

**2017 (7) TMI 539 - DELHI HIGH COURT****Canyon Financial Services Ltd Versus Income Tax Officer**

W.P.(C) 3241/2015, W.P.(C) 3242/2015, W.P.(C) 3243/2015, W.P.(C) 3245/2015, W.P.(C) 3246/2015, W.P.(C) 3248/2015

**Dated: - 10 July 2017**

Assessment u/s 153C - existence of satisfaction note - Held that:- While the documents may 'pertain to' the Assessee, but in the context explained above, they cannot be presumed to be documents that 'belonged to' the searched person. Consequently, even with regard to these documents, the jurisdictional requirement under Section 153 C (1) of the Act, of the AO of the searched person having to be satisfied that the said documents do not belong to searched person but to the Assessee, has not been fulfilled.

The satisfaction note prepared by the AO of the searched person does not fulfill the legal requirement spelled out in Section 153C (1) of the Act. The satisfaction note of the AO of the Assessee, being a carbon copy of the satisfaction note of the AO of the searched person also fails to fulfill the jurisdictional requirement. No reasons are recorded for the identical conclusion in either satisfaction note that the seized documents mentioned therein belong not to the searched person but to the Assessee.

For all the aforementioned reasons, the two satisfaction notes dated 13th and 19th March, 2014 issued by the AOs of the searched person and the Assessee respectively, and all proceedings consequent thereto, are hereby quashed. - Decided in favour of assessee.

**Judgment / Order**

**S. Muralidhar And Prathiba M. Singh, JJ.**

**For the Petitioner : Mr. Kamal K. Jetley with Mr. Rishabh Jetley and Mr. Varun Kaushik, Advocates**

**For the Respondent : Mr. Rahul Chaudhary, Senior standing counsel with Ms. Lakshmi Gurung, Advocate**

**ORDER**

Dr. S. Muralidhar, J.

1. These are five writ petitions filed by Canyon Financial Services Limited (hereafter 'the Assessee'), questioning the satisfaction notes dated 13th and 19th March, 2014 issued by the Deputy Commissioner of Income Tax ('DCIT'), Central Circle-2 New Delhi [hereinafter referred to the Assessing Officer ('AO') of the searched person] and the Income Tax Officer, Ward 3(2), New Delhi [hereinafter 'AO of the Assessee'] respectively initiating proceedings against the Assessee under Section 153C of the Income Tax Act, 1961 ('Act').

2. A search and seizure operation was carried out in the case of M/s. Dalmia Group of cases on 20th, 27th and 28th January 2012 by the Investigation Wing Unit-VI(1), New Delhi of the Income Tax Department ('Department'). In that process a search was undertaken of Mr. Parag Dalmia at Bhikaji Cama Place, New Delhi and documents comprising 249 pages were seized.

3. During the consequent assessment proceedings involving Dalmia Infrastructures Private Limited ('DIPL') [formerly known as Dalmia Equities Private Limited ('DEPL')], the AO of DEPL prepared on 13th March 2014 a satisfaction note in which set out in a tabular form an analysis of some of the documents seized as under:

<i>Annexure No.1 Party No.</i>	<i>Page Nos.</i>	<i>Description of documents</i>
A-3/DB-8	1-48	<i>These pages contain letter from M/s Canyon Financial Services Ltd. (AAACC3744J) written to Board of Directors, Dalmia Equities Pvt. Ltd. Regarding application for equity shares of ₹ 10/- each at a premium of ₹ 110/- per share. Certificate of Canyon Financial Services Ltd., confirming issue of equity shares of Dalmia Equities Pvt. Ltd. Copy of Form 32, copy of return of income of Canyon Financial Services Ltd. Director's report, certificate of incorporation, memorandum of association.</i>

4. Thereafter, the AO of the searched person recorded his satisfaction as under:

*"I have examined the documents and I am satisfied that the above seized material belongs to M/s Canyon Financial Services Ltd., which is assessed to tax with Ward 3(2), New Delhi. Hence, notice u/s 153C may be issued in the case of M/s. Canyon Financial Services Ltd. Accordingly for AYs 2006-07 to 2011-12."*

5. The search in the Dalmia Group of Companies took place on 20th January, 2012 and the satisfaction note by the AO of the searched person was dated 13th March, 2014. Therefore, Section 153C as it stood prior to the amendment with effect from 1st June, 2015 applied to the case on hand. In terms of the said provision i.e., 153C(1), the AO of the searched person had to be satisfied that the documents seized 'belongs or belong to a person other than the person referred to in Section 153A' in order that the AO of the searched person could to hand over such documents to the AO "having jurisdiction over such other person". The change brought about by the prospective amendment, with effect from 1st June 2015, is that for initiating proceedings under Section 153 C arising from searches after that date it is enough for the Department to show that a particular seized document 'pertains to' the other person. However, in the present case, since the proceedings under Section 153 C (1) of the Act against the Assessee commenced prior to 1st June 2015, the Department is not relieved of the burden of showing that the seized documents in fact belong to (and not merely pertain to) the Assessee.

6. In the present case, after recording the satisfaction note as above on 13th March 2014, the AO of the searched person made over the aforementioned documents to the AO of the Assessee. On 19th March 2014, the AO of the Assessee recorded his satisfaction note. This AO reproduced the same tabular columns as well as description of documents as set out in the satisfaction note of the AO of the searched person. Thereafter, the AO of the Assessee recorded verbatim the satisfaction as recorded by the AO of the searched person word for word.

7. Following the above satisfaction notes, notices under Section 143(2) of the Act dated 17th July, 2014 and Section 142(1) dated 5th September, 2014 was issued by the AO of the Assessee to the Assessee thereby initiating proceedings under Section 153C of the Act in respect of the Assessment Years 2006-07 to 2011-12.

8. On 20th March, 2015, the Assessee submitted objections to the initiation of proceedings under Section 153C of the Act. Inter alia it was pointed out that it was not shown in either of the satisfaction notes as to how the documents seized as referred to therein "belongs to" the Assessee in terms of Section 153C. The presumption in terms of Section 132(4A) read with Section 292C that the documents belonged to the searched person was also not rebutted by the Revenue. A reference inter alia was made to the decision in *Pepsico India Holdings (P) Limited v. Assistant Commissioner of Income Tax* (2015) 370 ITR 295 (Del).

9. The above submissions were negated by the AO of the Assessee. This led to the filing of the present petitions. On 27th March, 2015, this Court passed an interim order staying further proceedings pursuant to the aforementioned satisfaction notes.

10. Mr. Kamal K. Jetley, learned counsel appearing for the Petitioner, submitted that in terms of Section 153C (1) of the Act as it stood prior to the amendment with effect from 1st June 2015, it was incumbent on the Department to show the documents seized and referred to in the satisfaction notes of both the AO of the searched person and of the AO of the Assessee in fact 'belong to' the Assessee. Apart from the decision in *Pepsico India Holdings (P) Ltd v. Assistant Commissioner of Income Tax* (supra), Mr. Jetley also referred to the decision in *Pepsi Foods (P) Ltd. v. Assistant Commissioner of Income Tax* (2015) 376 ITR 87 (Del).

11. Mr. Rahul Chaudhary, learned Senior standing counsel appearing for the Department submitted that the presumption under Section 132(4A) read with Section 292C of the Act was for the benefit of the Department relieving it of the obligation of having to show that the documents seized from the possession of the searched person belonged to the searched person. According to Mr. Chaudhary, this presumption must be extended to relieve the Department of having to show that the documents seized in fact did not belong to the searched person but to some other person against whom the proceedings under Section 153C of the Act were to be initiated.

12. The two decisions that are relevant in this context are *Pepsico India Holdings (P) Ltd v. Assistant Commissioner of Income Tax* (supra) and *Pepsi Foods (P) Ltd. v. Assistant Commissioner of Income Tax* (supra). What Section 153C (1) of the Act requires in the context of the present case is for two satisfaction notes to be prepared since there are two different AOs, viz., the AO of the searched person and the AO of the Assessee (the 'other person').

13. In the first place, the satisfaction note of the AO of the searched person has to record that the document seized "belongs or belong to the person other than the person referred to in Section 153A" of the Act. It was explained in *Pepsico India Holdings (P) Ltd v. Assistant Commissioner of Income Tax* (supra) and reiterated in *Pepsi Foods (P) Ltd. v. Assistant Commissioner of Income Tax* (supra) that, given the nature of a particular seized document, in the process of recording his satisfaction, the AO of the searched person may have to note the reasons for his conclusion that the said document does not belong to the searched person but to the other person. It is not necessary that this should be done in each and every case. If, as in the present case,

the AO of the 'other person' is not the AO also of the searched person, then the AO of the other person has an obligation to also examine if indeed any of the documents handed over to him by the AO of the searched person in fact belong to the Assessee and further if they constitute incriminating material justifying the reopening of the assessments of the Assessee. This is then the second filter. However, as already mentioned, in each case the extent of satisfaction of the above requirement will depend upon on the nature of the documents.

14. Turning to the case at hand, the first document referred to in the satisfaction note of the AO of the searched person is an application made by the Assessee for subscription to the shares of DEPL. Being an application for subscription of equity shares, it is a document filled up by the Assessee and submitted to DEPL. The said application having being found in the possession of the searched person should safely be presumed to belong to the searched person by virtue of Section 132 (4A) read with Section 292 C of the Act. DEPL, there is also presumption that it in fact belongs to DEPL. This is a rebuttable presumption. But rebuttable at the instance of the searched person.

15. The presumption operates in favour of the Department by relieving it of the burden of having to demonstrate that the aforementioned document belongs to the DEPL. But here the Department seeks to be relieved of the burden of demonstrating that the said document in fact does not belong to DEPL but to the Assessee. That is not possible on a collective reading of Section 132 (4A) and Section 292 C of the Act. These provisions do not dilute the obligation on the Department and in particular the AO of the searched person, under Section 153 C (1) of the Act as it stood prior to 1st April 2015 of showing that the seized document belongs to the other person (here, the Assessee) and not the searched person from whom it was seized.

16. The application submitted by the Assessee for subscription of shares of DEPL can certainly be said to be 'pertaining to' to the Assessee. However, once it was submitted by the Assessee to DEPL, and was found in possession of DEPL, it cannot be said to 'belong' to the Assessee. If it had been recovered from the premises of the Assessee then the position may have been different. Based on the presumption under Section 132 (4A) read with Section 292 C of the Act it may have been possible to proceed against the Assessee under Section 153 A of the Act subject of course to the document constituting incriminating material. However, in the present case that is not the position. The jurisdictional requirement under Section 153C (1) of the Act of the Department having to show that the application made by the Assessee for the equity shares of DEPL belongs to the Assessee is not satisfied.

17. The second document is the certificate issued by the Assessee confirming the issuance in its favour of the equity shares of DEPL. The said document is titled 'To whomsoever it may concern'. It is, clearly, not addressed to a particular person but to anyone who may receive it. This document after it has been despatched by the Assessee and found in possession of someone else cannot said to 'belong' to the Assessee. While it may 'pertain' to the Assessee, it cannot be presumed to 'belong to' it when it is not recovered from the Assessee but from the searched person.

18. The other documents are copies of Form-32 of the Assessee, copies of the return of income of the Assessee, copy of its director's report, copy of certificate of incorporation and memorandum of association. These were documents furnished by the Assessee to DEPL and found in the possession of DEPL. Here, again, it cannot be presumed that such documents having being found in the possession of the DEPL did not belong to DEPL but to the Assessee. Here again, while the documents may 'pertain to' the Assessee, but in the context explained above, they cannot be presumed to be documents that 'belonged to' the searched person. Consequently, even with regard to these documents, the jurisdictional requirement under Section 153

C (1) of the Act, of the AO of the searched person having to be satisfied that the said documents do not belong to searched person but to the Assessee, has not been fulfilled.

19. As a result, the Court holds that the satisfaction note prepared by the AO of the searched person does not fulfil the legal requirement spelled out in Section 153C (1) of the Act. The satisfaction note of the AO of the Assessee, being a carbon copy of the satisfaction note of the AO of the searched person also fails to fulfil the jurisdictional requirement. No reasons are recorded for the identical conclusion in either satisfaction note that the seized documents mentioned therein belong not to the searched person but to the Assessee.

20. For all the aforementioned reasons, the two satisfaction notes dated 13th and 19th March, 2014 issued by the AOs of the searched person and the Assessee respectively, and all proceedings consequent thereto, are hereby quashed.

21. The writ petitions are allowed in the above terms but, in the circumstances, with no order as to costs.

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**Citations:** in 2017 (7) TMI 539 - DELHI HIGH COURT

1. [PEPSI FOODS PVT. LTD. \(NOW MERGED WITH PEPSICO INDIA HOLDING PVT. LTD\) AND OTHERS Versus ASSISTANT COMMISSIONER OF INCOME TAX & ANR - 2015 \(5\) TMI 655 - DELHI HIGH COURT](#)
2. [Pepsico India Holdings Private Limited Versus Assistant Commissioner of Income Tax & Another - 2014 \(8\) TMI 898 - DELHI HIGH COURT](#)