IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER
AND
SHRI C.M. GARG : JUDICIAL MEMBER

ITA nos. 1927 to 1931/Del/2015
Asstt. Yrs: 2007-08, 2008-09, 2009-10, 2010-11 & 2012-13

Rajeev Behl C/o Kapil Goel Adv. F-26/124 Sector 7 Rohini, Delhi-110085 PAN: AAMPB 3279 L (Appellant)	Vs.	DCIT Central Circle-15, New Delhi. (Respondent)

Appellant by : Shri Kapil Goel Adv.
Respondent by : Mrs. Nandita Kanchan CIT (DR)

Date of hearing : 10/06/2016.
Date of order : 29/06/2016.

O R D E R

PER S.V. MEHROTRA, A.M:

These are assessee's appeals against separate orders passed by the ld. CIT(Appeals) relating to asstt. Years 2007-08 to 2010-11 and 2012-13. Since common issues are involved for adjudication, therefore, all these appeals were heard together and are being disposed of by this common order for the sake of convenience.

2. Brief facts of the case, as noted by the AO, are that a search and seizure action in Kalra group of cases was initiated on 28.07.2011. Main company of the group was Consortium Securities Private Ltd. and it was a stock brokering company, having membership of National Stock Exchange (NSE), Bombay Stock Exchange (BSE), MCX Exchange Ltd. (MCX-SX),

United Stock Exchange Ltd. (USE) and depository participant of National Securities depositories Limited (NSDL). Consortium group of companies were promoted by Shri Parminder Singh and the registered office of the group companies was at New Delhi. Shri Parminder Singh Kalra was the main person who was controlling the affairs of the group companies and his sons, namely, Shri Harveer Singh and Sh. Bikramjit Singh Kalra were also associating him in controlling the affairs of the group companies. The group was also engaged in the real estate dealings.

3. The AO observed that during the search operation in M/s Consortium group of cases on 28.7.2011 certain documents were retrieved and it was found that those documents related to Shri Rajeev Behl (page nos. 14 to 36 of Annexure A-8) & (page nos. 94 to 139 of Annexure A-11). The AO has observed that these were mainly MOUs between the promoters of Realtech Group, namely, Sh. Yogesh Gupta, Shri Pankaj Dayal and Shri Rajeev Behl along with some working pertaining to Realtech group. The AO, on examination of MOUs, observed that it appeared that Shri Pankaj Dayal, Sh. Yogesh Gupta and Shri Rajeev Behl were promoters, directors and shareholders in equal proportions in various companies running and functioning under the Realtech Group. The AO referred to page nos. 118 to 139 of Annexure A11 and pointed out that the same was an annexure of MOU, wherein working of assets and liabilities of different projects of Realtech Group had been mentioned. The AO has further referred to clause 1.1 of MOU and pointed out that as per the said clause 'Company' means any of the group company of "Realtech", namely (i) Realtech Infrastructure Private Limited (ii) Realtech Construction Private Limited (iii) Realtech Projects Private Limited (iv) Realtech Maintenance Services Private Ltd. (v) Realtech Sports Academy Private limited (vi) Realtech Facilitators Private

limited (vii) Realtech Promoters Private Limited. (viii) Realtech Developers Private Limited (ix) Realtech Heights Private limited (x) Realtech Skiers Private Limited (xi) Vivid Builders Private Limited (xii) S.S. Con Build Private Limited (xiii) Dove Infrastructure Private Limited (xiv) Pacific Sports Academy private Limited.

4. The AO has further pointed out that when these documents were confronted to Shri Parminder Singh Kalra, he submitted that these papers/documents did not pertain to him. It was explained that due to dispute between the promoters of Realtech Group, namely, Shri Pankaj Dayal, Shri Yogesh Gupta and Shri Rajeev Behl, a memorandum of understanding was drawn by the partners for partition of the group. As per the terms of the MOU, each partner had to appoint one arbitrator which should be acceptable to the remaining two promoters of the Group and in that process, he (Shri Parminder Singh Kalra), was appointed as arbitrator by the Realtech Group promoters. Besides him, Shri B.N. Chandok and Shri Kuldeep Ahuja were also appointed as Arbitrators by the Realtech Group. The AO has further pointed out that during the course of post search proceedings summons were issued to three promoter directors of M/s. Real Tech Group, out of which only Mr. Yogesh Gupta appeared before the Investigation Wing and as per the report of the Investigation Wing, Mr. Yogesh Gupta remained evasive on various replies. The books of account were not produced to corroborate the various entries in the seized documents.

5. The AO has further pointed that in the absence of production of books of account of Realtech Group, it could not be ascertained whether the entries/liabilities mentioned/noted in the seized documents had actually been

recorded in the respective books of account maintained by the Realtech Group. He pointed out that since Shri Pankaj Dayal, Shri Rajeev Behl and Shri yogesh Gupta were promoter/director/shareholders in equal proportion of Realtech Group of companies and, therefore, had vested interest in the functioning of the group. The AO has further observed as under:

> *"In the view of above facts and looking at revenue implication involved in the case of Shri Rajeev Behl having substantial interest in M/s Realtech Group, I am satisfied that proceeding u/s 153C of the Income Tax Act, I961 are required to be initiated in this case. The case has already been centralize with this office u/s 127 of the I.T. Act, 1961vide CIT, Central-II, New Delhi's order F.No. CIT(C)-II/Cent./2002-13/1368 dt. 06.11.2012."*

6. Accordingly, notice u/s 153C was issued on 12.8.2013 for assessment years 2007-08, 2008-09, 2009-10, 2010-11 & 2012-13. Assessee filed returns for all these years as under"

Asstt. Yr.	Income (Rs.)
2007-08	67,03,657
2008-09	1,56,77,698
2009-10	71,31,946
2010-11	34,67,524
2012-13	31,89,334

7. The AO has pointed out that notice u/s 142(1) of the Income-tax Act along with questionnaire was issued on 13.1.2014 and in compliance to that the assessee attended the proceedings from time to time and filed documents as requisitioned. Further questionnaire was issued u/s 142(1) of the Act dated 28.2.2014 requiring the assessee to provide the complete details viz. name and address, PAN, copy of return of income, balance-sheet of the

persons from whom the assessee had claimed to have received unsecured loans. The AO pointed out that though assessee filed certain details on 5.3.2014 but in respect of following persons assessee had failed to furnish complete details in respect of AYs 2007-08:

i. Loan received from Sh. Manish Mehta HUF amounting to Rs. 10,00,000/-

ii. Loan received from M/s Incredible Capital Ltd., amounting to Rs. 50,00,000/-

iii. Loan received from Sh. Shailesh Dhir/ AR Securities amounting to Rs. 40,00,000/-

8. He, accordingly, made addition u/s 68 of Rs. 1 crore. Further disallowance u/s 14A read with Rule 8D was made of Rs. 40,794/- and on account of telephone and car expenses of Rs. 89,604/-.

9. Before ld. CIT(A), the assessee had raised two additional grounds of appeal. It was claimed that the impugned order u/s 153C was null and void since no incriminating documents pertaining to the assessee had been seized and the AO did not have the power to go beyond the seized documents. In the other ground it was claimed that the assessment proceedings were completed in haste and without giving reasonable opportunity to the assessee to present his case.

10. Ld. CIT(A) admitted both these grounds being legal in nature and adjudicate the same before taking the other grounds of appeal. The first contention of assessee vide letter dated 27.10.2014 was that 153C/153A proceedings were wrongly initiated in this case. The contention was that these proceedings could be initiated only in respect of years where there was some incriminating material. The assessee also claimed before ld. CIT(A) that the MOU comprising of the working of assets and liabilities of Raltech

Group, were seized from Shri Parminder Singh Kalra, who held it in the capacity of Arbitrator and hence the seized documents did not belong to him (assessee). It was also stated that while reframing the assessment u/s 153A, where assessment had been completed earlier, the AO had no power to go beyond the seized documents and that in his case the AO had exceeded that scope. It was also submitted that since regular assessment had been completed in assessee's case, there could be no abatement of proceedings. The assessee had relied on the decisions in the cases of All Cargo Global Logistics Ltd. Vs. DCIT 23 Taxmann.com 103 (Mum) (SB); Sinhgad Technical Education Society v. ACIT 16 Taxmann.com 101 (Pune); and CIT v. Shaila Agarwal 2011-TIOL-778-HC-All-IT. Ld. CIT(A) further pointed out that vide letter dt. 28.10.2014, the assessee further claimed that he had objected to the issue of notice u/s 153C and had also requested for the copy of the satisfaction note and copy of the seized material from the AO. It was claimed that objection to the 153C proceedings and request for the documents had been made vide letter dated 27.3.2014 addressed to the AO, which had been acknowledged by AO's office on 28.3.2014. In this regard ld. CIT(A) has observed as under:

> *"Copy of this letter, bearing the subject 'Objection to Notice u/s 153C …." And reference to the AO's notice u/s 153C dated 12.08.2013, which also bore the 'receipt stamp' of the 'Office of the Deputy Commissioner of Income Tax, CC-15, New Delhi' on 28.03.2014, was filed as evidence of the claim that 153C proceedings had been objected by him before the AO.*

11. Ld. CIT(A) examined the contents of MOU and after detailed consideration of the facts concluded that the seized material did not pertain to the Arbitrators, but to Rajeev Behl (assessee), Shri Yogesh Gupta and Sh. Pankaj Dayal, the promoters, directors and shareholders of the Realtech

Group. Accordingly, ld. CIT(A) held that proceedings u/s 153C were rightly invoked in the cases of these persons including the assessee.

12. Ld. CIT(A), after considering the decisions of Hon'ble Delhi High Court in the cases of SSP Aviation Ltd. v. DCIT 346 ITR 177 (Del.) and Anil Kumar Bhatia 24 Taxman.com 98 (Del.), pointed out that there is no condition of satisfaction on the existence of incriminating documents for assumption of jurisdiction u/s 153C. The AO is obliged to initiate proceedings u/s 153C where valuable article, books of account, documents etc. relating to a person other than the searched person is seized.

13. Ld. CIT(A) further examined the assessee's argument that 153C proceedings should be limited to only to the years in respect of which there was some material and that addition was to be confined to the material found during search and rejected the same following the decision of Hon'ble Jurisdictional High Court in the case of Anil Kumar Bhatia (supra), after referring to following paras of the judgment:

> "*Para 18 .... Under Section 153A and the new scheme provided/or, the AO is required to exercise the normal assessment powers in respect of the previous year in which the search took place.*
>
> *Para 19 .... Another significant feature of this Section is that the Assessing Officer is empowered to assess or reassess the "total income" of thee aforesaid years. This is a significant departure from the earlier block assessment scheme ... Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the 'total income' of the six assessment years ill 'question III separate assessment orders.*
>
> *Para 20... With all the stops having been pulled out, the Assessing Officer under Section 15JA has been entrusted with the duty of bringing to tax the total income of an assessee*

whose case is covered by Section 115JA, by even making reassessments without any fetters, if need be".

14. In this regard ld. CIT(A) further referred to the decision in the case of CIT v Chelan Dass Lachman Dass 25 Taxman.com 227 (Delhi), wherein their lordships held:

> Para 11 ... Section 153A which provides for, an assessment in case of search, and was introduced by the Finance Act, !2003 w.e.f 01.06.2003, does not provide that a search assessment has to-be made on the basis of evidence found as a result of search or other documents and such other materials or information as are available with the Assessing Officer and relatable to the evidence found....
>
> ... Section 153A(1)(b) provides for the assessment or reassessment of the total income of the six assessment years immediately preceding the assessment year relevant to the previous year in which the search took place. To repeat, there is no condition in this Section that additions should be strictly made on the basis of evidence found: in the course of the search or other post- search material or information available with the Assessing Officer which can be related to the evidence found.

15. Accordingly, ld. CIT(A) observed as under:-

> "4.7. It is thus evident from the two aforementioned decisions of the jurisdictional High Court that u/s 153A, the AO is required to assess the total income of the person in whose case notice U/S 153A or 153C has been issued. In Chetan Dass Lachman Dass (supra), their lordships have further explained what was stated in paras 18, 19 and 20 in Anil Kumar Bhatia (supra), namely that, in determining the 'total income' there are no fetters, since there is no condition U/S 153A" that assessment has to be confined to the material or relatable to the

material found during search. Indeed, this is the distinguishing feature of the: assessments u/s 153A, vis a vis the erstwhile block assessments under Chapter XIVB, where such a condition was built into the provision itself. That the powers of the AO, under the provisions of section 153A, are beyond sections 147, 148, 151 and 153, has been taken note of in Anil Kumar Bhatia (supra). It is also relevant that section 153A refers to the determination of the 'total income', which is defined in sub section (45) of section 2 of the Income Tax Act thus:

"total income" means the total amount of income referred to in section 5,computed in the manner laid down in this Act;

Section 5, mentioned in the definition of 'total income', refers to the 'scope of total income', and states that 'total income' includes 'all income of a person 'from whatever source derived', It may be also mentioned that while under section 158BD there was a need to examine whether the seized material represented undisclosed income of the assessee other than the one searched, under section 153C, as discussed above, there is no such mandate.

4.8. Therefore, considering Anil Kumar Bhatia (supra) and Chetan Dass Lachman Dass (supra), a harmonious interpretation of section 153A/ 153C with all the other provisions would lead to the inevitable conclusion that the AO is required to assess the total income in cases where notice u/s 153A or 153C has been issued. While determining the total income of a person u/s 153A therefore, the entire economic / financial matters pertaining to the year in question will have to be considered by the AO, whether or not these are relatable to the search. This view has also been reiterated by the jurisdictional High Court in their recent order dated 14.07.2014 in the case of Filatex India Ltd v CIT 2014- TIOL-1325-flC-DEL-IT, where both Anil Kumar Bhatia (supra) and Chelan Dass Lachman Dass (supra) were discussed.

> 4.9. In view of the facts of the case and interpretation by the jurisdictional High Court, the invocation of section 153C and completion of assessment u/s 153A in the case of the appellant is held to be in order. The additional ground of appeal relating to the 153C proceedings is therefore dismissed."

16. Ld. CIT(A) has also pointed out that the assessee in order to save himself from the application of the provisions of section 292BB claimed that he had objected to the 153C proceedings for AY 2006-07 to AY 2011-12 through six separate letter dated 27.3.2014 which had been duly acknowledged by the office of the AO on 28.3.2014. However, ld. CIT(A) has rejected the assessee's claim by elaborately referring to various defects in para 4.10 of her order. Ld. CIT(A) pointed out that since the assessee never objected to the proceedings u/s 153C, therefore, in view of the provisions of section 292BB, the additional ground of appeal relating to 153C proceedings did not survive. Ld. CIT(A) after elaborate consideration of facts concluded that assessee had been given reasonable opportunity of being heard.

17. On merits, ld. CIT(A) after rejecting the assessee's application for admission of additional evidence under Rule 46A, after detailed discussion, confirmed the additions made by AO, dismissing the assessee's appeal.

18. Being aggrieved with the order of ld. CIT(A) the assessee is in appeal before us and has taken following grounds of appeal:

> *"1. That on the facts and in the circumstances of the case and in law, Ld CIT~ Λ erred in not quashing the impugned proceeding and orders passed u/s l53C in violation of jurisdictional conditions stipulated u/s 153C of the Act.*
>
> *2. That on the facts and in the: circumstances of the case and in law, Ld CIT(A) erred in not quashing the impugned*

proceedings u/s IS3C by erroneously and perversely holding that:

a. Applicable Requirement of "belongs to" is fulfilled in extant ease on assumptions and presumptions;

There: is no requirement of incriminating material at all u/s 153C and can make unrestricted and unbridled de novo examination u/s 153C

That there is valid and requisite "satisfaction" u/s 153C to intimate proceedings;

That there is no embargo on Ld AO's power u/s 153C which according to CIT(A) is unfettered;

c. Section 292BBwhich is limitedly applicable to service of notice etc. is extrapolated to adjudicate and block legitimate jurisdictional plea u/s 153C;

f. That issues closed and settled in previous regular assessments u/s 143(3)and/or section 143(1) prior to instant 153C proceedings has no role to play here;

g. That block period u/s 153C (AY 2006-07 to AY 2011-2012) adopted by Ld AO is correct instead of right period being AY 2008~09 to AY 2013- 2014 which itself vitiates entire action;

3. That on the facts and in the circumstances of the case and in law, Ld CIT(A) erred in not quashing the impugned proceedings u/s 153C by conveniently brushing aside following vital facts:

a. That Ld AO in impugned order referring to assumption of jurisdiction has stated that same is initiate I for alleged revenue implication where there is none found subsequently;

b. That L I AO has referred to words "relating to" on face of order in beginning portion;

That no addition at all is made on alleged an I stated seized documents being basis of instant proceedings u/s 153C; That document seized were having no hearing (direct or indirect) to computation of income of assessee;

Awarding of Costs to assessee from revenue and CIT(A) Section 254(2B) relied

4. That on the fact and in the circumstances of the case and in law, Ld CIT(A) erred in not quashing the impugned proceedings u/s 153C and thereby causing immense and deep harassment to assessee, which is preyed to be visited with costs vide powers available to Hon'ble ITAT in section 254(2B) of the Income Tax Act, 1961.

On merits deduction of untenable and incorrect additions sustained by CIT(A)

That on the facts and in the circumstance of the case and in law, Ld CIT(A) erred in not deleting the addition made Ld AO on adhoc basis which is impermissible, on a/c of telephone, car running and maintenance expenses etc without any defect in supporting voucher and audited ledger acc etc.

6. That on the facts and in the circumstances of the case and in law, Ld CIT(A) erred in not deleting the addition made Ld AO u/s 68 (alleged unexplained cash credit) being genuine loans where Ld AO remained sitted with folded hands and failed to make any meaningful enquiry u/s 131/133(6) and no adverse material is brought on records to discredit assessee's copious evidence.

That on the facts and in the circumstances of the case and in law, Ld CIT(A) erred in not deleting the addition made by ld. AO u/s 68 (alleged unexplained cash credit) being genuine

loans by citing inapplicable precedents which are on share application money.

8. That on the facts and in the circumstances of the case and in law, Ld CIT(A) erred in not deleting the addition made Ld AO u/s 14A (rule 8D) on self suited reasoning and not considering Jurisdictional high court available orders covering assessee's case".

19. Ld. counsel for the assessee reiterated the submissions raised before ld. CIT(A) vide additional grounds taken before him. Ld. counsel submitted that satisfaction has not been recorded as per the requirement of section 153C. Ld. counsel further submitted that the initiation of proceedings u/s 153C were without jurisdiction as no relevant/ incriminating material, belonging to the assessee, was found during the search conducted in the case of searched person. Ld. counsel further submitted that in view of the decision of Hon'ble Delhi High Court in the case of CIT Vs. RRJ Securities (2015) 62 Taxmann.com 391 (Del), the initiation of proceedings for AY 2007-08 were barred by limitation because that fell outside the block period, which was to be reckoned from the date on which the proceedings were centralized u/s 127 on 6.11.2012 vide CIT Central-II, New Delhi order F.No. CIT(C)-II/Cent./2002-13/1368.

20. As regards assessment years 2008-09 and 2009-10, ld. counsel submitted that since the assessment had been completed u/s 143(3) on 30.12.2010 for AY 2008-09 and 30.12.2011 for AY 2009-10, therefore, they were completed assessments, hence, could not be tinkered with unless there was some incriminating material found in course of search in the case of searched person belonging to assessee.

21. As regards AY 2010-11, ld. counsel filed before us copy of acknowledgement of return of income and pointed out that this return was filed on 1.10.2010 and the notice u/s 143(2) could be issued upto 30.9.2011. He pointed out that period available for issue of notice u/s 143(2) is to be reckoned from the construed date of search as per first proviso to section 153C in case of other person in view of the decision of RRK Securities (supra). He submitted that since the cases were centralized on 6.11.2012, therefore, on this date (construed date of search), no time limit was left for issuance of notice u/s 143(2) for AY 2010-11 and, therefore, this assessment could not abate. Accordingly, this has to be considered completed assessment and, therefore, no addition could be made in absence of incriminating material.

22. As regards AY 2012-13, ld. counsel pointed out that AO has passed the assessment order u/s 143(3) on 29.3.2014 but since this assessment year fell within the block with reference to the construed date of search viz. 6.11.2012, therefore, the assessment order should have been passed u/s 153C and not u/s 143(3).

23. Ld. CIT(DR) submitted that the construed date of search as per first proviso to section 153C is only for the purpose of second proviso to section 153A and, therefore, relevant only for deciding which assessments are to be considered as pending assessments on date of search. She submitted that this deeming provision cannot be extended beyond the purpose for which it has been incorporated in the Act to decide under which section assessment is to be completed. She, therefore, submitted that assessment framed u/s 143(3) for AY 2012-13 was a valid assessment.

24. We have considered the rival submissions and have perused the record of the case. The first plea of ld. counsel for the assessee, regarding validity

of assessment u/s 153C is in regard to not recording of satisfactgion by AO in terms of section 153C.

25. The submission of ld. counsel is that the satisfaction was recorded on 8.8.2013 by the AO of person other than the searched person (AO of assessee) and not by the AO of such searched person viz. AO of Consortium Securities Pvt. Ltd.

26. As far as this plea of ld. counsel for the assessee is concerned, the issue is no more res-integra, more particularly, keeping in view the CBDT Circular on this issue that satisfaction as contemplated u/s 153C has to be recorded by the AO of both, searched person as well as by the AO of person other than the searched person. This is evident from the mandate of section 153C itself. The AO of searched person has to record a satisfaction that-

(a) Any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or
(b) Any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the searched person. Thereafter the AO of searched person has to hand over the books of a/c, documents, assets seized or requisitioned to the AO having jurisdiction over such other person. Once the AO of person other than the searched person receives such documents, then he can issue notice to assessee or reassess the income the other person in accordance with the provisions of section 153A, if this AO is satisfied that the books of a/c, documents, assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A. It is pertinent to note that the tenor of satisfaction, as contemplated in this section at two places is different. Whereas the AO of searched person has to simply

record a satisfaction regarding seized material being related to the other person, but when it comes to the recording of satisfaction by the AO of other person, then he can issue notice only if he is satisfied that the assets seized have a bearing on the determination of the total income of such other person. Thus, a more rigorous satisfaction is contemplated in this part of section 153C. The reason is obvious. Whereas, in the case of a searched person, search is proceeded by recording of reason to believe in consequence of information u/s 132 but when it comes to the initiation of proceedings in case of person other than the searched person, then the proceedings should not be reopened, merely if the documents related to that person are found but only when those documents have a bearing on the determination of the total income. This is so mandated by legislature so that proceedings in case of persons other than searched person are not reopened without due application of mind by AO of person other than searched person. One of the submissions of ld. counsel for the assessee in the context of this part of section 153C was that unless the AO of a person other than the searched person reaches the conclusion that the seized document represents incriminating material, the proceedings u/s 153C cannot be initiated. In our considered opinion, this is not the intention of legislature. A heavier burden has been imposed on the AO of the person other than the searched person, because the AO has to satisfy himself that the seized material has bearing on the total income, meaning thereby that AO should have formed a prima facie belief that the seized material has a bearing on the total income but he is not required to conclusively establish at the stage of issuing notice u/s 153C that the seized document represented incriminating material. The purpose of phrase 'have a bearing on the determination of the total income of such other person', is to meet such contingency where though the material

seized may be related to a person other than searched person, but if that material has no bearing at all on the determination of total income, then proceedings u/s 153C need not be initiated. The object is that AO should duly apply his mind to the material seized before issuing notice u/s 153C. The recording of satisfaction in the Income-tax Act in different sections have different import, depending upon the context in which the satisfaction is to be recorded. The whole object is to put a check on initiation of proceedings only after due application of mind.

27. Now, coming to the facts of the case, we find that in the satisfaction recorded on 8.8.2013 by the AO of person, other than of the searched person, it has, inter alia, been observed as under:

> "*The case has already been centralize with this office u/s 127 of the Income-tax Act, 1961, vide vide CIT, Central-II, New Delhi's order F.No. CIT(C)-II/Cent./2002-13/1368 dt. 06.11.2012.*

28. Thus, it is evident that the AO of searched person, had duly recorded the satisfaction and then only the case got centralized. Therefore, the plea of ld. counsel for the assessee that no satisfaction was recorded by the AO of searched person is devoid of any merit.

29. As regards the satisfaction recorded by AO of the person other than the searched person, the plea of argument of ld. counsel is that since no incriminating material was found relating to assessee (person other than the searched person), therefore, the initiation of proceedings was not in accordance with law.

30. We have observed earlier that AO of the person other than the searched person is required to form the prima facie belief that the seized material, relating to assessee, is having bearing on the total income of other

person. At the stage of issuance of notice u/s 153C he is not required to reach a conclusions regarding seized material being in the nature of incriminating material, which will lead to addition to total income of assessee. In this regard we may refer to the decision of Hon'ble Delhi High Court in the case of CIT Vs. RRJ Securities (2015)62 Taxmann.com 391 (Del), on which ld. counsel has placed heavy reliance. In para 35 & 36 of its decision, the Hon'ble High Court has observed as under:

> "*35. The AO of the person other than the one searched also, is not, at the stage of issuing notice .~ under Section 153CII53A of the Act, required to conclude that the assets/documents handed over to him by the AO of the searched person represent or indicate any undisclosed income of the Assessee under his jurisdiction. As explained in SSP Aviation (supra), Section 153C only enables the AO of a person other than the one searched, to investigate into the documents seized and/or the assets seized and ascertain that the same do not reflect any undisclosed income of the Assessee (i.e. a person other than the one searched) for the relevant assessment years. If the seized money, bullion, jewellery or other valuable article or thing seized as handed over to the AO of the Assessee, are duly disclosed and reflected in the returns filed by the Assessee no further interference would be called for. Similarly, if the books of accounts/documents seized do not reflect m1y undisclosed income, the assessments already made cannot be interfered with. Merely because valuable articles and/or documents belonging to the Assessee have been seized and handed over to the AO of the Assessee would not necessarily require the AO to reopen the concluded assessments and reassess the income of the Assessee.*
>
> *36. The decision in SSP Aviation (supra) cannot be understood to mean that the AO has the jurisdiction to make a reassement in every case, where seized assets or documents are handed*

over to the AO. The question whether the documents/assets seized could possibly reflect any undisclosed income has to be considered by the AO after examining the seized assets/documents handed over to him. It is only in cases where the seized documents/assets could possibly reflect any disclosed income of the Assessee for the relevant assessment years, that further enquiry would be warranted in respect of those years. Whilst, it is not necessary for the AO to be satisfied that the assets/documents seized during search of another person reflect undisclosed income of an Assessee before commencing an enquiry under Section 153C of the Act, it would be impermissible for him to commence such enquiry if it is apparent that the documents/assets in question have no bearing on the income of the Assessee for the relevant assessment years.

(emphasis supplied by us)

31. Now coming to the plea of ld. counsel for the assessee that no incriminating material was found relating to assessee from the premises of searched person. In this regard we find that during the search operation in the case of M/s Consortium group of cases on 28.7.2011, following documents were retrieved:

(i) page no. 14 to 36 of Annexure A-8.

(ii) Page nos. 94 to 139 of Annexure A-11.

These documents have been filed before us both, by assessee as well as the department. From pages 14 to 36 of Annexure A-8, it is noticed that the same is memorandum of understanding between Sh. Pankaj Dayal, Sh. Yogesh Gupta and Sh. Rajeev Behl (assessee). Further, page nos. 95 to 117 of Annexure A-11 also is the copy of the same memorandum of understanding. Page nos. 118 to 139 of Annexure A-11 represent papers relating to valuation of various projects of Realtech Group, which were assigned to the three promoters on partition. These documents were found from Shri Parminder Singh Kalra, who explained that due to dispute

between the promoters of Realtech group, MOU was drawn and as per the terms of the MOU, each partner had to appoint one arbitrator and he was one of such arbitrators. Beside him Shri B.N. Chandhok and Shri Kuldeep Ahuja were also appointed arbitrators. These three promoters were issued summons but only Shri Yogesh Gupta appeared before the Investigation Wind. The AO has noticed that he remained evasive on various replies. The books of a/c were not produced to corroborate the various entries in the seized documents. Under such circumstances, it cannot be said that AO could not arrive at the satisfaction as contemplated u/s 153C that the valuation (assets minus liabilities), arrived at in these documents had bearing on the total income of the three promoters including assessee, more particularly because assessee failed to explain the seized documents before the AO.

32. We, therefore, uphold the initiation of proceedings u/s 153C.

33. The next limb of ld. counsel for the assessee's argument, based on the decision of Hon'ble Delhi High Court in the case of RRJ Securities Ltd. (supra), is that the assessment proceedings for AY 2007-08 were wrongly initiated. We find considerable force in this argument of ld. counsel for the assessee in view of observations of Hon'ble Delhi High Court in para 24, which is reproduced hereunder:

> *24. As discussed hereinbefore, in terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(J) of the Act, would have to be in accordance with Section 1 53A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow the six assessment years for which assessments/*

reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment year 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years prior to the assessment year relevant to the previous year in which the search was conducted. If this interpretation as canvassed by the Revenue is accepted, it would mean that whereas in case of a person" searched, assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be reopened would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to the AO would be subsequent to the date of the search. This, in our view, would be contrary to the scheme of Section 153C(1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one searched) as the date of the search on the Assessee. The rationale appears to be that whereas in the case of a searched person the AO of the searched person assumes possession of seized assets/documents on search of the Assessee; the seized assets/documents belonging to a person other than a searched person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than tile one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no

jurisdiction to make an assessment of the Assessee's income for that year.

34. The block period, in view of first proviso to section 153C, had to be determined for the purposes of second proviso to section 153A from the date when the books of a/c were handed over to the AO of person other than the searched person. Respectfully following the aforementioned decision of Hon'ble Delhi High Court in the case of RRJ Securities Ltd. (supra)we hold that assessment for AY 2007-08 was outside the ambit of the block period and the AO had no jurisdiction to make assessment of the assessee's income for that year. Accordingly, assesse's appeal for AY 2007-08 is allowed.

35. Now coming to the appeals for AY 2008-09 and 2009-10, where the regular assessments were completed u/s 143(3) on 30.12.2010 and 30.12.2011 respectively u/s 143(3), the plea of ld. counsel for the assessee is that they were completed assessments and, therefore, the assessee's total income could be tinkered with only when some incriminating material was found during the course of search. He referred to the assessment order passed by the AO and pointed out that both the additions made by AO have no relation with the seized material and therefore, additions could not be made to the income assessed under the regular assessment.

36. We have considered the submissions of both the parties and have perused the record of the case. We find that as far as addition u/s 14A made for both the assessment years is concerned, the same has no relation with the seized material and since this was a case of completed assessment on the date of construed search, therefore, the addition could not be made.

37. As far as the second addition u/s 68 is concerned, we find that the addition has been made in respect of loans in AYs 2008-09 and 2009-10 as under:

A.Y. 2008-09:

Sh. Sandeep Sehgal	Rs. 35,00,000/-
Ms. Asha Hiryani	Rs. 4,80,000/-
M/s TKS Projects P. Ltd.	Rs. 4,00,000/-

A.Y: 2009-10:

Sandeep Sehgal	Rs. 35,00,000/-
Manish Mehta HUF	Rs. 10,00,000/-
M/s Maheshwari Synthetics	Rs. 15,00,000/-
Asha Hiryani	Rs. 4,80,000/-
M/s Alpex Exports P. Ltd.	Rs. 29,00,000/-

38. When we compare these loans with the seized documents, we find that at page 125 on the liability side, the following details are there:

FBD-OMCO	
1. Ranbir Nanda	Rs. 2650000/-
2. Ruchit Puri	Rs. 1250000/-
3. Virender Kumar	Rs. 1000000/-
4. Anil Kr. Malik/ Nirmal Khurana	Rs. 1000000/-
5. Ashok Narang/ Ashish Singh	Rs. 1000000/-
6. Parag Singhal	Rs. 1000000/-
FBD-BOC	
7. Jagdeep Singh Suri/Ranjit Chopra	Rs. 6400000/-
8. Honey Arora/ Ajinder P. Singh	Rs. 1500000/-
9. Luxmi Kandhari	Rs. 1500000/-
SOHNA-IT	
10. Jitender Singh	Rs. 1500000/-

GREATER NOIDA

11. Ranbir Nanda	Rs. 1000000/-
12. S.K. Verma	Rs. 1250000/-
13. Asha Chordia	Rs. 1000000/-
14. Gange Developres & Infrastructure	Rs. 1000000/-
15. Mahesh Vishnu Trade Credit(P) Ltd.	Rs. 1000000/-
16. Ashok Aggarwal	Rs. 1000000/-
17.Sanjay Shanker Gaikwad	Rs. 500000/-
18. Benu Agarwal	Rs. 500000/-
19. Yagya P Gupta	Rs. 500000/-
20. Achla Aggarwal	Rs. 1000000/-
21. Nandni Paints P. Ltd.	Rs. 500000/-
Total:	Rs. 28050000/-

39. Further, at page 130 we find that the details of loans received by Realtech Group were as under:

> *"There is an existing liability of Rs. 3.67 crore (Rs. Three core sixty seven lac only) on account of loans received on interest on behalf of Realtech group. The details are mentioned hereunder:*

Nijhawan	*Rs. 50,00,000/-*
Ravinder Ahuja	*Rs. 1,50,00,000/-*
Sandeep Mehta	*Rs. 35,00,000/-*
Sanjay Garg	*Rs. 72,00,000/-*
Adarsh India	*Rs. 60,00,000/-*

40. A bare perusal of these details clearly shows that none of the parties in respect of which additions have been made were mentioned in the seized documents.

41. At this juncture we may observe that though the AO has noticed that inspite of repeated opportunities the assessee neither furnished the necessary details nor explained the seized documents but has not made any addition with reference to seized documents. In this regard we notice that the AO in para 4 has observed that the details filed by the assessee had been correlated

with the claims made in the return of income. Thus, it is evident that addition has not been made with reference to seized documents and, therefore, it can be safely concluded that the addition has been made by AO sans incriminating material. Therefore, in view of the decision of Hon'ble Delhi High Court in the case of Kabul Chawla 234 Taxman 300/61 Taxmann.com 412 (Delhi) (ITA no. 707/2014 dated 28.8.2015) and the decision in the case of RRJ Securities Ltd. (supra), since the completed assessment could only be interfered with by the AO on the basis of any incriminating material found during the course of search or requisition of the document, therefore, the assessment made for AYs 2008-09 and 2009-10 are quashed because they were the completed assessment on the date of construed search.

42. Now coming to the assessment year 2010-11. For this assessment year admittedly no intimation u/s 143(1) was issued. The assessee in the paper book has filed the copy of acknowledgement of filing return of income on 1.10.2010. The contention of ld. counsel for the assessee was that this was also a case of completed assessment by placing his reliance on the decision of Hon'ble Delhi High Court in the case of Kabul Chawla (supra). Since no intimation u/s 143(1) had been issued for this assessment year, therefore, the decision of Hon'ble Delhi High Court in the case of Kabul Chawla (supra) is not applicable to the facts of the case.

43. In order to find out whether a particular assessment is a completed assessment or not on the date of search, we have to find out whether time limit for issuance of notice u/s 143(2) was there or not on the date of search, in view of the decision of Hon'ble Jurisdictional High Court of Delhi in the

case of CIT Vs. Income Tax Settlement Commission, rendered in WP(C) 213/2012 (C.M. Application 452/2012) vide order dated 20.11.2012. The Hon'ble Jurisdictional High Court has observed as under:

> *"10. The expression "pending" in this case, has to be viewed contextually. In plain terms, it would mean when some case, cause or controversy is actually pending consideration before the assessment officer. In the facts of this case, the assessee filed its returns for four successive years: no notice under Section 143 (3) was issued. The AO lost jurisdiction to deal with those matters on the expiry of 21 months' period reckoned from the daters) when the returns were filed. In Calcutta Discount Company Limited vs. Income-tax Officer & others, AIR 1961 SC 372, the Supreme Court had ruled that an assessment proceeding commences from the date when the assessee files its return. The terminus quo therefore would be the last date by which the Assessing Officer can legally pass an order. Once that period lapses, the officer loses jurisdiction and authority to issue any order …. ."*

44. Determination of this aspect is necessary in order to find out whether the assessment for a particular will abate or not. If it is a case of pending assessment, then in view of second proviso to section 153A, the assessment will abate but if it is a case of completed assessment, then the assessment will not abate. In this assessment year we find that return of income had been filed on 1.10.2010 and, therefore, notice u/s 143(2) could be issued up to 30.9.2011. Up to this date the assessment could be treated as pending assessment in view of the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Income Tax Settlement Commission (supra), an assessment is to be considered as a pending assessment if on the date of search, time was available for issuance of notice u/s 143(2).

45. The search in the present case took place on 28.7.2011 and on this date the time for issuance of notice u/s 143(2) was available because the notice could be issued up to 30.9.2011. However, in the present case the construed date of search would be 6.11.2012, being the date on which the seized documents were handed over to the AO of assessee. As held by us in preceding paras, the block period is to be reckoned from 6.11.2012 and when this date is substituted for the date of search then it cannot be said that the assessment for AY 2010-11 was pending on 6.11.2012. Therefore, this assessment also could not be tinkered with without there being any incriminating material.

46. We find that addition has been made in respect of following loans:

A.Y. 2010-11:

Navneet Gupta	Rs. 45,00,000/-
Maheshwari Synthetic	Rs. 10,00,000/-
Gurinder Singh Ahuja	Rs. 20,00,000/-
M/s Van Guard Media P. Ltd.	Rs. 75,00,000/-

47. When compared with the details of loans as per the seized documents, noted earlier, it is evident that there is no nexus between the additions made by AO with the seized documents. Therefore, the assessment for AY 2010-11 is also quashed.

48. Now coming to the assessment for AY 2012-13. For this assessment year the AO had passed the assessment order u/s 143(3) and not u/s 153C. The submission of ld. counsel is that since this assessment year falls in the block period reckoned from the construed date of search, therefore, AO should have passed the assessment order u/s 153C and not u/s 143(3). He

submitted that this assessment order is required to be quashed as not passed in accordance with law.

49. We find that the argument advanced by ld. counsel for the assessee overlooks the provisions of section 153C(2).

50. Ld. DR has rightly pointed out that first proviso to section 153C regarding substitution of date of search in the second proviso to section 153C in case of person other than the searched person, is only limited for determining the applicable period and it cannot be extended for determination of the section under which assessment order is to be passed. We find considerable force in the submission. No where u/s 153C, it is mentioned that the assessment for assessment year after the date of actual search has to be made in accordance with the provisions of section 153A. This is clearly evident from the provisions of section 153C(2), which reads as under:

> "*(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year-*
>
> *(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or*
>
> *(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been*

served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.]"

51. If we closely analyze the provisions of section 153C, we find that by incorporating second proviso to section 153C, the date of search has been deferred to the date of transfer of assets/ documents etc. to the AO having jurisdiction over other persons. The consequence of this would be to reckon the block period from this date. Therefore, legislature has incorporated section 153C(2) as per which, assessment u/s 153A/153C is to be made only if conditions contemplated in either of clause (a),(b) or (c) u/s 153C(2) are fulfilled. All these clauses contemplate various situations where assessment has to be treated as completed assessment. However, in respect of pending assessment no such provision has been made. Therefore, for pending assessments AO has to pass assessment order u/s 143(1)/ 143(3). If we accept the contention advanced by ld. counsel, then section 153C(2) will be rendered otiose. This section has been incorporated in view of the deeming provision contained in second proviso. Had the intention of legislature was that assessment orders in respect of assessment years prior to the date of construed search are to be passed u/s 153A/153C, then it could incorporate provisions identical to first proviso to section 153A for passing assessment orders. But that has not been done. In this regard it is pertinent to note that no incriminating document is likely to be found on date of actual search

relating to post search period. Therefore, there was no need to pass orders u/s 153A in respect of assessment year relevant to period after the date of actual search. It is well settled law that all orders passed by authorities are within jurisdiction unless contrary is established.

52. Admittedly the documents were received by AO of assessee after the due date for furnishing the return of income for assessment year 2012-13 relevant to previous year 2011-12. Therefore, assessment could be framed u/s 153A/ 153C only when any of the conditions contemplated under clauses (a), (b) or (c) are fulfilled.

53. As is evident from the assessment order, none of these conditions had been fulfilled and, therefore, the assessment framed u/s 143(3) was proper.

54. On merits, though ld. counsel for the assessee has not advanced any submission, but we find that assessee is aggrieved by the assessment order as well as ld. CIT(A)'s order on the ground that sufficient opportunity of hearing was not allowed to him. We notice that AO has also observed that assessee had not furnished necessary details in respect of certain loans for which addition has been made. We notice that assessment has been framed on 29.3.2014, almost at the fag end of limitation. Ld. CIT(A) has confirmed those findings after detailed deliberation. However, in order to impart substantial justice to the assessee, we consider it proper to set aside the orders of authorities below and restore the matter to the file of AO for passing the assessment order de novo.

55. In the result, assessee's appeals for AY 2007-08, 2008-09, 2009-10, 2010-11 are allowed and the appeal for AY 2012-13 is allowed for statistical purposes.

Order pronouncement in open court on 29/06/2016.

Sd/-	Sd/-
(C.M. GARG)	(S.V. MEHROTRA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Dated: 29/06/2016.

MP

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.