
(2015) 03 AHC CK 0042

In the Allahabad High Court

Case No : Income Tax Appeal No. 108 and Income Tax Appeal Defective Nos. 43 and 44 of 2014

Commissioner of Income Tax

APPELLANT

Vs

Nirmala Keshwani

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Income Tax Act, 1961 — Section 132, 132A, 143(3), 153A, 153-A

Citation : (2015) 280 CTR 193 : (2016) 380 ITR 566

Hon'ble Judges : Satish Chandra, J.; Tarun Agarwala, J.

Bench : Division Bench

Advocate : Shambhu Chopra, Senior Sc., for the Appellant; Rahul Agarwal, Advocates for the Respondent

Judgement

1. All the three appeals have been filed by the Department against consolidated order dated 29.11.2013 passed by the Income Tax Appellate Tribunal, Agra in ITA Nos. 200, 305 and 306/Agra/2013 for the assessment year 2002-03 and 2006-07.

2. The brief facts of the case are that all the assesseees belong to M/s. Shanker Gutka Group, where a search and seizure operation was carried out on 30/31 January 2008. During the course of search, some cash was found and seized. No search warrant was issued in the name of the assesseees, but the proceedings under Section 153C were initiated and assesseees were asked to file the returns. Later, the A.O. passed the assessment order on account of house property and long term capital gain under Section 153C read with Section 153A/143(3) of the Income Tax Act. The CIT(A) has confirmed the additions, but the Tribunal has deleted the said additions. Being, aggrieved the Department has filed the present appeals.

3. With this background, Shri Shambhu Chopra, the learned counsel for the Department submits that the core issue is that the Tribunal himself has interpreted the provision of Section 153C of the Income Tax Act but the same

only provides the procedure to be followed.

4. For the purpose, the learned counsel submits that in the case of Commissioner of Income Tax Vs. Classic Enterprises and F.I. Hospital, , it was observed that:

"...Section 153C of the Income Tax Act, 1961, prescribed the procedure to be adopted for initiating proceedings under section 153A against a person who has not be searched, in a situation where the Assessing Officer having the jurisdiction over the other person is different from the Assessing Officer having jurisdiction over the person in respect of whom the search has been conducted. The Assessing Officer has to be satisfied that undisclosed income found during search operations belongs to the third person before notice can be issued under section 153C. Mere use or mention of the word "satisfaction" in the order or note will not meet the requirement of the concept of satisfaction as used in section 158BD. The satisfaction has to be in writing and can be gathered from the assessment order, if it is so mentioned or recorded, or from any other order, note or record maintained by the Assessing Officer of the person searched. The Assessing Officer is satisfied when he makes up his mind or reached a clear conclusion when he take a prima facie view that the material available establishes "undisclosed income" of a third party. The Assessing Officer must reach a clear conclusion that good ground exists for the Assessing Officer of the third person to initiate proceedings as material before him shows or would establish "undisclosed income" of a third person. At this stage, as the proceedings are at the very initial stage, the "satisfaction" is neither required to be firm or conclusive..." 5. On an enquiry by the Bench, the learned counsel for the Department accepted that in the instant cases, no satisfaction was recorded. He read out para 7 of the Tribunal's order, where it was mentioned that the A.O. did not make any addition against the assessee on the basis of any adverse material. No material is produced to prove that the A.O. was satisfied that any money, bullion, jewellery or other valuable articles or things or books of accounts, or documents seized or requisitioned belong to or belonging to a person other than person referred to in Section 153A of the IT Act.

6. The learned DR also admits that no satisfaction note has been recorded in these cases before initiating the proceeding under Section 153C of the Income Tax Act as mentioned by the Tribunal in para 7 of the order.

7. However, he made a request that the Tribunal's order may kindly be set aside.

8. On the other hand, Shri Rahul Agrawal, the learned counsel for the assessee relied on impugned order passed by the Tribunal.

9. Learned counsel further submits that satisfaction is the mandatory requirement. For the purpose he relied on the ratio laid down in the following cases:

"(a) Commissioner of Income Tax Vs. Gopi Apartment, ; and

(b) CIT v. M/s. Shettys Pharmaceuticals and Biologicals Limited ITA Nos. 662 and 668 of 2014 (AP)"

10. It is also the submission of learned counsel for the assessee that the Income Tax Act however provides for taking recourse to a assessment of income of any other person other than the person searched and the conditions precedent for invoking such provisions against such other person are:

"(a) The search or requisition must have taken place in case of any person.

(b) Where the AO is satisfied that any money, bullion, jewellery or other valuable articles or other things or books of accounts or documents seized or requisitions belongs or belong to a person other than the person referred to in Section 153A.

(c) The books accounts or documents or assets seized or requisitioned shall be handed over to the AO having jurisdiction over such other persons.

(d) The AO has proceeded under Section 153C against such other person."

11. The section mandates about recording of the satisfaction by the Assessing Officer(s) and it is a pre-condition for invoking jurisdiction and it is not a mere formality because recording of satisfaction postulates application of mind consciously as the documents seized must be belonging to any other person other than the person referred to in Section 153-A of the Act.

12. Lastly, he made a request that the order passed by the Tribunal may kindly be uphold.

13. We have heard both the parties at length and gone through the materials available on record. From the record, it appears that this Court has taken a constant view that satisfaction is a pre-condition. "Satisfaction" has to be in writing and can be gathered from the order passed by the searched person, if it is so mentioned/recorded, or from any other order, note or record maintained by the Assessing Officer of the person searched. The satisfaction always reflects in writing/averments where it is recorded. The satisfaction may be recorded at any stage.

14. In the instant case, the order passed by the Tribunal, a final fact finding authority, clearly states that no "satisfaction note" has been recorded before initiating the proceedings under Section 153C of the Income Tax Act. In the case of Vijaybhai N. Chandrani Vs. Asstt. Commissioner of Income Tax, , it was held that:

"..Section 153A, 153B and 153C of the Income Tax Act, 1961, lay down a scheme for assessment in case of search and requisition. Section 153C which is similarly worded to section 158BD of the Act, proves that 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 he shall proceed against each such other person and issue such other person notice and assess or

reassess income of such other person. However, there is a distinction between the two provisions inasmuch as under section 153C notice can be issued only where the money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to such other person, whereas under section 158BD if the Assessing Officer was 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 assets were requisitioned under Section 132A, he could proceed against such other person under Section 158BC. Thus a condition precedent for issuing notice under section 153C and assessing or reassessing income of such other person, is that the money, bullion, jewellery or other valuable articles or thing or books of account or documents seized or requisitioned should belong to such person. If the requirement is not satisfied, recourse cannot be had to the provisions of section 153C." 15. In view of the above discussion, it is evident that when no satisfaction was recorded then the requirement of Section 153C was not satisfied. Therefore, we have no reason to interfere with the impugned order passed by the Tribunal, who has not sustained the proceedings under Section 153C of the Act, for the reason that there was no satisfaction at any stage.

16. Needless to mention that in the case of Manish Maheshwari Vs. Asstt. Commissioner of Income Tax and Another, , similar views were expressed. In the case of CIT v. Anil Kumar Chadha, Income Tax Appeal No. 86 of 2011 decided on 18th February 2015, the same was followed too.

17. By considering the totality of the facts and circumstances of the case, it appears that in the instant cases, no substantial question of law is emerging from the impugned order. When it is so, then we find no reason to interfere with the impugned order passed by the Tribunal, the same is hereby sustained alongwith the reasons mentioned therein.

18. In the result, the appeals filed by the Department are hereby dismissed at the admission stage.