

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA Nos. 2056 & 2057/Hyd/2011  
Assessment Years: 2005-06 & 2007-08

***M/s Shouri Constructions,*** ***...Appellant***  
*Hyderabad.*  
*(PAN - AAWFS3228A)*

Vs.

***Asst. Commissioner of Income-tax,*** ***...Respondent***  
*Circle - 8(1), Hyderabad.*

ITA No. 2058/Hyd/2011  
Assessment Year: 2007-08

***T. Jaipal Reddy,*** ***...Appellant***  
*Hyderabad.*  
*(PAN - AANPT6319E)*

Vs.

***Asst. Commissioner of Income-tax,*** ***...Respondent***  
*Circle - 8(1), Hyderabad.*

Appellant by : Shri A.V. Raghuram  
Respondent by : Smt. Amisha S. Gupt

**Date of Hearing : 29/04/2013**  
**Date of Pronouncement : 28/06/2013**

**ORDER**

PER SAKTIJIT DEY, J.M.:

These three appeals preferred by different assesseees are directed against separate orders of the CIT(A) for the assessment years 2006-07 & 2007-08. As identical issues are involved in

these appeals, they were clubbed and heard together, therefore, a common order is passed for the sake of convenience.

2. We will first deal with the common legal issue as raised in ground No. 2, in all the three appeals, reads as under:

*"The CIT(A) failed to appreciate that the very invocation of provisions of section 153C of the IT Act by the AO is illegal in as much as there is no incriminating material to assume jurisdiction u/s 153C against the appellant. The CIT(A) failed to appreciate that if assessments of these nature are allowed to stand then it is possible that an assessment can be made in case of any person without following the intent of legislature and true purport of the provisions of section 153C of the IT Act."*

3. As can be seen in the aforesaid ground the assessee has challenged the assumption of jurisdiction u/s 153C as there was no incriminating material belonging to the assessee.

4. Briefly the facts as taken from ITA No. 2057/H/11 are, the assessee is a firm engaged in the business of real estate and construction of flats. For the impugned assessment year the assessee filed its return of income on 29/10/2007 declaring total income of Rs. 4,91,130/-. A search and seizure operation u/s 132 was conducted in case of Sri D. Nagarjuna Rao, Sri K. Srinivasa Reddy and others on 29/10/2007. As a consequence of the search and seizure operation a notice u/s 153C r.w.s. 153A of the Act was issued to the assessee on 16/10/2008 calling upon it to submit its return of income. The assessee, in response to the notice issued submitted its return of income on 17/04/2009 declaring total income of Rs. 4,91,130/-. In course of the assessment proceeding that ensued, the AO noted that the assessee and Sri T. Jaipal Reddy have acquired a property at Plot No. 137,138 & 139, Survey No. 228, 229/1 admeasuring 525 sqr. Yards at Madinaguda on 01/10/1005 for a consideration of Rs.

6,00,000/-. The assessee and T. Jaipal Reddy executed agreement of sale-cum-general power of attorney in respect of the aforesaid property in favour of Mr. K. Ravindranath and Mr. K. Venkateswara Reddy vide registered deed dt 09/10/2006 for a consideration of Rs. 18,37,500/-. However, it was noticed by the AO that certain incriminating material being page 59 marked as 'A/DNR/18' dtd. 29/10/2007 seized from the business premises of D. Nagarjuna Rao revealed that the sale consideration paid to Mr. Venkatesh for purchase of the aforesaid property was Rs. 74,81,250/-. When the AO asked D. Nagarjuna Rao to explain the entries in the seized document he stated that a sum of Rs. 74,81,250/- was paid on various dates through Mr. Venkatesh, a mediator towards purchase of the aforesaid property and the property was registered in the name of Mr. K. Ravindranath and Mr. K. Venkateswara Reddy. D. Nagarjuna Rao, as noted by the AO, further stated that the funds for acquisition of the property was arranged by the firm M/s seetaramanjaneya Constructions and the entries as found in the seized document were made by him in his own handwriting. The AO further noted that Mr. K. Ravindranath and Mr. K. Venkateswara Reddy also confirmed that the property was purchased for Rs. 74,81,250/- and the amount was paid through Venkatesh. The AO also recorded a statement from the mediator S. Venkateswara Rao alias Venkatesh who also deposed that he acted as a mediator for the sale of property in question and received the sale consideration from D. Nagarjuna Rao towards sale of the property and in turn has paid the sale consideration to the seller Sri T. Jayapal Reddy after retaining his commission. The AO had observed in the assessment order that when these evidences were confronted to the assessee and questioned why the sale consideration should not be taken at Rs. 74,81,250/-, the assessee could not satisfactorily explain except

denying that the consideration is not Rs. 74,81,250/- but only Rs. 18,37,500/-. Though the assessee submitted that the incriminating material nowhere either bears the name of the assessee or his signature and the notings made in the seized document shows that Mr. Venkatesh, broker has received the sale consideration. The AO did not accept assessee's contention by observing that the assessee has admitted to having sold the property through the mediator Mr. Venkatesh and as the sale consideration paid by Sri D. Nagarjuna Rao was routed through Mr. Venkatesh his name has been entered in the incriminating material which also shows the sale consideration at Rs. 74,81,250/-. The AO therefore concluded that as Mr. Venkatesh was acting as a mediator he must have paid the same amount to the assessee and Sri T. Jaipal Reddy. Since the assessee has shown the sale consideration of the property at Rs. 18,37,500/-, the AO treated the differential amount of Rs. 56,43,750/- as the unaccounted income of the assessee and Sri T. Jaipal Reddy and apportioned it in the same ratio at which they have shown the sale consideration of Rs. 18,37,500/-. As a result an amount of Rs. 33,60,284/- was added at the hands of the assessee and an amount of Rs. 22,83,466/- was added at the hands of Sri T. Jaipal Reddy. The assessee challenged the assessment order by preferring an appeal before the CIT(A). The CIT(A) however concurred with the finding of the AO and sustained the addition.

5. The learned AR submitted that the assumption of jurisdiction by the AO u/s 153C of the Act without satisfying the primary conditions is invalid in law. It was submitted that as per the provision contained u/s 153C the AO must be satisfied that money, bullion, jewellery, other valuable article or things, books of account or documents seized belonged to a person other than the person who was subjected to search and seizure operation u/s

132 of the Act then action can be taken u/s 153C of the Act by the AO having jurisdiction of such other person. It was submitted that the seized document on the basis of which action was taken u/s 153C is a loose paper seized not from the assessee but a third party and the seized document neither shows the name of the assessee nor bears his signature. Therefore, such a document cannot be said to be belonging to the assessee. The learned AR submitted that the entire assessment is on the basis of the said seized documents and statement recorded from third parties. It was submitted that as no valuable articles or things, books of account or documents seized belonged to the assessee the proceeding initiated u/s 153C is without jurisdiction. In support of such contention, the learned AR relied upon the decision of the Hon'ble Gujarat High Court in the case of Vijaybhai N. Chandrani Vs. ACIT [333 ITR 436] and of ITAT Bangalore Bench in case of P. Srinivas Naik Vs. ACIT [117 ITD 201].

6. The learned DR at the outset objected to the admissibility of the ground raising the legal issue on the premise that such ground was not raised by the assessee before the CIT(A) and as such does not arise out of the order passed by the CIT(A). Without prejudice to the aforesaid preliminary objection the learned DR submitted that the sized document mentioned the sale consideration as Rs. 74,81,250/- and also the fact that it was paid through the broker Mr. Venkatesh. The sale consideration mentioned in the seized document was also corroborated in statements recorded from D. Nagarjuna Rao and the purchasers of the property as well as the broker Venkatesh. Therefore, the initiation of proceeding u/s 153C cannot be questioned.

7. The learned AR in his rejoinder while admitting to the fact that the legal issue challenging the validity of the proceeding

initiated u/s 153C was not raised before the CIT(A), however, submitted that the question of jurisdiction being purely a legal issue can be raised at any stage and even for the first time before the Tribunal by way of additional ground. In support of such contention he relied upon the decision of the ITAT, Mumbai Special Bench in case of All Cargo Global Logistics Ltd. Vs. DCIT [137 ITD 26].

8. We have considered rival submissions and perused the materials on record. We have also carefully examined the decisions placed before us. We will first deal with the objection of the learned DR in entertaining the ground raised by the assessee. It is not in dispute that no ground on the legal issue of validity of initiating proceeding u/s 153C was taken before the CIT(A). Therefore, considered in the light of the decision of the ITAT, Mumbai Special Bench in case of All Cargo Global Logistics Ltd. Vs. DCIT [supra] though this ground cannot be taken as a ground arising out the order of the lower authorities but certainly it can be taken as an additional ground as the Tribunal is only required to consider a question of law arising from the facts which are already on record. Accordingly, we proceed to decide the issue on its own merit. But before that, it is necessary to look into the provisions contained u/s 153C of the Act, which reads as under:

*“153C.<sup>68</sup>[(1)]Notwithstanding anything contained in [section 139](#), [section 147](#), [section 148](#), [section 149](#), [section 151](#) and [section 153](#), where the Assessing Officer 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](#) :)”*

9. A reading of the aforesaid provision makes it clear that two conditions have to be fulfilled for initiating proceeding u/s 153C of the Act, which are:

1. The AO must be satisfied that the money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs to a person other than the person referred to in section 153A.
2. After being satisfied that it belongs to a person other than the person from whom it is seized, he shall hand over the seized materials to the AO having jurisdiction over such other person having jurisdiction over such other person and that AO shall proceed against such other person by issuing a notice for assessing reassessing such other income.

10. Thus the condition precedent for assumption of jurisdiction u/s 153C is, the AO must be satisfied that the seized materials belongs to such other person. The word belong has not been defined under the Act. As per the dictionary meaning 'belong to' means be the property of; be the rightful possession of; be due to. Undisputedly seized document on the basis of which proceeding u/s 153C is initiated against the assessee is a loose sheet marked as 'A/DNR/18'. At our request the learned DR has submitted a copy of the aforesaid seized material which is

వ్లాటం కెసునెల A/c (మరిచివారు)

10/10/06	525 నశాల X 14250 = 7481250.00 BCPA = 137500.00 స్టాంపులు = 3250.00 పెండ్లింగ్ ఖరీదలు	7622000.00 ✓	
<u>కాస్ వ్లాటం కెసునెల A/c (మరిచివారు)</u>			
11/11/06	క్రాస్ వ్లాటం ఖాల్తాకు 525 నశాల ప్రీ క్రిన్ పెండ్లింగ్ వరుగా విడిచినది	500000.00	
13-6-07	ఖరీదు cheques.		250000.00
16.6.07	ఖరీదు cash	1.00.000.00	
26.2.07	ఖరీదు cash		50.000.00
		600000.00	300000.00
		300000.00	
		200000.00	
// True copy //			
JKP			

11. Since the seized document reproduced hereinabove is not properly visible, we are also annexing herewith a copy of the said document to this order, which should be treated as part of this order.

12. This document was seized from the business premises of D. Nagarjuna Rao in course of action u/s 132 of the Act against him. In the impugned assessment order the AO has also observed that the said D. Nagarjuna Rao had admitted that entries in the seized documents were made by him in his own handwriting. While considering the objection of the assessee, the AO has also admitted the fact that neither the name of the assessee appears in the seized document nor it bears their signature. The notings made in the seized document only shows that an amount of Rs. 74,81,250/- was paid to Mr. Venkatesh towards sale consideration of the property. When the document in question was not seized from the assessee but from a third party, who admittedly has made the entries therein and furthermore when the seized document neither mentions the name of the assessee or bears his signature, then by no stretch of imagination it can be said to be belonging to the assessee. Thus, the precondition for initiating proceeding u/s 153C is not satisfied. Therefore, the initiation of proceeding u/s 153C against the assessee is without jurisdiction. The Hon'ble Gujarat High Court in case of Vijaybhai N. Chandrani Vs. ACIT [supra] while considering identical issue held as under:-

**"12.** *On a plain reading of the aforesaid provisions it is apparent that sections 153A, 153B and 153C lay down a scheme for assessment in case of search and requisition. Section 153A deals with procedure for issuance of notice and assessment or reassessment in case of the person where a search is initiated under section 132 or books of account,*



*other documents or assets are requisitioned under section 132A after the 31st day of May, 2003. Section 153B lays down the time limit for completion of assessment under section 153A. Section 153C which is similarly worded to section 158BD of the Act, provides that where the Assessing Officer 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 he shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person. However, there is a distinction between the two provisions inasmuch as under section 153C notice can be issued only where the money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to such other person, whereas under section 158BD if the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or assets were requisitioned under section 132A, he shall proceed against such other person under section 158BC.*

**13.** *Thus a condition precedent for issuing notice under section 153C and assessing or reassessing income of such other person, is that the money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned should belong to such person. If the said requirement is not satisfied, recourse cannot be had to the provisions of section 153C of the Act.*

**14.** *Examining the facts of the present case in the light of the aforesaid statutory scheme, it is an admitted position as emerging from the record of the case, that the documents in question, namely the three loose papers recovered during the search proceedings do not belong to the petitioner. It may be that there is a reference to the petitioner inasmuch as his name is reflected in the list under the heading Samutkarsh Members Details and certain details are given under different columns against the name of the petitioner along with other members, however, it is nobody's case that the said documents belong to the petitioner. It is not even the case of the revenue that the said three documents are in the handwriting of the petitioner. In the circumstances, when the condition precedent for issuance of notice is not fulfilled any action taken under section 153C of the Act stands vitiated."*

13. The ITAT, Bangalore Bench in case of P. Srinivas Naik Vs. ACIT [supra] has held as under:

*"7. We have heard both the parties. It is an undisputed fact that books of account or document does not belong to the assessee, as these were seized from the premises of Shri Reddy. It is nowhere stated that these books of account or documents showed that all the transactions belonging to the assessee. Such books of account or documents contained the transactions relating to the group concerns of Shri Reddy. No valuable belonging to the assessee has been seized during the course of search. The term belonging, implied something more than the idea of casual association. It involves the notion of continuity and indicates one more or less intimate connection with the person over a period of time. The books of account or documents seized during the course of search have a close association with the group concern of Shri Reddy. It records the transaction carried out by that group. It does not record the transaction carried out by the assessee. Under Wealth-tax Act, assets belonging to assessee were taxable. The expression belonging to the assessee connotes both the complete ownership and limited ownership of interest. Of course belonging to is capable connoting, interest, which is less than absolute perfect legal title. However, there should be some limited ownership of interest, if it is to be permitted that the assets belongs to the assessee. In the instant case, documents or books of account found during the course of search and seized cannot be termed, to be indicating any limited interest of the ownership of the assessee in such books of account or documents. The language used in section 153C is materially different from the language used under section 158BD. As per section 158BD, if any undisclosed income relates to other person, then action against such other person can be taken provided such undisclosed income is referable to the document seized during the course of search. However, section 153C says that if valuable or books of account or documents belonging to other persons are seized then action under section 153C can be taken against that person. In the instant case, we are satisfied that books of account or documents do not belong to the assessee and, therefore, the Assessing Officer was not justified in*

*initiating action under section 153A read with section 153C of the Income-tax Act. The Assessing Officer is free to take proper remedial measure as per law."*

14. We, in the preceding paragraphs, have already held that the seized document on the basis of which proceeding u/s 153C was initiated cannot be said to be belonging to the assessee. Therefore, considered in the light of the ratios laid down in the judicial precedents referred to above, the assumption of jurisdiction u/s 153C has to be held as invalid and consequentially the assessment order passed must be declared as without jurisdiction. Accordingly, we set aside the order passed by the CIT(A) and allow the appeal of the assessee.

15. Facts in ITA Nos. 2056 & 2058/H/11 are materially the same as in ITA No. 2057/H/11 decided by us hereinabove. Hence, following our order passed in ITA No. 2057/H/11 we allow these two appeals.

16. In the result, all the three appeals under consideration are allowed.

**Pronounced in the open court 28/06/2013.**

**Sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER**

**Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER**

Hyderabad, Dated: 28<sup>th</sup> June, 2013.

Kv

Copy to:-

- 1) *M/s Shouri Constructions and T. Jaipal Reddy, C/o Sri A.V. Raghuram, Advocate, Flat No. 610, 6<sup>th</sup> Floor, Babukhan Estate, Basheer Bagh, Hyd. - 500 001.*
- 2) *ACIT, Circle - 8(1), Hyderabad*
- 3) *The CIT(A)-III, Hyderabad*
- 4) *The CIT-II Hyderabad*
- 5) *The Departmental Representative, I.T.A.T., Hyd.*

S.No	Description	Date	Intls	
1.	Draft dictated on			Sr.P.S./P.S
2.	Draft placed before author			Sr.P.S/PS
3	Draft proposed & placed before the second Member			JM/AM
4	Draft discussed/approved by second Member			JM/AM
5	Approved Draft comes to the Sr.P.S./PS			Sr.P.S./P.S
6.	Kept for pronouncement on			Sr. P.S./P.S.
7.	File sent to the Bench Clerk			Sr.P.S./P.S
8	Date on which file goes to the Head Clerk			