

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वरुआरएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.532, 533, 534 & 535/Viz/2019

(निर्धारणवर्ष/ AYs : 2011-12, 2009-10, 2012-13 & 2013-14)

Palla Simhachalam (HUF),
Visakhapatnam.
PAN: AALHP 3054 Q

Vs. Assistant Commissioner of
Income Tax,
Circle-5(1),
Visakhapatnam.

(अपीलार्थी/ Appellant)

(प्रत्यार्थी/ Respondent)

अपीलार्थकीओरसे/ Appellant by

: Sri I. Kama Sastry, CA

प्रत्यार्थकीओरसे/ Respondent by

: Sri MN Murthy Naik, CIT-DR

सुनवाईकीतारीख/ Date of Hearing

: 04/07/2022

घोषणाकीतारीख/Date of

: 22/08/2022

Pronouncement

O R D E R

PER S. BALAKRISHNAN, Accountant Member :

These appeals filed by the assessee are directed against the order of the Ld. Commissioner of Income Tax (Appeals)-9, Hyderabad [the Ld. CIT(A)] in ITA Nos. 10482, 10483, 10484 & 10490/CIT(A)-9/Hyd/2018-19, dated 23rd July, 2019 arising out

of the order passed U/s. 153C of the Income Tax Act, 1961 [the Act].

2. Brief facts of the case are that a search and seizure operations u/s. 132 of the Act was conducted in the residential premises of Palla Sankara Rao on 14/03/2014 and a prohibitory order was issued in respect of one almirah. The prohibitory order was lifted on 11/4/2014 and the search was completed on 11/4/2014. On the basis of the material from almirah, a notice u/s. 153C was issued on 05/01/2015 by the ACIT, Circle-5(1), Visakhapatnam to the assessee. The assessee filed its return of income u/s. 153C admitting a total income of Rs.8,34,520/-. Subsequently, the case was selected for scrutiny and statutory notices u/s. 143(2) and 142(1) were issued on the assessee. During the course of assessment proceedings the assessee's representative submitted that the transactions in the name of Sri Palla Sankara Rao unearthed during the course of search were admitted in the hands of Palla Simhachalam (HUF) and accordingly the AO based on the information completed the assessment determining the total income at Rs. 12,34,450/- after obtaining prior approval from the JCIT, Range-5, Visakhapatnam u/s. 153D of the Act. Aggrieved by the order of the Ld. AO,

assessee filed an appeal before the Ld. CIT (A). The Ld. CIT(A), while disposing off the appeal by way of consolidated order, dismissed the appeals and uphold the order of the Ld. AO. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

3. The assessee has raised the common grounds in all the four appeals from AY 2009-10, 2011-12, 2012-13 and 2013-14 and they are extracted herein below for reference:

- “1. The assumption of jurisdiction by the Ld. AO is bad in law for the reason that the notice issued u/s. 153C is not in conformity with the requirements of section 153C except mentioning in the heading that the notice is issued u/s. 153C.*
- 2. The Ld. CIT(A) is not justified in confirming the taxing of rent received from leasing of house property under the head income from other sources instead of under the head income from house property.*
- 3. All the above grounds of appeal are mutually exclusive and without prejudice to one another.*
- 4. The appellant craves leave to add to, amend, alter, delete all or any of the above grounds of appeal.”*

4. The Ld. Authorized Representative [Ld. AR] before us raised additional ground as below:

“On the facts and in the circumstances of the case and in law the assumption of jurisdiction by the Ld. AO U/s. 153C is bad in law in the absence of recording of

satisfaction as mandated by law. Therefore, the order passed by him U/s. 153C r.w.s 143(3) is null and void being without jurisdiction.”

5. Before adjudicating the other grounds, we first take up the additional ground raised by the Ld. AR. The Ld. AR vehemently argued that as per the provisions of section 153C of the Act the Assessing Officer should satisfy himself and record a satisfaction note before issuing notice u/s. 153C of the Act to the person other than the searched person. The Ld. AR further submitted that even though the searched persons has admitted the income in the hands of the assessee, it is mandatory as held by various courts that a satisfaction must be recorded by the AO. The Ld. AR further submitted that the Ld. AO cannot assume jurisdiction merely by consent or waiver made by the assessee. The Ld. AR also pointed out that the assessee has addressed letter dated 21/11/2018, 2/8/2019, 10/02/2020 and again on 19/02/2020 requesting the ACIT, Circle-5(1), Visakhapatnam being the Assessing Officer to provide copies of the satisfaction note recorded by him U/s. 153C of the Act. The Ld. AR submitted that the satisfaction note was never provided to the assessee inspite of our several repeated requests. Further, the Ld. AR also submitted that the notice U/s. 153C was issued on the assessee has also not specified the satisfaction note recorded by the AO of

the searched person. The Ld. AR relied on the decision rendered in the case of CIT vs. Calcutta Knitwears [2014] 223 Taxman 0115 (SC). The Ld. AR also further placed reliance on the Circular No. 24/2015, dated 31/12/2015 wherein a clarificatory circular was issued by the Central Board of Direct Taxes [CBDT] based on the outcome of the Hon'ble Supreme Court decision in the case of CIT vs. Calcutta Knitwears (supra). The Ld. AR also relied on several case laws as submitted in the paper book.

Per contra, the Ld. Departmental Representative [Ld. DR] argued that the search was conducted in the month of March, 2014 on the individual Sri PallaSankara Rao wherein the searched person Sri PallaSankara Rao while recording the statement u/s. 131(1A) and submitted vide Q.No.3 that the undisclosed income belong to PallaSimhachalam(HUF). The Ld. DR further submitted that based on the voluntary admission by the searched person Sri PallaSankara Rao notice u/s. 153C was issued to PallaSimhachalam(HUF) by the AO since the AO being the same Assessing Officer for both the searched person and the assessee. Therefore, the Ld. AR pleaded that the satisfaction note need not be issued. The Ld. DR also submitted a letter from DCIT, Circle-3(1), Visakhapatnam stating that since the searched

person Sri PallaSankara Rao, himself has accepted the undisclosed transaction in the hands of PallaSimhachalam(HUF)it is clear that the AO is satisfied with the escapement of income in the hands of Palla Simhachalam (HUF) needs to be brought into tax by passing the order U/s. 153C of the Act. The Ld. DR also submitted that Palla Simhachalam (HUF) has never filed its return of income till date. The Ld. DR further submitted that a notice U/s. 153C is a general format which is being used by the Department to all the assessee. The Ld. DR relied on the decision of the Hon'ble Supreme Court in the case of Super Malls (P.) Ltd vs. Pr. CIT [2012] 115 taxmann.com 105 (SC).

6. We have heard both the sides and perused the material available on record and the orders of the Authorities below. Admitted facts are that the assessee has been issued notice u/s. 153C of the Act on the basis of the incriminating material found during the search and seizure operations in the residential premises of P. Sankara Rao. It was also admitted in the sworn in statement under oath u/s. 132(4) of the Act dated 14/3/2014 and 10/04/2014 that Sri P. Sankara Rao voluntarily disclosed the undisclosed income in the capacity of PallaSimhachalam (HUF). It is also observed that the AO of the assessee and the

searched party are the same. The argument of the Ld. DR that a separate satisfaction note is not required since the AO is the same for the assessee and the searched person, cannot be accepted. We extract below section 153C of the Act for the sake of reference:

153C. (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,—

- (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or
- (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates 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 notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A:

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which

search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

7. We also find from the letter dated 9/9/2021 by the DCIT, Circle-3(1), Visakhapatnam in F.No.DCIT/C-3(1)/VSP/Misc/2021-22, the Ld. AO has accepted the fact as follows:

“.....

.....On verification of the assessment folders, satisfaction recorded before issue notice U/s. 153C was not found as per the order sheet notings.

.....”

8. In the light of the above, we understand that satisfaction note was not recorded by the AO before issuing the notice U/s. 153C of the Act. From the reliance placed by the Ld. DR in the decision of the Hon'ble Supreme Court in the case of Super Malls (P.) Ltd (supra), it is seen from para 6.2 that a satisfaction note was recorded by the Assessing Officer and the question arose before the Supreme Court was whether there is sufficient compliance of section 153C or not with respect to satisfaction recorded by the AO? The Hon'ble Supreme Court has observed that in that case the Assessing Officer was satisfied and it was specifically mentioned that the books of account seized were belonging to the assessee-other person, and therefore concluded that it cannot be said that the mandatory satisfaction given u/s. 153C of the Act are not being complied with. In the instant case, inspite of repeated requests from the AR, the Revenue has not produced any satisfaction note either to the assessee or before us. Further, it is also noted from the letter of the DCIT, Circle-3(1), Visakhapatnam that the satisfaction recorded before the issue of notice U/s. 153C was not found as per the order sheet notings. The Circular No. 24/2015, dated 31/12/2015 relied on by the Ld. AR is reproduced below:

CIRCULAR NO. 24/2015

F.No.279/Misc./140 /2015/ITJ

Government of India
 Ministry of Finance
 Department of Revenue
 Central Board of Direct Taxes

New Delhi, 31st December, 2015**Subject: Recording of satisfaction note under section 158BD/153C of the Act - reg.-**

The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitwears in its detailed judgment in Civil Appeal No.3958 of 2014 dated 12.3.2014(available in NJRS at 2014-LL-0312-51) has laid down that for the purpose of Section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person u/s 158BD. The Hon'ble Court held that "*the satisfaction note could be prepared at any 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; or*
- (b) *in the course of the assessment proceedings under section 158BC of the Act; or*
- (c) *immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person. "*

3. Several High Courts have held that the provisions of section 153C of the Act are substantially similar/pari-materia to the provisions of section 158BD of the Act and therefore, the above guidelines of the Hon'ble SC, apply to proceedings u/s 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.

4. The guidelines of the Hon'ble Supreme Court as referred to 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 the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgement. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD /153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court.

9. From the plain reading of the above Circular, it is noticed in para 4 that even if the AO of the searched person and the other person is one and the same, then also AO is required to record the satisfaction, as held by the various Courts. In the instant case, no such material has been brought before us by the 1d. DR. In view of the above discussions, since the satisfaction was not recorded by the Assessing Officer before issue of notice U/s. 153C of the Act, we are of the considered view that the order passed by the Ld. CIT(A) U/s. 153C of the Act deserves to be set aside for all the impugned assessment years. It is ordered accordingly.

10. Since the additional ground raised by the assessee has been adjudicated, we are of the view that the other grounds raised by the assessee for all the AYs under consideration need not be adjudicated on merits and it becomes infructuous.

11. In the result, all the appeals of the assessee are allowed.

Pronounced in the open Court on the 22nd August, 2022.

Sd/-

(दुव्वरुआर. एलरेडी)
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)
(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated :22.08.2022

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-PallaSimhachalam (HUF), D.No. 9-1-177, Pentaiah Marg, Gajuwaka, Visakhapatnam, Andhra Pradesh – 530026.
2. राजस्व/The Revenue –Assistant Commissioner of Income Tax, Circle-5(1), Pratyakshakar Bhavan, MVP Colony, Visakhapatnam, Andhra Pradesh – 530017.
3. The Principal Commissioner of Income Tax-2, Visakhapatnam.
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax (Appeals)-9, Hyderabad.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाइल / Guard file

आदेशानुसार / BY ORDER



Sr. Private Secretary
ITAT, Visakhapatnam