

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'E' : NEW DELHI)

**BEFORE SH. G.S.PANNU, HON'BLE PRESIDENT
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.2899/Del/2019
(Assessment Year : 2010-11)

ACIT, Central Circle-2 New Delhi	Vs.	M/s. Opal Buildwell P. Ltd. (formerly Namu Resorts Pvt. Ltd.) 445, Kucha Baijnath, Chandni Chowk, Delhi PAN : AABCN9757H
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. K.C.Singhal, Adv.
Revenue by	Sh. N.C.Swain, CIT-DR & Sh. Anuj Garg, Sr. DR

Date of hearing:	01.06.2023
Date of Pronouncement:	30.06.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the assessee against order dated 30.12.2018 in appeal no. 223/2017-18 in assessment year 2010-11 passed by Commissioner of Income Tax (Appeal)-23 (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 30.12.2017 u/s 153C r.w.s.

153A of the Income Tax Act, 1961 (herein after referred to as 'the Act') passed by ACIT, Central Circle-2, New Delhi (hereinafter referred to as the Assessing Officer 'AO').

2. The facts in brief are the appellant filed its return of income for A.Y. 2010-11 on 15.10.2010 declaring income of Rs. 2,81,421/- which was processed u/s 143(1) of the Act. Subsequently, the assessment has been reopened u/s 153C of the Act vide notice dated 18.10.2016 on the allegation that certain documents/papers belonging to the appellant were found during the course of search u/s 132 at the premises of Appu Ghar Group of cases on 10.03.2015. Admittedly, no documents/papers belonging to the appellant pertaining to this year was found in the course of search. In the course of assessment proceedings, the Ld. AO asked the assessee to file necessary evidences regarding various amounts, aggregating to Rs. 12,60,33,832/- received by it from various persons as appearing in bank statement issued by Kotak Mahindra Bank. In response to the same, the appellant filed its reply dated 27.12.2017 along with all relevant evidences i.e. bank statement along with confirmation, confirmations from the parties and copy the ITR of the related parties. Thereafter, the AO randomly selected 20 parties and issued summons to them u/s 131 of the Act on 27. 12.2017 through his inspector. According to his report, none of them were found at the given address. Hence, addition of Rs. 12,60,33,832 /- was made by him vide order dated 30.12.2017.

2.1 In appeal before Ld FAA, it held;

“4.2 The appellant has raised as many as five grounds of appeal. Vide ground No. 1, the appellant has challenged the legality of

*main contention of the appellant is that the satisfaction note for initiating the proceedings under section 153C by the assessing officer having jurisdiction over the case of 'other person' (the appellant) has been recorded on 14.10.2016. Relying upon the ratio laid down by the Hon'ble Delhi High Court while delivering the judgement in case of **CIT Vs. RRJ Securities Ltd. (2016) 380 ITR 612 (Del - HC)**, the AR argued that the block for making assessment under section 153C would be from AY 2011-12 to 2016-17. The AR further argued that the action of the AO in terms of initiating proceedings under section 153C of the IT Act, 1961 for assessment years 2009-10 and 2010-11 was not in accordance with the law.*

*4.3 Hon'ble Delhi High Court while delivering judgment in case of **Principal Commissioner of income Tax Vs. Sarwar Agency (P.) Ltd. [2017] 85 taxmann.com 269 (Delhi)** upheld the view that the six assessment years for which assessments/reassessments could be made under Section 153C of the Act would have to be construed with reference to the date of handing over of assets/documents to the AO of the other person (appellant).*

4.4 The Hon'ble High Court also remarked that 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.

4.5 Respectfully following the judgment of the Hon'ble Delhi High Court, it is held that in the present case, the date of writing

satisfaction note/ handing over of the relevant material being 14.10.2016, the AY in which the date of handing over of the relevant material falls would be AY 2017-18. Therefore, the. (block) period for issuing notices u/s 153C (r.w.s 153A) would be from AY 2011-12 to AY 2016-17(six AYs immediately preceding the A.Y. 2017-2018). Consequently, it is held that the notices issued (u/s 153C) for AY 2009-10 and 2010-11 were beyond mandate of the law.”

3. Now in appeal Revenue is raising following grounds :

- 1. The order of Ld. CIT(A) is not correct in law and facts.*
- 2. That on facts and circumstances of the case, the Ld. CIT(A) has erred in holding that the assessing officer could not issue notice u/s 153C of the I. T. Act, 1961 for the A.Y. 2010-11 in view of the amendment u/s 153C and quashing the assessment order passed by assessing officer u/s 153C r.w.s. 143(3) of the Act.*
- 3. That on facts and circumstances of the case, the Ld. CIT(A) has erred in holding that the assessing officer could not issue notice u/s 153C of the I. T. Act, 1961 for the A.Y. 2009-10 in view of the amendment u/s 153C even when the amendment to section 153C was made by Finance Act, 2017 which is effective from 01.04.2017, whereas the notice u/s 153C was issued on 18.10.2016, that is prior to the amendment in the provisions u/s 153C.*
- 4. That on facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 12,60,33,832/- made by the assessing officer on account of unexplained cash credit u/s 68 of the I.T. Act, 1961.*
- 5. The appellant craves for leave to add, amend any/all the ground of appeal before or during the course of hearing of the appeal.*

4. Heard and perused the record. On behalf of the revenue it was submitted that the ld. CIT(A) has fallen in error in allowing the appeal by following judgment of Hon'ble Delhi High Court in **CIT(A) vs. RRJ Securities Ltd. (supra)**. It was submitted that issuing a notice for Assessment Year 2009-10 and 2010-11 was within the purview of law in view of the amendments inserted in Section 153C vide Finance (No. 2) Act, 2014 with effect from 01.10.2014. It was submitted that the date of search in the case of assessee is 10.03.2015 while in case of the judgments relied by Ld. CIT(A) the date of search were before 1.10.2014. Ld. CIT-DR heavily relied the provisions of Section 153C as amended from time to time submitting that the action of AO in issuing notices from A.Y. 2009-10 onwards is as per law because the relevant assessment year or years referred to in sub section (1) of Section 153A of the Act were applicable and sub section 1 of Section 153A provided that the Assessing Officer shall assess or re-assess the total income in respect of each assessment year falling within such 6 assessment years.

5. On the other hand it was submitted on behalf of the respondent-assessee that as for the interpretation of the proviso to Section 153C of the Act, the date of search is applicable and the proviso itself says that date of initiation of search u/s 132 in the second proviso to sub section 153A of the Act shall be construed as reference to the date of receiving the books of account or document or assets seized. It was submitted that the language of provisions of Section 153C nowhere suggests the reference of assessment year while interpreting the scope of this section. It was accordingly submitted that Ld. CIT(A) has rightly relied the judgment of Hon'ble Jurisdictional High Court in **RRJ Securities Ltd. (supra)** which has been

further reiterated in **Serwer Agency (P) Ltd. 397 ITR 400** and even request to reconsider the ratio in RRJ Securities Ltd. (Supra) was rejected.

6. Appreciating the matter on record it can be observed that the grounds raised are connected to the question if by virtue of Section 153C of the Act, Assessing Officer was having jurisdiction to issue notices for assessment year 2009-10 and 2010-11. In this context, the crucial dates relevant for giving findings are provided as below :-

1. 10.03.2015 – search and seizure operation u/s 132 of the act was conducted in the group of cases.

2. 18.07.2016 - The Assessing Officer of the searched person who was also assessing officer of the assessee issued notice u/s 153C

7. In regard to this controversy, reliance is placed on the judgment of Co-ordinate Bench in **ITA No. 204/Del/2021 M/s. Karina Airlines International Limited vs. ACIT dated 28.02.2022** in which Hon'ble President was also in the coram and where in para no. 9 onwards to para no. 13 following relevant findings were given :-

“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 15th 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 1st 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 1st 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 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.

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 recording of 14 ITA No. 204/Del/2021 AY: 2011-12 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 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.

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 ie., 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 to 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 (11 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.”

8. Thus, there is no force in the contention raised on behalf of the Revenue that with reference to Section 153A the relevant assessment year or years for the purpose of Section 153C were required to be ascertained and accordingly the action of Ld. AO in issuing the notices from A.Y. 2009-10

onwards was as per law. The first proviso to Section 153C inserted by Finance Act, 2005 with retrospective effect from 01.06.2003 was applicable and a distinction was created in regard to relevant period of assessment and re-assessment in case of search person and the person other than searched. In regard to later person Section 153A was to be construed as reference to the date of receiving of the books of accounts or documents or assets seized or recognition by the Assessing officer having jurisdiction over such other person. In case the Assessing Officer happens to be the same officer exercising jurisdiction on both the searched and the person other than searched, then the date of issuing of notice i.e 18.10.2016 would have been relevant. In the case in hand the satisfaction note for initiating the proceedings u/s 153C by the Assessing officer having jurisdiction over the case of “other person” has been recorded on 14.10.2016 and accordingly notice was issued on 18.10.2016. Thus, there is no substance in the grounds raised and the same are decided against the Revenue. **The appeal of Revenue is dismissed.**

Order pronounced in the open court on 30th June, 2023.

Sd/-
(G.S.PANNU)
PRESIDENT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- 30.02.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI