

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 14.08.2014

+ WP (C) No.414 of 2014 & CM No.822 of 2014

PEPSICO INDIA HOLDINGS PRIVATE LIMITED ... Petitioner

Versus

**ASSISTANT COMMISSIONER
OF INCOME TAX & ANR**

... Respondents

WITH

WP (C) No.566 of 2014 & CM No.1149 of 2014

PEPSICO INDIA HOLDINGS PRIVATE LIMITED ... Petitioner

Versus

**ASSISTANT COMMISSIONER
OF INCOME TAX & ANR**

... Respondents

AND

+ WP (C) No.567 of 2014 & CM No.1150 of 2014

PEPSICO INDIA HOLDINGS PRIVATE LIMITED ... Petitioner

Versus

**ASSISTANT COMMISSIONER
OF INCOME TAX & ANR**

... Respondents

AND

+ WP (C) No.572 of 2014 & CM No.1156 of 2014

PEPSICO INDIA HOLDINGS PRIVATE LIMITED ... Petitioner

Versus

**ASSISTANT COMMISSIONER
OF INCOME TAX & ANR ...** Respondents

AND

+ **WP (C) No.573 of 2014 & CM No.1157 of 2014**

PEPSICO INDIA HOLDINGS PRIVATE LIMITED ... Petitioner

Versus

**ASSISTANT COMMISSIONER
OF INCOME TAX & ANR ...** Respondents

AND

+ **WP (C) No.574 of 2014 & CM No.1158 of 2014**

PEPSICO INDIA HOLDINGS PRIVATE LIMITED ... Petitioner

Versus

**ASSISTANT COMMISSIONER
OF INCOME TAX & ANR ...** Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Deepak Chopra, Ms Rashi Khanna &
Mr Harpreet Ajmani, Advs.

For the Respondents : Mr Rohit Madan, Adv.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE NAJMI WAZIRI

JUDGMENT

BADAR DURREZ AHMED, J. (ORAL)

1. These six (6) writ petitions raise a common issue and therefore the same are being decided together. The relevant Assessment Years are 2006-2007 to 2011-2012. By way of these writ petitions the petitioner (PepsiCo India Holdings Private Limited) has sought the quashing of the notices issued on 02.08.2013 under Section 153C of the Income Tax Act, 1961 (hereinafter referred to as the 'said Act').

2. A search and seizure operation under Section 132(1) of the said Act was conducted on 27.03.2012 on the Jaipuria Group. It is the case of the Revenue that during the said operation certain documents "belonging" to the petitioner were found. Consequently, the Assessing Officer of the Jaipuria Group prepared a Satisfaction Note dated 29.07.2013 to the effect that the documents mentioned therein belonged to the petitioner. It is thereafter that the Satisfaction Note as well as the said documents were symbolically handed over to the Assessing Officer of the petitioner. We use the expression "symbolically handed over" because of the fact that the Assessing Officer of the Jaipuria Group and the Assessing of the petitioner was one and the same person. It is thereafter that the said Assessing Officer issued notices to the petitioner, all dated 02.08.2013,

under Section 153C of the said Act seeking to reopen the assessments of the petitioner for the years 2006-2007 to 2011-2012 and to follow the procedure prescribed under Section 153A of the said Act.

3. In response to the said notices, the petitioner submitted its objections on 09.10.2013. Those objections were rejected by an order dated 02.12.2013 passed by the Assessing Officer. Pursuant thereto, the petitioner, being aggrieved by the action taken and proposed to be taken against the petitioner, has filed these writ petitions seeking the quashing of the said notices under Section 153C of the said Act.

4. Before we examine these writ petitions in detail it would be pertinent to point out that recently in the case of **Pepsi Foods Pvt. Ltd. Vs. Assistant Commissioner of Income Tax**, WP (C) No.415/2014 and other connected matters, this court had occasion to examine the very provisions which are under consideration in the matters before us. In the judgement delivered on 07.08.2014 in the case of **Pepsi Foods Pvt. Ltd.** (supra), after examining the provisions of Sections 153C, 132(4A)(i) & 292C(1)(i) of the said Act, this Court had observed as under:

“6. On a plain reading of Section 153C, it is evident that 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. It is only then that the

Assessing Officer of the searched person can handover such document to the Assessing Officer having jurisdiction over such other person (other than the searched person). Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or re-assess his income in accordance with the provisions of Section 153A. Therefore, before a notice under Section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is – after such satisfaction is arrived at – that the document is handed over to the Assessing Officer of the person to whom the said document “belongs”. In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to examine the provisions of presumptions as indicated above. Section 132(4A)(i) clearly stipulates that when inter alia any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in Section 292C(1)(i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or “satisfaction” that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of “satisfaction”.

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“11. It is evident from the above satisfaction note that apart from saying that the documents belonged to the petitioner and that the Assessing Officer is satisfied that it is a fit case for issuance of a notice under Section 153C, there is nothing which would indicate as to how the presumptions which are to be normally raised as indicated above, have been rebutted by the Assessing Officer.

Mere use or mention of the word “satisfaction” or the words “I am satisfied” in the order or the note would not meet the requirement of the concept of satisfaction as used in Section 153C of the said Act. The satisfaction note itself must display the reasons or basis for the conclusion that the Assessing Officer of the searched person is satisfied that the seized documents belong to a person other than the searched person. We are afraid, that going through the contents of the satisfaction note, we are unable to discern any “satisfaction” of the kind required under Section 153C of the said Act.”

5. While coming to the aforesaid conclusions the court had also examined the decisions which had been cited on behalf of the Revenue and which are, once again, being reiterated by the learned counsel for the Revenue before us. Those decisions are **Kamleshbhai Dharamshibhai Patel v. Commissioner of Income Tax**: (2013) 214 Taxman 558; **Commissioner of Income Tax v. Classic Enterprises**: (2013) 358 ITR 465 and a decision of a Division Bench of this Court in **SSP Aviation Ltd. v. Deputy Commissioner of Income Tax**: (2012) 346 ITR 177. This Court had indicated in its judgement in **Pepsi Foods Pvt. Ltd.** (supra) that the case of **Kamleshbhai Dharamshibhai Patel** (supra) was distinguishable on facts. Those observations would apply to the present writ petitions also. As regards the decision of the Allahabad High Court in **Classic Enterprises** (supra), this Court had indicated that it could not agree with the conclusions and observations of the Allahabad High Court

inasmuch as the decision of the Allahabad High Court was premised on a consideration of the provisions of Section 158BD of the said Act which are entirely different from the provisions of Section 153C of the said Act. Furthermore, with regard to the decision in **SSP Aviation Ltd.** (supra), this court had noted that the said decision does not militate against the view taken in **Pepsi Foods Pvt. Ltd.** (supra).

6. The learned counsel for the Revenue has cited an additional decision before us today and that is the case of **Sarvesh Kumar Agarwal Vs. Union of India & Ors.** [2013] 353 ITR 26 (All). This decision also, in our view, does not advance the case of the Revenue. This would be evident from the observations of the Allahabad High Court in paragraphs 19 to 21 of the said decision, which read as under:

“19. In Manish Maheshwari’s case (Supra) the Supreme Court observed that taxing statute must be constructed strictly. The Court, however, shall not interpret statutory provisions in such a manner, which would create an additional physical burden on a person. In case of any doubt or dispute, construction is to be made in favour of the tax payer and against the revenue.

20. In the present case we do not find anything wrong in the satisfaction note and the forwarding of the entire matter by the Income Tax Officer, Ward-III (2), Ahmedabad to the Assessing Officer of the petitioner at Bareilly. All the requirements of Section 153(c) were complied with by the Income Tax Officer, Ward-III (2), Ahmedabad. A search under Section 132A was carried out and bullion was seized. The case was selected for compulsory scrutiny for six assessment years. The assessee

established that the seized silver belongs to M/s Sarvesh Jewellers, Bareilly – the petitioner. The ownership and consignment of the petitioner was also confirmed by the Assessing Officer of the petitioner at Bareilly. The Income Tax Officer, Ward-III (2), Ahmedabad did not commit any error in law, in recording the satisfaction note requesting the petitioner’s Assessing officer to proceed under Section 153(c) of the I.T. Act.

21. After the assessment of the person in respect of whom search action was carried out is completed, the officer under Section 153C, where he find that seized articles belong to some other person, has to forward a satisfaction note to the Assessing Officer on such person. The satisfaction in such case is in respect of the material and disclosures of the person with which the articles or assets are found and not in respect of the person who whom they belong.”

(underlining added)

7. The above extract makes it clear that a taxing statute must be construed strictly and in the case of a doubt or dispute the construction in favour of the assessee has to be adopted. Apart from this, the material observation of the Allahabad High Court in the case of **Sarvesh Kumar Agarwal** (supra) is to be found in paragraph 20 thereof where it has been observed that the assessee established that the seized silver belongs to M/s. Sarvesh Jewellers, Bareilly – the petitioner. In other words, the person from whom the bullion was seized was able to establish that it did not belong to him but to Sarvesh Jewellers. It is in that context that the provisions of Section 153C of the Act were invoked inasmuch as the Assessing Officer would then be considered as having been satisfied that

the bullion which was seized from the searched person did not belong to the searched person but to some other person (in that case M/s. Sarvesh Jewellers, Bareilly).

8. From the foregoing discussion it is evident that in order that the Assessing Officer of the searched person comes to the satisfaction that documents or materials found during the search belong to a person other than the searched person, it is necessary that he arrives at the satisfaction that the said documents or materials do not belong to the searched person. We may point out that in the course of the arguments we had asked the learned counsel for the Revenue as to whether the documents in question had been disclaimed by the Jaipuria Group. The learned counsel for the Revenue, on instructions, states that this was not the case. In other words, it follows that the Jaipuria Group did not say that the documents did not belong to them.

9. It would now be necessary for us to examine the Satisfaction Note dated 29.07.2013. The said Note is as under:

“M/s Pepsico India Holding Pvt. Ltd.,
Satisfaction Note
A.Y. 2006-07 to 2011-12”

29-07-2013 Satisfaction Note for issue of Notice u/s 153C of
Income Tax Act, 1961 in the case of M/s Pepsico India Holding

Pvt. Ltd. (PAN: AAACP1272G), for the Assessment Years 2006-07 to 2011-12

In the case of Jaipuria Group, search and seizure action u/s 132(1) of I.T. Act, 1961 was carried out on 27.03.2012 and during the course of search and seizure action certain documents/papers were found and seized. The following documents which were found and seized during the course of search and seizure action u/s 132 (1) of I.T. Act, 1961 are found to be belonging to M/s PepsiCo India Holding Pvt. Ltd. (PAN: AAACP1272G) over which the jurisdiction lies with the undersigned:

Party/Annx./Page No.	Description of Annexure
B-2/A-11/34-35	These two pages are the 10 years Cumulative Redeemable preference Shares of Rupees.10/- each, purchased by M/s PepsiCo India Holding Ltd. from M/s Tripty Drinks Ltd. And 10 years Cumulative Redeemable Preference Shares of Rupees 10/- each, purchased by M/s PepsiCo India Holding Ltd. from M/s SMV Beverages Ltd.
B-2/A-14/60	This is a cheque of Rs.1,66,84002/- in favour of PepsiCo India Holding Pvt. Ltd. issued by M/s Neetar Beverages Pvt. Ltd. on 30/6/2012.
B-2/A-14/61	This is the cheque of Rs.60000000/- in favour of PepsiCo India Holding Pvt. Ltd. issued by M/s Neetar Beverages Pvt. Ltd. on 31.05.2011.
B-2/A-14/62	This is the cheque of Rs.60000000/- in favour of PepsiCo India Holding Pvt. Ltd. issued by M/s Neetar Beverages Pvt. Ltd.

	on 31/5/2010.
B-2/A-14/63	This is the cheque of Rs.60000000/- in favour of Pepsico India Holding Pvt. Ltd. issued by M/s Neetar Beverages Pvt. Ltd. on 31/5/2009.
B-2/A-14/64	This is a cheque of Rs.54691818/- in favour of Pepsico India Holding Pvt. Ltd. issued by M/s SMV Agencies Pvt. Ltd. on 30/6/2012.
B-2/A-14/65	This is the cheque of Rs.60000000/- in favour of Pepsico India Holding Pvt. Ltd. issued by M/s SMV Agencies Pvt. Ltd. on 31.05.2012.
B-2/A-14/66	This is the cheque of Rs.60000000/- in favour of Pepsico India Holding Pvt. Ltd. issued by M/s SMV Agencies Pvt. Ltd. on 30.04.2012.
B-2/A-14/67	This is the cheque of Rs.60000000/- in favour of Pepsico India Holding Pvt. Ltd. issued by M/s SMV Agencies Pvt. Ltd. on 30/06/2011.
B-2/A-14/68	This is the cheque of Rs.60000000/- in favour of Pepsico India Holding Pvt. Ltd. issued by M/s SMV Agencies Pvt. Ltd. dated: 30/04/2011.
B-2/A-14/69	This is the cheque of Rs.60000000/- in favour of Pepsico India Holding Pvt. Ltd. issued by M/s SMV Agencies Pvt. Ltd. dated: 30/6/2010.
B-2/A-14/70	This is the cheque of Rs.60000000/- in favour of Pepsico India Holding Pvt. Ltd.

	issued by M/s SMV Agencies Pvt. Ltd. dated: 30/04/2010.
B-2/A-14/71	This is the cheque of Rs.60000000/- in favour of Pepsico India Holding Pvt. Ltd. issued by M/s SMV Agencies Pvt. Ltd. dated: 30/04/2009.
B-2/A-14/72	This is the cheque of Rs.60000000/- in favour of Pepsico India Holding Pvt. Ltd. issued by M/s SMV Agencies Pvt. Ltd. dated: 30/6/2009.
C-2/A-1/101-115	These pages relates to “supply and loan agreement” made between Pearl Drinks Ltd. and Pepsico India Holdings Pvt. Ltd. on 01-10-2010.

I have examined the above mentioned documents/paper and satisfied that the provisions of section 153C of I.T. Act, 1961 are applicable in the case of M/s Pepsico India Holding Pvt. Ltd. (PAN: AAACP1272G). As the undersigned is having the jurisdiction over the case of M/s Pepsico India Holding Pvt. Ltd. (PAN: AAACP1272G), notices u/s 153C of I.T. Act, 1961 are issued on 29.07.2013 for the Assessment Years 2006-07 to 2011-12.

(Pukini Lokho)
Asstt. Commissioner of Income Tax,
Central Circle-12, New Delhi”

10. On going through the Satisfaction Note it is evident that there are three kinds of documents which are mentioned therein. First, are the photocopies of Cumulative Redeemable Preference Shares purchased by

PepsiCo India Holdings Private Limited from M/s. Tripty Drinks Limited and M/s. SMV Beverages Limited. The second set of documents are cheques found in the cheque books of the Jaipuria Group companies. These cheques are unsigned and they are the original leaves in the cheque books themselves which belonged to the Jaipuria Group of companies. Though, it must be pointed out that the cheques had been written in favour of PepsiCo India Holdings Private Limited. The third document is a photocopy of a Supply and Loan Agreement made on 01.10.2010 between Pearl Drinks Limited and PepsiCo India Holdings Private Limited.

11. In the objections furnished by the petitioner, it had specifically taken the point that the photocopies of the preference shares do not belong to the petitioner. The photocopies belong to the Jaipuria Group. It was, however, stated that the original preference shares certificates are with the petitioner and it is the originals which belong to them and not the copies. It was also contended by the petitioner in the objections that the unsigned cheques could, by no stretch of imagination, belong to the petitioner as they had not even been handed over to the petitioner and were to be found in the cheque books of the Jaipuria Group companies

themselves. Insofar as the copy of the Supply and Loan Agreement was concerned, the petitioner pointed out that the copy that was found in the possession of the Jaipuria Group belonged to the Jaipuria Group whereas the original which belonged to the petitioner was with the petitioner. Therefore, it was contended that none of the documents found during the course of searches conducted on the Jaipuria Group which find mention in the Satisfaction Note dated 29.07.2013, could be said to have belonged to the petitioner. Consequently, it was urged that the proceedings under Section 153C of the said Act ought to be dropped.

12. However, by virtue of the order dated 02.12.2013, the Assessing Officer rejected each one of these objections and observed that the provisions of Section 153C of the said Act had been rightly invoked and the petitioner was directed to comply with the assessment proceedings under Section 153C read with Section 143(3) of the said Act insofar as the Assessment Years 2006-2007 to 2011-2012 were concerned.

13. Having set out the position in law in the decision of this Court in the case of **Pepsi Foods Pvt. Ltd.** (supra), it must be seen as to whether the Assessing Officer of the searched person (the Jaipuria Group) could

be said to have arrived at a satisfaction that the documents mentioned above belonged to the petitioners.

14. First of all we may point out, once again, that it is nobody's case that the Jaipuria Group had disclaimed these documents as belonging to them. Unless and until it is established that the documents do not belong to the searched person, the provisions of Section 153C of the said Act do not get attracted because the very expression used in Section 153C of the said Act is that "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" In view of this phrase, it is necessary that before the provisions of Section 153C of the said Act can be invoked, the Assessing Officer of the searched person must be satisfied that the seized material (which includes documents) does not belong to the person referred to in Section 153A (i.e., the searched person). In the Satisfaction Note, which is the subject matter of these writ petitions, there is nothing therein to indicate that the seized documents do not belong to the Jaipuria Group. This is even apart from

the fact that, as we have noted above, there is no disclaimer on the part of the Jaipuria Group insofar as these documents are concerned.

15. Secondly, we may also observe that the finding of photocopies in the possession of a searched person does not necessarily mean and imply that they 'belong' to the person who holds the originals. Possession of documents and possession of photocopies of documents are two separate things. While the Jaipuria Group may be the owner of the photocopies of the documents it is quite possible that the originals may be owned by some other person. Unless it is established that the documents in question, whether they be photocopies or originals, do not belong to the searched person, the question of invoking Section 153C of the said Act does not arise.

16. Thirdly, we would also like to make it clear that the assessing officers should not confuse the expression 'belongs to' with the expressions 'relates to' or 'refers to'. A registered sale deed, for example, 'belongs to' the purchaser of the property although it obviously 'relates to' or 'refers to' the vendor. In this example if the purchasers premises are searched and the registered sale deed is seized, it cannot be said that it 'belongs to' the vendor just because his name is mentioned in

the document. In the converse case if the vendor's premises are searched and a copy of the sale deed is seized, it cannot be said that the said copy 'belongs to' the purchaser just because it refers to him and he (the purchaser) holds the original sale deed. In this light, it is obvious that none of the three sets of documents – copies of preference shares, unsigned leaves of cheque books and the copy of the supply and loan agreement – can be said to 'belong to' the petitioner.

17. In view of the foregoing discussion, we do not find that the ingredients of Section 153C of the said Act have been satisfied in this case. Consequently the notices dated 02.08.2013 issued under Section 153C of the said Act are quashed. Accordingly all proceedings pursuant thereto stand quashed.

18. The writ petitions are allowed as above. There shall be no orders as to costs.

19. All pending applications also stand disposed of.

BADAR DURREZ AHMED, J.

AUGUST 14, 2014
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NAJMI WAZIRI, J.