

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.7382/Del./2017
(ASSESSMENT YEAR : 2009-10)**

ACIT, Central Circle 16,
New Delhi.

vs. Smt. Vinita Chaurasia,
575, Double Storey Flats,
New Rajendra Nagar,
New Delhi – 110 060.

(PAN : AAFPC4589D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.S. Singhvi, CA

REVENUE BY : Shri F.R. Meena, Senior DR

Date of Hearing : 15.10.2020

Date of Order : 22.10.2020

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, ACIT, Central Circle 16, New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 26.09.2017 passed by the Commissioner of Income-tax (Appeals)-XXVI, New Delhi qua the assessment year 2009-10 on the grounds inter alia that :-

“Whether the Id. CIT(A) is justified in deletion the addition of Rs.4,00,00,000/- on the basis that Hon’ble High Court of Delhi as well as Hon’ble ITAT in assessee’s own case for A.Y.2010-11 has held that initiation of assessment proceedings u/s 153C was invalid, ignoring the fact that after the amendment in section 153C, which is clarificatory and curative and thus retrospective in nature, the requirement, is that the documents must pertain to the assessee and must have a bearing on the income of the assessee. Also, Department is in process of filing of SLP against the order of Delhi High Court in ITA No. 1004/2015 & 1005/2015, in assessee’s case for AY 2010-11.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : subsequent to the search and seizure operation carried out on Chaurasia Group on 29.04.2008, assessee filed return for various years u/s 153A of the Income-tax Act, 1961 (for short ‘the Act’) and regular assessment was framed at the income of Rs.1,61,49,687/- u/s 153C/143(3) of the Act. Subsequent thereto, search and seizure operation at the premises of Lalit Modi, a third party, was carried out on 19.06.2009 and a document No. Annexure A-1, Page 5, was found and seized on the basis of which proceedings u/s 153C were initiated and accordingly assessment was framed u/s 153C/143 (3) of the Act at the income of Rs.161,49,687/-.

3. On the basis of seized document, Annexure A-1, Page 5, from the premises of Lalit Modi, an addition of Rs.19,02,68,289/- was made for AY 2010-11 which was confirmed by the Id. CIT (A), however he has also enhanced the assessed income by

Rs.5,50,72,700/-. In AY 2010-11, ld. CIT (A) issued directions to the AO to assess a sum of Rs.4 crores in the hands of assessee for AY 2009-10 on the basis of same seized document which was qua property purchased by the assessee in Vasant Square Mall on 13.05.2009 from Suncity Projects (P) Ltd. out of which Rs.4 crores was allegedly received by the assessee in AY 2009-10. Consequently, AO made addition of Rs.4 crores and framed the assessment u/s 147/143(3) of the Act at an income of Rs.5,61,49,690/-.

4, Assessee carried the matter before the ld. CIT (A) by way of filing the appeal who has deleted the addition of Rs.4 crores by following the order passed by the ITAT and Hon'ble Delhi High Court by allowing the appeal. Feeling aggrieved by the order passed by the ld. CIT (A), the Revenue has come up before the Tribunal by way of filing the present appeal.

5. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Undisputedly, ld. CIT (A) has deleted the addition of Rs.4 crores by following the decisions rendered by the coordinate Bench of the Tribunal in **ITA No.3343/Del/2013 & Ors. vide**

order dated 29.05.2015, confirmed by the Hon'ble Delhi High Court in assessee's own case for AY 2010-11 reported in (2017) 394 ITR 758 (Delhi), wherein the same document Annexure A-1, Page 5, is held to be of Lalit Modi and not of the assessee in this case.

7. Coordinate Bench of the Tribunal vide order dated 29.05.2015 (supra) passed in assessee's own case for AY 2010-11 held that, "*the document, Annexure A-1, Page 5, belongs to Lalit Modi and the assessee, Vinita Chaurasia, has no concern with the same*" by returning following findings :-

"33. Turning to the facts of the present case, we note that it is not the case of the revenue that it is not the case of the revenue that the person searched Shri Lalit Modi had expressly disclaimed or disowned Annexure A1 as belonging to him. In view of ratio laid down by Hon'ble Jurisdictional High Court in the case ITA No.3551 & 3343/De1/2013 329/Del/2014 Asstt.Year: 2010-1134 of Pepsico India Holdings Pvt. Ltd. vs ACIT (supra) unless and until it is established that the document does not belong to the searched person, the provisions of section 153C of the Act do not get attracted because the language used by the legislature in section 153C of the Act mandates that where the AO is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong or belonged to a person other than the person referred to in section 153 A of the Act. Their lordships speaking for Hon'ble High Court of Delhi further held that it is necessary before the provisions of section 153C of the Act can be invoked that the AO of the searched person must be satisfied that the seized material, (which includes documents) does not belong to person searched and the impugned satisfaction note dated 30.6.2011, there is nothing to indicate that the seized document Annexure A-1 does not belong to Shri Lalit Modi and we also note that there is no disclaimer on the part of Shri Lalit Modi with regard to this document Annexure A-1.

34. We further hold that finding of a document in possession of a searched person does not necessarily mean that the same

"belongs to" or "belonged to" the other person whose name is mentioned therein. We have no hesitation to hold that unless it is established that the document in question does not belong to the searched person i.e. Shri Lalit Modi the question of invoking section 153C of the Act does not arise. As per provisions of section 153C of the Act and ratio ITA NO.3551 & 3343/Del/2013 329/De1/2014 Asstt.Year: 2010-11."

8. Then this issue was examined at length by the Hon'ble Delhi High Court in the assessee's own case (supra) and confirmed the findings as returned by the Tribunal that document, Annexure A-1, Page 5, belongs to Lalit Modi and on the basis of the same, proceedings u/s 153C cannot be initiated against the assessee by returning the following findings :-

"15. It requires to be first noted that the document relied upon by the Revenue (Annexure A-1 page 5) to sustain the additions made to the assessable income of the Respondent has not been shown to 'belong' to the Assessee. In arriving at this conclusion, the ITAT followed the decision of this Court in Pepsico India Holding Ltd. v. ACIT (2015) 370 ITR 295 (Del). Mr. Shivpuri on the other hand submitted that there have been subsequent decisions of the DBs of this Court which have explained the aforementioned decision and in particular the phrase „belongs to" occurring in Section 153C of the Act. He placed particular reliance on the decisions in Principal Commissioner of Income-tax-8 v. Super Malls (P.) Ltd. [2017] 291 CTR 142 (Del), Principal Commissioner of Income Tax, Circle-II v. Satkar Fincap (decision dated 16th November, 2016 in ITA No. 82 of 2016) and Principal Commissioner of Income Tax (Central)-2 v. Nau Nidh Overseas Pvt. Ltd. (decision dated 3rd February, 2017 in ITA No. 58/2017).

16. At the outset, it requires to be noticed that the search in the present case took place on 19th June 2009 i.e., prior to the amendment in Section 153 C (1) of the Act with effect from 1st June 2015. Therefore, it is not open to the Revenue to seek to point out that the document in question, "pertains to" or "relates to" the Assessee. The example given by this Court in Pepsico India Holding Ltd. (supra) is that of a photocopy of a sale deed which contains the names of the vendor and the vendee being found with the broker. The mere fact that such photocopy of the sale deed was found with the broker would not lead to the

conclusion that such a document 'belongs to' either the vendor or the vendee. While in the present case the AO in his satisfaction note does record that the document in question does not belong to Mr. Lalit Modi i.e. the searched person, he does not indicate on what basis he proceeds as if the document belonged to the Assessee.

17. In this context, it requires to be noticed that a very detailed interrogation of Mr. Lalit Modi in relation to this document took place, the relevant portions of which have been extracted by the ITAT in the impugned order. Question No. 25 posed to Mr Modi and his answer thereto reads as under:

“Q.25. I am showing you page no. 5 to 8 of Annexure A-1, please explain the contents.

Ans: Pages no. 5 to 8 are rough planning on page 5 proposal from Vasant Square Mall for sale was received and the deal did not materialise through me.”

18. The above statement was made in the course of the search. In the assessment proceedings in the case of Suncity Project Ltd. allegedly involving Mr. Lalit Modi, a specific question was put to him and his answer thereto was recorded on oath on 15th March, 2013 under Section 131 of the Act reads as under:

“Q.3. During the course of search proceedings at your residence at L-48, Lajpat Nagar-II, New Delhi, loose papers were found and seized vide annexure A-1. I am showing you page No.5 of the said Annexure A-1. Kindly explain the transactions mentioned in it.

Ans. The Chaurasia family is known to me. At the time of execution of sale deed in favour of Mrs. Vinita Chaurasia by M/s Suncity Projects Ltd. in respect of commercial space purchased in Vasant Square Mall, I was present as a witness and signed on the documents Conveying titles as a witness before sub registrar. It happened somewhere in May 2009. Since I am in real estate business, incidentally after coming back from execution of the said sale deed, I was approached by a broker at my residence making enquiry about availability of commercial space in Vasant Square Mall at Vasant Kunj, New Delhi. Since I accompanied Mrs. Vinita Chaurasia who has purchased commercial space at Vasant Square Mali, I telephoned her and got the details of cost etc. of her commercial space in Vasant Square Mall and told these facts to the said brokers. After few days, the broker came to my residence and delivered a proposal, which is nothing but

the same document shown to me as page No. 5 of Annexure A-1. The said proposal remained with me and before the same could be forwarded to Mrs. Vinita Chaurasia, a search and seizure operation by the Income Tax Department at my residence on 19.06.2009, during which the above mentioned paper containing the proposal was found and seized. Since it could not be delivered to Smt. Vinita Chaurasia, the proposal was not acted upon, hence, no transaction took place on the basis of the said page seized at page No. 5 of Annexure A-1. Had the said proposal materialized, I would have earned brokerage income. Since no such transaction took place, no commission was earned by me.”

19. *What is evident from the above reply of Mr. Lalit Modi is that even according to him the document in question did not belong to the Assessee. He appears to suggest that the document was a proposal delivered at his residence by some other broker and which proposal remained with him before it could be forwarded to the Assessee. In the meanwhile, the search and seizure operation took place.*

20. *There is no material whatsoever placed on record by the Revenue before the CIT (A) or the ITAT to justify the invocation of Section 153C of the Act against the Assessee on the basis that the above document belonged to her.”*

9. SLP filed by the Revenue against the judgment passed by the Hon'ble Delhi High Court and coordinate Bench of the Tribunal has also been dismissed by the Hon'ble Supreme Court in case cited as **Pr. CIT (Central 2), New Delhi vs. Vinita Chaurasia (2018) 259 taxman 88 (SC)**.

10. In view of what has been discussed above, we are of the considered view that when Annexure A-1, Page 5, which is the very basis of addition made by the AO in this case, has been held to be belonging to Lalit Modi, the very initiation of proceedings u/s 153C on the basis of the same against assessee are held to be not

sustainable by the Hon'ble Delhi High Court. Ld. CIT (A) has rightly deleted the addition made by the AO following the order passed by the Tribunal in assessee's own case (supra) and confirmed by Hon'ble Delhi High Court and Hon'ble Supreme Court. So, finding no illegality or perversity in the impugned order passed by the ld. CIT (A), present appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 22nd day of October, 2020.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 22nd day of October, 2020
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXVI, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**