

## No sec. 153C proceedings if loose papers seized from premises didn't make any reference to assessee

**Summary – The Mumbai ITAT in a recent case of National Standard India Ltd., (the Assessee) held that where loose papers seized from premises of assessee company indicating on money receipt on sale of flats did not make any reference to assessee nor same were in any way found to be related or pertaining to assessee, proceedings under section 153C against assessee on basis of said document were unjustified**

### Facts

- Search and seizure action was carried in the hands of the 'L' Group of entities, including its group companies and entities. The assessee company had become a part of 'L' Group in the year 2010. Therefore, at the time of the search action, its premises where the project of the 'L' Group was coming up, was covered under section 133A. During the course of the search and seizure proceedings, the key person of the 'L' Group came up with a disclosure of certain income and offered the same as additional income in his statement recorded under section 132(4), which thereafter was confirmed by him again in his statement recorded under section 132(4). The additional income offered by AL included an amount in respect of sale of flats and parking space in the hands of the assessee company.
- Pursuant to the search and seizure action, assessment proceedings were initiated under section 153C in the hands of the assessee-company. The Assessing Officer after deliberating on certain issues, assessed the loss in the hands of the assessee company at (Rs. 6.40 lakhs), as against the returned loss of (Rs. 3.62 Crores).
- On appeal, the Commissioner (Appeals) observed that the assessee had challenged the validity of the very assumption of jurisdiction by the Assessing Officer under section 153C in the year under consideration and in the succeeding years, viz. Assessment year 2006-07 to Assessment year 2010-11. The Commissioner (Appeals) finding himself to be in agreement with the assessee that the Assessing Officer had wrongly assumed jurisdiction under section 153C, thus quashed the assessment framed by the Assessing Officer under section 153A read with section 153C/143(3) on the said count itself, and therefore refrained from adjudicating the contentions of the assessee raised in context of the respective additions on merits.
- In instant appeal the revenue contended that the Assessing Officer of the searched person by referring to the 'loose papers' seized during the course of the search proceedings, had recorded his satisfaction in the order sheet. Therefore, there was enough incriminating material on record which justified the assumption of jurisdiction by the Assessing Officer under section 153C in the hands of the assessee.

### Held

- A bare perusal of the statutory provision of preamended section 153C reveals beyond any scope of doubt that up to 30th May 2015, the requirement as per the mandate of law for the purpose of

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assumption of jurisdiction under section 153C was that the Assessing Officer of the person searched should be satisfied that money, bullion, jewellery or other valuable article or thing or books of account or documents seized 'belonged' to a person other than the person referred to section 153A. The scope of the aforesaid statutory provision in light of the conscious, purposive and intentional usage of the term 'belongs' or 'belong to' in respect of a 'documents', therein excluded from its scope and gamut such seized documents, which though were found to pertain or relatable to such 'Other person', but however not found to be 'belonging' to the latter. The legislature therein realizing the fact that the usage of the aforesaid terms seriously jeopardised the assumption of jurisdiction by the Assessing Officer in a case where any 'books of account' or 'documents' which though pertained to or any information contained therein related to such other person, but were not found to be 'belonging' to him, thus, *vide* an amendment made available on the statute by the Finance Act, 2015, had with effect from 01-06-2015 dispensed with the terms 'belongs' or 'belong to', in respect of the 'books of account' or 'documents' seized during the course of search proceedings, and therein substituted the same by clause (b) of section 153C(1), which therein takes within its sweep any 'books of account' or 'documents' which pertain or pertains to or any information contained therein, relates to such other person. The relevant extract of the memorandum explaining the aforesaid amendment to section 153C, as had been made available on the statute *vide* the Finance Act, 2015.

- As the aforesaid amendment to section 153C is not retrospective in nature and is applicable only with effect from 1-6-2015, therefore, the case of the present assessee company would be regulated by the pre-amended provisions as were available on the statute till 30-05-2015.
- Further perusing the 'Satisfaction note' of the Assessing Officer as well as the seized documents, which had been referred to by the Assessing Officer to justify the assumption of jurisdiction under section 153C in the case of the assessee company. It is found that a bare perusal of seized documents did neither make any reference of the assessee-company, nor of any transaction entered into by the latter, which could go to justify the assumption of jurisdiction by the Assessing Officer under section 153C. In the absence of any 'document' belonging to the assessee having been seized during the course of search proceedings in the case of 'L' Group the assumption of jurisdiction by the Assessing Officer under section 153C by referring to the aforesaid seized documents, was highly misplaced. Despite specific requests made by the assessee *vide* his reply filed in response to the 'show cause' notice issued by the Assessing Officer therein calling upon the latter to explain as to how the incriminating documents, were alleged to be related to the assessee company, no reply had been furnished by the Assessing Officer. The contention of the assessee raised before the Assessing Officer that the same seized documents, had been referred to and related by him in his 'show cause' notice issued to one, SPL had also remained uncontroverted by the Assessing Officer. As no reference of the projects undertaken by the assessee company, *viz.* 'G' and 'S' finds any mention in the aforesaid seized documents, nor any reference of the assessee company is found therein,

therefore, it could safely be concluded that the requisite conditions for assumption of jurisdiction under section 153C had not been satisfied.

- Further, the Statement of 'AL' recorded under section 132(4) in the course of search and seizure proceedings conducted in the case of 'L' group cannot be construed as a 'seized document', therefore, the reliance placed by the Assessing Officer on the same to justify the validity of jurisdiction assumed under section 153C in the hands of the assessee company, cannot be accepted. Even otherwise as the disclosure of additional income made by AL in his statement recorded under section 132(4), in the hands of the assessee-company is relatable to Assessment year 2011-12, and does not pertain to any of the years in respect of which jurisdiction had been assumed by the Assessing Officer under section 153C in the case of the assessee company, therefore, the same on the said count also shall in no way go to confer validity to the assumption of jurisdiction by the Assessing Officer under section 153C.
- Thus, in light of aforesaid observations the Assessing Officer had clearly traversed beyond the scope of his jurisdiction under section 153C and therein proceeded with and framed assessment under section 153A read with section 153C/143(3) in the hands of the assessee-company.