

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

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

I.T.As. No.4059/DEL/2017
Assessment Years: 2008-09

ACIT, Central Circle-30, New Delhi.	Vs.	Sarvottam Commodities Pvt. Ltd. 303, Himaland House, D-5, Karampura Commercial Complex, New Delhi.
TAN/PAN: AALCS2583C (Appellant)		(Respondent)

Assessee by:	Shri Ajay Wadhwa, Adv.		
Department by:	Shri Sushma Singh, CIT-D.R.		
Date of hearing:	12	04	2021
Date of pronouncement:	9	07	2021

ORDER

PER AMIT SHUKLA, JM

The aforesaid appeal pertaining to A.Y.2008-09 has been filed by the Income-tax Department against the order of Commissioner of Income Tax (Appeals) – 30, New Delhi wherein the assessment has been quashed on the ground that it is barred by limitation.

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

"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. 23,68,50,000/-.

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. 11,84,250/- 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. The brief facts leading to this appeal 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, a notice under section 153C read with section 153A of the Act was issued on the appellant on 12.02.2015 on the ground that the documents/material belonging to the appellant were found during the course of search on PIL. A satisfaction note 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 appellant and the same was duly communicated to the appellant. The appellant filed detailed objections against the issuance of notice under section 153C of the Act and the satisfaction recorded by the AO. These objections were also considered by the AO and disposed off.

4. The following additions were made by the Ld. AO:

- a. Unexplained credit under section 68 of the Act of Rs. 23,68,50,000/- being share capital and security premium received by the appellant;
- b. Unexplained expenditure in the form of brokerage @ .5% i.e, 11,84,250/-

5. The appellant, before the Commissioner of Income Tax (Appeal) took the jurisdictional ground contending inter-alia that the assessment, so framed under section 153C of the Act in the case of

the appellant, is barred by limitation. According to the appellant, the provisions of section 153C come into play on handing over of documents seized and belonging to the appellant during the course of search by the AO of the searched person to the AO of the appellant. Admittedly, the search took place on 30.10.2012 and the documents relating to the appellant were handed over to its AO on 12.02.2015 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 assumed to be the date of handing over the material. Satisfaction notes are appended at page no.15-16 of the appellant's Paper Book.

6. According to the appellant, once the documents are handed over, 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.

7. According to the appellant, six preceding assessment years, from the date of the handing over of the documents, i.e. 12.02.2015, are beginning from A.Y. 2009-10 to 2014-15. The appellant contended that the impugned assessment related to A.Y. 2008-09. This assessment could not have been reopened for action under section 153C since first of the six preceding assessment years was A.Y. 2009-10 and not A.Y. 2008-09. Hence, according to the appellant, A.Y. 2008-09 does not come into the purview of the six preceding assessment years as envisaged under section 153C of the Act.

8. The appellant 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) and other judgements such as 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.) The contentions of the appellant are reproduced as under:-

Brief Facts:

1. *The assessee company incorporated on 09.10.2007 and was 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 30.09.2008 declaring income of Rs. 4340/-*

.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 12.02.2015 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. 10 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. 11-12 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. 13-14 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. 15 and copy of note recorded by the AO of the assessee is at page no.16 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. 25-26 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 of share applicants and the evidences to establish their identity, creditworthiness and genuineness of the transaction.

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 credit under section 68 of the Act of Rs. 23,68,50,000/- being share capital and security premium received by the assessee. **Refer page no. 40 of the Assessment Order**
- b. Unexplained expenditure in the form of brokerage @ .5% i.e., 11,84,250/-

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 21.03.2017 filed before the Ld. CIT(A) is attached at page no.205-488 and 489-599 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. 2008-09, being beyond the period of 6 years. – **Refer page no. 11-12 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 12.02.2015. In absence of any specific date of handing over of material in the satisfaction note, it was only on 12th February, 2015, 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, 12.02.2015 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. 2008-09 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 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.

9. On the other hand, the Department also filed written submissions in the matter which are reproduced 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. 3 [(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] 4 [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 5 [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 initiated. 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 ao 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 ao 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 ao 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.

10. Before the Ld. Commissioner of Income-tax (Appeals), the same contentions were made as much as it was sought to be contended that the assessment for A.Y. 2008-09 could not be made under section 153C of the Act as the same was barred by limitation.

11. The ratio of the order of the Commissioner of Income-tax CIT (Appeal) in the matter is reproduced as under:-

From the above, it is clear that AX), has wrongly issued notices u/s 153C of the Act, for A.Y. 2008-09, since the documents were handed over on 12.02.2015, 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(I) of the Act and 153A(I) of the Act From these facts, it is clear that the action initiated u/s 153C of the Act, for A.Y. 2008-09, is beyond the time limitation period prescribed under the Act, as the reference date for taking action u/s 153C of the Act, is 12.02.2015.

In view of the above, I am of the considered opinion that the assessment completed u/s 153C/153A of the Act, is void ab-initio, as the AO, has no jurisdiction for making the assessment for A.Y. 2008-09, 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., [2016J 380 1TR 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 12.02.2015.

Accordingly, ground No. 3, is hereby allowed.

12. We have carefully considered the above submissions and having gone through the facts of the case and applicable law, we would tend to agree with the appellant. The determining date for determination of six preceding assessment years that would lay upon under section 153C read with section 153A of the Act would decidedly be the date of handing over of the documents. Here the satisfaction note recorded by the A.O, of M/s Prakash Industries Ltd. is 12.12.2015, as well as by the A.O. of the appellant is on 12.12.2015, which is to be taken as the date of handing over of documents and date. Six preceding assessment years begin with A.Y.

2010-11 and end with A.Y. 2015-16. It would be the date of handing over the documents or date of recording of satisfaction will be the date for determining the date for calculating the preceeding six assessment years is well settled by the judgement of Hon'ble Delhi High Court in the case of **RRJ Securities** (380 ITR 612) relevant portion of which is reproduced below:-

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."

13. This judgement has been followed in Hon'ble Delhi High Court in the case of:

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

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 not 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.**

ii) 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.**

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

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.

14. Under these facts and circumstances, we have to hold that no assessment under section 153C could have been made in respect of A.Y. 2008-09. It was clearly barred by limitation. Hence, there is no option but to annul the assessment and all consequent additions made in the assessment also stand deleted.

15. As a result, the order of Ld. CIT (Appeal) upholding the decision of quashing of assessment for A.Y. 2008-09 being barred by limitation is upheld.

16. There is no requirement to go into the merits of the case since the assessment is barred by limitation and, therefore, the grounds of appeal raised by the Department are dismissed.

Order pronounced in the Open Court on 9th July, 2021

Sd/-

**[Dr. B.R.R. KUMAR]
[ACCOUNTANT MEMBER]**

DATED: 9/07/2021

PKK:

Sd/-

**[AMIT SHUKLA]
JUDICIAL MEMBER**