

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER**

ITA No. 1685/DEL/2023 [A.Y. 2014-15]

Shri Rakesh Bansal
117, LGF, Arjun Nagar
New Delhi

Vs.

The A.C.I.T.
Central Circle -16
New Delhi

PAN - AEKPB 0298 R

(Applicant)

(Respondent)

Assessee By : Shri Gautam Jain, Adv
Shri Lalit Mohan, CA

Department By : Shri P.N. Barnwal, CIT-DR

Date of Hearing : 17.01.2024

Date of Pronouncement : 22.01.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 28, New Delhi dated 04.05.2023 pertaining to A.Y. 2014-15.

2. The grievances of the assessee read as under:

"1. That the learned Commissioner of Income Tax (Appeals)-28, New Delhi has erred both in law and on facts in upholding the assumption of jurisdiction *uls* 153C of the Act and, framing of assessment *uls* 153C/143(3) of the Act

1.1. That both the notice issued *uls* 153C of the Act and assessment framed *uls* 153C of the Act were without satisfying the statutory preconditions contained in the Act and therefore without jurisdiction and therefore deserves to be quashed as such ..

1.2. That while upholding the assumption of jurisdiction the learned Commissioner of Income Tax (Appeals) has failed to appreciate that since neither money, bullion, jewellery or other valuable article or thing belonging to the appellant and nor any books of accounts or documents pertaining to the appellant or any information contained therein relating to the appellant were seized as a result of search the assumption of jurisdiction *uls* 153C of the Act was illegal, invalid and unsustainable.

1.3. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding the assumption of jurisdiction despite the fact that in absence of any valid satisfaction having been recorded both in the case of searched person and, the appellant action *uls* 153C of the Act was in excess of jurisdiction

2. That since no valid approval has been obtained *uls* 153D of the Act, order of assessment made *uls* 153C of the Act is invalid and deserves to be quashed as such

3. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding an addition of Rs. 1,60,00,000-representing alleged unexplained money under section 69A of the Act

3.1. That while confirming the above addition, the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the factual substratum of the case, statutory provisions of law and as such, addition so made and sustained is highly misconceived, totally arbitrary, wholly unjustified and therefore, unsustainable.

3.2 That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that impugned seized document IS a cancelled copy of collaboration agreement and no addition can be made on the basis of copy of cancelled agreement, more particularly since the the appellant and Mr. Vijay Gupta which are party to the collaboration agreement has denied any kind of payment/receipt of cash under the agreement in their respective statement recorded during post search proceedings.

3.3 That the learned Commissioner of Income Tax (Appeals) has appreciate that the burden is on revenue U/S 69 of the Act such not been discharged on the facts of the Appellant

4. That the learned Commissioner of Income Tax (Appeals) has also in law and on facts in upholding the levy of of Rs. 1,07,2601- U/S 234A of the Act, interest of Rs. 49,87,598/- U/S 234B of the Act 1,2301- U/S 234D of the Act which are not leviable on the facts of the appellant

It is therefore, prayed that, it be held that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) be quashed. It be further held that addition made and sustained by the learned Commissioner of Income Tax (Appeals) along with interest levied be deleted and appeal of the appellant be allowed

3. Briefly stated, the facts of the case are that return of income was filed by the assessee on 05.12.2014 declaring an income of Rs. 3,99,140/-. A search was conducted on Locker No. 159, Corporation Bank, Green Park Extension, New Delhi in pursuance to warrant in the name of Shri Rakesh Jain and Smt. Renu Jain.

4. In the search, photocopy of purported Collaboration Agreement dated 10.07.2013 between Smt. Vijay Gupta and Smt. Suman Bala Aggarwal and the assessee was found. The assessee was summoned by the Investigation Wing and statement was recorded in which the assessee denied any payment of cash to Smt. Vijay Gupta. Similarly, when Smt. Vijay Gupta was examined, she also denied receipt of any alleged payment in cash.

5. A satisfaction note was recorded by the ACIT, Central Circle-16, New Delhi in the case of Shri Rakesh Jain being the “searched person”. Satisfaction note reads as under:

Recording of satisfaction u/s 153C of the IT Act, 1961 about seized documents pertaining to person other than the person searched.

Name of Searched Person	AO of Searched Person	Name of persons other than searched person	AO of persons other than searched person
Sh. Rakesh Jain	ACIT, Central Circle-16, New Delhi	Sh. Rakesh Bansal (PAN: AEKPB0298R)	ITO, Ward-29(1), New Delhi

Search u/s 132 of the Income Tax Act was conducted in the case of Rakesh Jain Group on 02.11.2017. During the course of assessment proceedings u/s 153A in the case of Sh. Rakesh Jain and on perusal of seized data/documents in the case of Rakesh Jain Group of cases, certain documents as detailed below have been found to be pertaining to Sh. Rakesh Bansal (PAN: PAN: AEKPB0298R) and information contained in such documents pertains to Sh. Rakesh Bansal.

Team No.	Warrant executed in the name of	Premise	Annexure No.	Page No. of Annexure	Brief description of documents
RO-1	Sh. Rakesh Jain, Ms. Renu Jain	Locker No. 159, Corporation Bank, Green Park Extn., New Delhi.	A-9	30-46	Collaboration agreement entered on 29.06.2013 between Sh. Rakesh Bansal and Smt. Vijay Gupta & Smt. Suman Bala Agarwal in respect of development of property No. K-5, Green Park Main, New Delhi.

During the course of search, several incriminating documents were found and seized from various premises which indicated that Sh. Rakesh Jain was regularly investing in properties in and around Delhi/NCR. It is further seen that Sh. D.K Gupta himself has sold several properties to Sh. Rakesh Jain. One such property sold by Sh. D.K Gupta is the property at K-5, Green Park Extension, New Delhi. However, this property was actually jointly owned by Smt. Vijay Gupta, w/o Sh. D.K Gupta & Smt. Suman Bala Aggarwal. Before this property was sold to Sh. Rakesh Jain, Sh. D.K Gupta had given this property for redevelopment through a collaboration agreement dated 10.07.2013 executed between Smt. Vijay Gupta wife of Sh. D.K Gupta (Owner No 1), Smt. Suman Bala Aggarwal wife of Brahm Prakash Aggarwal (Owner No 2) & Sh. Rakesh Bansal, the Builder. This

document was found and seized from Locker No 159, Corporation Bank, Green Park Extension, New Delhi at pages No 47 to 63. Vide this Collaboration Agreement which is duly signed by the all the parties mentioned in the agreement the Builder Sh. Rakesh Bansal had paid an amount of Rs 2,00,00,000/- to the owner No 1 i.e. Smt. Vijay Gupta in the following manner:

Cheque dated 02.07.2013 of Rs. 5,00,000/-

Cheque dated 13.07.2013 of Rs. 35,00,000/-

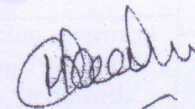
Cash of Rs. 1,60,00,000/-

It can be seen that amount of Rs 1,60,00,000/- was paid in cash and the remaining amounts have been paid in cheque whose details are also duly mentioned in the collaboration agreement. The cheque transaction mentioned in the collaboration agreement is duly accounted for in the Books of A/c of the parties where the cash portion is not recorded. Further, the property was redeveloped by Sh. Rakesh Bansal as per the terms and conditions laid down in the collaboration agreement. It is evidentially clear that Sh. Rakesh Bansal has paid cash amounting to Rs.1,60,00,000/- to Smt. Vijay Gupta on execution of the above agreement.

In view of the above facts, I am satisfied that above mentioned documents pertain to and information contained in the said documents relate to Sh. Rakesh Bansal (PAN: PAN: AEKPB0298R) i.e. the person other than the person searched under section 132 of the Income Tax Act, 1961 and it has a bearing for determination of total income of Sh. Rakesh Bansal (PAN: PAN: AEKPB0298R) for relevant assessment years.

Thus, the above mentioned seized documents are being handed over to the Assessing Officer of Sh. Rakesh Bansal (PAN: PAN: AEKPB0298R) for necessary action u/s 153C for A.Y. 2012-13 to A.Y. 2018-19.

Dated: 22.02.2021



(Praduman Chauhan)

Asstt. Commissioner of Income Tax
Central Circle-16, New Delhi.

6. Satisfaction note was also drawn by the Assessing Officer of the other person [the assessee] on 24.09.2021 which reads as under:

Satisfaction note for initiating proceedings under section 153C read with section 153A of the Income Tax Act, 1961 in the case of Sh. Rakesh Bansal (PAN: AEKPB0298R) - A.Y. 2012-13 to 2018-19

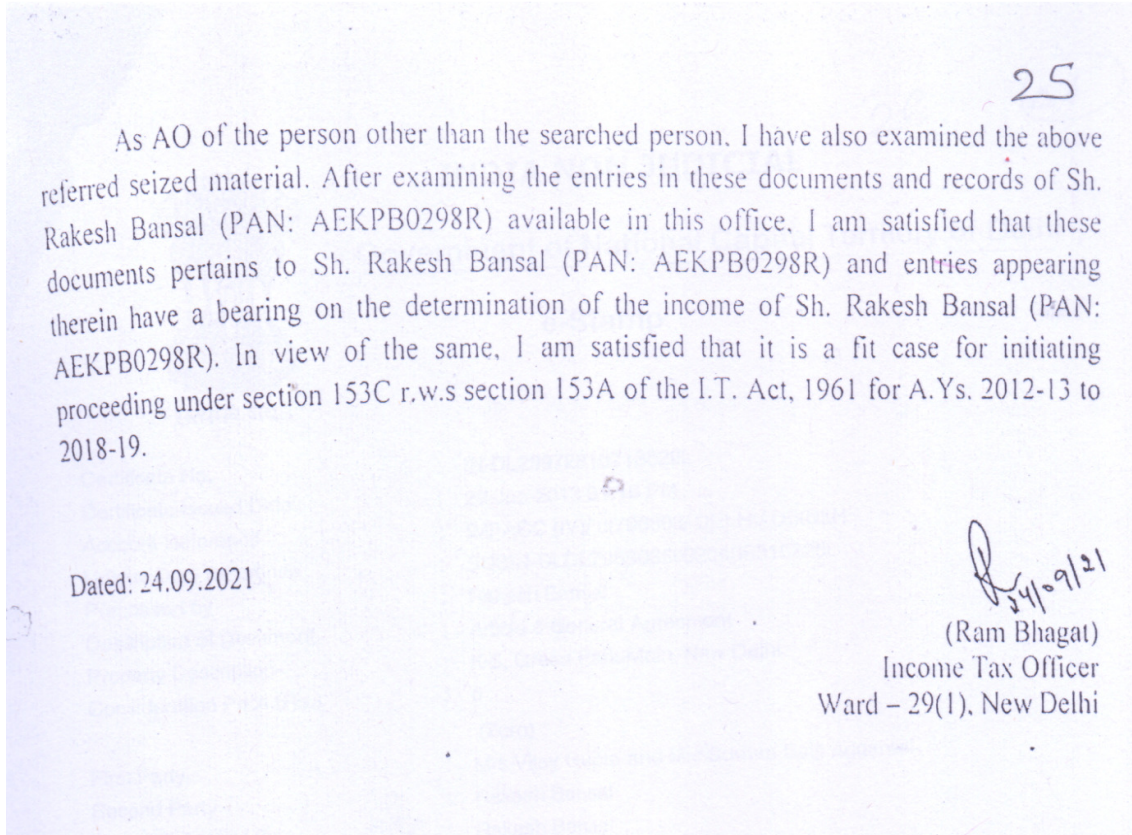
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Action under section 132 of the Income Tax Act, 1961 was conducted in Rakesh Jain Group of cases by the Investigation Wing, New Delhi on 02.11.2017. The AO of Sh. Rakesh Jain, a person covered under search conducted in the cases of Rakesh Jain Group recorded his satisfaction that certain information contained in the material seized in the cases of searched persons pertains to Sh. Rakesh Bansal (PAN: AEKPB0298R), the person other than the searched person. The Assessing officer of the searched person has recorded his satisfaction dated 22.02.2021 and handed over the seized material to the AO of the other person i.e. Sh. Rakesh Bansal (PAN: AEKPB0298R).

As per satisfaction note dated 22.02.2021, during the course of search action, certain documents containing details in respect of purchase of property situated at K-5, Green Park Main, New Delhi were found and seized from the Locker No. 159, Corporation Bank, Green Park Extn., New Delhi. On perusal of Pages 30-46 of Annexure A-9 seized from the locker, it is seen that it is a copy of a collaboration agreement executed between Smt. Vijay Gupta, wife of Sh. D.K. Gupta (Owner No. 1), Smt. Suman Bala Aggarwal, wife of Sh. Brahm Prakash Aggarwal (Owner No. 2) and Sh. Rakesh Bansal, the Builder on 10.07.2013 in respect of property situated at K-5, Green Park Main, New Delhi. The copy of this agreement is duly signed by all the parties. As per the said agreement, Sh. Rakesh Bansal has paid a total amount of Rs. 2,00,00,000/- to the Owner No. 1 i.e. Smt. Vijay Gupta via different modes i.e. Rs. 5,00,000/- via Cheque dated 02.07.2013, Rs. 35,00,000/- via Cheque dated 13.07.2013 and Rs. 1,60,00,000/- through Cash. It can be seen that amount of Rs. 1,60,00,000/- was paid in cash and the remaining amounts have been paid in cheque whose details are also duly mentioned in the collaboration agreement. The cheque transaction mentioned in the collaboration agreement is duly accounted for in the Books of A/c of the parties whereas the cash portion is not recorded. Further, the property was redeveloped by Sh. Rakesh Bansal as per the terms and conditions laid down in the collaboration agreement. It is evidentially clear that Sh. Rakesh Bansal has paid cash amounting to Rs. 1,60,00,000/- to Smt. Vijay Gupta on execution of the above agreement. Accordingly, the seized documents pertaining to Sh. Rakesh Bansal are handed over as per the details tabulated below:

Team No.	Warrant executed in the name of	Premise	Annexure No.	Page No. of Annexure	Brief description of documents
-	Sh. Rakesh Jain, Ms. Renu Jain	Locker No. 159, Corporation Bank, Green Park Extn., New Delhi	A-9	30-46	Collaboration agreement entered on 29.06.2013 between Sh. Rakesh Bansal and Smt. Vijay Gupta & Smt. Suman Bala Aggarwal in respect of development of property No. K-5, Green Park Main, New Delhi

Certified True Copy



7. Assessment proceedings were initiated against the assessee and assessment order was framed u/s 143(3) of the Act on 30.12.2021 by which the returned income of Rs. 3,99,140/- was assessed u/s 153C of the Act at Rs. 1,63,99,140/-.

8. Challenge is validity of this assessment order framed u/s 153C of the Act for the reason that it is invalid because the impugned A.Y is beyond the block of six A.Ys, as per provisions of the Act.

9. It is a settled proposition of law that as per provisions of section 153C of the Act, for taking action u/s 153C of the Act, date of search in the case of the other person would be date of receiving books of account or documents or assets allegedly belonging to the other person and seized in the course of search of the searched person. In other words, date of recording of the satisfaction in the case of the searched person qua the other person becomes date of search in the case of other person [the assessee in the present case].

10. This has been well settled by the Hon'ble Supreme Court in the case of CIT Vs. Jasjit Singh 458 ITR 437. Relevant findings read as under:

“9. It is evident on a plain interpretation of Section 153C(I) that the Parliamentary intent to enact the provision was to cater not merely to the question of abatement but also with regard to the date from which the six ~ e 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 result is that the proviso [to Section 153(c)(I)] is confined in its application to the question of abatement.”

11. In light of the aforementioned ruling of the Hon'ble Supreme Court in the case of the assessee, date of search would be 22.02.2021 and the impugned A.Y 2014-15 is beyond the block of six A.Ys starting from A.Y 2015-16.

12. Considering the facts of the case in totality, in light of the decision of the Hon'ble Supreme Court [supra], we have no hesitation in quashing the impugned assessment order. Ground No. 1 is allowed.

13. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case.

14. In the result, the appeal of the assessee in ITA No. 1685/DEL/2023 is allowed.

The order is pronounced in the open court on 22.01.2024.

Sd/-

**[YOGESH KUMAR U.S]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 22nd JANUARY, 2024

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	