

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.:732, 733 & 734/CHNY/2023

निर्धारण वर्ष /Assessment Years: 2013-14, 2014-15 & 2015-16

&

C.O Nos.34, 35 & 36/CHNY/2023

[in I.T.A. Nos.732, 733 & 734/CHNY/2023]

The DCIT,
Central Circle 2(3),
Chennai.

M/s. BSR Builders
Engineers & Contractors,
No.28, Tank Bund Road,
Nungambakkam,
Chennai – 600 034.

(अपीलार्थी/Appellant)

PAN: AAGFB 7140N
(Respondent / Cross Objector)

राजस्व की ओर से /Revenue by
निर्धारिती की ओर से/Assessee by

: Shri V. Nandakumar, CIT
: Shri G. Baskar & Shri P.M. Kathir,
Advocates

सुनवाई की तारीख/Date of Hearing : 05.02.2024

घोषणा की तारीख/Date of Pronouncement : 27.03.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

These three appeals by the Revenue and three cross objections by the assessee are arising out of the common order of Commissioner of Income Tax (Appeals)-18, Chennai in ITA Nos. 971, 972 & 973/22-23 dated 03.05.2023. The assessments were

framed by the ACIT, Central Circle-2(3), Chennai for the assessment years 2013-14 to 2015-16 u/s.143(3) r.w.s. 153A of the Income-tax Act, 1961 (hereinafter the 'Act') vide orders of even date 31.12.2017.

2. The only common issue in these three appeals of Revenue is against the order of CIT(A) holding that the addition cannot be made u/s.153A of the Act on the basis of material seized during the course of search of another person rather than assessment should have been made u/s.153C of the Act instead of 153A r.w.s. 143(3) of the Act. For this, Revenue has raised common grounds in all the three years and facts and circumstances are also emanating from the search conducted on the assessee firm u/s.132 of the Act on 06.07.2015. Hence, will take the facts and circumstances from ITA No.732/CHNY/2023 for the relevant assessment year 2013-14. The relevant grounds raised read as under:-

2. The Ld.CIT(A) erred in deleting the addition made towards unaccounted income of Rs.3,20,00,000/- towards cash received over and above the agreement value on sale of commercial space in M/s.BSR Mall holding that the addition made u/s.153A on the basis of materials seized during the course of search of another person is not sustainable. The Ld.CIT(A) ought to have adjudicated the merits of the case.

2.1 The Ld.CIT(A) failed to appreciate that search was conducted in the assessee's case on the basis of separate warrant issued in the name of

assessee, M/s.BSR Builders engineers and contractors, hence, the assessment framed u/s'1534 is valid in law.

2.2 The Ld.CIT(A) observed that the addition was made on the basis of receipts seized during the course of search in the case of Dr. Murugu Sundaram and Dr.Raja Sundarm. The Ld.CIT(A) failed to appreciate that during the course of search in the assessee's premises, a sworn statement was recorded from Shri.B.Ragavendra Reddy, Managing director of the firm on 06/07/2015 in which he admitted on money receipt from Dr.Murugu Sundaram and Dr.Raja Sundaram towards sale of portion of M/s.BSR Mall.

2.3 The Ld CIT(A) failed to appreciate that during the course of search in the business premises of assessee, a sale cum construction agreement was found and seized in ANN:ST/BSR/LS/S vide loose sheets No.74 to 84, being agreement between the assessee firm and doctor brothers' the said agreement was not entered into for the entire consideration' on comparison of cash receipts issued by M/s.BSR Builders in its letter head seized in the case of search of Doctor brothers with Sale cum construction agreement seized in the business premises of assessee revealed that the assessee firm received cash over and above the agreement value.

2.4 The Ld.CIT(A) failed to appreciate that the sale cum construction agreement seized from the assessee's premises, in which the consideration itself was understated is incriminating in nature, since the same has been entered for the purpose of accounting in books where as the assessee received cash over and above the stated consideration. Hence, the Ld.CIT(A) erred in deleting the addition made by the AO in the assessment framed u/s.1534 holding that the addition was made only on the basis of material seized during the course of search of another person.

2.5 Sec.250(2) of Income tax Act, 1961 states that the assessing officer, either in person or by a representative, has the right to be heard at the hearing o' the appeal. But while deciding the above additional ground raised by the assessee with regard to legal validity of assessment made u/s.153A on material seized during the search of another person, no opportunity was given to assessing officer i.e.DCIT, central Circle-2(3), Chennai. This is against the appeal procedure prescribed in the Act itself. This has denied the assessing officer an opportunity to present facts of the case.

3. Brief facts are that search u/s.132 of the Act was conducted in the case of Dr. Murugu Sundaram and Dr. Raja Sundaram on 06.07.2015 u/s.132 of the Act. Simultaneously, search was conducted on the assessee's firm on 06.07.2015 u/s.132 of the Act also. During the course of search in the case of Dr. Murugu Sundaram and Dr. Raja Sundaram on 06.07.2015, unaccounted money in cash along with incriminating evidences were found and also certain loose sheets were recovered which contained details of cash payments made by Dr. Murugu Sundaram and Dr. Raja Sundaram to the assessee firm M/s. BSR Builders Engineers & Contractors. From the loose sheets recovered and seized, the AO noted that the cash amount was paid during financial years 2012-13 to 2015-16 relevant to assessment years 2013-14 to 2016-17 aggregating to Rs.11.20 crores as under:-

| FY | AY | Amount (Rs.) |
|--------------|-----------|---------------------|
| 2012-13 | 2013-14 | 3,20,00,000 |
| 2013-14 | 2014-15 | 3,80,00,000 |
| 2014-15 | 2015-16 | 3,20,00,000 |
| 2015-16 | 2016-17 | 1,00,00,000 |
| Total | | 11,20,00,000 |

This triggered simultaneous search u/s.132 of the Act in the case of assessee's firm on 06.07.2015, wherein Shri B. Raghavendra Reddy, Managing Partner of the assessee firm in his sworn statement

admitted on-money receipt of cash of Rs.11.20 crores received from Dr. Murugu Sundaram and Dr. Raja Sundaram in connection with the sale of part of commercial building in BSR Mall being constructed by assessee firm. Accordingly, notice u/s.153A of the Act dated 15.11.2016 was issued and served on the assessee and in response to the same, the assessee filed return of income on 06.02.2017. The AO issue show-cause notice dated 18.12.2017 wherein assessee was asked to show-cause as to why the amount received in cash of Rs.3.20 crore in financial year 2012-13 relevant to this assessment year 2013-14, out of total cash received of Rs.11.20 crores on the basis of incriminating material and the statements of Managing Partner of Shri B. Raghavendra Reddy, u/s.132(4) of the Act recorded on 06.07.2015 and Dr. Murugu Sundaram and Dr. Raja Sundaram also recorded u/s.132 of the Act on 06.07.2015 be not added as unaccounted income. In reply, the assessee vide his letter dated 21.12.2017 stated that the cash received was purely advance for sale of portion of built-up area for the BSR Mall. The assessee contended that the assessee firm is following project completion method and assessee's project has not yet been completed and assessee will declare this income being cash received from Dr. Murugu Sundaram and Dr. Raja Sundaram

as and when the building is completed in term of project completion method. The AO noted that the assessee is involved in the activity of developing the residential and commercial properties. The BSR Mall is one of such properties, which is being developed by the assessee at OMR, Thoraipakkam, Chennai in a joint venture, where the land belongs to some other party and commercial building is being developed by the assessee firm. Admitted facts are that the commercial property area of 27522 sq.ft., is sold to Dr. Murugu Sundaram and Dr. Raja Sundaram. The AO noted that the assessee has received this cash payment of Rs.3.20 crores in financial year 2012-13 relevant to this assessment year 2013-14 and assessee's reply is evasive in regard to project completion method and hence, he assessed this cash received of Rs.3.20 crores as unaccounted income. Aggrieved, assessee preferred appeal before CIT(A).

4. Before CIT(A), the assessee raised additional ground as under:-

“1.1 The AO erred in making the addition of Rs.3,20,00,000/- to the appellant's income in the impugned order of assessment passed u/s.143(3) r.w.s.153A of the Act.

1.2 The addition being based on the documents and materials found during the search conducted in the case of Dr. Raja Sundaram and Dr. Murugu Sundaram, the appellant being the person other than the person referred to in section 153A, the addition in the impugned order is illegal.

1.3 In the absence of any “satisfaction note” recorded as mandated by the provisions of section 153C of the Act; the assessment made under section 153A of the Act is incorrect, unsustainable and is liable to be annulled.”

The assessee before CIT(A) as is seen from above, raised whether additions can be made while framing assessment u/s.153A of the Act, based on the material found and seized during the course of search of any other person, the CIT(A) held that the material seized during the course of search in the case of any other person cannot be used while framing assessment u/s.153A of the Act rather action should be taken u/s.153C of the Act. The CIT(A) recorded his finding in paras 36 to 38 as under:-

“36. It is evident from the judicial decisions discussed above that initiation of proceedings u/s 153C of the Act is mandatory if the material found during the search in the case of another person is sought to be used in framing the assessment of the assessee and such material cannot be used in the assessment framed u/s 153A in the case of the assessee. In view of this legal principle laid down in the said decisions, it is considered that the AO could not have taken cognizance of the documents found and seized in the course of the search conducted in the premises of Dr. Murugu Sundaram and Dr. Raja Sundaram through a separate warrant, while framing the orders of assessment u/s.153A of the Act in the case of the appellant. The AO could have taken cognizance of the said seized materials only by invoking the provisions section 153C of the Act after recording his satisfaction based on the said seized material. This jurisdictional precondition laid down in the Act of recording the satisfaction for taking action u/s 153C cannot be side-stepped / brushed aside and additions in respect of such seized material cannot be made in the proceedings u/s 153A

of the Act, as the scope of assessments framed under sections 153A and 153C of the Act is completely different.

37. In view of the aforesaid discussion and having regard to the judicial decisions cited above, it is held that the addition made in the case of the appellant towards unaccounted income represented by receipt of on-money in the assessment orders framed u/s 153A for AYs 2013-14 to 2015-16 based on the material seized during the course of the search in the case of Dr. Murugu Sundaram and Dr. Raja Sundaram is not legally sustainable. Accordingly, the AO is directed to delete the addition of Rs.3.20 Crores, Rs.3.80 Crores and Rs.3.20 Crores made in the assessment orders for AYs 2013-14 to 2015-16 respectively. The additional grounds of appeal are accordingly allowed.

38. As the addition made in the assessment orders for A Ys 2013-14 to 2015-16 has been held to be untenable in law on legal grounds, it is considered that the grounds of appeal raised by the appellant dealing with the merits of the issue are not required to be adjudicated. The Grounds of appeal Nos. 1.1 to 1.4 are therefore treated as dismissed for statistical purposes.

Aggrieved, now Revenue is in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. Brief facts are that search and seizure operation was conducted u/s.132 of the Act in the case of Dr. Murugu Sundaram and Dr. Raja Sundaram on 06.07.2015 from where unaccounted money in cash along with other incriminating evidences was found. Certain loose sheets were found and seized during the search operation which contained details of cash payments made by Dr. Murugu Sundaram and Dr. Raja Sundaram

to assessee firm during financial years 2012-13 to 2015-16 relevant to assessment years 2013-14 to 2016-17 in aggregate to Rs.11.20 crores and in the relevant assessment year 2013-14, the amount received was Rs.3.20 crore. This amount was received by assessee in connection with sale of part of commercial building in BSR Mall which was admitted by Dr. Murugu Sundaram and Dr. Raja Sundaram vide their sworn statement u/s.132(4) of the Act on 06.07.2015 and also by the Managing Partner of the assessee firm Shri B. Raghavendra Reddy. Consequently search was also conducted on the assessee firm u/s.132 of the Act on 06.07.2015. Consequently, notice u/s.153A of the Act dated 15.11.2016 was issued and served on the assessee. The assessee now before us contended that the assessments framed u/s.153A of the Act in these three assessment years are bad in law, as no incriminating material was found from the search conducted on assessee's premises but the loose sheets were found and seized from the premises of Dr. Murugu Sundaram and Dr. Raja Sundaram in the course of search conducted in their cases and hence, according to Id.counsel for the assessee, assessments should have been framed u/s.153C of the Act. It was contended by Id.counsel that loose sheets found and seized from the premises of Dr. Murugu Sundaram

and Dr. Raja Sundaram in the course of search conducted in their cases as per assessment framed u/s.153A of the Act makes it clear that no incriminating material was found during the course of search on the assessee's premises regarding the cash payments received from the said persons but the additions have been made purely on the basis of material found and seized during the course of search conducted in the case of Dr. Murugu Sundaram and Dr. Raja Sundaram. The Id.counsel also argued that the statement referred by the AO of Managing Partner Shri B. Raghavendra Reddy dated 06.07.2015 u/s.132(4) of the Act, wherein he admitted the receipt of cash to the extent of Rs.11.20 crores from the above said two persons only and pointed out that such admission was only on the basis of material found during the course of search in the case of above said two persons and deposition given by Dr. Murugu Sundaram and Dr. Raja Sundaram. The Id.counsel for the assessee drew our attention to the provisions of section 153A of the Act, which deal with assessment in the case of a search and are applicable for making assessment in the case of a person, in whose case, search was conducted u/s.132 of the Act. It was further argued that in case, where books of accounts or documents seized during the search pertain to or information contained therein relate

to a person other than the person referred to in section 153A of the Act i.e., the searched person, the seized books of account or documents are required to be handed over to the AO having jurisdiction over such 'other person' and if the said AO is satisfied that the same have a bearing on the determination of total income of such other person, he shall proceed against such 'other person' in term of section 153C of the Act and issue notice accordingly for assessing the income of that 'other person'. The Id.counsel for the assessee before us relied on the decisions of Hon'ble Delhi High Courts in the case of PCIT vs. Anand Kumar Jain (HUF) in ITA No.23 of 2021 and PCIT vs. Subhash Khattar in ITA No.60 of 2017. The Id.counsel also relied on the decision of Co-ordinate Bench of this Tribunal, Bangalore Bench in the case of P. Shyamaraju and Co. India P. Ltd., vs. DCIT in ITA No.978/Bang/2014.

6. We have gone through the decision of Hon'ble Delhi High Court in the case of Anand Kumar Jain, *supra*, wherein the Hon'ble Delhi High Court has dealt with exactly identical issue and relying on the decision of CIT vs. Kabul Chawla reported in [2016] 380 ITR 573 has held as under:-

"7. The preliminary question under consideration before us is whether a statement under Section 132(4) constitutes incriminating material for carrying out assessment under S. 153(A) of the Act. A reading of the impugned order reveals that the statement of Mr. Jindal recorded under Section 132(4) forms the foundation of the assessment carried out under Section 153A of the Act. That statement alone cannot justify the additions made by the AO. Even if we accept the argument of the Revenue that the failure to cross-examine the witness did not prejudice the assessee, yet, we discern from the record that apart from the statement of Mr. Jindal, Revenue has failed to produce any corroborative material to justify the additions. On the contrary we also note that during the course of the search, in the statement made by the assessee, he denied having known Mr. Jindal. Since there was insufficient material to support the additions, the ITAT deleted the same. This finding of fact, based on evidence calls for no interference, as we cannot re-appreciate evidence while exercising jurisdiction under section 260A of the Act.

8. Next, we find that, the assessment has been framed under section 153A, consequent to the search action. The scope and ambit of section 153A is well defined. This court, in *CIT v. Kabul Chawla*, concerning the scope of assessment under Section 153A, has laid out and summarized the legal position after taking into account the earlier decisions of this court as well as the decisions of other High Courts and Tribunals. In the said case, it was held that the existence of incriminating material found during the course of the search is a *sine qua non* for making additions pursuant to a search and seizure operation. In the event no incriminating material is found during search, no addition could be made in respect of the assessments that had become final. Revenue's case is hinged on the statement of Mr. Jindal, which according to them is the incriminating material discovered during the search action. This statement certainly has the evidentiary value and relevance as contemplated under the explanation to section 132(4) of the Act. However, this statement cannot, on a standalone basis, without reference to any other material discovered during search and seizure operations, empower the AO to frame the block assessment. This court in *Principal Commissioner of Income Tax, Delhi v. Best Infrastructure (India) P. Ltd.*, has *inter-alia* held that:

“38. Fifthly, statements recorded under Section 132(4) of the Act do not by themselves constitute incriminating material as has been explained by this Court in Harjeev Aggarwal. ”

9. In Commissioner of Income Tax v. Harjeev Aggarwal, this Court had held as follows:

“23. In view of the settled legal position, the first and foremost issue to be addressed is whether a statement recorded under Section 132(4) of the Act would by itself be sufficient to assess the income, as disclosed by the Assessee in its statement, under the Provisions of Chapter XIV-B of the Act.

24. In our view, a plain reading of Section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words “evidence found as a result of search” would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the explanation to Section 132(4) of the Act. However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by the Assessee during search operation.

25. (...) However, as stated earlier, a statement on oath can only be recorded of a person who is found in possession of books of accounts, documents, assets, etc. Plainly, the intention of the Parliament is to permit such examination only where the books of accounts, documents and assets possessed by a person are relevant for the purposes of the investigation being undertaken. Now, if the provisions of Section 132(4) of the Act are read in the context of Section 158BB(1) read with Section 158B(b) of the Act, it is at once clear that a statement recorded under Section 132(4) of the Act can be used in evidence for making a block assessment only if the said statement is made in the context of other evidence or material discovered during the search. A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger a block assessment. The undisclosed income of an Assessee has to be computed on the basis of evidence and material found during search. The statement recorded under Section 132(4) of the Act may also be used for making the assessment, but only to the

extent it is relatable to the incriminating evidence/material unearthed or found during search. In other words, there must be a nexus between the statement recorded and the evidence/material found during search in order to for an assessment to be based on the statement recorded.

26. In CIT v. Sri Ramdas Motor Transport Ltd., (1999) 238 ITR 177 (AP), a Division Bench of Andhra Pradesh High Court, reading the provision of Section 132(4) of the Act in the context of discovering undisclosed income, explained that in cases where no unaccounted documents or incriminating material is found, the powers under Section 132(4) of the Act cannot be invoked. (...)

27. It is also necessary to mention that the aforesaid interpretation of Section 132(4) of the Act must be read with the explanation to Section 132(4) of the Act which expressly provides that the scope of examination under Section 132(4) of the Act is not limited only to the books of accounts or other assets or material found during the search. However, in the context of Section 158BB(1) of the Act which expressly restricts the computation of undisclosed income to the evidence found during search, the statement recorded under Section 132(4) of the Act can form a basis for a block assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search and cannot be the sole basis for making a block assessment.

28. If the Revenue's contention that the block assessment can be framed only on the basis of a statement recorded under Section 132(4) is accepted, it would result in ignoring an important check on the power of the AO and would expose assesseees to arbitrary assessments based only on the statements, which we are conscious are sometimes extracted by exerting undue influence or by coercion. Sometimes statements are recorded by officers in circumstances which can most charitably be described as oppressive and in most such cases, are subsequently retracted. Therefore, it is necessary to ensure that such statements, which are retracted subsequently, do not form the sole basis for computing undisclosed income of an assessee. 29. In Commissioner of Income Tax v. Naresh Kumar Aggarwal: (2014) 3699 ITR 171 (T & AP), a Division Bench of Telangana and Andhra Pradesh High Court held that a statement recorded under Section 132(4) of the Act which is retracted cannot constitute a basis for an order under Section 158BC of the Act. (...)"

10. Now, coming to the aspect viz the invocation of section 153A on the basis of the statement recorded in search action against a third person. We

may note that the AO has used this statement on oath recorded in the course of search conducted in the case of a third party (i.e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of Section 153C, if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in Section 153A), then the only legal recourse available to the department was to proceed in terms of Section 153C of the Act by handing over the same to the AO who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act). As noted above, the Assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the ITAT. Therefore, we do not find any substantial question of law that requires our consideration.”

6.1 Similarly, Co-ordinate Bench of Bangalore Tribunal in the case of P. Shyamaraju and Co. India P Ltd., *supra*, has considered exactly identical issue and Tribunal vide para 6.6 held as under:-

“6.3 Further, the A.O. had made other additions (other than the claim of deduction u/s 80IA(4) of the I.T.Act) relying upon the materials marked as A/VSM/5,7,8,9,12,15,17 and a pen drive marked as A/VSM/16. It is an undisputed fact that those materials which were all found and seized was during the course of search carried out in the premises of one Sri.V.Shambamoorthy pursuant to a separate warrant of search. The A.O. is certainly entitled to use these materials to make addition in the hands of the assessee, provided, he had initiated proceedings u/s 153C of the I.T.Act and assessed the income u/s 153C r.w.s. 143(3) of the I.T.Act. There is no dispute that the A.O. in the instant case has not initiated proceedings u/s 153C of the I.T.Act. Now the question arises whether the incriminating material found and seized in the search of Sri.V.Shambamoorthy can be used in an assessment of the assessee in a proceedings u/s 153A of the I.T.Act without invoking the provisions of section 153C of the I.T.Act. The answer to the above question would be ‘no’. The reason being that as per

the provisions of section 153C of the I.T.Act. it is imperative that in order to use the material found and seized in a search of an another person other than the person who is subjected to assessment, such material cannot be used without invoking the provisions of section 153C of the I.T.Act. The proceedings u/s 153C of the I.T.Act ought to have been initiated in the case of the assessee when satisfaction was arrived at in the assessment proceedings of Sri.V.Shambamoorthy that material found and seized in the search of Sri.V.Shambamoorthy did not pertain to him, but instead pertains to the assessee.

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6.6 The learned Standing Counsel submitted that the decision of the Co-ordinate Bench in the case of Sri.Anil H Lad (supra) was per in curium inasmuch as the said order did not notice the judgment of the Hon'ble Karnataka High Court in the case of Canara Housing Development Company (supra), and hence, the same ought to be ignored by this Bench. The order of the Co-ordinate Bench in the case of Sri.Anil H Lad (supra) does not in any way contradict the judgment of the Hon'ble High Court in the case of Canara Housing Development Co. (supra) and nor does the decision violate the proposition of law decided therein, by the Hon'ble High Court. The judgment of the Hon'ble High Court in the case of Canara Housing Development Co. (supra) which was rendered in the context of revisionary proceedings u/s 263 of the I.T.Act was considered, clarified and explained by the Hon'ble jurisdictional High Court rendered subsequently in the case of IBC Knowledge Park (supra) and once again considered and clarified in another recent decision rendered by it in the case of Pr.CIT v. Delhi International Airport Pvt. Ltd. (supra). Thus, the argument canvassed by the learned Standing Counsel, questioning the correctness of the decision of the Co-ordinate Bench in the case of Sri.Anil H Lad (supra) is not legally tenable. The learned Standing Counsel had also made one more argument that on the date of search conducted on Sri.V.Shambamoorthy, there was no proceeding pending u/s 153A of the I.T.Act in the case of the assessee and hence the material found in the search of Sri.V.Sambamoorthy ought to be considered as "any other material which comes to the knowledge of the AO" and can be used in the assessment proceedings u/s 153A of the I.T.Act, without invoking the provisions of section 153C of the I.T.Act. This argument of the learned Standing Counsel suffers from the basic flaw inasmuch as it is not the date of search of Sri.V.Sambamoorthy,

which is to be reckoned to determine whether proceedings u/s 153A of the I.T.Act is initiated in the case of the assessee and is the same pending, but it is the date on which material, belonging / pertaining to the assessee, found in the search of Sri.V.Sambamoorthy, is handed over to the AO of the assessee, which is to be considered for determining whether proceedings u/s 153A of the I.T.Act is initiated and is pending on the date of receipt of such material. In the present case the date of initiation of proceedings u/s 153A of the I.T.Act definitely precedes the date on which material found in the search of Sri.V.Sambamoorthy is received for the purpose of assessing the same in the hands of the assessee. Thus, the AO ought to have initiated proceedings u/s 153C of the I.T.Act inasmuch as the proceedings u/s 153A of the I.T.Act had already commenced.”

7. After going through the judicial precedents and particularly the decision of Hon'ble Delhi High Court in the case of Anand Kumar Jain, *supra*, we are of the view that as per the mandate provided by the provisions of section 153C of the Act, the statement made by assessee cannot be a base for making assessment u/s.153A of the Act on the basis of alleged incriminating material (being the statement recorded u/s.132(4) of the Act) on the basis of which assessment was framed u/s.153A of the Act rather assessment should have been framed u/s.153C of the Act by recording a separate satisfaction. Hence, we find no infirmity in the order of CIT(A) and we affirm the order of CIT(A) on this legal issue.

8. Consequent to above view of ours, we upheld the order of CIT(A) quashing the assessment in all these three years i.e.,

assessment years 2013-14, 2014-15 & 2015-16. Therefore, these appeals of Revenue are dismissed.

9. Coming to cross objections of the assessee, we noted that mainly the grounds raised are supportive to the order of CIT(A) except the ground that the addition made by AO will fructify only on completion of project as per project completion method. The assessee before AO as well as CIT(A) contended this plea. The assessee before AO has raised this issue that acceptance of cash of Rs.11.20 crores in order to complete BSR Mall at OMR Road was not recognized as income for the reason that the project was not completed and construction was completed only in future years. The contention of assessee before AO was that this income has not accrued to the assessee on the basis of assessee following project completion method accounting system and this was not dealt by the AO or by the CIT(A). Since, we have confirmed the order of CIT(A) quashing the assessment on jurisdictional issue, this issue has become academic and need no adjudication. Accordingly, the common issue raised in the cross objection in all these assessment years 2013-14, 2014-15 & 2015-16 is dismissed as academic.

10. In the result, both the appeals filed by the Revenue in ITA Nos. 732, 733 & 734/CHNY/2023 and the cross objections filed by the assessee in CO Nos.34, 35 & 36/CHNY/2023 are dismissed.

Order pronounced in the open court on 27th March, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 27th March, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.