$~35 to 39

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

\+ **W.P.(C) 11900/2016, C.M. APPL.46931-32/2016**
\+ **W.P.(C) 11901/2016, C.M. APPL.46933-34/2016**
\+ **W.P.(C) 11902/2016, C.M. APPL.46942-43/2016**
\+ **W.P.(C) 11903/2016, C.M. APPL.46944-45/2016**
\+ **W.P.(C) 11904/2016, C.M. APPL.46946-47/2016**

KNS TRADING PVT LTD. ..... Petitioner

versus

ITO WARD 14(3) NEW DELHI ..... Respondent

Through : Sh. Rakesh Tiku, Sr. Advocate with Sh. Rahul Kochar, Advocate, for petitioner, in Item Nos. 35 to 39.

Sh. P. Roychaudhuri, Sr. Standing Counsel, for CIT.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% **21.12.2016**

1. The petitioner in these cases are aggrieved by notices issued under Section 153C of the Income Tax Act, 1961 pursuant to a search in the premises of a third party, i.e. Urbtech Group/M/s. Bhupinder Autotech Pvt. Ltd. [hereafter "the party searched"] on 10.10.2012. During the course of search, certain documents were detained/seized. The petitioner, i.e. the third party assessee received notices for the filed returns for AY 2010-11, 2011-12, 2013-14, 2014-15 and 2015-16.

2. Its grievance is that the search having ended on 10.10.2012, the question of filing returns for subsequent periods does not arise. Consequently and more fundamentally, it is urged that the satisfaction

note on which the Section 153C notice was premised is plainly erroneous inasmuch as it assumes that the documents relied upon relates to a cash transaction whereas a facial reading would disclose otherwise. To consider the second aspect first, the document in question – which could be said to relate to AY 2012-13, is an Agreement to Sell, needs examination. The assessee had agreed to purchase property from the party searched. The relevant recitals and contents of the Agreement to Sell are as follows:

> *"WHEREAS the said seeler has entered into Memorandum of Understanding with M/s. Hella India Lighting Limited on 03-06-10 for purchase of property at 14/6 Mathura Road, measuring 21780 Sq. Yards, bearing Khasra No./Rect no.47, Kila No.19/3, 20/3m 21/1m 21/2, 22/1 and Rect No.48, kila no.16/1/2, kila no.25 (As per Annexure-1) in which the Seller is bound by the above said MOU to get the property registered in the name of M/s. Bhupindra Autotech Industries Pvt. Ltd.*
>
> *AND WHEREAS the Seller has decided to sell the front portion of the property after getting it registered in its name and getting its Subdivision approved, the description of the part portion of the property under this agreement is an area of 206 feet front and 87.5 feet depth, measuring Approx 2002.77 Sq Yards, facing North, 40 feet wide road, East Mathura Road, West Other portion of the 21780 sq yard plot and the PURCHASER has offered to purchase the same (Hereinafter referred to as the "Said Space").*
>
> *AND WHEREAS the Seller indemnifies to get the said property free from all sorts of encumbrances that is sale, gift, mortgage, claim demands charges and litigation etc. till registration of the sale deed for the Said Space between the seller and the. purchaser. And whereas the said seller is interested for the sale of said space and the purchaser is also*

interested to purchase the same on the following terms and conditions.

<u>NOW THIS AGREEMENT WITNESSES AS UNDER:-</u>

1. That the total sale consideration of the above said property has been fixed at Rs. 7,21,00,000/- (Rupees Seven Crore Twenty One Lakhs Only) at the rate of Rs.36000/- per sq. yard.

2. The PURCHASER has paid the sum of Rs.72,00,000/- (Rupees Seventy two lacs only) as advance.

1. Rs. 5.00,000/- (Rupees Five Lacs Only) has been paid through RTGS from AXIS Bank.

2. Rs. 42,00,000/- (Rupees Forty Two Lacs Only) vide cheque no.
090099 dated 27.01.2011 drawn on AXIS Bank limited.

3. Balance Rs. 25.00,000/- (Rupees Twenty Five Lacs Only) vide
cheque no. 364290 dated 28.01.2011 Drawn on Andhra Bank.

3. PURCHASER will pay a progressive advance as mutually agreed upon at time of registration of Sale Deed between M/s. Hella India Lighting Limited and M/s. Bhupindra Autotech Industries Pvt. Ltd.

4 The balance payment of will be paid by the Purchaser to the Seller after 30 days of receipt of approval of Subdivision plan of the entire property especially the area of said space being 2002.77 Sq Yards, which is being sold to the Second Party and at the time of execution of the Sale Deed/Transfer Papers and thus completing the Sale transaction OR ~~four (4)~~ 3 months from the date of this MOU; whichever is later"

3. The satisfaction note, based on which the Assessing Officer (AO) issued the notice under Section 153C is as follows:

*"**Recording of satisfaction u/s 153C of the Income Tax Act, 1961***

During the course of search and seizure operation at the residential Business premises of the various persons associated with Urbetech Group of companies carried out on 10.10.2012, it has come to focus that M/s. Bhupendra Autotech Industries Pvt. Ltd. and M/s. KNS Trading Pvt. Ltd. entered into a deal of property. Perusal of the sales agreement dated 18.02.2011, which is part of Incriminating documents seized revealed that M/s. Bhupendra Autotech Industries Pvt. Ltd. sold a piece of land measuring 2003 sq. Yards to M/s. KNS Trading Pvt. Ltd. As per the aforesaid agreement (seized documents 32 to 37 of A-41) rate was settled at Rs. 36,000/-per sq.Yard. Total sales value as per recorded entries in the incriminating documents is Rs. 7,21.08,000/-. The initial amount received by the seller was Rs. 12,00,000/- m cash and Rs. 50,00,0001through cheque at the time of striking agreement vide clause number 3 of the agreement dated 18.02.20 11.

Deal, however, did not materialize and was cancelled subsequently on 18.09.2012 as per seized documents. An amount of Rs. 1,36,06,663/- was refunded to assessee i.e. M/s. KNS Trading Pvt. Ltd. which included interest amounting to Rs. 99,044/-.

Hence, upon receiving the copies of seized documents alongwith the satisfaction note from the Assessing Officer of M/s. Bhupendra Autotech Industries Pvt. Ltd. I am satisfied within the meaning of section 153C of the Act that above documents pertains to information contained therein, relates to M/s. KNS Trading Pvt. Ltd. In the light of above facts, it is clear *that M/s. KNS Trading Pvt. Ltd. paid and amount of Rs 72,00,000/- in cash, presumably, out of the undisclosed sources. Source of rest of the amount of Rs. 50,00,000/- also needs to be examined/investigated.*

The above referred seized material is handed over to this office in the month of March, 2016 i.e 2015-16. Further, it is observed that the assessee company, i.e. MIs. KNS Trading Pvt. Ltd. was incorporated on 17.04.2001. In view of the above, notice U/S 153C of the Act, is being issued to the assessee i.e. M/s. KNS Trading Pvt. Ltd. for AY. 2015-16, A.Y.2014-15, A.Y. 2013-14, A.Y 2012-13, A.Y. 2011-12 and A.Y. 2010-11."

4. This Court has considered the submissions of the parties. It is quite evident from a reading of the satisfaction note that the AO felt that the assessee had to be subjected to proceedings under Section 153C on account of his interpretation of the seized document (A-41), the Agreement to Sell in question. The satisfaction note recites the facts, i.e. entering into agreement between the parties; the circumstance that the sale could not be completed; the cancellation of the agreement dated 18.09.2012 whereby the parties decided that the amounts would be refunded to the assessee with interest and the fact that Rs. ₹1,36,06,663/- was in fact refunded to the assessee. In these circumstances, the satisfaction of the AO that, "*.......that above documents pertains to information contained therein, relates to M/s. KNS Trading Pvt. Ltd. In the light of above facts, it is clear that M/s. KNS Trading Pvt. Ltd. paid and amount of Rs 72,00,000/- in cash, presumably, out of the undisclosed sources. Source of rest of the amount of Rs. 50,00,000/- also needs to be*

examined/investigated……" is *ex-facie* untenable. As discussed earlier and as is apparent from the extract of the document itself, the sum of ₹72,00,000/- [₹5,00,000/-, ₹42,00,000/- and ₹25,00,000/-] was not paid in cash <u>but was a transaction evidenced by cheques</u>. Therefore, the inference that some amount had passed outside of the account books and that there were underlying cash transactions, are utterly unfounded and could not be the basis of satisfaction note under Section 153C. Consequently, the writ petitions have to succeed. No other material or document that belonged to the assessee was seized.

5. As far as the first question is concerned, the Court is of the opinion that since the only ground on which notice was issued under Section 153C is the assumption of underlying cash transactions, which is untenable, the interpretation of proviso to Section 153C in the circumstances is not called for . For the above reasons, the impugned notice and all other proceedings emanating therefrom are hereby quashed for all assessment years.

The writ petitions are allowed in the above terms.

Order dasti under the signatures of Court Master.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

DECEMBER 21, 2016
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