

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.714/Del/2021  
Assessment Year: 2011-12

DCIT, Circle-05, New Delhi	<b>Vs.</b>	Karina Airlines International Ltd., Flat No.11, Gali No.05, Block-A, West Karawal Nagar, New Delhi
		<b>PAN :AADCK1912D</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Ruchesh Sinha, Advocate
Department by	Sh. J.S. Minhas, CIT(DR)

Date of hearing	01.05.2023
Date of pronouncement	11.05.2023

**ORDER**

**PER SAKTIJIT DEY, JM:**

This is an appeal by the Revenue against order dated 26.02.2021 of learned Commissioner of Income Tax (Appeals)-24, New Delhi, for the assessment year 2011-12.

2. Though, Registry has pointed out delay of 44 days in filing the appeal, however, the delay is ignored as the delay in filing the appeal was due to restrictions imposed on account of Covid-19.

3. We have heard Sh. Ruchesh Sinha, learned counsel appearing for the assessee and Sh. J.S. Minhas, learned CIT(DR).

4. At the outset, learned counsel appearing for the assessee submitted, while deciding the cross appeal filed by the assessee for the very same assessment year, the Tribunal has quashed the assessment order passed for the impugned assessment year and set aside the order of learned Commissioner (Appeals). Thus, he submitted, the present appeal of the Revenue has become infructuous.

5. Learned Departmental Representative fairly accepted the aforesaid factual position.

6. Having considered rival submissions, we find, while deciding assessee's appeal for the very same assessment year arising out of the very same order of learned Commissioner (Appeals), the Tribunal in ITA No. 204/Del/2021, dated 28.02.2022, had quashed the impugned assessment order with the following observations:

*“8. We have considered rival submissions and perused the materials on record. For deciding the issue, following dates and events would have a crucial bearing:*

1. **07.04.2016** - search and seizure operation under section 132 of the Act was conducted in case of Sh. Harvansh Chawla.
2. **29.03.2019** - The Assessing Officer of the searched person recorded satisfaction with reference to the assessee and handed over the seized material.

3. **15.09.2019** - *The Assessing Officer of the assessee recorded the satisfaction for initiation of proceeding under section 153C of the Act.*

9. *Thus, as could be seen from the aforesaid dates and events, the search and seizure operation under section 132 of the Act had taken place on 07.04.2016. On a reading of section 153A of the Act, it is very much clear that in case of searched person, the Assessing Officer has power to assess or re-assessee the income in respect of each assessment year falling within the period of six assessment years immediately preceding the assessment year in which the search and seizure was conducted. However, section 153C of the Act, which lays down the procedure of assessment in case of a person other than the searched person, contemplates that the date of search for a case falling under this provision would be reckoned from the date of recording of satisfaction by the Assessing Officer of the searched person and handing over of the seized material.*

10. *By Finance Act, 2017, amendment was made to section 153A as well as 153C of the Act, simultaneously, empowering the Assessing Officer to make assessment not only for six preceding assessment years but for the relevant assessment year or years. Thus, effectively, the aforesaid amendment to sections 153A and 153C of the Act allows the Assessing Officer to make assessment for the same set of assessment years, both in case of searched person as well as the person other than the searched person. The crucial issue which arises for consideration is, whether the aforesaid amendment made to sections 153A and 153C of the Act would apply prospectively or retrospectively and, if prospectively, whether it will cover the present assessee. Now, it is fairly well settled through a number of judicial precedents that the amendment to sections 153A and 153C of the Act would apply prospectively w.e.f. 01.04.2017, i.e., from the assessment year 2017-18. In this context, we may refer to the decision of the Hon'ble Jurisdictional High Court in case of PCIT Vs. Sarwar Agency P. Ltd., [2017] 185 taxmann.com 269 (Delhi.)*

11. *The further contention of learned Departmental Representative is, since, the satisfaction in case of the assessee was recorded on 29.03.2019, the amendment would be applicable. Therefore, the same set of assessment years for which assessment proceeding was initiated in case of searched person has to be initiated against the assessee. However, we do not find merit in the aforesaid submissions. The Explanatory Notes to the provisions of the Finance Act, 2017 issued by the Central Board of Direct Taxes (CBDT) through Circular No. 2/2018, dated 15<sup>th</sup> February, 2018 explains the amendment made to the provisions of sections 153A and 153C of the Act as under:*

*“80.4 However, in order to protect the interest of the revenue in cases where tangible evidence(s) are found during a search*

or seizure operation (including section 132A cases) and the same is represented in the form of undisclosed investment in any asset, section 153A of the Income-tax Act relating to search assessments has been amended to provide that notice under the said section can be issued for an assessment year or years beyond the sixth assessment year already provided up to the tenth assessment year if—

- (i) the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant four assessment years (falling beyond the sixth year);
- (ii) such income escaping assessment is represented in the form of asset;
- (iii) the income escaping assessment or part thereof relates to such year or years.

*80.5 Applicability: The amended provisions of section 153A of the Income-tax Act shall apply where search under section 132 of the Income-tax Act is initiated or requisition under section 132A of the Income-tax Act is made on or after the 1st day of April, 2017.*

*80.6 Section 153C of the Income-tax Act has also been amended to provide a reference to the relevant assessment year or years as referred to in section 153A of the Income-tax Act.*

*80.7 Applicability: These amendments take effect from 1st April, 2017.”*

**12.** *In the aforesaid Explanatory Notes, the CBDT has not only clarified that such amendment would be effective from 1<sup>st</sup> April, 2017 but also made it clear that amended provisions would apply where search under section 132 of the Act is initiated or requisition under section 132A of Act was made on or after 1<sup>st</sup> April, 2017. Thus, the crucial date that has to be borne in mind is the date of search. Admittedly, in the facts of the present case, the date of search is 07.04.2016, which is prior to the date of amendment made to section 153A and 153C vide Finance Act, 2017. Thus, as per CBDT circular mentioned above, the amended provisions would not be applicable to the present case. Taking note of the aforesaid CBDT circular, the Hon'ble Gujarat High Court, in case of Anil Kumar Gopikishan Arawal Vs. CIT, (418 ITR 25), has held that the amended provisions of section 153C of the Act would apply where search and seizure is made after the amendment. Considered in the aforesaid perspective, the apprehension of the Revenue that if the*

*amended provisions are not applied with reference to the date of recording of satisfaction there will be different sets of assessment years for the searched person and the person other than the searched person, in our view, is completely misplaced. This is so, because, once the amended provisions of sections 153A and 153C are applicable in respect of search and seizure operation initiated under section 132 or requisition made under Section 132A of the Act post 01.04.2017, the provisions of sections 153A and 153C would be applicable to the same set of assessment years, both in case of the searched person and the person other than the searched person. It is relevant to observe, while considering identical issue in assessee's own case in assessment year 2012-13 (supra) the coordinate bench, after taking note of more or less similar argument made by the Revenue, has held as under:*

*“9. We have gone through the record in the light of the submissions made on either side. Insofar as the facts are concerned there is no dispute. Search in the case of Harvesh Chawla took place on 7/4/2016, the satisfaction by the learned Assessing Officer of the searched person was recorded on 29/3/2019 and the seized material was handed over to the learned Assessing Officer of the assessee who had recorded his satisfaction on 15/9/2019. It is clear that the date of search had fallen in the A.Y. 2017-18 which is relevant for the case of the person searched; whereas the satisfaction recorded by the learned Assessing Officer of the searched person on 29/3/2019 had fallen in the assessment year 2019-20 in which case the immediately preceding 6 assessment years would be assessment years 2013-14 to 2018-19; and the date of satisfaction recorded by the learned Assessing Officer of the assessee on 15/5/2019 falls in the assessment year 2020-21 in which case the immediately preceding 6 assessment years would be the assessment years from 2014- 15 to 2019-20.*

*10. It is, therefore, clear that when we reckon the 6 assessment years with reference to the recording of satisfaction by the learned Assessing Officer of the searched person or with reference to the recording of satisfaction by the learned Assessing Officer of the other person, in either case the assessment year 2012-13 is well beyond such period. So far as this factual position is concerned, it remains unassailable.*

*11. In respect of the starting point for computation of the block period, the Hon'ble Delhi High Court in the case of Pr. CIT v Sarwar Agency (P.)Ltd. [2017]185 taxmann.com 269 (Delhi) clearly held that in case of other person u/s 153C of the Act,*

*the starting point for computation of the block period would be the date from on which based on the seized documents, notice is issued to the other person. It was further held by the Hon'ble court that the amendment made in section 153C by Finance Act 2017 w.e.f. 1st April 2017 which states that block period for the "searched person" as well as the "other person" would be same six AYs immediately preceding the year of search is only prospective. It makes the things clear that the search that took place on 7/4/2016 in this case is prior to amendment unaffected by the amendment made by way of Finance Act 2017.*

*12. In CIT v RRJ Securities Ltd. (supra) the Hon'ble High Court held as under :*

*24. As discussed hereinbefore, in terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of 8 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, accent 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. Further, in the case of *ARN Infrastructure India Ltd v ACIT (supra)* the Hon'ble High Court held that,-

*12. 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.*

14. Lastly, in *MIKADOREALTORS P. LTD. VERSUS PR. CIT (CENTRAL) GURUGRAM. 2021 (5)TMI 722 - ITAT DELHI I.T.A. No.50/DEL/2021* a coordinate Bench of this Tribunal held that,-

*7. We will first take up the issue, whether in cases of Section 153C, the period of six years has to be reckoned from the date of recording of satisfaction note or from the date of search carried out in a case of a person provided in Section 153A. This precise issue has been dealt by the Hon'ble Delhi High Court in the case of CIT vs. RRJ Securities Ltd. as reported in 380 ITR 612 in the context of Section 153C of the Act, wherein it was laid down as under:*

*“Further, the period of six years would also have to be reckoned with respect to the date of recording of satisfaction note - that is. 8th September. 2010 -and not the date of search.*

*24. As discussed hereinbefore, in terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153 A 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 153 A of the Act and the reference to the date of search would have to be construed as the reference to the date of 10 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 recordings 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 recordings 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 153 A 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 11 of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee's income for that year.”*

*This principle was further reiterated in the case of ARN Infrastructure India Ltd. v. ACIT as reported in 394 ITR 569, wherein it has been held as under:*

*"12. 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 My, 2014 and the notice under Section I53C 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.

8. If we apply the ratio laid down by the Hon'ble Jurisdictional High Court, in the present case, then the date of satisfaction, i.e., 25.09.2018 has to be reckoned as the date of reference from where six assessment years immediately preceding assessment years has to be construed and therefore, six preceding assessment years in this case shall be from Assessment Year 2012-13 to Assessment Year 2018-19. The instant Assessment Year, i.e., Assessment Year 2017-18 ergo would be covered in the earlier six assessment years where the assessments have to be framed u/s.153C only, whereby the Assessing Officer was required to issue a notice u/s.153C, and frame the assessment u/s.153C/143(3). Contra to the law as interpreted by the Hon'ble Jurisdictional High Court, the Id. Assessing Officer had issued notice u/s. 142(1) and resultantly has framed the assessment u/s. 143(3), treating it to be regular assessment for the year of search. The amendment to clarify this position u/s. 153C (1) was brought in the statute by the Finance Act, 2017 w.e.f. 01.04.2017, wherein it has been provided that the six preceding assessment years for the person covered u/s 153C would be same as that of the searched person covered u/s 153A. In other words, in case of 'the other person' (i.e. person covered u/s 153C), six preceding assessment years has to be reckoned from the year of search. This amendment has been held to be prospective by the Hon'ble Jurisdictional High Court in the case of CIT vs. Sarwar Agency P Ltd. as reported in 397 ITR 400, wherein the Hon'ble Court observed and held as under:

“10. Mr. Salil Aggarwal, learned counsel for the Assessee, has drawn the attention of the Court to the recent amendment made in Section 153 C of the Act by the Finance Act, 2017 with effect from 1st April 2017. This amendment in effect states that the block period for the searched person as well as the 'other person' would be the same six AYs immediately preceding the year of search. This amendment is prospective.

11. 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 153C (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. 12. Consequently, no substantial question of law arises from the impugned order of the ITAT. The appeal is, accordingly, dismissed.”*

9. Further, Hon’ble Gujarat High Court in the case of *Anil Kumar Gopikishan Arawal v. CIT* as reported in 418 ITR 25 has also clarified that such an amendment is prospective after observing as under:-

*“19.19 It may be pertinent to note that vide CBDT Circular No. 2/2018 / dated 15.2.2018, it has been clarified that the amended provisions of section 153A of the Act shall apply where search under section 132 of the Act is initiated or requisition under section 132A of the Act is made on or after 1st day of April, 2017. It is further stated therein that section 153C of the Act has also been amended to provide a reference to the relevant assessment year or years as referred to in section 153A of the Income-tax Act. It is also stated therein that the amendment will take effect from 1st April, 2017. Therefore, even the CBDT, in the context of the amended provisions of section 153A of the Act, has clarified that it would apply when search or requisition is made after the date of the 13 amendment. Evidently, therefore, even the amended provisions of section 153C of the Act would apply when search or requisition is made after the amendment.”*

10. Similar amendments have been made from time to time in Section 153C and one of such amendment was in the Finance Act, 2015 brought in the statute from 01.06.2015, whereby the statute extended the scope of Section 153C by holding that not only the specified items ‘belonging to other person’ would trigger the provision of Section 153C but also any books of account or documents, seized or requisitioned which pertain to, or any information contained therein, which relates to other person would also trigger the provisions of section 153C of the Act. This amendment too has been held to be prospective and applicable only to searches conducted after 01.06.2015. This has been held so as Hon’ble Jurisdictional High Court in various judgments, some of which are as under:

i. 399 ITR 202 (Del) Canyon Financial Services Ltd. vs. ITO 5. The search in the Dalmia Group of Companies took place on 20th January, 2012 and the satisfaction note by the AO of the searched person was dated 13th March, 2014. Therefore, Section 153C as it stood prior to the amendment with effect from 1st June, 2015 applied to the case on hand. In terms of the said provision i.e., 153C(1), the AO of the searched person had to be satisfied that the documents seized 'belongs or belong to a person other than the person referred to in Section 153 A' in order that the AO of the searched person could hand over such documents to the AO "having jurisdiction over such other person". The change brought about by the prospective amendment, with effect from 1st June 2015, is that for initiating proceedings under Section 153 C arising from searches after that date it is enough for the Department to show that a particular seized document 'pertains to' the other person. However, in the present case, since the proceedings under Section 153 C (1) of the Act against the Assessee commenced prior to 1st June 2015, the Department is not relieved of the burden of showing that the seized documents in fact belong to (and not merely pertain to) the Assessee.

ii) 417 ITR 617 (Del) PCIT vs. Dreameity Buildwell (P) Ltd. "17. In 14 the present case the search took place on 5th January 2009. Notice to the Assessee was issued under Section 153 C on 19th November 2010. This was long prior to 1st June, 2015 and, therefore, Section 153C of the Act as it stood at the relevant time applied. In other words, the change brought about prospectively with effect from 1st June, 2015 by the amended Section 153C (1) of the Act did not apply to the search in the instant case. Therefore, the onus was on the Revenue to show that the incriminating material/documents recovered at the time of search 'belongs' to the Assessee, In other words, it is not enough for the Revenue to show that the documents either 'pertain' to the Assessee or contains information that 'relates to' the Assessee."

15. In the circumstances, we are of the considered opinion that since the date of search is 07.04.2016, the amendment brought by the Finance Act, 2017 would not be applicable and consequently the order of assessment dated 31.12.2019 passed u/s 153C r.w.s. 144 of the Act is bad and is liable to be quashed. We order accordingly. In view of our finding that

*the very assessment itself is bad being barred by limitation, adjudication of other grounds will only be academic and need not be resorted to.”*

**13.** *In our view, facts being identical, the aforesaid decision of the coordinate bench will squarely apply to the present appeal as well. Thus, respectfully following the decision of the coordinate bench in assessee’s own case, as referred to above, we hold that the impugned assessment order passed under section 153C of the Act, is wholly without jurisdiction, hence, invalid. Accordingly, we quash the same. Consequently, the order of learned Commissioner (Appeals) is set aside. In view of our decision in ground 1 and 2, the grounds raised on merits having become academic, are not adjudicated.”*

7. As a natural corollary, the impugned order of learned Commissioner (Appeals) was set aside. That being the case, the present appeal of the Revenue, for all practical purposes, has become infructuous. Hence, dismissed.

8. In the result, the appeal is dismissed.

***Order pronounced in the open court on 11<sup>th</sup> May, 2023***

**Sd/-  
(M. BALAGANESH)  
ACCOUNTANT MEMBER**

**Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER**

Dated: 11<sup>th</sup> May, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi