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

+ **ITA 110/2018**

**THE PR. COMMISSIONER OF
INCOME TAX -3**

..... Appellant

Through: Mr. Ruchir Bhatia, SSC with
Mr. Anant Mann, JSC.

Versus

DIVINE DEVELOPWELL PVT. LTD. Respondent

Through: Mr. Gautam Jain, Mr.
Shaantanu Jain & Mr. Manish
Yadav, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR

KAURAV

ORDER

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02.05.2024

1. The Principal Commissioner of Income Tax impugns the order of the Income Tax Appellate Tribunal ["ITAT"] dated 02 August 2017 and has proposed the following questions of law for our consideration:

“2.1 Whether assumption of jurisdiction under section 153C of the Act was incorrect and Id. ITAT /CIT(A) is justified in cancelling the assessments framed under section 153C read with section 153A of the Act?

2.2 Whether Id. ITAT/CIT(A). erred in law in holding that the documents based on which satisfaction was formed by the Assessing officer under section 153C of the Act did not belong to the assessee?

2.3 Whether Id. ITAT/CIT(A) erred in considering only the agreement to sale dated 08.09.2007 wherein the name of the assessee company did not appear but has failed to consider that the Assessing officer had formed his satisfaction also on the basis of copy off sale deed appearing at Pg. Nos. 1-78 of



Annexure LP -157 of the seized material wherein the name of the assessee company appeared?

2.4 Whether Id. ITAT/CIT(A) erred in law quashing the order of the Assessing officer on legal ground only without adjudicating the matter on merits and deciding the other ground taken by the assessee?

2.5 Whether Id. ITAT/CIT(A) erred in deleting the addition of Rs. 3,16,01,800/- made by the Assessing officer on account of undisclosed investment?

2.6 Whether Id. ITAT/CIT(A) erred in pointing out as to whom the seized material on the basis of which the AO had formed his belief under section 153C of the Act belonged and accordingly not directing the Assessing officer to initiate proceeding under section 153C of the Act against that person?"

2. The ITAT has while examining the validity of the action initiated in terms of Section 153C of the Income Tax Act, 1961 [“Act”] has observed as follows:

“7. We have considered the rival submissions and perused the material on record. The satisfaction note which has been made the basis for initiating the proceedings under Section 153C of the Act as recorded by the ACIT, Central Circle, Dehradun who was the Assessing Officer of the searched person namely Batta group of cases reads as under:

"A search under section 132 was initiated in the case of Batta group of cases on 4.3.2009. The business premises covered u/s 132 is situated at 7-Saharanpur Road, Dehradun. During the course of examination of the seized material, it has been found that Smt. Kavita Ahuja, NRI, w/o Shri Pushpendra Ahuja through Attorney Shri Ramesh Batta entered into an agreement to sell dated 8.9.2007 with M/s Divine Developwell Pvt. Ltd. B-52, Greater Kailash, Part-1, New Delhi through its director Shri Vinod Kapur for the sale of 1360 sq. mts. of land in Khasra No.129-Kha at Mauja Jakhan, Pargana Parwa Doon, Rajpitr Road, Dehradun @ Rs.35, 000/- per sq. yards. This copy of "Agreement to sell" is appearing in the annexure LP-143 pages 138 to 139 of the seized material. This agreement to sell is unsigned. But the correctness of its contents is further proved from another document appearing at page 137 of LP 143 which is a photo copy of receipt signed by the seller Shri Ramesh Batta as attorney of Smt. Kavita Ahuja and by purchaser Shri Vinod Kapur. As per this receipt and copy of agreement to sell dt. 8.9.2007, the rate of land to be sold is



agreed at Rs 35000/- per sq. yds. In respect of land at Jakhan, Rajpur Road, Dehradun as mentioned above. However, the sale deed has been executed for a consideration of Rs. 1,50,00,000/- only in the name of M/s Divine Developwell Pvt. Ltd., Delhi through its director Shri Vinod Kapur. The copy of sale deed is appearing at page 1 to 78 of annexure LP 157 of the seized material. As per this sale deed, land measuring 1331.15 sq. yds has been sold by Shri Ramesh Batta. The total sale consideration of 1331.4 sq. yds @ Rs.35,000/- per sq. yds comes to Rs. 4,66,01,800/-. However, the amount disclosed in the sale deed is only Rs. 1,50,00,000/-. Thus an amount of Rs. 3,16,01,800/- has been paid by Shri Vinod Kapur on behalf of the company to Shri Ramesh Batta over and above the amount disclosed in the sale deed. Appropriate additions have been made in the case of the seller Smt. Kavita Ahuja, NRI through her agent Sh. Ramesh Batta in the relevant asstt. Year. The copy of receipt and the copy of registered sale deed have been signed by Shri Ramesh Batta, the attorney holder of Smt. Kavita Ahuja, the seller and Shri Vinod Kapur, Director M/s Divine Developwell Pvt. Ltd., H. No. B-52, Greater Kailash, Part-I, New Delhi in respect of the sale of the land at above mentioned Khasra and as such these documents belong to the company. Accordingly, I am satisfied that these seized documents belong to the above purchaser of the land who have paid a sum of Rs. 3,16,01,800/- in cash, over and above the amount mentioned in the registered documents. Accordingly, the case of the above mentioned company is covered under the provisions of section 153C of the Income Tax Act."

7.1 On perusal of the satisfaction note, it is noted that it has been held that an amount of Rs. 3,16,01,800/- has been paid by Vinod Kapur on behalf of the assessee to Shri Ramesh Batta over and above the amount disclosed in the sale deed. The aforesaid conclusion essentially is based on two documents seized during the course of search. First and foremost document is agreement to sell dated 8.9.2007. It has been stated in the satisfaction note that this agreement to sell was entered between Smt. Kavita Ahuja, NRI W/o Shri Pushpender Ahuja through attorney Shri Ramesh Batta and the assessee company through its director Shri Vinod Kapur for sale of 1360 square meters of land at Mauja Jakhan, Pargana Parwa Doon, Rajpur Road, Dehradun at Rs.35,000/- per square yard. A copy of the agreement to sell has been placed on record. On perusal of the said agreement, it is noted that it is an unsigned agreement. It is also further noted that such unsigned agreement does not even bear the name of the assessee company. The agreement is between Smt. Kavita Ahuja and Shri Vinod Kapur. It is also a matter of fact that consideration of Rs.



1,50,00,000/- as stated in the sale deed dated 30.10.2007 between the assessee company and Smt. Kavita Ahuja has been discharged in the following manner:

- (a) Cheque No. 37574 dated 8.9.2007 of Rs. 5,00,000/-
- (b) Cheque No. 82501 dated 24.09.2007 of Rs. 50,00,000/-
- (c) DD No. 264756 dated 29.10.2007 of Rs. 54,00,000/-
- (d) Cheque No. 660423 dated 30.10.2007 of Rs.41,00,000

7.2 None of the aforesaid cheques find mentions in the agreement to sell entered between Shri Vinod Kapur and Smt. Kavita Ahuja. The only cheque stated in the agreement to sell is of Rs. 1,00,000/- by cheque no. 37569 dated 31.8.2007 which does not find mention in the sale deed. Thus, an unsigned agreement to sell having no name of the assessee company and neither shown in any manner linked with the sale deed entered into by the assessee company can be held to be belonging to the assessee company. The next document as referred in the satisfaction note is an undated signed by Shri Vinod Kapur and Shri Ramesh Batta. This receipt too is in respect of cheque no. 37569 dated 31.8.2007 of Rs. 1,00,000/- and cash of Rs. 4,00,000/- by Shri Vinod Kapur as an advance for the land. However, as stated above, none of these sums find mention in the sale deed executed by the assessee company for the purchase of land. Thus, even the said receipt cannot be said to be a basis assuming that such receipt belongs to the assessee company. It is pertinent to state here that even the receipt does not bear name of the assessee company. In fact, even the Assessing Officer in the order of assessment has not denied the above factual position. However, all what he has held is that Shri Vinod Kapur prior to 15.10.2007 i.e. on which he became the director of the assessee company was acting on behalf of the company. This logic of the Assessing Officer is unsupported by any material. The CIT(A) in light of the aforesaid factual position has held as under:

"The Assessing Officer having jurisdiction over the cases of Sh. Ramesh Batta and other group cases recorded the satisfaction that the document seized during the search belong to the appellant. The perusal of the assessment order reveals that the Assessing Officer has made a reference to certain documents seized during the search and the proceedings u/s 153C of the Act were initiated by the Assessing Officer on the basis of these documents without being satisfied that these documents belong to the appellant and contain the details of the income which is not disclosed to the Department by the such other person. The Assessing Officer placed reliance on the photocopy of unsigned agreement to sell dated 8th September 2007



between Ramesh Batta (Power of Attorney holder of Mrs. Kavita Ahuja) and Sh. Vinod Kapoor. The appellant company was incorporated on 28th of February 2007 by Sh. Peyush Narain Gupta and Sh. Amit Kumar Aggarwal. Sh. Vinod Kapoor was in no way connected with the company on 8th of September 2007. The documentary evidence adduced during the appellate proceedings makes it clear that Sh. Vinod Kapoor and Sh. Ravi Bahri became directors in the company after 15.10.2007 and on 8th of September 2007 Sh. Vinod Kapoor was not a Director in the appellant company. The document on the basis of which proceedings u/s 153C r.w.s. 153A of the Act have been initiated do not contain the name of the appellant company.

2.5 The term 'belonging to' implies something more than the idea of casual association. It involves notion of continuity and indicates more or less intimate connection with the person over a period of time. The expression belonging to the assessee connotes both the complete ownership and limited ownership of interest. Of course, belonging to is capable of connoting interest which is less than absolute perfect legal title. However, there should be some limited ownership of interest, if it is to be permitted that the assets belong to the assessee. In the instant case, the documents seized during the search cannot be termed to be indicating any limited interest of the ownership of the appellant. This is clear from the fact that the unsigned document dated 8th September 2007 on the basis of which the proceedings u/s 153C r.w.s. 153a of the Act have been initiated do not contain the name of the appellant company. This agreement is proposed to be executed between Sh. Ramesh Batta P.O.A. holder of Smt. Kavita Ahuja and Sh. Vinod Kapoor who was in no way connected with the company on 8th of September 2007. The language used in Section 153C of the Act is materially different from the language used in section 158BD of the Act. As per section 158BD if any undisclosed income relates to other person, then action against such other person can be taken provided such undisclosed income is referable to the document seized during the search. However, section 153C of the Act says that if valuable or books of accounts or documents belonging to such other person are seized then the proceedings u/s 153C of the Act can be initiated against such other person. On the touchstone of the ratio laid down in the decisions of the Hon'ble ITAT, Hyderabad in the case of M/s Shouri Constructions and Hon'ble Gujarat High Court in Vijay Bhai N Chandrani Vs. ACIT reported in 333 ITR 436



discussed in earlier paras, it is held that the documents seized during the search on 04.03.2009 do not belong to the appellant and the Assessing Officer was not justified in initiating the proceedings u/s 153C read with section 153A of the Act and as such, the proceedings initiated u/s 153C of the Act are not as per the law. The assessment made u/s 153C read with section 153A of the Act cannot stand of its own and hence, the same is cancelled."

3. According to Mr. Bhatia, learned counsel who appears in support of the appeal, the ITAT appears to have essentially proceeded on the basis that action could have been initiated under Section 153C of the Act only if the material gathered in the course of the search “belongs to” the non-searched entity. In this regard, he draws our attention to the amendments which came to be introduced in Section 153C of the Act by virtue of Finance Act, 2015 and in terms of which the expression “pertain” or “pertains to” came to be added.

4. We, however, find that notwithstanding the above, the ITAT has ultimately come to record a factual finding that the material which was gathered in that search had no co-relation with the respondent/ assessee. It is in the aforesaid basis that tested either on the anvil of “belong”/“belongs to” or “pertains”/“pertain to”, the view as ultimately expressed would not merit any interference.

5. We thus find that the appeal fails to raise any substantial question of law. It shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 2, 2024/kk