

Pr. Commissioner Of Income Tax, Surat-1 vs M/S. Munisuvrat Corporation on 23 July, 2019

Author: J.B.Pardiwala

Bench: J.B.Pardiwala, A.C. Rao

C/TAXAP/187/2019

JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 187 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

and

HONOURABLE MR.JUSTICE A.C. RAO

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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PR. COMMISSIONER OF INCOME TAX, SURAT-1

Versus

M/S. MUNISUVRAT CORPORATION

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Appearance:

MRS KALPANAK RAVAL(1046) for the Appellant(s) No. 1

HIREN J TRIVEDI(8808) for the Opponent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

and
HONOURABLE MR. JUSTICE A.C. RAO

Date : 23/07/2019

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE J.B. PARDIWALA) C/TAXAP/187/2019 JUDGMENT This Tax Appeal under Section 260A of the Income Tax Act, 1961, is at the instance of the Revenue and is directed against the order passed by the Income Tax Appellate Tribunal, Ahmedabad in the IT(SS) A No.203/ Ahd/2016 for the A.Y.2011-12 dated 3/10/2018.

2. The Revenue has proposed the following question of law :

"(A) Whether, on the facts and in the circumstances of the case and in law, the Income Tax Appellate Tribunal is right in holding the assessment illegal and void-abinitio ?"

3. It appears from the materials on record, that the assessment was finalised under Section 143(3) r.w.s 153C of the I.T Act on 30.3.2014 consequent to the search action under Section 132 of the I.T Act determining the total income at Rs 11,65,31,847/-. It also appears that in the assessment order, an addition was made amounting to Rs 11,65,91,847/-, on the basis of the document being 'saudachithi'. The said document was recovered from the bank locker of one Shri Kirit M. Shah and was seized. The sale price reflected is Rs 16,17,91,847/- whereas, the sale consideration shown in the registered sale deed was only to the tune of Rs. 4,52,60,000/-. Thus, the difference of Rs 11,65,31,847/- was added to the total income as unexplained expenditure under Section 69C of the Act.

4. Being aggrieved by the assessment order, the assessee preferred appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee and confirmed the addition made by C/TAXAP/187/2019 JUDGMENT the Assessing Officer.

5. Being dissatisfied by the order of the CIT(A), the assessee preferred second appeal before the ITAT. The ITAT allowed the appeal of the assessee, holding the assessment to be illegal and void ab-initio. The Revenue, being dissatisfied with the order of the ITAT, has approached this Court with the present Appeal.

6. We take notice of the principal argument that was canvassed by the assessee before the ITAT. The principal argument has been noted by the ITAT in para 7, which reads as under :

" 7. Feeling aggrieved and dissatisfied, the assessee has come up before this Tribunal by way of this appeal. The learned counsel for the assessee submitted that section, 153C of Income Tax Act, 1961, prescribed a mandatory requirement of recording of satisfaction by the AO of seized person about the belongingness of seized material by other person. The AO of the searched person is also required to hand over such searched material to the AO of the other person who then proceed for making the

assessment of other person. In the instant case, the AO of the searched person has not recorded the satisfaction in the assessment of the assessee. The assessee has raised this issue before the learned CIT(A) but learned CIT(A) has taken adverse view by holding that the AO had jurisdiction over under section 153 C of the Act as the satakhat belonged to the assessee. Hence, the AO was fully empowered to initiate proceedings under section 153 C of the Act. The learned counsel for the assessee, referred the CBDT circular No. 24/2015 dated 31st December C/TAXAP/187/2019 JUDGMENT 2015 which is regarding recording of satisfaction note under section 158BD/153C of the Act wherein in para 4 it was mentioned as "The guidelines of the Hon'ble Supreme Court as referred 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 "other person" is one and the same, then also he is required to record his satisfaction as held by the courts." The learned counsel for the assessee, submitted that the assessment proceedings carried under section 153 C of the Income Tax Act, 1961 were without recording of any satisfaction by the AO. The learned counsel contended that in the assessee's case no satisfaction was recorded by the AO of the person searched. The learned counsel for the assessee submitted that assessee has requested the AO vide letter dated 17th April 2018 to furnish copy of satisfaction note recorded under section 153 C in the case of to represent the case before Tribunal. However, it was not supplied to the assessee. Therefore, the Bench of Tribunal has also requested the AO vide letter dated 17th April 2018 to furnish copy of satisfaction note recorded under section 153C in the case of to represent the case before Tribunal. However, it was not supplied to the assessee. Therefore, the Bench of Tribunal has also requested the learned Departmental Representative to supply copy of satisfaction note if any recorded by the AO. In compliance thereof, the AO vide letter dated 20.8.2018 submitted that looking to facts that not only satisfaction note but also order sheet are not traceable, it is very likely that the AO was maintaining confidential folder incorporating important papers somehow got misplaced hence, not ready available with the AO i.e Income Tax officer, ward-1(3)(7) Surat C/TAXAP/187/2019 JUDGMENT also filed an affidavit dated 17.8.2018 to this effect that from transfer memo of records, no satisfaction note was received and same is not available on assessment record. The assessee is also agitating that even in its own case no satisfaction was recorded as regard to its belongingness to certain incriminating documents seized from the premises of Shir Kiritbhai M. Shah. The learned counsel for the assessee further relied in the case of Pepsi co India Holding Pvt. Ltd. V. ACIT (2015) 370 ITR 295 (Delhi) (2014) 50 taxmann. com 199 (Delhi) wherein it was observed as follows: "In the instant case, it is nobody's case that Jaipuria Group had disclaimed those documents as belonging to them. Unless and until it is established that the documents as belonging to them. Unless and until it is established that the documents do not belong to the searched person, the provisions of section 15C do not get attracted because the very expression used in section 153 C is that where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153 A...". In view of this phrase, it is necessary that before the provisions of section 153 C can be invoked, the Assessing officer of the searched person must be satisfied that the seized material (which included documents) does not belong to the person referred to in section 153 A, i.e., the searched person. In the satisfaction note, which is the subject matter of these writ petitions, there is nothing therein to indicate that the seized documents do not belong to the Jaipuria Group. This even apart from the fact that there is no disclaimer on the part of the Jaipuria Group insofar as these documents are concerned.(para 14)"

6. The Tribunal, ultimately recorded its findings as reflected in para 12 of the impugned order, which read thus :

" 12. We have heard the rival submissions and have perused the materials available on record. We find that the assessing officer has issued notices under section 153 C of the Act based on search under section 132(1) which was carried out in the case of Shri Kirit M. Shah. The Assessing Officer issued notices under section 153 C and initiated the assessments proceeding for the years under consideration. The provisions of section 153C can be invoked only after recording a satisfaction in the case of persons searched qua the assets or books or documents seized during the course of search belong to some other person. In the instant case, the Assessing officer of other concerned assessee has not recorded any satisfaction qua the belongingness of the seized documents with the assessee. Similarly, as admitted by the AO vide letter dated 20.8.2018 that there was no satisfaction note is available in the case of the assessee, led to believe that there was no satisfaction note recorded in the case of the assessee as well as in the case searched person, therefore, the assessment proceeding initiated by way of issue of notice under section 153C read with section 153 A is bad in law. The Hon'ble Delhi High Court in the case of Pepsi Co. India Holding Pvt. Ltd. V. ACIT (2015) 370 ITE 295 (Delhi) (2014) 50 taxmann.com 199(Delhi) "where the Assessing officer is satisfied that any money, bullion jewellery or other valuable article or thing or books of account or other than the person referred to in section 153A.." In view of this phrase, it is necessary that before the provisions of section 15 C can be invoked, the Assessing officer of the searched person must be satisfied that the seized material (which includes documents) does not belong to the person referred to in section 153 A i.e., the searched person. In the satisfaction C/TAXAP/187/2019 JUDGMENT note, which is the subject matter of these writ petitions, there is nothing therein to indicate that the seized documents do not belong to the Jaipuria Group. This is even apart from the fact that there is no disclaimer on the part of the Jaipuria Group insofar as these documents are concerned. In the present case, there is not satisfaction that seized document belonged to the assessee. therefore, proceeding initiated under section 153 C are bad in law." The similar issue had come up before the Hon'ble High Court of Madhya Pradesh in the case of CIT Vs Mechmen (2015) 60 taxmann.com 484 (MP), wherein the Hon'ble High court discussing the various judgments has held that the AO is obliged to record satisfaction (in case of the searched person) that the assets or documents do not belong to the searched person and these in fact belong to some other persons other than the searched person. This is sine quo non despite the fact that the AO of searched and non- searched person is same. Thereafter, he has to handover the material to the AO of non searched person having jurisdiction over him (may be the same AO). After receipt of the material and due verification, the AO of non-searched person has to issue notice under section 153 C of the Act and to proceed in the matter. Thus, we are of the view that the Assessing officer of the person searched has to necessarily form a satisfaction that the item referred to in section 153 C belongs or belong to a person other than the person searched. Apparently, in the present appeals, no such satisfaction has been recorded by the Assessment officer. The learned DR has not controverted the submission of the learned counsel for the assessee that in the case of the persons searched, no satisfaction as regard to the

belongingness of any document to the present assessee was recorded. The learned counsel for the assessee relied on circular No. 24/2015 dated 31.12.2015, issued by the CBDT, in which, the Board following the decision of Hon'ble C/TAXAP/187/2019 JUDGMENT Supreme Court in case of M/s Calcutta Knitwear's (civil Appeal No. 3958 of 2014 dated 12.3.2014), has directed that where the satisfaction by the Assessing officer of the person searched and other person is not found recorded, the Department should not press that matter in Appeal. Thus, keeping in view rival submissions in light of judicial pronouncements as discussed above and CBDT Circular (supra) the assessment in the assessee case for the assessment year under consideration is held as illegal and void-ab initio. Accordingly, the grounds raised by the assessee relating to applicability of section 153 C are allowed."

7. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that no error, not to speak of any error of law, is said to have been committed by the Tribunal in the impugned order .

8. We would not like to disturb the finding of fact arrived at by the Tribunal.

9. In the result, this Appeal fails and is hereby dismissed.

(J. B. PARDIWALA, J) (A. C. RAO, J) MARY VADAKKAN