

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA JUDICIAL MEMBER**

ITA No.3571/Del/2018
Assessment Year: 2008-09

M/s. Bholeji Infratrade Pvt. Ltd. (Merged with M/s. Akriti Realtech Ltd. Shop No.E-40, Nehru Ground, Faridabad PAN No.AACCB9666L	Vs	DCIT Central Circle-II Faridabad
(APPELLANT)		(RESPONDENT)

ITA No.3584/Del/2018
Assessment Year: 2008-09

M/s. M. K. Realtrade Pvt. Ltd. RRA Taxindia, D-28, South Extension, Part-1, New Delhi PAN No.AABCJ8784C	Vs	DCIT Central Circle-II Faridabad
(APPELLANT)		(RESPONDENT)

ITA No.3583/Del/2018
Assessment Year: 2008-09

Perfect Realtech P. Ltd. RRA Taxindia, D-28, South Extension, Part-1, New Delhi PAN No.AAECF0314K	Vs	DCIT Central Circle-II Faridabad
(APPELLANT)		(RESPONDENT)

ITA No.3582/Del/2018
Assessment Year: 2008-09

M/s. Daksh Developers Pvt. Ltd. RRA Taxindia, D-28, South Extension, Part-1, New Delhi -110049 PAN No.AAACD4616N	Vs	DCIT Central Circle-II Faridabad
(APPELLANT)		(RESPONDENT)

ITA No.3579/Del/2018
Assessment Year: 2008-09

M/s. Sundawn Builders Pvt. Ltd. RRA Taxindia, D-28, South Extension, Part-1, New Delhi -110049 PAN No.AAKCS2484F	Vs	DCIT Central Circle-II Faridabad
(APPELLANT)		(RESPONDENT)

ITA No.3580/Del/2018
Assessment Year: 2008-09

M/s. Arambh Tradecon Pvt. Ltd. RRA Taxindia, D-28, South Extension, Part-1, New Delhi -110049 PAN No.AAGCA2513D	Vs	DCIT Central Circle-II Faridabad
(APPELLANT)		(RESPONDENT)

ITA No.3578/Del/2018
Assessment Year: 2008-09

M/s. Aakash Infratade Pvt. Ltd. RRA Taxindia, D-28, South Extension, Part-1, New Delhi -110049 PAN No.AAGCA5942C	Vs	DCIT Central Circle-II Faridabad
(APPELLANT)		(RESPONDENT)

ITA No.3354/Del/2018
Assessment Year: 2008-09

DCIT Central Circle-II Faridabad	Vs	M/s. Arambh Tradecon Pvt. Ltd. RRA Taxindia, D-28, South Extension, Part-1, New Delhi -110049 PAN No.AAGCA2513D
(APPELLANT)		(RESPONDENT)

ITA No.3577/Del/2018
Assessment Year: 2008-09

First Realtrade P. Ltd. RRA Taxindia, D-28, South Extension, Part-1, New Delhi -110049 PAN No.AAACO8640D	Vs	DCIT Central Circle-II Faridabad
(APPELLANT)		(RESPONDENT)

ITA No.3575/Del/2018
Assessment Year: 2008-09

M/s. Nakshatra Realtrade Pvt. Ltd. RRA Taxindia, D- 28, South Extension, Part-1, New Delhi -110049 PAN No.AACCN3822G	Vs	DCIT Central Circle-II Faridabad
(APPELLANT)		(RESPONDENT)

ITA No.3360/Del/2018
Assessment Year: 2008-09

DCIT Central Circle-II Faridabad	Vs	First Realtrade P. Ltd. (Earlier Known as one on One Developers Pvt. Ltd. Shop No.-E-40, Nehru Ground, Faridabad PAN No.AAACO8640D
(APPELLANT)		(RESPONDENT)

ITA No.3358/Del/2018
Assessment Year: 2008-09

DCIT Central Circle-II Faridabad	Vs	M/s. Sundawn Builders Pvt. Ltd. Shop No. E-40, Nehru Ground, Faridabad PAN No.AAKCS2484F
(APPELLANT)		(RESPONDENT)

ITA No.3355/Del/2018
Assessment Year: 2008-09

DCIT Central Circle-II Faridabad	Vs	M/s. Naaz Builders Pvt. Ltd. Shop No.E-40, Nehru Ground, Faridabad PAN No.AACCN4907A
(APPELLANT)		(RESPONDENT)

ITA No.3581/Del/2018
Assessment Year: 2008-09

M/s. Swami Foods Ltd. RRA Taxindia, D-28, South Extension, Part-1, New Delhi -110049 PAN No.AAICS7753F	Vs	DCIT Central Circle-II Faridabad
(APPELLANT)		(RESPONDENT)

ITA No.3572/Del/2018
Assessment Year: 2008-09

M/s Naaz Builders Pvt. Ltd. RRA Taxindia, D-28, South Extension, Part-1, New Delhi -110049 PAN No.AACCN4907A	Vs	DCIT Central Circle-II Faridabad
(APPELLANT)		(RESPONDENT)

ITA No.3566/Del/2018
Assessment Year: 2008-09

Kalakriti Infratrade Pvt. Ltd. (Now known as M/s. Akriti Realtech Ltd) RRA Taxindia, D-28, South Extension, Part-1, New Delhi -110049 PAN No.AACCK9052H	Vs	DCIT Central Circle-II Faridabad
(APPELLANT)		(RESPONDENT)

Appellant by	Dr. Rakesh Gupta, Advocate Sh. Somil Aggarwal, Advocate Sh. Deepesh Garg, Advocate
Respondent by	Sh. Zafarul Haque Tanweer, CIT DR

Date of hearing:	13/09/2023
Date of Pronouncement:	13/09/2023

ORDER

PER N. K. BILLAIYA, AM:

The captioned appeals in the case of 12 different assessees are by the assessee and the revenue preferred against the very same order of the CIT(A)-2, Gurgaon dated 27.02.2018 pertaining to A.Y.2008-09.

2. Since under lying facts in the issues are identical in all the appeals, therefore, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The undisputed facts in the captioned appeals as agreed by both the representatives are that the business / office premises as well as residential premises of M/s. SRS Group were subjected to search and seizure operation u/s.132 of the Act on 09.05.2012

4. On the basis of the material found at the time of search satisfaction note was drawn in the cases of captioned assessees on 18.09.2014, therefore, reference to the date of search in the case of the captioned assessees (being person other than the search person) would have to be construed from the date of the recording of the satisfaction. This view is as per the decision of the Hon'ble Delhi High Court in the case of M/s. RRJ Securities 380 ITR 612. The relevant findings reads as under : -

“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 Page 5 of 8 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.

9. The Hon'ble High Court reaffirmed its view in the case of ARN Infrastructure India Ltd 81 Taxmann.co, 260 held as under:

“The decision in RRJ Securities Ltd. (supra) is categorical that under Section 153C of the Act, the period of six years as regards the person other than the searched person would commence only from the year in which the satisfaction note is prepared by the AO of the searched person and a notice is issued pursuant thereto. The date of the Satisfaction Note is 21st July, 2014 and the notice under Section 153C of the Act was issued on 23rd July 2014. The previous six AYs would therefore be from AY 2009-10 to AY 2014-15. This would therefore not include AYs 2007-08 and 2008-09. The decision in RRJ Securities Ltd. (supra) is also an authority for the proposition that for the proceedings under Section 153C to be valid, there had to be a satisfaction note recorded by the AO of the searched person. The Court also stated that - This position again stands settled by the decision in RRI Securities Ltd (supra). The fact that the Revenue's SLP against the said decision is pending in the Supreme Court does not make a difference sine the operation of the said decision has not been stayed.”

10. In the case of Raj Buildworth Pvt Ltd 113 Taxmann.com 600, the Hon'ble High Court observed as under:

“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 Page 6 of 8 the financial year in which the satisfaction note was recorded by the Assessing Officer.”

11. And in the case of Sarwar Agency Pvt Ltd 85 Taxmann.com 269, the relevant findings read as under:

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

14. This proposition has also been upheld and followed by this Tribunal in catena of judgment as cited by the ld. Counsel. Thus, respectfully following the ratio laid down by the Hon'ble Jurisdictional High Court we hold that is a terminal date for determining of six preceding assessment years for the purpose of Section 153C r.w.s. 153A would be the date of handing over the

documents or the dated of recording of the satisfaction. Admittedly, the six preceding assessment years in the case of the assessee is from Assessment Year 2009-10 and ending on 2014-15. Accordingly, we hold that ld. CIT (A) was correct in law that no assessment u/s.153C was made in respect of Assessment Year 2007-08 and is barred by limitation.

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

12. In the light of aforesaid judicial decisions and the date of search in the cases of the captioned assessee's Block Period would be A.Y.2009-10 to A.Y.2014-15. Since the assessment of the captioned appeals pertains to A.Y.2008-09 framed u/s.153C of the Act would be outside the purview of the block of assets of 6 years. As mentioned here in above. Therefore, the assessment so framed does not have any legal entity and deserve to be quashed. We hold accordingly.

13. Since assessments have been quashed we do not find it necessary to dwell into the merits of the case or other issues raised.

14. In the result, the appeals of the assessee are allowed and that of the revenue is dismissed.

15. Decision announced in the open court on 13.09.2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Dated: .09.2023

Neha

Copy forwarded to:

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

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Asst. Registrar
ITAT, New Delhi