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

\+ ITA 527/2022

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

Through: Mr. Prashant Meharchandani, Sr. Standing Counsel along with Mr. Akshat Singh, Jr. Standing Counsel, Ms. Ritika Vohra and Mr. Utkarsh Kandpal, Advs.

versus

M/S. GRACIOUS PROJECTS PVT. LTD. ..... Respondent

Through: Mr. S. Krishnan, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **01.03.2024**

1. A prayer for adjournment has been made. However, we note that the appeal has been pending since 2022. Consequently, the prayer so made is rejected.

2. The Department has instituted this appeal assailing the validity of the order passed by the Income Tax Appellate Tribunal [**'ITAT'**] dated 11 December 2019. For the purposes of considering the issues that arise, we are of the opinion that Question (A) as proposed and extracted hereunder would suffice:

> "(A) Whether, in the facts and circumstances of the ease and in law, the ITAT was justified in setting aside the assessment proceedings under Section 153C by holding that satisfaction in terms of provisions of section 153C has not been recorded in the case of searched person without appreciating that the Assessing Officer of the assessee and of the searched person was the same and there was no question of transmitting such documents from one Assessing Officer to another?"

3. As is manifest from a reading of the order of the ITAT, it has essentially proceeded on the basis that in the absence of a satisfaction recorded in the file of the searched person, no proceedings against the other person under Section 153C of the Income Tax Act, 1961 ['**Act**'] could have been initiated.

4. We note that the aforesaid view as taken appears to be wholly untenable bearing in mind the language employed in Section 153A as well as the judgment rendered by this Court in **Ganpati Fincap Services P. Ltd & Ors v. Commissioner of Income Tax** [2017 SCC Online Del 8666]. While dealing with this very issue, the Court in *Ganpati Fincap* had held as follows: -

> "**26.** The court is of the view that a plain reading of section 153C does not require the Assessing Officer of the searched person (A) to prepare two satisfaction notes. Only as far as the "other person" B is concerned, the Assessing Officer is expected to prepare a satisfaction note stating that the 2 documents belong to B. The failure by the Assessing Officer 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.
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> **27.** What the settled legal position as explained in several cases, which will be discussed shortly, is that the recording by the Assessing Officer 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 Assessing Officer of the searched person and the other person is the same. This is also what the Central Board of Direct Taxes Circular now clarifies. In a particular case, given the nature of the document, it may become necessary for the Assessing Officer 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.
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> **28.** Therefore, the court does not agree with Mr. Sabharwal that there have to be two separate satisfaction notes prepared by the Assessing Officer of the searched person even where he is also the

Assessing Officer of the other person. In such event, the Assessing Officer 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 Assessing Officer in his capacity as the Assessing Officer of such other person.

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37. In CIT 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 (page 633 of 380 ITR):

> "It is not disputed that the said hard disk also did not contain any incriminating material 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 Assessing Officer 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 CIT v. Mechmen (supra) reiterated the settled position that it is mandatory for the Assessing Officer of the searched person to record a satisfaction note in respect of the other person. That proposition is in fact too well settled. The Central Board of Direct Taxes circular now puts it beyond the pale of doubt. It categorically states that even where the Assessing Officer of the searched person and the other person is the same, such Assessing Officer is not relieved of his statutory obligation to record a satisfaction note in respect of the other person.

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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 Assessing Officer 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 Assessing Officer 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 Assessing Officer 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 Assessing Officer of the searched person is different from the Assessing Officer of the other person, the Assessing Officer will simultaneous with transmitting the documents along with his satisfaction note to the Assessing Officer 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 Assessing Officer of the searched person, after preparing and despatching the satisfaction note and documents to the Assessing Officer 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 Assessing Officer 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 Assessing Officer 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 Assessing Officer of the searched person even where he is also the Assessing Officer of the other person. In such event, the Assessing Officer 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 Assessing Officer in his capacity as the Assessing Officer 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 Assessing Officer 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 Assessing Officer 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 Assessing Officer 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."

5. The said opinion as expressed by this Court in *Ganpati Fincap* was not interfered with by the Supreme Court in SLP(C) 7146/2018, whereby the Supreme Court vide its order dated 19 February 2024 dismissed the Special Leave Petition preferred by the assessees. In this backdrop, it is also apposite to observe the following findings as rendered by the Supreme Court in **Super Malls Private Limited v. Principal Commissioner of Income Tax, 8, New Delhi** [2020(4) SCC 581] and which are extracted hereinunder:

> "**7.** This Court had an occasion to consider the scheme of Section 153-C of the Act and the conditions precedent to be fulfilled/complied with before issuing notice under Section 153-C of the Act in *Calcutta Knitwears* [*CIT* v. *Calcutta Knitwears*, (2014) 6 SCC 444] as well as by the Delhi High Court in *Pepsi Food (P) Ltd.* [*Pepsi Food (P) Ltd.* v. *CIT*, 2014 SCC OnLine Del 4029 : (2014) 367 ITR 112] As held, before issuing notice under Section 153-C of the Act, the assessing officer of the searched person must be "satisfied" that, inter alia, any document seized or requisitioned "belongs to" a person other than the searched person. That thereafter, after recording such satisfaction by the assessing officer of the searched person, he may transmit the records/documents/things/papers, etc. to the assessing officer having jurisdiction over such other person. After receipt of the aforesaid satisfaction and upon examination of such other documents relating to such other person, the jurisdictional assessing officer may proceed to issue a notice for the purpose of completion of the assessment under Section 158-BD of the Act and the other provisions of Chapter XIV-B shall apply.
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> **7.1.** It cannot be disputed that the aforesaid requirements are held to be mandatorily complied with. There can be two eventualities. It may so happen that the assessing officer of the searched person is different from the assessing officer of the other person and in the second eventuality, the assessing officer of the searched person and the other person is the same. Where the assessing officer of the searched person is different from the assessing officer of the other person, there shall be a satisfaction note by the assessing officer of the searched person and as observed hereinabove that thereafter the assessing officer of the searched person is required to transmit the

> documents so seized to the assessing officer of the other person. The assessing officer of the searched person simultaneously while transmitting the documents shall forward his satisfaction note to the assessing officer of the other person and is also required to make a note in the file of a searched person that he has done so. However, as rightly observed and held by the Delhi High Court in *Ganpati Fincap* [*Ganpati Fincap Service (P) Ltd.* v. *CIT*, 2017 SCC OnLine Del 8666 : (2017) 395 ITR 692] , the same is for the administrative convenience and the failure by the assessing officer of the searched person, after preparing and dispatching the satisfaction note and the documents to the assessing officer of the other person, to make a note in the file of a searched person, will not vitiate the entire proceedings under Section 153-C of the Act against the other person. At the same time, the satisfaction note by the assessing officer of the searched person that the documents, etc. so seized during the search and seizure from the searched person belonged to the other person and transmitting such material to the assessing officer of the other person is mandatory. However, in the case where the assessing officer of the searched person and the other person is the same, it is sufficient by the assessing officer to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, then the requirement of Section 153-C of the Act is fulfilled. In case, where the assessing officer of the searched person and the other person is the same, there can be one satisfaction note prepared by the assessing officer, as he himself is the assessing officer of the searched person and also the assessing officer of the other person. However, as observed hereinabove, he must be conscious and satisfied that the documents seized/recovered from the searched person belonged to the other person. In such a situation, the satisfaction note would be qua the other person. The second requirement of transmitting the documents so seized from the searched person would not be there as he himself will be the assessing officer of the searched person and the other person and therefore there is no question of transmitting such seized documents to himself.

6. We, consequently allow the instant appeal and set aside the order of the ITAT dated 11 December 2019 on the aforesaid terms.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J

MARCH 01, 2024/RW