

AO to record his satisfaction under sec. 153C even if he has jurisdiction over searched person and other person

Summary – The High Court of Allahabad in a recent case of Gopi Apartment, (the Assessee) held that even where Assessing Officer of both 'searched person' and 'other person' is same, recording of satisfaction is still required and mandatory, so as to initiate proceeding against such 'other person'.

Facts

- Search and seizure operation was conducted at premises of group B wherein certain incriminating material was found which belonged to the respondent-assessee. Accordingly, a notice under section 153C was issued to the respondent-assessee to file its return. Finally, the assessment order was passed on 31-12-2008.
- The first appellate authority held that in absence of the "satisfaction note" prepared by the Assessing Officer of searched person, the Assessing Officer of instant assessee could not have assumed jurisdiction under section 153C. Thus, all the proceedings undertaken under section 153C were to be declared as invalid.
- On second appeal, the Tribunal upheld the order passed by the first appellate authority.
- In the instant appeal before the High Court, the revenue contentent that the Assessing Officer of the 'searched person' and the 'other person' being the same, there was no requirement of handing over of books of account or documents or assets seized or requisitioned, as is mentioned in section 153C nor there was any necessity of recording a prior satisfaction before proceeding to assess the 'other person' as section 153C is merely procedural in nature.

Held

- A bare perusal of the provision contained in section 153C leaves no doubt that, as is provided under section 158BD, where the Assessing Officer, while proceeding under section 153A against a person who has been subjected to search and seizure under section 132(1) or has been proceeded under section 132A, 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 and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.
- Thus, there are two stages:
 - (1) The first stage comprises of a search and seizure operation under section 132 or proceeding under section 132A against a person, who may be referred as 'the searched person'. Based on such search and seizure, assessment proceedings are initiated against the 'searched person'

under section 153A. At the time of initiation of such proceedings against the 'searched person' or during the assessment proceedings against him or even after the completion of the assessment proceedings against him, the Assessing Officer of such a 'searched person', may, if he is satisfied, that any money, document etc. belongs to a person other than the searched person, then such money, documents etc. are to be handed over to the Assessing Officer having jurisdiction over 'such other person'.

- (2) The second stage commences from the recording of such satisfaction by the Assessing Officer of the 'searched person' followed by handing over of all the requisite documents etc. to the Assessing Officer of such 'other person', thereafter followed by issuance of the notice of the proceedings under section 153C, read with section 153A against such 'other person'.

The initiation of proceedings against 'such other person' are dependant upon a satisfaction being recorded. Such satisfaction may be during the search or at the time of initiation of assessment proceedings against the 'searched person', or even during the assessment proceedings against him or even after completion of the same, but before issuance of notice to the 'such other person' under section 153C.

- Even in a case, where the Assessing Officer of both the persons is the same and assuming that no handing over of documents is required, the recording of 'satisfaction' is a must, as, that is the foundation, upon which the subsequent proceedings against the 'other person' are initiated. The handing over of documents etc. in such a case may or may not be of much relevance but the recording of satisfaction is still required and in fact it is mandatory.
- The 'satisfaction' has to be in writing and can be gathered from the assessment order passed in respect of the 'searched person', if it is so mentioned/ recorded or from any other order, note or record maintained by the Assessing Officer of the 'searched person'. The word 'satisfaction' refers to the state of mind of the Assessing Officer of the person searched, which gets reflected in a tangible shape/ form, when it is reduced into writing. It is the conclusion drawn or the finding recorded on the foundation of the material available.
- In the instant case, a categorical finding has been recorded by the Commissioner (Appeals) and the Tribunal that there is no material showing the recording of satisfaction by the Assessing Officer of the 'searched person' prior to issuance of notice under section 153C to the respondent assessee, *i.e.* 'the other person'. It was the admitted case of the Revenue before the Commissioner (Appeals) and the Tribunal that though the Assessing Officer (of the other person) in the assessment order had stated that satisfaction for issuing notice under section 153C was recorded, however, on examination, recording of such satisfaction alleged to be recorded by the Assessing Officer was not available.
- A clear and plain reading of section 153C leaves no doubt that recording of satisfaction by the Assessing Officer of the person searched is mandatory and it has to precede the initiation of proceedings against the other person (not searched).