

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 1337 OF 2013

Director of Income Tax (IT) – II ... Appellant
Vs
M/s. Ingram Micro (India) Exports Pte. Ltd. ... Respondent

WITH
INCOME TAX APPEAL NO. 1339 OF 2013

WITH
WITH
INCOME TAX APPEAL NO. 1340 OF 2013

WITH
INCOME TAX APPEAL NO. 1341 OF 2013

WITH
INCOME TAX APPEAL NO. 1476 OF 2013

WITH
INCOME TAX APPEAL NO. 1477 OF 2013

Mr. Tejveer Singh for the Appellant in appeals.

Mr. J.D. Mistri, senior counsel with Mr. Madhur Agarwal and Mr. Atul K. Jasani for the Respondents in all appeals.

**CORAM : S.C. DHARMADHIKARI &
A.K. MENON, JJ.**

WEDNESDAY, 29TH APRIL, 2015

P.C. :

1. According to Mr. Tejveer Singh, this appeal which arises out of the Tribunal's order dated 21st December, 2012, in a batch of six

appeals and rendered for assessment years 2002-03 to 2007-08 raises the following substantial questions of law.

“Whether on the facts and circumstances of the case, the Hon'ble Tribunal was correct in holding that no satisfaction is recorded by the AO before initiating proceedings under section 153-C ?

Whether on the facts and circumstances of the case, the Hon'ble Tribunal was correct in admitting the additional ground raised for the first time before the Tribunal ?”

2. Mr. Tejveer Singh submits that these two substantial questions of law arise because pursuant to the search and seizure action under section 132 (1) of the Income Tax Act, 1961, carried out in the case of M/s. Ingram Micro (India) Exports Pte. Ltd. / M/s. Tech Pacific (India) Ltd. at their business premises revealed that these two companies are not paying any income tax in India though they are having permanent establishment through M/s. Ingram Micro (India)

Pte. Ltd. / M/s. Tech Pacific (India) Ltd. Therefore, proceedings were required to be initiated in this case to bring to tax the profits of these two entities. Subsequently, notices under section 153-C were issued for all these years. The assessee filed returns of income declaring Nil income. The assessments were completed by the Assessing Officer on 29th September, 2010. The assessee preferred an appeal before the Income Tax Appellate Tribunal, Mumbai Bench. This appeal has been allowed and firstly by permitting the assessee to raise additional ground on the validity of the proceedings under section 153-C of the Income Tax Act, 1961. Mr. Tejveer Singh would submit that the same should not be allowed. This course should not be permitted and in the light of this the Tribunal could not have nullified the entire proceedings. In any event, the Tribunal should have found out as to whether there was material before the Assessing Officer to initiate proceedings under section 153-C of the Income Tax Act, 1961. The opportunity to produce that material was not granted and adequately.

3. Mr. Mistri, learned senior counsel appearing on behalf of the respondents in some of these appeals points out that neither of these

submissions have any merit. The ground and which was permitted as an additional one goes to the root of the case. The Tribunal found that if there is no satisfaction recorded by the Assessing Officer before initiating proceedings under section 153-C of the IT Act, then, all other aspects need not be gone into. A finding in that behalf is sufficient and enough to dispose of these appeals. Secondly, the Tribunal has noted as to how many opportunities were granted by adjourning the appeals to produce the material before the Assessing Officer, if any. In that regard, he has invited our attention to paragraph 4 of the Tribunal's impugned order. For all these reasons, he would submit that the present appeals do not raise any substantial questions of law.

4. After hearing both sides and perusing the relevant material including the impugned orders, we are of the view that there is much substance in the contention of Mr. Mistri. The additional ground was permitted and with regard to the validity of the proceedings under section 153-C as the Tribunal concluded that this issue or question goes to the root of the case. If it is answered either way, the matter

would come to an end. The Tribunal has noted that the additional ground is the legal ground going to the root of the case. The Assessing Officer did not allow inspection of the record to the assessee or its counsel and that is why they have raised additional ground about validity of the proceedings under section 153-C. That is about absence of any satisfaction being recorded by the officer who was assessing the search party. There is no dispute about the fact that the assessee was not searched and the search has been conducted in the case of M/s. Ingram Micro (India) Exports Pte. Ltd. / M/s. Tech Pacific (India) Ltd. at their business premises in Mumbai. Therefore, in terms of section 153-A and 153-C of the IT Act, proceedings can only be initiated after the Assessing Officer arrives at a satisfaction that the seized material pertains to other persons, namely, persons other than the searched party. It is only then the persons other than the searched parties can be proceeded against. There is nothing in the assessment order which would indicate that the assessment officer arrived at such satisfaction. The Tribunal noted that it has allowed this additional ground to be raised after hearing the departmental representatives' objection. To do complete justice and to both sides

the Tribunal gave enough opportunity to the Revenue to produce the files and if the same contain the satisfaction of the Assessing Officer, then, to rely upon it before the Tribunal. The Tribunal noted that more than 20 months passed after the first direction to produce the record was issued. Despite repeated adjournments and as noted by the Tribunal in paragraph 9 of the impugned order, the satisfaction requisite for initiation of the proceedings under section 153-C was not available. The record in that behalf was not produced. In these circumstances, not only did the Tribunal find that it was necessary and in the interest of justice to permit raising of an additional ground, but to answer it. It is only to enable it to answer it that it relied on the settled principles and the judgment of the Hon'ble Supreme Court in the case of *Manish Maheshwari vs. Assistant Commissioner of Income Tax (2007) 289 ITR 341*. It is only to enable the Tribunal to refer to the settled principles and for re-enforcing its conclusion that this judgment is referred.

5. We do not find any wider or broader question being decided or answered. It there is a satisfaction required and to be recorded as a

pre-condition and which is mandatory, then, in the absence thereof all further steps stand vitiated is the conclusion reached in the facts and circumstances of the present case. That has been reached by holding that the records with regard to such satisfaction could not be produced by the Revenue despite several adjournments.

6. In the circumstances, we agree with Mr. Mistri that these appeals do not raise any substantial questions of law. They are, accordingly, dismissed. There shall be no order as to costs.

A.K. MENON, J.

S.C. DHARMADHIKARI, J.