

AFR

(Reserved)

Case :- INCOME TAX APPEAL No. - 60 of 2014

Appellant :- Commissioner Of Income Tax (Central)

Respondent :- M/S Gopi Apartment

Counsel for Appellant :- Ashok Kumar, Bharat Ji Agrawal

Hon'ble Amreshwar Pratap Sahi, J.

Hon'ble Rajan Roy, J.

(Delivered by Hon'ble Rajan Roy, J.)

This is an appeal of the Revenue under Section 260-A of Income Tax Act, 1961 (hereinafter referred to as 'the I.T. Act, 1961').

The facts of the case giving rise to the instant appeal are as under:

A search and seizure operation under Section 132(1) of the I.T. Act, 1961 was conducted on 17.10.2006 in 'Banarasi Group of Cases' encompassing residential and business premises of the said Group. It is alleged that during the search and also during the assessment proceedings in respect of the 'searched person', certain incriminating material was recovered, which has been mentioned in the panchanama drawn at the residence of Jeevan Kumar Agrawal, which belonged to the respondent assessee herein. Accordingly, a notice under Section 153-C dated 27.09.2008 was issued, after recording of the requisite satisfaction calling upon the respondent to file its return. The respondent vide its reply dated 24.12.2008, submitted that the return of income, filed earlier, may be treated as filed in response to the notice under Section 153-C of the I.T. Act.

The assessment in respect of the respondent-M/s Gopi Apartments was completed on 31.12.2008. The total income was assessed at

Rs.1,05,93,010/- for A.Y. 2005-2006.

The respondent assessee preferred an appeal before the C.I.T. (A) I, Kanpur against the assessment order dated 31.12.2008. The C.I.T. (A) I, Kanpur vide order dated 26.02.2010 deleted the entire addition by the Assessing Officer. The Revenue filed an appeal before the Income Tax Appellate Tribunal, Lucknow Bench, Lucknow (hereinafter referred to as 'the I.T.A.T.') against the appellate order dated 26.02.2010. The I.T.A.T. vide order dated 05.10.2010 deleted the additions. The Revenue again filed appeal before the I.T.A.T. against the said order, which was set aside on 26.04.2011 and the matter was remanded back to the C.I.T. (A) I, Kanpur.

The C.I.T. (A) I, Kanpur, vide its order dated 04.06.2012, again allowed the appeal in favour of the respondent assessee. While deciding the appeal, the C.I.T. (A) took note of the report of the Assessing Officer on the cross-objection filed by the assessee before I.T.A.T. The relevant extract of the report of the A.O., which was considered by the learned C.I.T. (Appeals), is quoted hereinbelow:

*“As may be seen from the assessment order itself that the proceedings under section 153C were initiated on the basis of seized material, documents belonging to the assessee found at the premises of Shri Jeewan Kumar Agarwal during the course of search proceedings. The **Assessing Officer in the assessment order has specifically stated that satisfaction for issuing notice under section 153C was recorded. However, on examination of record, such satisfaction recorded by the Assessing Officer is not available.**”*

Based on the discussion made by him, the C.I.T. (Appeals) held as under:

“5.4 In absence of the 'Satisfaction Note' prepared by A.O. of the searched person, it has to be held that the A.O. Of the instant assessee could not have assumed jurisdiction u/s 153C of the Act. Thus, all the proceedings undertaken u/s 153C are to be declared as invalid, being annulled for want of jurisdiction. Since the assessment framed u/s 153C has been annulled, no useful purpose shall be served by adjudicating on merits of the case and/ or other arguments of the appellant.”

The C.I.T. (A) I, Kanpur relied upon the law declared by the Supreme Court in the case of **Manish Maheshwari Vs. Assistant Commissioner of Income Tax and another, (2007) 289 ITR 341 (SC)** and by the Delhi High Court in the case of **New Delhi Auto Finance (P) Ltd. Vs. Joint Commissioner of Income Tax, Special Range-15, (2008) 170 ITR 83 (Delhi)**, which were based on the provisions contained in Section 158BD, which are *pari materia* with the provisions of Section 153C of I.T. Act, 1961.

Being aggrieved by the aforesaid order dated 04.06.2012, the Revenue preferred an appeal before the I.T.A.T., Lucknow Bench, Lucknow, which was decided on 25.10.2013, the order of the C.I.T. (Appeals) was affirmed and the appeal of the Revenue was dismissed. The relevant extract of the judgment of the learned I.T.A.T. is hereinbelow:

“5. We have considered the rival submissions, perused the material available on record and gone through the orders of the authorities below. We find that on page No.4 at para 5, the Learned CIT(A) has reproduced the comments given by the Assessing Officer in the course of remand proceedings and as per the same, it was reported by the Assessing Officer that although the Assessing Officer in his assessment order has specifically stated that satisfaction for issuing notice under section 153C was recorded, however, on examination of records, such satisfaction recorded by the Assessing Officer is not available. This

goes to show that it was not brought on record by the Assessing Officer before the Learned CIT(A) that on examination of records, any satisfaction recorded by the Assessing Officer is not available. Before us also, Learned D.R. of the Revenue has not brought on record the copy of any satisfaction recorded by the Assessing Officer of the searched person, which is necessary for issuing notice to the present assessee u/s 153C of the Act. In the absence of such satisfaction having been recorded by the Assessing Officer of the searched person, the present proceedings initiated by the present Assessing Officer against the present assessee u/s 153C is without jurisdiction and in our considered opinion, the same has been rightly quashed by Learned CIT (A) by following the judgment of Hon'ble Apex Court rendered in the case of Manish Maheshwari as reported in 208 CTR 97. We, therefore, do not find any reason to interfere in the order of Learned CIT (A).

6. In the result, the appeal of the Revenue is dismissed.”

It is in this factual background that the instant appeal has been preferred before this Court under Section 260-A of the I.T. Act, 1961 challenging the order dated 25.10.2013 passed by the I.T.A.T., Lucknow Bench Lucknow.

We have heard Sri Bharat Ji Agrawal, learned senior counsel assisted by Sri Ashok Kumar, learned counsel for appellant and Sri Ashish Bansal, learned counsel for respondent assessee and have perused the records.

The contention of Sri Agrawal is two fold. Firstly, he contends that in the instant case, the Assessing Officer of the 'searched person' and the 'other person' being the same, there was no requirement of handing over of the books of account or documents or assets seized or requisitioned, as is mentioned in Section 153C nor there was any necessity of recording a prior satisfaction before proceeding to assess the 'other person'. The satisfaction

subsequently recorded in the assessment order in respect of the 'other person' was sufficient compliance of provisions of Section 153C, which, in any case, was procedural in nature. The A.O. of both the proceedings, being the same, he was neither required to handover the documents to another Assessing Officer nor he had to record any satisfaction for the purpose of any other Assessing Officer since same Assessing Officer of the same designation is having jurisdiction over both the persons, i.e. 'searched person' and the 'other person' (not searched). Sri Agrawal relied upon a Division Bench judgment of this Court rendered in the case of **Commissioner of Income Tax Vs. Classic Enterprises, (2013) 358 ITR 465**.

It was contended that the Tribunal was not justified in quashing the notice under Section 153C, instead of deciding the question on merits as to whether additions are to be made and/ or to what extent the income is to be assessed in the hands of Gopi Apartments.

Sri Agrawal also contended that by the Finance Act, 2003, Amendment in Section 153A w.e.f. 01.06.2003 was made and Sections 153A and 153C were added in place of Sections 153BC and 153BD. Section 158BC is equivalent to Section 153A and Section 158BD is equivalent to Section 153C.

He also contended that the reliance placed by the I.T.A.T. upon the judgment of the Supreme Court in **Manish Maheshwari** (supra) was misplaced and the case, at hand, was squarely covered by the Division Bench of this Court in the case of **Classic Enterprises** (supra). In this regard, Sri Agrawal referred to the observation in Manish Maheshwari's case to the effect that *"No proceeding under Section 158BC had been initiated. There is, thus, a patent non-application of mind."*

Sri Ashish Bansal, learned counsel for respondent assessee, on the

other hand, contended that the initiation of the proceedings under Section 153C against the respondent assessee itself was illegal, as no satisfaction was recorded by the Assessing Officer of the 'searched person' prior to initiation of such proceedings against respondent assessee as was mandatory. He invited the attention of the court to the specific finding recorded by the learned C.I.T. (Appeals), as upheld by the I.T.A.T., based on the admission by the A.O. before it, which has already been taken note of by us in the earlier part of the judgment. Sri Bansal relied upon a recent judgment of the Apex Court in the case of **Commissioner of Income Tax-III Vs. M/s Calcutta Knitwears, Ludhiana** passed in Civil Appeal No.3958 of 2014 decided on 12.03.2014 in support of his contention.

Apart from the arguments, as noted above, no other argument was raised by the learned counsel for either of the parties nor any other judgment was cited before us in support of their respective contentions.

The relevant provision in the instant case, i.e. Section 153C is as under:

“153C. Assessment of income of any other person.

*(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, **where the Assessing Officer is satisfied** that 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 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and **that Assessing Officer shall proceed against each such other person and issue such other person notice** and assess or reassess income of such other person in accordance with the provisions of section 153A.”*

The aforesaid provision is contained in Chapter- XIV of the Income Tax Act, which contains the procedure for assessment.

A somewhat similar provision exists in Section 158BD under Chapter XIV-B, which contains the procedure for assessment of searched cases, which reads as under:

“158BD. Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed [under section 158BC] against such other person and the provisions of this Chapter shall apply accordingly.”

The meaning and scope of the aforesaid provision contained in Section 158BD came up for consideration before the Supreme Court in the case of **Commissioner of Income Tax-III Vs. M/s Calcutta Knitwears, Ludhiana** (supra).

The issue that fell for consideration before the Supreme Court, as mentioned in paragraph-3 of the judgment is being quoted hereinbelow:

“3. The issue that falls for our consideration and decision in all these appeals is: at what stage of the proceedings under Chapter XIV-B does the assessing authority require to record his satisfaction for issuing a notice under Section 158BD of the Income Tax Act, 1961 ('the Act' for short).”

After considering the rival contentions, relevant provisions of the Income Tax Act and the authorities on the subject, their Lordships held as under:

“41. We would certainly say that before initiating proceedings under Section 158BD of the Act, the assessing officer who has initiated proceedings for completion of the assessments under Section 158BC of the Act should be satisfied that there is an undisclosed income which has been traced out when a person was searched under Section 132 or the books of accounts were requisitioned under Section 132A of the Act. This is in contrast to the provisions of Section 148 of the Act where recording of reasons in writing are a sine qua non. Under Section 158BD the existence of cogent and demonstrative material is germane to the assessing officers' satisfaction in concluding that the seized documents belong to a person other than the searched person is necessary for initiation of action under Section 158BD. The bare reading of the provision indicates that the satisfaction note could be prepared by the assessing officer either at the time of initiating proceedings for completion of assessment of a searched person under Section 158BC of the Act or during the stage of the assessment proceedings. It does not mean that after completion of the assessment, the assessing officer cannot prepare the satisfaction note to the effect that there exists income tax belonging to any person other than the searched person in respect of whom a search was made under Section 132 or requisition of books of accounts were made under Section 132A of the Act. The language of the provision is clear and unambiguous. The legislature has not imposed any embargo on the assessing officer in respect of the stage of proceedings during which the satisfaction is to be reached and recorded in respect of the person other than the searched person.

44. In the result, we hold that for the purpose of Section 158BD of the Act a satisfaction note is sine qua non and must be prepared by the assessing officer **before** he transmits the records to the other assessing officer who has jurisdiction over such other person. The satisfaction note could be prepared at either of the following stages: (a) at the time of or along with the initiation of proceedings against the searched person under Section 158BC of the Act; (b) along with the

assessment proceedings under Section 158BC of the Act; and (c) immediately after the assessment proceedings are completed under Section 158BC of the Act of the searched person.

45. We are informed by Shri Santosh Krishan, who is appearing in seven of the appeals that the assessing officer had not recorded the satisfaction note as required under Section 158BD of the Act, therefore, the Tribunal and the High Court were justified in setting aside the orders of assessment and the orders passed by the first appellate authority. We do not intend to examine the aforesaid contention canvassed by the learned counsel since we are remanding the matters to the High Court for consideration of the individual cases herein in light of the observations made by us on the scope and possible interpretation of Section 158BD of the Act. 46. With these observations, the appeals are disposed of.”

The provisions of Section 158BD being *pari materia* with the provisions of Section 153C, the ratio of the aforesaid judgment clearly applies to the present case also.

The reference to the assessment proceedings under Section 158BC by the Supreme Court in the extracts quoted above is with regard to the 'assessment proceedings' in relation to the 'searched person' and not the 'other person' as referred to in Section 158BD.

A bare perusal of the provision contained in Section 153C of the I.T. Act leaves no doubt that, as is provided under Section 158BD, where the Assessing Officer, while proceeding under Section 153A against a person who has been subjected to search and seizure under Section 132(1) or has been proceeded under Section 132A, 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 153A, then the books of account or documents or assets seized or

requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person **and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.**

Thus, there are two stages:

(1) The first stage comprises of a search and seizure operation under Section 132 or proceeding under Section 132A against a person, who may be referred as 'the searched person'. Based on such search and seizure, assessment proceedings are initiated against the 'searched person' under Section 153A. At the time of initiation of such proceedings against the 'searched person' or during the assessment proceedings against him or even after the completion of the assessment proceedings against him, the Assessing Officer of such a 'searched person', may, if he is satisfied, that any money, document etc. belongs to a person other than the searched person, then such money, documents etc. are to be handed over to the Assessing Officer having jurisdiction over 'such other person'.

(2) The second stage commences from the recording of such satisfaction by the Assessing Officer of the 'searched person' followed by handing over of all the requisite documents etc. to the Assessing Officer of such 'other person', thereafter followed by issuance of the notice of the proceedings under Section 153C read with section 153A against such 'other person'.

The initiation of proceedings against 'such other person' are dependant upon a satisfaction being recorded. Such satisfaction may be

during the search or at the time of initiation of assessment proceedings against the 'searched person', or even during the assessment proceedings against him or even after completion of the same, **but before issuance of notice to the 'such other person' under Section 153C.**

Even in a case, where the Assessing Officer of both the persons is the same and assuming that no handing over of documents is required, the recording of 'satisfaction' is a must, as, that is the foundation, upon which the subsequent proceedings against the 'other person' are initiated. The handing over of documents etc. in such a case may or may not be of much relevance but the recording of satisfaction is still required and in fact it is mandatory.

In this regard, the ratio of the judgment of the Supreme Court in the case of **Commissioner of Income Tax-III Vs. M/s Calcutta Knitwears, Ludhiana** (supra), as noted above, clearly applies to the proceedings under Section 153C also.

The 'satisfaction' has to be in writing and can be gathered from the assessment order passed in respect of the 'searched person', if it is so mentioned/ recorded or from any other order, note or record maintained by the Assessing Officer of the 'searched person'. The word 'satisfaction' refers to the state of mind of the Assessing Officer of the person searched, which gets reflected in a tangible shape/ form, when it is reduced into writing. It is the conclusion drawn or the finding recorded on the foundation of the material available. In this regard, reference may be made to the pronouncements in the case of **C.I.T. Vs. Radhey Shyam Bansal, (2011) 337 ITR 217 (Delhi)** and the Division Bench judgment of this Court in the case of **C.I.T. Vs. Classic Enterprises** reported in **(2013) 358 ITR 465 (Allahabad)**.

In the case of **Manish Maheshwari Vs. Assistant Commissioner of**

Income Tax and another, (2007) 289 ITR 341 (SC), their Lordships had the occasion to consider the provisions of Sections 158BC and 158BD and held that the conditions precedent for taking recourse to a block assessment in terms of Section 158BC and 158BD (i) were as under:

“(i) Satisfaction must be recorded by the Assessing Officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under Section 132 of the Act; (ii) The books of account or other documents or assets seized or requisitioned had been handed over to the Assessing Officer having jurisdiction over such other person; and (iii) The Assessing Officer has proceeded under Section 158BC against such other person.”

*11.The conditions precedent for invoking the provisions of Section 158BD, thus, are required to be satisfied **before** the provisions of the said chapter are applied in relation to any person other than the person whose premises had been searched or whose documents and other assets had been requisitioned under Section 132A of the Act.”*

The ratio of the judgment in **Manish Maheshwari's** case also applies to the provisions of Section 153C and to the facts of this case.

In the instant case, a categorical finding has been recorded by the C.I.T. (Appeals) and the I.T.A.T. that there is no material showing the recording of satisfaction by the Assessing Officer of the 'searched person' prior to issuance of notice under Section 153C to the respondent assessee, i.e. 'the other person'. It was the admitted case of the Revenue before the C.I.T. (Appeals) and the I.T.A.T. that though the Assessing Officer (of the other person) in the assessment order had stated that satisfaction for issuing notice under Section 153C was recorded, however, on examination, recording of such satisfaction alleged to be recorded by the Assessing Officer was not available.

In view of the legal position, as already discussed above and the admitted factual position as aforesaid, we are unable to accept the contentions of Sri Agrawal.

We are also of the view that plea, which is being raised in this appeal, was not raised in the grounds of appeal before the I.T.A.T., however, even otherwise such plea does not have any merit.

The contention of Sri Agrawal that Section 153C is only procedural in nature, therefore, the non-recording of prior satisfaction does not vitiate the assessment order, as, such satisfaction, has been recorded in the assessment order passed subsequently with regard to the other person, is also not acceptable for the reason that the Supreme Court in the case of **M/s Calcutta Knitwears** (supra) has already considered this aspect of the matter in the context of Section 158BD, and after taking note of the fact that the said provision is a machinery provision has interpreted the same. In the light of the interpretation given by it and in view of the ratio laid down therein, the contention of Sri Agrawal does not hold ground. A clear and plain reading of Section 153C leaves no doubt that recording of satisfaction by the Assessing Officer of the person searched is mandatory and it has to precede the initiation of proceedings against the other person (not searched).

A specific query was put to Sri Agrawal as to whether, on the basis of the material collected during the search and seizure operation or during the assessment, proceedings against the 'searched person' or thereafter, any proceeding could be initiated against the 'other person' under any other provision of the Income Tax Act, he categorically replied that except Section 153C, there was no other provision under which action could be initiated against him.

The reliance placed by Sri Agrawal upon the Division Bench judgment of this Court in the case of **C.I.T. Vs. Classic Enterprises** (supra) far from helping his cause goes against him. We have already relied upon the said judgment to explain the concept of 'satisfaction' under Section 153C, which is required to be recorded in writing. However, on the other issues, the said judgment is distinguishable for the reason that in the said case, the Assessing Officer had recorded his 'satisfaction' and after recording the satisfaction on the subject matter on 02.08.2006 handed over the books of account and seized material, thus, the issue, which falls for consideration in this appeal, in fact, did not arise for consideration in the said appeal. In any case, the case at hand being squarely covered by the pronouncements of the Supreme Court, as already referred, the reliance placed by Sri Agrawal on the aforesaid judgment does not cut much ice.

In view of the above discussion, we find that no substantial question of law arises in the instant appeal warranting interference with the impugned judgment under Section 260-A of the Income Tax Act, 1961. It is accordingly dismissed.

Order Date :- 01.05.2014
NLY