

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 18.12.2015

+ ITA 719/2015

PR. COMMISSIONER OF INCOME TAX -03 Appellant

versus

M/S FLUCKY LEASING & FINANCE PVT. LTD. Respondent

WITH

+ ITA 728/2015

PR. COMMISSIONER OF INCOME TAX -03 Appellant

versus

M/S FLUCKY LEASING & FINANCE PVT. LTD. Respondent

WITH

+ ITA 730/2015

PR. COMMISSIONER OF INCOME TAX - 03 Appellant

versus

M/S FLUCKY LEASING & FINANCE PVT. LTD. Respondent

WITH

+ ITA 731/2015

PR. COMMISSIONER OF INCOME TAX - 03 Appellant

versus

M/S FLUCKY LEASING & FINANCE PVT. LTD. Respondent

WITH

+ **ITA 732/2015**

PR. COMMISSIONER OF INCOME TAX - 03 Appellant

versus

M/S FLUCKY LEASING & FINANCE PVT. LTD. Respondent

WITH

+ **ITA 733/2015**

PR. COMMISSIONER OF INCOME TAX - 03 Appellant

versus

M/S FLUCKY LEASING & FINANCE PVT. LTD. Respondent

WITH

+ **ITA 734/2015**

PR. COMMISSIONER OF INCOME TAX - 03 Appellant

versus

M/S FLUCKY LEASING & FINANCE PVT. LTD. Respondent

WITH

+ **ITA 751/2015**

PR. COMMISSIONER OF INCOME TAX-03 Appellant

versus

M/S FLUCKY LEASING & FINANCE PVT. LTD. Respondent

WITH

+ **ITA 791/2015**

PR. COMMISSIONER OF INCOME TAX-03 Appellant

versus

M/S FLUCKY LEASING & FINANCE PVT. LTD. Respondent

AND

+ **ITA 792/2015**

PR. COMMISSIONER OF INCOME TAX-03 Appellant

versus

M/S FLUCKY LEASING & FINANCE PVT. LTD Respondent

+ **ITA 794/2015**

PR. COMMISSIONER OF INCOME TAX-03 Appellant

versus

M/S FLUCKY LEASING & FINANCE PVT. LTD Respondent

+ **ITA 795/2015**

PR. COMMISSIONER OF INCOME TAX-03 Appellant

versus

M/S FLUCKY LEASING & FINANCE PVT. LTD Respondent

Advocates who appeared in these cases:

For the Appellant : Ms Suruchi Aggarwal, Senior Standing counsel
with Ms Lakshmi Gurung.
Mr Shiv Raj Singh, Dy. CIT.
For the Respondent : Mr C.S. Aggarwal, Senior Advocate with
Mr Prakash Kumar and Mr.Gautam Jain.

CORAM:

DR. JUSTICE S.MURALIDHAR

MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The Revenue has filed these appeals under Section 260A of the Income Tax Act, 1961 (hereafter the 'Act') impugning a common order dated 29th October, 2014 passed by the Income Tax Appellate Tribunal (hereafter the 'Tribunal') in a batch of 12 appeals in respect of six Assessment Years ('AY') being 2003-04, 2004-05, 2005-06, 2006-2007, 2007-2008, and 2009-10. The aforesaid 12 appeals included 6 appeals preferred by the Assessee and 6 appeals preferred by the Revenue. The said appeals, respectively, impugned six separate orders passed by the Commissioner of Income Tax (Appeals) [CIT(A)] – all dated 22nd February, 2012 - disposing of the respective appeals preferred by the Assessee against the assessment orders dated 31st December, 2010 passed in respect of the aforementioned AYs.

2. The Revenue has projected the following questions of law in each of the aforesaid appeals:-

“(i) Whether in the facts and circumstances of the case and

in law, ITAT could have held that both the AOs making assessment u/s 153A as well as AO initiating proceedings u/s 153C, should have separately recorded their satisfaction even when the AO making assessment u/s 153A is the same person as the one initiating proceedings u/s 153C?

- (ii) Whether in the facts and circumstances of the case and in law, ITAT could have upheld the deletion of addition u/s 68, even when it was established that the assessee is an entry operator?
- (iii) Whether in the facts and circumstances of the case, ITAT could have deleted additions under section 68 of the Act on the ground that they are not based on any material found as a result of the search on the assessee company?
- (iv) Whether in the facts and circumstances of the case, ITAT could have held that there was no valid search since the impugned additions have been made under section 153C/143(3) of the Act without reference to any material found as a result of search?
- (v) Whether in the facts and circumstances of the case, ITAT could have held that additions made in non-abated assessments, are invalid?
- (vi) Whether on the facts and circumstances of the case, findings of the ITAT are perverse?"

3. Since the issues involved and the questions of law projected by the Revenue are common, these appeals were heard together.

4. The above proceedings emanate from the search and seizure operations under Section 132 of the Act, which commenced on 14th October, 2008 in respect of "SVP Group of companies".

5. According to the Revenue, the core of SVP Group of companies consisted of four companies, namely, SVP Builders India Ltd., SVP Developers (India) Pvt. Ltd., SVP Liquors India Limited and Five Vision Promoters Pvt. Ltd, which were engaged in the business of construction of residential, commercial and business complexes as well as in sale and purchase of lands. It was found that the aforesaid four companies had received share capital from 106 companies during the AYs 2003-04 to 2009-10. It is the case of the Revenue that the aforesaid four companies forming core of the SVP Group, had been charging on-money on sale of flats and shops which was not accounted for in the regular books of accounts. According to the Revenue, usually this on-money was taken in cash and was routed back into the Group companies in the form of share application/unsecured loans, share capital, etc. These funds were further invested by the SVP Group of companies to purchase lands for new projects as well as for booking bogus expenses, as site development charges, for inflating the cost of construction. In addition to the four companies forming the core of the SVP Group, warrants for search and seizure operations were also issued in respect of twenty other companies.

6. The AO categorized the 106 companies, which had invested in the share capital of the aforesaid four companies of the SVP Group during the AYs 2003-04 to 2009-10, into 3 groups tabulated in Table-I, II and III. Table-I shareholders consisted of 20 companies which had been subjected to search and seizure operation under Section 132 of the Act; Table II shareholders comprised of 12 companies against whom proceedings were initiated under Section 153C of the Act consequent to the search conducted

on the SVP Group and other Table-I shareholders; and Table-III shareholders comprised 74 companies. The Assessee, in the present case, is one of the 12 companies that were not subjected to search but was assessed under Section 153C of the Act.

7. The assessment order records that a notice under Section 153C of the Act was issued by the Assistant Commissioner of Income Tax, Meerut ('ACIT, Meerut') on 15th September, 2010 for the AYs 2003-04, 2004-05, 2005-06, 2006-07 & 2007-08. On the same date, a notice under Section 142(1) of the Act was issued for AY 2009-10. In response to the notice under Section 153C and 142(1) of the Act, the Assessee filed its returns of income on 22nd November, 2010 for the respective six AYs in question. On 23rd November, 2010, notices were issued under Section 143(2) and 142(1) of the Act were issued by Assistant Commissioner of Income Tax, Central Circle, Ghaziabad ('AO').

8. Thereafter, various notices were issued by the AO. According to the AO, the said notices were not fully complied with. However, this is disputed by the Assessee and the paper book filed by the Assessee in these proceedings indicates that the notices were responded to. On 31st December, 2010, the AO passed assessment orders in respect of each of the AYs in question assessing the amounts credited in the books of the Assessee as income under Section 68 of the Act. The AO observed in the assessment orders that the details with regard to sources of investment in unquoted shares alongwith the name and addresses of the investors were called for but the same were not complied with. The AO further recorded that even in instances where details were filed, the same were incomplete

and without the addresses of the investors. The AO also adverted to certain facts relating to other companies and held that the Assessee Company was only involved in receipts of share application money and other funds and transmitting the same to other un-quoted companies as investment in their share capital. He observed that the Assessee had not invested in any listed company for earning any income. According to the AO, the Assessee did not carry on any genuine business activity but was involved only in money laundering.

9. The Assessee, being aggrieved by the assessment orders, preferred appeals before the CIT(A), *inter alia*, challenging the assumption of jurisdiction under Section 153C of the Act. The Assessee contended that the assessing officer of the searched person had not recorded his satisfaction that any money, bullion, jewellery or other valuable article or thing or books of accounts or documents seized or requisitioned belonged to the Assessee. It was contended that in the absence of such satisfaction, the AO could not have assumed jurisdiction to commence proceedings under Section 153C of the Act. The Assessee further contended that the amounts received by it were duly recorded in its books of accounts and, thus, no addition could be made under Section 68 of the Act. The CIT(A) called for a remand report on the submissions made by the Assessee. The AO submitted the remand report, *inter alia*, enclosing a satisfaction note recorded by the AO, which reads as under:-

“A search operation u/s 132(1) of the Income Tax Act, 1961 was conducted in the case of SVP Group of cases and concerned person at various officers and residences by issuing warrants of authorization u/s 132(1) of the Income Tax Act,

1961 on 14.10.2008 and various documents books of account, other valuable articles and other things were found and seized from various premises. On verification of various documents and books of account found and seized from the business premises of M/s SVP Builders India Ltd, 17, Kiran Enclave, G.T. Road, Ghaziabad, I am satisfied that some- documents including following documents belong to M/s Flucky Leasing & Finance (P) Ltd, B-4/71-A, Lawrence Road, New Delhi.

Annexure A-5 Pages no 27 to 39- loose papers regarding purchase of shares by, B-4/71-A, Lawrence Road, New Delhi. These papers include resolution dated 14-06-2006 in favour of Mr. Ghansyam Dass, director, affidavit of Mr. Ghansyam Dass dated 26-02-2007 regarding investment of Rs. 10,00,000/- in purchase of shares of M/S SVP Builders India Ltd, 4-share applications, acknowledgement receipt of return for assessment year 2006-07 along with P & L A/c & balance sheet, certificate incorporation of the company, one page of associated of articles, copy of statement by M.G. Investment of having advanced a loan of Rs.10,00,000/- to M/S Gulbarga Associates (P) Ltd

Annexure A-15- page no. 240 to 248- copies of share certificates held by individuals/ companies of M/S SVP Builders India Ltd. Registered folio no. 028, certificate no. 00239 to 00247 in the name of M/S Flucky Leasing & Finance (P) Ltd Each share certificate is of 10000 shares.

Annexure A-44- page no. 77 to 85- copies of share certificates of M/S SVP Builders India Ltd Registered folio no. 033, certificate no. 256 to 264 in the name of M/S Flucky Leasing & Finance (P) Ltd Each share certificate is of 10000 shares.

Annexure A-50- page no. 43 to 57- copies of share certificates of M/S SVP Builders India Ltd Registered folio no. 028 total 15 share certificates in the name of M/S

Flucky Leasing & Finance (P) Ltd Each share certificate is of 10000 shares.

Annexure A-60- *page no. 240 to 254- copies of share certificates register folio no. 0071, certificate no. 870 to 884 in the name of M/s Flucky Leasing & Finance (P) Ltd, B-4-71-A, Lawrence Road, New Delhi of M/S SVP, Builders India Ltd each share certificate is of 10000 shares.*

Annexure A-61- *page no. 149 to 155- copies of share certificates register folio no. 071, certificate no. 1183 to 1189 in the name of M/S Flucky Leasing & Finance (P) Ltd, B-4-71-A, Lawrence Road, New Delhi of M/S SVP Builders India Ltd. each share certificate is of 2000 shares.*

Annexure A-84- *Pages no 41- loose papers regarding purchase of shares by M/S Flucky Leasing & Finance (P) Ltd B-4/71-A, Lawrence Road, New Delhi. These papers include resolution dated 30-03-2005 in favour of Mr. Ghansyam Dass, director, affidavit of Mr. Ghansyam Dass dated 05-02-2007 regarding investment of Rs. 1600000/- (in cash) in purchase of shares of M/s SVP Builders India Ltd., 5-share applications, acknowledgement receipt of return for assessment year 2006-07 along with P & L A/c & balance sheet, certificate incorporation of the company, one page of memorandum of association.*

Therefore, in view of the provision of section 153C(1) read with section 153A of the Income Tax Act, 1961, I am satisfied that proceedings u/s 153C read with section 153A is required to be initiated in the case of M/S Flucky Leasing & Finance (P) Ltd., B-4-71-A, Lawrence Road, New Delhi. Accordingly, notice u/s 153C read with section 153A of the Income Tax Act, 1961 is being issued for the assessment years 2003-2004 to 2008- 2009.”

10. The Assessee disputed that the documents referred to in the satisfaction note belonged to the Assessee. It was submitted that although

some of the documents emanated from the Assessee, the same were forwarded to SVP Builders India Ltd. in connection with the investment made by the Assessee in the share capital of that company. Therefore, the said documents no longer belonged to the Assessee. Insofar as share certificates are concerned, it was contended that the some of the documents alleged to be share certificates were not share certificates but counter foils of the shares certificates issued by SVP Builders India Ltd. and the other share certificates seized pertained to shares that had already been sold by the Assessee and, therefore, the certificates no longer belonged to the Assessee.

11. During the course of the proceedings before the CIT(A), the Assessee also furnished affidavits of various persons who had invested in the Assessee company either by applying for shares or by lending money as short term loans.

12. The CIT(A) observed that the balance sheet of the Assessee did not reflect any physical assets and the Assessee was not engaged in any actual business activity. The shares sold and purchased by the Assessee were not saleable in the open market and were not tradable commodities. It is further observed that the profit or loss shown from the activity of sale and purchase of shares by private limited companies was a “fake attempt to give semblance of genuineness of a functional company”. The CIT(A) further held that the Assessee was carrying on business only on paper and its sole purpose was to benefit others. It was also noticed that the shares of SVP Group were purchased by the Assessee at a higher price and the same were subsequently sold to individuals/concerns of SVP Group at a throw away

price, which was a fraction of the purchase price. According to the CIT(A), the same evidenced that the transaction was done only for the purposes of benefiting the SVP Group. The CIT(A) concluded that the Assessee was only a conduit for transferring money to SVP Group and based on the aforesaid conclusion, directed deletion of the addition made by the AO with a direction to add the same in the hands of the beneficiaries. In addition to the above, the CIT(A) gave further directions, *inter alia*, for proceeding under Section 277A read with Section 278B of the Act and on account of helping the SVP Group of companies to evade tax by acting as a name lender and creating evidences on paper to give a genuine colour to illegal transactions.

13. The Assessee as well as the Revenue preferred appeals against the orders passed by the CIT(A). Whilst the Assessee was mainly aggrieved by the decision of the CIT(A) in rejecting its contention that the proceedings under Section 153C of the Act were without jurisdiction; the Revenue challenged the deletion of the additions made under Section 68 of the Act.

14. The ITAT upheld the Assessee's contention that the documents found during search and seizure operation conducted with respect to SVP Group did not belong to the Assessee and, therefore, the assumption of jurisdiction under Section 153C of the Act was unsustainable. The ITAT also held that a satisfaction note had not been recorded by the assessing officer of the searched person and, therefore, initiation of proceedings under Section 153C of the Act was invalid. Insofar as the addition under Section 68 of the Act is concerned, the ITAT held that the sources of money received by the Assessee were duly explained, and therefore,

deleted the addition made under Section 68 of the Act. Accordingly, the ITAT allowed the appeals preferred by the Assessee and rejected the appeals preferred by the Revenue. The Revenue being aggrieved by the same has preferred the present appeals.

15. The principal controversy involved in the present appeals relates to the question of assumption of jurisdiction by the AO under Section 153C of the Act. Admittedly, the Assessee was not one of the entities that was subjected to search and seizure operation under Section 132 of the Act. The assessments were also framed under Section 153C of the Act; although the assessments order reflect that the assessments were framed under Section 143(3)/153A(b) of the Act, the orders passed by the CIT(A) indicates the same to be a typographical error. Section 153C of the Act provides for assessment/reassessment in cases where assets/documents have been found during the search and seizure operations and the same do not belong to the searched person(s).

16. The second issue involved in these appeals is whether the documents seized during search conducted under Section 132 of the Act on SVP Group of companies belonged to the Assessee.

17. It is seen that the facts and the issues involved are similar in all material aspects to the facts and issues involved in **Pr. Commissioner of Income Tax - 06 v. Nikki Drugs & Chemicals Pvt. Ltd.**: ITA 422/2015, decided on 3rd December, 2015. Thus, for the reasons stated in *CIT v. Nikki* (*supra*) we find no infirmity with the view of the ITAT that the proceedings under Section 153C of the Act were without jurisdiction. In the

circumstances, it is not necessary to consider the other issues sought to be raised by the Revenue.

18. In the circumstances, no substantial question of law arise in these appeals, the same are accordingly dismissed. The parties are left to bear their own costs.

VIBHU BAKHRU, J

S. MURALIDHAR, J

DECEMBER 18, 2015
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