

\$~65 to 87, 93 to 95 & 103 to 105

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 22.01.2015

- + ITA 429/2013
- + ITA 430/2013
- + ITA 431/2013
- + ITA 432/2013

THE COMMISSIONER OF INCOME TAX (CENTRAL)-I

..... Appellant

Through Mr. Balbir Singh, sr. standing counsel
with Mr. Abhishek Singh Baghel,
Adv.

versus

MOHAN MEAKINS LIMITED

..... Respondent

Through Mr. C S Aggarwal, Sr. Adv. with Mr.
Prakash Kumar, Adv.

- + ITA 433/2013

THE COMMISSIONER OF INCOME TAX (CENTRAL)-III

..... Appellant

Through Mr. Balbir Singh, sr. standing counsel
with Mr. Abhishek Singh Baghel,
Adv.

versus

NATIONAL INDUSTRIES CORPORATION LTD.

..... Respondent

Through Mr. C S Aggarwal, Sr. Adv. with Mr.
Prakash Kumar, Adv.

- + ITA 522/2013
- + ITA 530/2013
- + ITA 534/2013
- + ITA 535/2013
- + ITA 536/2013
- + ITA 537/2013

THE COMMISSIONER OF INCOME TAX CENTRAL - III

..... Appellant
Through Mr. Balbir Singh, sr. standing counsel
with Mr. Abhishek Singh Baghel,
Adv.

versus

SUPERIOR INDUSTRIES LTD.

..... Respondent
Through Dr. Rakesh Gupta, Adv.

- + ITA 252/2014
- + ITA 253/2014
- + ITA 254/2014
- + ITA 255/2014
- + ITA 256/2014

THE COMMISSIONER OF INCOME TAX CENTRAL-III

..... Appellant
Through Mr. Rohit Madan and Mr. Ruchir
Bhatia, Advs.

versus

DCM SHRIRAM INDUSTRIES LTD.

..... Respondent
Through None

- + ITA 418/2014
- + ITA 419/2014
- + ITA 420/2014
- + ITA 421/2014
- + ITA 422/2014
- + ITA 423/2014
- + ITA 447/2014

COMMISSIONER OF INCOME TAX-

..... Appellant
Through Mr. Kamal Sawhney, sr. standing
counsel

versus

SARAYA INDUSTRIES LTD.

..... Respondent

Through None

- + ITA 759/2014
- + ITA 760/2014
- + ITA 761/2014

THE COMMISSIONER OF INCOME TAX CENTRAL-III

..... Appellant

Through Mr. Rohit Madan and Mr. Ruchir
Bhatia, Advs.

versus

M/S LORDS DISTILLERY LIMITED

..... Respondent

Through Mr. C S Aggarwal, Sr. Adv. with Mr.
Prakash Kumar, Adv.

- + ITA 782/2014
- + ITA 783/2014
- + ITA 784/2014

THE COMMISSIONER OF INCOME TAX CENTRAL-III

..... Appellant

Through Mr. Rohit Madan, Adv.

versus

NATIONAL INDUSTRIAL CORPORATION LTD

..... Respondent

Through Mr. Salil Aggarwal and Mr. Vikas
Jain, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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CM No.20425/2014 in ITA 759/2014

CM No.20427/2014 in ITA 760/2014

CM No.20429/2014 in ITA 761/2014

CM No.20978/2014 in ITA 782/2014

CM No.20980/2014 in ITA 783/2014

CM No.20982/2014 in ITA 784/2014

For the reasons stated in the applications the delay in refiling the appeal is condoned.

The applications are disposed of.

ITA Nos.429/2013, 430/2013, 431/2013, 432/2013, 433/2013, 522/2013, 530/2013, 534/2013, 535/2013, 536/2013, 537/2013, 252/2014, 253/2014, 254/2014, 255/2014, 256/2014, 418/2014, 419/2014, 420/2014, 421/2014, 422/2014, 423/2014, 447/2014, 759/2014, 760/2014, 761/2014, 782/2014, 783/2014 & 784/2014

1. In this batch of appeals, the revenue challenges the common order dated 23.11.2012 of the Income Tax Appellate Tribunal (ITAT). The question of law sought to be urged is whether Section 153C, to the extent it, inter alia, enables the assessing officer to issue notice to third parties, on the basis of the satisfaction that “any money, bullion, any 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, i.e. the person searched, is wide enough to lead to a notice only on the basis of entries in some documents.

2. In view of the orders that we proceed to make, no elaborate discussion

on merits is not warranted. Briefly, a search took place on 14.02.2006 in the premises of M/s Radico Khaitan and one Mr. R K Miglani, Secretary General of Uttar Pradesh Distillery Association (UPDA). In the course of these search proceedings, various documents including reports narrating amounts alleged to have been received or receivable from various members of the UPDA and the basis thereof were recovered. The revenue also relied upon the statement of Mr. R K Miglani. On the basis of these materials, notice was issued under Section 153C to the assessee/respondents. The notice was impeached by the respective assessees on the ground that the documents, to the extent they reflected payments allegedly made or payable, could not constitute valid material since they did not “belong” to them. This ground was successfully pleaded before the Tribunal.

3. Before this Court, various authorities were urged in support of the contention that a restricted meaning has to be given to the expression “belongs to”. The learned counsel have specifically relied upon *Commissioner of Income Tax V. Pepsico India Holding (P) Ltd.* 370 ITR 295; *SSP Aviation V. Deputy Commissioner of Income Tax* (2012) 346 ITR 177, *Commissioner of Wealth Tax V. Meattles P. Ltd.* (1985) 153 ITR 201 apart from a Gujarat Division Bench ruling in *Vijay Bhai N. Chandrani V. Assistant Commissioner of Income Tax* (2010) 231 CTR 474. The revenue, apart from contesting the applicability of these authorities, urged that ITAT fell into error in not noticing that the said documents i.e. the entries in the reports did not alone form the basis of the notice under Section 153C, and sought to rely upon the statements of Mr. R K Miglani as well as production figures of the distilleries, which according to it were part of the seized material.

4. We notice that in the impugned order ITAT has analyzed the material which forms the basis of satisfaction of Section 153C in the following terms:

“However, in the present appellant’s case, no books of account nor any incriminate documents pertaining to the appellant were seized when a search was conducted in the residential premises of Sri Miglani and that no books of account or documents or assets seized or requisitioned were handed over to the assessing officer having jurisdiction over the appellant.....”

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The expression “document” has been defined in the Indian Evidence Act, to mean any matter expressed or described upon any substance by means of letter, figure, marks or by more than one of these means intended to be used for the purpose of recording that matter. There is no dispute that documents in these appeals were in the handwriting of Mr. Miglani. He is not the employee of any of the assessee. According to our understanding, the presumption of ownership of document could be attached with the person who authored it or with whom it was found i.e. the person who possessed it. All the documents relied upon by the revenue were not emanating from the books of the assessee or in the handwriting of any employee of the assessee. We could appreciate the case of the revenue if it was able to lay its hand on any forwarding letter i.e. chit etc. written by the assessee while handing over the money to UPDA. Any fax message, any e-mail or any audio message recorded from the telephone conversation. Had any such material was found then it could be said that the documents belonging to the assessee were found. The material emanating from the alleged compilation of details from Mr. Miglani can be an information pertaining to the assessee disclosing the details of income or expenditure but that cannot be a document belonging to the assessee. It can be explained with a simple example, suppose an ex-employee of a concern who has a knowledge of account makes extra polation of the accounts on the basis of his

experience and that person was searched, can be document be considered as belonging to the assessee. It may give information to the Income Tax Department for investigation. It may lead to reopening of assessment but those details cannot be a gospel truth and cannot be considered as documents belonging to the erstwhile employer.”

5. The revenue urges that the Assessing Officer and the CIT(Appeals) took note of not merely the document which listed out the payments made in a tabular form for different purposes, but also other documents and materials in the form of production figures, the statement of Mr. R K Miglani, and the circumstance that the production figures coincide with the figures available with the revenue in the pending proceedings. It appears that the ITAT has not rendered any specific findings on the status of such documents. For instance, if the production figures were in fact forwarded by the concerned unit under a letter or some other form connecting it with the material form seized, inference would be of particular kind.

6. Having regard to these factors, this Court is of the opinion that the ITAT should render specific findings as to the status of the documents and in that sense, connect with the concerned assessee's third parties who were issued notice under Section 153C, and not merely the general nature of the documents in the form of production figures or amounts tabulated in a chart. This would give a clearer picture as to whether any document or material seized during the course of the proceedings belonged to any of the assessees.

7. We refrain from expressing any final opinion in the matter even on the contentions urged. Instead, we remit the matter for reconsideration on the lines indicated above. The ITAT shall refer to the material in entirety in respect of each assessee and render specific findings on this aspect. All

rights and contentions of the parties, including that of the revenue, if they feel aggrieved against the orders of the ITAT, are kept open. It is also clarified that the findings of the ITAT, if adverse to the revenue, are open to challenge.

8. The above appeals are remitted to the ITAT for fresh consideration. ITAT shall consider and render findings on the grounds raised by or in the appeals before it by the concerned assesseees. It is clarified that this is not a limited remand and the ITAT shall proceed to hear the merits of the appeals pending before it on other grounds as well.

9. Appeals are accordingly disposed of in the above terms.

10. Dasti to the parties.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

JANUARY 22, 2015

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