

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

**Before Dr. B. R. R. Kumar, Accountant Member
Shri Yogesh Kumar US, Judicial Member**

**ITA Nos. 1012 & 1013/Del/2021 :
Asstt. Years: 2005-06 & 2006-07**

Rameshwaram Steel and Power Pvt. Ltd., 1, Village Bade Guma, Ghar Ghoda, Raigarh, Chattisgarh-496001	Vs	The DCIT, Central Circle-20, Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AACCR 7426 A		

**Assessee by : Sh. Ved Jain, CA
Ms. Supriya Mehta, CA
Revenue by : Sh. Sapna Bhatia, CIT- DR**

Date of Hearing: 31.10.2023	Date of Pronouncement: 09.01.2024
------------------------------------	------------------------------------------

ORDER

Per Dr. B. R. R. Kumar:-

The present appeals have been filed by the assessee against the order of Ld.CIT(A)-24, New Delhi dated 08.07.2021 for the A.Ys. 2005-06 & 2006-07.

2. Since, the issue involved in all these appeals are similar, they were heard together and being adjudicated by a common order. In ITA No. 1012/Del/2021, following grounds have been raised by the assessee:

1. *That on the facts and in the circumstances of the case and in law the Id. CIT(A) has erred in Law in confirming the invocation of the provision of section 153C of the Income Tax Act, 1961, particularly when the Ld. AO could not substantiate the belongingness of the alleged seized documents to the appellant*

which is a legal pre-requisite for invoking provisions of section 153C of Income Tax Act. Thus, proceedings u/s 153C is erroneous, illegal and bad in law.

2. That on the facts & in the circumstances of the case the Ld. CIT(A) has failed to appreciate that satisfaction note is absolutely devoid of any categorization/specification of the undisclosed income with reference to the documents mentioned therein which is a legal pre-requisite for invoking provisions of section 153C and thus additions needs to be deleted.

3. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erroneously confirmed additions/disallowances in the impugned assessment order framed u/s 153C of the act on the issues which has no nexus with the alleged material unearth during the course of search operations and thereby making a de-novo assessment, which needs to be deleted.

Tax Effect: 1,59,81,774/-

4.(a) That on the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in confirming the addition of Rs. 4,36,75,000/- u/s 68 of Income Tax Act, 1961, towards addition in share capital (including share premium) which is erroneous illegal, bad in law and deserves to be deleted.

4.(b) That the Ld. CIT(A) has grossly ignored the ruling jurisdictional Delhi High Court in case of CIT(Central)-I\I vs Kabul Chawla, 380 ITR 573, Pr. CIT vs Ankush Saluja (2019) 419 ITR 431 (Delhi HC) and Pr. CIT vs Meeta Gutgutia 2018) 96 Taxmann.com 468 (SC), wherein it is held that addition/disallowance is not justified in absence of incriminating absence of in material found during the search. Thus impugned additions is erroneous, illegal and bad in law and deserves to be deleted.

4.(c) That the Ld. CIT(A) has failed to appreciate that the Ld. AO has erred in law by adding the share capital (including share premium) introduced by the erstwhile promoter group to the income of the appellant controlled by the current promoter group pursuant to share purchase agreement dated 28.05.2008. without prejudice the transaction related to AY 2009-10.

4.(d) That the Ld. CIT(A) has failed to consider the fact that the share capital (including share premium) already stands assessed u/s 143(1) of the act and no proceedings were pending for assessment year 2005-06.

3. The assessee has raised the additional grounds of appeal in ITA No. 1012/Del/2021 are as under:-

.....

3. However, while filing the appeal the appellant inadvertently has left out the ground of appeal relating to order passed by Ld. AO u/s 153C for the assessment year under consideration being bad in law as the same is beyond the period of six assessment years immediately preceding the assessment year relevant to the previous year in which satisfaction has been recorded.

4. That accordingly, the applicant is filing additional ground of appeal. That it is submitted that the following additional ground may kindly be taken as the same goes to the root of the issue and all the facts are already on record:

"6. On the facts and circumstances of the case, the Assessment Order passed by AO u/s 153C of the Act for the assessment year under consideration is bad in law and liable to be quashed in view of the fact that the same is beyond the period of six assessment years immediately preceding the assessment year relevant to the previous year in which satisfaction has been recorded.

4. Brief facts of the case are that the case of the assessee was opened u/s 153C on account of certain documents found and seized during the course of search conducted on Monnet Group of cases on 19.11.2010.

5. A satisfaction note was also recorded by the AO on 21.05.2012 and pursuant to which notice u/s 153C dated 21.05.2012 was issued to the assessee. A copy of satisfaction note is placed at PB Pg. 28-41 and notice issued u/s 153C is placed at PB Pg. 25

6. At the outset, it is an undisputed fact that the Assessment Year under consideration is AY 2005-06 and the satisfaction in the case of the assessee was recorded on 21.05.2012 i.e. AY 2013-14.

7. It is now a settled position of law that the period of six years for the purposes of Section 153C has to be construed from the assessment year relevant to the previous year in which satisfaction for issue of notice u/s 153C was recorded.

8. Therefore, the six years of which the assessment proceedings could have been initiated u/s 153C were AYs 2007-08 to AY 2012-13.

9. Since the assessment year under consideration is AY 2005-06, it falls beyond the period of six years referred to in Section 153C and thus is outside the scope of Section 153C of the Act, and thus the AO had no jurisdiction to make an assessment of the assessee's income for the year under consideration.

10. Reliance is placed on the following judicial pronouncements in this regard wherein it has been held that the issuance of notice u/s 153C beyond the period of Six Assessment Years immediately preceding the Assessment year in which satisfaction note is recorded is not in accordance with law.

- COMMISSIONER OF INCOME TAX 14 VERSUS JASJIT SINGH IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION DATED September 26, 2023

"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."*

• COMMISSIONER OF INCOME TAX-7 VERSUS RRJ SECURITIES LTD. AND VICA-VERSA 2015 (11) TMI 19 - DELHI HIGH COURT Dated: - 30-10-2015

"11. *The principal issue to be addressed is whether the assessments made under Section 153C of the Act were without jurisdiction. In this regard, it is relevant to note that the search under Section 132 of the Act, which ultimately led to the proceedings under Section 153C of the Act, was conducted on 20th October, 2008. It is the Revenue's claim that during the said operations, certain documents and papers as well as the hard disk containing data relevant to the Assessee were seized. The AO was satisfied that the said assets/documents belonged to the Assessee - as required under Section 153C of the Act - and the satisfaction note was recorded on 8th September, 2010. The notice under Section 153C of the Act was issued to the Assessee immediately thereafter.*

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. Hence keeping in view the date of satisfaction note, the assessment years involved, the provisions of the Act, judgment of the Hon'ble Jurisdictional High Court and also the judgment of Hon'ble Apex Court, we hold that the assessments are barred by limitation and hence treated as *void*.

12. In the result, the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 09/01/2024.

**Sd/-
(Yogesh Kumar US)
Judicial Member**

**Sd/-
(Dr. B. R. R. Kumar)
Accountant Member**

Dated: 09/01/2024

NV, Sr. PS

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, DELHI**