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

\+ W.P.(C) 3228/2023 & CM APPL. 12531/2023 (INTERIM RELIEF)

ROHIT BHARGAVA (EX-PARTNER OF M/S SHANKAR LAL VED PRAKASH, NOW DISSOLVED) & ANR.
.....Petitioners

Through: Mr. Ved Jain, Mr. Nischay Kantoor, Ms. Soniya Dodeja, Mr. Divyansh Dubey and Mr. Govind Gupta, Advs.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 31, DELHI & ANR. .....Respondents

Through: Mr. Abhishek Maratha, SSC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

O R D E R

% **16.01.2025**

1. The instant writ petition has been preferred seeking quashing of the proceedings referable to Section 153C of the **Income Tax Act, 1961**[1] as initiated by the first respondent in the name of the firm Shankar Lal Ved Prakash for **Assessment Year**[2] 2019-20. The firm, Shankar Lal Ved Prakash, has since come to be dissolved and it is in the aforesaid backdrop that the writ petition has been preferred and is being prosecuted by one of its erstwhile partners.

2. The Section 153C assessment was predicated on a Satisfaction Note which has been placed on our record and reads as under: -

"Satisfaction Note

[1] Act

For initiating proceedings under Section 153C read with section 153A of the Income Tax Act, 1961 in the case of M/s Shankar Lal Ved Prakash (PAN: AAGPP7410D), AY 2019-20

A search action under Section 132 of the Income Tax Act was conducted in Faqir Chand Group of cases of Investigation wing, New Delhi on 30.10.2018 to 17.12.2018 wherein the warrant was executed on 06.12.2018 in the name of Shri Rohit Bhargava and Sh. Amit Goyal at Locker No. 121 at M/s Faqir Chand lockers and Vaults Private Limited 6704A, Khari Baroli, Chandni Chowk, Delhi. It has been brought to the notice of the undersigned by the AO of Shri Rohit Bhargava and Shri Amit Goyal, in whose cases action under Section 132 of the Income tax Act was taken that seized assets, i.e cash amounting to Rs. 25,00,000/- seized from the locker No. 121, belongs to the M/s Shankar Lal Ved Prakash. The Assessing officer of the searched person has recorded his satisfaction dated 25.10.2021 that the following seized assets belongs to the assessee i.e. M/s Shankar Lal Ved Prakash.

<table>
<tr><td colspan="3">Premises from where documents found and Seized :
Premises of M/s Faqir Chand Lockers and Vaults Pvt Ltd (Locker No. 141) at 6704A, Basement, Khari Baoli, Delhi.</td></tr>
<tr><td>Annexure no.</td><td>Description</td><td>Remarks</td></tr>
<tr><td>Annexure-C</td><td>Cash amounting to Rs. 25,00,000/- found and seized.</td><td>Cash belongs to firm M/s Shankar Lal Ved Prakash</td></tr>
</table>

2. The said satisfaction note received from the AO of the searched person has been placed on record. On perusal of the seized assets and statements recorded, I am also satisfied that the seized asset i.e. cash amounting to Rs. 25,00,000/- belongs to M/s Shankar Lal Ved Prakash and have a bearing on the determination of its total income. 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 Income Tax Act, 1961 for AY 2019-20.

Accordingly, notice u/s 153C r.w.s 153A is being issued as per provisions of the Income Tax Act, 1961 for the A.Y. 2019-20.

Date: 25.10.2021 (Kapil Kumar Singh)
Deputy Commissioner of Income Tax
Central Circle-31, New Delhi"

3. As is evident from the record, the respondents had drawn proceedings under Section 153A pursuant to a search action undertaken in terms of Section 132 of the Act in the name of Sh. Rohit

[2] AY

Bhargava and Sh. Amit Goyal. Amongst various other articles that were seized in the course of that search was cash amounting to INR 25 lakhs seized from Locker No. 121, which as per the Satisfaction Note, belonged to the erstwhile and now dissolved partnership firm. It is on the aforesaid basis that proceedings under Section 153C were commenced against the partnership firm for AY 2019–20.

4. However, and undisputedly, both Sh. Rohit Bhargava and Sh. Amit Goyal were assessed under Section 153A and in whose hands the seized cash has already been subjected to assessment and tax. Against the order of assessment dated 25 January 2023 passed in the name of those individuals, appeals are pending before the **Commissioner of Income-Tax**[3] (Appeals).

5. The question which therefore arises is whether once INR 25 Lakhs was made subject to an assessment under Section 153A, the same could constitute a basis for drawl of proceedings against the partnership firm.

6. Section 153A enables the respondents to commence proceedings against the searched person. The said provision enables them to assess or reassess the total income of the searched person for six assessment years immediately preceding the AY relevant to the previous year in which the search is conducted. It is this provision that enables the **Assessing Officer**[4] to reassess the total income of the searched persons not just confined to the six AYs' alluded to above but also the *"relevant assessment years"* as defined and which could by extension lead to the assessment for up to ten past AYs' being re-examined.

[3] CIT
[4] AO

7. Section 153C, however, is designed to a deal with the contingency where in the course of the search, the Department were to come across material that *"belongs to"* or is *"related to"* a person other than the one subjected to search. In such a situation, the relevant material is liable to be transmitted by the AO of the searched person to the AO of the non-searched entity for the commencement of proceedings referable to Section 153C.

8. However, the same article that is unearthed or seized in the course of the search surely cannot form the subject matter of assessment parallelly under Section 153A as well as 153C. This since the material seized in the course of the search can either belong to the searched person or satisfaction would have to be arrived at that the same belongs or relates to a person other than the one subjected to search.

9. Since the respondents had proceeded to frame an order of assessment in the name of Rohit Bhargava and Amit Goyal and brought INR 25 Lakhs of the cash seized in the course of that search to tax in the course of that exercise, it is clearly indicative of the article seized being asserted to be that pertaining to the searched entities as opposed to a non-searched party.

10. While the respondents would seek to urge that the action against the dissolved partnership firm has been commenced in light of the stand taken by the individual partners, namely of the cash belonging to the firm, what is material insofar as we are concerned is the formation of opinion by the respondents of the cash being property of the searched individuals and consequently having been taxed in their hands.

11. We thus fail to comprehend or appreciate how the said seizure

could have been independently subjected to proceedings referable to Section 153C in the hands of the dissolved firm which was the non-searched entity.

12. We, consequently, allow the instant writ petition and quash the impugned notice under Section 153C dated 28 October 2021 as well as the impugned order dated 25 January 2023.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 16, 2025/DR