

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

**Before Sh. Saktijit Dey, Vice President
Dr. B. R. R. Kumar, Accountant Member**

**ITA No.3129/Del/2015 : Asstt. Year: 2006-07
ITA No.3130/Del/2015 : Asstt. Year: 2007-08
ITA No.5397/Del/2015 : Asstt. Year: 2012-13**

DCIT, Central Circle-19, New Delhi	Vs	iServices Investments Ltd., C/o Mr. Sandeep Chilana, Adv. C-56, LFG, Jangpura Extension, New Delhi-110014
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**CO No.386/Del/2015
(ITA No.3129/Del/2015 : Asstt. Year: 2006-07)
CO No.387/Del/2015
(ITA No.3130/Del/2015 : Asstt. Year: 2007-08)
CO No.389/Del/2015
(ITA No.5397/Del/2015 : Asstt. Year: 2012-13)**

iServices Investment Ltd., C/o Mr. Sandeep Chilana, Adv. C-56, LFG, Jangpura Extension, New Delhi-110014	Vs	DCIT, Central Circle-19, New Delhi
PAN No. AABCI6428A		

**Assessees by : Sh. Amit Goel, CA, Pranav Yadav, Adv.,
Nippun Mittal, CA & Ms Anjali Jain, Adv.
Revenue by : Sh.Vizay B. Vasanta, CIT-DR &
Sh. Sanjay Kumar, Sr. DR**

Date of Hearing: 26.10.2023	Date of Pronouncement: 28.12.2023
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ORDER

Per Bench:

The present appeals by the Revenue and the cross objections by the assessee have been filed against the orders of Id. CIT(A)-XXVII, New Delhi dated 30.01.2015 and 12.06.2015.

2. In ITA No.3129/Del/2015, following grounds have been raised by the Revenue:

"1. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in holding that there is substantial force in the submission made by the appellant on the issue of initiating proceedings u/s 153C of Income Tax Act.

2. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in holding that assessee company is not resident in terms of provisions under section 6(3)(ii) of the I.T. Act for the purpose of tax liability whereas on the basis of seized documents/e-mails and various statements of Sh. Ajay Kalsi/Sh. Anil Aggarwal, it has been established that control and management of the assessee company is situated wholly in India.

3. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring that underlying assets and sources of revenue of all the overseas companies are the Indian Companies.

4. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring the substantial evidence in form of seized material, E-mails, Share Holding pattern showing the ultimate control and management of Indian companies and overseas companies lies with Sh. Ajay Kalsi and Smt. Mala Kalsi, who have created different verticals of corporate veil under them to avoid taxability in India.

5. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring the provisions of section 9(1) of the I.T. Act as the revenue has been earned because of underlying assets of the assessee wholly and totally situated in India.

6. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs.19,85,38,174/- made by Assessing Officer against nil income.

7. (a) The order of the Ld. CIT (Appeals) is erroneous and not tenable in law and on facts."

3. In ITA No.3130/Del/2015, following grounds have been raised by the Revenue:

"1. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in holding that there is substantial force in the submission made by the appellant on the issue of initiating proceedings u/s 153C of Income Tax Act.

2. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in holding that assessee company is not resident in terms of provisions under section 6(3)(ii) of the I.T. Act for the purpose of tax liability whereas on the basis of seized documents/e-mails and various statements of Sh. Ajay Kalsi/Sh. Anil Aggarwal, it has been established that control and management of the assessee company is situated wholly in India.

3. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring that underlying assets and sources of revenue of all the overseas companies are the Indian Companies.

4. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring the substantial evidence in form of seized material, E-mails, Share Holding pattern showing the ultimate control and management of Indian companies and overseas companies lies with Sh. Ajay Kalsi and Smt. Mala Kalsi, who have created different verticals of corporate veil under them to avoid taxability in India.

5. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring the provisions of section 9(1) of the I.T. Act as the revenue has been earned because of underlying assets of the assessee wholly and totally situated in India.

6. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in deleting the addition of Rs. 87,49,80,570/- made by Assessing Officer against nil income.

7. (a) The order of the Ld. CIT (Appeals) is erroneous and not tenable in law and on facts."

4. In ITA No.5397/Del/2015, following grounds have been raised by the Revenue:

"1. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in holding that there is merit in the contention of the appellant regarding the unlawful initiation of proceedings u/s 142[1] of Income Tax Act.

2. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in holding that assessee company is not resident in terms of provisions under section 6(3)(ii) of the I.T. Act for the purpose of tax liability whereas on the basis of seized documents/e-mails and various statements of Sh. Ajay Kalsi/Sh. Anil Aggarwal, it has been established that control and management of the assessee company is situated wholly in India.

3. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring that underlying assets are all located in India and also sources of revenue of all the overseas companies are the Indian Companies.

4. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring the substantial evidence in form of seized material, E-mails, Share Holding pattern showing the ultimate control and management of Indian companies and overseas companies lies with Sh. Ajay Kalsi and Smt. Mala Kalsi, who have created different verticals of corporate veil under them to avoid taxability in India.

5. The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in ignoring the provisions of section 9(1) of the I.T. Act as the revenue has been earned because of underlying assets of the assessee which are wholly and totally situated in India.

6. The Ld. CIT(A) on the fact in the circumstances of the case has erred in law in accepting the loss of Rs. 52,72,09,025/- declared by the assessee and allowing the same, while holding that the assessee company was not resident in India, thereby making the order self contradictory.

7. The Ld. Commissioner of Income Tax (Appeals) has erred in holding that provision of section 124(4) was applicable in this case and further that the order should have been passed under the provisions of sec. 144C of the Act.

8. (a) The order of the Ld. CIT (Appeals) is erroneous

and not tenable in law and on facts."

5. The common grounds of Cross Objections in CO No.386/Del/2015 and in CO No.387/Del/2015 read as under:-

"1. On the facts and circumstances of the case and in law, the assessment order passed by the learned assessing officer is without jurisdiction. The alleged jurisdiction assumed is contrary to the provisions of Income Tax Act including provisions of section 124 to section 127 of Income Tax Act. Accordingly the assessment order passed by the learned assessing officer is liable to be quashed.

2a. On the facts and circumstances of the case and in law, the initiation of assessment proceedings and issue / service of notices are not in accordance with the provisions of law and accordingly the assessment order passed on the foundation of such notice(s) is liable to be quashed.

b. On the facts and circumstances of the case and in law, the assessment order passed by the learned assessing officer is bad-in-law and needs to be quashed as no notice as required u/s 143(2) of Income Tax Act, 1961, was served on the appellant.

3. On the facts and circumstances of the case and in law, in terms of provisions of section 144C of Income Tax Act, 1961, the assessment order passed by the learned assessing officer is bad-in-law and needs to be quashed. The learned A.O. has erred, both on facts and in law in passing the assessment order straightaway and in ignoring the statutory provisions of Section 144C of the Act whereby the learned A.O. has to pass a draft assessment order.

4. On the facts and circumstances of the case and in law, the proceedings initiated under section 153C are bad in law and against the statutory provisions.

5. On the facts and circumstances of the case and in law the notice issued under section 153C of the Act and the consequent proceedings initiated, by the learned assessing officer is barred by limitation."

6. Grounds raised in CO No.389/Del/2015 read as under:

"1a. On the facts and circumstances of the case and in law, the initiation of assessment proceedings and

issue / service of notices are not in accordance with the provisions of law and accordingly the assessment order passed on the foundation of such notice(s) is liable to be quashed.

b. On the facts and circumstances of the case and in law, the assessment order passed by the learned assessing officer is bad-in-law and needs to be quashed as no notice as required u/s 143(2) of Income Tax Act, 1961, was served on the appellant."

7. Heard the arguments of both the parties and perused the material available on record.

8. The COs pertaining to A.Y. 2006-07, A.Y. 2007-08 and A.Y. 2012-13 are being dealt together.

9. The pertinent facts are as under:

- The date of search – 22.03.2012 (A.Y. 2012-13)
- Date of recording of satisfaction u/s 153C – 18.11.2013 (A.Y. 2014-15)
- It was argued that based on the date of recording of satisfaction, the Assessment made u/s 153C for the A.Y. 2006-07 and A.Y. 2007-08 are outside the scope of Section 153C of the Act.

10. On this issue, we are guided by the judgment of Hon'ble Jurisdictional High Court of Delhi in the case of CIT-7 Vs. RRJ Securities Ltd. in ITA No. 177/2015. For the sake of ready reference, the relevant part of the order is reproduced as under:

"12. At this stage it is expedient to refer to Section 153C(1) of the Act, which reads as under:-

"153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,--

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to;

or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A :

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated."

13. The first and foremost step for initiation of proceedings under Section 153C of the Act is for the AO of the searched person to be satisfied that the assets or documents seized belong to the Assessee (being a person other than the searched person). The AO of the Assessee, on receiving the documents and the assets seized, would have jurisdiction to commence proceedings under Section 153C of the Act. The AO of the searched person is not required to examine whether the assets or documents seized reflect undisclosed income. All that is required for him is to satisfy himself that the assets or documents do not belong to the searched person but to another person. Thereafter, the AO has to transfer the seized assets/documents to the AO having jurisdiction of the Assessee to whom such assets/documents belong. Section 153C(1) of the Act clearly postulates that once the AO of a person, other than the one searched, has received the assets or the documents, he is to issue a notice to assess/re-assess the income of such person - that is, the Assessee other than the person searched - in accordance with provisions of Section 153A of the Act.

14. The proviso to Section 153C(1) of the Act expressly indicates that reference to the date of initiation of search for

the purposes of second proviso to Section 153A shall be construed as a reference to the date on which valuable assets or documents are received by the AO of an Assessee (other than a searched person). Thus, by virtue of the second proviso to section 153A of the Act, the assessments/reassessments that were pending on the date of receiving such assets, books of accounts or documents would abate.

15. The controversy in this regard is no longer res integra. A Coordinate Bench of this Court in SSP Aviation Ltd. v. Deputy Commissioner of Income Tax: (2012) 346 ITR 177 has held that:

"in case of the searched person, the date with reference to which proceedings for assessment or reassessment of any assessment year within a period of six assessment years shall abate, is the date of initiation of search under Section 132 or requisition under Section 132A. However, in case of other person.. such date will be the date of receiving the books of account or documents or assets seized or requisition by the Assessing Officer having jurisdiction over such other person. In the case of other person, the question of pendency and abatement of proceedings of assessment or reassessment to the six assessment years would have to be examined with reference to such date"

16. The CIT(A) sought to distinguish the present case by observing that in the facts of the present case, the AO of the searched person who has to handover the documents and the AO of the Assessee was one and the same person. In our view, this distinction is not relevant in the scheme of Section 153C of the Act and the CIT(A) erred in proceeding on the basis that the period of six years was to be reckoned from the end of the

financial year preceding the financial year in which the search was conducted.

17. In Pepsi Foods Pvt. Ltd. v. Assistant Commissioner of Income Tax: (2014) 367 ITR 112 (Del), this Court had explained that on a plain reading of Section 153C of the Act, a notice under that section could be issued only after two preceding conditions had been met. First of all, the AO of the searched person would have to arrive at a satisfaction that document or asset seized does not belong to the person searched but to some other person and secondly, the seized documents/assets are handed over to the AO having jurisdiction over that person, that is, the person other than the one searched and to whom the seized documents/assets are said to belong. The relevant extract of the said decision is quoted below:-

"6. On a plain reading of section 153C, it is evident that the Assessing Officer of the searched person must be 'satisfied' that, inter alia, any document seized or requisitioned 'belongs to' a person other than the searched person. It is only then that the Assessing Officer of the searched person can handover such document to the Assessing Officer having jurisdiction over such other person (other than the searched person). Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or reassess his income in accordance with the provisions of section 153A. Therefore, before a notice under section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is-after such satisfaction is arrived at-that the document is

handed over to the Assessing Officer of the person to whom the said document 'belongs'. In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to examine the provisions of presumptions as indicated above. Section 132(4A)(i) clearly stipulates that when, inter alia, any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in section 292C(1)(i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or 'satisfaction' that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of 'satisfaction'.

xxxx xxxx xxxx xxxx '11. It is evident from the above satisfaction note that apart from saying that the documents belonged to the petitioner and that the Assessing Officer is satisfied that it is a fit case for issuance of a notice under section 153C, there is nothing which would indicate as to how the presumptions which are to be normally raised as indicated above, have been rebutted by the Assessing Officer. Mere use or mention of the word "satisfaction" or the words "I am satisfied" in the order or the note would not meet the requirement of the concept of satisfaction as used in section 153C of the said Act. The satisfaction note itself must display the reasons or basis for the conclusion that the Assessing Officer of the searched person is satisfied that the seized

documents belong to a person other than the searched person. We are afraid, that going through the contents of the satisfaction note, we are unable to discern any "satisfaction" of the kind required under section 153C of the said Act'."

18. It, plainly, follows that the recording of a satisfaction that the assets/documents seized belong to a person other than the person searched is necessarily the first step towards initiation of proceedings under Section 153C of the Act. In the case where the AO of the searched person as well as the other person is one and the same, the date on which such satisfaction is recorded would be the date on which the AO assumes possession of the seized assets/documents in his capacity as an AO of the person other than the one searched.

19. The Allahabad High Court in the case of Commissioner of income Tax v. Gopi Apartments: (2014) 360 ITR 411 has expressed a similar view in the following words:-

"25. A bare perusal of the provision contained in Section 153C of the I.T. Act leaves no doubt that, as is provided under Section 158BD, where the Assessing Officer, while proceeding under Section 153A against a person who has been subjected to search and seizure under Section 132(1) or has been proceeded under Section 132A, is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or

reassess income of such other person in accordance with the provisions of section 153A.

Thus, there are two stages:

(The first stage comprises of a search and seizure 1 operation under Section 132 or proceeding under) Section 132A against a person, who may be referred as 'the searched person'. Based on such search and seizure, assessment proceedings are initiated against the 'searched person' under Section 153A. At the time of initiation of such proceedings against the 'searched person' or during the assessment proceedings against him or even after the completion of the assessment proceedings against him, the Assessing Officer of such a 'searched person', may, if he is satisfied, that any money, document etc. belongs to a person other than the searched person, then such money, documents etc. are to be handed over to the Assessing Officer having jurisdiction over 'such other person'.

(The second stage commences from the recording of 2 such satisfaction by the Assessing Officer of the) 'searched person' followed by handing over of all the requisite documents etc. to the Assessing Officer of such 'other person', thereafter followed by issuance of the notice of the proceedings under Section 153C read with section 153A against such 'other person'. The initiation of proceedings against 'such other person' are dependant upon a satisfaction being recorded. Such satisfaction may be during the search or at the time of initiation of assessment proceedings against the 'searched person', or even during the assessment proceedings against him or even after completion of the same, but before issuance of notice to the 'such other person' under Section 153C.

26. *Even in a case, where the Assessing Officer of both the persons is the same and assuming that no handing over of documents is required, the recording of 'satisfaction' is a must, as, that is the foundation, upon which the subsequent proceedings against the 'other person' are initiated. The handing over of documents etc. in such a case may or may not be of much relevance but the recording of satisfaction is still required and in fact it is mandatory."*

20. *Mention may also be made to the decision of the Madhya Pradesh High Court in Commissioner of Income Tax v. Mechmen: (2015) 60 taxmann.com 484 (Madhya Pradesh). In that case, the Court had explained that the fact that incidentally the AO is common at both stages would not extricate him from recording satisfaction at the respective stages. It was explained that since the satisfaction of the AO of a searched person that assets/documents seized belong to some other person is sine qua non to commencing proceedings under Section 153C of the Act in respect of such other person, the AO could not assume jurisdiction and transmit the items to another file concerning the person (other than the one searched) pending before him, before being satisfied that the seized assets/documents belonged to the other person.*

21. *As discussed hereinbefore, once the AO of the searched person is satisfied that the seized assets/documents belong to another person and the said assets/documents have been transferred to the AO of such other person, the proceedings for assessment/reassessment of income of the other person has to proceed in accordance with provisions of Section 153A of the Act. Section 153A requires that where a search has been initiated under Section 132 of the Act, the AO is required to issue notice requiring the noticee to furnish returns of income*

in respect of six assessment years relevant to the six previous years preceding the previous year in which the search is conducted. As discussed hereinbefore, by virtue of second proviso to Section 153A, the assessment/reassessment pending on the date of initiation of search abate. In the context of proceedings under Section 153C of the Act, the reference to the date of initiation of the search in the second proviso to Section 153A has to be construed as the date on which the AO receives the documents or assets from the AO of the searched person. Thus, by virtue of second proviso to Section 153A of the Act as it applies to proceedings under Section 153C of the Act, the assessment/reassessment pending on the date on which the assets/documents are received by the AO would abate. In respect of such assessments which have abated, the AO would have the jurisdiction to proceed and make an assessment. However, in respect of concluded assessments, the AO would assume jurisdiction to reassess provided that the assets/documents received by the AO represent or indicate any undisclosed income or possibility of any income that may have remained undisclosed in the relevant assessment years. This Court in Commissioner of Income Tax (Central)-III v. Kabul Chawla: ITA 707/2014, decided on 28th August, 2015 has held that completed assessments could only be interfered with by the AO on the basis of any incriminating material unearthed during the course of the search or requisition of the documents. In absence of any incriminating material, the AO does not have any jurisdiction to interfere in concluded assessments. This Court had summarized the legal position in respect of Section 153A of the Act as under:-

"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in

the aforementioned decisions, the legal position that emerges is as under:

- i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*
- ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*
- iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".*
- iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."*
- v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e.*

those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

- vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*
- vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."*

22. The aforesaid principles would be equally applicable to proceedings initiated under Section 153C of the Act as Section 153C(1) of the Act expressly provides that once the AO has received "money, bullion, jewellery or other valuable articles or thing or books of account or documents seized" from the AO of the searched person, he would proceed to assess or reassess the income of the person to whom such assets/books belong in accordance with Section 153A of the Act.

23. In the present case, the Assessee had claimed that the assessments for the concerned assessment years were not pending on the date of recording of satisfaction by the AO and, therefore, would not abate by virtue of the second proviso to Section 153A of the Act. 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 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 year 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years prior to the assessment year relevant to the previous year in which the search was conducted. If this interpretation as canvassed by the Revenue is accepted, it would mean that whereas in case of a person searched, assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be reopened

would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to the AO would be subsequent to the date of the search. This, in our view, would be contrary to the scheme of Section 153C(1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one searched) as the date of the search on the Assessee. The rationale appears to be that whereas in the case of a searched person the AO of the searched person assumes possession of seized assets/documents on search of the Assessee; the seized assets/documents belonging to a person other than a searched person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee's income for that year."

11. Further, we have perused the order of the Hon'ble Supreme Court in the case of Commissioner of Income Tax-14 Vs. Jasjit Singh in CA No. 6566 of 2023 dated 26.09.2023.

12. The Hon'ble Apex Court enunciated as under:

"7. Sections 153A and Section 153C of the Income Tax Act, 1961 to the extent they are relevant are extracted below:

"153A. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003 61[but on or before the 31st day of March, 2021], the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is 3made and for the relevant assessment year or years: Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:...."

"153C.(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A:

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section 4(1) of section 153A shall be construed as reference to

the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated."

8. In SSP Aviation (supra) the High Court inter alia reasoned as follows:

"14. Now there can be a situation when during the search conducted on one person under Section 132, some documents or valuable assets or books of account belonging to some other person, in whose case the search is not conducted, may be found. In such case, the Assessing Officer has to first be satisfied under Section 153C, which provides for the assessment of income of any other person, i.e., any other person who is not covered by the search, that the books of account or other valuable article or document belongs to the other person (person other than the one searched). He shall hand over the valuable article or books of account or document to the Assessing Officer having jurisdiction over the other person. Thereafter, the Assessing Officer having jurisdiction over the other person has to proceed against him and issue notice to that person in order to assess or reassess the income of such other person in the, manner contemplated by the provisions of Section 153A. Now a question may arise as to the applicability of the second proviso to Section 153A in the case of

the other person, in order to examine the question of pending proceedings which have to abate. In the case of the searched person, the date with reference to which the proceedings for assessment or reassessment of any assessment year within the period of the six assessment years shall abate, is the date of initiation of the search under Section 132 or the requisition under Section 132A. For instance, in the present case, with reference to the Puri Group of Companies, such date will be 5.1.2009. However, in the case of the other person, which in the present case is the petitioner herein, such date will be the date of receiving the books of account or documents or assets seized or requisition by the Assessing Officer having jurisdiction over such other person. In the case of the other person, the question of pendency and abatement of the proceedings of assessment or reassessment to the six assessment years will be examined with reference to such date."

9. It is evident on a plain interpretation of Section 153C(1) that the Parliamentary intent to enact the proviso was to cater not merely to the question of abatement but also with regard to the date from which the six year period was to be reckoned, in respect of which the returns were to be filed by the third party (whose premises are not searched and in respect of whom the specific provision under Section 153-C was enacted. The revenue argued that the proviso [to Section 153(c)(1)] is confined in its application to the question of abatement.

10. This Court is of the opinion that the revenue's argument is insubstantial and without merit. It is quite plausible that without the kind of interpretation which SSP Aviation adopted, the A.O. seized of the materials – of the search party, under Section 132 – would take his own time to forward the papers and materials belonging to the third party, to the concerned A.O. In that event if the date would virtually "relate back" as is sought to be contended by the revenue, (to the date of the seizure), the

prejudice caused to the third party, who would be drawn into proceedings as it were unwittingly (and in many cases have no concern with it at all), is dis-proportionate. For instance, if the papers are in fact assigned under Section 153-C after a period of four years, the third party assessee's prejudice is writ large as it would have to virtually preserve the records for at latest 10 years which is not the requirement in law. Such disastrous and harsh consequences cannot be attributed to Parliament. On the other hand, a plain reading of Section 153-C supports the interpretation which this Court adopts.

11. For the foregoing reasons, the Court finds no merit in these appeals; they are accordingly dismissed, without order on costs."

13. Thus, on going through the judgments of Hon'ble jurisdictional High Court and Hon'ble Apex Court, we have no hesitation to hold that the Assessments made for A.Y. 2006-07 and A.Y. 2007-08 u/s 153C consequent to the satisfaction note recorded on 18.11.2013 are outside the scope of Section 153C of the Income Tax Act, 1961 and hence, the assessments are treated as *void ab initio*. Consequently, the assessment made u/s 143(3) for A.Y. 2012-13 shall also be treated as *void*.

14. In the result, the Cross Objections of the assessee are allowed and consequently the appeals of the revenue are liable to be dismissed.

Order Pronounced in the Open Court on 28/12/2023.

Sd/-

(Saktijit Dey)
Vice President

Dated: 28/12/2023

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member