

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD 'A' BENCH : Hyderabad**

**(Through Video Conference)**

**Before Smt. P. MADHAVI DEVI, Judicial Member  
and  
Shri L.P. SAHU, Accountant Member**

**ITA No. 489/Hyd./2020  
Assessment Year: 2006-07**

ACIT, Central Circle 3(1)  
Hyderabad

vs. M/s Aashi Plywood Industries  
Hyderabad

[PAN: AADFP9625M]

**(Appellant)**

**(Respondent)**

**For Revenue:** Sri Waseem-Ur-Rahman, D.R.  
**For Assessee:** Shri P. Murali Mohana Rao, AR.

**Date of Hearing** : 03/08/2021  
**Date of Pronouncement** : 30/08/2021

**ORDER**

**PER L.P. SAHU, A.M.**

This appeal of Revenue is directed against the order of the CIT(A)-12, Hyderabad dated 13.03.2020 pertaining to A.Y. 2006-07.

At the outset it is brought to our notice that the appeal is filed with a delay of 08 days. Assessee filed petition for condonation of delay stating delay caused due to Covid Pandemic, and requested for condonation of delay. We see the delay is neither deliberate nor wilful or intentional, and the same is condoned to which the D.R. has no objection.

2. Facts of the case in brief are that a search and seizure operation u/s 132 of the Act was carried out in the case of M/s MBS Jewellers Pvt. Ltd., and its group of cases on 11.03.2010. During the course of search certain

documents were found and seized relating to M/s Aashi Plywood Industries. Accordingly, notice u/s 153C was issued to the assessee on 22.11.2011. In response to notice, assessee filed return of income on 15<sup>th</sup> December, 2011 declaring total income of Rs. 1,78,796/-. Accordingly, other statutory notices were issued to the assessee. During the course of assessment proceedings from the balance sheet it was observed that there was total unsecured loan of Rs. 2,81,26,000/- out of which three unsecured loan creditors were discussed in AY 2004-05, therefore, the remaining balance of Rs.1,83,51,000/- was added to the income of assessee by holding that the assessee did not satisfy the conditions stipulated in sec.68 of the Act.

3. Being aggrieved assessee went in appeal before the CIT(A) and the CIT(A) by following the decisions in assessee's own case for AY 2007-08 on identical reasons recorded in ITA 0080/2015-16 order dated 25<sup>th</sup> May, 2017 allowed the appeal of the assessee by holding as under.

*"5.2 I have carefully considered the submissions made by the appellant as well as the observations of the AO in the impugned order. The copy of the order sheet recorded by the AO has also been called for, and it is seen that the reasons recorded in the case for issuing notice u/s.153C are as under:*

*" .....Search- & Seizure operations were conducted in the MBS Jewellers Pvt. Ltd., group of cases on 11.03.2010. During the course of search, books of accounts, documents & other loose sheets were found and seized. As per the seized documents, pages 18 to 23 of Annexure A/PCG/Res/01 relates to M/s.Aashi Plywood Industries proceedings u/ s. 153C is initiated.*

*Put up notices u/s.153C & 142(1) of the IT Act."*

*5.3 From this noting, it is seen that the proceedings under section 153C are initiated only because there were certain material documents seized during the course of search in the case of MBS Jewellers P. Ltd., and certain pages therein related to the assessee herein. There is no satisfaction recorded by the A.O. of MBS Jewellers P. Ltd., that the income mentioned in the documents belongs to the assessee herein.*

*5.3.1 Similar issue has been decided by my predecessor in the assessee's own case for the AY 2007-08 on identical reasons recorded in ITA no. 0080/2015-16, dated 25-05-2017 wherein the relevant portion of the decision is reproduced as under:*

"5.2 I have carefully considered the submissions made by the appellant as well as the observations of the AO in the impugned order.

The copy of the order sheet recorded by the AO has also been called for, and it is seen that the reasons recorded in the case for issuing notice u/s.153C are as under:

" Search & Seizure operation conducted in the MBS Jewellers Pvt. Ltd., group of cases. During the course of search, books of accounts, documents & other loose sheets were found and seized. As per the seized documents, pages 03 to 09 of Annexure A/PCG/Res/01 relates to Mrs. Reena Peterson w/o. R. Peterson proceedings u/s. 153C is initiated.

Put up notices u/s.153C & 142(1) of the IT Act.

5.3 From this noting, it is seen that the proceedings under section 153C are initiated only because there were certain material documents seized during the course of search in the case of MBS Jewellers P. Ltd., and certain pages therein related to the assessee herein. There is no satisfaction recorded by the A.D. in the case of MBS Jewellers P. t.td., that the income mentioned in the documents belongs to the assessee herein.

The Hon'ble A.P. High Court in the case of CIT-III, Hyderabad vs. Shettys Pharmaceuticals & Biologicals Ltd., (supra) has held as under:

"Held: It is clear from section 153C that firstly satisfaction has to be recorded by the Assessing Officer who conducted search, 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. Thereafter, the Assessing Officer having jurisdiction over third party on receipt of the seized material or books of account or document being handed over to him shall record his own satisfaction after examining the same independently without being influenced by the satisfaction of the seizing officer. In other words it is not an automatic action. Satisfaction of two officers is missing. In this connection the text of the order of the Assessing Officer is that a search and seizure operation under section 132 was carried out in the group case of TYG and others on 25-3-2010. During the course of search operation documents belonging to the assessee have been seized. Hence, it is considered to initiate proceeding under section 153C. [Para 6]

The aforesaid section mandates recording of satisfaction of the Assessing Officer(s) is a pre-condition for invoking jurisdiction and it is not a mere formality because recording of satisfaction postulates application of mind consciously as the documents seized must be belonging to the any other person other than the person referred to in section 153A.

*It was contended that the same Assessing Officer was involved in the matter. This fact does not dispense with above requirement. It is settled position of law that when a thing is to be done in one particular manner under law this has to be done in that manner alone and not other way. The Tribunal has correctly followed the principle. There was no element of law to be decided. [Para 7]*

*The appeal was dismissed accordingly. [para 9]*

*Respectfully following the judgment of the jurisdictional High Court on similar set of facts, I have no hesitation in holding that the A. O. of the person searched has not recorded any satisfaction that the income relatable to the seized material belongs to the assessee herein. Therefore, the assessment is quashed".*

*6.0. Respectfully following the decision of the Ld.CIT(A) in assessee's own case for AY 2007-08, under identical circumstances, the appeal of the appellant for 2006-07 is allowed.*

4. Being aggrieved with the order of the CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds.

*"1. The Id.CIT(A) erred both in law and on facts of the case in allowing relief to the assessee.*

*2. The Ld.CIT(A) erred in not following the Hon'ble Supreme Court of India's decision in the case of M/s. Super Malls Private Limited Vs Principal Commissioner of Income Tax 8, New Delhi vide Civil Appeal Nos. 2006-2007 of 2020, wherein it has held that "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".*

*3. The Ld.CIT(A) ought to have appreciated the fact that the satisfaction note by the Assessing officer clearly states that the documents so seized belonged to the appellant.*

*4. The Ld. CIT(A) erred in not appreciating the fact that the Assessing officer for the searched person and other person is one and the same fully complied with provisions of section 153C of the IT Act.*

*5. The Ld.CIT(A) ought to have appreciated the fact that the incriminating material seized during the course of search is very much reflected in the satisfaction note recorded in respect of the other person.*

*6. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.*

5. Ld.DR relied on the order of the AO and submitted that the CIT(A) was not justified to allow the appeal of the assessee by holding that there was no satisfaction recorded while initiating proceedings u/s 153C is totally wrong and he drew our attention to the copy of order of this bench recorded by AO. Accordingly he submitted that there was proper satisfaction recorded by the AO while initiating proceedings u/s 153C of the Act.

6. On the other hand ld.AR relied on the order of the CIT(A) and submitted that the CIT(A) has rightly followed the decision in assessee's own case for the AY 2007-08. He has filed paper book containing 71 pages. Accordingly there was no proper satisfaction recorded by the jurisdictional AO and further submitted that the appeal filed for the AY 2007-08 has been dismissed by the hon'ble tribunal for low tax effect and he also drew our attention on the order which is referred by the ld.DR as satisfaction note and submitted that it is not proper satisfaction, therefore, the CIT(A) has rightly allowed the appeal of the assessee.

7. After hearing both the sides and orders of authorities below, we observe that the impugned issue has been decided by the CIT(A) by holding that there is no satisfaction recorded by the AO while initiating proceedings u/s 153C of the Act. While going through the paper book page no.64 which was a copy of the order sheet which is as under.

*" .....Search- & Seizure operations were conducted in the MBS Jewellers Pvt. Ltd., group of cases on 11.03.2010. During the course of search, books of accounts, documents & other loose sheets were found and seized. As per the seized documents, pages 18 to 23 of Annexure A/PCG/Res/01 relates to M/s.Aashi Plywood Industries proceedings u/ s. 153C is initiated.*

*Put up notices u/s.153C & 142(1) of the IT Act."*

On perusal of the above, this is not a satisfaction note which should be recorded by the jurisdictional AO of the searched person. It is just a copy of the order sheet. In the above order sheet we also observe that there is no signature of the AO and the self-satisfaction of the AO is also not found.

7.1. On going through the judgements relied by Id.AR placed at pages 65 to 71 of paper book in ITA 1082/Hyd/2014 and others in group cases, a similar issue has been decided by the Coordinate bench of this tribunal in assessee's group cases in favour of assessee which is as under.

*"2. In the appeals against the assessment order under section 143(3) read with section 153C i.e., in ITA.Nos.1082/Hyd/2014 to ITA.No.1087/Hyd/2014 and ITA.No.1091/Hyd/2014, the assesseees have raised grounds of appeal against the additions confirmed by the Ld. CIT(A) and also have raised additional grounds of appeal challenging the validity of the proceedings under section 153C of the I.T. Act. Ground Nos. 16 and 17 are against the invocation of the provisions of section 153C of the I.T. Act without recording the satisfaction that the income belongs to the assesseees herein. In support of Ground No.16, the assessee has placed reliance upon the decision of the Hon'ble A.P. High Court in the case of CITIII, Hyderabad vs. Shettys Pharmaceuticals & Biologicals Ltd., (2015) 57 taxmann.com 282 (A.P.) in ground No.17. Since these grounds are on legal issues and does not require any verification of fresh facts, respectfully following the judgment of the Hon'ble Supreme Court in the case of NTPC reported in 229 ITR 383 (SC), we admit the additional grounds of appeal raised by the assessee. 2.1. The Ld. Counsel for the assessee, has also filed the charts in all the above cases against the assessment orders under section 143(3) read with section 153C of the Act reproducing the order sheet entries in the case of all these assesseees for invoking the provisions of section 153C of the I.T. Act. As seen in the case of Smt. Reena Peterson, the order sheet entry is as follows :*

*"Mrs. Reena Peterson, PAN APOPP0610C, Asst. Year 2006-07  
w/o. Peterson  
# 14/240, Mirjalguda Malkajgiri  
Hyderabad.*

*Search & Seizure operations were conducted in the MBS Jewellers Pvt. Ltd., group of cases on 11.03.2010. During the course of search, books of accounts, documents & other loose sheets were found and seized. As per the seized documents, pages 03 to 09 of Annexure A/PCG/Res/01 relates to Mrs. Reena Peterson w/o. R. Peterson proceedings u/s.153C is initiated. Put up Notices u/s.153C & 142(1) of the IT Act."*

*3. Similar order sheet entries are also made in the case of other assesseees as well. From these notings, it is seen that the proceedings under section 153C are initiated only because there were certain material documents seized during the course of search in the case of MBS Jewellers P. Ltd., and certain pages therein relate to the assesseees herein. There is no satisfaction recorded by the A.O. in*

*the case of MBS Jewellers P. Ltd., that the income mentioned in the documents belongs to the assessee herein. The Hon'ble A.P. High Court in the case of CIT-III, Hyderabad vs. Shettys Pharmaceuticals & Biologicals Ltd., (supra) has held as under :*

*“Held : It is clear from section 153C that firstly satisfaction has to be recorded by the Assessing Officer who conducted search, 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. Thereafter, the Assessing Officer having jurisdiction over third party on receipt of the seized material or books of account or document being handed over to him shall record his own satisfaction after examining the same independently without being influenced by the satisfaction of the seizing officer. In other words it is not an automatic action. Satisfaction of two officers is missing. In this connection the text of the order of the Assessing Officer is that a search and seizure operation under section 132 was carried out in the group case of TYG and others on 25-3-2010. During the course of search operation documents belonging to the assessee have been seized. Hence, it is considered to initiate proceeding under section 153C. [Para 6]*

*The aforesaid section mandates recording of satisfaction of the Assessing Officer(s) is a precondition for invoking jurisdiction and it is not a mere formality because recording of satisfaction postulates application of mind consciously as the documents seized must be belonging to the any other person other than the person referred to in section 153A.*

*It was contended that the same Assessing Officer was involved in the matter. This fact does not dispense with above requirement. It is settled position of law that when a thing is to be done in one particular manner under law this has to be done in that manner alone and not other way. The Tribunal has correctly followed the principle. There was no element of law to be decided. [Para 7].*

*The appeal was dismissed accordingly. [Para 9]”*

4. *Respectfully following the judgment of the jurisdictional High Court on similar set of facts, we have no hesitation in holding that the A.O. of the person searched has not recorded any satisfaction that the income relatable to the seized material belongs to the assessee herein. Therefore, the assessments are quashed.”*

7.2. Respectfully following the above judgements, we dismiss the appeal of the Revenue.

5. In the result, Revenue's appeal is dismissed.

Order pronounced on 30/08/2021.

**Sd/-**  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(L.P. SAHU)**  
**ACCOUNTANT MEMBER**

Dated: 30<sup>th</sup> August, 2021

\*gmv

Copy of Order forwarded to:

1. ACIT, Central Circle 3(1) , Hyd.
2. M/s Aashi Plywood Industries, Plot nos. 5,6,7,18,19&20, IDA Patancheru, Hyderabad 502 319, Telangana
3. CIT(A)-12, Hyderabad
4. Pr.CIT-Central, Hyderabad.
5. D.R. ITAT Hyderabad
6. Guard File