

* THE HONOURABLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA

AND
THE HONOURABLE SRI JUSTICE SANJAY KUMAR

+ I.T.T.A. Nos.662 and 668 of 2014

% 26-11-2014

Commissioner of Income Tax – III
IT Towers, A.C. Guards
Hyderabad ... Appellant

Vs.

\$ M/s. Shettys Pharmaceuticals & Biologicals Limited
1-7-12, Musheerabad
Hyderabad ... Respondent

! COUNSEL FOR APPELLANT : Sri B. Narasimha Sarma

^ COUNSEL FOR RESPONDENT :-

<GIST:

>HEAD NOTE:

? CITATIONS: 1. AIR 1936 PC 253

-
-
-
-

-
-
-
-
-
-
-
-
-
HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.T.T.A. Nos.662 AND 668 OF 2014

DATED:26.11.2014

Between:

Commissioner of Income Tax – III
IT Towers, A.C. Guards
Hyderabad ... Appellant

And

M/s. Shettys Pharmaceuticals & Biologicals Limited
1-7-12, Musheerabad
Hyderabad ... Respondent

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

-
I.T.T.A. NOs.662 AND 668 OF 2014

COMMON JUDGMENT: (per the Hon'ble The Chief Justice Sri Kalyan Jyoti Sengupta)

I.T.T.A. NO.662 OF 2014

-
This appeal is sought to be preferred and admitted against the judgment and order of the learned Tribunal dt.28.5.2014 in relation to the assessment year 2009-2010 on the following suggested question of law.

"In the facts and circumstances of the case, whether the Hon'ble Tribunal (ITAT) is correct in law in quashing the assessment framed under Section 153C of the Income Tax Act 1961 on the ground that there is no satisfaction recorded by the Assessing Officer having jurisdiction over the searched person despite the fact that the Assessing Officer of the Respondent – assessee and the Assessing Officer of the searched assessee are one and the same and the satisfaction recorded by the common Assessing Officer before issue of notice under Section 153C of the Income Tax Act, 1961 is sufficiently valid to finalize the assessment under Section 153C of the Income Tax Act?"

We have heard Sri B. Narasimha Sarma, learned counsel for the appellant Revenue and gone through the impugned judgment and order of the learned Tribunal. The learned Tribunal in this case did not accept the initiation of the action under Section 153C of the Income

Tax Act, 1961 (hereinafter referred to as 'the Act'). This action has to be taken against a third party in respect of the incriminating materials brought out in connection with search and seizure conducted on another party. Section 153C of the Act specifically says that the Assessing Officer must be satisfied that such action is required to be initiated.

Sri Narasimha Sarma, learned counsel for the appellant, submits that the word recording satisfaction is not a pre-condition for the object of the aforesaid Section. In any event, from a reading of the order passed by the Assessing Officer to initiate action, if it emerges that satisfaction is deemed to have been arrived at, mere non-use of the word of satisfaction does not vitiate the action.

The argument apparently is very attractive, but the law is otherwise and the learned Tribunal has correctly applied. We therefore appropriately set out Section 153C of the Act.

“Assessment of income of any other person

“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 any money, bullion, Jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong 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.”

(emphasis supplied)

It is therefore clear that firstly satisfaction has to be recorded by the Assessing Officer who conducted search, that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in Section 153A of the Act. Thereafter, the

Assessing Officer having jurisdiction over third party on receipt of the seized material or books of accounts or document being handed over to him shall record his own satisfaction after examining the same independently without being influenced by the satisfaction of the Seizing Officer. In other words it is not an automatic action. We find satisfaction of two officers is missing. In this connection we set out the text of the order of the Assessing Officer which is as follows.

“A search and seizure operation u/s. 132 was carried out in the group case of Dr. T. Yadhaiah Goud and others on 25.3.2010. During the course of search operation documents belonging to SHETTY PHARMACEUTICALS & BIOLOGICAL LTD., has been seized. Hence it is considered to initiate proceeding u/s. 153C of the I.T.Act.”

The aforesaid Section mandates recording of satisfaction of the Assessing Officer(s) is a pre-condition for invoking jurisdiction and it is not a mere formality because recording of satisfaction postulates application of mind consciously as the documents seized must be belonging to the any other person other than the person referred to in Section 153-A of the Act. It is contended that the same Assessing Officer is involved in the matter. This fact does not dispense with above requirement. It is settled position of law that when a thing is to be done in one particular manner under law this has to be done in that manner alone and not other way (See *Nazir Ahmed v. King Emperor*^[1]). We think the learned Tribunal has correctly followed the principle. We do not find any element of law to be decided.

We accordingly dismiss the appeal. There will be no order as to costs.

I.T.T.A. NO.668 OF 2014

Since the issue involved in this appeal is identical to the one raised in the above appeal (I.T.T.A. No.662 of 2014), the aforesaid judgment will be applicable to this matter and hence the appeal is dismissed in terms of the aforesaid judgment. There will be no order

as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

26.11.2014

bnr

Reportable

[\[1\]](#) AIR 1936 PC 253