



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

+ **WPC No.309/2011**

Reserved on : 12th January, 2012

% **Date of Decision : 29th March, 2012**

SSP AVIATION LTD.

.... Appellant

Through : Mr. O S Bajpai, Sr. Adv. with Mr.
Piyush Kaushik, Adv.

VERSUS

DEPUTY COMMISSIONER OF INCOME TAXRespondent

Through : Mr. N P Sahni, sr. standing counsel

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not ? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

R.V. EASWAR, J.:

SSP Aviation Ltd., the petitioner herein, is a company based in Delhi mainly engaged in the business of real estate development. It was regularly filing returns of income under the Income Tax Act, 1961, hereinafter referred to "the Act". In respect of the assessment



years 2003-04 to 2008-09 it had filed returns of income. The relevant details are set out below in the form of a table: -

Assessment Year	Date of filing of Return	Date upto which action could be taken u/s 143(2) i.e. date after which scrutiny assessments u/s 143(3) have become time barred
2003-04	31.12.2003	31.12.2004
2004-05	31.10.2004	31.10.2005
2005-06	29.10.2005	31.10.2006
2006-07	27.11.2006	30.11.2007
2007-08	30.10.2007	31.10.2008
2008-09	31.03.2009	30.09.2009

2. On 5th January 2009, there was a search under Section 132 of the Act of the Puri Group of Companies namely, Puri Construction Ltd. and its associate concerns. We are not concerned with the validity of the search on Puri Group of Companies in the present writ petition. Section 153C of the Act provides for the assessment of income of any person other than the person who is searched under Section 132. It is enough to notice that under sub-section (1) of



Section 153C, if the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized in the course of the search belongs to a person other than the person who was searched, then such assets or books of account or documents shall be handed over by him to the Assessing Officer having jurisdiction over such other person. Once that is done, the Assessing Officer having jurisdiction over such other person shall proceed against him for making an assessment or re-assessment of his income in accordance with the provisions of Section 153A. The petitioner herein was not searched under Section 132 of the Act. However, some documents belonging to it were found during the search carried out in the premises of Puri Group of Companies. Therefore, in accordance with Section 153C(1), the Assessing Officer recorded a satisfaction note on 3.11.2010 as follows:

“SATISFACTION NOTE U/S 153C OF THE I.T. ACT,
1961 IN THE CASE OF M/S. SSP Aviation Pvt. Ltd.

(Formerly M/s. SSP Properties Pvt. Ltd.)

PAN : AAHCS8024N

A.Y. 2003-04 TO 2008-09

3.11.2010 *This case has been centralized u/s 127 with
the Assessing Officer, Central Circle-18, New
Delhi vide Order F. No.CIT-*



III/Centralization/2010-11/2024 dated 1.11.2010 passed by CIT- Delhi-III, New Delhi.

Search & seizure operation in M/s. Taneja-Puri Group of cases was conducted on 5.1.2009. During the course of search at the Corporate Office of M/s. Puri Group at 4-7b, Ground Floor, Tolstoy House, Tolstoy Marg, New Delhi, some agreements were found and seized as Party A-9, Annexure A-8, Pages 1 to 72. These pages contain copies of three agreements. The first agreement is between M/s. Puri Construction Ltd. and its associated persons and M/s. SSP Properties Pvt. Ltd. in the form of collaboration agreement dated 28.4.2006. The next agreement is between M/s. SSP Properties Pvt. Ltd. and M/s. Emaar MGF Land Pvt. Ltd. in the form of Assignment Agreement dated 21.7.2006 and the last agreement is between M/s. Puri Construction Ltd. and M/s. Emaar MGF Land Pvt. Ltd. in the form of Escrow Agreement dated 08.08.2006. A perusal of these documents and other related information shows that M/s. SSP Properties Pvt. Ltd. acquired developmental rights from M/s. Puri Group in respect of 9.06 acres of land and subsequently transferred such rights in favour of M/s. Emaar MGF Land Pvt. Ltd. for a total consideration of Rs.86 cr. Against which it had already received on amount of Rs.44 cr. till 31.3.2008.

In the light of above, I am satisfied that the above case is fit for assessment u/s 153C in accordance with the provisions of section 153A of



the Income Tax Act. (sic) 1961 as the seized documents containing collaboration agreement dated 28.4.2006 and the assignment agreement dated 21.7.2006 mentioned above belong to M/s. SSP Properties Pvt. Ltd. (Now M/s. SSP Aviation Pvt. Ltd.) being a person other than the person where the search has been initiated. Hence, in order to assess/ reassess the income of this assessee, notices u/s 153C are hereby issued for assessment years 2003-04 to 2008-09.

*Sd/-
DCIT, CC-18, New Delhi”*

A copy of the satisfaction note as well as the Collaboration Agreement dated 28.4.2006 and the Assignment Agreement dated 21.7.2006, which find mention in the satisfaction note were supplied to the petitioner by the Assessing Officer under cover of letter dated 5.12.2010, which is Annexure P7 of the writ petition.

3. Enquiries were made from the petitioner pursuant to the issue of notice to it on the basis of the aforesaid documents and the satisfaction note. The petitioner was asked by the investigation wing of the income tax department about the nature of the monies received by the petitioner from Emaar MGF Land Ltd. (hereinafter referred to as MGF). In response to the enquiries, the petitioner by letter dated 19.2.2009 informed the investigation wing that the monies received from MGF were held by it as security deposit in terms of the



Assignment-cum-Nomination Agreement dated 21.7.2006 between it and MGF for sale of development rights, which have been acquired by the petitioner from the Puri Group of Companies. The petitioner explained to the income tax authorities that the amounts received for sale of the development rights from MGF were duly reflected in its audited accounts as current liabilities for the relevant years and it was also explained that since the monies were received with several pre-conditions and obligations regarding the timely completion of the real estate project, which was a pre-requisite for recognition of revenue and since till date those obligations and conditions have not been fulfilled, the petitioner did not take cognizance of any revenue from the monies/deposits received from MGF. Copies of the petitioner's letter dated 19.2.2009 and the Assignment cum Nomination Agreement dated 21.7.2006 are marked as Annexures P1 and P2 respectively to the writ petition.

4. While matters rested as above, the Assessing Officer issued notice under Section 153A of the Act (wrongly mentioned as 153C in the assessment orders) to the petitioner on 3.11.2010, calling upon the petitioner to furnish returns of income in respect of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted under Section 132. Since the search was conducted on 5.1.2009



relevant for the assessment year 2009-10, the petitioner filed returns of income for the six earlier years namely the assessment years 2003-04 to 2008-09. The assessment year 2003-04 was the first year of assessment since the petitioner was incorporated as a company only on 8.1.2003. For the assessment years 2003-04 to 2006-07 and the assessment year 2008-09, the assessments were completed under Section 143(3) read with Section 153C as per the table set out below:

Assessment Year	Income Declaration (Rs.)	Income Assessed (Rs.)
2003-04	Nil	Nil
2004-05	Nil	Nil
2005-06	Nil	Nil
2006-07	Nil	Nil
2008-09	Nil	Nil

In all the aforesaid assessment years, the assessee had incurred expenses which were shown in its profit and loss account but there was no income since there was no business activity. Normally, the expenses incurred by the petitioner should have been carried forward to the subsequent years but according to the Assessing Officer in the absence of any income during the above years those expenses were



to be disallowed and since they were disallowed he assessed the total income at Rs.Nil for all the assessment years and also refused carry forward of any loss.

5. However, in respect of the assessment year 2007-08 there was a significant difference in the pattern of the assessment made under Section 143(3) read with Section 153C by order dated 30.12.2010. For this year also the petitioner had filed a return declaring income of Rs.Nil on 2.12.2010 in response to the notice issued under Section 153A. In the course of the assessment proceedings, the Assessing Officer, who is the respondent in the present proceedings, referred to the agreements seized during the search in the offices of Puri Group of Companies and held that a reading of documents and the transactions recorded therein prima facie showed that the petitioner had sold development rights in the land, the profit from which are taxable in the assessment year 2007-08. He also noticed that the assessee had received a sum of Rs.44 crores as deposit in the previous year relevant to the assessment year 2008-09 from MGF, which was not offered for taxation in that year. The respondent therefore asked the petitioner to explain why no income was offered from the transaction despite receipt of a substantial amount for the transfer of the development rights. In response to the same, the petitioner filed a detailed reply, the gist of which is that the money



was received as security deposit and not as income and that until and unless the conditions and stipulations regarding the transaction are fulfilled by the parties, no income can be said to have accrued to the petitioner. The reply of the petitioner is set out in full in the assessment order dated 30.12.2010 for the assessment year 2007-08 and is not being reproduced here for the sake of brevity. The respondent did not accept the explanation of the petitioner. According to him the petitioner had acquired the development rights in the land from Puri Construction Ltd. on 28.4.2006 and within a short period of time assigned or sold the rights to MGF on 21.7.2006. Since this date fell within the financial year ending 31.3.2007, the profit from the transaction had accrued to the petitioner and became taxable in the assessment year 2007-08. The respondent further noted that the total consideration payable by MGF to the petitioner for assignment of the development rights was Rs.86 crores and this was payable on successful completion of the project, out of which an amount of Rs.50 crores was payable to the petitioner against due performance of the agreement and in case of successful and timely completion of the project, the security deposit would stand adjusted against the total consideration of Rs.86 crores. He further, noticed that the petitioner had received Rs.44 crores from MGF till 31.3.2008 against transfer of the development rights. In the balance



sheet of the petitioner as on 31.3.2007, the entire amount of Rs.86 crores was shown as part of construction work in progress. According to the respondent, the petitioner had failed to explain why no income was recognised by it out of the total consideration of Rs.86 crores received from MGF. MGF was found to have claimed the amount as part of the cost of the project. According to him the profit on the sale of development rights had accrued to the petitioner in the previous year relevant to the assessment year 2007-08. Referring to the judgment of the Bombay High Court in the case of *C D Kapadia Vs. CIT* (2003) 260 ITR 491, he held that the entire amount of Rs.86 crores was taxable as the income of the petitioner for the assessment year 2007-08.

6. The petitioner had submitted before the respondent, in the course of the assessment proceedings, that the receipt from MGF was linked to the percentage of completion method and the profits from the transaction will be shown according to the said method and was in fact shown in the subsequent assessment year. This plea was however, turned down by the Assessing Officer on the ground that the petitioner is not a contractor or developer and that it had purchased and sold development rights and therefore the profits cannot be assessed on the basis of the percentage of completion method. In this view of the matter the entire amount of Rs.86 crores



was assessed in the assessment year 2007-08 by order dated 30.12.2010, passed under Section 153C read with Section 143(3) of the Act.

7. It is against the aforesaid assessment orders for the assessment years 2003-04 to 2008-09 passed on 29.12.2010 and 30.12.2010 that the petitioner has filed the present writ petition. The main contention of the petitioner is that the Assessing Officer has illegally assumed jurisdiction under Section 153C read with Section 153A of the Act, that there was no undisclosed income to be assessed in the petitioner's hands and therefore a writ of certiorari should issue to quash the proceedings as null and void.

8. It has been averred in the writ petition that appropriate disclosures had been made in the audited accounts of the petitioner for the financial year 2008-09, relevant to the assessment year 2009-10 and that in such a situation it cannot be alleged that the petitioner had earned any undisclosed income, which was required to be assessed under Section 153A. The petitioner, it is further averred in the writ petition, had also declared income of Rs.37,57,24,522/- for the assessment year 2009-10 under the percentage completion method and that in the year ended 31.3.2010, relevant to the assessment year 2010-11 it had recognized further income of



Rs.23,83,04,910/- on the basis of the percentage completion method. When complete disclosure of the amount received and the income offered on the basis of percentage completion method are declared in the accounts of the petitioner, it cannot be said that there was any undisclosed income earned by the petitioner. The further averment in the writ petition is that the seizure of the documents relating to the petitioner in the course of the search conducted under Section 132 is illegal and invalid since the basic conditions that are required to be complied with before issue of a warrant of authorization under Section 132 have not been satisfied. According to the averments made in the writ petition, a seizure can only be made when the assets or documents represent any undisclosed income. It is contended that the balance sheets of the petitioner disclosed the receipt of the amounts from MGF for sale of development rights and therefore those amounts cannot be stated to be undisclosed income merely because the petitioner chose to follow the percentage of completion method of recognition of revenue. According to the petitioner if the receipt declared in the books of account cannot be described as undisclosed income, there can be no satisfaction as required by Section 132(1) nor can there be any satisfaction required to be recorded under Section 153C(1) of the Act. It is further contended that Section 153C may lead to harassing situations since the



Assessing Officer has no option but to reopen the assessments for six assessment years.

9. On the above principal grounds, the petitioner contends that the seizure of the documents, the satisfaction recorded by the Assessing Officer under Section 153C(1) and the assessment orders passed by the respondent for the assessment years 2003-04 to 2008-09 have all to be struck down.

10. In support of the aforesaid contentions raised in the writ petition, Mr. Bajpai, ld. senior counsel for the petitioner, drew our attention to several authorities. In particular he laid emphasis on the following judgments:

- (1) L R Gupta Vs. UOI (1992) 194 ITR 32 (Del.)
- (2) Ajit Jain Vs. UOI (2000) 242 ITR 302 (Del.)
- (3) Saraya Industries Ltd. Vs. UOI (2008) 306 ITR 189 (Del.)
- (4) Balwant Singh Vs. Jagdish Singh (2010) 8 SCC 685

11. Controverting the contentions in the writ petition and the points raised by Mr. Bajpai, ld. sr. counsel for the petitioner, Mr. N P Sahni, ld. sr. standing counsel put forth the following submissions :



(a). Both the finalisation of the accounts for the year ended 31.3.2009 and the audit of the accounts for the said period were carried out much after the date of the search which took place on 5.1.2009 and therefore on the date on which the search took place it was perfectly legal for the Assessing Officer to invoke the procedure prescribed in Section 153C (1) and forward the seized documents to the Assessing Officer having jurisdiction over the petitioner;

(b). At the time when the documents are found and seized, the procedure prescribed by Section 153C(1) merely enables the Assessing Officer to hand over the seized documents relating to the other person to the Assessing Officer having jurisdiction over the other person and thereafter the procedure prescribed by Section 153A has to be followed, and according to that procedure the petitioner will be given due opportunity of being heard and it is open to him to show that the documents did not represent any undisclosed income;

(c). Against the assessment made for the six preceding assessment years under Section 153A read with Section 153C, the petitioner has an efficacious alternative remedy by way of an appeal;

(d). It is not open to the petitioner to challenge the seizure of the documents since the warrant of search is not in its name;



(e). Even in the year ended 31.3.2008, the petitioner had received a sum of Rs.44 lacs from MGF and in the return filed for the assessment year 2008-09, no income had been shown by the petitioner despite the receipt of the aforesaid sum, thus giving rise to a prima facie satisfaction that there was undisclosed income earned by the petitioner.

12. The ld. sr. standing counsel for the income tax department also stated that the petitioner has already filed appeals before the CIT(Appeals) and has availed of the alternative remedy.

13. Sections 153A to 153D are placed in Chapter XIV of the Act, which is titled “procedure for assessment”. Section 153A provides for the assessment in case of search or requisition. This section applies to a person in whose case a search is initiated under Section 132 or books of account etc. are requisitioned under Section 132A. The procedure prescribed under Section 153A is that the Assessing Officer shall call upon the assessee who is searched to furnish returns of income for six assessment years immediately preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made. The assessee, on receipt of the notice from the Assessing Officer, shall furnish the returns of income and thereafter the Assessing Officer is empowered to assess or re-



assess the total income in respect of different assessment year falling within six assessment years. Now, a question may arise as to what would happen to the regular returns, if any, filed by the searched assessee for any of the six assessment years which are pending on the date on which the search was initiated. The answer is given by the second proviso to Section 153A, which says that if any of those returns is or are pending, the assessment or reassessment relating to those returns shall abate. The object obviously is to avoid multiplicity of assessment or reassessment proceedings in respect of the same assessment year or years. Once Section 153A is found to be applicable, there will be only one assessment in respect of each of the six assessment years immediately preceding the assessment year relevant to the previous year in which the search is conducted, in which the “total income” of the assessee will be assessed or reassessed. It should be remembered that only the pending assessment or reassessment proceedings in respect of any those six assessment years that will abate; in case the assessment or reassessment for any of those 6 years have already been completed as on the date of search then there is no question of any of them abating for the simple reason that what can abate is only what remains pending.



14. Now there can be a situation when during the search conducted on one person under Section 132, some documents or valuable assets or books of account belonging to some other person, in whose case the search is not conducted, may be found. In such case, the Assessing Officer has to first be satisfied under Section 153C, which provides for the assessment of income of any other person, i.e., any other person who is not covered by the search, that the books of account or other valuable article or document belongs to the other person (person other than the one searched). He shall hand over the valuable article or books of account or document to the Assessing Officer having jurisdiction over the other person. Thereafter, the Assessing Officer having jurisdiction over the other person has to proceed against him and issue notice to that person in order to assess or reassess the income of such other person in the manner contemplated by the provisions of Section 153A. Now a question may arise as to the applicability of the second proviso to Section 153A in the case of the other person, in order to examine the question of pending proceedings which have to abate. In the case of the searched person, the date with reference to which the proceedings for assessment or reassessment of any assessment year within the period of the six assessment years shall abate, is the date of initiation of the search under Section 132 or the requisition under Section



132A. For instance, in the present case, with reference to the Puri Group of Companies, such date will be 5.1.2009. However, in the case of the other person, which in the present case is the petitioner herein, such date will be the date of receiving the books of account or documents or assets seized or requisition by the Assessing Officer having jurisdiction over such other person. In the case of the other person, the question of pendency and abatement of the proceedings of assessment or reassessment to the six assessment years will be examined with reference to such date.

15. It needs to be appreciated that the satisfaction that is required to be reached by the Assessing Officer having jurisdiction over the searched person is that the valuable article or books of account or documents seized during the search belong to a person other than the searched person. There is no requirement in Section 153C(1) that the Assessing Officer should also be satisfied that such valuable articles or books of account or documents belonging to the other person must be shown to show to conclusively reflect or disclose any undisclosed income.

16. It will be appreciated from the above that the procedure envisaged by Section 153C, which is applicable to the petitioner herein, does not in any way infringe any rights of the petitioner or



curtail or curb his right to be heard by the Assessing Officer or to file appeals and question the assessments made pursuant to the notice under Section 153A. There is no ground for any apprehension that the petitioner will not be heard before the assessments or reassessments for the six assessment years are completed. In fact, in the case of the petitioner itself the Assessing Officer has not made any addition in the assessments completed under Section 153A read with Section 153C for the assessment years 2003-04 to 2006-07 and 2008-09. He has made the addition of Rs.86 crores only in the assessment year 2007-08 against which an appeal has already been filed, as stated by the Id. senior standing counsel. This also finds mention in para VI of the counter affidavit filed by the respondent. Thus, full opportunity of being heard is available, and in fact was made available to the petitioner herein to represent against the proposed assessments or reassessments. The apprehension expressed by Mr. Bajpai, Id. senior counsel for the petitioner seems to be futile and spartan in the present case, as no adverse order/ addition has been made except in one year, i.e. 2007-08 in respect of which documents were found. This addition is also pending in appeal.

17. The judgment of this court in Saraya Industries Ltd. (supra) was relied upon by Mr. Bajpai, in support of his contention that the seizure of the document must be of such nature that even closed



assessments for six years could be reopened and this requirement postulates that the provisions of Section 153C can be set in motion only if there is a finding that the seized document or books of account or valuable article represents the undisclosed income of the other person. The said decision does not assist the petitioner. The section merely enables the revenue authorities to investigate into the contents of the document seized, which belongs to a person other than the person searched so that it can be ascertained whether the transaction or the income embedded in the document has been accounted for in the case of the appropriate person. It is aimed at ensuring that income does not escape assessment in the hands of any other person merely because he has not been searched under Section 132 of the Act. It is only a first step to the enquiry, which is to follow. The Assessing Officer who has reached the satisfaction that the document relates to a person other than the searched person can do nothing except to forward the document to the Assessing Officer having jurisdiction over the other person and thereafter it is for the Assessing Officer having jurisdiction over the other person to follow the procedure prescribed by Section 153A in an attempt to ensure that the income reflected by the document has been accounted for by such other person. If he is so satisfied after obtaining the returns from such other person for the six assessment years, the proceedings



will have to be closed. If the returns filed by the other person for the period of six years does not show that the income reflected in the document has been accounted for, additions will be accordingly made after following the procedure prescribed by law and after giving adequate opportunity of being heard to such other person. That, in sum and substance, is the position.

18. A reference to Section 158BD of the Act, which falls under the Chapter XIV-B, may be of some use. This section provided for assessment of the undisclosed income by any person other than the person searched under Section 132. It applies to search conducted prior to 31.05.2003. It provided as follows:

“Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and the provisions of this Chapter shall apply accordingly.”

(underlining ours)



It will be seen that whereas Section 158D refers to the satisfaction of the Assessing Officer that any “undisclosed income” belongs to any person other than the searched person, Section 153C(1) in contrast refers merely to the satisfaction of the Assessing Officer that the valuable article or books of account or document “belongs” to a person other than the searched person. The latter provision does not refer to any undisclosed income at all. The machinery provided in Sections 153C read with 153A merely facilitates an enquiry regarding the existence or otherwise of undisclosed income in the hands of the person other than the searched person. The starting point of the enquiry is the seizure of the valuable article or books of account or document, which according to the satisfaction reached by the Assessing Officer, belongs to a person other than the searched person. It is necessary to notice the difference between the two provisions in order to deal with the contention put forward by the Id. counsel for the petitioner that the seizure itself is invalid or illegal on the ground that there could not have been any satisfaction before issuing the warrant of authorization under Section 132 of the Act that the petitioner had earned undisclosed income because the income reflected in the seized documents namely, the Collaboration Agreement dated 24.8.2006 and the Assignment Agreement dated 21.7.2006, had



already been taken note of in the account books of the petitioner. This is a debatable issue as is apparent from the submission of the Revenue. They have submitted to the contrary. It cannot be said that the seizure of the documents was unwarranted or contrary to law. As noticed above, Revenue has highlighted that finalization and audit of accounts was after the date of the search. The accounts for the year ended 31.03.2009 now relied upon by the petitioner, were finalized after the search on 05.01.2009. Seizure has to be judged in the perspective and the facts known and within the knowledge when it was made. On that date, the Revenue was not in a position to know whether any income from the transaction had been discharged by the petitioner in its books of account for the year ended 31.03.2009. In the very nature of things, the warrant of authorization of the search under Section 132 could not have been issued on the footing that there was undisclosed income in the case of the petitioner simply because action under Section 132 was taken not against the petitioner, but against the Puri Group of Companies. Section 153C postulates that while conducting the search on the person in whose name the search warrant is issued under Section 132, some valuable article or books of account or document is seized, which does not belong to the searched person but is seen to belong to any other person, the procedure stated therein should be followed. Therefore,



nothing is to be gained from saying that the pre-conditions mentioned in clauses (a), (b) and (c) of sub-section (1) to Section 132 have not been satisfied vis-à-vis the petitioner so as to confer legality upon the seizure of the documents in question. In our opinion, it is not necessary for the revenue authorities to have reasons to believe that the petitioner would not produce any books of account or document or that the petitioner is in possession of any money, bullion, jewellery or other valuable article or thing which it had not or will not disclose for the purpose of the assessment proceedings. The petitioner was not searched. Search was on a third person and validity of the seizure has to be examined with reference to the said person searched. At the time when the Assessing Officer having jurisdiction over the searched person reaches the satisfaction that the document belongs to a person other than the searched person, it is not necessary for him to also reach a firm conclusion/ opinion that the document shows undisclosed income belonging to such other person. That is a matter for enquiry, which is to be conducted in the manner prescribed by Section 153C. The fact that the procedure envisaged by Section 153C is somewhat cumbersome and that the person other than the searched person is put to some inconvenience cannot be an argument to hold that the entire proceedings are bad in law.



19. In the course of his arguments, Mr. Bajpai, ld. sr. counsel for the petitioner, administered a caution that a search under Section 132 of the Act is a serious invasion into the privacy of an individual and, therefore, the provisions relating to such a power should be strictly construed and the grave consequences which may result due to exercise of such a power should be kept in mind while interpreting the provisions relating to search and seizure. There can be no quarrel with the proposition put forth by him. In the present case, however, there is no scope for applying the proposition. Herein we are concerned with a person in whose case no search under Section 132 has been authorized. Documents belonging to the petitioner were found during the search carried out in the premises of Puri Group of Companies and the Assessing Officer, being satisfied that they belong to the petitioner, forwarded them to the Assessing Officer having jurisdiction over the petitioner. This procedure followed by the Assessing Officer was strictly in accordance with sub-section (1) of Section 153C. There is no averment that the seizure or the forwarding of the document after duly reaching the satisfaction was a malafide action on the part of the respondent. The procedure followed was also in accordance with the statutory provision referred to above.



20. The other apprehension expressed by Mr. Bajpai, namely, that there is grave danger that even disclosed transactions/ income are likely to undergo a further scrutiny causing harassment to those persons whose assets or valuable articles or books of accounts or documents are found during the search conducted in the case of another person, may be justified to a limited extent, if facing an inquiry all over again can be justly described as harassment. There can be some inconveniences in a case where the income had already been disclosed by the other person who has not been searched. However, there is no cause for any apprehension that the income tax authorities will exploit the situation to harass assesseees where there is evidence adduced by them to show and establish that the income reflected by the valuable article or books of accounts or document seized during the search has already been disclosed by them. Even if they tend to act unreasonably or under misplaced enthusiasm, there are adequate safeguards which can be availed of by those persons. The apprehensions expressed by Mr. Bajpai in our opinion and with respect, are unfounded.

21. The above discussion in our opinion is sufficient to dispose of the contentions of the ld. senior counsel for the petitioner. However, in the course of the arguments there was a debate as to whether the petitioner was justified in following the percentage of completion



method of accounting for recognising the income from the sale of the development rights. We have gone through the relevant documents to which our attention was drawn by both the sides in support of their rival stands, but we do not think that it would be proper for us to examine the question since the assessment order for the assessment year 2007-08 passed under Section 153C read with 143(3) on 30.12.2010 is under appeal before the CIT (Appeals). Even otherwise, in proceedings under Article 226, this question should not be gone into, as appellate statutory forum is the right and proper course/ remedy. It is for the petitioner to make out the case in the appeal pending before the appellate authorities under the relevant provisions of the Act. We express no opinion on the merits of the addition of Rs.86 crores.

22. For the aforesaid reasons we see no merit in the writ petition filed by the petitioner. The same is accordingly dismissed. All interim orders stand vacated. There shall be no order as to costs.

(R.V. EASWAR)
JUDGE

(SANJIV KHANNA)
JUDGE

MARCH 29, 2012/vld