

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 1150/MUM/2020
Assessment Year: 2010-11
&
ITA No. 1149/MUM/2020
Assessment Year: 2011-12
&
ITA No. 1148/MUM/2020
Assessment Year: 2012-13
&
ITA No. 1147/MUM/2020
Assessment Year: 2013-14**

Dinesh Shah (HUF),
Flat No. 434, Shabri Shikhar,
R.C. Marg, Chembur (W),
Mumbai-400071.

PAN No. AADHS 0544 N
Appellant

Dy. CIT, Central Circle-3(4),
Mumbai.

Vs.

Respondent

Assessee by : Mr. Rasesh Shah
Revenue by : Ms. Sanyogita Nagpal, CIT-DR

Date of Hearing : 15/02/2024
Date of pronouncement : 13/03/2024

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee were adjudicated by the Income-tax Appellate Tribunal (in short 'the Tribunal') on 15.09.2022, however, on Miscellaneous Applications filed by the



assessee on the ground for non-representation by the assessee before the Tribunal, the appeals have been recalled by the Tribunal on 05.01.2023 by way of order passed in MA No. 287/Mum/2022. Hence, these appeals were before us for adjudication.

2. The grounds raised in the appeals are identical, mostly related to the addition u/s 68 of the Income-tax Act, 1961 (in short 'the Act'). Before us, the assessee has also raised an additional ground in all the appeals challenging the validity of the reassessment proceedings completed u/s 153C of the Act. The relevant additional ground is reproduced as under:

- *On the facts and in circumstances of the case as well as law on the subject, learned Assessing Officer has erred in issuing notice u/s 153C and passing assessment order u/s 143(3) r.w.s. 153C.*

2.1 The grounds and additional ground raised being identical in all these appeals, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

3. In view of the settled principle held by the Hon'ble Supreme Court in the case of **NTPC Ltd. 229 ITR 283 (SC)**, the additional ground raised by the assessee is admitted after hearing arguments of both the parties as ground being purely legal in nature and no investigation of fresh facts is required.



4. We have heard rival submissions of the parties on the issue of additional ground and perused the relevant material on record including paper book filed by the assessee. In the case , the Assessing Officer has completed impugned assessments u/s 153C of the Act. The Assessee has challenged the legality of jurisdiction acquired by the AO for invoking proceedings u/s 153C of the Actr. Before us, the Ld. Counsel for the assessee referred to the satisfaction note recorded by the Assessing Officer of searched person as well as assessee, for issuing notice u/s 153C of the Act, which is available on Paper Book page 1. In the case the Assessing Officer is same for searched person and the assessee. The Ld. Counsel for the assessee submitted that the documents on the basis of which proceedings u/s 153C of the Act have been initiated were impounded during the course of the survey action, whereas for invoking proceedings u/s 153C of the Act, the law requires that assets or documents should be seized in the course of the search action. For ready reference the relevant provisions of section 153C of the Act are reproduced 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 six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153A]]”

4.1 On perusal of the above proceedings, it is evident that for invoking provisions of section 153C of the Act, the Assessing Officer should record satisfaction that any any money, bullion, jewellery or other valuable article or thing, **seized or requisition during the course of searched person** belonged to the assessee or any other books of account or documents, **seized or requisitioned**, pertains or pertain to, or any information contained therein, relates to the assessee, then the Assessing Officer of the searched person shall handover that material or books of account or assets to the Assessing Officer of the third person (i.e. the assessee in present case) and then the Assessing Officer of the third person (i.e. the assessee) shall also record the satisfaction that the books of accounts of the documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person.

4.2 In the instant case in the satisfaction recorded the Assessing Officer has referred to loose papers No. 1 to 8 of the Annexure A-1 containing pages 1 to 33 found from the office premises of M/s



Ankur Shubham Developers, Micro Ankur Developers, Sahaj Ankur Developers, Shubham Developers. For ready reference, the satisfaction note recorded by the AO is reproduced as under:

“Recording of satisfaction for issuance of notice u/s. 153C in the case of Dinesh V ShaH (HUF)

(A.Y. 2008-09 to 2013-14)

A search and seizure action u/s 132 of the act, was conducted on 10-12-2013 in the case of M/s Ankur Shubham Group. From the office premises of Ankur Shubham Developers, Micro Ankur Developers, Sahaj Ankur Developers, Shubham Developers certain loose papers were found which were seized as annexured as Annexure A-1 (Page No. 1 to 33).

Page nos. 1 to 8 of the said annexure belonging to the assessee contains certain information which need to be probed further.

In view of the above and provisions of Section 153C of I.T. Act, 1961, notice u/s 153C is being issued in the case of Dinesh V. Shah(HUF).”

4.3 The Ld. counsel for the assessee referred to paper book page No. 2 which is the first page of Annexure A-1 referred by the Assessing Officer. The said page indicates that this Annexure was impounded during the course of the survey conducted on the office premises of Ankur Shubham Group at 303, Santacruz, West, Mumbai on 10.12.2013. The ld Counsel also referred to a copy of authorization dated 11/12/ 2013 (PB-I/35) issued by the concerned Deputy Director of Income-tax for carrying out survey in the name of four parties namely (i) M/s Ankur Shubham Developers, (ii) Micro Ankur Developers, (iii) Sahaj Ankur Developers, and (iv) Shubham Developers at address 303, Golden Bungalow, Juhu Road, Santacruz (w), Mumbai. The paper book page 37 is the Annexure-A impounded during the course of survey,



which contains one of the items as loose papers 1 to 33. This same annexure of loose papers has been referred by the AO in his satisfaction note as seized material. In view of the above it is evident that the Assessing Officer has wrongly mentioned in the satisfaction note that the Annexure was seized (i.e. during the course of search) but it was actually impounded during the course of survey u/s 133A of the Act. We are of the opinion that as per the provisions of section 153C of the Act, unless the documents belonging to or pertaining to the other person (i.e. the assessee in instant case) are seized during the course of search action at the premises of the searched person, no proceedings u/s 153C of the Act can validly be taken in the course of the other person i.e. the assessee. Since, in the instant case, the material considered for initiating action u/s 153C of the Act in the case of the assessee was not seized in the course of the search action but was impounded in the course of the survey action, therefore, the action of reassessment u/s 153C of the Act is not as per the provisions of law and stands invalid. The Hon'ble Supreme Court in the case **Commissioner of Income-tax v. Sinhagad Technical Education Society [2017] 84 taxmann.com 290 (SC)** held that for invoking section 153C of the Act the incriminating material should pertain to assessment years in question whereas in the instant case the incriminating material have not even seized during the course of the search action. The Ld. Departmental Representative relied on the decision of the of **Hon'ble Supreme Court in the case of CIT v. S.**



Ajit Kumar [2018] 93 taxmann.com 294 (SC) wherein it is held that any material or evidence found/collected in a survey which has been simultaneously made at premises of the connected person can be utilized while making block assessment in respect of assessee u/s 158BB, r.w.s. 158BH. We find that in the case, the issue was of considering the any other material or information available and relatable to such evidence during the course of the assessment u/s 158BB/158BC of the Act. In the said decision, the issue in dispute is not regarding the assessment u/s 158BD which is *pari-materia* with assessment u/s 153C of the Act. The issue in dispute in above decision being different, the ratio of the said decision is not applicable over the facts of the instant case. Since, the material to be considered for invoking u/s 153C of the Act should be seized during the course of the search u/s 132 of the Act on searched action or requisitioned u/s 132A of the Act and this being a mandatory condition for invoking action u/s 153C of the Act, failure on the part of the Assessing Officer in recording the satisfaction based on any material seized during the course of the search, the action taken u/s 153C of the Act do not meet requirement of law and therefore stand quashed. The additional ground raised in all the four years is accordingly allowed.

5. Since, we have already quashed the proceedings u/s 153C of the Act, therefore, we are not required adjudicate regular grounds of the appeal as same are rendered merely academic.



5. In the result, all four appeals of the assessee are allowed.

Order pronounced in the open Court on 13/03/2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 13/03/2024

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai