

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

आयकर अपील सं. / ITA Nos.1381 to 1383/PUN/2016  
निर्धारण वर्ष / Assessment Years : 1999-2000 to 2001-02

Kewal Kumar Jain  
Kumar Capital, 1<sup>st</sup> Floor,  
2413, East Street,  
Pune – 411001

.... अपीलार्थी/Appellant

PAN: AAYPJ2209C

Vs.

The Asst. Commissioner of Income Tax,  
Circle 4, Pune

.... प्रत्यर्थी / Respondent

Assessee by : Shri Rajendra Agiwal  
Revenue by : Shri O.A. Mao

सुनवाई की तारीख / <b>Date of Hearing : 30.08.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 30.08.2018</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

This bunch of three appeals filed by assessee are against consolidated order of CIT(A)-2, Pune, dated 03.03.2016 relating to assessment years 1999-2000 to 2001-02 against respective orders passed under section 143(3) r.w.s. 153C of the Income Tax Act 1961 (in short the 'Act').

2. This bunch of three appeals relating to same assessee on similar issues were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The assessee has raised several grounds of appeal but we are first adjudicating the jurisdictional issue raised by the assessee by way of ground of appeal No.4, which reads as under:-

**“Assessment is Time Barred**

4. *failed to appreciate that six years prior to the assessment year in which documents were received by the jurisdictional Assessing Officer of the Appellant, which can be reassessed to tax, start from AY 2002-03 and hence reassessment made for AY 1999-00 is time barred;”*

4. Briefly, in the facts of the case, the assessee had originally filed return of income on 31.08.2009. Search and seizure operation under section 132 of the Act was carried out at the premises of Shri Shreeram H. Soni on 29.07.2003. During the course of search operation, documents relating to the assessee were found and seized. The said documents were forwarded to the Assessing Officer, Incharge of assessee vide letter dated 30.05.2007. On receipt of the documents, the Assessing Officer issued notice under section 153C of the Act for assessment years 1998-99 to 2004-05. We are concerned with the appeals relating to assessment years 1999-2000 to 2001-02. The Assessing Officer made certain additions in the hands of assessee vide order passed under section 143(3) r.w.s. 153C of the Act.

5. Before the CIT(A), the assessee challenged the validity of initiation and also the conduct of proceedings under section 153C of the Act. The challenge was that no proceedings could be initiated for the captioned assessment years

as it was beyond the period of six years starting from the date of information received i.e. 15.06.2007. The assessee also challenged the assessment proceedings for non-issue of notice under section 143(2) of the Act. However, the CIT(A) dismissed both the contentions of assessee and decided the issue on merits.

6. The assessee is in appeal before us both on jurisdictional issue and issue raised on merits. We are proceeding to decide the jurisdictional issue first.

7. The learned Authorized Representative for the assessee strongly objected to the assessment proceedings conducted for the captioned assessment years being beyond the period of six years starting from assessment year 2008-09 since the information was received by the Assessing Officer, Incharge of assessee on 15.06.2007.

8. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the orders of Assessing Officer and CIT(A).

9. We have heard the rival contentions and perused the record. Briefly, in the facts of the case, search under section 132 of the Act was carried out at the premises of Shri Shreeram H. Soni on 29.07.2003, wherein certain documents relating to the assessee were found and seized. The said information was received by the Assessing Officer, Incharge of assessee on 15.06.2007, which is clearly mentioned in the assessment order at page 5 of the said order. In other words, information was received in assessment year 2008-09. Under the pre-

amended provisions of section 153C of the Act, it is provided 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 to a person other than the person referred in section 153A of the Act i.e. the person searched, then books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person. The proviso thereunder reads as under:-

“153C(1).....

**Provided** that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to 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”

10. In view of proviso to section 153C of the Act, in the case of such ‘other person’, reference to the date of initiation of search under section 132 of the Act shall be construed as reference to the date of receiving books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person. Further, under section 153A of the Act, the Assessing Officer is empowered to assess or re-assess the total income in respect of each assessment year falling within such six assessment years. In other words, period of assessment or re-assessment has to be within a period of six years from the year of receipt of information by the Assessing Officer, Incharge of such other person. In the case of assessee, the year of receipt of information is assessment year 2008-09 and in case the period of six years is counted from that year, then it would be up to assessment year 2002-03; whereas the assessee is in appeal before us for the assessment completed relating to assessment years 1999-2000 to 2001-02. The learned Authorized

Representative for the assessee has placed heavy reliance on the ratio laid down by the Hon'ble High Court of Delhi in Pr. CIT Vs. Sarwar Agency (P.) Ltd. (2017) 397 ITR 400 (Del).

11. We find that the Hon'ble High Court of Delhi has adjudicated the said issue in detail i.e. assessment or re-assessment of 'other person' under sub-section (1) of section 153C of the Act in accordance with the provisions of section 153A of the Act. The Hon'ble High Court referred to the said provisions and observed as under:-

*"4. Sub-section (1) of Section 153C provides that the assessment or re-assessment of the income of the 'other person' would be in accordance with the provisions of Section 153A. The first proviso to sub-section (1) of Section 153 C further states that, in case of such other person, the reference to the date of initiation of search in the second proviso to Section 153 A(1) "shall be construed as reference to the date of receiving the books of accounts or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person."*

12. Thereafter, elaborating on the case of assessee, it was observed as under:-

*"5. In terms of Section 153 A(1) (b) of the Act, the AO shall assess or re-assess the total income of six AYs immediately preceding the AY relevant to the previous year in which the search was conducted. The second proviso to sub-section (1) of Section 153 A of the Act, states that assessment or reassessment relating to any AY falling within the period of six AYs referred to in the said sub-section pending on the date of initiation of the search under Section 132, would abate.*

*6. The case of the Revenue is that the first proviso to Section 153 C refers only to the second proviso to Section 153 A(1) of the Act, which only indicates that any assessment relating to any AY falling within the period of six AYs which is pending as of the initiation of search shall abate. Therefore, the second proviso to Section 153 C is also concerned only with the aspect of abatement of pending assessments. According to the Revenue, this makes no difference to the computation of the block of six years preceding the AY relevant to the previous year /in which the search was conducted. In other words, according to the Revenue, the block period for both the searched person and the 'other person' would remain the same notwithstanding that there may be some delay in transmitting the documents recovered during the search which belong or pertain to the 'other person' to the AO of such other person.*

7. The case of the Assessee, on the other hand, is that since in the case of the 'other person' the AO issues notice only subsequent to the notices issued under Section 153 A to the searched person, the starting point for computation of the block period would be the date on which, based on the seized documents, notice is issued to the 'other person' under Section 153 C of the Act. Thus in the present case, the six year period prior to AY 2012-13 i.e. AY 2007-08 to AY 2012-13. Thus no notice could be issued under Section 153 C of the Act to reopen the Assessee's assessment for AY 2006- 07. Reliance is placed on the decision of this Court in Commissioner of Income-tax-7 v. RRJ Securities Ltd. [2016] 380 ITR 612 (Del) where this very question was examined and answered in favour of the Assessee and against the Revenue.

8. In RRJ Securities (supra), the Court after noticing the decision in SSP Aviation Ltd. v. Deputy CIT [2012] 346 ITR 177 (Del), held as follows:

"21. As discussed hereinbefore, once the AO of the searched person is satisfied that the seized assets/documents belong to another person and the said assets/documents have been transferred to the AO of such other person, the proceedings for assessment/reassessment of income of the other person has to proceed in accordance with provisions of Section 153A of the Act. Section 153A requires that where a search has been initiated under Section 132 of the Act, the AO is required to issue notice requiring the noticee to furnish returns of income in respect of six assessment years relevant to the six previous years preceding the previous year in which the search is conducted. As discussed hereinbefore, by virtue of second proviso to Section 153A, the assessment/reassessment pending on the date of initiation of search abate. In the context of proceedings under Section 153C of the Act, the reference to the date of initiation of the search in the second proviso to Section 153A has to be construed as the date on which the AO receives the documents or assets from the AO of the searched person. Thus, by virtue of second proviso to Section 153A of the Act as it applies to proceedings under Section 153C of the Act, the assessment/reassessment pending on the date on which the assets/documents are received by the AO would abate. In respect of such assessments which have abated, the AO would have the jurisdiction to proceed and make an assessment. However, in respect of concluded assessments, the AO would assume jurisdiction to reassess provided that the assets/documents received by the AO represent or indicate any undisclosed income or possibility of any income that may have remained undisclosed in the relevant assessment years..... 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(1) of the Act, would have to be in accordance with Section 153A 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 that 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."

*9. The said decision in RRJ Securities (supra) has been followed by this Court subsequently in ARN Infrastructure India Ltd. v. Assistant Commissioner of Income-tax, Central Circule-28, New Delhi [2017] 394 ITR 569 (Del.).”*

13. The Hon'ble High Court also considered the amendment to section 153C of the Act by Finance Act, 2017 and held that the said amendment in effect stated that block period for searched person as well as other person would be the same six years immediately preceding year of search. It was further held by the Hon'ble High Court that the said amendment was prospective. The Hon'ble High Court also noted the fact that the Revenue had not challenged the decision of the Hon'ble High Court of Delhi in CIT Vs. RRJ Securities Ltd. (2015) 62 taxmann.com 391 (Del) before the Hon'ble Supreme Court and also noted that recent amendment to section 153C(1) of the Act stated for the first time for both the searched person and other person, the period of re-assessment would be six years preceding the year of search. It was reiterated that the said amendment was prospective and the appeal of Revenue in that case was dismissed.

14. The issue arising in the present appeal before us is squarely covered by the ratio laid down by the Hon'ble High Court of Delhi (supra) and following the same parity of reasoning, we hold that assessment proceedings initiated for assessment years 1999-2000 to 2001-02 are beyond the period of available under the proviso to section 153C read with proviso to section 153A of the Act and hence, the Assessing Officer had no jurisdiction to take up proceedings for the captioned assessment years. We hold that initiation and completion of proceedings against the assessee, who is 'other person' than searched person, is both invalid and bad in law. The jurisdictional issue raised by the assessee by

way of ground of appeal No.4 is thus, allowed. We are not addressing the issue on merits as assessment has been held to be invalid.

15. In the result, all the appeals of assessee are allowed.

Order pronounced on this 30<sup>th</sup> day of August, 2018.

Sd/-  
(ANIL CHATURVEDI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-  
(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 30<sup>th</sup> August, 2018.

GCVSR

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-2, Pune;
4. The Pr.CIT-2, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "बी" / DR 'B', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune