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

+ W.P.(C) 6162/2023 & CM APPL. 24246/2023 (Stay)

MUKESH CHANDRA AGARWALPetitioner

Through: Mr. Salil Kapoor, Mr. Sumit
Lalchandani, Ms. Ananya
Kapoor, Mr. Tarun Chanana &
Mr. Shivam Yadav, Advocates

versus

DY. COMMISSIONER OF INCOME TAX CENTRAL
CIRCLE 28, DELHIRespondent

Through: Mr. Abhishek Maratha, Sr. SC
with Mr. Parth Semwal & Mr.
Apoorv Agarwal, Jr.SC & Ms.
Nupur Sharma, Mr. Gaurav
Singh, Mr. Bhanukaran Singh
Jodha & Ms. Muskan Goel,
Advocates for Revenue

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+ W.P.(C) 6164/2023 & CM APPL. 24250/2023 (Stay)

MUKESH CHANDRA AGARWALPetitioner

Through: Mr. Salil Kapoor, Mr. Sumit
Lalchandani, Ms. Ananya
Kapoor, Mr. Tarun Chanana &
Mr. Shivam Yadav, Advocates

versus

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CIRCLE 28, DELHIRespondent

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Apoorv Agarwal, Jr.SC & Ms.
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Singh, Mr. Bhanukaran Singh



Jodha & Ms. Muskan Goel,
Advocates for Revenue

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+ W.P.(C) 6271/2023 & CM APPL. 24626/2023 (Stay)

MUKESH CHANDRA AGARWALPetitioner

Through: Mr. Salil Kapoor, Mr. Sumit
Lalchandani, Ms. Ananya
Kapoor, Mr. Tarun Chanana &
Mr. Shivam Yadav, Advocates

versus

DY. COMMISSIONER OF INCOME TAX CENTRAL
CIRCLE 28, DELHIRespondent

Through: Mr. Abhishek Maratha, Sr. SC
with Mr. Parth Semwal & Mr.
Apoorv Agarwal, Jr.SC & Ms.
Nupur Sharma, Mr. Gaurav
Singh, Mr. Bhanukaran Singh
Jodha & Ms. Muskan Goel,
Advocates for Revenue

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER
04.09.2024

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1. The writ petitioner impugns the initiation of proceedings referable to Section 153C of the **Income Tax Act, 1961**¹ and insofar as they pertain to **Assessment Years**² 2014-2015, 2017-2018 and 2018-2019.

2. From the Satisfaction Note dated 24 December 2021 which has

¹ Act

² AY



been drawn by the Jurisdictional **Assessing Officer**³, we find that the following material was taken note of as warranting assessment being undertaken under Section 153C for AYs 2014-2015 to 2020-2021.

That Satisfaction Note is reproduced hereinbelow:

“A search and seizure operation was carried out in the Alankit Group of cases on 18.10.2019 subsequently the said group was centralized to the jurisdiction of the undersigned. Accordingly, during the course of assessment proceedings u/s 153A of Alankit Group, material documents related to your case have been found.

1. Annexure A-1, MCAR, page 1 to 17:- found and seized at 173, Sita Ram Apartments, IP Extension, Delhi wherein copy of Sale deed dated **26.08.2015** in favour of Shri Mukesh Chandra Agrawal found - Residential Plot Sale deed made in Agra, Uttar Pradesh, Plot no. 21, Area 166.47 Sq. Mtr. Located in Swapn Lok Kaloni Kakua, Agra by Vishal Infra Pvt Ltd for Sale to Shri Mukesh Chandra Agrawal, Total Value of Property **Rs.6,00,000/-**.

2. Annexure A-1, MCAR, page 30 to 46:- found and seized at 173, Sita Ram Apartments, IP Extension , Delhi wherein copy of Sale deed dated **30.05.2019** of Residential flat in favour of Shri Mukesh Chand Agrawal found - copy of Sale Deed in case of Residential Plot Area 138.28 Sq. Mtr Flat no. 173, Sitaram Apartment, I P Extention Delhi-92 in favour of Shri Mukesb Chand Agarwal and Smt Neeta Agarwal, by Shri Ajay Tiwari, F14/118, Krishna Nagar, Delhi-51.Total Value of Property **Rs. 1,80,00,000/-**.

3. Annexure A -1, MCAR, page 51 to 65:- found and seized at 173, Sita Ram Apartments, IP Extension , Delhi wherein copy of Sale deed dated **21.04.2014** of Residential Plot in favour of Shri Mukesh Chand Agrawal found- copy of Residential Plot Sale deed made in Mathura, Uttar Pradesh, Plot Area 166.44 Sq. Mtr. Located in Mauja Bakal pur, Mathura by Agrawal Developers for Sale of Plot 44, Agrawal developers, Mauja Bakalpur, Mathura Total Value of Property **Rs.16,00,000/-**.

The said satisfaction note prepared by the AO of the person searched has been kept on record. I have also examined the above documents and the contents noted/written therein. After examination of these documents, I am also satisfied that these documents belong to the assessee. In view of the same, I am further satisfied that it is fit case for initiating proceedings u/s 153C of the Income Tax Act, 1961 for the A.Ys. 2014-15 to 2020-21.

³ AO



Accordingly, notice u/s 153C is issued as per provisions of the I.T. Act, 1961.”

3. As it manifest from the aforesaid, the satisfaction rested on transactions which were dated 21 April 2014, 26 August 2015 and 30 May 2019. None of those transactions pertained to the AYs in question.

4. We in this regard bear in mind the following pertinent principles which we had come to enunciate in **Saksham Commodities Limited v. Income Tax Officer, Ward 22(i), Delhi & Anr⁴**. The relevant paragraphs of the said decision are reproduced below:-

“63. On an overall consideration of the structure of Sections 153A and 153C, we thus find that a reopening or abatement would be triggered only upon the discovery of material which is likely to *“have a bearing on the determination of the total income”* and would have to be examined bearing in mind the AYs' which are likely to be impacted. It would thus be incorrect to either interpret or construe Section 153C as envisaging incriminating material pertaining to a particular AY having a cascading effect and which would warrant a mechanical and inevitable assessment or reassessment for the entire block of the “relevant assessment year”.

64. In our considered view, abatement of the six AYs' or the *“relevant assessment year”* under Section 153C would follow the formation of opinion and satisfaction being reached that the material received is likely to impact the computation of income for a particular AY or AYs' that may form part of the block of ten AYs'. Abatement would be triggered by the formation of that opinion rather than the other way around. This, in light of the discernibly distinguishable statutory regime underlying Sections 153A and 153C as explained above. While in the case of the former, a notice would inevitably be issued the moment a search is undertaken or documents requisitioned, whereas in the case of the latter, the proceedings would be liable to be commenced only upon the AO having formed the opinion that the material gathered is likely to inculcate the assessee. While in the case of a Section 153A assessment, the issue of whether additions are liable to be made based upon the material recovered is an aspect which would

⁴ 2024 SCC OnLine Del 2551



merit consideration in the course of the assessment proceedings, under Section 153C, the AO would have to be prima facie satisfied that the documents, data or asset recovered is likely to “have a bearing on the determination of the total income”. It is only once an opinion in that regard is formed that the AO would be legally justified in issuing a notice under that provision and which in turn would culminate in the abatement of pending assessments or reassessments as the case may be.

65. We would thus recognize the flow of events contemplated under Section 153C being firstly the receipt of books, accounts, documents or assets by the jurisdictional AO, an evaluation and examination of their contents and an assessment of the potential impact that they may have on the total income for the six AYs' immediately preceding the AY pertaining to the year of search and the “relevant assessment year”. It is only once the AO of the non-searched entity is satisfied that the material coming into its possession is likely to “have a bearing on the determination of the total income” that a notice under Section 153C would be issued. Abatement would thus be a necessary corollary of that notice. However, both the issuance of notice as well as abatement would have to necessarily be preceded by the satisfaction spoken of above being reached by the jurisdictional AO of the non-searched entity.

66. Therefore, and in our opinion, abatement of the six AYs' or the “relevant assessment year” would follow the formation of that opinion and satisfaction in that respect being reached.

67. On an overall consideration of the aforesaid, we come to the firm conclusion that the “incriminating material” which is spoken of would have to be identified with respect to the AY to which it relates or may be likely to impact before the initiation of proceedings under Section 153C of the Act. A material, document or asset recovered in the course of a search or on the basis of a requisition made would justify abatement of only those pending assessments or reopening of such concluded assessments to which alone it relates or is likely to have a bearing on the estimation of income. The mere existence of a power to assess or reassess the six AYs' immediately preceding the AY corresponding to the year of search or the “relevant assessment year” would not justify a sweeping or indiscriminate invocation of Section 153C.

68. The jurisdictional AO would have to firstly be satisfied that the material received is likely to have a bearing on or impact the total income of years or years which may form part of the block of six or ten AYs' and thereafter proceed to place the assessee on notice under Section 153C. The power to undertake such an assessment would stand confined to those years to which the material may relate or is likely to influence. Absent any material that may either



cast a doubt on the estimation of total income for a particular year or years, the AO would not be justified in invoking its powers conferred by Section 153C. It would only be consequent to such satisfaction being reached that a notice would be liable to be issued and thus resulting in the abatement of pending proceedings and reopening of concluded assessments.”

5. Mr. Maratha, learned counsel for the respondent has however drawn our attention to a **Show Cause Notice**⁵ which refers and alludes to material gathered from a laptop found and seized from the residence of an individual. He specifically draws our attention to the following recitals as appearing in the SCN dated 18 February 2023:

“1. During the course of search and seizure operation, several ledgers maintained with regard to various cash payments have been obtained from accounts maintained in the name “Anarkali Complex” in Tally found in folder named DATA 24 in the laptop of Sh. Sunil Kumar Gupta found and seized from the residence of Sh. Sunil Kumar Gupta, at 3584/4, Narang Colony, Gali No. 4 Tri Nagar Delhi (Path: F:\SKGR A-32\SUNIL KUMAR GUPTA HP LAPTOP\EXTRACTED DATA\Tally[root].1\Local Disk\ANARKALI\BACKUP\DATA24\DATA24).

2. Copy of the relevant ledgers extracted from the laptop found and seized from the residence of Sh. Sunil Kumar Gupta at 2584/4, Narang Colony, Gali No. - 4, Tri Nagar, Delhi are enclosed with this notice. Further, during the course of search and seizure proceedings statement of Sh. Sunil Kumar Gupta was also recorded wherein he has accepted that he has noted these transaction 20/30 years before of its actual date of occurrence to disguise the authority in case of any investigation/enquiry. The relevant part of the statement of Sh. Sunil Kumar Gupta is reproduced as under:”

6. We however note that the material which is referred to the aforesaid SCN is neither noticed, examined nor considered in the satisfaction note. In view of the aforesaid, we find ourselves unable to sustain the action under Section 153 C.

7. The writ petitions are consequently allowed and the impugned notices dated 28 December 2021 issued under Section 153C and all

⁵ SCN



consequential proceedings arising therefrom are hereby quashed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 4, 2024/MR