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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 16306/2023 & CM APPL. 65672/2023 (Interim Relief)**
DEV TECHNOFAB LIMITED. Petitioner

Through: Mr. Sachit Jolly, Ms. Ankita
Prakash, Mr. Abhyudaya
Shankar Bajpai & Mr. Aditya
Rathore, Advs.

versus

**DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL
CIRCLE- 19 & ANR. Respondents**

Through: Mr. Prashant Meharchandani,
SSC with Mr. Akshat Singh,
JSC, Ms. Ritika Vohra & Mr.
Utkarsh Kandpal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE AMIT BANSAL

ORDER
24.05.2024

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1. This writ petition has been preferred seeking the following reliefs:

- a) That this Hon'ble Court be pleased to issue a Writ of Certiorari, or any other appropriate Writ, order or direction of like nature, to quash the Impugned Notices dated 24.04.2023 issued under Section 153C of the Act for AY 2014-15 to 2020-21 (**Annexure – P1 at Pg. Nos. 44-50**) and the Impugned Order dated 22.11.2023 (**Annexure – P2 at Pg. Nos. 51-134**) and the consequential proceedings being completely illegal and without jurisdiction;
- b) For such further and other reliefs, including costs of this Petition, as this Hon'ble Court may deem fit and proper in the nature and circumstances of the case.



2. Undisputedly, and as would be evident from a reading of the Satisfaction Note pertaining to the non-searched entity, namely the petitioner, the material which is alluded to pertains to Assessment Year [“AY”] 2019-20 only. Action under Section 153C of the Income Tax Act, 1961 [“Act”], however, sought to encompass AYs 2014-15 to 2020-21. Insofar as AYs other than AY 2019-20 are concerned the impugned action would clearly not sustain bearing in mind the judgment rendered by the Court in **Saksham Commodities Limited vs. Income Tax Officer, Ward 22(1), Delhi & Anr** [2024 SCC OnLine Del 2551] and where while explaining the statutory imperatives of incriminating material we had held as follows:

“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 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.”

3. That only leaves us to examine the contention of Mr. Jolly, learned counsel appearing for the petitioner, who submits that even for AY 2019-20 the Assessing Officer [“AO”] does not refer to any incriminating material. According to learned counsel the mere recovery of a ledger account cannot possibly be construed as being incriminating.

4. We find ourselves unable to pursue this line of inquiry which is suggested bearing in mind the obvious disputed issues of fact which arise. We also bear in consideration the following conclusions and observations as they appear in the satisfaction note as drawn:

“5.4 In respect of M/s DNC, the following investigations revealed that it was a bogus entity:

- Sh. Paras Mal Lodha (who was searched twice by the Directorate of Income Tax Investigation, Delhi) was found to be actively involved in arranging accommodation entries and hawala transactions. It was further learnt during the course of search on HP/MB Group a part of its project was awarded to DNC.
- The scanned copies of the GST Registration Certificate and a cancelled cheque of DNC were also found in the Whatsapp messages of Sh. Paras Mal Lodha during the course of search on him on 07.04.2019. The presence of such messages in respect of DNC with a Hawala/Entry Operator who had done siphoning off of funds in earlier EPC contracts of HP group also raised suspicion with respect to the EPC Contract awarded by the group to M/s DNC Infrastructure Private Limited.
- It is relevant to mention here that investigations were also carried out in the case of DNC by the Hyderabad Zonal Unit of the Directorate General of Goods and Service Tax Intelligence (regarding DNC). The incident report No. 116/2019-20-GST dated 25.10.2019 filed by the Unit revealed that DNC was involved in wrongful claim of Input



Tax Credit as it is was without receipt of commensurate material or services. The relevant extract of their incident report is being reproduced below:

3. Scrutiny of documents received on 01.11.2019 from M/s DNC and their GSTIN-2A returns revealed that they have received GST Invoices worth Rs. 203.74 Crores from various firms such as M/s S Star Infraction India Pvt Ltd (GSTIN: 36AAW7908211121), M/s SStar Enterprises (GSTIN: 36AAW793191A121), M/s Ashu Projects Ltd (GSTIN: 36AAW790801271), M/s Windrust Infrahull Pvt Ltd (GSTIN: 36AAW790790120), M/s Caxson Enterprises (GSTIN: 36AAW790801201), M/s Always Town Planners Pvt Ltd (GSTIN: 36AAW790801201), M/s Unisew Infraction Private Limited (GSTIN: 36AAW790790120), M/s Greenwood Infrastructure Consulting Private Limited (GSTIN: 36AAW790801201), M/s Ambient Real Estate Limited (GSTIN: 36AAW790801201) and M/s SStar Corporation India Private Limited (GSTIN: 36AAW790801201), who are already under investigation by the DGC-120 for issuing invoices without any actual supply of goods/services.

- In his statement to GST authorities, MD of the M/s DNC - Sh. Dirishala Naresh Chaudhary had accepted to wrongful availment of ITC and reversed ITC in some cases. The report of the Hyderabad Zonal Unit of the Directorate General of GST Intelligence further concluded that even the payments claimed to be made to suppliers of materials were also found to be bogus along with sub-contractors. No supply of any material had actually taken place by these suppliers.
- In the wake of this background, the search and survey actions were carried in case of DNC. Also, search & seizure action u/s 132, was conducted at the residence of its Managing Director, Mr. Dirishala Naresh Chowdary on 01.11.2019.
- To ascertain if any activity of DNC was genuine, investigations were carried to ascertain that DNC did not actually provide any genuine supply of work/services and funds were merely siphoned off.
- During the search, statement of Mr. Dirishala Naresh Chowdary, Managing Director of DNC, was recorded on oath and was asked to provide the details of the work being carried out by DNC for various projects along with details regarding the selection of the sub-contractor parties for these projects and nature of work carried out by them. No satisfactory answer could be provided.
 - (i) Mr. Dirishala Naresh Chowdary was not even aware of the sub-contractors and how the selection of these sub-contractors was done for carrying out this project 'worth over a hundred crore, which is not realistic.
 - (ii) No proofs of any work being carried out by the sub-contractors was made available by DNC during the search.
 - (iii) No details regarding the projects and even key employees could be provided.



- From further, action in case of Yogesh Gupta (found as an entry operator) and M/s Shree Gold, proofs of accommodation entry activity of DNC was further found. Relevant excerpt of the statement of Sh.Yerram Kishore:

Q.22	On perusal of Sale Register of Shree Gold from 01.04.2018 to till date, (Exhibit-3 to the statement), it has been noticed that you have shown sale of Gold to M/s DNC Infrastructure Pvt Ltd on different dates during FY 2018-19 and FY 2019-20. Please furnish complete ledger of M/s DNC Infrastructure Pvt Ltd in your books of account.
Ans.	I am furnishing ledger of M/s DNC Infrastructure Pvt Ltd in the books of account of Shree Gold for FY 2018-19 and FY 2019-20. Placed as exhibit-4 to the statement. We have received from the company Rs 12.50 Cr between 01.04.2019 to 09.04.2019 and Rs 13.13 Cr between 13.11.2018 to 10.12.2018.
Q.23	Please explain in detail how and when the delivery of said gold, as mentioned in above questioned, was made to M/s DNC Infrastructure Pvt Ltd? Please furnish invoices along with delivery receipts for the gold delivery, if any.
Ans.	The said gold was never delivered to M/s DNC Infrastructure Pvt Ltd. The MD of this company Mr Naresh Chowdhary was in need of cash so he contacted us for the same. His company transferred funds through RTGS to Shree Gold as per ledger provided by the earlier. In response to fund received from the company we paid cash of Rs 25.83 Cr (after deduction of my commission) to Mr Naresh Chowdhary, MD of M/s DNC Infrastructure Pvt Ltd on different dates. Although I took delivery receipts from M/s DNC Infrastructure Pvt Ltd but in actuality no gold delivery was made to the company or its director. I am furnishing invoices. (Exhibit-5)

- Analysis of the bank account statement of M/s DNC further revealed that immediately after receipt of funds from MB Power (Madhya Pradesh) Ltd., the same were transferred to several Delhi based entities such as 5 Star Infracon Pvt. Ltd., Allways Town Planners Private Limited, Planwell Industries Corporation Private Limited etc. which were found to be non-existent at their registered address during field investigations which raised further doubts over the genuineness of transactions between MB Power (Madhya Pradesh) Ltd. and DNC Infrastructure Pvt. Ltd. and that the same represented siphoning off of funds from the project.

6. Therefore, in view of the above findings, I am satisfied that seized documents/digital data and information contained therein, relates to/pertains to M/s Dev Technofab Limited and have a bearing on the determination of total income of this person. In view of the same, I am further satisfied that it is a fit case for initiating proceedings u/s 153C r.w.s.153A of the Act for the AYs 2014-15 to 2020-21.”

5. In view of the aforesaid, the writ petition partly succeeds. The impugned action under Section 153C of the Act, pertaining to AYs 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2020-21 are hereby quashed and set aside.

6. However, and insofar as AY 2019-20 is concerned, the same is left untouched. All rights and contentions of respective parties are kept



open to be addressed in the ongoing assessment proceedings for AY 2019-20.

YASHWANT VARMA, J

AMIT BANSAL, J

MAY 24, 2024/kk