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

\+ **ITA 1152/2017**

THE PR. COMMISSIONER OF INCOME TAX CENTRAL-3 ..... Appellant

Through: Ms. Vibhooti Malhotra, Sr. Standing Counsel.

versus

M/S. DREAMCITY BUILDWELL PVT. LTD. ..... Respondent

Through: Mr. Salil Aggarwal with Mr.Madhur Aggarwal and Mr.Uma Shankar, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% 09.08.2019

Dr. S. Muralidhar, J.:

1. This is an appeal by the Revenue against the order dated 30th January, 2017 passed by the ITAT in ITA No.4766/Del/2009 for the Assessment Year ('AY') 2005-06.

2. The question sought to be urged by the Revenue is whether the ITAT erred in deleting the addition of Rs.2.12 crores made by the Assessing Officer ('AO') on account of unexplained cash credit under Section 68 of the Income Tax Act, 1961 ('Act') adopting 'a restrictive and pedantic interpretation' of the scope of assessment under Section 143 (3) read with

Section 153C of the Act?

3. The background facts are that the Assessee is a company engaged in the business of real estate development. It filed its return of income for the AY in question, declaring 'NIL' income. The return was picked up for scrutiny and a notice under Section 143(2) was issued to the Assessee. In the assessment proceedings under Section 143(3) of the Act, the AO noticed that the Assessee had received credit entries in the sum of Rs. 2.12 crores from one M/s. Shri Niwas Leasing & Finance Ltd. (SNLF). On account of failure on the part of the Assessee to establish the identity, creditworthiness and genuineness of the entry appearing in its books, the AO added the aforementioned sum to the income of the Assessee under Section 68 of the Act by the assessment order dated 28th December, 2007.

4. The appeal by the Assessee against the above assessment order was allowed by the Commissioner of Income Tax Appeals [CIT (A)] by an order dated 14th October, 2009. The reasoning given by the CIT (A) was that SNLF was an existing Assessee having a PAN and that, therefore, the identity of SNLF was not in doubt. The money had been received by cheque and the amounts had been utilised for making payments to the MCD authorities. Therefore, the transaction was genuine. The Assessee had provided a confirmatory letter as well as a copy of the bank account of SNLF. The amount had been received by cheques and the jurisdictional AO of SNLF had confirmed the said facts. It was further noted that the Assessee could not be fastened with the burden of proving credits in the accounts of SNLF. In other words, the Assessee could not be asked to prove the source

of source. Accordingly, the addition made by the AO was deleted.

5. The Revenue filed an appeal before the ITAT being ITA No.4766/Del/2009. While the said appeal was pending, a search and seizure operation under Section 132 was carried out on 5th January 2009 in the cases of the Taneja Puri Group at its various premises. According to the Revenue, during the course of search, some documents 'belonging' to the Assessee were found in the searched premises. Notice under Section 153C of the Act was issued to the Assessee on 19th November, 2010.

6. According to the AO, in addition to the credit entry of Rs.2.12 cores, the Assessee had also received Rs.1.00 crore from six entities controlled and managed by Mr. S.K. Gupta, who was an accommodation entry provider. According to the Revenue, the search in the premises of Mr. S.K. Gupta revealed that the six companies/entities were paper companies only for providing accommodation entries. An assessment order dated 29th December 2010 was framed against the Assessee under Section 143(3) read with Section 153C of the Act, determining its income at Rs.3.12 crores.

7. After the CIT (A) dismissed the Assessee's appeal by an order dated 26th July, 2013 the Assessee filed an appeal being ITA No. 5201/Del/2013 in the ITAT. By a common order the ITAT dismissed the Revenue's appeal being ITA No.4766/Del/2009, upholding the deletion by the CIT (A) on merits of the addition of Rs.2.12 crores made by AO under Section 68 of the Act. The ITAT allowed the appeal of the Assessee being ITA 5201/Del/2013, holding that the assumption of jurisdiction under Section 153C of the Act by the AO

was not proper.

8. It must be noted at the outset that the Revenue filed two appeals in this Court against the common order of the ITAT in both the aforementioned ITAs. The Revenue's appeal against the dismissal by the ITAT of the Revenue's appeal ITA 4766/Del/2009 (being ITA No.1153/2017), was by separate order passed today, treated as not pressed since the tax effect was below the revised monetary limit in terms of CBDT Circular No. 17 of 2019 dated 8th August 2019.

9. As far as the present appeal is concerned the question is whether the AO's assumption of jurisdiction under Section 153 C of the Act qua the Assessee was justified in the facts and circumstances of the case?

10. For the aforementioned purpose it must be noted that the satisfaction note of the AO for assumption of jurisdiction qua the Respondent Assessee under Section 153C of the Act read as under:

> "A search and seizure operation under section 132(1) of the Income-tax Act was carried on 5.01.2009 at various business and residential premises of Taneja Puri Group of cases, Search and seizure proceedings were carried out at 9, K.G.Marg, New Delhi which is the residence of Sh. Ravinder Kumar Taneja director in various Taneja Group of companies. Various Taneja group of companies are also being run from the said premises. During the course of search at the said premises, various incriminating documents were found and seized. Annexure A-2 of seized documents contains a letter from Director Town and Country Planning, Haryana and Chandigarh addressed to the assessee company Dreamcity Buildwell P. Ltd. along with other associated person of the assessee group granting licence

to the assessee company for setting up of a residential plotted colony on the land measuring 304.58 acres at Village Aterna, Nangal Ralan, Patla, Jakholi, and Sersa, Distt. Sonipat. The said licence granted on the basis of application dated 10.03.2005, 7.03.2005 and 26.04.2005 submitted by the assessee to the Director Town and Country Planning. In the Annexure A-2, the said letter has been page numbered as pages 82 to 86.

Pages 87 to 96 of the Annexure A-2 again a letter dated 16.12.2005 from District Town Planner (HQ) NC for Director Town and Country Planning, Haryana and Chandigarh addressed to M/s. Dreamcity Buildwell P. Ltd. along with other associated persons of the assessee granting permission for transfer of license number 65 to 98 of 2005 dated 5.08.2005 granted to the assessee company for developing a residential plotted colony in village Patti Mushalman and Shahpur, Distt. Sonipat, in favour of Rangoli Buildtech P. Ltd.

In the light of the above, I am satisfied that the above case is a fit case for issuing notice under section 153C of the Income Tax Act, 1961 as the seized documents mentioned above belonging to Dreamcity Buildwell P. Ltd. being a person than a person in whose case the search has been initiated, have been found during the course of search and seizure proceedings at 9, K.G. Marg, New Delhi in the case of Mr. Ravinder Kumar Taneja.

During the course of search and seizure proceedings at 28, Prithviraj Road, New Delhi the residence of Mr. D.N. Taneja main controlling person of the Taneja Group of companies, Mr. D.N. Taneja in his sworn statement given under section 132(4) of the Income Tax Act, 1961 offered an income of Rs.6.23 crore for taxation in respect of entries taken by various Taneja Group of companies from the concerns of Mr. S.K. Gupta an entry operator Mr. D.N. Taneja in his statement also provided a list of all such transactions made by various Taneja group companies with the concerns statement of Mr. D.N.

> Taneja as an Annexure to the statement. As per the said Annexure, the assessee company Dreamcity Buildwell P. Ltd. has also undertaken various transactions on 27.04.2004 and 28.07.2004 with various concerns of Mr. S.K. Gupta. The entire transactions with the concerns of Mr. S.K. Gupta have been offered for taxation by Mr. D.N. Taneja in his statement.
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> Therefore, for this reason also, I am satisfied that it is a fit case for initiating proceedings under section 153C of the Income Tax Act, 1961."

11. The ITAT correctly noted that two of the above documents referred to, viz., the licence issued to the Assessee by the Director, Town and Country Planning (DTCP), Haryana and the permission granted to it by the DTCP for transferring the said licence could not be said to be the documents that constituted incriminating evidence revealing any escapement of income. In this context reliance was placed on the decision of this Court in ***CIT v. RRJ Securities Ltd. (2016) 380 ITR 612 (Del)*** in which it was held that an AO would not proceed to commence an enquiry under Section 153C of the Act if it was apparent that the documents in question had no bearing on the income of the Assessee for the relevant AYs. As far as the statement of Mr. D. N. Taneja was concerned, the ITAT held that they it was not in any way connected with the undisclosed income of the Assessee. The offering of income of Rs.6.23 crores for taxation by Mr. D. N. Taneja did not make any reference to the undisclosed income of the Assessee.

12. Ms. Vibhooti Malhotra, learned Senior Standing Counsel for the Revenue, submitted that while the two documents, viz., the licence issued to the Assessee by the DTCP and the letter permitting it to transfer such

licence, could be said to 'belong' to the Assessee, they could not be said to be incriminating material relevant to any escapement of income of the Assessee for the AY in question. However, according to her, the ITAT erred in overlooking the third document, namely the annexure to the statement of Mr. D. N. Taneja, which showed that the Assessee had also undertaken various transactions on 27th and 28th April 2004 with various concerns of Mr. S. K. Gupta, which admittedly were paper entities. Mr. S. K. Gupta was himself an accommodation entry provider. Further, Mr. D. N. Taneja had offered for taxation the entire transactions with the concerns of Mr. S. K. Gupta. Therefore, the said annexure was certainly a document pertaining to the Assessee. Consequently, according to Ms. Malhotra, the assumption of jurisdiction qua the Assessee under Section 153C of the Act was valid.

13. Mr. Salil Aggarwal, learned counsel for the Assessee drew the attention of the Court to the fact that prior to its amendment with effect from. 1st June, 2015, Section 153C of the Act read as under:

> "**153C. Assessment of income of any other person** Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person."

14. After its amendment with effect from 1st June, 2015 Section 153C (1) of the Act reads as under:

"153C. **Assessment of income of any other person**

(1) Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, where the Assessing Officer is satisfied that,—

(*a*) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(*b*) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or 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 each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person [2]for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A"

15. It can straightaway be noticed that the crucial change is the substitution of the words 'books of account or documents, seized or requisitioned belongs to or belong to a person other than the person referred to in Section 153A' by two clauses i.e. a and b, where clause b is in the alternative and provides that 'such books of account or documents, seized or requisitioned' could 'pertain' to or contain information that 'relates to' a person other than a person referred to in Section 153A of the Act.

16. The trigger for the above change was a series of decisions under Section 153C, as it stood prior to the amendment, which categorically held that unless the documents or material seized 'belonged' to the Assessee, the assumption of jurisdiction under Section 153C of the Act qua such Assessee would be impermissible. The legal position in this regard was explained in ***Pepsi Foods Pvt. Ltd. v. Assistant Commissioner of Income Tax (2014) 367 ITR 112 (Del)*** where in para 6 it was held as under:

> "6. On a plain reading of Section 153C, it is evident that the Assessing Officer of the searched person must be "satisfied" that inter alia any document seized or requisitioned "belongs to" a person other than the searched person. It is only then that the Assessing Officer of the searched person can handover such document to the Assessing Officer having jurisdiction over such other person (other than the searched person). Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or reassess his income in accordance with the provisions of Section 153A. Therefore, before a notice under Section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is – after such satisfaction is arrived at – that the document is handed over to the Assessing Officer of the person to whom the said document "belongs". In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to examine the provisions of presumptions as indicated above. Section 132 (4A) (i) clearly stipulates that when inter alia any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in Section 292C (1) (i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer

> to rebut that presumption and come to a conclusion or "satisfaction" that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of "satisfaction".

17. In the present case the search took place on 5th January 2009. Notice to the Assessee was issued under Section 153 C on 19th November 2010. This was long prior to 1st June, 2015 and, therefore, Section 153C of the Act as it stood at the relevant time applied. In other words, the change brought about prospectively with effect from 1st June, 2015 by the amended Section 153C (1) of the Act did not apply to the search in the instant case. Therefore, the onus was on the Revenue to show that the incriminating material/documents recovered at the time of search 'belongs' to the Assessee. In other words, it is not enough for the Revenue to show that the documents either 'pertain' to the Assessee or contains information that 'relates to' the Assessee.

18. In the present case, the Revenue is seeking to rely on three documents to justify the assumption of jurisdiction under Section 153 C of the Act against the Assessee. Two of them, viz., the licence issued to the Assessee by the DTCP and the letter issued by the DTCP permitting it to transfer such licence, have no relevance for the purposes of determining escapement of income of the Assessee for the AYs in question. Consequently, even if those two documents can be said to 'belong' to the Assessee they are not documents on the basis of which jurisdiction can be assumed by the AO under Section 153C of the Act.

19. As far as the third document, being Annexure A to the statement of Mr. D. N. Taneja, is concerned that was not a document that 'belonged' to the Assessee. Admittedly, this was a statement made by Mr. Taneja during the course of the search and survey proceedings. While it contained information that 'related' to the Assessee, by no stretch of imagination could it be said to a document that 'belonged' to the Assessee. Therefore, the jurisdictional requirement of Section 153C of the Act, as it stood at the relevant time, was not met in the present case.

20. For the aforementioned reasons, this Court concludes that the ITAT committed no legal error in holding that the AO had wrongly assumed jurisdiction under Section 153C *qua* the Assessee. The ITAT, rightly, therefore, set aside the order of the CIT (A), which had held the contrary.

21. No substantial question of law arises from the impugned order of the ITAT. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 09, 2019
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