Commissioner Of Income Tax-Iii vs Singhad Technical Education Society on 29 August, 2017

Equivalent citations: AIRONLINE 2017 SC 662

Author: A.K. Sikri

Bench: Ashok Bhushan, A.K. Sikri

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REPORTA

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.11080 OF 2017
(ARISING OUT OF SLP (C) NO. 25257 OF 2015)

COMMISSIONER OF INCOME TAX-III, PUNE .....APPELLANT

VERSUS

SINHGAD TECHNICAL EDUCATION SOCIETY .....RESPONDENT(S

WITH

CIVIL APPEAL NO.11081 OF 2017
(ARISING OUT OF SLP (C) NO. 25258 OF 2015)

CIVIL APPEAL NO.11082 OF 2017
(ARISING OUT OF SLP (C) NO. 27323 OF 2015)

CIVIL APPEAL NO. 11083 OF 2017
(ARISING OUT OF SLP (C) NO. 30278 OF 2015)

JUDGMENT

A.K. SIKRI, J.

Leave granted.

2) All these four appeals are filed by the Commissioner of Income Date: 2018.01.24 15:54:29 IST Reason:

Tax-III, Pune (hereinafter referred to as the 'Revenue), wherein the respondent is also the same (hereinafter referred to as the 'assessee').

Even the issue that arises for consideration is identical in all these appeals. Reason for filing four appeals is that the dispute pertains to four Assessment Years, i.e. 2000-01, 2001-02, 2002-03 and 2003-04. In fact, for this very reason the High Court has decided the issue by common judgment dated March 25, 2015, the correctness whereof is challenged by the Revenue in these appeals. Thus, we propose to club all these appeals and proceed to decide by a singular judgment.

3) The issue pertains to the validity of the proceedings which were initiated by the Assessing Officer (for short, 'AO') under Section 153C of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). It may be mentioned here itself that the assessee is an educational institution registered under the Bombay Public Trusts Act, 1950 and the Societies Registration Act, 1860. It also got itself registered under Section 12AA of the Act since the Assessment Year 1994-95. Because of the said registration under Section 12AA of the Act, Sections 11 and 12 of the Act apply to the assessee as per which income earned by the assessee from property held for charitable or religious purposes (Section 11) and income from contributions are exempt from taxation under certain circumstances.

4) It so happened that a search and seizure operation was carried out under Section 132 of the Act on one Mr. M.N. Navale, President of the assessee Society, and his wife on July 20, 2005 from where certain documents were seized. On the basis of these documents, which according to the Revenue contained notings of cash entries pertaining to capitation fees received by various institutions run by the assessee, a notice under Section 153C of the Act was issued on April 18, 2007. It is that notice which is quashed by the Income Tax Appellate Tribunal (ITAT) and the order of the ITAT has been upheld by the High Court by the impugned judgment.

5) With the glimpse of the issue involved and the background in which the same has arisen, we now proceed to state the facts in little detail so as to get the clarity of the matter.

6) As mentioned above, a search was conducted on Mr. M.N. Navale and his wife on July 20, 2005. It is not in dispute that he is one of the trustees of the assessee Society. This search was conducted under Section 132 of the Act. As per the Revenue, certain incriminating documents were recovered which showed that the assessee was taking capitation fee from the students. These documents also allegedly reveal that the activities of the trust were not genuine and were not being carried out in accordance with the trust deed. For these reasons, the assessee was treated as an Association of

> Person (AOP). Having regard to the complexity involved in the accounts and the changes to be effected on account of the change in the status of the assessee to that of AOP, a special audit under Section 142(2A) of the Act was conducted.

On the basis of special audit report, taxable incomes for the Assessment Years 1999-2000 to 2006-07 had been worked out.

7) Since the documents were recovered from Mr. Navale and sought to be used against the assessee, for undertaking this exercise it is imperative that a Satisfaction Note is recorded by the AO of the person searched for use of those documents against the third person (assessee herein), which is a pre-condition for initiation of proceeding under Section 153C of the Act. This Satisfaction Note was recorded on April 18, 2007. In this Note, after discussing the documents which were recovered and seized in the search carried out on Mr. Navale, the AO recorded his satisfaction to the effect that the assessee trust cannot be considered as a genuine trust; it was receiving extra money over and above the fee fixed by the competent authority; it was not adhering to the object of providing education to the masses and managing trustees were using the assessee's trust for their own benefits. Thus, the notice under Section 153C of the Act was issued for the Assessment Years 2000-01 to 2005-06. Notice was also issued under Section 143(2) for Assessment Year 2006-07.

8) On receipt of the said notice, the assessee filed its revised return for the Assessment Year 2006-07 and in respect of other Assessment Years, it stuck to its original returns. Thereafter, registration of the trust was cancelled under Section 12AA(3) of the Act on October 09, 2007 and the assessee was treated as AOP. Special audit was ordered, as mentioned above, and after the receipt of the Special Audit Report, assessment order was passed by the AO on August 07, 2008 for Assessment Years 1999-2000 to 2006-07. Assessment Year 1999-2000 was covered under Section 147 of the Act, Assessment Year 2006-07 was covered under Section 143(3) of the Act and Assessment Years 2000-01 to 2005-06 were covered under Section 153C read with Section 143(3) of the Act. AO assessed the income of the assessee in the sum of Rs.3,54,46,432/-. The concluding portion of the assessment order reads as follows:

> "16. In view of the totality of facts and circumstances, discussed as above, under Part A and Part B of the order, following conclusions are reached.
>
> (i) The assessee STES charged donations while granting admissions.
>
> (ii) As the registration of the Trust is cancelled on the grounds that activities of the Trust are not genuine and also are not being carried out in accordance with the Trust Deed, the assessee STES will have to be assessed as an AOP.
>
> (iii) Regardless of cancellation of registration, the benefits of sections 11 & 12 are denied in view of applicability of section 13(1)(c) on account of cash and jewellery seized, siphoning/diversion of money, creation of assets much more in value than the nominal incomes returned and known sources of income, payment of rent in excess of reasonable rent and other benefits.

(iv) In view of complexity involved in the accounts and the changes to be effected on account of change in the status of the assessee to that of "AOP", special audit u/s. 142(2A) has been conducted and the net taxable incomes, for A.Yrs. 1999-2000 to 2006-07, have been worked out on the basis of recast accounts and taxed in this order.

(v) There is total failure on the part of the assessee to explain the seized material, evidencing collection of donations/capitation fee.

(vi) The relevance and correctness of the seized material is clearly established.

(vii) The undisclosed income, on account of donations collected, for A.Y. 2006-07, has been worked out and taxed in this order.

(viii) Seized material clearly shows collection of donations/capitation fee on one hand and expenditure/outgoings on the other hand.

(ix) Instances of siphoning and diversion of amounts, out of

receipts on account of donations/capitation fee, are evident from the seized material.

(x) Number of assets of the Principal trustee/related persons have been found/seized as against nominal incomes returned and known sources of income. The assets/benefits derived are possible only because of receipts on account of donations/capitation fee.

(xi) The theory of bigger HUF and obtaining of decree from the Court is an effort only to escape the rigours of laws relating to taxation. The said decree of the Hon. Court has been obtained by misrepresentation and suppression of facts. The same is not accepted by the department and appropriate course of action is contemplated.

(xii) Siphoning of money, diversion of amounts, creation of assets, all out of the receipts on account of donations, and payment of rent which is not reasonable attract the provisions of Section 13(1)(c). These are the benefits derived by persons referred to in Section 13(3).

Subject to the above, the total income and tax for A.Y. under consideration is computed, as below:

A	Total Income as returned	Rs. Nil
B	Additions	
	I. Revised Income computed as per discussion in Paras 7 & 8	Rs.3,54,46,432/-
C	Total Income Assessed	Rs.3,54,46,432/-
D	Total Income Assessed	Rs.3,54,46,430/-

9) The assessee filed appeal thereagainst, which was partially allowed by the Commissioner of Income Tax (Appeals) {CIT(A)}. He, however, upheld the order of the AO, holding that the assessee was not eligible for exemption under Section 11 of the Act and, therefore, donations received were rightly treated as income. Against the aforesaid part of the order, which was against the assessee, it preferred further appeal to the ITAT. In the appeal before the ITAT, the assessee raised additional ground questioning the validity of the notice under Section 153C of the Act on the ground that satisfaction was not properly recorded and also that the notice under Section 153C was time barred in respect of Assessment Years 2000-01 to 2003-04. The ITAT allowed the assessee to raise the additional ground and decided the same in favour of the assessee thereby quashing the notice in respect of the aforesaid Assessment Years. Challenging this order, the Revenue filed appeals before the High Court. However, the High Court has dismissed these appeals, as mentioned above.

10) Mr. Ranjit Kumar, learned Solicitor General appearing for the Revenue, took us through the Satisfaction Note recorded by the AO discussing the material which had been found against the assessee on the basis of which the assessee was not found to be a genuine trust and was indulging in profiteering, benefits whereof were reaped by the trustees of the assessee. He also referred to the discussion contained in the order passed by the AO and particularly the conclusions arrived at by the AO wherein it was inter alia concluded that the assessee charged donations while granting admissions, which were the reasons for denying the benefits under Sections 11 and 12 of the Act and that the assessment was made keeping in view the Special Audit Report.

11) Coming to the issue pertaining to the validity of notice under Section 153C of the Act, submission of the learned Solicitor General was that the ITAT committed gross error in allowing this additional ground ignoring a material fact that the assessee had not objected to the jurisdiction under Sections 153C or 147 of the Act at any stage in the course of the assessment proceedings which were duly recorded by the AO in his order. It was argued that the ITAT did not discuss the merits of the case at all and quashed the entire proceedings by discussing the legality and validity of the notice under Section 153C of the Act only. He further pointed out that even the High Court dismissed the appeal of the Revenue on the same very ground.

12) The learned Solicitor General also referred to the judgment dated March 29, 2012 of the Delhi High Court in the case of SSP Aviation Limited v. Deputy Commissioner of Income Tax, (2012) 20 taxmann.com 214 (Delhi), as well as the judgment dated December 24, 2012 of the Gujarat High Court in the case of Kamleshbhai Dharamshibhai Patel v. Commissioner of Income Tax-III, (2013) 31 taxmann.com 50 (Gujarat), wherein a contrary view is taken by these two High Courts.

13) Mr. Jehangir D. Mistri, learned senior counsel appearing for the assessee, countered the aforesaid submissions. He argued that the Tribunal was right in permitting the assessee to raise the issue regarding validity of notice under Section 153C of the Act when it was ex facie found that such

a notice was time barred and, therefore, it was a jurisdictional ground which could be raised by the assessee. Coming to the merits of that ground, learned senior counsel submitted that the Satisfaction Note dated April 18, 2007 is ex facie recorded/prepared by the AO in his capacity as the AO of the assessee society and does not set out the date on which the books of accounts or documents or assets seized etc. from the person searched were handed over/dealt with in the capacity of AO of the assessee society, but this cannot be earlier than April 18, 2007, i.e. the date when the Satisfaction Note was prepared. Since the Assessment Order pursuant thereto can be passed under Section 153A(1) of the Act for a period of six Assessment Years, immediately preceding the Assessment Year relevant to the Previous Year in which the books of accounts or documents or assets were received by the AO of the assessee, he argued that no notice could have been issued for the Assessment Years prior to 2002-03. Therefore, notice for the Assessment Years 2000-01 and 2001-02 was clearly time barred. In respect of Assessment Years 2002-03 and 2003-04, the submission of Mr. Mistri was that one of the jurisdictional conditions precedent to the issue of a notice under Section 153C is that 'money, bullion, jewellery or other valuable article or thing' or any 'books of accounts or documents' must be seized or requisitioned. In the present case, nothing was seized relating to any of the Assessment Years in question and hence the notice under Section 153C and the assessment under Section 153A, read with Section 153C, pursuant thereto are invalid.

14) We have bestowed our due consideration to the respective submissions of the counsel for the parties.

15) At the outset, it needs to be highlighted that the assessment order passed by the AO on August 7, 2008 covered eight Assessment Years i.e. Assessment Year 1999-2000 to Assessment Year 2006-07. As noted above, insofar as Assessment Year 1999-2000 is concerned, same was covered under Section 147 of the Act which means in respect of that year, there were re-assessment proceedings. Insofar as Assessment Year 2006-07 is concerned, it was fresh assessment under Section 143(3) of the Act. Thus, insofar as assessment under Section 153C read with Section 143(3) of the Act is concerned, it was in respect of Assessment Years 2000-01 to 2005-06. Out of that, present appeals relate to four Assessment Years, namely, 2000-01 to 2003-04 covered by notice under Section 153C of the Act. There is a specific purpose in taking note of this aspect which would be stated by us in the concluding paragraphs of the judgment.

16) In these appeals, qua the aforesaid four Assessment Years, the assessment is quashed by the ITAT (which order is upheld by the High Court) on the sole ground that notice under Section 153C of the Act was legally unsustainable. The events recorded above further disclose that the issue pertaining to validity of notice under Section 153C of the Act was raised for the first time before the Tribunal and the Tribunal permitted the assessee to raise this additional ground and while dealing with the same on merits, accepted the contention of the assessee.

17) First objection of the learned Solicitor General was that it was improper on the part of the ITAT to allow this ground to be raised, when the assessee had not objected to the jurisdiction under Section 153C of the Act before the AO. Therefore, in the first instance, it needs to be determined as to whether ITAT was right in permitting the assessee to raise this ground for the first time before it, as an additional ground.

18) The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.

19) We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy.

20) Insofar as the judgment of the Gujarat High Court relied upon by the learned Solicitor General is concerned, we find that the High Court in that case has categorically held that it is an essential condition precedent that any money, bullion or jewellery or other valuable articles or thing or books of accounts or documents seized or requisitioned should belong to a person other than the person referred to in Section 153A of the Act. This proposition of law laid down by the High Court is correct, which is stated by the Bombay High Court in the impugned judgment as well. The judgment of the Gujarat High Court in the said case went in favour of the Revenue when it was found on facts that the documents seized, in fact, pertain to third party, i.e. the assessee, and, therefore, the said condition precedent for taking action under Section 153C of the Act had been satisfied.

21) Likewise, the Delhi High Court also decided the case on altogether different facts which will have no bearing once the matter is examined in the aforesaid hue on the facts of this case. The Bombay High Court has rightly distinguished the said judgment as not applicable giving the following reasons:

> "8. Reliance on the judgment of the Division Bench of the High Court of Delhi reported in case of SSP Aviation Ltd. Vs. Deputy Commissioner of Income Tax (2012) 346 ITR 177 is misplaced. There, search was carried out in the case of "P" group of companies. It was found that the assessee before the Hon'ble Delhi High Court had acquired certain development rights from "P" group of companies. Based thereon, the satisfaction was recorded by the Assessing Officer and he issued notice in terms of

Section 153C. Thereupon the proceedings were initiated under section 153A and the assessee was directed to file returns for the six assessment years commencing from 2003-04 onwards. The assessees filed returns for those years but disclosed Nil taxable income. These returns were accepted by the Assessing Officer, however, in respect of the assessment year 2007-08 there was a significant difference in the pattern of assessment for this year also, the return was filed for Nil income but there were certain documents and which showed that there were transactions of sale of development rights and from which profits were generated and taxable for the assessment year 2007-08. Thus, the receipt of Rs.44 crores as deposit in the previous year relevant to the assessment year 2008-09 and later on became subject matter of the writ petition before the Delhi High Court. That was challenging the validity of notice under section 153C read with section 153A. In dealing with such situation and the peculiar facts that the Delhi High Court upheld the satisfaction and the Delhi High Court found that the machinery provided under section 153C read with section 153A equally facilitates inquiry regarding existence of undisclosed income in the hands of a person other than searched person. The provisions have been referred to in details in dealing with a challenge to the legality and validity of the seizure and action founded thereon. We do not find anything in this judgment which would enable us to hold that the tribunal's understanding of the said legal provision suffers from any error apparent on the face of the record. The Delhi High Court judgment, therefore, will not carry the case of the revenue any further." We, thus, do not find any merit in these appeals.

22) We now advert to the implication of the fact which has been emphasised in para 15. As pointed out in the said para, the assessment order passed by the AO covers eight Assessment Years. Assessment done in six Assessment Years is under Section 153C of the Act.

Assessment order is set aside only in respect of four such Assessment Years that too on the technical ground, noted above. This objection pertaining to the four Assessment Years in question does not relate to the other two Assessment Years, namely, 2004-05 and 2005-06. Likewise, this decision has no bearing in respect of assessment done qua Assessment Year 1999-2000 as well as Assessment Year 2006-07. The necessary consequence would be that insofar as the conclusions of the AO in his assessment order regarding the activities of the trust not being genuine and not carried out in accordance with the trust deed or cancellation of registration, denial of benefits of Sections 11 and 12 etc. are concerned, the same would not be affected by this judgment. It is, thus, clarified that this Court has not dealt with the matter on merits insofar as incriminating material found against the assessee or Mr. Navale is concerned. Pithily put, this Court has not given any clean chit to the assessee insofar as the finding of the AO to the effect that the assessee had been indulging in profiteering and collecting capitation fee is concerned. Whatever other repercussions are there, based on these findings, they can follow. This Court was not informed and, therefore, unaware of any challenge to the assessment order in respect of other four Assessment Years and outcome thereof. Wherever any such proceedings are pending, same would be considered without being affected by the outcome of these proceedings.

23) The appeals are dismissed with the aforesaid observations.

.....J. (A.K. SIKRI) .....J. (ASHOK BHUSHAN)
NEW DELHI;

AUGUST 29, 2017.