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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 449/2016**
+ **ITA 450/2016 & CM No.26463/2016**
+ **ITA 451/2016 & CM No.26464/2016**
+ **ITA 453/2016 & CM No.26466/2016**

PRINCIPAL COMMISSIONER OF INCOME-TAX- 8 Appellant

Versus

M/S SUPER MALLS PVT. LTD., Respondent

Through: Shri Dileep Shivpuri, Senior Standing
Counsel, Shri Sanjay Kumar and
Shri Vikrant A. Maheshwari,
Advocates for Appellants.
Mr. Arvind Kumar, Advocate for
Respondent M/s Super Malls Pvt. Ltd.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **22 .11.2016**

CM Nos.26463, 26464 & 26466/2016 (for exemption)

1. Allowed, subject to all just exceptions.
2. The applications are disposed off.

ITA Nos. 449-451 & 453 of 2016

3. Admit.
4. The question of law urged is whether in the circumstances of the case, the ITAT findings that the satisfaction note was flawed and could not withstand scrutiny under Section 153(C) of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act') is correct.
5. This Court does not propose to advert the facts in detail except to state that the search and seizure operation was carried out in the premises of Shri Tejwant Singh and one Shri Ved Prakash Bharti. A survey too was

conducted under Section 133A of the Act in the premises of the assessee. As a consequence of that, notice was issued to the assessee under Section 153C of the Act by the Assessing Officer (AO), who also co-incidentally happened to be the AO of the searched party i.e Tejwant Singh and Ved Prakash Bharti and had issued notice under Section 153A of the Act. The assessments and additions finally made in the block period were the subject matter of an appeal to the CIT(A), which upheld that. In the circumstances, the assessee's appeal to the ITAT, which upheld it at the threshold stating that the satisfaction note recorded under Section 153C of the Act in respect of the assessee i.e., the third party was invalid.

6. At the outset, counsel for the assessee fairly conceded that since the AO in both the cases i.e. that of the searched party and the third party were the same, the question of transmitting or recording a separate note etc. could not have been insisted upon. He, however, stated that the findings of the ITAT with respect to the nature of satisfaction i.e. that the documents "belonged to the assessee", should be sustained. For this, learned counsel relied upon the subsequent amendment to Section 153C of the Act, brought into force with effect from 01.06.2015 by the Finance Act, 2015. It was submitted that the legislature was conscious of the pitfalls that existed in the previous legislation and, therefore, deleted reference to the expression "belonging to" and instead substituting with "pertains or pertained to".

7. Learned counsel also relied upon the decision reported as ***Pepsico India Holdings (P) Ltd. Vs. ACIT (2014) 50 Taxman.com 299 (Delhi)***. It was, therefore, urged that in the present case the reference to certain documents reflecting a state of factual affairs did not justify a conclusion that the material or materials found in the pen drive "belonged" to the

assessee i.e the respondent. It was also urged that the note itself pointed to the material found referable or relatable to other third parties as well.

8. This Court has considered the submissions. The reasons or satisfaction note that formed basis of the notice under Section 153C of the Act to the assessee in this case are extracted below:-

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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.
Asstt. Year	:	2005-06 to 2010-11
PAN	:	AAICS2163F
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, Punjahi 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 Income Tax Act, 1961 by the worthy Commissioner of Income Tax-III New Delhi vide order F.No. CITIII/Delhi/Centralization/2012-1312455, 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 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 is 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)

*Asstt. Commissioner of Income Tax,
Central Circle, Karnal"*

9. A plain reading of the note clearly shows that search in the business premises of two individuals was carried out; equally, survey of premises of the assessee was also carried out. In the course of this search of Shri Ved Prakash Bharti – who also was a director and assessee, some pen drives were found and seized. Further documents listed in Annexure A-1 too were seized after their print outs were obtained. These documents detailed cash receipts for the sale of the shops and offices in the assessee's other concerns. In these circumstances, having regard to all these conspectus of facts, the AO expressed under Section 153C of the Act that the documents so seized "belonged" to the assessee. We are unpersuaded by the assessee's submissions that the expression "belonged", in the context in which it was

used has to be understood as imputing “relating to”, or any other term. Plainly put, the AO was satisfied that the documents belonged to the assessee in view of what was contained or brought out on a fair reading of their contents. It must not to be overlooked that while construing a document, expressions should not be interpreted too literally as if they are, words, carved in stone or in a Statute - as the ITAT did in this case. For these reasons, we are of the opinion that the ITAT should not have allowed the appeal only on this hyper technical ground with regard to the satisfaction note. Those findings are, accordingly, set aside.

10. In view of the above discussion, the ITAT’s decision with respect to the satisfaction recorded by the AO under Section 153C of the Act is set aside. A further direction is issued to the ITAT to hear the appeals afresh on merits uninfluenced by the observations of this Court on the contentions of the parties.

11. These appeals are accordingly allowed in the above manner.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

NOVEMBER 22, 2016

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