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

**ITA No. 566/2017**

INDEX SECURITIES PRIVATE LIMITED ..... Respondent
**04.09.2017**

*27. The recent decision of the Supreme Court in* ***Commissioner of Income Tax-III, Pune v. Sinhgad Technical Education Society [2017] 84 taxmann.com 290 (SC)****) is a complete answer to both points urged by the Revenue. The said decision, therefore, requires to be discussed in some detail.*

*28.1 The Supreme Court noted that the Assessee had raised a challenge to the validity of the assumption of jurisdiction by the AO under Section 153C of the Act for the first time before the ITAT. It was urged on behalf of the Revenue that the ITAT erred in allowing the said challenge by the Assessee by way of additional grounds. A reference was made by the Revenue to the decision of this Court in* ***SSP Aviation Limited v. Deputy Commissioner of Income Tax [2012] 346 ITR 177 (Del)*** *and that of the Gujarat High Court in* ***Kamleshbhai Dharamshibhai Patel v. Commissioner of Income Tax-III (2013) 263 CTR (Guj) 362*** *which according to the Revenue held to the contrary.*

*28.2 The Supreme Court noted that the appeals relating to four of the AYs i.e. 2000-01 to 2003-04 were covered by the notice under Section 153C of the Act. In dealing with the question as to whether the ITAT was right in permitting the Assessee to raise this additional*

*ground for the first time before it, the Supreme Court in paras 18 and 19 observed as under:*

*"18. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf,* ***it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act****. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the satisfaction note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also give its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the Respondent, argued that notice in respect of assessment years 2000-01 and 2001-02 was even time barred.*

*19. We, thus, find that* ***the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on***

***merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish****. Before us, it was argued by the Respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy."*

***28.3 From a reading of the above two paragraphs, it is plain that the Supreme Court (i) agreed with the ITAT that the documents seized had to relate to the AYs whose assessments were reopened and that this was an essential jurisdictional fact and (ii) upheld the decision of the ITAT to permit the additional ground to be raised before it for the first time.***

*28.4 The Supreme Court also agreed with the decision of the Gujarat High Court in* ***Kamleshbhai Dharamshibhai Patel*** *(supra) to the extent it held that "it is an essential condition precedent that any money, bullion or jewellery or other valuable articles or thing or books of accounts or documents seized or requisitioned should belong to a person other than the person referred to in Section 153A of the Act." The Supreme Court observed: "This proposition of law laid down by the High Court is correct, which is stated by the Bombay High Court in the impugned judgment as well."*

*28.5 The above categorical pronouncement of the Supreme Court cannot, by any stretch of imagination, be termed as obiter as has been suggested by Mr. Manchanda. Even the obiter dicta of the Supreme Court is binding on this Court.*

*29. The search in the case before the Supreme Court was prior to 1st June 2015. Apart from the fact the Supreme Court approved the above decision of the Gujarat High Court holding that the seized documents should 'belong' to the other person, the legal position in this regard where the search has taken place prior to 1st June 2015 has been settled by the decision of this Court in* ***Pepsico India Holdings (P) Ltd. v. ACIT*** *(supra). In* ***Commissioner of Income Tax v. Vinita Chaurasia*** *(supra), this Court reiterated the above legal position after discussing the decisions in* ***Principal Commissioner of Income Tax v. Super Malls (P) Limited*** *(supra) and* ***Commissioner of Income Tax (Central)-2 v. Nau Nidh Overseas Pvt. Ltd.*** *(supra). The essential jurisdictional requirement for assumption of jurisdiction under Section 153 C of the Act (as it stood prior to its amendment with effect from 1st June 2015) qua the 'other person' (in this case the assessees) is that the seized documents forming the basis of the satisfaction note must not merely 'pertain' to the other person but must belong to the 'other person'. 30. In the present case, the documents seized were the trial balance and balance sheets of the two Assessees for the period 1st April to 13th September 2010 (for ISRPL) and 1st April to 4th September 2010 (for VSIPL). Both sets of documents were seized not from the respective Assessees but from the searched person i.e. Jagat Agro Commodities (P) Ltd. In other words, although the said documents might 'pertain' to the Assessees, they did not belong to them. Therefore, one essential jurisdictional requirement to justify the assumption of jurisdiction under Section 153 C of the Act was not met in the case of the two Assessees.*

*31. As regards the second jurisdictional requirement viz., that the seized documents must be incriminating and must relate to the AYs whose assessments are sought to be reopened, the decision of the Supreme Court in* ***Commissioner of Income Tax-III, Pune v. Sinhgad Technical Education Society*** *(supra) settles the issue and holds this to be an essential requirement. The decisions of this Court in* ***CIT-7 v. RRJ Securities (2016) 380 ITR 612 (Del)*** *and* ***ARN Infrastructure India Limited v. ACIT [2017] 394 ITR 569 (Del)*** *also hold that in order to justify the assumption of jurisdiction under Section 153 C of the Act the documents seized must be incriminating and must relate to each of the AYs whose assessments are sought to be reopened. Since the satisfaction note forms the basis for initiating the proceedings under Section 153 C of the Act, it is futile for Mr Manchanda to contend that this requirement need not be met for initiation of the proceedings but only during the subsequent assessment.*

*32. In the present case, the two seized documents referred to in the Satisfaction Note in the case of each Assessee are the trial balance and balance sheet for a period of five months in 2010. In the first place, they do not relate to the AYs for which the assessments were reopened in the case of both assessees. Secondly, they cannot be said to be incriminating. Even for the AY to which they related, i.e. AY 2011-12, the AO finalised the assessment at the returned income qua each Assessee without making any additions on the basis of those documents. Consequently even the second essential requirement for assumption of jurisdiction under Section 153 C of the Act was not*

*met in the case of the two Assessees*

*33. This Court does not consider it necessary to examine the merits of the case as far as the deletions by the CIT (A) of the additions made by the AO under Section 153C of the Act are concerned. In any event, a detailed analysis has been undertaken by the CIT (A) of the materials produced by the Assessee which justified the deletion of such additions. Even on this score, no interference is warranted with the impugned order of the CIT (A).*

*34. For the aforesaid reasons, the Court finds that no substantial question of law arises from the impugned orders of the ITAT.*

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

**ITA 499/2011**

RENU CONSTRUCTIONS PVT LTD ..... Respondent

**06.09.2017**

By an order dated 15th November 2011, while admitting these appeals, the following questions were framed for consideration by this Court:

*"1. Whether the Income Tax Appellate Tribunal is correct in annulling the block assessment order?*

*2. Whether the Income Tax Appellate Tribunal has erred in law in presuming that the seized document did not belong to the respondent?*

*3. Whether the order of Income tax Appellate Tribunal is perverse in the facts and circumstances of the case?"*

8. The recent decision of the Supreme Court in ***Commissioner of Income Tax, Pune v. Sinhgad Technical Education Society [2017] 84 taxmann.com 290 (SC)*** settles the legal position in favour of the Assessees. The Supreme Court, while affirming the judgment of the Bombay High Court, approved the decision of the Gujarat High Court in ***Kamleshbhai Dharamshibhai Patel v. Commissioner of Income Tax-III, (2013) 263 CTR (Guj) 362*** that a document seized 'should belong to a person other than the person referred to in Section 153A of the Act'. It has been categorically observed by the Supreme Court that the above position of law laid down by the Gujarat High Court is correct.

9. Consequently, this Court rejects the contention of the learned counsel for the Revenue that even prior to 1st June 2015 at the stage of initiation of proceedings under Section 153C of the Act, it is sufficient if the seized document 'pertained to' the other person and it is not necessary to show that the seized material 'belonged to' the other person. This legal position has been explained by this Court in its recent decision dated 10th July 2017 in W.P. (C) No. 3241/2015 (***Canyon Financial Services Ltd. v. Income Tax Officer***).

10. As far as ITA No. 499/2011 is concerned, the Court finds that there is an additional ground to reject the appeal of the Revenue. The satisfaction note recorded by the AO in that case does not even refer to the seized documents.

11. For the aforementioned reasons, Question No. 2 framed by the Court is answered in the negative, i.e. in favour of the Assessees and against the Revenue.

***Delhi high court in Vinita Chaurasia case 394 ITR 758***

*14. This Court has heard the submissions of Mr. Dileep Shivpuri, learned Senior Standing Counsel for the Department and Mr. Ajay Vohra, learned Senior counsel appearing for the Assessee. 15. It requires to be first noted that the document relied upon by the Revenue (Annexure A-1 page 5) to sustain the additions made to the assessable income of the Respondent has not been shown to 'belong' to the Assessee. In arriving at this conclusion, the ITAT followed the decision of this Court in* ***Pepsico India Holding Ltd. v. ACIT (2015) 370 ITR 295 (Del)****. Mr. Shivpuri on the other hand submitted that there have been subsequent decisions of the DBs of this Court which have explained the aforementioned decision and in particular the phrase „belongs to" occurring in Section 153C of the Act. He placed particular reliance on the decisions in* ***Principal Commissioner of Income-tax-8 v. Super Malls (P.) Ltd. [2017] 291 CTR 142 (Del), Principal Commissioner of Income Tax, Circle-II v. Satkar Fincap*** *(decision dated 16th November, 2016 in ITA No. 82 of 2016) and* ***Principal Commissioner of Income Tax (Central)-2 v. Nau Nidh Overseas Pvt. Ltd.*** *(decision dated 3rd February, 2017 in ITA No. 58/2017).*

*16. At the outset, it requires to be noticed that the search in the present case took place on 19th June 2009 i.e., prior to the amendment in Section 153 C 1) of the Act with effect from 1st June 2015. Therefore, it is not open to the Revenue to seek to point out that*

*the document in question, „pertains to "or „relates to "the Assessee.*

*The example given by this Court in* ***Pepsico India Holding Ltd.*** *(supra) is that of a photocopy of a sale deed which contains the names of the vendor and the vendee being found with the broker. The mere fact that such photocopy of the sale deed was found with the broker would not lead to the conclusion that such a document 'belongs to " either the vendor or the vendee. While in the present case the AO in his satisfaction note does record that the document in question does not belong to Mr. Lalit Modi i.e. the searched person, he does not indicate on what basis he proceeds as if the document belonged to the Assessee. 1) of the Act with effect from 1st June 2015. Therefore, it is not open to the Revenue to seek to point out that the document in question, „pertains to "or „relates to "the Assessee. The example given by this Court in* ***Pepsico India Holding Ltd.*** *(supra) is that of a photocopy of a sale deed which contains the names of the vendor and the vendee being found with the broker. The mere fact that such photocopy of the sale deed was found with the broker would not lead to the conclusion that such a document 'belongs to "either the vendor or the vendee. While in the present case the AO in his satisfaction note does record that the document in question does not belong to Mr. Lalit Modi i.e. the searched person, he does not indicate on what basis he proceeds as if the document belonged to the Assessee.*

*20. There is no material whatsoever placed on record by the Revenue before the CIT (A) or the ITAT to justify the invocation of Section 153C of the Act against the Assessee on the basis that the above document belonged to her.*

*24. In the present case, however, it is nobody "s case other than the Revenue that the document found in the premises of Mr. Lalit Modi belongs to the Assessee. Mr. Shivpuri referred to Section 292 C of the Act for the purposes of drawing two presumptions (i) the one contained in Section 292 C (1) (i) to the effect that the document found in possession of a person should be presumed to belong to such person. As far as this is concerned, clearly, since the document was found in possession of Mr. Modi, the presumption, if at all, is attracted only qua Mr. Lalit Modi and not the Assessee herein. 25. There is, therefore, nothing to contradict the categorical finding of the ITAT that the document which formed the main basis for initiation of the proceedings under Section 153C of the Act does not belong to the Assessee. One of the principal conditions for attracting Section 153C of the Act is, therefore, not fulfilled in the present case.*

*26. Turning to the document itself, Mr. Shivpuri urged that the further presumption in Section 292C(1)(ii) would stand attracted viz., that the contents of the document should be presumed to be true. His submission was that the said presumptions have not been rebutted by the Assessee and, therefore, whatever was said in the document should be taken to be sufficient proof of concealment of the income by the Assessee.*

*27. The Court is unable to accept the above submission of Mr. Shivpuri. The Court in this regard notices that the detailed interrogation of Mr. Modi revealed the source of the document and the fact that Mr. Modi was not the author of the document. Mr. Modi had suggested that it was some other broker who had given him the said document as a „proposal". There appears to have been no attempt made by the AO to enquire into the matter further to find out*

*if at all there was any such other broker who had prepared the document. Further, there is no attempt also made to ascertain whether the prevalent market value of the space purchased by the Assessee could at all fetch the value indicated in the document which is Rs.32,85,37,354. This was too fundamental an issue to be left un-investigated. The AO appears to have proceeded purely on conjectures as regards what the document has stated without noticing the internal contradictions and inconsistencies. For instance, the document talks of rent payable for a period from 2006 onwards where in fact even according to the Revenue the Assessee purchased the property on 13th May, 2009. The shifting of the burden on the Assessee without making these basic enquiries to unearth the truth of the document could not have been accepted and was rightly commented upon by the ITAT. The entire basis for making the additions to the assessable income of the Assessee was a single document i.e., Annexure A-1. The attempt at making additions on the basis of Annexure A-1, without any further investigation on the above lines, is bound to be rendered unsustainable in law. 28. Therefore, even as regards the merits of the additions made by the AO, the Court funds no error having been committed by the ITAT in deleting them. 29. No substantial question of law arises from the impugned order of the ITAT. The appeals are dismissed.*

***3.1 Delhi high court decision in Raidco Khaitan in WP 7207/2008 dated 13/07/2017 (83 taxmann.com 375)*** *is noteworthy*

*"….23. The revenue's argument mainly hinges upon the clandestine payments to UPDA and statements of its Secretary General. These*

*include various tables and charts mentioning the names of distilleries (members of the association) and the expected payment from such distilleries. These documents were signed by the Sh. Miglani and on behalf of the different distilleries. The revenue had prepared a chart for each assessment year and the payment made by the assessee to the fund, according to it, worked out to ` 29.95 crores. This was allegedly used to bribe public officials and politicians.* ***The reasoning of the Commission was that these documents were in the possession of UPDA and the statements of Sh. Miglani were made not in the course of its search (i.e. of the assessee's premises) and therefore corroboration of the statements as well as the documents with the materials seized from the assessee's premises in this regard was necessary. The question here is whether this reasoning is sound.***

*24. Section 132 no doubt mandates a presumption in respect of search and seizure operations; yet textually the presumption relates to material documents and books of account seized of from the assessee's premises and the presumption that can be made from it, not from materials seized and statement recorded, of third parties.* ***Only if the materials that are sought to be relied upon emanate from the premises of the party subject to assessment, that the presumption can be drawn. It is evident that in the absence of these foundational facts, the revenue is under an obligation to establish through materials relatable to the assessee, what it alleged against it.*** *What were the best pointers for further investigation were the discovery of material and evidence, which the revenue claim pointed to the assessee's failure to disclose full facts and income, should have resulted in further investigation and unearthing of material in the*

*form of seized documents from the assessee's premises. Unfortunately the linkage between the material seized from the assessee's premises and those from UPDA's premises as well as the statement of Sh. Miglani was not established through any objective material. It is now settled law that block assessments are concerned with fresh material and fresh documents, which emerge in the course of search and seizure proceedings; the revenue has no authority to delve into material that was already before it and the regular assessments were made having regard to the deposition, the inability of the revenue to establish as it were, that the assessee's expenditure claim was bogus, or it had underreported income and that it resorted to over invoicing and diversion of funds into the funds allegedly maintained by the UPDA, was not established. The findings of the Commission therefore cannot be faulted as contrary to law."*

*From above extracted portion, it leaves no room for scintilla of doubt that present additions just on basis of seized material from another person premises without revenue discharging corroborative onus lying on it, all additions are unlawful.*

**S.2(12A) : Books of account –Entries in loose papers/ sheets are irrelevant and inadmissible as evidence – Offences and prosecution – Settlement Commission [Ss.132, 143(3), 245D, Evidence Act, S. 34]**

Entries in loose papers/ sheets are irrelevant and inadmissible as evidence. Such loose papers are not "books of account" and the entries therein are not sufficient to charge a person with liability. Even if books of account are regularly kept in the ordinary course of business, the

entries therein shall not alone be sufficient evidence to charge any person with liability. It is incumbent upon the person relying upon those entries to prove that they are in accordance with facts. Finding of Settlement Commission disregarding such evidence as inadmissible and unreliable. The materials in question were not good enough to constitute offences to direct the registration of a first information report and investigation therein. (C.B.I. v. V. C. Shukla (1998)3 SCC 410 (SC) followed).

*Common Cause (A Registered Society) v. UOI (2017) 394 ITR 220 (SC)*

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

**ITA No. 637/2017**
PR. COMMISSIONER OF INCOME TAX(CENTRAL-02) ..... Appellant
Through: Mr. Rahul Chaudhary, Senior Standing Counsel with Mr. Sanjay Kumar, Junior Standing Counsel
versus
MERA BABA REALITY ASSOCIATES PVT. LTD ..... Respondent
**21.08.2017**

*Similar Facts as noted in high court decision*

….In this letter, *inter alia*, the AO stated that the information regarding the second search in the premises of K.S. Dhingra & G.S. Dhingra Group was forwarded to his office by the Investigation Wing in the month of March 2013. An SCN dated 8th March 2013 was issued to the Assessee. Further investigation and enquiries in the matter could not be carried out due to late receipt

of information and shortage of time. The reply furnished by the Assessee was not found satisfactory, as they had denied to have paid any interest other than as recorded in their books of account, whereas the seized documents showed interest payment @ 40% p.a….

**Held**

14. What is interesting in the present case is that this exercise under Section 263 of the Act was undertaken after a full-fledged exercise has already been undertaken by the AO under Section 153A of the Act. ***Incidentally, it may be mentioned that, from the facts that have emerged, if so-called incriminating material was found during the course of the search in the case of K.S. Dhingra & G.S. Dhingra Group, the assessment proceeding ought to have been initiated against the Assessee under Section 153C of the Act***. The Assessee of course did not question this because the assessment order ultimately was not adverse to the Assessee. The AO had a full-fledged opportunity to undertake a detailed enquiry, and having not done so on account of paucity of time, there cannot be any inference that the inadequate inquiry led to the AO to arrive at incorrect facts.

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

**ITA 60/2017**

SUBHASH KHATTAR

**25.07.2017**

The facts leading to the filing of the present appeal are that a search took place on 17th August, 2011 in the corporate office of AEZ Group at 301-303, Bakshi House, Nehru Place, New Delhi during which a hard disc was found and seized from which, a print out of a file named "D.P. Correction Sheet.xls" was taken. This sheet contained details of Sales Status of lndirapuram Habitant Centre and at serial No. 32 of the said sheet, the name of the Assessee appeared. According to the Revenue, the Assessee had invested a sum of Rs. 20 crores. Therefore, on 10th February, 2012, a search operation was undertaken under Section 132 of the Act in the case of the Assessee. There is no dispute that this search did not result in the discovery of any incriminating material *qua* the Assessee.

Held

*7. A question was posed to the learned counsel for the Revenue whether in the present case anything incriminating has been found when the premises of the Assessee was searched. The answer was in the negative. The entire case against the Assessee was based on what was found during the search of the premises of the AEZ Group. It is thus apparent on the face of it, that the notice to the Assessee under Section 153A of the Act was misconceived since the so-called incriminating material was not found during the search of the Assessee's premises. The Revenue could have proceeded against the Assessee on the basis of the documents discovered under any other provision of law, but certainly, not under Section 153A. This goes to the root of the matter.*