

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" NEW DELHI  
(Through Video Conferencing)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

I.T.As. No.4051, 4052/DEL/2017  
Assessment Years: 2007-08, 2008-09

ACIT, Central Circle-30, New Delhi.	Vs.	M/s. Ankit Nivesh & Management Pvt. Ltd., 203 Puja House, Karampura Commercial Complex, New Delhi.
TAN/PAN: AACCA2546A		
(Appellant)		(Respondent)

Appellant by:	Shri Ajay Wadhwa, Adv.
Respondent by:	Shri Sushma Singh, CIT-D.R.
Date of hearing:	24/03/2021
Date of pronouncement:	18/06/2021

**ORDER**

**PER AMIT SHUKLA, JM**

The aforesaid appeals have been filed by the Revenue against the orders of Commissioner of Income Tax (Appeals) – 30, New Delhi, pertaining to A.Y.2007-08 and 2008-09, wherein the assessments have been quashed on the ground that they are barred by limitation.

2. The grounds of appeal taken by the Department before us are reproduced under:

ITA No.4051/Del/2017

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O to delete the addition made u/s 68 of the I T. Act on account of unexplained cash credits amounting to Rs. 3,75,00,000/- on protective basis.*

2. *On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in holding that the initiation of action u/s 153C of the Act, for completing assessment u/s 153C/153A of the Act, is barred by limitation by relying on the decision in the case of CIT vs. RRJ Securities Ltd. by the jurisdictional High Court which has not been accepted by the department and SLP against the same has been filed before Hon'ble Supreme Court.*

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts by relying on the decision in the case of Sh. Kabul Chawla by the jurisdictional High Court which has not been accepted by the department and SLP against the same has been filed before Hon'ble Supreme Court.*

4. *On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in arriving at the conclusion that the words 'total income' as used in Section 153C/153A would only mean undisclosed income discovered from seized / incriminating material.*

5. *On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in adopting a restrictive and pedantic interpretation of the scope of assessment u/s 153C/153A of the Act.*

6. *On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in arriving at the conclusion that the words total income' as used in section 153C/153A would only mean income unearthed during search when the decision of the Hon'ble High Court of Karnataka in the case of Canara Housing Development Company Vs. DCIT dated 09.08.2014 has held that total income includes income unearthed during search and any other income.*

7. *That the grounds of appeal are without prejudice to each other.*
8. *That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.”*

ITA No.4052/Del/2017

1. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to delete the addition made u/s 68 of the I.T. Act on account of unexplained cash credits amounting to Rs. 5,98,93,870/- on protective basis.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to delete the addition of Rs. 4,87,000/- as unexplained expenditure on account of brokerage.*
3. *On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in holding that the initiation of action u/s 153C of the Act, for completing assessment u/s 153C/153A of the Act, is barred by limitation by relying on the decision in the case of CIT vs. RRJ Securities Ltd. by the jurisdictional High Court which has not been accepted by the department and SLP against the same has been filed before Hon'ble Supreme Court.*
4. *On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts by relying on the decision in the case of Sh. Kabul Chawla by the jurisdictional High Court which has not been accepted by the department and SLP against the same has been filed before Hon'ble Supreme Court.*
5. *On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in arriving at the conclusion that the words 'total income' as used in Section 153C/153A would only mean undisclosed income discovered from seized / incriminating material.*
6. *On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in adopting a restrictive and pedantic interpretation of the scope of assessment u/s 153C/153A of the Act.*

7. *On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in arriving at the conclusion that the words 'total income' as used in section 153C/153A would only mean income unearthed during search when the decision of the Hon'ble High Court of Karnataka in the case of Canara Housing Development Company Vs. DCIT dated 09.08.2014 has held that total income includes income unearthed during search and any other income.*

8. *That the grounds of appeal are without prejudice to each other.*

9. *That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."*

3. Since the issues involved in both the appeals are common, arising out of similar set of facts and additions made are on protective basis, therefore, same were heard together are being disposed of by way of this consolidated order. For the sake of convenience we are taking into consideration the facts of ITA No. 4051/D/2017 AY 2007-08.

4. The brief facts are that, consequent to a search dated 30.10.2012 conducted on M/s Prakash Industries Ltd (PIL in short) under section 132(1) of the Income-tax Act, 1961, a notice under section 153C read with section 153A of the Act was issued on the assessee on 19.09.2014 on the ground that the documents/material belonging to the assessee were found during the course of search on PIL. Satisfaction notes before issuance of notice under section 153C of the Act was recorded by Assessing Officer (AO) in the capacity of the AO searched person, i.e., PIL and also in the capacity of the AO of the assessee and the same were duly communicated to the assessee. The assessee filed detailed objections against the issuance

of notice under section 153C of the Act and also against the satisfaction recorded by the AO. The objections were considered and disposed off by the AO.

5. The following additions were made by the Ld. AO in his orders passed under section 153C of the Act on 31.03.2015:

- a. Unexplained investment in M/s Prakash Industries Ltd. of Rs. 3.75 crores and Rs. 5,98,93,870/- in AY 2007-08 and 2008—09 respectively on protective basis.
- b. Unexplained expenditure in the form of brokerage amounting to Rs.4,87,000/- in AY 2008-09.

6. The assessee, before the Ld. Commissioner of Income Tax (Appeals) took a jurisdictional ground contending inter-alia that the assessment, so framed under section 153C of the Act, is barred by limitation. Ld. CIT(A) after examining the facts on record and details, has held that the assessment passed u/s 153C is void-ab-initio as the Assessing Officer had no jurisdiction for making the assessment for A.Y. 2007-08, being beyond the period of 6 years. The relevant observation of the ld. CIT(A) is reproduced hereunder:

*“For the above submission/ arguments, the appellant has relied upon the decision of jurisdictional High Court of Delhi in the case of CIT-7 vs. M/s RRJ Securities Ltd. [2016] 380 1TR 612 (Delhi), where it has been held that the date of handing over of material, will be construed as the reference date for initiation of action u/s 153C of the Act, as against date of initiation of search, construed the reference date for initiation of action u/s 153A of the Act.*

*From the above, following facts emerged:*

- *the satisfaction note recorded by the A.O. of M/s Prakash Industries Ltd., in the case of appellant, is undated, satisfaction recorded by the A.O. of the appellant is on 19,9,2014, which is to be taken as the date of handing over of documents,*
- *as per proviso to section 153C (I) of the Act, the reference date for taking action u/s 153C, will be as 19,9.2014, in the case of appellant, instead of date of search on 30.10.2012, which is required for taking action u/s 153 A of the Act, and*
- *the 6 preceding A.Ys., will be from A.Y. 2009-10 to A.Y. 2014-15 only.*

*From the above, it is clear that A.O, has wrongly issued notices u/s 153C of the Act, for A.Y. 2007-08 and A.Y. 2008-09, since the documents were handed over on 19.9.2014, Therefore, the notice issued by the A.O., is beyond the limitation period of 6 years from the reference date, prescribed in the first proviso to section 153C (1) of the Act and 15 3 A (1) of the Act. From these facts, it is clear that the action initiated u/s 153C of the Act, for A.Y. 2007-08, is beyond the time limitation period prescribed under the Act, as the reference date for taking action u/s. 153C of the Act, is 19.9.2014.*

*In view of the above, I am of the considered opinion that the assessment completed u/s. 153C/ 153 A of the Act, is void ab-initio, as the A.O. has no jurisdiction for making the assessment for A.Y.2007-08, being beyond the period of 6 years. Accordingly, I agree with the arguments of the appellant and also the facts of the appellant are squarely covered by the ratio laid down by Hon'ble Jurisdictional High Court of Delhi, in the case of CIT-7 Vs. M/s RRJ Securities Ltd., (2016} 380 HR 612 (Delhi) (supra). In these facts and circumstances, I hold that the assessment completed u/s 153C/153A, is void ab initio,*

*since notice u/s 153C of the Act, was issued beyond limitation period of 6 years from the reference date of 19.9.2014.*

*Accordingly, ground No. 3, is hereby allowed.”*

7. Before us, Ld. AR on behalf of the assessee, submitted that the provisions of section 153C comes into play only on handing over of seized documents belonging to the assessee found during the course of search by the AO of the searched person to the AO of the assessee. Admittedly, the search took place on 30.10.2012 and the documents relating to the assessee were handed over to the AO on 19.09.2014 which is also the date of recording of the satisfaction note. In absence of any specific date of handing over of material in the satisfaction note, the date of recording of satisfaction will be taken to be the date of handing over the material. Satisfaction notes are placed at page nos. 26-31 of the appellant's Paper Book.

8. The AR of the assessee contended that, once the documents are handed over to the AO of the assessee, six preceding assessment years from the date of handing over of the documents lay open for assessment under section 153C read with section 153A of the Act. According to the assessee, six preceding assessment years from the date of the handing over of the documents, i.e. 19.09.2014, are beginning from A.Y. 2009-10 to 2014-15. He further contended that the impugned assessment relates to A.Y. 2007-08. This assessment could not have been reopened for action under section 153C since first of the six preceding assessment year is A.Y. 2009-10 and not A.Y. 2007-08. Hence, according to the appellant, A.Y. 2007-08 does

not come into the purview of the six preceding assessment years as envisaged under section 153C of the Act.

9. In support, the AR had filed detailed submissions in this regard and also relied upon the judgement of the Hon'ble Delhi High Court in the case of RRJ Securities (380 ITR 612), ARN Infrastructure India Ltd. (81 taxmann.com 260), Raj Buildworth Pvt. Ltd. (113 taxmann.com 600), Sarwar Agency Pvt. Ltd. (85 taxmann.com 269). Besides this other judgements of this Tribunal was filed, like, R.L. Allied Services – (54 taxmann.com 222), Inlay Marketing Private Ltd. (60 taxmann.com 431, Lairy Distributors Pvt. Ltd. (74 taxmann.com 122), Champak Niketan Pvt. Ltd. (ITA No. 5692/Del/2016), DSL Properties (P.) Ltd. v. Dy. CIT [2013] 60 SOT 88/33 taxmann.com 420 (Delhi - Trib.) Thus, he submitted that in view of the principle laid down in these judgments its clear that the action of the Assessing Officer to rope in AY 2007-08 is beyond 6 years and therefore order of CIT (A) is legally correct. Ld. AR has also filed written submissions, relevant portion of which are reproduced under for understanding the facts and issues involved:-

***Brief Facts:***

- 1. The assessee is engaged in the business of investment and sale purchase of shares during the relevant assessment year and filed its return of income u/s 139 of*

*the Act on 30.10.2007 declaring income of Rs. 729/-.*

***Refer page no. 1 of the paper book.***

- 2. The case of the assessee company was reopened under section 153C of the Act by issuing notice on 19.09.2014 consequent to the search and seizure operation u/s 132 of the Act on M/s Prakash Industries group of Companies on 30.10.2012. **Copy of notice issued is attached at page no. 20 of the paper book.***
- 3. The assessee filed reply in response to the aforesaid notice vide letter dated 25.02.2015 requested the Ld. AO to provide the copy of satisfaction note recorded by him as well as the Assessing Officer of searched person and also requested to provide the details of search and the material seized and relied upon by the Ld. AO for recording the satisfaction required u/s 153C of the Act. **(Refer page no. 22-23 of the PB)***
- 4. The assessee vide letter dated 27.02.2015 again requested to provide the copy of satisfaction note and seized material relied upon by the Ld. AO for recording the satisfaction required u/s 153C of the Act and stated that the return filed under section 139 of the Act may be treated as filed in response to notice under section 153C of the Act **(Refer page no. 24-25 of PB)***
- 5. The Ld. AO provided the copy of satisfaction note recorded by him and the AO of searched person but never provide the copy of seized material on the basis of which satisfaction was recorded. **(Copy of satisfaction note***

**recorded by the AO of searched person is attached at page no. 26-28 and copy of note recorded by the AO of the assessee is at page no. 29-31 of the paper book)**

6. *The assessee vide letter dated 04.03.2015 the assessee had filed detailed objections against the initiation of the proceedings under section 153C of the Act. **Refer page no. 38-39 of the paper book.***
7. *Thereafter the Ld. AO issued notices under section 142(1) along with questionnaire to the assessee and asked for the various details including details of shares sold which were held as stock in trade and the investments made in M/s Prakash Industries Ltd.*
8. *In response to the notices issued by the Ld. AO the assessee furnished the details as required by the Ld. AO from time to time.*
9. *In spite of the various explanations and documentary evidences submitted before the Ld. AO, the Ld. AO had completed the assessment u/s 153C of the Act on 31.03.2015 without passing the speaking order disposing off the objections raised by the assessee company against the initiation of proceedings under section 153C of the Act. The Ld. AO made following additions to the returned income:*
  - a. *Unexplained investment in M/s Prakash Industries Ltd. of Rs. 3.75 crores on protective basis. - **Refer page no. 23 of the Assessment Order.***

**10.** *Aggrieved by the order of Ld. AO the assessee had preferred an appeal before the learned. The assessee put forth his arguments and filed detailed submissions against the initiation of proceedings under section 153C of the Act and on merits before the Ld. CIT(A) Commissioner of Income Tax (Appeals) – 30 (“Ld. CIT (A)”).* **Copy of submissions dated 11.03.2017 and 21.02.2017 filed before the Ld. CIT(A) is attached at page no. 76-362 and 363 – 369 of the paper book.**

11. *The Ld. CIT (A) after examining the case in detail passed the order on 31.03.2017 in favour of assessee on the following grounds:*

- i. *The assessment completed under section 153C of the Act is void-ab-initio as the AO has no jurisdiction to for making assessment for A.Y. 2007-08, being beyond the period of 6 years. – Refer page no. 10-12 of the CIT(A) order.*

12. *Being aggrieved by the order of Ld. CIT (A), the department had filed an appeal before Your Honours.*

**I. Issuance of notice under section 153C for the relevant assessment year is barred by limitation; notice issued by the AO and the consequential order passed under section 153C deserves to be quashed**

1. *Your Honours, in the present case the search was conducted at the premises of M/s Prakash Industries Ltd. on 30.10.2012. The searched person is M/s Prakash Industries Ltd. and the assessee is “other person” in terms of section 153C of the Act.*
2. *The date of search is 30.10.2012 and the date of recording satisfaction by the Ld. AO is 19.09.2014. In absence of any specific date of handing over of material in the satisfaction note, it was only on 19th September, 2014, the date of recording of satisfaction will be assumed to be the date of handing over the material.*
3. *Prior to the amendment by Finance Act, 2017, in terms of the proviso to Section 153C (1) of the Act, the date of receipt of the books and accounts by the AO of the Assessee is deemed to be the date of search. In the present case in absence of any specific date of handing over of material, the date of recording satisfaction i.e, 19.09.2014 is to be treated as the date of handing over of material and therefore the six AYs preceding the year of the search, for which the assessment was proposed to be reopened, should be A.Y. 2009-10 to A.Y. 2014-15.*
4. *The relevant assessment year i.e, A.Y. 2007-08 is therefore barred by limitation.*
5. *Consequently, the notice under Section 153C (1) could have been issued for AYs 2009-10 to A.Y. 2014-15.*

6. *It is a settled legal position that prior to the amendment by Finance Act, 2017 the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act.*
7. *Issuance of notice for the relevant assessment year is invalid and without jurisdiction.*
8. *To support its contentions the assessee relies upon the following judgements of the various High Courts and Tribunals:*
  - a. **Hon'ble High Court of Delhi in the case of RRJ Securities (380 ITR 612) has held that: - dated 30.10.2015**

**Held:**

*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. 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 years 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 the 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.

**b. Hon'ble High Court of Delhi in the case of ARN Infrastructure India Ltd. (81 taxmann.com 260) has held that:**

**Held:**

The decision in *RRJ Securities Ltd. (supra)* is categorical that under Section 153C of the Act, the period of six years as regards the person other than the searched person

would commence only from the year in which the satisfaction note is prepared by the AO of the searched person and a notice is issued pursuant thereto. The date of the Satisfaction Note is 21st July, 2014 and the notice under Section 153C of the Act was issued on 23rd July 2014. The previous six AYs would therefore be from AY 2009-10 to AY 2014-15. This would therefore not include AYs 2007-08 and 2008-09. The decision in *RRJ Securities Ltd. (supra)* is also an authority for the proposition that for the proceedings under Section 153C to be valid, there had to be a satisfaction note recorded by the AO of the searched person.

The Court also stated that - **This position again stands settled by the decision in RRJ Securities Ltd (supra). The fact that the Revenue's SLP against the said decision is pending in the Supreme Court does not make a difference sine the operation of the said decision has not been stayed.**

c. **Hon'ble High Court of Delhi in the case of Raj Buildworth Pvt. Ltd. (113 taxmann.com 600) has held that: dated - 23.10.2018**

The Assessing Officer of the search party and the respondent assessee was the same. In such a factual matrix, the Assessing Officer could not have been initiated and passed an Assessment Order under Section 153C of the Act for the **Assessment Year 2007-08 as the same**

**was beyond the period of six years from the end of the financial year in which the satisfaction note was recorded by the Assessing Officer.**

**d. Hon'ble High Court of Delhi in the case of Sarwar Agency Pvt. Ltd. (85 taxmann.com 269) has held that:**

**Held:**

Mr. Ashok Manchanda, learned Senior Standing counsel for the Appellant, sought to pursue this Court to reconsider its view in RRJ Securities (supra). The Court declines to do so for more than one reason. First, for reasons best known to it, the Revenue has not challenged the decision of this Court in RRJ Securities (supra) in the Supreme Court. **The said decision has been consistently followed by the authorities under this Court as well as by this court. Thirdly, the recent amendment to Section 153 C(1) of the Act states for the first time that for both the searched person and the other person the period of reassessment would be six AYs preceding the year of search. The said amendment is prospective.**

**e. Hon'ble ITAT Delhi – R.L. Allied Services – (54 taxmann.com 222)**

**Held:**

**In the case under appeal before us, as mentioned by the Assessing Officer in paragraph 2 of his order, the seized**

material was received on 12th March, 2009 from ACIT, Central Circle-17. Thus, the year in which seized material was seized is previous year 2008-09 relevant to AY 2009-10. The preceding six years would be AY 2008-09, 2007-08, 2006-07, 2005-06, 2004-05 and 2003-04. Therefore, after considering the facts of the assessee's case and combined reading of Section 153C as well as Section 153A, in our opinion, the issue of notice under Section 153C for AY 2001-02 & 2002-03 is barred by limitation. Accordingly, we quash the same and consequentially, the assessment order passed in pursuance to the notice issued under Section 153C is also quashed.

**This decision has been affirmed by the Delhi High Court (ITA No. 570/ 2016)**

*In the present case, there is no doubt that it was only on 24th March 2009 that the AO of the Assessee received the documents seized and it was on that date a notice under Section 153C (1) was issued and served upon the Assessee. Consequently, this Court finds no legal error in the conclusion of the ITAT that notice under Section 153C (1) could not have been issued for AYs 2001-02 and 2002-03.*

**f. Hon'ble ITAT Delhi in the case of Inlay Marketing Private Ltd. (60 taxmann.com 431) has held that:**

**Held:**

*view of above decision and as per letter and spirit of s. 153(1) of the Act, we are inclined to hold that since in this case satisfaction was recorded on 5th July, 2010 and notice under s. 153C was issued on 6th July, 2010, the only conclusion that can be drawn is that the AO of such other person other than searched has taken over the possession of the seized document on 5th July, 2010. Accordingly, as per s. 153A(1) of the Act, the AO can issue a notice under s. 153A of the Act for the previous year in which the search is conducted and for the purpose of s. 153C of the Act on the date on which the document is handed over to the AO of the person other than the searched person for six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition or handing over of document or material is made. In the case in hand, the relevant date of handing over may easily be inferred from satisfaction note i.e. 5th July, 2010 and, thus, relevant previous year is 2010-11 and obviously the asst. yr. would be asst. yr. 2011-12.*

*We are inclined to hold that the AO has issued notice under s. 153C of the Act, dt. 5th July, 2010 for asst. yrs. 2003-04 and 2004-05 on 6th July, 2010 which is clearly barred by limitation.*

**g. Hon'ble ITAT Delhi in the case of Lairy Distributors Pvt. Ltd. (74 taxmann.com 122)**

**Held:**

“Admittedly the Assessing Officer of the other person recorded satisfaction for initiation of proceedings and issuance of notice under section 153C on 9-9-2013 and when the CIT-DR could not assist about the receiving of documents etc. by the Assessing Officer of the other person the date of recording satisfaction i.e., 9-9-2013 is treated as date of receiving documents etc. Thus limitation period for calculation of Assessment years under the ambit of section 153C should be reckoned from 9-9-2013 relevant to Financial year 2013-14 and Assessment year 2014-15 and hence the six years under scanner would be Assessment years 2008-09 to 2013-14. In this situation the assumption of jurisdiction for Assessment year 2006-07 would be beyond limitation period and same has to be held as bad in law and invalid jurisdiction.”

**h. Hon'ble ITAT Delhi in the case of Champak Niketan Pvt. Ltd. (ITA No. 5692/Del/2016) – dated 25.05.2018** has held that:

Since in the instant case also the documents were handed over to the Assessing Officer on 03.12.2013 and action u/s 153C was also initiated on 03.12.2013 a finding given by the ld. CIT(A) and not controverted by the ld. DR, therefore, the six preceding assessment years will be from A.Y.

2008-09 to 2013-14. Since in the instant case, the Assessing Officer has issued notice u/s 153C to the assessee for assessment year 2006-07, therefore, the same being beyond the period of six preceding assessment years from the reference date is void ab-initio. Therefore, the assessment completed u/s 153C/153A for the impugned assessment year is void ab-initio since the Assessing Officer has no jurisdiction for making the assessment for assessment year 2006-07 being beyond the period of six years. Since the order of the ld. CIT(A) is in accordance with law laid down by the Hon'ble Jurisdictional High Court, therefore, in absence of any contrary material brought to our notice, we do not find any infirmity in the order of the ld. CIT(A) holding the assessment as void ab-initio. Accordingly, the order of ld. CIT(A) is upheld and the grounds raised by the Revenue are dismissed.

**i. DSL Properties (P.) Ltd. v. Dy. CIT [2013] 60 SOT 88/33 taxmann.com 420 (Delhi - Trib.)**

*As per proviso to Section 153C, the date of search is to be substituted by the date of receiving the books of account or documents or assets seized by the Assessing Officer having jurisdiction over such other person. Learned DR has stated that since the Assessing Officer of the person searched and the Assessing Officer of such other person was the same, no handing over or taking over of the*

document was required. That Section 153C(1) and its proviso have to be read together in a harmonious manner. While interpreting Section 153C, we have already held that for initiating valid jurisdiction under Section 153C, even if the Assessing Officer of the person searched and the Assessing Officer of such other person is the same, he has to first record the satisfaction in the file of the person searched and thereafter, such note alongwith the seized document/books of account is to be placed in the file of such other person. The date on which this exercise is done would be considered as the date of receiving the books of account or document by the Assessing Officer having jurisdiction over such other person. Though while examining the facts of the assessee's case we have arrived at the conclusion that no such exercise has been properly carried out and therefore initiation of proceedings under Section 153C itself is invalid, however, since both the parties have argued the issue of period of limitation also, we deem it proper to adjudicate the same. Since in this case satisfaction is recorded on 21st June, 2010 and notice under Section 153C is also issued on the same date, then only conclusion that can be drawn is that the Assessing Officer of such other person has taken over the possession of seized document on 21st June, 2010. Accordingly, as per Section 153(1), the Assessing Officer can issue the notice for the previous year in which search is conducted (for the purpose of Section 153C the

*document is handed over) and six assessment years preceding such assessment year. Now, in this case, the previous year in which the document is handed over is 1st April, 2010 to 31st March, 2011.*

10. On the other hand, the ld. CIT-DR has filed written submissions, which reads as under:

*“Sub: Written Submission in the above cases - reg.*

*With respect to the ground that the initiation of proceedings u/s 153 was barred by limitation. In this regard the following may kindly be considered:*

*It is important to consider the provision of section 153C of the I.T. Act which is as below:*

*“153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person 3a [and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing*

*Officer is satisfied that the books of account or documents or 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 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 position of law is very clear and there is no ambiguity in the Act. This is further clarified by the jurisdictional Hon’ble Delhi High Court in the case of SSP Aviation Ltd. Vs. DCIT in W.P.C. No. 309/2011 dated 29.03.2012 in Para No. 13, 14 & 15 which are as under:-*

*“13. Sections 153A to 153D are placed in Chapter XIV of the Act, which is titled procedure for assessment Section 153A provides for the assessment in case of search or requisition. This section applies to a person in whose case a search is initiated under Section 132 or books of account etc. are requisitioned under Section 132A. The procedure prescribed under Section 153A is that the Assessing Officer shall call upon the assessee who is searched to furnish returns of income for six assessment years immediately preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made. The assessee, on receipt of the notice from the Assessing*

Officer, shall furnish the returns of income and thereafter the Assessing Officer is empowered to assess or re-assess the total income in respect of different assessment year falling within six assessment years. Now, a question may arise as to what would happen to the regular returns, if any, filed by the searched assessee for any of the six assessment years which are pending on the date on which the search was initiate. The answer is given by the second proviso to Section 153A, which says that if any of those returns is or are pending, the assessment or reassessment relating to those returns shall abate. The object obviously is to avoid multiplicity of assessment or reassessment proceedings in respect of the same assessment year or years. Once Section 153A is found to be applicable, there will be only one assessment in respect of each of the six assessment years immediately preceding the assessment year relevant to the previous year in which the search is conducted, in which the total income of the assessee will be assessed or reassessed. It should be remembered that only the pending assessment or reassessment proceedings in respect of any those six assessment years that will abate; in case the assessment or reassessment for any of those 6 years have already been completed as on the date of search then there is no question of any of them abating for the simple reason that what can abate is only what remains pending.

14. Now there can be a situation when during the search conducted on one person under Section 132, some documents or valuable assets or books of account belonging to some other person, in whose case the search is not conducted, may be found.

*In such case, the Assessing Officer has to first be satisfied under Section 153C, which provides for the assessment of income of any other person, i.e., any other person who is not covered by the search, that the books of account or other valuable article or document belongs to the other person (person other than the one searched). He shall hand over the valuable article or books of account or document to the Assessing Officer having jurisdiction over the other person. Thereafter, the Assessing Officer having jurisdiction over the other person has to proceed against him and issue notice to that person in order to assess or reassess the income of such other person in the manner contemplated by the provisions of Section 153A. Now a question may arise as to the applicability of the second proviso to Section 153A in the case of the other person, in order to examine the question of pending proceedings which have to abate. In the case of the searched person, the date with reference to which the proceedings for assessment or reassessment of any assessment year within the period of the six assessment years shall abate, is the date of initiation of the search under Section 132 or the requisition under Section 132A. For instance, in the present case, with reference to the Puri Group of Companies, such date will be 5.1.2009. However, in the case of the other person, which in the present case is the petitioner herein, such date will be the date of receiving the books of account or documents or assets seized or requisition by the Assessing Officer having jurisdiction over such other person. In the case of the other person, the question of pendency and abatement of the proceedings of assessment or*

*reassessment to the six assessment years will be examined with reference to such date. It needs to be appreciated that the satisfaction that is required to be reached by the Assessing Officer having jurisdiction over the searched person is that the valuable article or books of account or documents seized during the search belong to a person other than the searched person. There is no requirement in Section 153C(1) that the Assessing Officer should also be satisfied that such valuable articles or books of account or documents belonging to the other person must be shown to show to conclusively reflect or disclose any undisclosed income.”*

*It is evident that the reference of Proviso 1 of Section 153C is only in relation to the 2 nd proviso to subsection 1 of section 153A which speaks about the abatement of the pending proceedings of six assessment years and not regarding the assessment of the preceding six assessment year which will be the same as in section 153A as well as in section 153C.*

### **DECISION**

11. We have heard the rival submissions and also perused the relevant finding given in the impugned orders as well as material referred to before us. The assessee is engaged in the business of investment and sale purchase of shares during the relevant assessment year and filed its return of income u/s.139 of the Act on 30.10.2007 declaring income of Rs.729/-. Consequent to the search and seizure operation u/s.132 on M/s. Prakash Industries of

Companies on 31.10.2012 satisfaction was recorded by the Assessing Officer u/s.153C and proceedings u/s.153C was initiated after issuance of notice on 19.09.2014. Here in this case though the date of search in the case of Prakash Industries was 30.10.2012 however the date of recording of satisfaction by the Assessing Officer is on 19.09.2014. Since there is no specific date of handing over of material in the satisfaction note, then date of 19<sup>th</sup> September, 2014 is to be reckoned as date of handing over the material and the time limit of calculating the six years has to be calculated from this date. Prior to the amendment by Finance Act, 2017, in terms of the proviso to Section 153C (1) of the Act, the date of receipt of the books and accounts by the AO of the Assessee is deemed to be the date of search. In the present case in absence of any specific date of handing over of material, the date of recording satisfaction i.e., 19.09.2014 is to be treated as the date of handing over of material and therefore the six AYs preceding the year of the search, for which the assessment was proposed to be reopened, should be A.Y. 2009-10 to A.Y. 2014-15.

12. Consequently the notice u/s. 153C(1) could have been issued for Assessment Years 2009-10 to 2014-15. Prior to the amendment brought by the Finance Act, 2017 the date on which the Assessing Officer of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act.

13. In the following judgments, the Hon'ble Delhi High Court have clearly held that the provisions of six years would have to be counted from the year in which satisfaction note is prepared.

**a. Hon'ble High Court of Delhi in the case of RRI Securities (380ITR 612) has held that; - dated 30.10.2015**

Held:

*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. 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 years 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 the 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.

**b. Hon'ble High Court of Delhi in the case of ARN Infrastructure India Ltd. (81 taxmann.com 260) has held that:**

**Held:**

The decision in RRJ Securities Ltd. (supra) is categorical that under Section 153C of the Act, the period of six years as regards the person other than the searched person would commence only from the year in which the satisfaction note is prepared by the AO of the searched person and a notice is issued pursuant thereto. The date of the Satisfaction Note is 21st July, 2014 and the notice under Section 153C of the Act was issued on 23rd July 2014. The previous six AYs would therefore be from AY 2009-10 to AY 2014-15. This would therefore not include AYs 2007-08 and 2008-09. The decision in RRJ Securities Ltd. (supra) is also an authority for the proposition that for the proceedings under Section 153C to be valid, there had to be a satisfaction note recorded by the AO of the searched person.

The Court also stated that - **This position again stands settled by the decision in RRI Securities Ltd (supra). The fact that the Revenue's SLP against the said decision is pending in the Supreme Court does not make a difference sine the operation of the said decision has not been stayed.**

**c. Hon'ble High Court of Delhi in the case of Raj Buildworth Pvt. Ltd. (113 taxmann.com 600) has held that: dated - 23.10.2018**

*The Assessing Officer of the search party and the respondent assessee was the same. In such a factual matrix, the Assessing Officer could not have been initiated and passed an Assessment Order under Section 153C of the Act for the **Assessment Year 2007-08 as the same was beyond the period of six years from the end of the financial year in which the satisfaction note was recorded by the Assessing Officer.***

*d. **Hon'ble High Court of Delhi in the case of Sarwar Agency Pvt. Ltd. (85 taxmann.com 269) has held that:***

*Held:*

*Mr. Ashok Manchanda, learned Senior Standing counsel for the Appellant, sought to pursue this Court to reconsider its view in RRJ Securities (supra). The Court declines to do so for more than one reason. First, for reasons best known to it, the Revenue has not challenged the decision of this Court in RRJ Securities (supra) in the Supreme Court. **The said decision has been consistently followed by the authorities under this Court as well as by this court. Thirdly, the recent amendment to Section 153 C(l) of the Act states for the first time that for both the searched person and the other person the period of reassessment would be six AYs preceding the year of search. The said amendment is prospective.***

14. This proposition has also been upheld and followed by this Tribunal in catena of judgment as cited by the Id. Counsel. Thus, respectfully following the ratio laid down by the Hon'ble Jurisdictional High Court we hold that is a terminal date for determining of six preceding assessment years for the purpose of Section 153C r.w.s. 153A would be the date of handing over the documents or the dated of recording of the satisfaction. Admittedly, the six preceding assessment years in the case of the assessee is from Assessment Year 2009-10 and ending on 2014-15. Accordingly, we hold that Id. CIT (A) was correct in law that no assessment u/s.153C was made in respect of Assessment Year 2007-08 and is barred by limitation.

15. Similarly in Assessment Year 2008-09 also we need the same fate which is also beyond the limitation period of six years as stated above. Accordingly, the order of the ld. CIT(A) is upheld and the Revenue's Appeal is dismissed.

16. In the result, the both the appeals of the Revenue are dismissed.

**Order pronounced in the Open Court on 18<sup>th</sup> June, 2021**

Sd/-

**[B.R.R. KUMAR]**

**[ACCOUNTANT MEMBER]**

DATED: 18/06/2021

PKK:

Sd/-

**[AMIT SHUKLA]**

**JUDICIAL MEMBER**