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

\+ **ITA 613/2016**

PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 ..... Appellant

Versus

INSTRONICS LTD. ..... Respondent

With

\+ **ITA 614/2016**

PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 ..... Appellant

Versus

INSTRONICS LTD. ..... Respondent

With

\+ **ITA 615/2016**

PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 ..... Appellant

Versus

INSTRONICS LTD. ..... Respondent

With

\+ **ITA 801/2016**

PR. COMMISSIONER OF INCOME TAX ..... Appellant

Versus

INSTRONICS LTD ..... Respondent

With

\+ **ITA 805/2016**

PR. COMMISSIONER OF INCOME

TAX CENTRAL-3 ..... Appellant

Versus

INSTRONICS LTD. ..... Respondent

With

\+ **ITA 809/2016**

PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 ..... Appellant

Versus

INSTRONICS LTD. ..... Respondent

With

\+ **ITA 814/2016**

PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 ..... Appellant

Versus

INSTRONICS LTD. ..... Respondent

With

\+ **ITA 840/2016**

PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 ..... Appellant

Versus

INSTRONICS LTD. ..... Respondent

With

\+ **ITA 848/2016**

PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 ..... Appellant

Versus

INSTRONICS LTD. ..... Respondent

AND

\+ **ITA 849/2016**

PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 ..... Appellant

Versus

INSTRONICS LTD. ..... Respondent

Through: Mr.Ashok K.Manchanda, Sr.Standing Counsel with Mr.Raghvendra Singh, Mr. Anand K.Chaudhari, Advocates for the appellants.
Mr.Vikas Jain, Advocate for the Respondents.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R

% **25.05.2017**

C.Ms.No. 30398/2016 & 30399/2016 (delay) in ITA No. 613/2016
C.Ms.No. 30401/2016 & 30402/2016 (delay) in ITA No. 614/2016
C.Ms.No. 30404/2016 & 30405/2016 (delay) in ITA No. 615/2016
C.Ms.No. 42538/2016 & 42539/2016 (delay) in ITA No. 801/2016
C.Ms.No. 43053/2016 & 43054/2016 (delay) in ITA No. 805/2016
C.Ms.No. 43253/2016 & 43254/2016 (delay) in ITA No. 809/2016
C.M.No. 43265/2016 & 43266/2016 (delay) in ITA No. 814/2016
C.Ms.No. 43686/2016 & 43687/2016 (delay) in ITA No. 840/2016
C.Ms.No. 44047/2016 & 44048/2016 (delay) in ITA No. 848/2016
C.Ms.No. 44055/2016 & 44056/2016 (delay) in ITA No. 849/2016

1. For the reasons explained in the applications, the delay in filing as well as re-filing is condoned. The applications are disposed of.

ITAs Nos. 613/2016, 614/2016, 615/2016, 801/2016, 805/2016, 809/2016, 814/2016, 840/2016, 848/2016, 849/2016.

2. These are ten appeals by the Revenue directed against the common order

dated 13th March, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITAs Nos. 6336, 6337, 6338, 6339, 6340 and 6341/Del/2014 for the Assessment Years ('AYs') 2003-04 to 2008-09 and ITAs Nos. 6553, 6554, 6555 and 6556/Del/2014 for the AYs 2005-06 to 2008-09. Of the 10 appeals, 6 were by the Assessee and 4 by the Revenue. The Revenue's appeals were for the AYs 2005-06 to 2008-09.

3. By the impugned order, the ITAT has partly allowed all the appeals filed by the Assessee and dismissed the cross appeals of the Revenue.

4. **Admit**.

5. The following question of law is framed for consideration:

> "Whether the ITAT was correct in holding that in the absence of any satisfaction of the Assessing Officer (AO) of the searched person, the assessment framed by invoking the provisions of Section 153C cannot be sustained?"

6. In the present case, the search took place in the cases of Shri B.K. Dhingra, Smt. Poonam Dhingra and Madhusudan Buildcon Pvt. Ltd., associates of Thapar Group of Companies on 20th October, 2008. During the course of the search at the residential premises at F-6/5, Vasant Vihar, New Delhi, certain documents belonging to the Assessee, Instronics Ltd. were found and seized. After about two years of the search, the AO of the searched person on 30th September, 2010 recorded a satisfaction that some of the documents belong to the Assessee. The satisfaction note recorded on 30th September, 2010 reads as under:

> "In the case of Sh. B. K. Dhingra, Smt. Poonam Dhingra, M/s Mayank Traders Pvt. Ltd., M/s. Horizon Pvt. Ltd., search &

seizure took place u/s 132 on 20.10.2008. The undersigned is the jurisdictional AO of these cases. During the course of search & seizure documents/papers at pages 1 to 38 of Annexure A-87, Annexures, A-96, A-97, A-98 and A-99, are found to belong to M/s. Instronics Ltd., 192C, J & K Pocket, Dilshad Garden, New Delhi. I have examined the above mentioned documents/papers and provision of Section 153C is invokeable in this case. As the undersigned is also the jurisdictional AO of M/s. Instronics Ltd. 192C, J & K Pocket, Dilshad Garden, New Delhi, this satisfaction note is recorded and is placed in the file before issuing notice u/s 153C."

7. Thereafter, notice under Section 153C of the Act was issued to the Assessee by the ACIT, Central Circle-17 on 1st October, 2010 calling upon the Assessee to file its return of income for AYs 2003-04 to 2008-09 within 15 days from the date of service of the notice. The case was subsequently transferred to Central Circle-21 by an order dated 19th October, 2010. In response to the notice under Section 153C, the Assessee filed returns for the aforementioned AYs.

8. By separate assessment orders dated 31st December 2010, for each of the AYs 2003-04 to 2008-09 the AO finalised the assessment under Section 143(3) read with Section 153C of the Act making additions to the returned income in each of the AYs.

9. The appeals by the Assessee was dismissed by the CIT(A) by separate orders dated 5th September, 2014 sustaining most of the additions and disallowances. The objection raised by the Assessee to the assumption of jurisdiction under Section 153C of the Act was negatived by the CIT(A).

10. It is the case of the Revenue that at the stage of the proceedings before the CIT(A), the Assessee did not place on record any replies received by it in response to an application made under the Right to Information Act, 2005 ('RTI Act') despite their being available with the Assessee.

11.Against the decision of the CIT(A), both the Assessee and the Revenue filed appeals before the ITAT. At this stage, the Assessee placed on record the information gathered pursuant to the application made under the RTI Act. It was contended before the ITAT by the Assessee that the satisfaction note recorded on 30th September, 2010 was by the AO of the Assessee and not the AO of the searched person. Accepting this submission, the ITAT by the impugned order held that the assumption of jurisdiction against the Assessee under Section 153C of the Act was unsustainable in law.

12. It is contended by Mr. Ashok Manchanda, learned Senior Standing Counsel for the Revenue that the ITAT erred in observing that there is no satisfaction note of the AO of the searched person in the present case. It overlooked that in the satisfaction note itself, the AO specifically notes that he is also the jurisdictional AO for all of the cases i.e., for the searched persons as well as the other persons. This basic error led the ITAT to hold that the assumption of jurisdiction under Section 153C of the Act was illegal. He relied *inter alia* on the decisions of this Court in ***Principal Commissioner of Income Tax v. Satkar Fincap Ltd.*** (order dated 16th November, 2016 in ITA No. 82/2016) and in ***Principal Commissioner of Income Tax v. Super Malls Ltd.*** (order dated 13th January, 2017 in ITA No. 450/2016).

13. Mr. Vikas Jain, learned counsel for the Respondent Assessee, on the other hand, sought to place reliance on the decisions of this Court in ***ARN Infrastructure India Ltd. v. ACIT*** (order dated 24th April, 2017 in W.P. (C) No. 2768/2016), ***CIT-7 v. RRJ Securities Limited [2015] 62 taxmann.com 391 (Del)***, ***PCIT-(Central-2) v. IECS Solutions Private Limited*** (order dated 19th October, 2015 in ITA No. 806/2015) and ***Principal Commissioner of Income Tax v. Aakash Arogya Mandir Pvt. Ltd.*** (order dated 28th July, 2015 in ITA No. 509/2015).

14. Today by a separate judgment in the batch of writ petitions, the lead case being W.P.(C) 525/2015 (***Ganpati Services Pvt. Ltd. v. Commissioner of Income Tax etc)***, the Court summarised the legal position in respect of the Satisfaction Note under Section 153 C of the Act as under:

> "38. 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 153 A 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 153 C 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 153 C of the Act.

(v) There does 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 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 153 C 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 153 C against the other person."

15. In the present case, the ITAT overlooked the fact that the Satisfaction Note was in fact recorded by the AO of the searched person who also happened to be the AO for the Assessee (the other person) as well. This is clear from the sentence in the Satisfaction Note which reads: "The undersigned is the jurisdictional AO of these cases." TheAO of the searched person has recorded the satisfaction that the seized documents belonged to the Assessee. In similar circumstances in ***Principal Commissioner of Income Tax v. Satkar Fincap Ltd.*** (*supra*), this Court held likewise. The Satisfaction Note in the present case, therefore, satisfies the requirement of the law. Consequently, the question framed is answered in the negative i.e., in favour of the Revenue and against the Assessee.

16. The learned counsel for the Petitioner then urged that the documents referred to in the Satisfaction Note were not incriminating and, therefore, on that ground also, the assumption of jurisdiction under Section 153C by the AO was erroneous.

17. The Court finds that there is no discussion in the impugned order of the ITAT on whether the documents referred to in the Satisfaction Note were, in fact, incriminating. The ITAT invalidated the proceedings under Section 153 C of the Act only on the ground of there being no Satisfaction Note by the AO of the searched person. As discussed earlier, this was factually erroneous. There was no occasion for the ITAT to examine the other grounds of challenge to the assumption of jurisdiction under Section 153 C

of the Act.

18. Consequently, the impugned order dated 13th March 2015 of the ITAT is hereby set side. The Court restores to the file of the ITAT for a further hearing all the appeals in which the impugned order was passed for consideration of the further grounds including the question whether the assumption of jurisdiction by the AO under Section 153C *qua* the Assessee was justified on the ground that the documents seized and stated to belong to the Assessee were not incriminating.

19. The aforementioned appeals be listed before the ITAT on 3rd July, 2017 for directions.

20. The present appeals of the Revenue are allowed in the above terms.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 25, 2017
'anb' /dn