

\$~7-10

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

% **DECIDED ON: 03.02.2017**

+ ITA 58/2017
ITA 59/2017, CM APPL.2767/2017
ITA 82/2017, CM APPL.3614/2017
ITA 83/2017, CM APPL.3615/2017

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) - 2

..... Appellant

Through: Mr. Dileep Shivpuri, Sr. Standing
Counsel with Mr. Vikrant A. Maheshwari,
Advocate.

versus

M/S NAU NIDH OVERSEAS PVT.LTD. Respondent

Through: Ms. Monika Ghai, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

S.RAVINDRA BHAT, J.(ORAL)

1. Admit.
2. Issue notice.
3. The following question of law arises for consideration: -

“Did the ITAT fall into error in holding that the satisfaction recorded under Section 153C of the Income Tax Act, 1961 was not in compliance with the provisions of the Act and furthermore that the material discovered during the search in the circumstances of the case did not belong to the assessee/respondent.”

4. Ms. Monika Ghai, Advocate accepts notice of appeal.

With consent of counsel for the parties, appeals were heard finally.

5. The facts of the case are that the assessee provides Business Auxiliary services and also earns income by way of commissions/brokerage. It had declared over ₹1.85 crores in its return of income dated 30.09.2008. One of its Directors, i.e., Jatinder Pal Singh was subjected to search proceedings on 22.04.2010. In the course of the search, cash worth ₹ 2 crores was seized. In his residential premises over ₹15.74 lakhs was found of which ₹15 lakhs was seized by the department; out of this a sum of ₹10 lakhs belonged to the company.

6. In the course of the search, Jatinder Pal Singh, the party who was eventually issued notice under Section 153A stated in furtherance to question no.27 that *“the cash belongs to both the companies and my personal cash but the computer on which books of accounts are maintained have been seized by the CBI and physical print out have not been taken hence I am not in a position to explain the same.”*

7. Based on the above material, notice was issued to the present assessee as a third party under Section 153C. The final assessment was challenged by the assessee which was upheld by the CIT (A). However, the ITAT upheld the assessee's contentions with respect to the defective notice under Section 153C. It was held that there was no satisfaction note recorded by the concerned Assessing Officer in accordance with law and secondly that the material nowhere disclosed that any document or item or material was recovered that belonged to the assessee in this case.

8. Learned counsel for the Revenue relies upon the decision of this Court in *Principal Commissioner of Income-Tax- 8 vs. M/s Super Malls Pvt. Ltd.*, 76 Taxman.com 267 Delhi and *Dayawanti through legal heir Sunita Gupta & Anr. v. CIT*, 390 ITR 496 Delhi and submits that in the present case because of the unity of the office of the AO, he held jurisdiction over both the assessee and the searched person, and the satisfaction note could not be termed defective. As to the other aspect, i.e., material “belonging” to the third party, learned counsel referred to the statement of Jatinder Pal Singh to say that it clearly pointed out that part of the cash seized from his premises belonged to the assessee in the present case.

9. Learned counsel for the respondents relied upon the judgment of this Court in *Pepsico India Holding Ltd. vs. ACIT* 370 ITR 295 as well as *CIT v. Nikki Drugs & Chemicals Pvt. Ltd.* (2016) 236 Taxman 305 to say that there was no proper satisfaction recorded within the meaning of the term as interpreted by the Court under Section 153C.

10. The AO in this case was common, i.e., had jurisdiction to complete the assessment in respect of both the searched person and the third party. In *Super Mall (supra)* this Court had occasion to deal with an identical situation and held as follows: -

“9. A plain reading of the note clearly shows that search in the business premises of two individuals was carried out; equally, survey of premises of the assessee was also carried out. In the course of this search of Shri Ved Prakash Bharti – who also was a director and assessee, some pen drives were found and seized. Further documents listed in Annexure A-1 too were seized after their print outs were obtained. These documents detailed cash receipts for the sale of the shops and offices in the

assessee's other concerns. In these circumstances, having regard to all these conspectus of facts, the AO expressed under Section 153C of the Act that the documents so seized "belonged" to the assessee. We are unpersuaded by the assessee's submissions that the expression "belonged", in the context in which it was used has to be understood as imputing "relating to", or any other term. Plainly put, the AO was satisfied that the documents belonged to the assessee in view of what was contained or brought out on a fair reading of their contents. It must not be overlooked that while construing a document, expressions should not be interpreted too literally as if they are, words, carved in stone or in a Statute - as the ITAT did in this case. For these reasons, we are of the opinion that the ITAT should not have allowed the appeal only on this hyper technical ground with regard to the satisfaction note. Those findings are, accordingly, set aside.

11. In the present case too Jatinder Pal Singh was one of the Directors of the assessee. In the course of the search of his residential and other premises, he clearly stated that some cash seized in those premises belonged to the assessee. For the purposes of Section 153C, the satisfaction of the AO recorded was, in this Court's opinion sufficient. The satisfaction note in fact reads as follows: -

Satisfaction Note u/s. 153C of the Income Tax Act, 1961
In the case of M/s Nav Nidh Overseas Pvt. Ltd. PAN
No.AABCN3865G
M/s. Nav Nidh Motels Pvt. Ltd. PAN No.AAACN4560B, D-6/1,
Vasant Vihar, New Delhi

1. During the course of assessment proceedings in the case of Sh. Jatinder Pal Singh PAN: AIPPS9874G for the assessment year 2011-12, it was noticed that during the search and seizure operation u/s. 132 of the Income Tax Act, 1961, undertaken on 22.4.2010 pursuant to authorisation u/s132 in the case of Sri Jatinder Pal Singh, R/o D-6/13, Vasant Vihar, New Delhi, cash of Rs.15,75,000/- was found

out of which cash of Rs.15,00,000/- was seized from the above premises.

2. *Statement of Sh. Jatinder Pal Singh was recorded u/s. 132(4) of the Income Tax Act, 1961. In reply to question No.7, it is stated as under: -*

About Rs.15 lacs is at my residence and Rs.2 crores in my office which is located in the same plot on ground floor. Out of Rs.15 lacs, a sum of Rs.10 lacs belongs to company namely Navnidh Overseas Pvt. Ltd. and Rs.5 lacs is my personal Rs. 2 crores I have received as advance with regard to my agricultural land at Faridabad where I intended to sell the land in small plots”

- 2.1 *In answer to question No.27, Sh. Jatinder Pal Singh states as under:*

“The cash belongs to both the companies and my personal cash but the computer on which books of accounts are maintained have been seized by the CBI and physical print out have not been taken hence I am not in a position to explain the same.”

3. *The case of M/s Nav Nidh Overseas Pvt. Ltd. and M/s Nav Nidh Motels Pvt. Ltd. have been centralized to this Circle vide letter F.No.CIT-V/Centralisation/2010-11/1067 dated 17.08.2010.*
4. *I am, therefore, satisfied that the cash seized from Sh. Jatinder Pal Singh from his residence belongs to M/s. Nav Nidh Motels Pvt. Ltd., as stated by him in the statement recorded u/s. 132 (4) of the Act, warranting action u/s. 153C in the cases M/s. Nav Nidh Overseas Pvt. Ltd. and M/s. Nav Nidh Motels Pvt. Ltd. Sh. Jatinder Pal Singh one of the Directors in both these companies.*

07.02.2013

(Sumesh Swani)
Deputy Commissioner of Income Tax
Central Circle-9, New Delhi.

12. Like in *Super Malls (supra)*, the AO considered the totality of the statement to conclude - undoubtedly facially, that the cash seized belonged to the third party, i.e., the assessee in the present case. Such statement also constitutes as material because it is made in the course of the search under Section 132 (4) and is also in consonance with the ruling of this Court in *Dayawanti (supra)*.

13. For the above reasons, these appeals have to succeed. The question of law framed is accordingly answered in favour of the Revenue. The impugned order of the ITAT is, therefore, set aside. The ITAT is now directed to hear the assessee's appeal on its merits.

14. The appeals are accordingly allowed.

**S. RAVINDRA BHAT
(JUDGE)**

**NAJMI WAZIRI
(JUDGE)**

FEBRUARY 03, 2017
/vikas/