be a typographical error. Section 153C of the Act provides for assessment/reassessment in cases where assets/documents have been found during the search and seizure operations and the same do not belong to the searched person(s). Section 153C of the Act reads as under:

“153C. (1) 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 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

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 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 made 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 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.”

16. It is apparent from the above that the first step for initiation of proceedings under Section 153C of the Act is for the assessing officer of the searched person to be satisfied that the assets or documents seized do not belong to the searched person but to the assessee sought to be assessed under Section 153C of the Act. Once the assessing officer of the searched person is so satisfied, he is required to transfer the assets or documents, which he believes belongs to the assessee, to the assessing officer having jurisdiction over that assessee. The assessing officer of the assessee on receipt of such asset or document seized would have jurisdiction to commence proceedings under Section 153C of the Act. The assessing officer has, thereafter, to apply his mind as to whether the assets and documents received have a bearing on the determination of the total income of the Assessee and if he is so satisfied that the same have a bearing on the determination of the income of the assessee, he has to issue notice and assess or reassess the income of the assessee in accordance with the

provisions of Section 153A of the Act. Section 153A of the Act requires that a notice be issued to the person sought to be assessed, calling upon the said assessee to file his return of income in respect of each year falling within the specified six AYs. It is further specified that the provisions of the Act shall, so far as may be, applied as if such returns were returns required to be furnished under Section 139 of the Act. Thus, the assessing officer has to, thereafter, proceed with the assessment/reassessment in accordance with the provisions of the Act; that is, accept the return with or without such adjustments as permissible under Section 143(1) of the Act or if the claims made by the assessee are considered as inadmissible and/or it is considered necessary and expedient to subject the returns to further scrutiny, issue the requisite notice under Section 143(2) of the Act and frame the assessment in accordance with the Act.

17. In the present case, the ITAT specifically recorded that, admittedly, a satisfaction note had not been recorded by the assessing officer of the searched person. It was contended by the Revenue before the ITAT that the assessing officer of the searched i.e. SVP Group was not required to record such satisfaction as both the Assessee and the SVP Group were being assessed by the same officer. This contention was rejected by the ITAT by

following the decision of this Court in **Pepsi Foods Pvt. Ltd v. Asstt Commissioner of Income Tax**: (2014) 367 ITR 112 (Del). The Allahabad High Court in the case of **Commissioner of Income Tax v. Gopi Apartments**: (2014) 365 ITR 411 (All.) has also held that even in cases where the assessing officer of the person searched and the assessee who is sought to be assessed under Section 153C is the same, the assessing officer is required to record his satisfaction that the assets/ documents seized belong to a person (the assessee) other than the searched person. In **CIT v. Mechmen 11-C**: (2015) 60 taxmann.com 484 (M.P.) a Division Bench of the Madhya Pradesh High Court had expressed the above view in the following manner:-

“18. The concomitant of this conclusion, is that, the legal position as applicable to Section 158BD regarding satisfaction in the first instance of the first Assessing Officer forwarding the items to the Assessing Officer having jurisdiction; and in the second instance of the Assessing Officer having jurisdiction whilst sending noticee to such other person (other than the person referred to in Section 153A), must apply proprio vigore. The fact that incidentally the Assessing Officer is common at both the stages would not extricate him from recording satisfaction at the respective stages. In that, the Assessing Officer is satisfied that the items referred to in Section 153C belongs or belong to a person (other than the person referred to in Section 153A), being sine qua non. He cannot assume jurisdiction to transmit those items to another file which incidentally is pending before him concerning other person (person other than the person referred to in Section

153A). The question as to whether that may influence the opinion of the Assessing Officer having jurisdiction over such other person, also cannot be the basis to take any other view. As a matter of fact, the other Assessing Officer to whom the items are handed over, before issuing notice must himself be satisfied after due verification of the items received and the disclosures made by the other person in the returns for the relevant period already filed by the other person before him. For the same reason, we must reject the argument of the Department that the discretion of the Assessing Officer having jurisdiction will be impaired in any manner, if he were to hold a different view. Similarly, as there is no provision either express or implied (in the Act) to dispense with the requirement of satisfaction, if the Assessing Officer happens to be the same, as in this case, the argument of the Department must be negated.

19. After receipt of the materials, the Assessing Officer having jurisdiction is expected to conduct enquiry and due verification of the relevant facts; before forming his prima facie satisfaction. The Assessing Officer having jurisdiction will be well within his rights to form an independent view before issuing notice to the other person (person other than the person referred to in Section 153A) under his jurisdiction on the basis of his own enquiry. In our opinion, the view formed by the Assessing Officer after his own enquiry does not entail in seating in appeal over the satisfaction of the first Assessing Officer, who had handed over the items to him.”

18. This Court has also expressed a similar view in **Commissioner of Income Tax-7 v. RRJ Securities Ltd.:** (2015) 62 taxmann.com 391 (Delhi). Thus, the controversy whether it is necessary for the assessing officer of the searched person to record his satisfaction that the

assets/documents seized belong to the assessee other than the searched person is no longer *res integra*. It is settled that recording of such satisfaction is *sine qua non* for commencing any proceedings under Section 153C of the Act. Thus, the decision of the ITAT in this regard cannot be faulted. It was sought to be contended before us that the assessing officer of the searched persons had, in fact, recorded the necessary satisfaction note. However, the learned counsel for the Revenue could not confirm whether such note was prepared prior to the initiation of the proceedings under section 153C of the Act. The Assessee's contention that despite its request such note had not been disclosed during the assessment proceedings has also not been controverted. In the circumstances, the categorical finding of the ITAT that it was an admitted fact that the assessing officer of the searched persons had not recorded a satisfaction note, cannot be interfered with.

19. The next controversy relates to the question whether the documents seized during the search conducted under section 132 of the Act on SVP Group of companies belonged to the Assessee. The details of the documents are indicated in the satisfaction note quoted hereinbefore.

20. The Assessee disputed that the said documents could be stated to be belonging to the Assessee. Insofar as the resolutions, affidavits, counter foils of the income tax returns, copies of the incorporation certificate, Memorandum of Association, resolutions, affidavits, and share application forms are concerned, the Assessee explained that these documents were handed over to the SVP Builders India Ltd. in connection with the investment made by the Assessee. Although these documents pertain to and emanate from the Assessee, these documents could not be stated to belong to the Assessee as they had been handed over to SVP Builders India Ltd. and now formed a part of their records and not that of the Assessee's. It was contended that, therefore, these documents did not belong to the Assessee. Insofar as the counter foils of the share certificates are concerned, it cannot be disputed that the said documents never belonged to the Assessee but were a part of the records of the company issuing certificates, i.e, SVP Builders India Ltd. As far as the share certificates of the SVP Builders India Ltd. is concerned, it was submitted that the same pertain to the shares that had already been sold and the endorsement made on the rear of the share certificates clearly indicated that the Assessee was no longer

the holder of the said shares and the same stood registered in the name of one Satpal on 26th March, 2004.

21. The ITAT considered the above contentions and following the decision of this Court in **Pepsico India Holdings Pvt. Ltd. v. Assistant Commissioner of Income Tax**: (2015) 370 ITR 295 (Delhi) held that the documents in question could not be said to belonging to the Assessee. In **Pepsico India Holdings Pvt. Ltd.** (*supra*), this Court has explained that the expression ‘belongs to’ must not be confused with the expression ‘relates to’. As an illustration, this Court has referred to a registered sale deed which, although, registered by the vendor would belong to the purchaser of the property and could not be considered to be belonging to the vendor only because the vendor’s name was mentioned in the documents. In the present case, although the photocopies of the documents handed over to SVP Builders India Ltd. may be copies of the original documents that belong to the assessee, the said photocopies would belong to SVP Builders India Ltd. as the same were handed over to it in connection with the investment made by the Assessee. Similarly, a certified copy of the Assessee’s resolution signed by its Directors, would also belong to the SVP Builders India Ltd. even though the minutes of the Board meeting form a part of the record of

the Assessee. We find no infirmity with the view taken by the ITAT in this regard. Thus, notwithstanding the controversy whether the assessing officer of the searched persons had recorded his satisfaction that the specified seized documents belonged to the Assessee, the initiation of proceedings under section 153C of the Act, in respect of the Assessee would be without jurisdiction.

22. Since, we find no infirmity with the view of the ITAT that the proceedings under Section 153C of the Act were without jurisdiction, it is not necessary to consider the other issues sought to be raised by the Revenue.

23. In the circumstances, no substantial question of law arise in these appeals, the same are accordingly dismissed. The parties are left to bear their own costs.

VIBHU BAKHRU, J

S. MURALIDHAR, J

DECEMBER 03, 2015
MK/RK