

Cited Here

ARSHAD ISPAT & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR.

IN THE ITAT BANGALORE BENCH 'C'

N. V. VASUDEVAN, VP & B. R. BASKARAN, AM.

ITA No. 926/Bang/2015, 928 & 929/Bang/2015, 930 & 931/Bang/2015

Jul 30, 2021

(2021) 62 CCH 0375 BangTrib

Legislation Referred to

Section 139, 147, 148, 149, 151, 153C

Case pertains to

Asst. Year 2008-09 & 2010-11

Decision in favour of:

Assessee

Search and seizure—Assessment in case of other person—Recording of finding by AO— A and E are partnership firms — Assessments in all cases have been completed by A.O. u/s 143(3) r.w.s. 153C — Revenue carried out search and seizure operation u/s 132 in case of B — In connection therewith, premises of A & E and B were also searched — Assessing officer of "searched person" and "other persons, being assessee herein" came to be one and same person — A.O. completed assessment in hands of above said assesseees — Held, Assessing officer is same for searched person and also assesseees herein, being "Other persons" — Assessing officer has recorded fact of conducting of search in premises of assesseees herein and seizure of certain documents — However, search in premises of assesseees is on basis of warrant issued in name of B — Hence assesseees herein are "Other persons", as referred to in sec.153C — In none of satisfaction notes, AO has recorded a finding that seized documents "belong to" assesseees — AO must be conscious and satisfied that documents seized/recovered from searched person belonged to other person — Hence, it is duty of AO to apply his mind and should consciously and mandatorily state in satisfaction note that seized documents belong to "other person" — Without recording such a satisfaction, it cannot be presumed that seized materials belong to

"other persons", in which case AO could not have initiated proceedings against "other persons" u/s 153C — Initiation of proceedings u/s 153C in instant cases is bad in law — Assessee's appeals allowed.

Held

Assessing officer is the same for searched person and also the assessee herein, being "Other persons". Assessing officer has recorded the fact of conducting of search in the premises of the assessee herein and seizure of certain documents. However, the search in the premises of the assessee is on the basis of warrant issued in the name of B. Hence the assessee herein is "Other persons", as referred to in sec.153C. In none of the satisfaction notes, the AO has recorded a finding that the seized documents "belong to" the assessee. Supreme Court has held in the case of *M/s Super Malls Private Limited Vs. Principal Commissioner of Income tax (423 ITR 281)(SC)* that the AO must be conscious and satisfied that the documents seized/recovered from the searched person belonged to the other person. Hence, it is the duty of the AO to apply his mind and should consciously and mandatorily state in the satisfaction note that the seized documents belong to "other person". Without recording such a satisfaction, it cannot be presumed that the seized materials belong to "other persons", in which case the AO could not have initiated proceedings against the "other persons" u/s 153C. Initiation of proceedings u/s 153C in the instant cases is bad in law. Assessee's appeals allowed.

(para 8)

M/s Super Malls Private Limited Vs. Principal Commissioner of Income tax (423 ITR 281)(SC)

Conclusion

AO must be conscious and satisfied that the documents seized/recovered from the searched person belonged to the other person.

In favour of

Assessee

Cases Referred to

M/s Super Malls Private Limited Vs. Principal Commissioner of Income tax (423 ITR 281)(SC)

Counsel appeared:

V. Srinivasan, A.R for the Appellant.: Dilip for the Respondent

B. R. BASKARAN, AM.

1. The appeals filed by the respective assesseees are directed against the orders passed by Ld. CIT(A)-11, Bengaluru in their respective hands and they relate to the assessment years mentioned in the caption. In all these appeals, the assesseees have challenged the validity of initiation of proceedings u/s 153C of the Income-tax Act, 1961 [the Act' for short]. Accordingly, all these appeals were heard on the above said preliminary issue only.

2. The facts relating to the above said issue are stated in brief. M/s. Arshad Ispat and M/s. Arshad Exports are partnership firms. The assessments in all the above said 5 cases have been completed by the A.O. u/s 143(3) r.w.s. 153C of the Act. The revenue carried out search and seizure operation u/s 132 of the Act in the case of "Shri B. Nagendra". In connection therewith, the premises of M/s. Arshad Ispat & M/s. Arshad Exports and residence of Mr. K. Asghar Khan were also searched on 25.10.2010, i.e., the premises of the assesseees before us were subjected to search as part of search and seizure operations conducted in the hands of Shri B Nagendra. Subsequently, all the cases were centralized with Deputy Commissioner of Income-tax, Central Circle -2(3), Bengaluru. Hence the assessing officer of the "searched person" and "other persons, being the assesseees herein" came to be one and same person.

3. Subsequently, the A.O. issued notices under section 153C of the Act to the assesseees herein for the years mentioned in the caption. Thereafter, the A.O. completed the assessment in the hands of above said assesseees for the years under consideration u/s 143(3) r.w.s. 153C of the Act. It is the contention of the assesseees herein that the initiation of proceedings u/s 153C of the Act is not valid and hence the impugned assessments should be quashed.

4. In order to appreciate the contentions of the assessee, we extract below the provisions of sec.153C, which are relevant for the years under consideration, since this provision has been amended often. Provisions of sec.153C were introduced by Finance Act, 2003 and the same read as under:-

"153C. Assessment of income of any other person.—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 such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A."

The Finance Act, 2005 made following amendments:-

"47. In the Income-tax Act, with effect from the 1st day of June, 2003,—

(a) section 153C shall be numbered as sub-section (1) thereof and in sub-section (1) as so numbered, the following proviso shall be inserted and shall be deemed to have been inserted, namely:—

" 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 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.";

(b) after sub-section (1) as so numbered, the following sub-section shall be inserted and shall be deemed to have been inserted, namely:— "(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."

5. The above said provisions were interpreted by Hon'ble Supreme Court in the case of M/s Super Malls Private Limited Vs. Principal Commissioner of Income tax (423 ITR 281)(SC). The relevant observations are extracted below:-

"5. We have heard the learned counsel for the respective parties at length.

5.1 As observed hereinabove, the short question which is posed for the consideration of this Court is, whether there is a compliance of the provisions of Section 153C of the Act by the Assessing Officer and all the conditions which are required to be fulfilled before initiating the proceedings under Section 153C of the Act have been satisfied or not?

6. This Court had an occasion to consider the scheme of Section 153C of the Act and the conditions precedent to be fulfilled/complied with before issuing notice under Section 153C of the Act in the case of Calcutta Knitwears (supra) as well as by the Delhi High Court in the case of Pepsi Food Pvt. Ltd. (supra). As held, before issuing notice under Section 153C of the Act, the Assessing Officer of the searched person must be "satisfied" that, inter alia, any document seized or requisitioned "belongs to" a person other than the searched person. That thereafter, after recording such satisfaction by the Assessing Officer of the searched person, he may transmit the records/documents/things/papers etc. to the Assessing Officer having jurisdiction over such other person. After receipt of the aforesaid satisfaction and upon examination of such other documents relating to such other person, the jurisdictional Assessing Officer may proceed to issue a notice for the purpose of completion of the assessment under Section 158BD of the Act and the other provisions of Chapter XIV-B shall apply. 6.1 It cannot be disputed that the aforesaid requirements are held to be mandatorily complied with. There can be two eventualities. It may so happen that the Assessing Officer of the searched person is different from the Assessing Officer of the other person and in the second eventuality, the Assessing Officer of the searched person and the other person is the same. Where the Assessing Officer of the searched person is different from the Assessing Officer of the other person, there shall be a satisfaction note by the Assessing Officer of the searched person and as observed hereinabove that thereafter the Assessing Officer of the searched person is required to transmit the documents so seized to the Assessing Officer of the other person. The Assessing Officer of the searched person simultaneously while transmitting the documents shall forward his satisfaction note to the Assessing Officer of the other person and is also required to make a note in the file of a searched person that he has done so. However, as rightly observed and held by the Delhi

High Court in the case of *Ganpati Fincap (supra)*, the same is for the administrative convenience and the failure by the Assessing Officer of the searched person, after preparing and dispatching the satisfaction note and the documents to the Assessing Officer of the other person, to make a note in the file of a searched person, will not vitiate the entire proceedings under Section 153C of the Act against the other person. At the same time, the satisfaction note by the Assessing Officer of the searched person that the documents etc. so seized during the search and seizure from the searched person belonged to the other person and transmitting such material to the Assessing Officer of the other person is mandatory. However, in the case where the Assessing Officer of the searched person and the other person is the same, it is sufficient by the Assessing Officer to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, then the requirement of Section 153C of the Act is fulfilled. In case, where the Assessing Officer of the searched person and the other person is the same, there can be one satisfaction note prepared by the Assessing Officer, as he himself is the Assessing Officer of the searched person and also the Assessing Officer of the other person. However, as observed hereinabove, he must be conscious and satisfied that the documents seized/recovered from the searched person belonged to the other person. In such a situation, the satisfaction note would be qua the other person. The second requirement of transmitting the documents so seized from the searched person would not be there as he himself will be the Assessing Officer of the searched person and the other person and therefore there is no question of transmitting such seized documents to himself.

6.2. Now let us consider from the satisfaction note recorded by the Assessing Officer, in the present case. Whether there is a sufficient compliance of Section 153C of the Act or not. The satisfaction note reads as under:

"Name and address of the assessee :	M/s Super Malls (P) Ltd. Sector 12, HUDA, Karnal Regd. Office at 51, Transport Centre Punjabi Bagh, New Delhi.
PAN :	AAICS2I63F
Status :	Company

Reasons/Satisfaction note for taking up the case of M/s Super Malls (P) Ltd. Sector-12, HUDA, Karnal Regd. Office at 51, Transport Centre, Punjabi Bagh, New Delhi under Section 153C of the Income Tax Act, 1961.

The jurisdiction of this case has been assigned to this Office u/s 127 of the Income Tax Act, 1961 by the worthy Commissioner of Income Tax-III New Delhi vide order F. No. CIT111/Delhi/Centralization/1012-1312455 dated 15.01.2013.

By virtue of the authorization of the Director of Income Tax (Investigation), Chandigarh, a search & seizure operation u/s 132(1) of the Act was carried out on 08/09.04.2010 at the residential/business premises of Sh. Tejwant Singh & Sh. Ved Parkash Bharti Group of cases,

Karnal, Panipat & Delhi and a survey u/s 133A of the IT. Act, 1961 was also carried out at the business premises of M/s Super Mall (P) Ltd. Karnal & New Delhi. During the course of search on 08/09.04.2010 at residence of Sh. Ved Parkash Bharti who is a Director in the assessee company M/s Super Mall (P) Ltd., Pen drives were found and seized as per Annexure-3 from vehicle No. HR06N-0063 parked in front of the residence of Sh. Ved Parkash Bharti. Some documents as per Annexure A-1 were seized after taking print out of the above said pen drives. These documents contain the details of cash receipt on sale of shop/offices at M/s Super Mall, Karnal also beside other concerns. These documents are required for assessment proceedings. During the statement of Sh. Ved Parkash Bharti at the time of search, he has also stated that these documents pertain to him and M/s Super Mall (P) Ltd., Karnal in which he is Director. In view of the above and as per the provisions of sub-section 91 of Section 153C of the Act, I am satisfied that the document seized from the residence of Sh. Ved Parkash Bharti belongs to a person i.e. Super Mall (P) Ltd., other than the person referred in section 153A. Accordingly, it is directed to issue such person (M/s Super Mall (P) Ltd.) notice and assess and reassess income in accordance with the provision of section 153A of the Act.

Dated: 22.02.2013

sd/-

(VED PARKASH KALIA) "

From the aforesaid satisfaction note, it emerges that the Assessing Officer is satisfied that the documents containing the details of the cash receipts on sale of shop/offices at M/s Super Mall, Karnal belonged to the other person - assessee - M/s Super Mall. He is also satisfied that the documents/pen drive are seized from the searched person. He is also satisfied that the documents so seized from the residence of the searched person/Ved Prakash Bharti belonged to the assessee - the other person. Therefore, the Assessing Officer was satisfied and it is specifically mentioned that the documents so seized belonged to the assessee - the other person. Therefore, it cannot be said that the mandatory requirements of Section 153C of the Act, in the facts and circumstances of the case, have not been complied with. The satisfaction note by the Assessing Officer clearly states that the documents so seized belonged to the other person - the assessee and not the searched person. Thus, the High Court is justified in observing that the requirement of Section 153C has been fulfilled. On facts, we are in complete agreement with the view taken by the High Court on the requirement of Section 153C of the Act being fulfilled by the Assessing Officer before initiating the proceedings under Section 153C of the Act.

7. In view of the above and for the reasons stated above, all these APPEALS fail and the same deserve to be dismissed and are accordingly dismissed. Now, the learned ITAT shall decide and dispose of the appeals afresh on merits, at the earliest, in accordance with law, as observed by the High Court in the impugned Judgment(s) and Order(s)."

6. The Honble Supreme Court has interpreted the then existing provisions of sec.153C as under:-

- (a) Before issuing notice u/s 153C of the Act, the Assessing officer of the searched person must be "satisfied" that, inter alia, any document seized or requisitioned "belongs to" a person other than the searched person.
- (b) After recording such satisfaction by the AO of the searched person, he may transmit the records/documents/things/papers etc., to the Assessing officer having jurisdiction over such other person.
- (c) After receipt of the aforesaid satisfaction and upon examination of such other documents relating to

such other person, the jurisdictional Assessing officer may proceed to issue notice for the purpose of completion of the assessment under Section 158BD of the Act and other provisions of Chapter XIV-B shall apply.

(d) Failure of the AO of the searched person, after preparing and dispatching the satisfaction note and the documents to the AO of the other person, to make note in the file of searched person, will not vitiate the entire proceedings under section 153C of the Act against the other person.

(e) At the same time, the satisfaction note by the AO of the searched person that the documents etc., so seized during the search and seizure from the searched person to the other person and transmitting such material to the AO of the other person is mandatory.

(f) However, in the case where the AO of the searched person and the other person is the same, it is sufficient by the AO to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, then the requirement of Section 153C of the Act is fulfilled. In case, where the AO of the searched person and the other person is the same, there can be one satisfaction note prepared by the Assessing officer, as he himself is the Assessing Officer of the searched person and also the Assessing officer of the other person.

(g) However, the AO must be conscious and satisfied that the documents seized/recovered from the searched person belonged to the other person.

7. It is the contention of these assesseees that the assessing officer has not recorded satisfaction that the materials etc found during the course of search belong to them. In order to appreciate this contention of the assesseees, we extract below the satisfaction recorded in the hands of these assesseees. The revenue has furnished copies of satisfaction recorded in the cases of M/s Arshad Exports and Sri K Asgar Khan. The AO has also furnished copies of satisfaction note in the case of all the three assesseees in the remand report filed before Ld CIT(A). All these satisfaction notes appear to have been taken from the files of assesseees herein. In the instant cases, the assessing officer is the same for searched person and also the assesseees herein, being "Other persons". The satisfaction note for the years under consideration for all the three assesseees are extracted below:-

(A) Arshad Ispat - A.Y. 2010-11

"A search action u/s 132 was initiated in the case of Sri B. Nagendra and in connection with the same, the premises of M/s. Arshad Ispat, Khan Building, 3rd Cross, Vijay Nagar, College Road, Hospet was also searched and documents/assets were seized as per inventory - A annexed to the panchanama dated 25.10.2010 and A-1/A1 annexed to the Panchanama dated 3.11.2011 for the search conducted in the premises of M/s. Arshad Ispat, Khan Building, 3rd Cross, Vijay Nagar, College Road, Hospet. Hence, a notice calling for the return of income for the A.Y. 2010-11 as envisaged u/s 153C issued."

(B) Sri K. Asghar Khan

(a) A.Y. 2008-09

(a) "A search action u/s 132 was initiated in the case of Sri B. Nagendra and in connection with the same, the premises of Sri Asgar Khan, Near College Ground, College Road, Hospet was also searched and documents/assets were seized as per inventory - A annexed to the panchanama dated 25.10.2010 for the search conducted in the premises of Sri Asgar Khan, Near College Ground, College Road, Hospet."

Hence, a notice calling for the returns of income for the asst. year 2008-09 as envisaged u/s 153C issued."

(b) A.Y. 2010-11:

(b) "A search action u/s 132 was initiated in the case of Sri B. Nagendra and in connection with the same, the premises of Sri Asgar Khan, Near College Road, Hospet was also searched and documents/assets were seized as per inventory - A annexed to the panchanama dated 25.10.2010 for the search conducted in the premises of Sri Asgar Khan, Near College Ground, College Road, Hospet.

Hence, a notice calling for the returns of income for the asst. year 2010-11 as envisaged u/s 153C issued."

(C) M/s. Arshad Exports

(a) A.Y. 2009-10

(a) "A search action u/s 132 was initiated in the case of Sri B. Nagendra and in connection with the same, the premises of M/s. Arshad Exports, Khan Building, 3rd Cross, Vijay Nagar College Road, Hospet was also searched and documents/assets were seized as per inventory - A annexed to the panchanama dated 25.10.2010 and A-1/A1 annexed to the Panchanama dated 2.11.2011 for the search conducted in the premises of M/s. Arshad Exports, Khan Building, 3rd Cross, Vijay Nagar College Road, Hospet. This case is centralized to this office vide CIT Gulbarga Order F.No.90/Notification/CIT-GLB/2010-11 dated 22.3.2011.

Hence, a notice calling for the returns of income for the asst. year 2009-10 as envisaged u/s 153C issued."

(b) A.Y. 2010-11:

(b) A search action u/s 132 was initiated in the case of Sri B. Nagendra and in connection with the same, the premises of M/s. Arshad Exports, Khan Building, 3rd Cross, Vijay Nagar College Road, Hospet was also searched and documents/assets were seized as per inventory - A annexed to the panchanama dated 25.10.2010 and A-1/A1 annexed to the Panchanamadated 2.11.2011 for the search conducted in the premises of M/s. Arshad Exports, Khan Building, 3rd Cross, Vijay Nagar College Road, Hospet. This case is centralized to this office vide CIT Gulbarga Order F.No.90/Notification/CIT-GLB/2010-11 dated 22.3.2011.

Hence, a notice calling for the returns of income for the asst. year 2010-11 as envisaged u/s 153C issued."

8. A careful perusal of the satisfaction notes extracted above would show that the assessing officer has recorded the fact of conducting of search in the premises of the assessee herein and seizure of certain documents. However, the search in the premises of the assessee is on the basis of warrant issued in the name of Sri B Nagendra. Hence the assessee herein is "Other persons", as referred to in sec.153C of the Act. In none of the satisfaction notes, the AO has recorded a finding that the seized documents "belong to" the assessee herein. The Honble Supreme Court has held in the case of Super Malls Private Limited (supra) that the AO must be conscious and satisfied that the documents seized/recovered from the searched person belonged to the other person. Hence, it is the duty of the AO to apply his mind and should consciously and mandatorily state in the satisfaction note that the seized documents belong to "other person". Without recording such a satisfaction, it cannot be presumed that

the seized materials belong to "other persons", in which case the AO could not have initiated proceedings against the "other persons" u/s 153C of the Act.

9. In view of the foregoing discussions, we are of the view that the initiation of proceedings u/s 153C of the Act in the instant cases is bad in law. Accordingly, we quash the orders passed by the tax authorities in the hands of the assessee herein for the years under consideration.

10. In the result, all the appeals of the assessee are treated as

Order pronounced in the open court on 30th Jul, 2021.

Customized Notes

© Copyright 2021 Wolters Kluwer (India) Pvt. Ltd. All Rights Reserved.