

ITA Nos.1017 & 1018/Bang/2011 & CO No.52/Bang/2014  
Shri Karthik Krishna, Bangalore  
ITA Nos.1019 & 1020/Bang/2011  
Smt. Rajyalakshmi, GPA Holder of Smt. Kavya Krishna, Bangalore  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“C” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**  
**AND**  
**SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1017 & 1018/Bang/2011 & CO No.52/Bang/2014 (Arising out of ITA No.1007/Bang/2011)
Assessment Years: 2007-08, 2008-09 & 2006-07 respectively

Sri Karthik Krishna G-1 Brigade Lavelle 11/12, 7 <sup>th</sup> Cross, Lavelle Road Bangalore  <b>PAN NO : AKQPK3582R</b>	<b>Vs.</b>	DCIT Central Circle-2(3) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA No.1019 & 1020/Bang/2011
Assessment Years: 2007-08 & 2008-09

Smt. Rajyalakshmi, GPA Holder of Smt. Kavya Krishna G-1 Brigade Lavelle 11/12, 7 <sup>th</sup> Cross, Lavelle Road Bangalore  <b>PAN NO : AKQPK3581N</b>	<b>Vs.</b>	DCIT Central Circle-2(3) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Prashanth G.S., A.R.
<b>Respondent by</b>	:	Shri Parithivel, D.R.

<b>Date of Hearing</b>	:	01.11.2023
<b>Date of Pronouncement</b>	:	29.11.2023

**O R D E R**

**PER BENCH:**

Originally the department came in appeal before this Tribunal vide above ITA Numbers and assessee filed a CO before this Tribunal. These are collectively disposed of vide order dated 5.6.2014. Against the Tribunal order, the assessee went in appeal before Hon'ble High Court of Karnataka raising question of law that there was no

satisfaction recorded before issuing the notice u/s 153C of the Income-tax Act,1961 [‘the Act’ for short] by the jurisdictional AO since the recording of satisfaction was sine-qua-non for initiating proceedings u/s 153C of the Act. On this issue, the Hon’ble High Court vide judgement nos.447 of 2014, 450 of 2014, 95 of 2016 & 98 of 2016 remitted the appeals in ITA Nos.1017 & 1018/Bang/2011, CO No.52/Bang/2014, ITA Nos.1019 & 1020/Bang/2011 to the file of Tribunal with a direction to call for the records and examine whether satisfaction u/s 153C of the Act was recorded and to examine the same. Hence, these appeals are listed for fresh hearing only to consider the above legal issue afresh.

**2.** The ld. A.R. submitted that the assessments under section 143(3) r.w.s 153C of the Act were completed vide orders dated 22.12.2010 for the assessment years 2006-07, 2007-08 & 2008-09 in the case of Mr. Karthik Krishna and for the assessment years 2007-08 & 2008-09 in the case of Kavya Krishna.

**Karthik Krishna:**

**2.1** He submitted that aggrieved by the orders of assessments for the assessment years 2006-07 to 2008-09, Mr. Karthik Krishna had preferred appeals before the CIT(A). The ld. CIT(A) allowed the appeal of Mr. Karthik Krishna for the assessment year 2006-07 vide order dated 30.08.2011 and the appeals for the assessment years 2007-08 & 2008-09 were dismissed vide order dated 15.09.2011 against which Mr. Karthik Krishna had preferred appeals before the Hon’ble Tribunal in ITA Nos. 1017 & 1018/Bang/2011. The Department had also filed an appeal before the Tribunal for the assessment year 2006-07 in ITA No. 1007/Bang/2011 and Mr. Karthik Krishna had filed a cross objections in C.O. No. 52/Bang/2014 against the department appeal for the assessment year 2006-07.

**Kavya Krishna:**

**2.2** He submitted that aggrieved by the assessment orders for the assessment years 2007-08 & 2008-09, Kavya Krishna had preferred appeals before the Id. CIT(A). The Id CIT(A) had dismissed the appeals vide order dated 15.09.2011 against which Kavya Krishna had preferred appeals before the Tribunal in ITA Nos. 1019 & 1020/Bang/2011. He submitted that the Tribunal had passed a common order dated 05.06.2014 in the case of Mr. Karthik Krishna [ITA No. 1007/Bang/2011 (Dept. Appeal) & C.O. No.52/Bang/2014 for assessment year 2006-07 and ITA Nos. 1017 & 1018/Bang/2011 for the assessment years 2007-08 & 2008-09] & Kavya Krishna [ITA Nos. 1019 & 1020/Bang/2011 for the assessment years 2007-08 & 2008-09]. Aggrieved by the order dated 05.06.2014 passed by the Tribunal Mr. Karthik Krishna had filed an appeal before the Hon'ble High Court of Karnataka in ITA No. 447/2014. Further, Kavya Krishna, represented by Smt. Rajya Lakshmi had also filed an appeal before the Hon'ble High Court in ITA No. 450/2014 against the common order of the Tribunal dated 05.06.2014.

**2.3** He further submitted that Mr. Karthik Krishna & Kavya Krishna had also filed a common Miscellaneous Petition (MP) in MP No. 47/Bang/2014 before the Tribunal in respect of the common order dated 05.06.2014 passed by the Tribunal. The Tribunal had dismissed the MP vide order dated 24.09.2015 against which Mr. Karthik Krishna & Kavya Krishna had filed independent appeals before the, Hon'ble High Court of Karnataka in ITA Nos. 95/2016 & 98/2016 for the . assessment years 2007-08 & 2008-09.

**2.4** The Hon'ble High Court vide its common order dated 12.09.2022 allowed the appeals filed in ITA Nos. 447/2014 & 450/2014 by setting aside the common order dated 05.06.2014

passed by the Tribunal arising out of C.O. No. 52/Bang/2014 for the assessment year 2006-07, ITA No. 1017 & 1018/Bang/2014 and ITA Nos. 1019 & 1020/Bang/2014 for the assessment years 2007-08 & 2008-09 in the case of Mr. Karthik Krishna & Kavya Krishna. The High Court has also directed the Tribunal to call for the records of the department examine whether satisfaction under section 153C of the Act is recorded.

**2.5** He further submitted that as per the directions of the Hon'ble High Court, the Tribunal had posted the matters for hearing on various dates and directed the department to furnish the records to examine the satisfaction recorded for issuance of notices under section 153C of the Act. The Departmental Representative had taken time for producing the records on 08.06.2023, 05.07.2023, 08.08.2023 & 04.10.2023. However, the department did not furnish the records/ satisfaction notes before the Tribunal which clearly indicates that either the department does not have any records or the records with them do not help their case.

**2.6** He submitted that in the absence of records the adverse inference that no satisfaction recorded for initiating proceedings under section 153C of the Act has to be drawn as the department has repeatedly failed to furnish the impugned records/ satisfaction note despite direction by the Tribunal. He placed reliance on the decision of the Apex court in the case of Rai Singh Deb Singh Bist & Anr., 88 1TR 200 wherein it has been held as follows:

*“In the writ petitions the assessee called upon the Income-tax Officer to produce the report made by him to the Central Board of Revenue as well as the order of the Central Board of Revenue thereon. Despite this prayer, neither the Union of India nor the Income-tax Officer cared to produce the report made by the Income-tax Officer to the Central Board of Revenue under section 34(l)(a) or the order of the Central Board of Revenue. Before the hearing of the writ petitions*

*commenced, the assessee again applied to the court to call upon the Union of India and the Income-tax Officer to produce those documents. In response to that application, an affidavit was filed before the court stating that the relevant records could not be traced from the file of the Central Board of Revenue. Assuming that the concerned records were missing from the file of the Central Board of Revenue, the copy of the report made by the Income-tax Officer and the order received by him must have been in the file of the Income-tax Officer. No reason was given for not producing those records. These circumstances give rise to an adverse inference against the department. We are constrained to come to the conclusion that the records in question were not produced because they did not assist the department's case. Under these circumstances, it is not possible to come to the conclusion that the facts necessary to confer jurisdiction on the Income-tax Officer to proceed under section 34(l)(a) had been established. " (Emphasis Added)*

**2.7** He placed reliance on the decision of the Hon'ble High Court of Karnataka in the case of Ramnath Santu Angolkar vs. DCIT, reported in 422 ITR 508, wherein it was held that:

*.....However, on account of non-production of the warrant of authorization, the adverse inference has to be drawn. Therefore, the first substantial question of law is answered in favour of the appellant and against the revenue, however, with the liberty to the revenue to proceed against the appellant in accordance with law. " (Emphasis Added)*

**2.8** He placed reliance placed on the decision of the Jurisdictional Tribunal in the case of Microland Ltd. vs. ACIT, 67 ITD 446 wherein it has been held as follows:

*“Whatever may be the case relating to disclosure of the information about search to the assessee even at the assessment stage, at this stage of appeal before us, at least, the Departmental authorities should have placed all the relevant records. The Tribunal would have surely taken care to see that such confidential matters are not divulged to the assessee or anybody else. However, non-production of the relevant records would certainly go against the Departmental case. We are constrained to take an adverse view of the matter on account of non-compliance of our*

*requirements, by the Departmental authorities. We therefore come to the opinion that the name of M/s. Microland Ltd., was not there in the original search warrant and was inserted at a later stage and a photocopy thereof only was produced before us when we wanted for the same. " (Emphasis Added)"*

**2.9** He submitted that section 114(g) of the Indian Evidence Act, 1872 pertains to the principle of presumption regarding evidence not presented. It establishes that if evidence that could be produced is intentionally not presented, the court may infer that if such evidence were provided, it would likely be unfavourable to the party withholding it. In the case instant, the department despite providing numerous opportunities has failed to produce the records/ satisfaction note as required under section 153C of the Act. Therefore, the reasonable conclusion that no records/ satisfaction note is available with the department has to be drawn under the facts and circumstances of the case. It is settled position of law that recording of satisfaction is a sine qua non for initiating proceedings under section 153C of the Act. The Department has also accepted the view that satisfaction note is a sine qua non for initiating proceedings under section 153C of the Act vide CBDT Circular No. 24/2015 dated 31.12.2015. Therefore, the satisfaction of the Assessing Officer that the books of accounts and documents found during the course of search does not belong to the person referred to in section 153A of the Act, but belonged to any other person is a prerequisite and such satisfaction must be recorded before initiating proceedings under section 153C of the Act. In the case instant, in the absence of the records, the adverse inference must be inferred that the satisfaction note as required under section 153C of the Act is not recorded and thus the orders passed under section 143(3) r.w.s 153C of the Act are without jurisdiction & hence the same needs to be quashed under the facts & circumstances of the case. In view of the above, the ld. A.R. for the assessee humbly prayed that

the cross objection & appeals be allowed in the interest of equity and justice.

**3.** The Id. D.R. submitted that as per direction of the Bench, he has sought for the assessment records in above cases for the relevant assessment years along with satisfaction note recorded u/s 153C of the Act. In this connection, he submitted that despite best efforts, the assessment records in respect of the above cases could not be retrieved till date. As a matter of fact, the entire details of communication with the Assessing Officer/ Range Head/Pr. Commissioner during the last 03 months was furnished before the Bench. Initially efforts were made to obtain the records from the Central Circle where the Search Assessment was completed in the case of Mr. Krishna & group consisting of Mrs. Rajyalakshmi, Mr. Karthik Krishna & Late Mrs. Kavya Krishna (GPA Holder-Mrs. Rajyalakshmi) & others. As it came to light that a lot of cases in the group was decentralized with DCIT, Circle 3(1) Bangalore, communication was made with the AO to obtain the files. But it was learnt that the cases of Mrs. Rajyalakshmi, Mr. Karthik Krishna & Late Mrs. Kavya Krishna (GPA Holder-Mrs. Rajyalakshmi) were decentralized with ITO, Ward 1(2)(1). Communication was sent to the AO with a copies to Addl. CIT, Range 1(2), Bangalore, CIT(Judicial), Bangalore & PCIT-I, Bengaluru to furnish the assessment records relevant to above cases.

**3.1** He further submitted that it was also informed that although one year has been elapsed, finality could not be reached as the recording of satisfaction u/s 153C was not ascertained in the case of Mr. Karthik Krishna for AY 2006-07, 2007-08 & 2008-09 and Late Mrs. Kavya Krishna for AY 2007-08 & 2008-09 from the assessment records. The field formation was also informed about the serious view of Hon'ble members of 'C' Bench with regard to

unseemly delay in furnishing assessment records in the above cases and non-compliance to the directions of the Hon'ble High Court of Karnataka. The AO was also informed that the issue shall be taken up as "Most Urgent" and "Most Important" and if the details called for were not furnished, the ITAT shall be constrained to complete the appeal proceedings on the basis of materials available on record.

**3.2** He submitted that in response, the AO filed a reply dated 25/10/2023 through his Range Head stating that Assessment Records of SRI KARTHIK KRISHNA & SMT RAJYALAKSHMI (GPA holder of Late Kavya Krishna) could not be traced in his office. It was also submitted that efforts taken with outsourced Agency (M/S. Iron Mountain) proved futile. As the case before the Tribunal was slated for hearing on 01/11/2023, further efforts were made by making a personal visit to the office of AO (along with ITI) on 30/10/2023 and AO was requested to make all out efforts in this regard. Enquiries were also conducted with the DCIT (Hqrs) of PCIT-I, Bengaluru and personal interaction with PCIT-I, Bengaluru who is having jurisdiction of the AO under whom the assesseees are covered was made and requested to do the needful. Pr. CIT-I instructed the AO to make all out efforts to trace the required files and send to ld. D.R's office by 31/10/2023 evening. However, on the evening of 31/10/2023, ld. D.R. received a mail from ITO Ward 1(2)(1), Bangalore that a re-search of their record room is being made and it will take nearly a week's time to complete.

**3.3** In this connection, the ld. D.R. submitted that provocation of proceedings u/s 153C was brought on record in all the orders u/s 143(3) r.w.s 153C in the case of Mr. Karthik for AY 2006-07, 2007-08 & 2008-09 & Late Mr. Kavya Krishna for AY 2007-08 & 2008-09. The recording of satisfaction for initiating proceedings

u/s 153C and its validity in the case of Mr. Karthik Krishna and Late Mrs. Kavya Krishna was also elaborated by CIT (A) VI Bangalore vide his orders dated 15/09/2011 for AY 2007-08 & 2008-09. (Order para 3.2/pages 203) for AY 2006-07, the Satisfaction Note for proceedings u/s 153C of the Act in the case of Mr. Karthik was also brought on record by the CIT (A) VI Bangalore vide his order dated 30/08/2011. The challenges raised for initiating the proceedings u/s 153C and its validity in the case of Mr. Karthik Krishna & Late Mrs. Kavya Krishna for AY 2006-07, 2007-08, 2008-09 and 2007-08 & 2008-09 respectively were effectively countered and dismissed by the 'C' Bench of Tribunal vide its common order dated 05/06/2014 (in para 29, 30 & 31/ pages 28,29,30 & 31). Besides with regard to in the Counter Objection 52/Bang/2014 dated 23/05/2014 filed by Mr. Karthik Krishna (against the order of CIT (A) for AY 2006-07 dated 15/09/2011 with regard to Satisfaction for initiation of proceedings u/s 153C) ITAT 'C' Bench vide its order dated 05/06/2014 (as per para 19,20 & 21 /pages 16, 17 & 18) dismissed the same. In the light of the above, the ld. D.R. requested vide letter dated 1.11.2023 that this Tribunal may kindly grant at least 10 days time to make the last bit efforts to trace the Assessment records of SRI KARTHIK KRISHNA & SMT RAJYALAKSHMI (GPA holder of Late Kavya Krishna) especially in the light of fact that assessment records of Mrs. Rajyalakshmi was retrieved along with Satisfaction Note for initiating proceedings u/s 153C for AY 2008-09 which was submitted to the Bench on the date of hearing i.e. 1.11.2023 to ascertain the recording of satisfaction note for initiating the proceedings u/s 153C in the case of Mr. Karthik Krishna & Late Kavya Krishna and submit a report thereon.

**4.** We have heard the rival submissions and perused the materials available on record. These cases have been originally disposed of by this Tribunal vide order dated 5.6.2014 wherein the Tribunal dismissed the issue by observing as under:

*“20. As far as the merits of the issue raised in the cross objection, namely, validity of initiation of proceedings u/s 153C of the Act is concerned, the argument of the learned counsel for the assessee was that the proceedings u/s 153C of the Act can be initiated only where document seized in the course of search u/s 132 of the Act belonged to a person other than the person who has been subjected to a search u/s 132 of the Act. His submission was that the gift deeds found in the search of premises of his mother was neither incriminating nor belonged to the assessee and, therefore, no valid proceedings u/s 153C of the Act could have been initiated against the assessee.*

*21. We find it difficult to accept the submission made by the learned counsel for the assessee in this regard. As we have already seen the gift deed clearly refers to the fact that a gift is being given by Muniswamy, to the assessees. It is also seen that along with the gift deed, delivery notes duly signed by both the assessees of this group of appeals were also found. In such circumstances, it is difficult to accept the contention of the assessee that the document seized in the search of his mother did not belong to the assessee. Sec.153C of the Act also does not mandate that the document seized should be incriminating as is sought to be argued by the learned counsel for the assessee. We also hold that in the circumstances proper satisfaction for proceeding against the Assessee’s u/s 153C of the Act has been arrived at. The proceedings u/s 153C of the Act were properly initiated. We, therefore, do not find any substance in the cross objection filed by the assessee. Consequently the same is dismissed.”*

**4.1** Consequent to this, assessee filed MA No.47/Bang/2014 and the Tribunal vide order dated 24.9.2015 dismissed the MA as follows:

*“24. We will now deal with the contentions regarding validity of initiation of search u/s.153C of the Act as put forth in the miscellaneous petition. It has been first contended that the Tribunal did not call for the satisfaction recorded by the AO despite the Assessee pleading that the Department is put to strict proof of recording of satisfaction for proceeding u/s.153C of the Act by the AO. No such plea was raised when the appeal was argued as is contended in para 2.6 of the miscellaneous petition. The decision in the case of Calcutta Knitwear (supra) was referred to was cited before the bench when the appeal was argued. that was a decision rendered in the context of provisions of section 158 BD of the Act. Whether the decision referred to in para 2.7 of the miscellaneous petition were cited before the bench when the appeal was argued. In any event the question*

*whether the decisions referred to in para 2.7 of the miscellaneous petition rendered in the context of Sec.158BD of the Act can be applied to proceedings u/s.153C of the Act is again a debatable issue and such debatable issues cannot be subject matter of decision in a M.P. In this regard the learned counsel for the Assessee has relied on the following decisions in support of his stand that the satisfaction that material seized belongs to the person other than the person searched should be reached by the AO of the person searched and it is only then the proceedings u/s.153C of the Act can be initiated against the other person.*

*Pepsi Foods Pvt. Ltd. vs. ACIT 367 ITR 112(Del)  
Pepsico India Holdings Pvt.Ltd. vs. ACIT 370 ITR 295 (Del)  
ACIT vs. Inlay Marketing Pvt.Ltd. 113 DTR 121 (ITAT)  
(Del) DCIT vs. Qualitron Commodities (P) Ltd. 167 TTJ 553  
DCIT vs. Aakash Arogya Mindir Pvt.Ltd. 114 DTR 61 (ITAT) (Delhi)  
Srinivasa Naik vs. ACIT 117 ITD 201 (ITAT) (Bang.)  
Vijaybhai N.Chandrani vs. ACIT 333 ITR 436 (Guj)  
Sri Gurinder Singh Bawa ITA NO.2075/Mum/2010 dated 16A1.2012  
Sanjay Agarwal ITA No.3184/Del/2013 dated 16.6.2014*

*The learned counsel for the Assessee has also placed reliance on the decision of the Hon'ble Supreme Court in the case of CIT Vs. Calcutta Knitwears 362 ITR 673 (SC) which is a decision rendered in the context of provisions of Sec.158BD of the Act. As we have already observed, such new contentions cannot be raised in a miscellaneous petition filed u/s.254(2) of the Act.*

*25. The next contention of the Assessee is that the presumption u/s.292C of the Act is that a document found in the course of search belongs to the person who is searched u/s.132 of the Act and there can be no presumption u/s.292C of the Act that the seized document belongs to the person referred to in the said document. Again such an argument was not raised when the appeal was heard. It is not open to the Assessee to raise a new plea in a miscellaneous petition u/s.254(2) of the Act. In any event the presumption u/s.292C is a rebuttable presumption that the seized document i.e., the gift deeds etc., does not relate to the Assessee. The contention in this regard is without any merit and deserves to be rejected.*

*26. The next submission of the Assessee's is that the Tribunal did not note the following material arguments advanced and not passing a speaking order on the validity of assumption u/s.153C of the Act viz.,*

- (a) that the Department should be put to strict proof of seizure of incriminating documents belonging to the Assessee in the course of search in the premises of the Assessee's mother;*
- (b) that the document seized by the authorized officer was not validly transmitted to the AO who made the assessment;*
- (c) that the search u/s.132 of the Act itself was not valid and therefore proceedings u/s.153C of the Act could not be validly initiated;*

(d) *that the gift deed only evidences factum of a gift having already been made and therefore it cannot be said that there was evidence found in the course of search regarding the actual gift having been made by Mr.Munisamy to the two Assesseees.*

(e) *that the AO of the person searched should reach a satisfaction that the material seized in the course of search belong to person other than the person who was searched u/s 132 of the Act and thereafter he has to handover the said seized material to the AO of the other person. Such satisfaction has to be recorded in writing. Though such a requirement is not discernable from the provisions of Sec.153C of the Act, yet on parity of ratio laid down in the case of Manish Maheshwari 289 ITR 341 (SC) and Calcutta Knitting Wears 362 ITR 673 (SC), in the context of Sec.158BD of the Act, such requirement should be held to be applicable in the context of Sec.153C of the Act as well.*

(iv) *The tribunal did not deal with the contention that the seized documents were not validly handed over by the authorized officer to the AO of the Assessee.*

(v) *The seized document does not belong to the Assesseees but the documents only make a reference to the Assesseees.*

*None of the above arguments were raised except for the reference to decision of Hon'ble Supreme Court in the case of Calcutta Knitting Wears (supra) when the appeal was heard. With regard to seizure of the documents of gifts and other documents relating to the gift, it was never the plea of the Assessee that the gift deeds did not relate to the Assessee or that it was not found in the course of search u/s.132 of the Act in the residential premises occupied by the Assessee. The seized document clearly relates to the Assesseees and there is no gainsaying that the same was not handed over properly to the AO of the Assesseees. All the arguments raised above, to say the least, are frivolous.*

27. *By another supplementary petition dated 6.2.2015 (wrongly dated as 6.2.2014) the Assessee has also sought to contend that jurisdiction u/s.153C of the Act can be invoked only when there is discovery of incriminating material in the course of search u/s.132 of the Act. We are afraid that the proposition put forth by the Assesseees in this regard is contrary to the decision of the Hon'ble Karnataka High Court in the case of Canara Housing Development Company vs, DCIT (2014) 114 DTR 162 (Karn). In the aforesaid decision the Hon'ble Karnataka High Court took the following view:*

*"Section 153A starts with a non obstante clause. The fetters imposed upon the Assessing Officer by the strict procedure to assume jurisdiction to reopen the assessment under Sections 147 and 148, have been removed by the non obstante clause with which sub section (1) of Section 153,4 opens. The time-limit within which the notice under Section 148 can be issued, as provided in Section 149 has also been made inapplicable by the non obstante clause. Section 151 which requires sanction to be obtained by the Assessing Officer by issue of notice to reopen the assessment under Section 148 has also been excluded in a case covered by Section 153A. The time-limit prescribed for completion of an assessment or reassessment by Section 153 has also been done away with in a case covered by Section 153A. With all the stops having been pulled out, the Assessing Officer under Section 153A has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any*

*fetters, if need be. Therefore, it is clear even if an assessment order is passed under section 143(1) or 143(3) of the Act, the Assessing Officer is empowered to reopen those proceedings and reassess the total income taking note of the undisclosed income, if any, unearthed during the search. After -such reopening of the assessment, the Assessing Officer is empowered to assess or reassess the total income of the aforesaid years. The condition precedent for application of Section 153A is there should be a search under Section 132. Initiation of proceedings under Section 1534 is not dependent on any undisclosed income being unearthed during such search. The proviso to the aforesaid section makes it clear the assessing officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. If any assessment proceedings are pending within the period of six assessment years referred to in the aforesaid sub-section on the date of initiation of the search under Section 132, the said proceeding shall abate. If such proceedings are already concluded by the assessing officer by initiation of proceedings under Section 1534, the legal effect is the assessment gets reopened. The block assessment roped in - only the undisclosed income and the regular assessment proceedings were preserved, resulting in multiple assessments. Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the "total income" of the six assessment years in question in separate assessment orders. The Assessing Officer is empowered to reopen those proceedings and reassess the total income, taking note of the undisclosed income, if any, unearthed during the search. He has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters. This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax. When once the proceedings are r Section 153A of the Act, the legal effect is eve e the assessment order is passed it stands r of law there is no order of assessment. Re-opened means to deal with or begin with again. It means the Assessing Officer shall assess or reassess the total income of six assessment years. Once the assessment is reopened, the assessing authority can take note of the income disclosed in the earlier return, any undisclosed income found during search or and also any other income which is not disclosed in the earlier return or which is not unearthed during the search, in order to find out what is the "total income" of each year and then pass the assessment order."*

*In view of the aforesaid decision of the Hon'ble Karnataka High court, we are of the view that the plea put forth by the Assessee's in the miscellaneous petition is devoid of merit and liable to be rejected.*

*28. We are of the view that none of the mistakes pointed out by the Assesseees in this miscellaneous petition are mistakes apparent from the record. The miscellaneous petition is therefore liable to be rejected as it seeks a review of the order of the tribunal in the garb of a miscellaneous petition."*

**4.2** Against the order of the Tribunal, assessee herein went in appeal before Hon'ble jurisdictional High Court and the High Court remitted this issue to the file of Tribunal by observing as under:

*“8. We have carefully considered the rival contentions and perused the records.*

*9. Undisputed facts of the case are, a copy of the declaration said to have been prepared by Muniswamy was found in the residence of Smt. Rajyalakshmi. Revenue initiated proceedings under Section 153C of the Act. Assessee's grievance is that the said proceedings are without jurisdiction because recording satisfaction which is a condition precedent before making over it to the jurisdictional Officer even though the Assessing officer and the Searching officer are one and the same, is mandatory. This position of law is not disputed by the Revenue. Admittedly, the assessee has filed rectification application before the ITAT with a prayer to call for records and to examine whether satisfaction as required under Section 153C was recorded. The said applications have been rejected.*

*10. In Calcutta Knitweaves, (supra), it is held that satisfaction note is sine qua non and must be proved by the Assessing Officer before he transmits the records to the jurisdictional Assessing Officer. The Apex Court, in that case was considering Section 158BD of the Act, which is pari material with Section 153C of the Act.”*

**4.3** Hence, these appeals are listed for hearing as follows:

Date	Particulars	Remarks
06.06.2023	A.R. sought adjournment	Adjourned to 08.06.2023
08.06.2023	D.R. sought adjournment	Adjourned to 05.07.2023
05.07.2023	D.R. sought adjournment	Adjourned to 08.08.2023
08.08.2023	D.R. sought adjournment	Adjourned to 30.08.2023
30.08.2023	A.R. sought adjournment	Adjourned to 31.08.2023
31.08.2023	Case kept as part heard	Adjourned to 04.10.2023
04.10.2023	A.M. was on leave	Adjourned to 01.11.2023
01.11.2023	Case was heard	

**4.4** Since we have permitted the ld. D.R. to file written submissions and other documents as requested by him, the ld. D.R. filed the written submissions vide letter dated 1.11.2023, which has been filed on 02.11.2023 seeking time to file the satisfaction note and requesting further time to file the satisfaction note as follows:

1. *"The above appeal came up for hearing on 01/11/2023 before the 'C' Bench of the Hon'ble ITAT, Bengaluru.*
2. *Further to the Order of the Hon'ble High Court of Karnataka dated 12/09/2022, the 'C' Bench of Hon'ble ITAT has sought for assessment records in the above cases including copies of Satisfaction Notes recorded to ascertain the validity of the proceedings initiated u/s 153C of the Income Tax Act, 1961.*
3. *During the course of hearing in the above cases before the 'C' Bench of the Hon'ble ITAT, Bangalore, the undersigned was directed to furnish the Assessment Records in the above cases for the relevant Assessment Years and enquiry was made with regard to ascertaining the recording of Satisfaction Note u/s 153C of the Act.*
4. *In this connection, it was submitted that despite best efforts, the assessment records in respect of the above cases could not be retrieved till date. As a matter of fact, the entire details of communication with the Assessing Officer/Range Head/Pr. Commissioner during the last 03 months was furnished before the Bench. Initially efforts were made to obtain the records from the Central Circle where the Search Assessment was completed in the case of Mr. Krishna & group consisting of Mrs. Rajyalakshmi, Mr. Karthik Krishna & Late Mrs. Kavya Krishna (GPA Holder-Mrs Rajyalakshmi) & others. As it came to light that a lot of cases in the group was decentralized with DCIT, Circle 3(1) (1), Bangalore, communication was made with the AO to obtain the files. But it was learnt that the cases of Mrs. Rajyalakshmi, Mr. Karthik Krishna & Late Mrs. Kavya Krishna (GPA Holder- Mrs Rajyalakshmi) were decentralized with ITO, Ward 1(2)(1). Communication was sent to the AO with a copies to Addl. CIT, Range 1(2), Bangalore, CIT (Judicial), Bangalore & PCIT-1, Bengaluru to furnish the assessment records relevant to above cases.*
5. *It was also informed that although 1 year has been elapsed, finality could not be reached as the recording of satisfaction u/s 153C was not ascertained in the case of Mr. Karthik Krishna for AY 2006-07, 2007-08 a 2008-09 and Late Mrs. Kavya Krishna for AY 2007-08 a 2008-09 from the assessment records. The field formation was also informed about the serious view of Hon'ble members of 'C' Bench with regard to unseemly delay in furnishing assessment records in the above cases and non-compliance to the directions of the Hon'ble High Court of Karnataka. The AO was also informed that the issue shall be taken up as "Most Urgent" and "Most Important" and if the details called for were not furnished, the Hon'ble ITAT shall be constrained to complete the appeal proceedings on the basis of materials available on record.*
6. *In response, the AO filed a reply dated 25/10/2023 through his Range Head stating that Assessment Records of SRI KARTHIK KRISHNA a SMT RAJYALAKSHMI (GPA holder of Late Kavya Krishna) could not be traced in his office. It was also submitted that efforts taken with outsourced Agency (M/s. Iron Mountain) proved futile.*
7. *Further, sincere efforts were made by making a personal visit to the office of AO (along with ITI) on 30/10/2023 and AO was requested to make all out efforts in this regard. Enquiries were also conducted with the DCIT (Hqrs) of PCIT-1,*

*Bengaluru and personal interaction with PCIT-1, Bengaluru who is having jurisdiction of the AO under whom the assesseees are covered was made and requested to do the needful. Pr. CIT-1 instructed the AO to make all out efforts to trace the required files and send it to our office. However, this office received a mail from ITO Ward 1(2) (1), Bangalore that a re-search of their record room is being made and are yet to ascertain the Assessment Records. It is further submitted that sincere efforts were taken to trace and ascertain, if the Assessment Records were placed in the Office of the Senior Standing council of Income Tax department, Bangalore, Office of the Principal CCIT, Bangalore, JCIT (Judicial), Bangalore and even in the Office of CIT (DR) but all were in vain.*

8. *In this connection, it is submitted that provocation of proceedings u/s 153C was brought (vide para 2) on record in all the orders u/s 143(3) r.w.s 153C in the case' of Mr. Karthik for AY 2006-07, 2007-08 a 2008-09 a Late Mr. Kavya Krishna for AY 2007-08 a 2008-09. The recording of satisfaction for initiating proceedings u/s 153C and its validity in the case of Mr. Karthik Krishna and Late Mrs. Kavya Krishna was also elaborated by CIT(A) VI Bangalore vide his orders dated 15/09/2011 for AY 2007-08 a 2008-09. (Order para 3.2/pages 203) which reads*

*".....3.2. On perusal of the records, it is seen that the A.O. has recorded the reasons and has mentioned that action u/s 132 was conducted in the case of Sri M Krishna & Others including in the case of Smt Rajyalakshmi, the appellant's mother and on scrutiny of the seized documents, it was seen that some materials belonging to Sri Karthik Krishna, were found and the A.O. is satisfied that the action u/s 153c had to be initiated for A.Y. 2007-08 & 2008-09 since the following documents belong to Sri Karthik Krishna..... "*

*".....3.2. On perusal of the records, it is seen that the A.O. has recorded the reasons and has mentioned that action u/s 132 was conducted in the case of Sri M Krishna & Others including in the case of Smt Rajyalakshmi, the appellant's mother and on scrutiny of the seized documents, it was seen that some materials belonging to Smt Kavya Krishna, were found and the A.O. is satisfied that the action u/s 153c had to be initiated for A.Y. 2007-08 & 2008-09 since the following documents belong to Smt. Kavya Krishna..... "*

*and for AY 2006-07, the Satisfaction Note for proceedings u/s 153C in the case of Mr. Karthik was also brought on record by the CIT (A) VIU Bangalore vide his order dated 30/08/2011 which reads*

*".....3.2. On perusal of the records, it is seen that the A.O. has recorded the reasons and has mentioned that action u/s 132 was conducted in the case of Sri M Krishna & Others including in the case of Smt Rajyalakshmi, the appellant's mother and on scrutiny of the seized documents, it was seen that some*

*materials belonging to Sri Karthik Krishna, were found and the A.O. is satisfied that the action u/s 153c had to be initiated for A.Y. 2006-07 since the following documents belong to Sri Karthik Krishna..... "*

9. *The challenges raised for initiating the proceedings u/s 153C and its validity in the case of Mr. Karthik Krishna a Late Mrs. Kavya Krishna for AY 2006-07, 2007-08, 2008-09 and 2007-08 a 2008-09 respectively were effectively countered and dismissed by the 'C' Bench of Hon'ble ITAT vide its common order dated 05/06/2014 (in para 29, 30 a 31 / pages 28, 29, 30 & 31). Besides with regard to in the Counter Objection 52/Bang/2014 dated 23/05/2014 filed by Mr., Karthik Krishna (against the order of CIT (A) for AY 2006-07 dated 15/09/2011 with regard to Satisfaction for initiation of proceedings u/s 153C) ITAT 'C' Bench vide its order dated 05/06/2014 (as per para 19, 20 & 21/pages 16, 17 a 18) dismissed the same.*
10. *In the light of the above, it is requested that Hon'ble Bench of ITAT may kindly consider the speaking order passed by CIT (A), where it was detailed that based on the records available to him, the search proceedings were initiated with the recordings of satisfaction note u/s 153C in the case of Mr. Karthik Krishna a Late Kavya Krishna and confirm that the search proceeding were initiated with satisfaction note u/s 153C of the Income Tax Act.*

**4.5** Further, on 17.11.2023, the Id. D.R. filed one more written submission, which reads as follows:

1. *"The above appeal came up for hearing on 01/11/2023 before the 'C' Bench of the Hon'ble JTAT, Bengaluru.*
2. *Further to the Order of the Hon'ble High Court of Karnataka dated 12/09/2022, the 'C' Bench of Hon'ble ITAT has sought for assessment records in the above cases including copies of Satisfaction Notes recorded to ascertain the validity of the proceedings initiated u/s 153C of the Income Tax Act, 1961.*
3. *During the course of hearing in the above cases before the 'C' Bench of the Hon'ble ITAT, Bangalore, the undersigned was directed to furnish the Assessment Records in the above cases for the relevant Assessment Years and enquiry was made with regard to ascertaining the recording of Satisfaction Note u/s 153C of the Act.*
4. *In this connection, it was submitted that despite best efforts, the assessment records in respect of the above cases could not be retrieved till date. As a matter of fact, the entire details of communication with the Assessing Officer/Range Head/Pr. Commissioner during the last 03 months was furnished before the Bench. Initially efforts were made to obtain the records from the Central Circle where the Search Assessment was completed in the case of Mr. Krishna & group consisting of Mrs. Rajyalakshmi, Mr. Karthik Krishna & Late Mrs. Kavya Krishna (GPA Holder-Mrs Rajyalakshmi) & others. As it came to tight that a lot of cases in the group was decentralised with DCIT, Circle 3{1} (1), Bangalore,*

*communication was made with the AO to obtain the files. But it was learnt that the cases of Mrs. Rajyalakshmi, Mr. Karthik Krishna & Late Mrs. Kavya Krishna (GPA Holder-Mrs Rajyalakshmi) were decentralised with ITO, Ward 1(2)(1). Communication was sent to the AO with a copies to Addl. CIT, Range 1(2), Bangalore, CIT (Judicial), Bangalore & PCIT-1,Bengaluru to furnish the assessment records relevant to above cases.*

5. *It was also informed that although 1 year has been elapsed, finality could not be reached as the recording of satisfaction u/s 153C was not ascertained in the case of Mr. Karthik Krishna for AY 2006-07, 2007-08 a 2008-09 and Late Mrs. Kavya Krishna for AY 2007-08 & 2008-09 from the assessment records. The field formation was also informed about the serious view of Hon'ble members of 'C' Bench with regard to unseemly delay in furnishing assessment records in the above cases and non compliance to the directions of the Hon'ble High Court of Karnataka. The AO was also informed that the issue shall be taken up as "Most Urgent" and "Most Important" and if the details called for were not furnished, the Hon'ble ITAT shall be constrained to complete the appeal proceedings on the basis of materials available on record.*
6. *In response, the AO filed a reply dated 25/10/2023 through his Range Head stating that Assessment Records of SRI KARTHIK KRISHNA a SMT RAJYALAKSHMI (GPA holder of Late Kavya Krishna) could not be traced in his office. It was also submitted that efforts taken with outsourced Agency (M/s. Iron Mountain) proved futile.*
7. *Further, sincere efforts were made by making a personal visit to the office of AO (along with IT!) on 30/10/2023 and AO was requested to make all out efforts in this regard. Enquiries were also conducted with the DCIT(Hqrs) of PCIT-1, Bengaluru and personal interaction with PCIT-1, Bengaluru who is having jurisdiction of the AO under whom the assessee are covered was made and requested to do the needful. Pr. CIT-1 instructed the AO to make all out efforts to trace the required files and send it to our office. However, this office received a mail from ITO Ward 1(2) (1), Bangalore that a re-search of their record room is being made and are yet to ascertain the Assessment Records. It is further submitted that sincere efforts were taken to trace and ascertain, if the Assessment Records were placed in the Office of the Senior Standing council of Income Tax department, Bangalore, Office of the Principal CCIT, Bangalore, JCIT (Judicial), Bangalore and even in the Office of CIT (DR) but all were in vain.*
8. *In this connection, it is submitted that provocation of proceedings u/s 153C was brought (vide para 2) on record in all the orders u/s 143(3) r.w.s 153C in the case of Mr. Karthik for AY 2006-07, 2007-08 a 2008-09 a Late Mr. Kavya Krishna for AY 2007-08 & 2008-09. The recording of satisfaction for initiating proceedings u/s 153C and its validity in the case of Mr. Karthik Krishna and Late Mrs. Kavya Krishna was also elaborated by CIT(A) VI Bangalore vide his orders dated 15/09/2011 for AY 2007-08 a 2008-09. (Order para 3.2/pages 203) which reads:*

*".....3.2. On perusal of the records, it is seen that the A.O. has recorded the*

*reasons and has mentioned that action u/s 132 was conducted in the case of Sri M Krishna & Others including in the case of Smt Rajyalakshmi, the appellant's mother and on scrutiny of the seized documents, it was seen that some materials belonging to Sri Karthik Krishna, were found and the A.O. is satisfied that the action u/s 153c had to be initiated for A.Y. 2007-08 & 2008-09 since the following documents belong to Sri Karthik Krishna..... "*

*".....3.2. On perusal of the records, it is seen that the A.O. has recorded the reasons and has mentioned that action u/s 132 was conducted in the case of Sri M Krishna & Others including in the case of Smt Rajyalakshmi, the appellant's mother and on scrutiny of the seized documents, it was seen that some materials belonging to Smt Kavya Krishna, were found and the A.O. is satisfied that the action u/s 153c had to be initiated for A.Y. 2007-08 & 2008-09 since the following documents belong to Smt. Kavya Krishna..... "*

*and for AY 2006-07, the Satisfaction Note for proceedings u/s 153C in the case of Mr. Karthik was also brought on record by the CIT (A) VIU Bangalore vide his order dated 30/08/2011 which reads*

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9. *The challenges raised for initiating the proceedings u/s 153C and its validity in the case of Mr. Karthik Krishna & Late Mrs. Kavya Krishna for AY 2006-07, 2007-08, 2008-09 and 2007-08 a 2008-09 respectively were effectively countered and dismissed by the 'C' Bench of Hon'ble ITAT vide its common order dated 05/06/2014 (in para 29, 30 a 31 / pages 28, 29, 30 a 31). Besides with regard to in the Counter Objection 52/Bang/2014 dated 23/05/2014 filed by Mr. Karthik Krishna (against the order of CIT (A) for AY 2006-07 dated 15/09/2011 with regard to Satisfaction for initiation of proceedings u/s 153C) ITAT 'C' Bench vide its order dated 05/06/2014 (as per para 19, 20 a 21/pages 16, 17 &18) dismissed the same.*
10. *In the light of the above, it is requested that Hon'ble Bench of ITAT may kindly consider the speaking order passed by CIT (A), where it was detailed that based on the records available to him, the search proceedings were initiated with the recordings of satisfaction note u/s 153C in the case of Mr. Karthik Krishna a Late Kavya Krishna and confirm that the search proceeding were initiated with satisfaction note u/s 153C of the Income Tax Act."*

**4.5.1** Thus, the crux of submission of the ld. D.R. is that the ld. CIT(A) has already seen the satisfaction note recorded in these cases u/s 153C of the Act and should be inferred that there is valid recording of satisfaction by the jurisdictional AO of the assesseees and the issues to be decided in favour of the department.

**4.6** In this case, as seen from the order of the Hon'ble High Court, it has been remitted to the file of Tribunal to see whether proceedings u/s 153C of the Act in these cases of these assesseees have been initiated properly. In our opinion, to examine the issue with regard to initiation of proceedings u/s 153C of the Act recording of satisfaction by the ld. AO of the assessee is very important and without which proceedings cannot be started. The Tribunal, being final fact-finding authority, given ample opportunity to the department to produce the copy of satisfaction note recorded to initiate the proceedings u/s 153C of the Act. The ld. D.R. relied on the order of ld. CIT(A) and stated that ld. CIT(A) has recorded the fact of validly initiating the proceedings u/s 153C of the Act and he found that ld. AO is satisfied that the action u/s 153C of the Act was initiated properly. However, at all stages of the proceedings before us, the ld. D.R. was not able to produce copy of satisfaction note recorded in these cases and he has only placed reliance on the orders of ld. CIT(A), which is not sufficient to hold that there is recording of valid satisfaction by jurisdictional AO of these assesseees. More so, the Hon'ble High Court has remitted the issue to the file of the Tribunal to verify whether there is recording of valid satisfaction note u/s 153C of the Act in these cases. Being so, we have no alternative to place reliance on the judgement of Hon'ble Supreme Court in the case of Union of India Vs. Rai Singh Deb Singh Bist reported in 88 ITR 200 (SC), wherein it was held that when the records in question were not produced because they could not be traced from the records

of the ld. AO, the court could draw adverse inference against the department. The facts of the above case and decisions are as follows:

**Facts:**

*The assessee, HUF, filed its returns for the relevant assessment years in due time. The assessee's account books showed considerable cash credits in the name of the brothers-in-law of the second respondent, the karta of the HUF. These alleged creditors were living in Nepal. The account books also showed certain credit entries in the name of 'R', alleged to be in connection with expenses incurred by him for getting trees cut on behalf of the assessee. The assessee was a forest contractor. He had taken large tracts of forests for felling trees in Nepal. The ITO went into the genuineness of the cash credit entries standing in the name of the alleged creditors of the assessee as well as to the alleged amount due to one of them. The contention of the assessee was substantially accepted either by the Appellate Assistant Commissioner or by the Appellate Tribunal. With regard to the assessment for the assessment years 1943-44 to 1949-50, the final assessments were made in pursuance of an agreement or settlement arrived at between the assessee and the Deputy Director of Inspection (Investigation). Long after the assessments in question were finalised, the ITO issued notices to the appellants under section 34(1)(a) of the 1922 Act, seeking to reopen the assessments already finalised.*

*On writ, petition, the High Court quashed the notices.*

*On appeal to Supreme Court.*

**Held**

*Before an ITO can issue a statutory notice under section 34(1)(a) of 1922 Act, he must have reason to believe that by reason of omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for the years in question, income, profits or gains chargeable to tax have escaped assessment during those years. Further, before doing so, he must have recorded his reasons for acting under section 34(1)(a) of 1922 Act and the Central Board of Revenue must have been satisfied on those reasons that it is a fit case for the issue of the notice. The recording of the reasons in support of the belief formed by the ITO and the satisfaction of the Central Board of Revenue on the basis of the reasons recorded by the ITO that it is a fit case for issue of notice under section 34(1)(a) of 1922 Act are extremely important circumstances to find out whether the ITO had jurisdiction to proceed under section ) of 1922 Act. The assessee alleged in his writ petitions that there was no relevant material before the ITO before he issued notices under section 34(1)(a) of 1922 Act on the basis of which he could have had reason to believe that any income had escaped assessment. In the writ petitions the assessee called upon the ITO to produce the report made by him to the Central Board of*

*Revenue as well as the order of the Central Board of Revenue thereon. Despite this prayer, neither the Union of India nor the ITO cared to produce the report made by the ITO to the Central Board of Revenue under section 34(l)(a) of 1922 Act or the order of the Central Board of Revenue. Before the hearing of the writ petitions commenced, the assessee again applied to the court to call upon the Union of India and the ITO to produce those documents. In response to that application, an affidavit was filed before the court stating that the relevant records could not be traced from the file of the Central Board of Revenue. Assuming that the concerned records were missing from the file of the Central Board of Revenue, the copy of the report made by the ITO and the order received by him must have been in the file of the ITO. No reason was given for not producing those records. These circumstances gave rise to an adverse inference against the department. The conclusion should be that the records in question were not produced because they did not assist the department's case. Under these circumstances, it was not possible to come to the conclusion that the facts necessary to confer jurisdiction on the ITO to proceed under section 34(l)(a) of 1922 Act had been established. Therefore, the impugned notice had rightly been quashed by the High Court. Note: Decision in favour of the assessee."*

**4.7** As per the above judgement of Hon'ble Supreme Court, if the department is not able to produce the requisite records before the authorities/Courts, it could be drawn adverse inference that no records are available with the department.

**4.8** In the present case, we have given ample opportunity to the department to produce the satisfaction note recorded in these cases. However, the department on one or other reasons taken adjournment to produce the said document. Even after completing the hearing of the case, the Id. D.R. filed a letter seeking time to produce the same and the same has been considered and waited for. In spite of this, it has not been produced before us till date of pronouncement of this order. Having no alternative, we are inclined to draw adverse inference that such satisfaction note is not available with the department. Accordingly, the appeals filed by the assessee are to be allowed on the ground that no valid satisfaction note has been

recorded by ld. AO of the assessee to initiate the proceedings u/s 153C of the Act, which is a mandatory requirement and that is not complied with. Accordingly, all these impugned assessments in these two assessee's cases are quashed.

**5.** In the result, all the appeals and CO of the assessee are allowed.

Order pronounced in the open court on 29<sup>th</sup> Nov, 2023

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 29<sup>th</sup> Nov, 2023.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**