

A M/S SUPER MALLS PRIVATE LIMITED
v.
PRINCIPAL COMMISSIONER OF INCOME TAX 8,
NEW DELHI

B (Civil Appeal Nos. 2006-2007 of 2020)

MARCH 05, 2020

[ASHOK BHUSHAN AND M. R. SHAH, JJ.]

C *Income Tax Act, 1961 – s.153C – Search and seizure operation carried out at residential/business premises of Director (the searched person) of assessee-company – A pen drive was found and seized – Some documents were seized containing details of cash receipts on sale of shops/offices at assessee-company – Notice issued to assessee u/s.153C by Assessing Officer who co-incidentally happened to be the same for the assessee and the searched person – Assessee filed*
D *return for assessment year 2008-09 – Assessment finalised by the Assessing Officer – Assessment order challenged contending that satisfaction note recorded u/s.153C w.r.t the assessee, i.e., a third party, was invalid – Dismissed by CIT (Appeals) – Assessee’s appeal allowed by ITAT – Revenue’s appeal allowed by High Court – Held:*
E *Before issuing notice u/s.153C, 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 – After recording such satisfaction, he may transmit the records/ documents/papers etc. to the Assessing Officer having jurisdiction over such other person – After receipt of the said satisfaction & on*
F *examination of such other documents relating to such other person, the jurisdictional Assessing Officer may proceed to issue notice for completion of assessment u/s.158BD – There can be two eventualities- Assessing Officer of the searched person is different from the Assessing Officer of the other person; the Assessing Officer of the searched person and the other person is the same – Where*
G *the Assessing Officer is different, there shall be a satisfaction note by the Assessing Officer of the searched person who then is required to transmit the documents so seized to the Assessing Officer of the other person – Simultaneously he shall forward his satisfaction note and is also required to make a note in the file of searched person*

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that he has done so – However, in case where the Assessing Officer 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 s.153C is fulfilled – Second requirement of transmitting the documents so seized would not be there as he himself will be the Assessing Officer of the other person also – In the facts of the present case, it cannot be said that the mandatory requirements of s.153C were not complied – High Court justified in observing that requirement of s.153C was fulfilled – ITAT to decide and dispose of the appeals afresh on merits, at the earliest, in accordance with law.

Dismissing the appeals, the Court

HELD: 1.1 Before issuing notice under Section 153C of the Income Tax Act, 1961, 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. 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 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

- A simultaneously 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, 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
- B 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. 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
- C and the other person and therefore there is no question of transmitting such seized documents to himself. It cannot be said that the mandatory requirements of Section 153C of the Act, in the facts and circumstances of the case, were not complied with. [Paras 6, 6.1 and 6.2][682-G-H; 683-B-H; 684-A-C]

- D *Commissioner of Income Tax v. Calcutta Knitweaves* (2014) 6 SCC 444 : [2014] 5 SCR 855 – relied on.

Pepsi Food Pvt. Ltd. v. Assistant Commissioner of Income Tax 2014 (367) ITR 112 (Delhi) ; *Ganpati Fincap Service Pvt. Ltd. v. Commissioner of Income Tax* 2017 (395) ITR 692 (Delhi) – approved.

- E *Commissioner of Income Tax v. Bipinchandra Chimanlal Doshi* 2017 (395) ITR 632 (Gujarat) – referred to.

Case Law Reference

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| F | [2014] 5 SCR 855 | relied on | Para 3.2 |
| | (2014) 367 ITR 112 (Delhi) | approved | Para 3.2 |
| | (2017) 395 ITR 632 (Gujarat) | referred to | Para 3.2 |
| | (2017) 395 ITR 692 (Delhi) | approved | Para 3.2 |

- G CIVIL APPELLATE JURISDICTION: Civil Appeal Nos.2006-2007 of 2020.

From the Judgment and Order dated 22.11.2016 and 13.01.2017 of the High Court of Delhi at New Delhi in ITA No.453/2016 and in Review Petition No.16/2017 in ITA No.453/2016 respectively.

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R.P. Bhat, Sr. Adv., Samrat Nigam, Ms. Perna Mehta, Advs. for A
the Appellant.

Arijit Prasad, Sr. Adv., Mrs. Rekha Pandey, Balaji Srinivasan,
Mrs. Anil Katiyar, Advs. for the Respondent.

The Judgment of the Court was delivered by B
M. R. SHAH, J.

1. As common question of law and facts arise in this group of
appeals, and are with respect to common assessee, but with respect to
different assessment years, all these appeals are being decided together
by this common Judgment and Order. C

2. For the sake of convenience, the facts of Civil Appeals arising
from Special Leave Petition(C) Nos. 8449-8450/2017 arising from I.T.A.
No. 453/2016 & Review Petition No. 16/2017 for Assessment Year
2008-09 are stated and considered. The facts in nutshell are as under:

2.1 By virtue of the authorization of the Director of Income Tax D
(Investigation), Chandigarh, a search and seizure operation under Section
132(1) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act')
was carried out on 8/9.04.2010 at the residential/business premises of
Shri Tejwant Singh and Shri Ved Prakash Bharti group of companies at
Karnal, Panipat and Delhi. A survey under Section 133A of the Act was E
also carried out at the business premises of M/s Super Mall (P) Limited
– the assessee, at Karnal and New Delhi. That during the course of the
search on 8/9.04.2010 at the residence of Shri Ved Prakash Bharti, a
Director in the assessee company – M/s Super Mall (P) Limited, pen
drive was found and seized from the vehicle parked in front of Shri Ved
Prakash Bharti's residence. That some documents were seized after F
taking out the print from the above said pen drive. The said documents
contained the details of the cash receipts on sale of shops/offices at
M/s Super Mall, Karnal, also besides other concerns. That as a
consequence of the aforesaid search and seizure operation, a notice
was issued to the assessee – M/s Super Mall (P) Limited (hereinafter G
referred to as the 'Assessee') under Section 153C of the Act by the
Assessing Officer. At this stage, it is required to be noted that co-
incidentally it so happened that the Assessing Officer of the assessee
and the Assessing Officer of the search persons – Tejwant Singh and
Ved Prakash Bharti was the same. The assessee filed its return for the
assessment year 2008-09. The assessment for the assessment year 2008- H

A 09 was finalised by the Assessing Officer and additions were made in the assessment year 2008-09. The assessment order was the subject matter of appeal before the Commissioner of Income Tax (Appeals). The assessment order was challenged mainly on the ground that the satisfaction note recorded under Section 153C of the Act in respect of the assessee, i.e., a third party, was invalid. That the learned CIT (Appeals) dismissed the assessee's appeal. However, the learned Income Tax Appellate Tribunal (for short 'ITAT') allowed the appeal preferred by the assessee and held that the satisfaction note recorded under Section 153C of the Act in respect of the assessee, i.e., a third party, was invalid. In the appeal before the High Court, by the impugned Judgment and Order, the High Court has allowed the said appeal preferred by the Revenue and has observed and held that there was a compliance of Section 153C of the Act. The High Court also observed that the Assessing Officer was justified in recording the satisfaction that the documents so seized "belonged" to the assessee. Consequently, the High Court has set aside the order passed by the learned ITAT and remanded the matter to the learned ITAT to hear the appeals afresh on merits. At this stage, it is required to be noted that the learned ITAT set aside the order passed by the learned CIT(Appeals) solely on the satisfaction note being invalid and did not enter into the merits. Therefore, the High Court set aside the learned ITAT's decision with respect to satisfaction note recorded by the Assessing Officer under Section 153C of the Act. Hence, the present appeal.

2.2 Therefore, the short question which is posed for the consideration of this Court is with respect to the satisfaction note recorded by the Assessing Officer, as required under Section 153C of the Act.

F 3. Shri R.P. Bhatt, learned Senior Advocate appearing on behalf of the assessee has made the following submissions:

G 3.1 That in the facts and circumstances of the case, the High Court has materially erred in observing and holding that the Assessing Officer has complied with the provisions of Section 153C of the Act;

H 3.2 That in the present case there was no satisfaction note by the Assessing Officer of the searched party. That as per the scheme of Section 153C of the Act, the Assessing Officer of searched person, i.e., the Directors in this case has to be firstly "satisfied" that any money, jewellery or other valuable articles, books of accounts or documents

seized or requisitioned “belong to”, i.e., in this case, the assessee company, a person other than the person referred to under Section 153A of the Act. It is submitted that thereafter and on being satisfied that the books of accounts or documents or assets so seized or requisitioned shall be handed over by the Assessing Officer of searched person, i.e., the Directors in this case to the Assessing Officer having jurisdiction over such other person i.e., the assessee company. That the aforesaid requirements before issuing notice under Section 153C of the Act are held to be mandatory by this Court in catena of decisions. Reliance is placed upon the decision of this Court in the case of *Commissioner of Income Tax v. Calcutta Knitwears (2014) 6 SCC 444*; decision of the Delhi High Court in the case of *Pepsi Food Pvt. Ltd. v. Assistant Commissioner of Income Tax 2014 (367) ITR 112 (Delhi)*; decision of the Gujarat High Court in the case of *Commissioner of Income Tax v. Bipinchandra Chimanlal Doshi 2017 (395) ITR 632 (Gujarat)*; and the decision of the Delhi High Court in the case of *Ganpati Fincap Service Pvt. Ltd. v. Commissioner of Income Tax 2017 (395) ITR 692 (Delhi)*;

3.3 That even the CBDT also issued a Circular explaining the requirements to be followed by the Assessing Officer before issuing notice under Section 153C of the Act. That the said Circular has been referred to and considered by the Delhi High Court in the case of *Ganpati Fincap (supra)* and after considering the various decisions of different High Courts, it is observed that when proceedings are proposed to be initiated under Section 153C of the Act against the “other person”, it has to be preceded by a satisfaction note by the Assessing Officer of the searched person. It is further observed that he will record in his satisfaction note that the seized documents belong to “other person”. That in the present case there was no satisfaction note by the Assessing Officer of the searched person. That there is a non-compliance of the provisions of Section 153C of the Act as well as even the Circular issued by the CBDT and therefore the learned ITAT rightly set aside the assessment order.

3.4 Making the above submissions and relying upon the aforesaid decisions, it is prayed to allow the present appeals.

4. Shri Arijit Prasad, learned Senior Advocate appearing on behalf of the Revenue, while opposing the present appeal/s has vehemently submitted that in the facts and circumstances of the case and after

A considering the satisfaction note recorded by the Assessing Officer, the High Court has rightly observed and held that there is a sufficient compliance of Section 153C of the Act. In support he has made the following submissions:

4.1 That in the present case, the Assessing Officer of the assessee
B and the Assessing Officer of the searched person was the same and therefore if one looks at the satisfaction note, it can be seen that there is a satisfaction note by the Assessing Officer of the searched person also. It is submitted that as the Assessing Officer was the same, there was no question of thereafter transmitting the documents so seized from
C the searched person to another Assessing Officer as he himself was the Assessing Officer of the searched person as well as the Assessing Officer of the assessee. Therefore, there was a sufficient compliance of the requirements under Section 153C of the Act.

4.2 That even as observed and held by the Delhi High Court in
D the case of *Ganpati Fincap (supra)*, in case the Assessing Officer of the searched person and the other person is the same, there need not be two separate satisfaction notes recorded by the Assessing Officer of the searched person, where he is also the Assessing Officer of the other person.

4.3 Making the above submissions and relying upon the aforesaid
E decision, it is prayed to dismiss the present appeals.

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

5.1 As observed hereinabove, the short question which is posed
F 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
G 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
H 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

A 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.

C 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:

D	“Name and address of the assessee	:	M/s Super Malls (P) Ltd. Sector 12, HUDA, Karnal Regd. Office at 51, Transport Centre
E	PAN	:	Punjabi Bagh, New Delhi. AAICS2163F
	Status	:	Company

F 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.

G 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. CITIII/Delhi/Centralization/1012-1312455 dated 15.01.2013.

H 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.

- A 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.
- B 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).

Divya Pandey

Appeals dismissed.