

IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFUAR RAHMAN, AM

आयकर अपील सं /I.T.A. No. 354/Mum/2012
(निर्धारण वर्ष / Assessment Year: 2008-09)

आयकर अपील सं /I.T.A. No. 355/Mum/2012
(निर्धारण वर्ष / Assessment Year: 2009-10)

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| Dilip B Patel C-1, Flat No. 1504, Satellite Classic, Station Road, Jogeshwari (E), Mumbai- 400068. | बनाम / Vs. | DCIT(OSD-II, CR-7) Aayakar Bhavan, 4 th Floor, Room No. 214, Mumbai-400020. |
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आयकर अपील सं /I.T.A. No. 5641/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2009-10)

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| Dilip B Patel C-1, Flat No. 1504, Satellite Classic, Station Road, Jogeshwari (E), Mumbai- 400068. | बनाम / Vs. | DCIT(OSD-II, CR-7) Aayakar Bhavan, 4 th Floor, Room No. 214, Mumbai-400020. |
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आयकर अपील सं /I.T.A. No. 1847/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2008-09)

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| DCIT(OSD-II, CR-7) Aayakar Bhavan, 4 th Floor, Room No. 214, Mumbai- 400020. | बनाम / Vs. | Dilip B Patel C-1, Flat No. 1504, Satellite Classic, Station Road, Jogeshwari (E) Mumbai-400068. |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AIOPP9402F | | |
| (अपीलार्थी/ Appellant) | .. | (प्रत्यर्थी / Respondent) |

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| Assessee by: | Shri Pavan Ved |
| Revenue by: | Shri Ankush kappor (DR) Ms. Vranda U Matkari (Sr. AR) |

सुनवाई की तारीख / Date of Hearing: 18/01/2024
घोषणा की तारीख /Date of Pronouncement: 30/01/2024

आदेश / ORDER**PER ABY T VARKEY, J.M:**

These are four (4) appeals filed by both assessee and revenue against the order of Ld. CIT(A)/First Appellate Authority. Out of it two (2) appeals i.e. ITA. No. 354 & 355/Mum/2012 are quantum appeals arising from assessment framed for AY. 2008-09 & AY. 2009-10 u/s 153C/143(3) of the Income Tax Act, 1961 (hereinafter “the Act”); and ITA. No. 1847 & 5641/Mum/2015 are penalty appeals u/s 271AAA of the Act. Since both parties agree, we will first adjudicate appeals numbered as ITA Nos. 355 & 354/Mum/2012 for AY 2008-09 & AY 2009-10.

2. These are appeals preferred by the assessee Shri Dilip B. Patel against the order of the Ld. Commissioner of Income Tax (Appeals)-40, Mumbai [hereinafter the ‘Ld. CIT(A)’] dated 27.10.2011 for AY 2008-09 & AY 2009-10.

3. At the outset, the Ld. AR brought to our notice that the assessee is challenging the jurisdiction of the Assessing Officer [AO] [Shri. B D Patil DCIT (OSD-II) Central Range-7, Mumbai] to frame the assessment u/s 153C/143(3) of the Act for both AY 2008-09 & AY 2009-10 without first of all forming requisite satisfaction as envisaged u/s 153C of the Act.

4. Assailing the action/jurisdiction of the AO to have framed the assessment u/s 153C/143(3) of the Act, in absence of valid satisfaction recorded by the AO before initiating assessment as per special provision (*in cases of assessment to be framed where search took place*) as envisaged u/s 153C of the Act, the Ld. AR, submitted that the assessee in this case Shri Dilip B Patel was not searched by the department. In this regard, the Ld AR pointed out that there was search u/s 132 of the Act in the case of Shri Vinod Faria & Shri Milan Dalal on 30.05.2008; and based on allegation of finding certain incriminating materials against the assessee from the premise of the searched persons, the impugned proceedings u/s 153C of

the Act has been initiated against the assessee by issue of notice u/s 153C of the Act on 03.12.2009, which according to Ld. AR, AO could not have done without first forming requisite satisfaction as required u/s 153C of the Act. According to him, there is no valid satisfaction u/s 153C of the Act. Drawing our attention to page No. 3 of the paper-book wherein the AO had filed the report called for by this Tribunal wherein the AO has admitted that there is no satisfaction note as such in this case u/s 153C, and tried to justify the same by observing as under:

1. "It may be noted that recording of satisfaction in the case of any 153C assessee is required only w.e.f. 01-10-2014 and therefore the said amended provision does not apply to the present assessee.
2. In support of the above facts, reference is made to the following:-
3. Order Sheet noting dated 08-12-2009 of the AO in the case of Shri Dilip B. Patel for proceedings u/s 153C. Copy made available to Shri Dilip B. Patel as per item (ii) of his requisition.
4. Notice dated 27-10-2010 u/s. 142(1) of the Act issued by the AO to the assessee, Shri Dilip Patel specifically seeking explanation with regard to the seized material in the Faria Group to which the assessee belongs (copy enclosed).
5. Assessment order of Shri Vinod Faria for A.Y. 2009-10 dated 28-12-2010 (copy enclosed)."

5. Thereafter the Ld. AR also drew our attention to the purported satisfaction note of the AO as contended by him in his report (supra) wherein he claims that order sheet noting dated 08.12.2009 which is found placed at page 43 of the paper-book, and a copy of which was produced by the Ld. DR which we note it to be a hand written order-sheet noting, but the *typed version* reads as under:-

"The case was received on transfer from ITO 24(1)(1) in view of order u/s 127(2) of the Act dated 23.10.2008 by CIT-24, Mumbai. The case

was already selected under CASS for scrutiny by the concerned AO.
The case records are received today.

After verification of the search/seizure Group of Milan Dalal/Vinod Faria Group (Date of Search 30.05.2008) it is noticed that the case falls under the provisions of section 153C of the I.T. Act 1961. Hence, the assessment proceedings pending u/s 143(3) of the Act as on today are hereby abated. The notice u/s 153 C are being issued for AY 2003-04 to 2008-09 accordingly.”

6. According to the Ld. AR, a perusal of the above noting [order-sheet entry] in no way conveys the forming of satisfaction as required u/s 153C of the Act to initiate the special provisions of search assessment on the ‘*other person*’ (not searched/3rd person). Further, according to the Ld. AR, in this case the AO of the searched person [*Shri Vinod K Faria who was searched on 30.05.2008*] and the assessee were same [i.e. Shri B D Patil (DCIT (OSD-II) Central Range-7, Mumbai)] and drew our attention to the page 68 wherein the copy of the assessment order passed u/s 153A of the Act in the case of Shri Vinod Faria is found kept from page No. 56 to 68 and on perusal of which reveals that Shri B D Patil (DCIT (OSD-II) Central Range-7, Mumbai, was his Assessing Officer, i.e. of the searched person. However, according to the Ld. AR, even if the AO of the searched person and the “other person” (*Assessee in this case/3rd person*) is the same, still AO needs to record his satisfaction *i.e.* before usurping the jurisdiction u/s 153C of the Act over the assessee (*who falls in the category of ‘other person’*) to initiate the special provision for assessment u/s 153C of the Act. According to the Ld. AR, a perusal of the report filed by AO (*supra*) would reveal that the AO on wrong understanding/ignorance of law was of the view that requirement of AO to record satisfaction before initiating proceedings u/s 153C of the Act was with effect from 01.10.2014, and therefore the amendment is not applicable to the case of the assessee. According to the Ld. AR, this reasoning is misplaced and the amendment

brought in by Finance Act 2014, w.e.f. 01.04.2014 only reiterated the requirement of law already stated in section 153C of the Act that AO has to record his satisfaction that money, bullion, valuable articles or things or books or documents seized [*from during search*] belongs to 'other person' (*not the searched person/assessee in this case*). It was pointed out by the Ld. AR that Parliament inserted "*pertain/related to*" (*along with belong*) only from 01.04.2017 (Finance Act, 2017). Anyway, according to him, perusal of the purported satisfaction note as well as admission of the AO it can be seen that there was no "*valid satisfaction*" formed by the AO before issuing notice u/s 153C of the Act and therefore the issuance of notice u/s 153C of the Act dated 09.12.2009 and subsequent framing of assessment u/s 153(A)/143(3) of the Act were invalid and *null* in the eyes of law.

7. Per contra Ld. DR could not controvert the aforesaid submission of the Ld. AR of the assessee. However the written submission of Ld. DR is reproduced as under: -

Brief history of the case:

i) The assessee had filed return of Income originally, on 12.10.2007 declaring total income at Rs. 1,80,514/- for A.Y. 2007-08. A search and seizure Action u/s 132(1) of the Income Tax Act, 1961 was conducted in Business and Residential Premises of Vinod Faria/Milan Dalal Group of cases on 30.05. 2008. The key persons in this group are Vinod Faria and Milan Dalal. The assessee Shri Dilip B. Patel was close associate of Shri Vinod Faria and was signatory Authority of the Bank account of M/s. Genelec Limited. There were several cash transactions, purchase/sale and investments in immovable properties done by the assessee on behalf of Shri Vinod Faria,

ii) Shri Vinod Faria, the key person of the group maneuvered various transactions of receipts and payments of cash for sale/purchase of

immovable properties, development rights, and tenancy rights etc. the major source of generation of the cash is on money received on booking of the galas of high-speed Project of M/s. Genelic Limited. The other concerned parties are the assessee, Shri Amarshi Nisar, Velji Faria and Shri Raja Patel. Some of the cash transactions and the investments in immovable properties were done by the assessee on behalf of Shri Vinod Faria and marked as Annexure A-4 reflected cash transactions and unexplained investments made by the assessee and Shri Vinod Faria.

iii) Jurisdiction over this case has been assigned to the AO by the Commissioner of Income Tax-24, Mumbai vide letter u/s. 127(2) in file No. CIT 24/Centralisation/15/2008-09/537 dated 23.10.2008. The case was taken up for assessment by issuing statutory notices on 03.12.2009, duly served upon the assessee.

iv) Further, the assessment was completed on 29.12.2010 by passing order /s. 143(3) r.w.s.153C of the Income Tax Act, 1961 with various additions made to the income declared by the assessee therein, after taking approval of the Addl Commissioner u/s. 153D of the Income Tax Act, 1961. Noting by the Assessing Officer on order sheet, page no. 3 dated 08/12/2009 in the case records of A.Y. 2007-08 clearly mentions about invoking of provisions of Section 153C of the Income Tax Act in respect of the Assessee the same is being reproduced hereunder:

8/12/09 The case was received on transfer from ITO 24(1)(1) in view of the order u/s 127(2) dated 23.10.2008 by CIT-24, Mumbai. The case was already selected under CASS for scrutiny by the concerned AO. The case records are received today After verification of the search/seizure Group of Milan Dalal/Vinod Faria Group (date of search 30.05.2008) it is noticed that the case falls under the provisions of 153C of the I.T. Act 1961. Hence the assessment proceedings pending u/s. 143(3) as on today are hereby abated The Notice u/s. 153C are being issued for A.Yrs 2003-04 to 2008-09 accordingly

v) Being aggrieved the Assessee filed an appeal before the CIT (A) and the Ld. CIT (A) passed the appellant order against the assessment order vide appeal no. CIT (A)-40/IT/DCIT(OSD-1)C.R.7/66/13-14 giving part relief to the assessee.

vi) The assessee, being aggrieved preferred appeal before Hon'ble ITAT, Mumbai with one of the grounds of appeal as "the assessment proceedings are void ab initio as apparently satisfaction for issuing notice was not recorded in this case."

A. The first contention of the assessee is Issue of notice u/s, 153C was without recording of satisfaction of assessing officer (AO) of searched person. Hence, assessment is null and void

The Ld AR of the appellant has argued that the AQ has not recorded any satisfaction before issuing notice u/s153C of the Act. In this regard, a report was called from the AO. The AD vide letter No.DCIT-CC-4(4)/Remand report/2016-17 dated 24.03.2017 has replied that the AO had in fact recorded a written satisfaction note on 08.12.2009 before issuing the notice u/s. 153C on 09.12.2009 (copy of the reply of AO is enclosed). It is, therefore, clear that the AO has duly followed the procedure as required by the Act and Circular No.24/2015.

2 Section 153C provides that where the AO is satisfied that any money, bullion, jewellery or other valuable article or thing belongs to, or any books of account or documents seized or requisitioned pertain to, or any information contained therein, relates to, any person, other than the person referred to in section 153A, the books of account or documents or assets seized or requisitioned shall be handed over of 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

3. There is no disagreement that the Assessing Officer must be satisfied that the money, bullion, valuables etc "belong to or books of accounts documents "relate to" a person other than the person referred to in section 153A of the Act to invoke section 153C. The Legislature has used different phrases in respect of assets/valuable and books of accounts /document. It has used "belong to for the seized or requisitioned assets and valuables whereas the words used for books of account and document are "relate to It is, therefore, clear that the seized books or documents should be related to the person other than the searched person. There is no requirement that they should belong to the other person. It is clear from the assessment order and the order of the Ld.CIT (A) that various note book and loose papers as per A-1 and A-4 found from the premises of Shri Vinod Faria, the key person of the group, where search was conducted u/s 132(1) of the Act, 1961, were related to the assessee. These facts have been discussed at great length in the assessment order. Hence, the other condition of section 153C is also satisfied.

4 Assessing Officer (AO) has been defined as section 2(7A) of the Act, which is as under:

*means the [Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director] or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act, and the [Additional Commissioner or Additional Director or Joint Commissioner or Joint Director) who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act".

5 It is clear from the above definition that AO means ACIT/DCIT or ADIT/DDIT etc. When AO has been defined in the Act itself and has been subsequently used in various sections of the Act, meaning given in the definition has to be used to a understand the said authority in other sections

including u/s153A or 153C. Therefore, even the Deputy Director of Income tax (Investigation) is also an AO for the purpose of the Act. It is seen from the Appraisal Report prepared by the DDIT (Inv.) and forwarded by the Addl. DIT(Inv) that the assessee's name is specifically mentioned in the list covered u/s. 153C of the Act. It is stated that various incriminating documents belonging /relating to the assessee have been seized. Subsequently, the DCIT(OSD-II). R-7 has also recorded satisfaction which is enclosed in the report of the AO dated 24/03/2017(supra). The AO has also discussed as to how the case comes under provisions of section 153C in the assessment order at paras 1 to 5. In view of these facts and clear provisions of the Act, the contention of the Ld. AR is not acceptable.

8 The second contention of the assessee is Approval accorded by JCIT u/s, 153D was without application of mind, hence assessment is null and void

6. The appellant has also contended that no opportunity of hearing was giving to him before approval u/s153D by the Addl. CIT. There is no requirement for granting any opportunity of hearing to assessee prior to giving approval, as per section 153D, to the order of the assessment or re-assessment u/s153A/153C. Reliance is placed on the decision in the case of Gopal S Pandith vs DCIT[2016] 74 taxmann.com 273(Bangalore-Trib.). In the following cases, it was also held that the CIT need not give opportunity of hearing to assessee before approval u/s158BG

i. Rishab Chand Bhansali vs DCIT [267 ITR 577(Kar)).

ii. Shaktavail Bankers vs DCIT (255ITR144(Mad]

iii. Kailash Mandgil vs DCIT (72 ITD 97 (ITAT Del.)(SB)].

6.1 The appellant has also argued that there is no satisfaction/application of mind of Addl. CIT before granting approval. Reliance is placed by him on the decision in case of Sahara India vs CIT, 169 Taxmann 328(SC). The facts and issue in case of Sahara India (supra) are totally different. In the case of Sahara India, it pertained to exercise of power u/s 142(2A) and

opportunity of hearing before it i.e. pre-decisional hearing. On the other hand, in the present case, the approval u/s 153D is almost at the end of the assessment proceedings. The assessee has been given ample opportunity by ADIT(Inv.) and the DCIT(OSD-II) during the search and post search investigation and assessment proceedings. Since, the facts and issues in case of Sahara India are totally different from the facts and issues in the present appeal, the ratio is not applicable. The Hon'ble Supreme Court in the case of Padmasundara Rao vs State of TN, 255 ITR 147 (SC) has held that judicial utterances are made in the setting of facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Hence, the ratio of Sahara India is not applicable to the present case.

6.2 Be that as it may, it needs to be emphasized that the Addl, CIT or the Range head is involved at every stage of assessment of search cases. The Appraisal Report prepared by the processing ADIT(Inv) is forwarded to him by the Addl.DIT(Inv). The centralization order by the DGIT (Inv.), CCIT and CIT is also intimated to him. He is consulted by the AO while issuing questionnaire to the assessee. Various incrementing materials and the books of account are shown to him by the AO during discussion and his guidance is taken regarding the course of investigation to be carried on to reach the logical conclusion. Once the replies are received and investigation is completed, the matter is again discussed with the Addl.CIT and a draft order is prepared and put up to the Addl.CIT. As stated, it is the culmination of the entire process of passing the search assessment order and not a stand-alone act for the first time. Hence, the Addl.CIT is very much part of the entire process in passing the assessment order. Therefore, the question of application of mind of Addl.CIT before granting approval is not a pertinent issue so far as validity of the assessment order is concerned. The Addl.CIT is very much a part of the entire proceedings and order has been passed on his full knowledge and he is fully conversant with the entire matter,

C. The third contention of the assessee is Notice u/s, 143(2) was not at all Issued hence assessment is without jurisdiction and therefore null and void. No.

7 The Ld. AR has also argued that in absence of notice u/s 143(2), the order is not valid. The said argument is not acceptable. Issue of notice u/s143(2) is not mandatory in case of search assessment u/s153A/153C. Reliance is the placed in the following decisions.

(i) Suman Lata Bansal [ITA No. 525 to 530/M/2008 dtd 25.05.2015(TM)]

(ii) Tasem Singla vs DCIT [385 ITR 138 (P&H)]

(iii) Ashok Chaddha [20 taxmann.com 387(Del.)]

8 In view of the above submission, it is requested that the jurisdictional issues raised by the Ld. AR may be dismissed. As regards the merit of the additions, the AO has relied on various incriminating materials found during the course of search and subsequent investigation conducted during the post search period and during the assessment proceedings. The finding of the AO has been approved by the Ld. CIT (A). Hence, the addition made by the AO and sustained by the CIT (A) may be confirmed.

9 Further the counter comments of A.O. dated 12.03.2018 and 24.11.2016 are enclosed herewith as Annexure A and Annexure B respectively.”

8. We have heard both parties and perused the records. We note that a search and seizure action u/s 132(1) of the Act and survey u/s 133 A of the Act was carried out in the case of Millan Dalal Group on 30.05.2008; and AO notes that the key persons in this group were Shri Vinod Faria and Millan Dalal. According to the AO, the assessee (Shri. Dilip B Patel) was close associate of Shri. Vinod Faria and he had authority/signatory of bank account of M/s Jenelac Ltd. And there were several transactions made by the assessee on behalf of Shri Vinod Faria. According

to the AO, the major source of generation of cash was from the “*on-money*” received on booking of the galas of High-speed project of M/s Genelcc Ltd. And material seized indicated cash transactions and investments in immovable properties were being done by the assessee [*on behalf of the Shri Vinod Faria*] and seized materials and documents (*from premises of the Shri Vinod Faria and Group entities*) reflected transactions indicating unaccounted and unexplained investment of assessee and Shri Vinod Faria ; and a note book (*note book seized from Shri Vinod Faria marked A-4 and also referred to loose paper no. 23 of Annexure A-I*) reflects such dealings, the AO, was of the view that the case of the assessee was covered under provision of section 153C of the Act, and since pursuant to transfer order u/s 127(2) of the Act dated 23.10.2008, the case of assessee was centralised in his charge and jurisdiction/case assigned to the him, [*i.e AO/Shri B D Patil [DCIT (OSD-II) Central Range-7, Mumbai]*] he made the aforesaid noting in his (AO’s) order-sheet dated 08.12.2009, thereafter, he issued notice u/s 153C of the Act on 09.12.2009; and pursuant to which the assessee filed his return income on 17.02.2010. Thereafter the assessment was framed in the case u/s 153C/143(3) of the Act dated 28.12.2010 for AY 2008-09 by making an addition of Rs. 7,62,92,356/- [Rs. 7,64,65,240 – 1,72,884/-]. And for the AY 2009-10 similarly the AO made addition u/s 153C/143(3) of the Act of Rs. 4,92,260/- vide order dated 28.12.2010. On appeal the Ld. CIT(A) has confirmed the action of the AO.

9. As noted (*supra*), the assessee has assailed *inter-alia* the jurisdiction of the AO; and one such legal issue is that in absence of recording of requisite *satisfaction* by AO in the case of assessee u/s 153C of the Act, the notice issued by AO u/s 153C of the Act, is wholly without jurisdiction. In other words, the AO before issuing notice u/s 153C of the Act dated 09.12.2009, had not successfully usurped the jurisdiction vested u/s 153C of the Act by not recording his “*satisfaction*” as required u/s 153C of the Act. In this case as noted (*supra*)

assessee has not been searched u/s 132 or requisitioned u/s 132A of the Act. However, pursuant to search on 30.05.2008 at the premises of Shri Vinod Faria/ Shri Milan Dalal Group of cases, and based on the Appraisal Report [*prepared by the DDIT (inv)*] the case of the assessee was transferred from ITO 24(1)(1) to the Assessing Officer we are concerned [i.e. AO/DCIT OSD II Central Range-7, Mumbai]. And AO on 08.12.2009 recorded the fact of transfer of this case of assessee from ITO-24(1)(1) and notes that the case records of assessee was received on 08.12.2009, and AO takes note that *verification of case records of searched person Shri. Vinod Faria/Milan Dalal group (date of search 30.05.2009) would reveal that assessee's case would fall under the provision of section 153C of the Act and hence the assessment proceedings pending before him got abated and issued notice accordingly.* This noting (in the order-sheet) made by AO dated 08.12.2009 cannot be termed as 'valid satisfaction' as envisaged u/s 153C of the Act, even though AO of the searched person as well as of the 'other person/assessee in this case' is the same [i.e, AO is same for both]. In such a scenario also, the AO of the other person, before usurping the jurisdiction u/s 153C of the Act, has to mandatorily record *satisfaction* that the material seized from searched person belongs/pertains/relates to assessee. In this case, as noted (supra), no such findings of fact which was the *jurisdictional fact* has been recorded by AO in his satisfaction/order-sheet noting produced before us (supra). Since the requirement of law is not satisfied i.e. AO before usurping the jurisdiction of the 'other person' (not searched person/assessee in this case) has not recorded valid satisfaction to initiate proceedings against assessee u/s 153C of the Act, the assessee has to succeed on this legal issue. Moreover, we note that this issue is no longer *res-integra* as held by the Hon'ble Supreme Court in the case of M/s Super Malls Pvt Ltd. V/s Pr. CIT-8 new Delhi [(2020) 423 ITR 281 (SC)] wherein the Hon'ble Supreme Court has held as under:-

"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 (P.) Ltd. (supra). has 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 Services (P.) Ltd. (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." (Emphasis Supplied)

10. We also take note of the Circular No. 24/2015 issued by the CBDT after taking note of the decision of the Hon'ble Supreme Court M/s Calcutta Knitwear [362 ITR 373] and has issued ibid circular which reads as under:-

“Taking note of the above, on 31.12.2015, a Circular No. 24 of 2015 was issued by the Central Board of Direct Taxes (CBDT) which reads as under:

"1. The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitwears in its detailed judgment in Civil Appeal No. 3958 of 2014 dated 12-3-2014 [2014] 43 taxmann.com 446 (SC) (available in NJRS at 2014-LL-0312-51) has laid down that for the purpose of section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person u/s 158BD. The Hon'ble Court held that "the satisfaction note could be prepared at any of the following stages:

(a) at the time of or along with the initiation of proceedings against the searched person under section 1588C of the Act; or

(b) in the course of the assessment proceedings under section 1588C of the Act; or

(c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person."

3. Several High Courts have held that the provisions of section 153C of the Act are substantially similar/pari- materia to the provisions of section 158BD of the Act and therefore, the above guidelines of the Hon'ble SC, apply to proceedings u/s 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.

4. The guidelines of the Hon'ble Supreme Court as referred to in para 2 above, with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgment. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158D/153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court." (Emphasis Supplied)

11. According to us even though Circular No. 24 of 2015, (though issued on 31.12.2015 i.e, prior to the order of judgement of Hon'ble Supreme Court in Super Malls), would apply to the present appeal because CBDT in Paragraph 5 of the Circular (supra) had directed the department to either withdraw or not press the issue in pending litigation in cases where the recording of satisfaction did not meet the guidelines laid down by the Hon'ble Supreme Court referred to in paragraph 2 of the aforesaid Circular M/s Calcutta Knitwears). Further, the Circular clearly states that the CBDT had accepted the position that the guidelines laid down by the Hon'ble Supreme Court in the case of Calcutta Knitwear (supra) while dealing with the provisions of Section 158BD of the Act, shall also apply to proceedings under Section 153C of the Act.

12. Be that as it may, in this case as noted AO of the searched person and the 'other person'/assessee in this case are the same. Therefore, the AO before usurping the jurisdiction u/s 153C of the Act has to record '*one-satisfaction note*' as clarified by the Hon'ble Supreme Court in the case of M/s Super Mall Pvt Ltd. (supra) wherein the Hon'ble Supreme Court has clarified that when the AO of the

searched person and other person are the same, then there is no requirement of AO preparing two (2) satisfaction notes (*which requirement is necessary when AO of searched person & other person are different as interpreted by Hon'ble Supreme Court in Calcutta Knitwear*) but only one satisfaction note is necessary i.e. at the stage before he usurps the jurisdiction of other person (assessee in this case) has to mandatorily record *satisfaction* that the material seized from searched person belongs/pertains/relates to assessee [viz jurisdictional fact] and thereafter only he can issue notice u/s 153C of the Act. Therefore, a Satisfaction note qua the “*other person*” (assessee in this case) had to be recorded by the AO prior to the initiation of proceedings under section 153C of the Act i.e, the “*other person*” (assessee in this case). Here in this case we note after perusal of satisfaction note as extracted (supra) the AO in first paragraph merely states about receiving the case related to the assessee and notes in this regard that assessee's case has been transferred to him from ITO 24(1)(1) by order passed by CIT u/s 127 of the Act dated 23.10.2008. In para 2, the AO further records that after verification of the file of Milan Dalal/Vinod Faria Group after the search & seizure on 30.05.2008, it was noticed by him that the case of assessee falls under the provision of section 153C of the Act, hence, according to him, the assessment proceedings pending u/s 143(3) are abated and that “*notice u/s 153C of the Act are being issued for AY 2003-04 to 2008-09 accordingly*”. From the perusal of the contents of para 2, it reveals that AO has simply stated that he has verified the records of the group of Milan Dalal/ Vinod Faria, after search action, and according to him, the case of the assessee falls u/s 153C of the Act. And therefore, he issued notice u/s 153C of the Act. This assertion of the AO in no way can be termed as *valid satisfaction* because the AO has not referred to any incriminating material belonging/pertaining/relating to the assessee which was seized/ unearthed from the premises of the searched person [i.e. *Milan Dalal/Vinod Faria group*], which was

the essential jurisdictional fact, which is absent in the satisfaction note. Perusal of the satisfaction note dated 08.12.2009 (supra) does not reveal that the AO has made any averment as to his satisfaction that any money, bullion, jewellery or other valuable articles belongs to assessee or things or books of account or documents seized pertains/relates to the assessee which is the jurisdictional fact required to be made by AO in order to usurp jurisdiction u/s 153C of the Act which is clearly absent in this case and therefore on this legal issue itself the assessee has to succeed and we hold that AO did not record valid satisfaction before issuing notice to assessee u/s 153C of the Act dated 09.12.2009. Therefore, AO did not had requisite jurisdiction to issue notice to assessee u/s 153C of the Act dated 09.12.2009. Therefore, subsequent framing of assessment order u/s 153C/143(3) of the Act is null in the eyes of law.

13. Before we part, we take note of the written submission of Ld. DR (*only in respect of this legal issue*) that recording of the satisfaction note is not requirement of law and that requirement came only with effect from 1.10.2014 which is erroneous because before the amendment was made in section 153C of the Act vide Finance Act 2014, the requirement of law to record satisfaction before usurping jurisdiction u/s 153C of the Act has been *sine qua non* as has been held by the Hon'ble Supreme Court in Calcutta Knitwear which prompted the CBDT to issue circular no. 24/2015 (supra). Therefore such a contention is devoid of merits; coming to the next assertion of Ld. DR based on definition of assessing officer as per section 2(7A) of the Act which includes Additional Director/Joint Director, the Ld. DR submits that in any event the '*appraisal report*' prepared by Additional/Joint Director of Investigation Wing should be considered as 'satisfaction note' of the AO, which contention cannot be accepted for the simple reason that section 2(7A) of the Act defines Assessing Officer who has been vested with the jurisdiction u/s 120(1) of the Act. The department could not place on

record such direction/order issued by competent authority u/s 120(1) or (2) vesting such jurisdiction to Additional/Joint Directors who prepared the appraisal report. Therefore, there is no merit in such a contention. And therefore, in the light of the discussion (supra) and in the light of the Hon'ble Supreme Court decision in the Super Mall Pvt Ltd. (Supra), the AO having not recorded valid satisfaction note in the case of the "other person"/assessee in this case as required by section 153C of the Act, we find that the AO lacked jurisdiction to frame assessment u/s 153C/143(3) of the Act and therefore assessment framed by him for AY 2008-09 and 2009-10 are held to be without jurisdiction and therefore quashed.

ITA No. 1847/Mum/2017 (AY 2008-09) & ITA No. 5641/Mum/2016 (AY 2009-10)

14. These are appeals preferred by the Revenue and the assessee against the penalty order passed by AO u/s 271AAA of the Act, which was deleted/sustained by Ld CIT(A) for AY 2008-09 & AY 2009-10 respectively.

15. At the outset it is noted that these are penalties levied by the AO u/s 271AAA of the Act pursuant to the quantum assessment framed u/s 153C of the Act. Since the foundation for the levy of penalty u/s 271AAA of the Act has been removed, the penalty also falls because the case of the assessee is squarely covered by the legal maxim "*Sublato fundamental Credit opus*" meaning in case foundation is removed, the super-structure falls. In Badarimath V/s Tamilnadu AIR 2000 SC 3243 it was held by Hon'ble Supreme Court that once the basis of proceedings is gone, all consequential order & acts would fall on the ground automatically which is applicable to judicial and quasi-judicial proceedings. In the light of aforesaid discussion, penalties levied under 271AAA of the Act are also without jurisdiction and consequently quashed.

16. In the result, appeals of the assessee are allowed and appeal of the revenue stands dismissed.

Order pronounced in the open court on 30/01/2024.

Sd/-
(S RIFAUR RAHMAN)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 30/01/2024
Aniket Singh Rajput, (Steno)

Sd/-
(ABY T VARKEY)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai