

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13787 of 2009

For Approval and Signature:

HONOURABLE MR. JUSTICE D.A.MEHTA

HONOURABLE MS. JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIJAYBHAI N CHANDRANI - Petitioner(s)

Versus

ASSISTANT COMMISSIONER OF INCOME TAX, CRICLE - 1 - Respondent(s)

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Appearance :

MRS SWATI SOPARKAR for Petitioner(s) : 1,

MR MANISH R BHATT, SR. ADVOCATE with MRS MAUNA M BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR. JUSTICE D.A.MEHTA

and

HONOURABLE MS. JUSTICE H.N.DEVANI

Date : 30/03/2010

ORAL JUDGMENT
(Per : HONOURABLE MS. JUSTICE H.N.DEVANI)

1. Considering the controversy involved in the present petition, by consent of the learned advocates for the parties, the matter is taken up for final hearing today. Hence, rule. Learned advocate for the respondent is directed to waive service of rule.

2. This petition under Article 226 of the Constitution of India challenges notices dated 07th October, 2009 issued by the respondent under section 153C of the Income Tax Act, 1961 (the Act) directing the petitioner to furnish the return of income under section 153C for the assessment years 2001-2002 to 2006-2007.

3. The petitioner, an individual, purchased a plot of land in one Samutkarsh Co-operative Housing Society being developed by one Savvy Infrastructure Ltd. It appears that a search came to be conducted under section 132 of the Act at the premises of the said Samutkarsh Co-operative Housing Society as well as at the office of the builder - Savvy Infrastructure Ltd. in the year 2008. Subsequently, on the basis that certain documents pertaining to the petitioner have been found and seized during the search, the impugned notices came to be issued against the petitioner for assessing the petitioner's income for six assessment years preceding the assessment year relevant to the previous year in which the search was conducted i.e. from assessment year 2001-2002 to assessment year 2006-2007.

4. Vide letter dated 11th November, 2009, the petitioner requested the respondent to provide copies of the seized material and also asked for an extension to file the return. The respondent supplied copies of three loose sheets of paper which, according to the petitioner, do not belong to him. It is in these circumstances that the petitioner has moved the present petition challenging the aforesaid notices.

5. Mrs. Swati Soparkar, learned advocate for the petitioner has invited attention to the provisions of section 153C of the Act to submit that notice under the said provision can be issued only when 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 in whose case a search has been initiated under section 132. It is submitted that it is an admitted position that the three loose papers found at the time of the search do not belong to the petitioner; that the impugned notice itself states that the proceedings have been initiated on the basis of documents which pertain to the petitioner. It is contended that in the circumstances, it is not open to the respondent to issue the impugned notices for reassessing the petitioner's income under the provisions of section 153C of the Act.

6. Mr. M.R. Bhatt, learned senior advocate for the respondent has invited attention to the averments made in the affidavit-in-reply dated 22nd February, 2010 made by the respondent and has placed reliance upon the same.

7. A perusal of the impugned notices dated 07th

October, 2009 indicates that a search was conducted under section 132 of the Act at the premises of Samutkarsh Co-operative Housing Society and Savvy Infrastructure Limited, Ahmedabad. During the course of search, certain documents pertaining to the petitioner were also found and seized. It is on the basis of these documents that notices under section 153C have been issued against the petitioner. The petitioner has also annexed copies of the three loose papers which form the basis for issuance of the notice under section 153C at Annexure 'C' to the petition. A perusal of the said documents indicates that the same contain details of members of Samutkarsh Co-operative Housing Society. The said document undoubtedly is not a document which belongs to the petitioner though there is a reference to the petitioner in one of the loose papers under the heading "Samutkarsh Members Detail" indicating plot numbers, names of members and other details.

8. Vide Section 65 of the Finance Act, 2003 three new Sections viz. 153-A, 153-B and 153-C came to be inserted after Section 153 of the Income Tax Act, with effect from the 1st day of June, 2003. The said three sections fall under the heading "Assessment in case of search or requisition".

9. Section 153-A which provides for "*Assessment in case of search or requisition*" reads thus:

(1) Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, in the case of a person where a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132-A after the 31st day

of May, 2003, the Assessing Officer shall—

- (a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139;*
- (b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made :*

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this section pending on the date of initiation of the search under Section 132 or making of requisition under Section 132-A, as the case may be, shall abate.

Explanation.—For the removal of doubts, it is hereby declared that,—

- (i) save as otherwise provided in this section, Section 153-B and Section 153-C, all other provisions of this Act shall apply to the assessment made under this section;*
- (ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.*

10. 153-B provides for “Time-limit for completion of assessment under Section 153-A”.

11. The controversy in issue pertains to the interpretation of the provisions of Section 153-C of the Act which reads thus:

“153-C. Assessment of income of any other person.—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 153-A, 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 153-A."

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 158 BD 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 153-A 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, resort 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 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.

15. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned notices dated 07th

October, 2009 issued by the respondent under section 153C of the Act are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(D.A. Mehta, J.)

(Harsha Devani, J.)

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