

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "G" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA.No.2526/Del./2017  
Assessment Year 2013-2014

Shri Vinod Kumar, House No.87, Village & Post Office Jaunpur, Mehralui, New Delhi – 110 047. PAN AALPK7391K	vs.	The DCIT, Central Circle-1, 7 <sup>th</sup> Floor, HSIIDC Building, Udyog Vihar, Phase-V, Gurgaon.
(Appellant)		(Respondent)

For Assessee :	Shri Prakash Chand Yadav, Advocate.
For Revenue :	Shri Prakash Dubey, Sr. D.R.

Date of Hearing :	31.03.2021
Date of Pronouncement :	06.04.2021

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-3, Gurgaon, Dated 28.02.2017, for the A.Y. 2013-2014.

2. We have heard the Learned Representative of both the parties and perused the material available on record.

3. Briefly the facts of the case are that a return of income declaring total income of Rs.3,10,05,770/- was filed by the assessee on 31.03.2014. The A.O. noted that assessee enjoys income from house property, long term capital gains and from other sources. The books of account produced by assessee were found to be correct. The A.O. asked the assessee to explain the method of valuation of 231 shares held by him of M/s. Krrish Realty Nirman Pvt. Ltd., and sold by him to M/s. Olmec Properties Pvt. Ltd. The assessee filed a detailed reply before A.O, but, the A.O. was not satisfied with the explanation of assessee. The A.O. noted that same issue was considered in A.Y. 2012-2013 in which the Ld. CIT(A) has deleted the addition of Rs.38,61,24,029/- and the appeal of the Department is filed before the Tribunal. The A.O. considering the explanation of assessee, made addition of Rs.73,86,427/- on account of long term capital gains and also made addition of

Rs.12,45,000/- under section 68 of the I.T. Act on account of agricultural income. The A.O. passed the assessment order under section 143(3) Dated 22.01.2016. The assessee challenged both the additions before the Ld. CIT(A). The Ld. CIT(A) partly allowed the appeal of assessee.

4. The assessee in the present appeal has raised the following additional grounds :

- a) *“The A.O. has erred in assuming and assessing the impugned year as year of search, ignoring that the year of search for the present assessee would be AY 2014-15, as the documents pertaining to present assessee were received on 29.08.2013, as is evident from the assessment order.*
- b) *On the facts and under the circumstances of the case the assessment of the impugned year, without following the mandatory provisions of law applicable for cases covered under section 153C, is bad in law and void ab-initio.*

c) *Without prejudice to the above, On the facts and under the circumstances of the case, the jurisdiction of the AO under is bad in law as no satisfaction in the file of searched person has ever been recorded for assuming the jurisdiction of assessee's case for the present AY 2013-14.”*

4.1. Learned Counsel for the Assessee submitted that the additional grounds are legal in nature and goes to the root of the matter and relied upon Judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., vs., CIT 229 ITR 383 (SC) and submitted that identical issue have been considered by ITAT, Delhi G-Bench, Delhi in the case of the same assessee for preceding A.Y. 2012-2013 vide Order Dated 09.08.2019 and this issue have been considered in favour of the assessee. He has, therefore, submitted that since the additional grounds raised are legal in nature and goes to the root of the matter, therefore, the same may be admitted for disposal of the appeal.

5. The Ld. D.R. on the other hand opposed to the admission of the additional grounds.

6. Considering the facts of the case in the light of Order of the Tribunal Dated 09.08.2019 (supra) and that the additional grounds are legal in nature and goes to the root of the matter, therefore, we admit the additional grounds for the purpose of disposal of the appeal.

7. Learned Counsel for the Assessee submitted that search and seizure action was conducted by the Department on M/s. Krrish Realty Nirman Pvt. Ltd., Group on 09.11.2011. The A.O. made the additions on account of long term capital gains and under section 68 of the I.T. Act, 1961 solely relying upon his assessment order for the preceding A.Y. 2012-2013. He has submitted that A.O. has incorrectly assumed the impugned assessment year as search year and hence, erred in framing the assessment of the impugned year under section 143(3) of the I.T. Act, 1961 instead of passing the Order under section 153C of the I.T. Act, 1961. He has submitted that A.O. has not recorded any satisfaction note under section 153C of the I.T. Act and has referred the reply Dated 20.05.2020 under RTI Act in which A.O. has specifically admitted that no such satisfaction is

recorded in assessment year under appeal and the same have not been found-out from the record. He has submitted that no satisfaction note have been recorded in the case of the person searched, therefore, assessment order is invalid and bad in Law. He has submitted that it is an admitted fact that documents pertaining to assessee had been transferred to the A.O. of Central Circle on 29.08.2013. Hence, as per the First proviso to Section 153C of the I.T. Act the date of search in the case of assessee would be 29.08.2013 which would fall in A.Y. 2014-2015, therefore, the previous six years period would have to be reckoned from this date which would mean the relevant assessment year of the search in the case of assessee would be from A.Ys. 2008-2009 to 2013-2014. He has submitted that the A.O. instead of passing the Order under section 153C of the I.T. Act passed the assessment order under section 143(3) of the I.T. Act, 1961 which is illegal and bad in Law. He has submitted that the same issue have been considered by ITAT, Delhi G-Bench, Delhi in the case of the same assessee for preceding A.Y. 2012-2013 in ITA.No.2550/Del./2015

and C.O.No.146/Del./2018 vide Order Dated 09.08.2019 and cross-objection of the Assessee has been allowed and Departmental appeal have been dismissed. He has submitted that the issue is, therefore, covered in favour of the assessee and impugned assessment order is *void abinitio*. He has submitted that same issue is also considered by ITAT in this Order following the Order in the case of BNB Investment & Properties Ltd., vs., DCIT [2018] 68 ITR 567 [Delhi-Tribu.] vide Order Dated 27.06.2018. Similarly, the ITAT in the case of M/s. Ambawata Buildwell Pvt. Ltd., in ITA.No.2592/2015 vide Order Dated 23.08.2018 held that “*year of search in these cases would be A.Y. 2014-2015 as the documents pertaining to assessee were received on 29.08.2013.*” The Learned Counsel for the Assessee, therefore, submitted that the assessment order is *null and void*.

8. On the other hand, the Ld. D.R. relied upon the Orders of the authorities below and submitted that the ITO in the case of the person searched and the third person i.e., assessee are the same, therefore, one A.O. cannot handover

the documents with another A.O. Thus, it is evident that the instant case of the assessee is not the one where the documents were handed-over to another A.O. holding the jurisdiction over the assessee, but, a case where the case of the assessee was handed-over to the A.O. who completed the assessment in the case of assessee, covered under section 153A. Thus, the First proviso to Section 153C does not get attracted at all in the instant case. The Ld. D.R. submitted that decision in the case of CIT vs., RRJ Securities Pvt. Ltd., 380 ITR 612 (Del.) (HC) the Hon'ble Delhi High Court took a view that the years covered under section 153C would be determined from the date of handing-over the documents to the other A.O. considering such date as initiation of the search and same view have been taken by the Hon'ble Delhi High Court in its subsequent decision in the case of CIT vs., Swar Agencies 397 ITR 400 (Del.), but, Review Petition could not be filed because of low tax effect. Thus, this decision will not apply in the case of assessee. The Ld. D.R. submitted that seventh year in the case of the assessee would be A.Y. 2012-2013.

Thus, the proceedings for the year under consideration i.e., A.Y. 2013-2014 has been rightly completed under section 143(3) of the I.T. Act and there is no obligation on the A.O. to record satisfaction under section 153C of the I.T. Act, 1961. The Ld. D.R. also filed written submissions as well as certain decisions referred to in the written submissions.

9. We have considered the rival submissions and perused the material on record. The A.O. in response to the RTI Application reported to the assessee vide letter Dated 20.05.2020 that as per the record available in his Office the satisfaction note recorded by assuming jurisdiction in the case of the assessee under section 153C in the case of M/s. Venta Realtech Pvt. Ltd., [Formerly known as M/s. Krrish Realty Nirman Pvt. Ltd., ] has not been found. The ITAT, Delhi Bench in the case of the assessee in Departmental Appeal and Cross Objection vide Order Dated 08.09.2019 considered the identical issue and declared the assessment order to be *null and void*. The Cross Objection of the Assessee is allowed and Departmental Appeal is dismissed.

The Order of the Tribunal Dated 09.08.2019 (supra) is reproduced as under :

**“IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “G” NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI L. P. SAHU, ACCOUNTANT MEMBER**

I.T.A. No.2550/DEL/2015  
Assessment Year: 2012-13

DCIT, Central Circle-1, Faridabad.	vs.	Vinod Kumar, H. No.267, Ist Floor, Chhatarpur Enclave, Mehrauli, New Delhi.
TAN/PAN: AALPK 7391K		
(Appellant)		(Respondent)

CO No.146/DEL/2018  
Assessment Year: 2012-13

Vinod Kumar, H. No.267, Ist Floor, Chhatarpur Enclave, Mehrauli, New Delhi.	vs.	DCIT, Central Circle-1, Faridabad.
TAN/PAN: AALPK 7391K		
(Appellant)		(Respondent)

Appellant by:	Shri S.S. Rana, CIT-DR		
Respondent by:	Shri P.C. Yadav, Adv.		
Date of hearing:	22	05	2019
Date of pronouncement:	09	08	2019

**ORDER**

**PER AMIT SHUKLA, JUDICIAL MEMBER:**

*The aforesaid appeal has been filed by the Revenue and Cross Objection by the assessee against the impugned order dated 24.02.2015 passed by Pr. CIT (OSD), Gurgaon u/s.153B(1)/143(3) for the Assessment Year 2012-13.*

*2. Though, the Revenue has challenged the addition of Rs.38,61,24,029/- made on account of Short Term Capital Gain, whereas in the Cross Objection the assessee has challenged the very validity of assessment framed u/s.153B(1)/143(3) on the following grounds:*

*“1. The order of AO as sustained by the CIT (A) is bad in law.*

*2. On the facts and under the circumstances of the case the Assessment order passed under section 153B(1)(b)/143(3), considering the impugned year as year of search, ignoring the date of receipt of material from the AO of searched person, is bad in law in terms of the Ist proviso of section 153C of the Act.*

*a) The AO has erred in assuming and assessing the impugned year- as year of search, ignoring that the year*

*of search for the present assessee would be AY 2014-15, as the documents pertaining to present assessee were received on 29.08.2013, as is evident from the assessment order.*

*b) On the facts and under the circumstances of the case the assessment of the impugned year without following the mandatory provisions of law applicable for cases covered under section 153C is bad in law*

*3. Without prejudice to the above, On the facts and under the circumstances of the case, the jurisdiction of the AO under section 153C is bad in law as no satisfaction in the file searched person has ever been recorded for assuming the jurisdiction of assessee's case for the present AY.”*

*3. Since the validity and the jurisdiction of the Assessing Officer for passing the order u/s.153B(1)/143(3) has been challenged by the assessee in his cross objection, therefore, this issue is being taken up. The brief facts qua the said legal issue are that assessee is an individual deriving income from salary, house property and other sources. Return of income*

*for the Assessment Year 2012-13 was filed on 06.10.2012, declaring total income of Rs.1,12,01,410/-. A search and seizure action was conducted by the Investigation Wing, Chandigarh at Krrish Group on 09.11.2011. Thereafter, a survey action u/s.133A was also carried out on 05.11.2011 at the business premises of the assessee and his company M/s. Ambawata Buildwell Pvt. Ltd. As culled out from the assessment order, the assignment of jurisdiction over the assessee was transferred to CIT, Central Gurgaon, vide order dated 12.08.2013, who transferred the case to Assessing Officer of Central Circle-1, Faridabad and the seized documents were received in the same Central Circle on 29.08.2013. Thereafter, the Assessing Officer in paragraph 2 had taken note of the fact that in the present year the provision of Section 153A(1)(a) r.w.s. 153C of the Act are applicable, treating it to be the year of search. Accordingly, a notice were issued to the assessee u/s.142(1) requiring him to file his return of income in respect of Assessment Year 2012-13, i.e., assessment year pertaining to year in which survey was conducted. In response, assessee has stated that*

he has already filed his return of income on 16.10.2012. Thereafter, assessee has filed revised return on 29.11.2013 declaring income of Rs.4,62,24,040/-. In pursuance to such revised return notice u/s.143(2) and 142(1) were issued to the assessee. The Assessing Officer in the assessment order has made addition of Rs.38,61,24,029/- after detailed discussion based on seized material and finally concluded as under:

“13. The total consideration for 2737 equity shares at the rate of Rs.1,57,517/- per share as calculated above comes to Rs.43,11,24,029/- However, the assessee has taken the sale consideration for 2737 equity shares as Rs.4,50,00,000/- which is not acceptable. Hence, the difference of the sale consideration which comes to Rs.38,61,24,029/- is added to the returned income of the assessee.

Hence, an addition of Rs.38,61,24,029/- is made to the returned income of the assessee for the year.”

4. Though, validity of assessment was not challenged before the ld. CIT(A), however, in Cross Objection, assessee has raised this issue and has also filed application under Rule 27 of the ITAT Rules.

5. Before us, ld. counsel for the assessee had submitted following dates and sequence of events with reference to assessment order: -

<i>DATE</i>	<i>Sequence of event</i>	<i>Page no of PB</i>
09.11.2011	Search and seizure action occurred in the case of Krrish Group. It is alleged that some documents belonging to assessee were found from Krrish Reality Nirman Pvt Ltd located at 406 Tower, Elegance Tower, Jasola Distt. Centre Sarita-Vihar New-Delhi	Admitted fact-see Asst Order-Pg-2
16.10.2012	Return of Income filed by assessee declaring Income of Rs 1,12,01,410/-	Admitted fact-See Asst Order-Pa -2
12.08.2013	Jurisdiction of assessee has been transferred from Gurgaon to Faridabad.	See Asst Order First Page
29.08.2013	The documents pertaining to assessee had been transferred to the AO of central circle.	Admitted fact - See Asst Order-Pg -1
16.10.2013	Detailed questionnaire has been issued	Asst order Pg-2
27.12.2013	Effective hearing vis-a-vis the issue involved has taken place	Para I at Page NO-3 of the assessment
03.02.2014	AR of the assessee appeared and filed reply	
05.02.2014	Order of assessment has been passed.	

6. Based on the aforesaid events, he submitted that documents pertaining to assessee were handed over to the Assessing Officer after 29.08.2013. Accordingly, in terms of proviso to Section 153C the date of search in the case of the present assessee would be reckoned from 29.08.2013, which date falls under Assessment Year 2013-14. He further pointed out that by virtue of 1<sup>st</sup> proviso to Section 153C, the date of handing over the document would become the date of search in the case of other person and previous six years would have to be reckoned from this date which means the relevant assessment year of search in this case would be Assessment year 2013-14, (i.e., from 29.08.2013) and six previous assessment years would start from Assessment Years 2007-08 to 2012-13. Thus, the present assessment framed by the Assessing Officer under provision of the Act is void ab initio as the same has been passed without following the mandatory provision of Section 153C. In support, he strongly relied upon the judgment of Hon'ble Jurisdictional High Court in the case **CIT vs. RRJ Securities Ltd. (2016) 380 ITR 612** and **Pr. CIT vs. Sarwar Agencies Pvt. Ltd.,**

**340 ITR 400.** He pointed out that the same principle has been followed by the co-ordinate Benches including group cases and relied upon the following three judgments.

- (i) M/s. Ambawatta Build well Pvt. Ltd., ITA No.2592/Del/2015,
- (ii) M/s. BNB Investment & Properties Ltd., ITA No.504/Del/2015
- (iii) M/s. Commitment Mortality Vision Education Society, 3980 & 3981/Del/2017

7. He further pointed out that in the case of BNB Investment (*supra*) the same too was in pursuance of same search of Krrish Group and Assessing Officer was also the same, and in that case the Tribunal for the same Assessment Year 2012-13 has held the assessment void *ab initio* and without jurisdiction.

8. On the other hand, ld. CIT-DR submitted that assessment has been framed u/s.153A(1)(b) which provides that Assessing Officer has to assess or re-assess the total in all the six assessment years immediately preceding the assessment year relevant to the previous year in which such

*search is conducted. Nowhere the section contains the words 'the date of initiation of search' which are referred in the 1<sup>st</sup> proviso to Section 153C. The 1<sup>st</sup> proviso to Section 153C is only referring to the abatement of existing proceedings as mentioned in the 2<sup>nd</sup> proviso to Section 153A(1). 1<sup>st</sup> proviso further clarifies this point by usage of words 'the date of initiation of search' which are nowhere mentioned else in Section 153A(1). This point has been now clarified by amendment brought in the statute of Finance Act, 2017 in Section 153A for decreasing the time limit of completion of assessment and also increasing the period from 6 to 10 years in relevant cases. He also quoted the amended proviso of Section 153C. He further submitted even after this amendment, the first proviso stands as it is and the statute makes it further clear that the first proviso to section 153C always meant to refer to the abatement of the proceedings as mentioned in the second proviso to section 153A (1). Otherwise the current section 153C will have major incongruity as to whether six years would be reckoned from date of search as mentioned in amended 153C (1) or from the*

date of handing over of the documents as mentioned in the first proviso of 153C which remained unamended. The Decision of RRJ securities (*supra*) was rendered with respect to, whether the initial assessment year would be time barred or not. Here it is not a dispute of time barring or limitation. Further the amended 153C(1) was not available for the guidance of the Hon'ble Court and hence proper appreciation of law was not done.

9. He further referred to the judgment of Hon'ble Delhi High Court in the case of **Ganpati Fincap Services P. Ltd. vs. CIT (2017) 82 taxmann.com 408 (Delhi)** wherein their Lordships have summarized the legal position as under:

“41. To summarise the legal position:

(i) No search under Section 132(1) of the Act can be initiated without a satisfaction note being recorded by the AO of such searched person. This is followed by issuance of a notice to such searched person under Section 153A of the Act. At that stage the AO does not have to record another satisfaction note qua the searched person.

*(ii) Where proceedings are proposed to be initiated under Section 153C of the Act against the 'other person', it has to be preceded by a satisfaction note by the AO of the searched person. He will record in this satisfaction note that the seized document belongs to the other person. Depending on the nature and contents of the document he may be required to give some reasons for such conclusion.*

*(iii) Where the AO of the searched person is different from the AO of the other person, the AO will simultaneous with transmitting the documents along with his satisfaction note to the AO of the other person, make a note in the file of the searched person that he has done so. But this is for administrative convenience. The failure by the AO of the searched person, after preparing and despatching the satisfaction note and documents to the AO of the other person, to make a noting to that effect in the file of the searched person will not vitiate the proceedings under Section 153C against the other person.*

*(iv) Where the AO of the searched person and the other person is the same, such a satisfaction note qua the other person has to be recorded by the AO of the searched person prior to the initiation of the proceedings against the other person. This is a sine qua non for triggering the proceedings against the other person under Section 153C of the Act.*

*(v) There do not have to be two separate satisfaction notes prepared by the AO of the searched person even where he is also the AO of the other person. In such event, the AO need make only one satisfaction note. That satisfaction note is qua the other person. Further it is sufficient that such satisfaction note is placed in the file of the other person by the AO in his capacity as the AO of such other person.”*

10. *We have heard the rival submissions and also perused the relevant finding given in the impugned order as well as relevant dates and events on the issue of validity of the assessment as challenged by the assessee in the Cross Objection. The Assessing Officer has framed the assessment*

*order by treating the Assessment Year 2012-13 as the year of search on the premise that search and seizure operation was carried on 09.11.2011 in the case of Krrish Group of cases and also consequential survey u/s.133A carried on in the case of the assessee on 15.11.2011. It is an admitted fact that jurisdiction of the assessee has been transferred from Gurgaon to Faridabad on 12.08.2012 and document relating to the assessee has been transferred to the present Assessing Officer of Central Circle-1, Faridabad. 1<sup>st</sup> proviso to Section 153C reads as under:*

*“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:.”*

*The 2<sup>nd</sup> proviso to Section 153A (1) reads as under :*

*“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 [sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate.”*

12. *The controversy, whether in the wake of 2<sup>nd</sup> proviso to Section 153C the date of initiation of search u/s.132 should be from the date of receiving of books of account or documents etc. by the Assessing Officer having jurisdiction over such person had come up before the Hon’ble Jurisdictional High Court in the case of **R.R. Securities (supra)**. This judgment has been again reiterated and followed by the Hon’ble Jurisdictional High Court in the case of **Pr. CIT vs. Sarwar Agencies (supra)** wherein their Lordships have explained the said provisions considering the amendment in section 153C by the Finance Act, 2017 with effect from April 1, 2017, in the following manner :*

*“Sub-section (1) of section 153C of the Income-tax Act, 1961 provides that the assessment or reassessment 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 153C further states that, in case of such other person, the reference to the date of initiation of search in the second proviso to section 153A(l) "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". In terms of section 153A(l)(b) of the Act the Assessing Officer shall assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted. The second proviso to sub-section (1) of section 153A of the Act states that assessment or reassessment relating to any assessment year falling within the period of six assessment years referred to in the said sub-section pending on the date of initiation of the search under*

*section 132, would abate. In CIT v. RRJ Securities Ltd. [2016] 380 ITR 612 (Delhi), the court held that 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 Assessing Officer receives the documents or assets from the Assessing Officer of the searched person, proceedings, by virtue of section 153(1) of the have to be in accordance with section 153A of 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 or 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 or documents to the Assessing Officer of the assessee.*

*The amendment in section 153C of the Act by the Finance Act, 2017 with effect from April 1, 2017 to the effect that the Block Period for the person in respect of*

*whom the search was conducted as well as the "other person" would be the same six assessment years immediately preceding the year of search is prospective.*

*A search under section 132 of the Income-tax Act, 1961 took place on November 11, 2010 in the T group of cases. The documents pertaining to the assessee were forwarded along with a satisfaction note by the Assessing Officer of the party in respect of which the search was conducted to the Assessing Officer of the\*assessee on January 3, 2013. The Assessing Officer of the assessee issued notice to the assessee under section 153C of the Act on January 4, 2013 for the assessment year 2006-07. The Tribunal held that the notice issued to the assessee under section 153C of the Act for the assessment year 2006-07, was without jurisdiction since the assessment year was beyond the purview of issuance of notice in terms of the provision under section 153C of the Act. On appeal:*

*Held accordingly, dismissing the appeal, that the Tribunal was justified in holding that the notice issued to the assessee under section 153C of the Act for the assessment year 2006-07 was without jurisdiction since the assessment year was beyond the purview of issuance of notice in terms of the provision.”*

13. *The ratio of the judgments of Hon’ble Jurisdictional High Court has been applied in a similar group matters pertaining to the same search for the Assessment Year 2012-13 in the case of BNB Investment (supra), wherein the Tribunal after referring to the Hon’ble Jurisdictional High Court judgment and also catena of other Tribunal decision, finally observed and held as under:*

*“It is not in dispute that search was conducted on Krrish Group of cases on 09.11.2011. The impounded documents have been received by the A.O. on 29.08.2013. The satisfaction under section 153C have been recorded on 03.10.2013. The A.O. passed the assessment order under section 153B(l)(b) of the I.T. Act,*

*considering the assessment year under appeal i.e., A.Y. 2012-2013 to be the year of search. However, the First Proviso to Section 153C of the I.T. Act provides that the 06 assessment years for which assessments or re-assessments could be made under section 153C of the I.T. Act, would also have to be construed with reference to the date of handing-over of the assets or documents to the A.O. of the assessee. Therefore, the 06 assessment years under section 153C of I.T. Act in the case of assessee would be A.Y. 2008-2009 to 2013-2014. The A.O, therefore, shall have to pass the assessment order under section 153C of the I.T. Act. However, A.O. has not issued any notice under section 153C of the I.T. Act before initiating the proceedings against the assessee which is also admitted by the A.O. in reply to the assessee under RTI Act. The Amendment in Section 153C of the I.T. Act by the Finance Act, 2017, w.e.f. 01.04.2017 to the effect that block period for the person in respect of whom the search was conducted as well as the “other person” would be the same six*

*assessment year immediately preceding the year of search is prospective in nature. The issue have been dealt in detail by the Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT vs. Sarwar Agency P. Ltd., (supra) and by ITAT, Delhi, B-Bench, in the case of Empire Casting Pvt. Ltd., New Delhi vs. ACIT, C.C.2, New Delhi and Pavitra Realcon Pvt. Ltd., New Delhi vs. ACIT, C.C.32, New Delhi (supra). The A.O, therefore, should have framed the assessment under section 153C of the I.T. Act in the case of the assessee and at the time of initiating the proceeding against the assessee, should have issued notice under section 153C of the I.T. Act which have not been done in this case. The issue of notice under section 153C is mandatory and a condition precedent for taking action against the assessee under section 153C of the I.T. Act. The assessment order, therefore, vitiate, void, illegal and bad in law and cannot be sustained. The contention of the Ld. D.R. have already taken care in the above judgments.”*

14. *The aforesaid findings and the observation of the Tribunal will apply mutatis mutandis in this case also, as the facts and circumstances are pari materia and even the sequence of events. Accordingly following the aforesaid precedent, we hold that the impugned Assessment Year 2012-13 cannot be treated as year of search, and therefore, assessment could not have been framed u/s.143(3) r.w.s. 153B(1) and accordingly, assessment order passed by the Assessing Officer is declared null and void and consequently the Cross Objection of the assessee is allowed.*

15. *Since, we have already held that assessment order is not in accordance with law, therefore, the issue raised on merits by the Department has become purely infructuous and same is dismissed.*

16. *In the result, the appeal of the Revenue is dismissed and Cross Objection of the assessee is allowed.”*

9.1. It is not in dispute from the above facts that search and seizure action was conducted in M/s. Krrish Realty Nirman Pvt. Ltd., on 09.11.2011. Thereafter, survey

was conducted in the premises of the assessee on 05.11.2011 and his Company M/s. Ambawata Buildwell Pvt. Ltd., the jurisdiction over the case of assessee was transferred to CIT, Central, Gurgaon vide Order Dated 12.08.2013, who transferred the case to A.O. of Central Circle-1, Faridabad and the seized documents were received in the same Central Circle on 29.08.2013. The Tribunal in the background of these identical facts and decision of the Hon'ble Delhi High Court and the Order of the Tribunal in the case of BNB Investment & Properties Ltd., vs., DCIT [2018] 68 ITR 567 [Delhi-Tribu.] has held that impugned A.Y. 2012-2013 cannot be treated as year of the search. Therefore, assessment order were declared as *null and void* and cross objection of the assessee is allowed. In the background of these facts it is clear that impugned documents have been received by the A.O. on 29.08.2013. No satisfaction note have been recorded under section 153C of the I.T. Act. The A.O. passed the assessment order for the assessment year under appeal i.e., 2013-2014 under section 143(3) considering the preceding A.Y. 2012-2013 to the year

of the search. However, the First proviso to Section 153C of the I.T. Act provides that six assessment years for which assessments or re-assessments could be made under section 153C of the I.T. Act would also have to be construed with reference to the date of handing-over of the assets or documents to the A.O. of the assessee. Therefore, the six assessment years under section 153C in the case of the assessee would be A.Ys. 2008-2009 to 2013-2014 [under appeal]. Thus the A.O. shall have to pass the assessment order under section 153C of the I.T. Act instead of passing the assessment order under section 143(3) of the I.T. Act. The A.O. has not followed the proviso to Section 153C of the I.T. Act. No satisfaction note have been recorded in the case of person searched and no notice under section 153C have been issued to the assessee. The ITAT in the case of same assessee had decided an identical issue following the Order in the case of BNB Investment & Properties Ltd., vs., DCIT [2018] 68 ITR 567 [Delhi-Tribu.] in which case also the search was connected with the case of M/s. Krrish Realty Nirman Pvt. Ltd., Group of cases on 09.11.2011 and the

issue have been decided in favour of the assessee by following the Judgment of Hon'ble Delhi High Court. Therefore, the issue is covered in favour of the assessee by the Order of the Tribunal in the case of assessee for the A.Y. 2012-2013 (supra) as well as Order of the Tribunal in the case of BNB Investment & Properties Ltd., vs., DCIT (supra). The assessment order, therefore, vitiated and is void, illegal and bad in Law and cannot be sustained. The contention of the Ld. D.R. have also been taken care in the aforesaid decision as noted above because the mandatory provisions of Section 153C shall have to be followed by the A.O. before proceeding in the matter where A.O. is same in the case of person searched or the third party. The mandatory conditions of Section 153C of the I.T. Act shall have to be complied with by the A.O. which is also subsequently clarified by the CBDT in their Circular issued in this regard. Therefore, the contention of the Ld. D.R. have no merit and are accordingly rejected.

9.2. Considering the totality of the facts and circumstances of the case, we set aside the Orders of the

authorities below and quash the same and allow the additional grounds of appeal. Resultantly, all additions stand deleted. Since the assessment order is set aside on additional grounds, therefore, there is no need to decide the additions on merits which are left with academic discussion only. Accordingly, appeal of the assessee is allowed.

10. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-  
(N.K. BILLAIYA)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 06<sup>th</sup> April, 2021

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.