

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 1720/DEL/2015 (A.Y 2007-08)

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| ACIT, Central Circle-30, New Delhi. (APPELLANT) | Vs | M/s. Gracious Project Pvt. Ltd., 09, Tolstoy House, Tolstoy Marg, Cannaught Place, New Delhi. (PAN : AACCG 3028 M) (RESPONDENT) |
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| Appellant by | Shri Sushma Singh, CIT-D.R. |
| Respondent by | --None-- |

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| Date of Hearing | 10.12.2019 |
| Date of Pronouncement | 11.12.2019 |

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order of the Commissioner of Income Tax [Appeals]-XXX, New Delhi dated 16.12.2014 for Assessment Year 2007-08.

2. The Grounds of appeal are as under:-

1. *"On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition by holding that the jurisdiction u/s 153C is not assumed properly and in accordance with law whereas the Assessing Officer duly recorded the satisfaction during the assessment proceedings.*
2. *On the facts and in circumstances of the case and in law, the CIT (A) has erred in allowing the appeal of the assessee without going into the merits of the case.*

3. *The order of the CIT (A) is erroneous and is not tenable on facts and in law.*
4. *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

3. The assessee is a company incorporated on 14.01.2005 to carry on business of Real Estate. The assessee filed return u/s 139(1) relevant to the A.Y. 2007-08 on 30th March 2008 declaring income of Rs. Nil. The return was processed u/s 143(1) of Income Tax Act, 1961. No assessment was thereafter made u/s 143(3)/144 and thus the order u/s 143(1) became final. Thereafter search u/s 132 of the Income Tax Act, 1961 was conducted by the investigation wing of the Department on 22.03.2011 in the Amtek group of cases. The assessee's case was proposed for centralization by the investigation wing on the basis of certain documents found from the premises of M/s Excel Infotech Pvt. Ltd. at the Connaught Place, New Delhi. The Assessing officer wrote a satisfaction note, and held that these papers belong to the assessee and issued notice u/s 153C to the assessee. In response to notice u/s 153C, the assessee filed return declaring income of Nil on 20.12.2012. The Assessing Officer made addition of Rs. 8.70 crores holding the view that the total amount of Rs. 14.98 crores was to be paid by the assessee out of which Rs. 6.28 crores have been paid by cheques and the balance amount of Rs. 8.70 crores was paid out of books.

4. Being aggrieved by the assessment order, the assessee filed an appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. At the time of hearing none appeared for the assessee despite giving notice. Therefore, we are proceeding on the basis of the submissions made by the assessee before the Assessing Officer as well as before the CIT(A).

6. The Ld. DR submitted that the CIT(A) erred in deleting the addition by holding that the jurisdiction u/s 153C is not assumed properly and in accordance with law whereas the Assessing officer duly recorded the satisfaction during the Assessing proceedings. The Ld. DR submitted that the Assessing Officer for the searched assessee as well as the present assessee are one and the same, therefore, the proper satisfaction was recorded and there is no assumption of jurisdiction u/s 153C, therefore, the matter may be decided on merit by the CIT(A) and the issues be restored back to the file of the CIT(A) to be decided on merit. The Ld. DR pointed out on Para 3.3 wherein the CIT(A) mentioned that a perusal of above satisfaction notice reveals that on the top of the satisfaction note the name of the appellant is written as the name of the assessee. Therefore, it is apparent that satisfaction note is written in the file of the appellant in state of persons searched. Further at the end of the satisfaction note, it is written that the notice u/s 153C is issued to M/s. Gracious Projects Pvt. Ltd. Therefore, apparently the satisfaction note u/s 153C is recorded in appeal file and not in the file of the persons searched. The Ld. DR submitted that this observation is incorrect.

7. We have heard Ld. DR and perused all the relevant materials available on record including the submissions mentioned in assessment order and the order of the CIT(A) placed before the authorities by the assessee. The assessee challenged the jurisdiction as the Assessing Officer has not given any separate satisfaction for the assessee and only a mechanical satisfaction was recorded. The CIT(A) while giving the finding observed that the satisfaction note is not recorded in the file of the assessee searched u/s 132 and documents claimed to be owned by the assessee was transferred to the file of the assessee. Therefore, the jurisdiction assumed u/s 153C in the case of the assessee is not in accordance with provisions of section 153C wherein satisfaction note in the searched persons proceeding has to be recorded separately. The Ld. DR from the records has not submitted the proper satisfaction except pointing out that the name of the assessee is mentioned in the satisfaction note. From the

perusal of record, the assessee's contentions before the CIT(A) was that on page no. 56 of Annexure-A-3, seized from the premises of M/s Excel Infotech Pvt. Ltd., it was written that 'the total amount of Rs. 14.98 crores is to be borne by the second party (i.e. assessee) and on the same page it is also written that balance amount of Rs. 6.28 crores to be paid by the assessee company outside the books. But against the same amount two cheques bearing numbers 15686 dated 09-02-2007 for Rs. 3 crores and other cheque no. 15689 dated 13-02-2007 for Rs. 3.28 crores the both of J&K Ltd. were mentioned with the name of M/s Thermax Construction Udyog Ltd. The only amount that was paid by the assessee by way of loan and advances is arising out of the joint venture contractual agreement was Rs. 6.28 crores only, which has been duly shown as loans and advances in books of accounts. The Assessing officer without any evidence held that these papers belong to the assessee and issued notice u/s 153C to the assessee. None of the seized documents was prepared by assessee as per the contention of the assessee before the Assessing Officer. Neither the said documents contained any name nor contain authorized person's signature except the joint venture agreement as per the submissions of the assessee before the CIT(A). Thus, the assessee submitted that these papers did not belong to the assessee. The Assessing Officer, therefore assumed jurisdiction to make assessment u/s 153C as per the contention of the assessee before the CIT(A). In response to notice u/s 153C, the assessee filed return declaring income of Nil on 20.12.2012. All these contentions were dealt with by the CIT(A) while giving finding to that extent with reasoned order. The case laws referred by the Ld. DR that of PCIT vs. Sheetal International Pvt. Ltd. 2017-TIOL-1355-HC-DEL-IT), PCIT vs. Instronics Ltd. 2017 82 taxmann.com 357 (Delhi) and Ganpati Fincap Services (P) Ltd. vs. CIT (2017) 82 Taxmann.com 408 (Delhi) are factually distinguishable as in present assessee's case no satisfaction was recorded separately by the Assessing Officer of the searched person. Thus, these case laws will not be applicable in assessee's case. Therefore, appeal of the Revenue is dismissed.

8. In result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 11th day of December, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 11/12/2019
*Priti Yadav, Sr. PS **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

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| Date of dictation | 10.12.2019 |
| Date on which the typed draft is placed before the dictating Member | 10.12.2019 |
| Date on which the typed draft is placed before the Other Member | 11.12.2019 |
| Date on which the approved draft comes to the Sr. PS/PS | 11.12.2019 |
| Date on which the fair order is placed before the Dictating Member for pronouncement | 11.12.2019 |
| Date on which the fair order comes back to the Sr. PS/PS | 11.12.2019 |
| Date on which the final order is uploaded on the website of ITAT | 11.12.2019 |
| Date on which the file goes to the Bench Clerk | 11.12.2019 |
| Date on which the file goes to the Head Clerk | |