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

+ **W.P.(C) 525/2015**

GANPATI FINCAP SERVICES PVT. LTD. Petitioner

Versus

COMMISSIONER OF INCOME TAX Respondent

+ **W.P.(C) 527/201547**

GANPATI FINCAP SERVICES PVT. LTD. Petitioner

Versus

COMMISSIONER OF INCOME TAX Respondent

+ **W.P.(C) 529/2015**

SHUSHRE SECURITIES PVT. LTD. Petitioner

Versus

COMMISSIONER OF INCOME TAX Respondent

+ **W.P.(C) 2220/2015**

SHUSHRE SECURITIES PVT. LTD. Petitioner

Versus

COMMISSIONER OF INCOME TAX Respondent

+ **W.P.(C) 2221/2015**

SHUSHRE SECURITIES PVT. LTD. Petitioner

Versus

COMMISSIONER OF INCOME TAX Respondent

+ **W.P.(C) 2224/2015**

SHREY INFRADEVELOPERS PVT. LTD. Petitioner

Versus

COMMISSIONER OF INCOME TAX Respondent

+	W.P.(C) 2225/2015	
	SHREY INFRADEVELOPERS PVT. LTD.	 Petitioner
	Versus	
	COMMISSIONER OF INCOME TAX	 Respondent
+	W.P.(C) 2226/2015	
	SHREY INFRADEVELOPERS PVT. LTD.	 Petitioner
	Versus	
	COMMISSIONER OF INCOME TAX	 Respondent
+	W.P.(C) 2227/2015	
	GANPATI FINCAP SERVICES PVT. LTD.	 Petitioner
	Versus	
	COMMISSIONER OF INCOME TAX	 Respondent
+	W.P.(C) 2228/2015	
	GANPATI FINCAP SERVICES PVT. LTD.	 Petitioner
	Versus	
	COMMISSIONER OF INCOME TAX	 Respondent
+	W.P.(C) 2229/2015	
	GANPATI FINCAP SERVICES PVT. LTD.	 Petitioner
	Versus	
	COMMISSIONER OF INCOME TAX	 Respondent
+	W.P.(C) 2245/2015	
	SHUSHRE SECURITIES PVT. LTD.	 Petitioner
	Versus	
	COMMISSIONER OF INCOME TAX	 Respondent
+	W.P.(C) 2246/2015	
	GANPATI FINCAP SERVICES PVT. LTD.	 Petitioner

Versus

COMMISSIONER OF INCOME TAX

..... Respondent

+

W.P.(C) 2247/2015

SHUSHRE SECURITIES PVT. LTD.

..... Petitioner

Versus

COMMISSIONER OF INCOME TAX

..... Respondent

+

W.P.(C) 2248/2015

SHUSHRE SECURITIES PVT. LTD.

..... Petitioner

Versus

COMMISSIONER OF INCOME TAX

..... Respondent

Through: Mr. Sanjeev Sabharwal, Senior Advocate with Mr. V. Raja Kumar, Advocate for the Petitioners.

Mr. Rahul Chaudhary, Senior Standing Counsel for the Revenue.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE CHANDER SHEKHAR**

ORDER
25.05.2017

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Dr. S. Muralidhar, J.:

1. These fifteen writ petitions arise out of a similar set of facts concerning the notices issued to each of the Petitioners under Section 153C of the Income Tax Act, 1961 ('Act').

2. Six of the writ petitions viz., W.P. (C) Nos. 2227, 2228, 525, 2229, 2246 and 527 of 2015 by Ganpati Fincap Services Pvt. Ltd. (hereafter 'Ganpati') and six writ petitions viz., W.P. (C) Nos. 2247, 2221, 2248, 529, 2245 and 2220 of 2015 by Shushre Securities Pvt. Ltd. (hereafter 'Shushre') concern

Assessment Years (AYs) 2004-05, 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 respectively. Three writ petitions viz., W.P. (C) Nos. 2224, 2225, 2226 by Shrey Infradevelopers Pvt. Ltd. (hereafter 'Shrey') concern AYs 2007-08, 2008-09 and 2009-10 respectively.

Background facts in the Ganpati cases

3. The background facts in each set of petitions are more or less similar. On 26th March, 2010 a search and seizure operation under Section 132 of the Act along with a survey operation under Section 133A of the Act were undertaken at various residential and business premises of Aseem Kumar Gupta and his associated Group including Raj Kumar Chawla and Anju Chawla. There were two search parties. Several documents and account books were seized from the premises of Aseem Kumar Gupta, Raj Kumar Chawla and Anju Chawla.

4. The case of Ganpati was with the Assessing Officer (AO) of Ward 12(1). On 25th November 2010 jurisdiction was transferred to the AO of Central Circle (CC)-16 who first issued a notice to Ganpati under Section 153C of the Act on 9th December 2010. The notice was received by Ganpati on 27th December 2010. At this stage no satisfaction note had been prepared.

5. On 21st January 2011, Ganpati requested that the return originally filed for AYs 2004-05 to 2009-10 under Section 139(1) be treated as the return filed pursuant to the notice under Section 153C for the said AYs.

The Satisfaction Note

6. On 23rd June 2011, the jurisdiction in respect of Ganpati was again transferred from CC-16 to CC-9 under the orders of the CIT (C)-II. Thereafter on 14th October 2011, the following satisfaction note in the case of Ganpati was recorded by the AO:

“Satisfaction recorded u/s 153 C in the case of M/s. Ganpati Fincap Services Pvt. Ltd.

A search & seizure operation u/s 132 of the Act was conducted on 26.03.2010 at various premises of Aseem Kumar Gupta, his associates & other beneficiaries. During the search & seizure operations various documents, books of account, hard disks etc. were seized. On perusal of the seized documents, it was noticed that some of these documents belong to the assessee which *inter alia* include the following:

Page 13 and 14 of Annexure A-I seized by party ABR-2, are schedules attached to and forming part of the balance sheet and profit & loss account of the assessee as on 31-03-2008 and as on 31-03-2007.

Page 15 and 16, Annexure A-I seized by party ABR-2, are the profit & loss account and balance sheet of the assessee as on 31-03-2008 and as on 31-03-2007.

Page 17 to 20, of Annexure A-I seized by party ABR-2, are the balance sheet and profit & loss account (and schedules attached thereto) of the assessee as on 31-03-2009 and as on 31-03-2008.

Page 21 to 25, of Annexure A-I seized by party ABR-2, are the unsigned Indemnity bond to be signed by outgoing director of the assessee company for transferring the shares of the assessee company.

Page 26, of Annexure A-I seized by party ABR-2, is the unsigned memorandum of understanding between outgoing

directors of the assessee company, Shri Aseem Kumar Gupta and Sri Raj Kumar Chawla for transferring the assessee company.

In view of the above, and considering the fact that documents and books of accounts seized during the search belong to the assessee, I am satisfied that the assessee's case is a fit case for initiating proceedings u/s 153 C of the Income Tax Act, 1961. Accordingly, action u/s 153 C of the Act is initiated for the Assessment Year 2004-05 to 2010-11.

Issue notice u/s 153 C of the Act for the Assessment Year 2004-05 to 2010-11.”

Assessment orders

7. Separate assessment orders were passed by the AO on 26th December, 2011 for the AYs 2004-05 to 2009-10 creating demands by making additions to the returned income of Ganpati in the cases of each of the Petitioners. The return originally filled by Ganpati had been processed under Section 143(1) of the Act. Now it was under Section 143(3) read with Section 153C of the Act.

8. The assessment orders noted that on 23rd December, 2011 a show cause notice (‘SCN’) was issued to Ganpati stating that there was no real business activity and there was no supporting infrastructure such as fixed assets. In those circumstances, Ganpati was asked to explain why the company should not be treated as a fictitious entity existing only on paper and as to why the corporate veil should not be pierced. Ganpati was asked to show cause as to why the expenses debited (barring statutory and obligatory expenses) should not be disallowed since it had failed to provide justification to establish the

business purposes of the expenses debited in the P&L Account and also did not give any evidence to establish these expenses.

9. With Ganpati not filing any reply, the AO proceeded to add the unexplained expenses to its income. The AO held that Ganpati was just a conduit used by Aseem Kumar Gupta for providing accommodation entries which does not require elaborate infrastructure and such amounts of expenditure to be incurred. Since Ganpati has failed to furnish the necessary evidence in support of its claim of expenditure, addition of the equivalent amount was directed to be made to its taxable income. Thereafter, in response to a request made by Ganpati on 16th January, 2012 for inspection of the assessment records, the AO provided Ganpati a copy of the satisfaction note.

Revision petition under Section 264

10. Aggrieved by the above assessment orders, Ganpati preferred separate revision applications under Section 264 of the Act before the Commissioner of Income Tax (CIT) Central-2, one for each AY. *Inter alia* it was contended by Ganpati that the assumption of jurisdiction by the AO under Section 153C of the Act was illegal and therefore the entire proceedings were void *ab initio*. In their revision application the Petitioners *inter alia* pointed out that “on the inspection of assessment record of Aseem Kumar Gupta it is also found that no satisfaction in case of Aseem Kumar Gupta is recorded by assessing officer that those documents relates to the assessee company which is the precondition for requisition of the information in case of assessee company for initiation of proceedings under Section 153C of the IT

Act.” Therefore, the proceedings initiated under Section 153C of the Act “is bad in law and order was passed in violation of the provisions of Section 153C should be annulled.” Ganpati relied on the decision in ***Manish Maheshwari v. ACIT [2007] 289 ITR 341(SC)***.

Order of the CIT

11. By the impugned order dated 24th March, 2014 the CIT disposed of the petitions of Ganpati holding as under:

(i) Not only the Balance Sheet and the P&L Account, but the other documents also reflected the transfer of shares. The corrected draft MOU for transferring Ganpati between Aseem Kumar Gupta and Raj Kumar Chawla was one such document. Further, Aseem Kumar Gupta admitted in his statement that he had been providing accommodation entries through a number of entities. Ganpati was one such entity which was used in abetment of tax evasion by providing accommodation entries to beneficiaries. Accordingly, there was an intricate connection between Ganpati and Aseem Kumar Gupta.

(ii) With reference to the satisfaction note, a reference was made to the decision in ***CIT v. Panchajanyam Management Agencies & Services (2011) 333 ITR 281 (Ker.)***. It was held that “where the Assessing Officer of the person searched and the person against whom proceedings under Section 153C are initiated are one and the same there is no need to record satisfaction.” Reliance was also placed on the decision of the Allahabad High Court in ***TVS Securities & Finance Pvt. Ltd v. CIT (C)*** (order dated

23rd August, 2013 in ITA No. 165 of 2008) to the effect that the satisfaction of the AO was not mandatory where the AO initiating the proceedings and the AO who made the earlier assessment are the same person. Thus it was concluded that there was no mandatory requirement of recording of satisfaction by the AO while initiating proceedings under Section 153C of the Act and “specifically when the AO of the person searched and the person against whom proceedings under Section 153C were initiated are one and the same.”

(iii) Since in the present case the AO recorded his satisfaction regarding the documents seized before initiating the proceedings under Section 153C of the Act there was no infirmity.

12. As regards the other grounds, the CIT held that the AO had violated the principles of natural justice by finalising the assessment before the expiry of time limit for compliance given in the final SCN. Accordingly, the matter was restored to the AO by setting aside the assessment orders for AYs 2004-05 to 2009-10. The AO was asked to dispose of the matters in accordance with law after making inquiries, investigation and verification, as well as affording an opportunity to Ganpati which was also directed to comply with the notices issued by the AO and furnish all details/documents/information in support of the claims made.

13. This Court has heard the submissions of Mr. Sanjeev Sabharwal, learned Senior counsel appearing for the Petitioner and Mr. Rahul Chaudhary, learned Senior Standing Counsel appearing for the Revenue.

Submissions on behalf of Ganpati

14. The main plank of the submission of Mr. Sabharwal was a decision of this Court in ***Principal Commissioner of Income Tax v. Nikki Drugs & Chemicals P. Ltd.*** [2016] 386 ITR 680 (Del) and the decision of the Karnataka High Court in ***Arihant Aluminium Corporation v. Assistant Commissioner of Income-Tax*** [2016] 388 ITR 450. According to Mr. Sabharwal, the aforementioned decisions made it clear that there were at least two satisfaction notes that were mandatory. One by the AO of the person searched, other by the AO of the 'other person' in relation to whom the incriminating documents belonging to such other person were found during the course of the search.

15. With specific reference to the observations of this Court in ***Pepsi Foods (P). Ltd. v. Assistant Commissioner of Income-tax*** [2015] 376 ITR 87 (Del), Mr Sabharwal submitted that the first step for the AO of the person who searched was to arrive at a clear satisfaction that the documents seized from the searched person does not belong to the searched person but the other person. It is only thereafter that, even if the AO of the searched person and the other person is the same, that the same AO, in his capacity as the AO of the other person will prepare a separate satisfaction note in regard to the other person. According to him, these were two separate processes and if the first step was overlooked or missed then the entire proceedings under Section 153C would be vitiated.

16. Mr Sabharwal referred to the decisions of this Court in ***Pepsico India Holdings (P.) Ltd. v. Assistant Commissioner of Income-tax*** [2015] 370 ITR 295 (Del), ***Commissioner of Income-tax-7 v. RRJ Securities Ltd.***

[2016] 380 ITR 612 (Del), *Commissioner of Income-tax (Central) v. Gopi Apartment [2014] 365 ITR 411 (All)* and *Commissioner of Income-tax v. Mechmen 11-C [2016] 380 ITR 591 (MP)*. He also referred to the decisions of this Court in *Pr. Commissioner of Income Tax (Central-II) v. Aakash Arogya Mandir Pvt. Ltd.* (order dated 28th July, 2015 in ITA No. 509/2015) and *ARN Infrastructure India Ltd. v. Assistant Commissioner of Income-Tax, Central Circle-28, New Delhi* (order dated 25th April, 2017 in W.P. (C) No. 2768/2016).

Submissions on behalf of the Revenue

17. Mr. Rahul Chaudhary, learned Senior standing counsel for the Revenue submitted that there was no requirement under Section 153C for there to be a satisfaction note for the searched person. The satisfaction note in respect of the searched person was at the stage of Section 132 of the Act. After that once the search concluded, notice to the searched person under Section 153A of the Act was issued as a matter of course. It is only for the 'other' person; that Section 153C mandates a satisfaction note. One by the AO of the searched person and the other by the AO of the 'other' person. Both would be to the effect that the documents in question that were seized during the search belong to the other person. Even where the AO for the searched person and the other person was the same the AO of the searched person had to perforce record the satisfaction note.

18. Mr. Chaudhary sought to distinguish the decisions of this Court in *Principal Commissioner of Income Tax v. Nikki Drugs & Chemicals P. Ltd (supra)* and the other decision cited by Mr Sabharwal. He referred to the

CBDT Circular No. 24 of 2015 dated 31st December, 2015 which clarified the legal position. There was therefore no room for ambiguity. He pointed out that in the facts of the present case, there was a satisfaction note recorded by the AO of the searched person in respect of the documents belonging to Ganpati and the requirement of Section 153C was fulfilled. He drew attention to the presumption under sub-section (4A) of Section 132 and referred to the notes about its introduction which explained that the said provision was meant to assist the Revenue.

Analysis of Section 153C

19. In order to appreciate the above submissions it is necessary first to examine in some detail the relevant provision i.e. Section 153C(1) of the Act which reads as under (this is as it stood prior to 1st June 2015):

“153C Assessment of income of any other person.-

- (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, 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, then, the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of Section 153A, if, that Assessing Officer is satisfied that the books of determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of Section 153A:

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated."

20. It must be noted that Section 153C has undergone a change with effect from 1st June 2015. That change is prospective. But in the present cases, with the search having taken place on 26th March 2010 it is Section 153C as it stood prior to 1st June 2015 which would apply.

21. In order to understand how the provision works a simple illustration may be taken up. Imagine that the searched person is 'A'. The search authorisation is issued under Section 132(1) of the Act in A's name after the authorised officer records a satisfaction note in the file of A that he has reason to believe that A is in possession of money, bullion, jewellery or other valuable thing which he has not disclosed in the returns of income filed by him and which, without a search, is not likely to be disclosed or unearthed.

22. Thereafter a search takes place in not only the premises of 'A' but any premises where the undisclosed income is believed to have been kept and 10 documents are seized. It is found that of the 10 documents seized, 2 belong to 'B', 'B' then becomes the 'other person' i.e. a person other than the searched person.

23. It may so happen that 'A' and 'B' are group companies. The search may simultaneously takes place in the premises of 'A' and 'B'. Even where A and B are under the jurisdictions of different AOs at the time of search, after the search for administrative convenience the cases of A and B are transferred to the same circle to be dealt with by the same AO.

24. In this illustration after having seized the above 10 documents, 2 of which belong to B and 8 belong to A (the searched person) what should the AO do in order to comply with Section 153C of the Act? The AO in his capacity as the AO of the searched person, that is, 'A' does not have to, in order to continue the assessment proceedings against 'A' record any satisfaction note as such. As far as 'A' is concerned, he is the searched person and notice to him under Section 153A automatically follows. In those assessment proceedings, the AO will have to examine if the eight seized documents constitute incriminating material that would justify revisiting of an assessment which has abated or whether it would result in additions in a pending assessment. For the purposes of the present case we need not further examine the requirement of Section 153A because what we are concerned is with Section 153C that is the provision in relation to the 'other person'.

25. As regards 2 other documents which the AO is satisfied 'belong to' the other person 'B', he will prepare a satisfaction note to that effect. The question that is posed is, whether the AO has to prepare two satisfaction notes in relation to these 2 documents: one in which he states that these 2 documents in the opinion of the AO do not belong to 'A' and the second note which states that he is satisfied that these 2 documents belong to 'B'?

26. The Court is of the view that a plain reading of Section 153C does not require the AO of the searched person (A) to prepare two satisfaction notes. Only as far as the 'other person' B is concerned' the AO is expected to prepare a satisfaction note stating that the 2 documents belong to B. The failure by the AO to add in the said satisfaction note that the 2 documents do not belong to A will not vitiate the entire proceedings against B under Section 153C of the Act for the simple reason that there is no such requirement.

27. What the settled legal position as explained in several cases, which will be discussed shortly, is that the recording by the AO of the searched person that some documents seized during the search 'belong to' the other person is mandatory in order to assume jurisdiction *qua* the other person under Section 153C of the Act. This is mandatory even where the AO of the searched person and the other person is the same. This is also what the CBDT Circular now clarifies. In a particular case, given the nature of the document, it may become necessary for the AO to indicate the basis of his satisfaction that the document belongs only to B and not to A. But then that is dictated by the nature of the document. What he has to be sure about, and

the note should reflect this, is that it does belong to B. Once the note says that then the requirement of Section 153C is fulfilled.

28. Therefore, the Court does not agree with Mr Sabharwal that there have to be two separate satisfaction notes prepared by the AO of the searched person even where he is also the AO of the other person. In such event, the AO need make only one satisfaction note. That satisfaction note is *qua* the other person. Further it is sufficient that such satisfaction note is placed in the file of the other person by the AO in his capacity as the AO of such other person.

29. Where the AO of the searched person is different from the AO of the other person the AO will, simultaneous with transmitting the documents along with his satisfaction note to the AO of the other person, make a note in the file of the searched person that he has done so. But this is for administrative convenience. The failure by the AO of the searched person, after preparing and despatching the satisfaction note and documents to the AO of the other person, to make a noting in the file of the searched person will not vitiate the entire proceedings under Section 153C against the other person.

Understanding the illustration in Pepsico India Holdings

30. The example given by this Court in ***Pepsico India Holdings (P.) Ltd.*** is examined next. It may so happen that a particular document like the copy of a sale deed which has the names of both the vendor ('X') the vendee (Y) and perhaps some other person say 'Z' who may have signed as a witness or 'D' who may be a broker is found during search in the premises of say X. Since

all their names figure in that document it might become necessary for the AO of the searched person (X) to form an opinion about whom that document could be said to 'belong to'. The satisfaction note in such a case will require the AO to record his reasons for his conclusion that the document belongs to say Y. In that process, in his satisfaction note, he may in the first portion explain why he thinks that the said document does not belong to 'X', 'Z' or 'D' but belongs to 'Y'.

31. This does not mean that in each and every case, even when the document is such as to leave no doubt as to whom it belongs to the AO has to necessarily record that it does not belong to the searched person. As long as he records that in his opinion it belongs to the other person, that will satisfy the requirement of the law. Further Section 153C does not state that the failure by the AO in such case to record in his satisfaction note that such a document does not belong to the searched person would vitiate the entire proceedings under Section 153C against the other person notwithstanding the AO having recorded that it does belong to the other person.

32. Mr. Sabharwal was unable to show whether after the decision in ***Pepsico Holdings***(supra) a Court had invalidated the proceedings under Section 153C only because the satisfaction note recorded by the AO to the effect that the documents seized belonged to the other person 'B' did not also state that the document does not belong to the searched person 'A'. The Court now proceeds to discuss the decisions cited by him.

The decision in Nikki Drugs

33.1 The facts in ***Principal Commissioner of Income Tax v. Nikki Drugs &***

Chemicals P. Ltd (supra) were that search and seizure operation under Section 132 of the Act were commenced on 14th October, 2008 in respect of the SVP Group of Industries. In addition to the four companies forming the core of the SVP Group, warrants of search and seizure were also issued in respect of 20 other companies. It was found that the four companies forming core of the SVP Group had received share capital from 106 companies during the year 2003-04 to 2009-12. The case of the Revenue was that the aforementioned four companies have been charging 'on money' on sale of accounts.

33.2 The AO categorised the 106 companies which had invested in the share capital of the SVP Group during the AYs 2003-04 to 2009-10 into three groups. These were Tables I, II and III. Table II comprised of 12 companies, including the Respondent Nikki Drugs and Chemicals Pvt. Ltd. ('Nikki') against whom proceedings were initiated under Section 153C of the Act. There too Nikki challenged the assumption of jurisdiction of the AO under Section 153C of the Act. It was contended that the AO of the searched person (SVP Group) had not recorded his satisfaction that any money or any other valuable article belonged to the other person (Nikki). On merits it was submitted that the amount received by Nikki was duly recorded in its books of accounts and did not warrant assessment under Section 68 of the Act.

33.3 The CIT (A) in the appeal filed by Nikki called for a remand report. The AO submitted the remand report enclosing the satisfaction note recorded by the AO which *inter alia* mentioned that some of the documents seized belonged to M/s. SVP Builders India Ltd. but recorded satisfaction

about certain other documents belonged to Nikki and the satisfaction that proceedings under Section 153C read with Section 153A of the Act were required to be initiated against Nikki. The CIT (A) did not agree that the assumption of jurisdiction under Section 153C was erroneous. However, on merits, the CIT (A) deleted that additions made by the AO with the directions to add the loss in the hands of the beneficiary.

33.4 Nikki and the Revenue then went before the ITAT. Nikki was aggrieved by the decision of the CIT (A) rejecting its contention that the proceedings under Section 153C were without any jurisdiction. The Revenue, on the other hand, challenged the deletions of the additions made by the AO. The ITAT found that a satisfaction note had not been recorded by the AO of the searched person and, therefore, initiation of proceedings under Section 153C was invalid. The ITAT found that the sources of money received by the Assessee were duly explained and thereby deleted the additions under Section 68 of the Act. Nikki's appeals were allowed and the Revenue's appeal were dismissed.

33.5 Aggrieved by the order of the ITAT, the Revenue preferred the above appeal before this Court. The Court in ***Principal Commissioner of Income Tax v. Nikki Drugs & Chemicals P. Ltd*** (*supra*) specifically noted that:

"17. In the present case, the ITAT specifically recorded that, admittedly, a satisfaction note had not been recorded by the assessing officer of the searched person."

18.....It was sought to be contended before us that the assessing officer of the searched persons had, in fact,

recorded the necessary satisfaction note. However, the learned counsel for the Revenue could not confirm whether such note was prepared prior to the initiation of the proceedings under section 153C of the Act. The Assessee's contention that despite its request such note had not been disclosed during the assessment proceedings has also not been controverted. In the circumstances, the categorical finding of the ITAT that it was an admitted fact that the assessing officer of the searched persons had not recorded a satisfaction note, cannot be interfered with."

33.6 Therefore, what weighed with this Court was that the AO of the searched person had not recorded a satisfaction note *prior* to the assumption of jurisdiction *qua* the other person. This therefore turned on facts.

The CBDT Circular

34. The CBDT within a few days after the above decision in ***Principal Commissioner of Income Tax v. Nikki Drugs & Chemicals P. Ltd*** (*supra*) issued Circular No. 24 of 2015 on 31st December 2015, the relevant portions of which read as under:

"The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of M/s *Calcutta Knitwears* in its detailed judgment in Civil Appeal No. 3958 of 2014, dated March 12, 2014 has laid down that for the purpose of section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the Assessing Officer before he transmits the record to the other Assessing Officer who has jurisdiction over such other person under Section 158BD. The Hon'ble Court held that "*the*

satisfaction note could be prepared at any of the following stages:

*(a) at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; or
(b) in the course of the assessment proceedings are completed under section 158BC of the Act of the searched person.”*

3. Several High Courts have held that the provisions of Section 153C of the Act are substantially similar/*pari materia* to the provisions of Section 158BD of the Act and therefore, the above guidelines of the Hon’ble Supreme Court, apply to proceedings under Section 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by the CBDT..

4. The guidelines of the Hon’ble Supreme Court as referred to in para 2 above, with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that even if the Assessing Officer of the searched person and the ‘other person’ is one and the same, then also he is required to record his satisfaction as has been held by the courts.

5. In view of the above, filing of appeals on the issue of recording of satisfaction, note should also be decided in the light of the above judgment. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under Section 158 BD/153 C should be withdrawn/not pressed if it does not meet the guidelines laid down by the apex court.”

Other decisions

35.1 Subsequently in ***Arihant Aluminium Corporation v. Assistant Commissioner of Income-Tax*** (*supra*), a Division Bench of the Karnataka High Court dealt with same issue. After noticing the CBDT Circular, the

Karnataka High Court concluded as under:

“The resultant effect would be that, the requirements of recording of satisfaction note for exercise of power under Section 153C is a mandatory requirement and cannot be given a go-bye, either at the stage of initiation or during the course of assessment or at the conclusion of the assessment.”

35.2 The matter was sent back to the ITAT for examining “whether there was compliance of the requirement of satisfaction recording before final conclusion was drawn and as to whether the assessment made under Section 153C is in accordance with the provisions of the Act or bad in law or liable to be quashed or not.”

36. The Madhya Pradesh High Court in *CIT v. Mechmen 11-C* (*supra*) reiterated that the recording of satisfaction by the AO of the searched person that the documents belong to the other person is a *sine qua non* for commencing the proceedings against the other person under Section 153C of the Act. This is more or less what the CBDT Circular now acknowledges. There is no requirement in terms thereof for the AO of the searched person, while recording that the documents belong to the other person, to also record that they do not belong to the searched person.

37. In *Commissioner of Income-tax-7 v. RRJ Securities Ltd.*(*supra*), the Court came to a conclusion on the facts of that case that the documents which were in the hard disc and contained working papers for the preparation of the Assessee’s balance sheet, income tax computation and

details of income tax filing did not in fact constitute incriminating material. In fact the clear finding was that the hard disc did not belong to the Assessee. It is evident from para 30 which reads as under:

“30. It is not disputed that the said hard disk also did not contain any incriminating as the data on the hard disc only supported the return filed by the Assessee. This apart, as the hard disc did not belong to the Assessee, in our view, proceedings under Section 153C of the Act could not be initiated on the basis of the said disk.”

38. The said decision too therefore did not hold that the failure by the AO of the searched person to record that the documents belonging to the other person do not belong to the searched person would vitiate the proceedings under Section 153C against the other person.

39. The Madhya Pradesh High Court in ***Commissioner of Income-tax v. Mechmen***(supra) reiterated the settled position that it is mandatory for the AO of the searched person to record a satisfaction note in respect of the other person. That preposition is in fact too well settled. The CBDT Circular now puts it beyond the pale of doubt. It categorically states that even where the AO of the searched person and the other person is same, such AO is not relieved of its statutory obligation to record a satisfaction note in respect of the other person.

40. In ***Pr. Commissioner of Income Tax (Central-II) v. Aakash Arogya Mandir Pvt. Ltd.***(supra), there were factual findings that the AO of the searched person had not recorded the satisfaction note in respect of the other person. Likewise, in ***ARN Infrastructure India Ltd. v. Assistant***

Commissioner of Income-Tax(supra), the Court was satisfied that the documents seized were not incriminating.

Legal position summarised

41. To summarise the legal position:

(i) No search under Section 132(1) of the Act can be initiated without a satisfaction note being recorded by the AO of such searched person. This is followed by issuance of a notice to such searched person under Section 153A of the Act. At that stage the AO does not have to record another satisfaction note *qua* the searched person.

(ii) Where proceedings are proposed to be initiated under Section 153C of the Act against the 'other person', it has to be preceded by a satisfaction note by the AO of the searched person. He will record in this satisfaction note that the seized document belongs to the other person. Depending on the nature and contents of the document he may be required to give some reasons for such conclusion.

(iii) Where the AO of the searched person is different from the AO of the other person, the AO will simultaneous with transmitting the documents along with his satisfaction note to the AO of the other person, make a note in the file of the searched person that he has done so. But this is for administrative convenience. The failure by the AO of the searched person, after preparing and despatching the satisfaction note and documents to the AO of the other person, to make a noting to that effect in the file of the searched person will not vitiate the proceedings under Section 153C against

the other person.

(iv) Where the AO of the searched person and the other person is the same, such a satisfaction note *qua* the other person has to be recorded by the AO of the searched person *prior* to the initiation of the proceedings against the other person. This is a *sine qua non* for triggering the proceedings against the other person under Section 153C of the Act.

(v) There do not have to be two separate satisfaction notes prepared by the AO of the searched person even where he is also the AO of the other person. In such event, the AO need make only one satisfaction note. That satisfaction note is *qua* the other person. Further it is sufficient that such satisfaction note is placed in the file of the other person by the AO in his capacity as the AO of such other person.

(vi) It is only in certain cases, where the document is such that it may belong to more than one person (including the searched person) that the AO will have to indicate in the satisfaction note the reasons why he is of the opinion that the document belongs to the other person and not the searched person.

(vii) Where the AO of the searched person records that the seized document in question belongs to the other person, and where necessary, gives the reasons therefor, the requirement of Section 153C stands satisfied. The failure by the AO in such case to record in the satisfaction note that such document does not belong to the searched person will not vitiate the proceedings under Section 153C against the other person.

Conclusion in the Ganpati cases

42. In the Ganpati cases, the satisfaction note clearly records the view that the documents listed therein belong to the other person. The satisfaction note is of the AO of the searched person who also happens to be the AO of the other person i.e. Ganpati. Merely because the note also does not categorically state that the documents mentioned therein do not belong to the searched person (Aseem Kumar Gupta Group) will not invalidate the assumption of jurisdiction under Section 153C *qua* Ganpati.

43. The view taken by the CIT in the impugned order does not call for interference. The remand to the AO for giving Ganpati a further opportunity regarding the nature of the documents and the validity of the additions made as a result thereof also calls for no interference. The writ petitions by Ganpati fail and are hereby dismissed.

Facts in Shushre and Shrey

44. As far as Shushre is concerned, arising from the same search and seizure and survey operation undertaken on 26th March 2010, a satisfaction note was recorded by the AO CC-9 on 8th November 2011 as under:

"Satisfaction recorded u/s 153C in the case of M/s. Shushre Securities Pvt. Ltd.

A search & seizure operation u/s 132 of the Act was conducted on 26.03.2010 at various premises of Aseem Kumar Gupta, his associates & Other Beneficiaries. During the search & seizure operations various documents, books of account, hard disks etc. were seized. On perusal of the seized documents, it was noticed that some of these documents belong to the assessee which *inter alia* include the following:

Page no 17 of Annexure A2 seized by party RG 9 is a letter from Parsvnath Developers Ltd. in respect of payments outstanding related to Unit No B1-1205 A in Parsvnath Palacia Greater NOIDA

An un-numbered page, of Annexure A2 seized by party RG 9, annexed between page 16 and page 17 is the copy of account of ledger of the assessee in the books of Parsvnath Developers Ltd.

Pages 48 and 49 of Annexure A-17 seized by party SG-6, are the financial statements of the assessee company as on 31-03-2005.

In view of the above, and considering the fact that documents and books of accounts seized during the search belong to the assessee, I am satisfied that the assessee's case is a fit case for initiating proceedings u/s 153C of the Income Tax Act, 1961. Accordingly, action u/s 153 C of the Act is initiated for the Assessment Year 2004-05 to 2010-11.

Issue notice u/s 153C of the Act for the Assessment Year 2004-05 to 2010-11."

45. As far as Shrey is concerned the Satisfaction Note dated 8th November 2011 read as under:

"Satisfaction recorded u/s 153C in the case of M/s. Shrey Infradevelopers Pvt. Ltd.

A search & seizure operation U/S 132 of the Act was conducted on 26.03.2010 at various premises of Aseem Kumar Gupta, his associates & Other Beneficiaries. During the search & seizure operations various documents, books of account, hard disk etc. were seized. On perusal of the seized documents, it was noticed that some of these documents belong to the assessee which *inter alia* include the following:

Page 38 of Annexure A2 seized by party RG 9 is a receipt from tdi in respect of payment of Rs. 7,50,000 made by M/s. Shrey Infradevelopers Pvt. Ltd.

Page 19 of Annexure A2 seized by party RG 9 is a cheque drawn in favour of M/s Shrey Infradevelopers Pvt. Ltd.

Page 43-50 of Annexure A-12 seized by party SG6 are bank statement of the assessee company reflecting unusually high number of withdrawals and deposits of almost equal amounts.

Page 43-50 of Annexure A-12 seized by party SG6 are bills raised by the assessee company to various parties.

In view of the above, and considering the fact that documents and books of accounts seized during the search belong to the assessee, I am satisfied that the assessee's case is a fit case for initiating proceedings u/s 153C of the Income Tax Act, 1961. Accordingly, action u/s 153C of the Act is initiated for the Assessment Year 2004-05 to 2010-11.

Issue notice u/s 153C of the Act for the Assessment Year 2004- 05 to 2010-11."

46. The AO passed assessment orders in the cases of Shushre and Shrey on 22nd and 23rd December 2011 respectively, making additions to the taxable income. These were challenged by Shushre and Shrey by filing applications under Section 264 of the Act on 16th April and 13th April 2012 respectively. The CIT by orders dated 21st March and 20th April 2014 respectively rejected both applications. Unlike the case of Ganpati, the CIT declined to remand the cases to the AO for determining if the additions made could be sustained.

47. Mr Sabharwal sought to contend that in the cases of both Shushre and Shrey the documents said to belong to each of them were not incriminating so as to warrant any additions during the reassessment. According to him,

documents like financial statements can hardly be said to be incriminating. He took the Court through some of the documents.

48. The Court notes that in the impugned orders dismissing the revision petitions of Shushre and Shrey, the CIT has noted that despite several opportunities being granted to the ARs of the Assessee, they did not appear and "no submissions on merits of the case" were made by the two Assessee during present proceedings. In the circumstances, no fault can be found with the CIT for declining to interfere on merits with the additions made by the AO.

49. Even otherwise, in these writ proceedings, it is difficult for the Court to examine the documents seized and determine if in fact they could be said to be incriminating *qua* each of the said Assessee. There could be instances where the very nature of the document for e.g., a balance sheet or P&L account of the Assessee, which already stood disclosed during the original assessment proceedings, can be said to be non-incriminating. That again will depend on the facts and circumstances.

50. However, the documents listed out in both the above satisfaction notes *qua* Shushre and Shrey are not such that can be said to be non-incriminating on a bare perusal. There was sufficient opportunity for both Assessee to demonstrate how they were not. But they did not avail of the opportunity. In the writ jurisdiction, this Court has to be satisfied that the CIT's impugned orders are not unfair, unjust or irrational and are consistent with the basic procedural requirements. On none of these counts do the impugned orders of the CIT in the present case warrant interference. Consequently, the petitions

of Shushre and Shrey also are held to be without merit.

51. The impugned orders of the CIT are accordingly upheld and all the writ petitions are dismissed, with no order as to costs.

S. MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 25, 2017
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