

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B. R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.347/Bang/2012
Assessment year : 2007-08

The Assistant Commissioner of Income Tax, Central Circle - 2(3), Bengaluru.	Vs.	M/s. Everglades, No.1146, 12 th Main, 1 st Cross, HAL 2 nd Stage, Bengaluru-560038. PAN : AAAAE 2295 E
APPELLANT		RESPONDENT

Appellant by	:	Shri. Pradeep Kumar, CIT(DR)(ITAT), Bengaluru.
Respondent by	:	Shri. Balachandran and Shri. Shiva Prasad Reddy, Advocates

Date of hearing	:	19.07.2021
Date of Pronouncement	:	23.07.2021

ORDER

Per N.V. Vasudevan, Vice President

The facts and circumstances under which this appeal by the revenue is listed for hearing before the Tribunal is as follows:

2. The assessee is an Association of Persons (AoP). One Shri. D. K. Sharma with 10% share and M/s. Akme Projects Ltd., with 90% shares are the members of the AoP.

3. During the previous year relevant to Assessment Year 2007-08, the AoP sold lands in Varthur Hobli, Bengaluru East Taluk, under sale deed dated 28.12.2006 to one Shri. R. B. Nataraj, nominee of M/s. Sobha Developers Ltd., for a consideration

of Rs.1.06 Crores. There is no dispute that this transaction has been reflected in the books of account of the AoP. The return of income for the Assessment Year 2007-08 was filed by the assessee on 15.10.2007. The Order of Assessment passed u/s.153C of the Income Tax Act, 1961 (hereinafter called 'the Act') is not clear as to whether any intimation under section 143(1) of the Income Tax Act, 1961 (hereinafter called 'the Act') was issued but no order u/s.143(3) of the Act was passed.

4. A search under section 132 of the Act was carried out in the case of one Shri. M. Krishna on 26.08.2008. Shri. D. K. Sharma, one of the members of the AoP was also searched on 25.08.2008. In the course of search of Shri. M. Krishna, certain documents were found. Consequent to the said search, the case of the assessee AoP as well as Shri. D. K. Sharma and other connected persons were centralized with the DCIT, Central Circle – 2(3), Bengaluru. The AO of the searched person and the assessee AoP were therefore one and the same.

5. The proceedings under section 153C of the Act were initiated against the assessee by issue of notice dated 19.07.2010. As already mentioned, with reference to the original return of income filed by AoP on 15.10.2007, no scrutiny assessment was completed. The assessee filed a letter dated 14.09.2010 requesting the AO to consider the return already filed on 15.10.2007 as a return filed in response to the notice under section 153C of the Act.

6. The issue that arose for consideration in the course of the assessment proceedings was as whether a sum of Rs.2.44 Crores received by the assessee from Shri. D. K. Sharma under a pay order dated 28.12.2006 is assessable as income in the hands of the assessee. It was the case of the Revenue that there was a settlement deed dated 28.06.2006 under which M/s. Sobha Developers Ltd., paid a sum of

Rs.2.44 Crores in addition to the sum of Rs.1.06 Crores paid as consideration for purchase of land. The money was stated to have been paid through Shri. D. K. Sharma to the assessee. According to the Revenue, the aforesaid sum was nothing but part of the sale consideration for sale of the land. According to the assessee, the sum of Rs.2.44 Crores was nothing but money given to the assessee to settle dispute and litigation in respect of the properties that was sold to M/s. Sobha Developers Ltd., and was not in the nature of income in the hands of the Assessee.

7. Ultimately, a sum of Rs.2.44 Crores was assessed to tax in the hands of the assessee. The CIT(A), however, agreed with the plea of the assessee and deleted the addition. On further appeal by the Tribunal in ITA No.347/Bang/2012 order dated 29.07.2016 reversed the order of the CIT(A) and restored the order of the AO by allowing the appeal of the Revenue. The assessee preferred an appeal before the Hon'ble High Court against the order of the Tribunal and the Hon'ble High Court in ITA No.666/2016 by order dated 30.11.2017 remanded the case with the Tribunal to decide the issue with regard to the existence of satisfaction for initiating proceedings under section 153C of the Act. It is pursuant to the aforesaid order of the Hon'ble High Court that this appeal has been listed before the Tribunal for hearing.

8. We have heard the rival submission. The sum and substance of the Hon'ble High Court order is based on an order rendered by the Hon'ble High Court of Karnataka in ITA No.447/2010 dated 11.03.2016 in the case of M/s. Arihant Aluminum Corporation Ltd., Vs. ACIT. In the aforesaid decision, the Hon'ble High Court, after making a reference to CBDT's Circular No.24/2015 dated 31.12.2015 and the decision of the Hon'ble Supreme Court in the case of M/s. Calcutta Knitwears in Civil Appeal No.3958/2014 dated 12.03.2014, observed that before initiating proceedings under section 153C of the Act against the person other than

the person who is searched, satisfaction needs to be recorded. Learned DR has produced satisfaction note recorded in the case of the assessee and the same reads as follows:

Satisfaction Note for initiating action u/s. 153C

Name of the Assessee : **M/s.Everglades**
1146, 12th Main, 1st Cross
HAL 2nd Stage, Bangalore-38

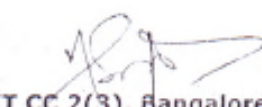
Assessment Year : **2007-08**
P.A.No. : **AAAAE2295E**

20.07.2010 Action u/s. 132 was conducted in the case of Sri M Krishna Family and Group on 26.08.2008 based on the authorisation issued by the DIT(Inv), Bangalore vide Warrant No.2170 in the name of **Sri D K Sharma** dt: 25.08.2008.

During the course of search in the case of Sri M Krishna, the following books / documents were found and seized:

<u>Exhibit I.D.</u>	<u>Page Nos.</u>
A-5/DKS/DCK/08-09/14	28, 31-34, 85

On scrutiny of the above documents seized it is seen that the above materials belongs to **M/s.Everglades**. I am satisfied that action u/s. 153C has to be initiated in the case of **M/s.Everglades** for the A.Y. 2007-08 Hence, issue notice u/s. 153C of I.T. Act, 1961.


DCIT CC 2(3), Bangalore

9. Learned DR also brought to our notice the decision of the Hon'ble Supreme Court in the case of Super Malls Pvt. Ltd., Vs. CIT Civil Appeal Nos.2006 and 2007/2020, judgment dated 05.03.2020 in which the Hon'ble Supreme Court, after referring to the decision of the Hon'ble Supreme Court in the case of Calcutta Knitwears (supra) observed as follows:

“6. This Court had an occasion to consider the scheme of Section 153C of the Act and the condition 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 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 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.

10. According to him, in the present case, the AO of the searched person and the AO of the other person i.e., person other than the searched person i.e., the assessee being one and the same, the satisfaction recorded by AO under section 153C of the Act to the effect that documents seized in the search belong to the assessee is sufficient compliance to the requirement of initiating proceedings under section 153C of the Act in the case of the assessee. He also drew attention to the decision of the Hon'ble Karnataka High Court in the case of Principal CIT Vs. GMR Energy Ltd., IT Appeal No.358/2018 dated 08.01.2019 wherein it was held that for initiating proceedings under section 153A of the Act, what is required is a search under section 132 of the Act and not detection of undisclosed income during search.

11. Learned Counsel for the assessee on the other hand submitted that the satisfaction note does not disclose as to how the material found in the course of search of Shri. M. Krishna belongs to the assessee and therefore the satisfaction required for initiating proceedings under section 153C of the Act does not exist. He also submitted that the impugned addition made in the Order of Assessment under section 153C of the Act was not based on any seized material but only based on

evidence already available on record of assessment and therefore addition was not warranted. We may observe that this submission of the learned Counsel for the assessee is beyond the scope of the present proceedings. The addition made on merits has already been confirmed by this Tribunal and the Hon'ble High Court has remanded the case for the limited purpose of examining the existence of satisfaction for initiation of proceedings under section 153C of the Act. This argument of the learned Counsel for the assessee is therefore beyond the scope of present proceedings.

12. Learned Counsel for the assessee submitted that proceedings under section 153C of the Act can be initiated only if incriminating material is found in the case of a searched person belonging to the other person against whom proceedings under section 153C of the Act are sought to be initiated. It was his submission that the satisfaction note should reflect satisfaction that undisclosed income emanates from seized documents. In this regard, he placed strong reliance on the decision of the Hon'ble Karnataka High Court in the case of IBC Knowledge Park Pvt. Ltd., (2016) 69 taxmann.com 108 (Karnataka). Our attention was drawn to the following paragraph of the aforesaid order.

SI No	Reference to para & page no.	Conclusions(Emphasis added)
1	Substantial question of Law No.(b) in para 3	<i>Whether the Tribunal was correct that the assessment under section 153C was valid despite there being no satisfaction recorded that the documents found during the search on 17.06.2008 were incriminating in Nature and prima facie represented undisclosed income?</i>

2	Para 56	<p>The Hon'ble HC answered the above as under:</p> <p><i>We answer substantial question of law number 2 was not correct in holding that the assessment under section 153C was valid Despite there being no satisfaction recorded to the effect that the document found during the search on 17/06/2008 were incriminating in nature and Prima facie represented undisclosed income.</i></p>
3	Para 50	<p><i>Thus, where no material belonging to a third party is found during a search, but only an inference of undisclosed income is drawn during the course of enquiry, during search or during post-search enquiry, section 153C would have no application.</i></p> <p><i>Thus, the detection of incriminating material leading to an inference of undisclosed income is a sine qua non for invocation of section 153C of the Act.</i></p>
4	Para 55	<p><i>If the observations made by the Tribunal are considered in this regard, it is noted by the Tribunal that it is not necessary that satisfaction should be recorded that the documents or valuable assets found in the course of search showed undisclosed income. In view of the aforesaid discussion, we do not think such can be the correct position of law.</i></p>

13. It was the submission of the learned Counsel for the assessee that the satisfaction note produced by the Department before the Tribunal does not refer to any incriminating material revealing undisclosed income. Reference was also made to the decision of the Hon'ble Karnataka High Court in the case of Star PVG Exports (2019) 112 taxmann.com 163 (Karnataka) wherein it was held that addition in an Assessment under section 153C of the Act has to be based on incriminating material found during the course of search. Reference was also made to the decision of the Hon'ble Supreme Court in the case of Singhad Technical Society Civil Appeal No.11080/2017. According to the learned Counsel for the assessee, the Hon'ble Supreme Court has taken a view that as per provisions of section 153C of the Act, incriminating material which is found in a search had to pertain to the Assessment Year in respect of which an addition is made and this was a jurisdictional fact which should exist before making any impugned addition under section 153C of the Act.

14. We have examined the satisfaction note filed by the Department. From a perusal of the same, we find that the AO has recorded that the seized document referred to in the satisfaction note belongs to the assessee. The assessee has not denied this fact at any point of time. We may also point out that in the proceedings before the AO, CIT(A) and the Tribunal, the assessee never raised the issue with regard to non-existence of the required satisfaction for initiating proceedings under section 153C of the Act. As we have already seen the decision of the Hon'ble Supreme Court rendered in the case of Supermall Pvt. Ltd., (supra), settles the issue with regard to initiation of proceedings under section 153C of the Act. The aforesaid decision considers the earlier decision of the Supreme Court in the case of Calcutta Knit Wears (supra). The decision rendered by the Hon'ble Supreme Court therefore clarifies the legal position with regard to the initiation of proceedings under section 153C of the Act. The decision rendered by the Hon'ble jurisdictional

High Court in the case of IBC Knowledge Park Pvt. Ltd.,(supra) should therefore be considered as overruled by implication, in cases where the AO of the searched person and the other person is one and the same. The decision rendered in the case of Singhad Education Society (supra) does not lay down that the documents seized should be incriminating and should disclose undisclosed income before a valid proceedings can be commenced under section 153C of the Act. We may mention that there is a difference between addition made on the basis of the documents found in the course of search and initiating proceedings under section 153C of the Act on the basis of documents found in the search. While it may be true that for making an addition under section 153C of the Act, the documents found in the course of search should be incriminating, there is no such requirement for initiating proceedings under section 153C of the Act. It is seen from the judgment of the Hon'ble Supreme Court in the case of Super Mall Pvt. Ltd.,(supra) that if in case the AO of the searched person and the other person is the same, it is sufficient if the AO notes in the satisfaction note that the documents seized from the searched person belonged to the other person. Once note says so, then the requirement of section 153C of the Act is fulfilled. In our opinion, the satisfaction note recorded by the AO and extracted in the earlier part of this order sufficiently complies with the satisfaction required for initiation of proceedings under section 153C of the Act.

15. The learned counsel for the Assessee has placed reliance on a decision of the ITAT Bangalore Bench in the case of Sree Lakshmi Venkateshwara Minerals Vs. DCIT (2021) 123 taxmann.com 255 (Bangalore-Trib) in support of his contention that the satisfaction note should spell out the nature of the seized document and how the same prima facie should reveal undisclosed income. We have perused the said decision and we find that in the aforesaid decision, additions were deleted on the ground that the same were not based on incriminating seized material found in the

course of search. In paragraph-32 of the said order, the tribunal has made it very clear that the issue of validity of initiation of proceedings 153C of the Act is not being adjudicated. Moreover, the said case pertained to assessment years where the assessments stood concluded prior to the date of search, whereas in the present case, the assessment for the relevant AY was open assessment not having been concluded pursuant to the original return of income filed by the Assessee either by an order u/s.143(3) or by non issue of notice u/s.143(2) of the Act, within the time period prescribed for issue of such notice before the date of search. In this regard, we also notice that in the present case, the assessee filed return of income on 15.10.2007 and no order under section 143(3) of the Act was passed. The search in the case of Shri. N. Krishna based on which proceedings under section 153C of the Act were initiated against the assessee took place on 26.08.2008. The time limit for issue of notice under section 143(2) of the Act for Assessment Year 2007-08 was available to the AO till 30.09.2008. Since the search was conducted on 26.08.2008 in the case of Shri. N. Krishna, the proceedings against the assessee would not be hit by the proviso to section 153A of the Act and the proceedings can be initiated and additions can be made even in the absence of any incriminating material because such proceedings will be considered as abated proceedings in which scope of making additions will be much greater. For the reasons given above, we are of the view that the issue with regard to validity of initiation of proceedings under section 153C of the Act has to be held in favour of the Revenue. We are therefore of the view that the issue remanded by the Hon'ble High Court for consideration by this Tribunal has to be decided against the assessee and it is held that there existed proper satisfaction for the AO to proceed against the assessee under section 153C of the Act. The issue is accordingly decided in favour of the Department and against the assessee.

16. In the result, appeal by the Assessee is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(B. R. BASKARAN)
Accountant Member

Sd/-
(N. V. VASUDEVAN)
Vice President

Bangalore,

Dated : 23.07.2021.

/NS/*

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.