

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 315 of 2024

With

R/SPECIAL CIVIL APPLICATION NO. 317 of 2024

With

R/SPECIAL CIVIL APPLICATION NO. 321 of 2024

With

R/SPECIAL CIVIL APPLICATION NO. 324 of 2024

With

R/SPECIAL CIVIL APPLICATION NO. 328 of 2024

With

R/SPECIAL CIVIL APPLICATION NO. 365 of 2024

With

R/SPECIAL CIVIL APPLICATION NO. 436 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

and

HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

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 or any order made thereunder ?	

SHYAMLAL RUPCHAND PARWANI

Versus

**THE ASSISTANT COMMISSIONER INCOME TAX , CENTRAL CIRCLE 1(1)
(1)**

Appearance:

DARSHAN R PATEL(8486) for the Petitioner(s) No. 1

for the Respondent(s) No. 2

MR.VARUN K.PATEL(3802) for the Respondent(s) No. 1

CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE

SUNITA AGARWAL
and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 06/02/2024

CAV JUDGMENT
(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

1. In another set of writ petitions leading being Special Civil Application No. 434 of 2024, arguments were heard on 15.01.2024 and the matter has been kept for orders on 06.02.2024. It is pointed out by Mr. Darshan R. Patel, learned counsel for the petitioners that one writ petition being Special Civil Application No. 436 of 2024 filed by the petitioner herein, namely Shyamlal Rupchand Parwani has been tagged with the aforesaid bunch, though the facts of the said case are somewhat different from the present bunch. It was, therefore, agreed between the parties that since the order has yet not been delivered, Special Civil Application No. 436 of 2024 be also decided with this bunch. We, therefore, direct that the Special Civil Application No. 436 of 2024 be tagged with the present bunch of petitions filed by the same petitioner, namely, Shyamlal Rupchand Parwani arising out of a similar dispute.
2. As the issue raised in the present bunch of writ petitions are identical in nature, they have been heard together and are

being decided by this common judgement.

3. The challenge is to the notice dated 09.06.2022 for the Assessment Year 2014-15(in short as A.Y.2014-15”) under Section 153C of the Income Tax Act, 1961 (in short as “the Act’1961”) as also the order dated 02.12.2023 purporting to be the objection disposal order passed by the respondent No.2. The further challenge is to the notice under Section 142(1) dated 11.12.2023. The prayer is to restrain the respondents from enforcing the compliance of the impugned notice under Section 153C dated 09.06.2022 for A.Y.2014-15.
4. The grounds to challenge the initiation of proceedings under Section 153C of the Act’1961 are that:-
 - (i) The satisfaction note of the searched person as well as the satisfaction note recorded in the case of the petitioner, have not been provided to the petitioner, though specific request was made by the petitioner vide letter dated 08.08.2022. The entire proceedings leading to the issuance of notice under Section 142, therefore, stands vitiated.
 - (ii) No incriminating material was found against the petitioner during the search carried out on 15.10.2019.
 - (iii) Baseless allegations have been made against the petitioner without there being any material before the Assessing Officer to even record the *prima facie* proof that the seized material has a bearing on the petitioner’s case.

5. Elaborating the above grounds, it was submitted by Mr. Darshan R. Patel, the learned counsel for the assessee that as the satisfaction note admittedly was not provided to the petitioner along with the notice under Section 153C, there was no question of filing of the objection by the petitioner. However, in a mechanical manner, the Assessing Officer had served the copy of the objection disposal order of other persons treating the letter dated 19.10.2023 as the objection of the petitioner to the notice dated 09.06.2022 under Section 153C of the Act'1961.
6. The attention of the Court is invited to the copy of the communication dated 19.10.2023 (at Page '29' of the paper book of Special Civil Application No. 315 of 2024) to demonstrate that in response to the notice under Section 143(2) of the Act'1961 dated 01.08.2022, the petitioner had requested to provide copy of the satisfaction note and other material on the basis of which the proceedings under Section 153C have been initiated. It was contended that though repeated requests were made by the petitioner vide letters dated 06.08.2022 and 19.10.2023, the copy of the satisfaction note and other material have not been provided. The result is that the communication of objection disposal order dated 02.12.2023 is proved to be a mechanical exercise on the part of the Assessing Officer. The submission is that

this fact itself shows the approach of the Assessing Officer to implicate the petitioner by any means without there being any material before it to record the *prima facie* satisfaction that the seized material pertains to or relates to the petitioner. The CBDT instructions vide Circular No.24 of 2015 dated 31.12.2015 has been placed before us to submit that the guidelines issued by the CBDT in compliance of the judgement of the Apex Court in the case of ***CIT vs. Calcutta Knitwears, (2014)43 taxmann.com 446 (SC)*** dated 12.03.2014 has to be strictly complied with.

7. It was clarified therein that the provisions of Section 153C of the Act'1961 being *pari materia* to the provisions of Section 158D of the Act, guidelines of the Apex Court shall apply to the proceedings under Section 153C of the Act'1961, for the purposes of assessment of income of other than the searched person. It was further stated that even if the Assessing Officer of the searched person and the 'other person" is one and the same, then also he is required to record his satisfaction note as has been held by the Courts. We may note from the Circular dated 31.12.2015 and the decision of the Apex Court in ***Calcutta Knitwears*** (supra) that three directions have been contained therein to prepare the satisfaction note at the following stages of the proceedings: -
“(a) at the time of or along with the initiation of

proceedings against the searched person under section 158BC of the Act; or
(b) in the course of the assessment proceedings under section 158BC of the Act; or
(c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person.”

8. The issue before the Apex Court in ***Calcutta Knitwears*** (supra) was of delay of over eight months between the dates of completion of assessments of the searched person and recording of the satisfaction notes. As ruled by the Apex Court, it was advised by CBDT that the satisfaction note is to be prepared immediately on completion of the assessment of the searched person.
9. Having noted the above submissions, we may record that it is not the case of the petitioner herein that no satisfaction note has been recorded independently by the Assessing Officer of the petitioner before proceeding under Section 153C of the Act'1961, on receipt of the satisfaction note of the Assessing Officer of the searched person. The copy of the satisfaction note though was not provided initially to the petitioner and the Assessing Officer has committed an error in forwarding the objection disposal order dated 02.12.2023 to the petitioner treating the communication dated 19.10.2023 as the communication of objection against the satisfaction note. There is no dispute that once the satisfaction note was not

provided to the petitioner, there was no question of disposal of his objection as communicated to the petitioner vide the letter dated 02.12.2023. However, the fact remains that the satisfaction note of the Assessing Officer had later been served upon the petitioner, subsequent to the notice under section 142(1) dated 11.12.2023. However, the said admitted fact had not been disclosed in the writ petition. The copy of the satisfaction note served upon the petitioner though later in point of time, has not been appended herewith.

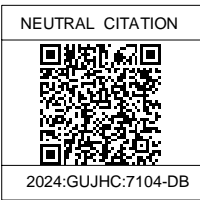
10. In the said scenario, we are not in a position to accept the contention of the learned counsel for the petitioner that there was no satisfaction note of the Assessing Officer before proceeding under Section 153C of the Act'1961. It may be noted that the petitioner has filed return in compliance of the notice under Section 142(1) dated 11.12.2023. The notice under Section 153C for the A.Y.2014-15 under challenge is dated 09.06.2022. As the petitioner has approached this Court, in the instant petition, only after issuance of the notice under Section 142(1) dated 11.12.2023 after filing of the return, we do not find it a fit case to interfere at this stage, on the sole ground that the satisfaction note was not provided to the petitioner along with the notice dated 09.06.2022 issued under Section 153C for A.Y. 2014-15 and, as such, the entire proceedings leading to issuance of notice under Section

142(1) dated 11.12.2023 stands vitiated.

11. We may take note of the decision of the Apex Court relied on by the learned counsel for the Revenue in the case of ***Commissioner of Income-Tax, Gujarat vs. Vijaybhai N. Chandrani, [2013] 35 taxmann.com 580(SC)***, wherein it has been held by the Apex Court that at the stage of issuance of notice under Section 153C, the High Court ought not to have entertained the writ petition and relegate the assessee to file the reply to the said notices upon receipt of the decision of the Assessing Officer, if for any reason, it was aggrieved by the said decision, to question the same before the forum provided under the Act.
12. We may further note that the points raised by the learned counsel for the assessee on the plea of lack of jurisdiction of the Assessing Officer in issuing notice under Section 153C of the Act, can not be appreciated by us, as it could not be demonstrated that no satisfaction note was recorded by the Assessing Officer prior to issuance of the notice under Section 153C of the Act'1961 on 09.06.2022.
13. For the aforesaid, we do not find any merit in the challenge made in the bunch of writ petitions, i.e. Special Civil Application No. 315 of 2024 filed by the petitioner, namely Shyamlal Rupchand Parwani to the notice under Section

153C of the Act'1961 dated 09.06.2022 and the notice under Section 142(1) dated 11.12.2023. However, it is kept open for the petitioner to raise all possible objections before the Assessing Officer during the course of assessment proceedings including that there was no satisfaction note of the Assessing Officer before issuance of the notice under Section 153C dated 09.06.2022 and that there was no occasion to record *prima facie* proof that the seized material pertains to or relates to the petitioner. The petitioner would be at liberty to raise objections that no incriminating material was found during the search carried out on 15.10.2019 of the searched person, which could have been made basis for recording satisfaction, if any, by the Assessing Officer of the petitioner. The petitioner would be free to contend that he cannot be linked to a baseless satisfaction note, which has no material foundation.

14. It is further clarified that while framing the assessment order, the Assessing Officer will not be influenced by any of the observations made by us hereinabove as we have not expressed any opinion on the correctness or otherwise of the submissions made on the merits of the proceedings initiated against the assessee based on the search carried out under Section 132 of the Act'1961.



15. Subject to the above, the writ petitions in this bunch are finally disposed of.

Further Order

16. The request for stay of the order for a period of four weeks to enable the petitioner to approach the Apex Court is hereby rejected.

(SUNITA AGARWAL, CJ)

(ANIRUDDHA P. MAYEE, J.)

SUDHIR