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

माननीय श्री वी. दुर्गाराव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JMAND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकरअपीलसं./ ITA No.223/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2015-16)
&
2. आयकरअपीलसं./ ITA No.224/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2016-17)
&
3. आयकरअपीलसं./ ITA No.225/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2017-18)

DCIT Central Circle-2(4) Chennai.	बनाम / Vs.	**Shri P. Rama Mohan Rao** No.17/184, Y Block, First Street, 6th Main Road, Anna Nagar, Chennai-600 040.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AAFPR-2074-N**		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

&
4. Cross Objection No.10/Chny/2023
(In ITA No.223/Chny/2023)
(निर्धारण वर्ष / Assessment Year: 2015-16)
&
5. Cross Objection No.11/Chny/2023
(In ITA No.224/Chny/2023)
(निर्धारण वर्ष / Assessment Year: 2016-17)
&
6. Cross Objection No.12/Chny/2023
(In ITA No.225/Chny/2023)
(निर्धारण वर्ष / Assessment Year: 2017-18

Shri P. Rama Mohan Rao No.17/184, Y Block, First Street,	बनाम/	**DCIT** Central Circle-1(4)

6th Main Road, Anna Nagar, Chennai-600 040.	Vs.	Chennai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.**AAFPR-2074-N**		
(अपीलार्थी**/Cross Objector**)	:	(प्रत्यर्थी / **Respondent**)
अपीलार्थीकीओरसे/ **Revenue by**	:	Shri V. Nandakumar (CIT)- Ld. DR
प्रत्यर्थीकीओरसे/ **Assessee by**	:	Shri Y. Sridhar (FCA)-Ld. AR

सुनवाईकीतारीख**/Date of Hearing**	:	10-01-2024
घोषणाकीतारीख /**Date of Pronouncement**	:	02-04-2024

आदेश / O R D E R

Per Bench

1. Aforesaid appeals by revenue for Assessment Years (AY) 2015-16 to 2017-18 arise out of a common order passed by Learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] on 19-12-2022in the matter of separate assessments framed by Ld. Assessing Officer [AO] u/s.144 r.w.s 153C for AYs 2015-16 to 2016-17 on 26-12-2018 and u/s 144 for AY 2017-18 on 26-12-2018.It is admitted position that facts as well as issues are quite identical in all the years and our adjudication in any one year shall equally apply to the other years also. For the purpose of adjudication, facts from case records of AY 2015-16 have been culled out in this order.

2. The grounds taken by the Revenue in AY 2015-16 read as under:

1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.
2. The Ld.CIT(A) erred in deleting the addition of Rs.5,25,00,00/- for AY 2015-16 made towards payment received from M/s.S.R.S.Mining and associates based on the incriminating materials seized from the premises of SRS Mining and sworn statements recorded from Shri.K.Srinivasulu and the assessee.
2.1. The Ld.CIT(A) erred in observing that that there is no mention anywhere in the seized materials that the assessee was recipient of unaccounted incidental charges from M/s.S.R.S.Mining. Shri.K.Srinivasulu admitted in his sworn statement dated 10.12.2016 that those note books were maintained by him as per the instructions of

partners of M/s.S.R.S Mining and the entries found were incidental charges paid to various persons. Shri.K.Srinivasulu stated in his sworn statement that S2 refers to Secretary-2 and Temple son refers to Shri.Vivek Papisetty, son of ShriRam Mohan Rao. It is to be noted that the assessee was then Secretary-2 to the Chief Minister of Tamilnadu and Shri.Vivek Papisetty in his sworn statement accepted the payments mentioned as "Temple son" as payments received by him. Hence, the AO has rightly assessed the payments with code names Temple and S2 mentioned in the seized material in the hands of assessee.

2.2. The Ld.CIT erred in observing that there was no acknowledgement in the seized material by the assessee of receiving the said payments by way of appending his signature/initial against the said payments. As far as question of not writing the name in full but in abbreviated form and not recording acknowledgement for the payments made, the Ld.CIT(A) ought to have appreciated that maintaining clear, unambiguous and formal records of transaction of such nature would not be done for obvious reasons.

2.3. The Ld.CIT(A) erred in holding that such seized material is a document with scant details does not have any evidentiary value in respect of entries found therein without any corroborative evidence, without appreciating that the entries found in the seized materials were in the form maintained systematically on daily basis mentioning the amount and the author of seized material Shri Srinivasulu admitted the nature of payments and reference of code names.

2.4. The Ld.CIT(A) erred in observing that there was no corroborative evidence in respect of such seized materials with regard to the receipt of incidental charges by the assessee from M/s.SRS Mining. The primary evidence found during the course of search were notebooks maintained by Shri.K.Srinivasulu during the ordinary course of business carried on by the firm, M/s.SRS mining and the statement recorded from Shri.K.Srinivasulu in which he explained the nature of entries is corroborative evidence.

2.5. The CIT(A) erred in not accepting the finding of the Investigation Department that the assessee has applied his unaccounted money received by assessee from SRS Mining for purchase of diamond Jewellery worth Rs.87,94,000/- in cash and without any bill, based on the evidence of cash sales created in bogus names as admitted by Shri.NPS Kanagaraj, Senior Manager of M/s.Kirtilal Kalidass Jewellers Pvt. Ltd in his sworn statement.

2.6. The Ld.CIT(A) has sought to cast doubts on the veracity of entries made in the note book seized from the possession of Shri Srinivasulu. The Ld.CIT(A) failed to appreciate that several of the entries in the note book denoting expenses and bank deposits have been verified during post search proceedings. This was maintained by the searched firm to arrive at the profits earned from unaccounted business of sand mining carried out by it.

2.7. The Ld.CIT(A) has stated that Shri.K.Srinivasulu has no firsthand knowledge of information as the entries were made by him as per the instructions of partners of M/s.SRS Mining and the partners of the firm should also have been examined to prove the veracity of the entries. It is to state that the partners also agreed with the explanation of Shri Srinivasulu regarding the entries made although they have also withdrawn their statement subsequently.

2.8. The Ld.CIT(A) failed to appreciate that the addition has been made on the basis of sworn statement recorded u/s.132(4) on 10.12.2016 which has evidentiary value. Shri Srinivasulu retracted his sworn statement after a gap of 106 days, which is

only an afterthought. It is held in various decisions that once the statements has been recorded on oath, duly signed, it has a great evidentiary value and it is normally presumed that whatever stated at the time of recording the statements under Section 132(4), are true and correct and brings out the correct picture, as by that time the assessee is influenced by external agencies. Hence, the retraction of statement by Shri Srinivasulu, after a gap of 106 days was not relied upon by the assessing officer.
2.9. The Ld CIT(A) erred in observing that the statement of Shri.Srinivasulu lost its evidentiary value on his retraction, without appreciating that the retraction of statement by both ShriSrinivasulu holds no value as they have done so by citing absurd and unfounded reasons like they were subjected to harassment and mental pressure by IT Authorities. They have not brought any evidence to show that they were harassed during search operation through any means.

3. The assessee has filed identical cross-objections in all the three years. The grounds taken in cross-objections for AY 2015-16 read as under:

1. The order of the learned Commissioner of income-tax(Appeals)-19, Chennai dated 19.12.2022 in so far as it is prejudicial to the interest of the Respondent is opposed to law, facts and circumstances of the case.
2. The learned CIT(Appeals) erred in upholding the action of the learned Deputy Commissioner of Income tax, Central Circle 2(4) (Appellant -Assessing Officer for short) in completing the assessment u/s 144 of the Income tax Act, 1961 (hereinafter referred to as 'the Act'), although the Respondent-assessee had admittedly complied with all notices. The legal objections raised and the opportunity sought to cross-examine Sri K. Sreenivasulu whose statement was being heavily relied upon cannot be construed as procrastination by the Respondent-assessee.
3. The learned CIT(Appeals) having come to the conclusion that the Respondent-assessee has responded to the notices and subsequent letters issued by Appellant-Assessing Officer should have quashed the assessment proceedings u/s 144, as the conditions for completion of assessment u/s 144 laid down in the Act have not been satisfied.
4. The learned CIT(Appeals) erred in holding that Appellant-Assessing Officer has followed the principles of natural justice, even when the cross-examination of Sri K.Sreenivasulu was not allowed, irrespective of whether he has turned hostile. The only alternative left to the Appellant-Assessing Officer was to ignore the statement of Sri K.Sreenivasulu altogether in the assessment proceedings itself.
5. The learned CIT(Appeals) failed to appreciate that the valuable right of cross-examination of a witness who tarnished the image of the Respondent-assessee, cannot be effaced by just giving a facade of opportunities in the appellate proceedings and should have quashed the assessment order on this ground.
6. The learned CIT(Appeals) having come to the conclusion that the statement of Sri K.Sreenivasulu should not be relied upon for completion of assessment proceedings, more particularly because of the finding given by the Madras High Court in WP No. 34626/2018 and W.M.P No.40141/2018 27.12.2018 ought to have come to the conclusion that the whole edifice of the AO for making addition built on the statement recorded u/s 132(4) from

Sri K.Sreenivasulu should crumble ex facie, and the assessment should have been held as invalid.

7. The Respondent - assessee objects to the grounds of appeal raised by the Appellant-Assessing Officer and making a reference to the statement recorded from Sri K.Sreenivasulu, as corroborative evidence of seized loose sheets and note books, even when it has been established that it is liable to be discarded in toto, in the absence of any opportunity to cross-examine Sri K.Sreenivasulu and has also been approved by the Hon'ble High Court of Madras in writ proceedings.

8. The Respondent - assessee objects to the grounds of appeal raised by the Appellant-Assessing Officer and making a reference to the statement recorded from Sri N P S Kanagaraj, Senior Manager of M/s Kirtilal Kalidoss Jewellers P.Ltd., though the same was not relied upon by the Assessing Officer in the assessment proceedings itself. The appellant had no opportunity to seek his cross-examination also, as it was not relied upon by the Appellant-Assessing Officer at the time of assessment. This issue is being raised by the Appellant Assessing Officer for the first time before this Hon'ble ITAT.

9. The Respondent - assessee objects to the grounds of appeal raised by the Appellant-Assessing Officer at ground No.2.6 and making a reference to the *"several entries in the note book denoting expenses and bank deposits have been verified during post search proceedings. This was maintained by the search firm to arrive at the profits earned from unaccounted business of sand mining carried out by it."* The Assessing Officer having not noted any such verification in the assessment order, the Respondent-assessee pleads for dismissal of this ground of appeal in limine.

10. The Respondent - assessee objects to the grounds of appeal raised by the Appellant-Assessing Officer with regard to purchase of jewellery also from M/s. Kirtilal Kalidoss Jewellers P. Ltd.(though it is relevant for the AY 2017-18 only) as it was also not relied upon by the Appellant-Assessing Officer in the assessment order and the appellant had no opportunity to raise the grounds before the CIT(Appeals). This issue is being raised by the Appellant-Assessing Officer for the first time before this Hon'ble ITAT.

11. The learned CIT(Appeals) erred in holding that the withdrawal of the notice first issued u/s 153A inadvertently on 31.7.2018 is proper, without appreciating that the Appellant-Assessing Officer had complete information with regard to the persons in whose name warrant was issued, from whose premises what material have been gathered, in respect of a search conducted as long back as December, 2016 and had sufficient time to marshal the facts.

12. The CIT(Appeals) should have appreciated that there is no provision to withdraw a notice once issued under a statutory provision viz., 153A and this mistake is incurable and fatal to the assessment proceedings. The CIT(Appeals) should have straightaway quashed the assessment proceedings, instead of upholding the same as having been rightly concluded after the issue of a proper notice u/s 153C, even when there was no justification to issue such a notice either.

13. The Respondent-assessee supports the order of CIT(Appeals) with regard to deletion of addition on merits of the so-called incidental charges.

As is evident, the sole issue that arises for our consideration is additions made by revenue based on search findings. The assessee is challenging

the jurisdiction of Ld. AO on various legal grounds besides supporting impugned order on merits.

Arguments before us

4. The Ld. CIT-DR, drawing attention to grounds of appeal, advanced arguments and submitted that the additions are based on search findings coupled with the statements recorded u/s 132(4). The Ld. CIT-DR supported the additions made in the assessment order. The Ld. AR, on the other hand, while supporting the impugned order on merits, assailed the validity of assessment proceedings on legal grounds. The Ld. AR submitted that initially a notice u/s 153A was issued which was withdrawn later on and another notice u/s 153C was issued. The Ld. AR raised the plea of violation of principle of natural justice in its cross-objections. To support the submissions, reliance has been placed on various judicial decisions, the copies of which have been placed on record. The written submissions have also been filed during the course of hearing which have duly been considered while disposing-off these appeals. The Ld. CIT-DR submitted that assessee's cross-objections have already been considered in the impugned order. It was also submitted that the assessment was framed on *best-judgment* basis u/s 144 since no information was furnished by the assessee and therefore, no prejudice has been caused to the assessee. The Ld. CIT-DR Also submitted that the appellate authority did not consider the remand report as furnished by Ld. AO.

5. Having heard rival submissions, oral as well as written and upon perusal of case records including various judicial pronouncements as cited before us, our adjudication would be as under. The

assesseebeinga resident individual derived income from salary and income from other sources. An assessment was framed against the assessee for AY 2015-16 u/s 144 r.w.s. 153C of the Act on 26-12-2018 wherein certain additions were made which form part of subject matter of present appeal before us.

6. Assessment Proceedings

6.1 The assessment was so framed against the assessee pursuant to search and seizure action u/s 132 in the case of M/s SRS mining, Shri K. Srinivasulu, Shri M. Prem Kumar &ors. at T. Nagar on 08-12-2016. During search proceedings in the case of M/s SRS mining, certain incriminating material was seized which was marked as ANN/MPK/NS/B&D/S-19-20, ANN/KGAR/MPKSSR/B&D/S-1to 3, ANN/KGA/SRS/B&D/S-1, ANN/MPK/NS/B&D/S-3 and ANN/KGAR/MPKSSR/LS/S-1 from the premises of M/s SRS mining. The said material allegedly contained details of cash payment / incidental charges paid to several persons including the assessee and his son. The assessee was allegedly paid a sum of Rs.525 Lacs in the capacity of then Chief Secretary of Tamilnadu. In the note books, the assessee was vaguely described as “Temple” and “S-2” and his son was described as “Temple Son”. The codes were deciphered by Ld. AO by relying on the statement made by one Shri K. Srinivasulu u/s 132(4) in whose possession those incriminating books and documents were found. Shri K. Srinivasulu is stated to be an employee of M/s SRS mining who maintained diaries / note-books on the instructions of partners of M/s SRS mining. The relevant part of the statement has been extracted on Page No.2 of the assessment order.

6.2 Subsequently, another search was carried out in the case of assessee as well as his son Shri Vivek Papisetty on 21-12-2016. The assessee's son admitted to have received facilitation charges of Rs.10 Crores from Shri Sekar Reddy of M/s SRS Mining. It was also admitted that the unaccounted income was invested towards unaccounted payment to purchase immoveable properties in Ennore.

6.3 Drawing analogy from separate statement recorded from assessee that code "S4" means Secretary-4 to Chief Minister (CM), Ld. AO concluded that "S2" as contained in seized material would refer to payments made to Secretary-2 to Chief Minister (CM). Since the assessee functioned as Secretary-2 at the office of CM, it was obvious that the seized note books referred to the assessee only.

6.4 In the above background, a notice u/s 153C was issued to the assessee on 24-09-2018 and the assessee admitted income of Rs.18.66 Lacs. During the course of assessment proceedings, the assessee was required to file various details.

6.5 The Ld. AO, based on entries made in material as seized from M/s SRS mining, alleged that the assessee was in receipt of Rs.525 Lacs which would be treated as unaccounted money of the assessee. The details of these entries have been extracted on Page No.5 of the assessment order which are as under: -

ANN/MPK/NS/B&D/S-19			
Date	**Description**	**Amount(Rs)**	Page No
13.09.2014	S2	7500000	7
04.11.2014	S2(KS)	7500000	31
04.12.2014	S2	7500000	45
09.02.2015	S2.KS(TJS)	2500000	72
09.02.2015	S2.(KS)(Karthikumar)	1000000	72
10.02.2015	S2 (KS)	3000000	72
10.02.2015	S2 (Subramanian)	1000000	72

03.03.2015	S2 (KS) 8.20 pm thrgh Pondy	7500000	82
ANN/MPK/NS/B&D/S-3			
08.07.2014	S2	7500000	29
01.08.2014	S2	7500000	43

6.6 Considering the fact that the statement of Shri K. Srinivasulu was being used against the assessee, the assessee demanded cross-examination of Shri K. Srinivasulu and the assessee was requested to come on 19-12-2018 for cross-examination. However, it came to light that Shri K. Srinivasulu sent a letter through Jail Authorities retracting his earlier statements. On the date of cross-examination, the witness turned hostile and remained non-cooperative. Though the assessee kept on insisting cross-examination, Ld. AO continue to alleged that the said amount was received by the assessee as incidental charges which was nothing but unaccounted money of the assessee. Finally, the amount of Rs.525 Lacs was added to the income of the assessee as unaccounted income.

6.7 The assessment for AY 2016-17 was framed in similar manner u/s 144 r.w.s. 153C of the Act on 26-12-2018 making impugned additions in similar fashion. The assessment for AY 2017-18 was completed u/s 144 on 26-12-2018 on similar lines.

6.8 Aggrieved, the assessee assailed the action of Ld. AO before first appellate authority. All the appeals were disposed-off by first appellate authority vide common order dated19-12-2022 partly allowing the appeals of the assessee. Aggrieved, the revenue is in further appeal before us whereas the assessee has raised cross-objections.

Appellate Proceedings

7.1 During appellate proceedings, the assessee vehemently assailed the assessment proceedings on legal ground as well as on merits. The Ld. CIT(A) noted that AO had initially issued notices u/s 153A on 31-07-2018 which were subsequently recalled on 24-09-2018. The Ld. AO issued notices u/s 153C on 24-09-2018 since the material seized from the premises of M/s SRS Mining contained information regarding payment of incidental charges to various persons including the assessee and the said material had bearing on determination of total income of the assessee. The assessment for AYs 2014-15 to 2016-17 was completed u/s 144 r.w.s. 153C whereas the assessment for AY 2017-18 was completed u/s 144.

7.2 In the meanwhile, on the issue of cross-examination, the assessee preferred Writ Petition before Hon'ble High Court of Madras and sought cross-examination of Shri K. Srinivasulu vide WP No.34626 of 2018 and WMP No.40141 of 2018. An order was passed by Hon'ble Court in the same on 27-12-2018. Dismissing the petition filed by the assessee, Hon'ble Court pertinently observed as under: -

> 4. The fact that the witness had turned hostile would only stand to the benefit of the petitioner as the entire evidence of the witness could be considered and this court is unable to understand as to how it would be adverse to that of the petitioner. Even if the respondent was to rely on that part of the evidence of Shri K. Srinivasulu which is in their favour they have to let in other reliable evidence to corroborate the same. During the course of the arguments, it was informed by the learned Senior Counsel that the copies of the evidence had not been provided to the petitioner and this court directs the respondents to give copies of the evidence to the petitioner.
>
> 5. I do not find any infirmity in the order of the respondent in refusing the request for cross examination since the witness had turned hostile to the respondent's contentions. Needless to state that in the light of the amendment to Section 154 by insertion of Sub Section (2) by the Act 2 of 2006 w.e.f. 16.04.2006, it is well open to the petitioner to work out his right in accordance with law on receipt of the evidence directed to be given.

> 6. In the result, this writ petition shall stand dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

The Hon'ble Court thus held that since the witness turned hostile, Ld. AO was right in refusing the request for cross-examination. Further, Ld. AO was to consider other reliable evidences to sustain the additions. Considering the same, Ld. CIT(A), in para-17 of the order, upheld the inability of Ld. AO to afford cross-examination of the witness.

7.3 On the issue of opportunity of hearing, Ld. CIT(A) held that the authorized representative of the assessee was exhaustively heard during appellate proceedings and no prejudice was caused to the assessee, in this regard. This legal ground was also rejected.

7.4 The assessee raised another legal issue that there was no provision to withdraw a notice once issued u/s 153A. The Ld. AO ought to have issued notice u/s 153C only after satisfying himself that the books of account or documents seized in the case of M/s SRS Mining pertained to the assessee and the same had bearing on determination of total income of the assessee. However, the name of the assessee was nowhere mentioned in the seized material. The codes used like "Temple" and "S-2" would not confer any power on AO to issue notice u/s 153C. The notice was issued based on imaginations, presumptions and bald deductions. Therefore, the notices for AYs 2015-16 & 2016-17 were to be quashed.

7.5 The Ld. CIT(A), in para 21.1 of the impugned order, observed that though the search was conducted at the residence of the assessee on 21-12-2016, the same was on the strength of warrant issued in the name of M/s SRS Mining and others as well as in the name of assessee's son

i.e., Shri Vivek Papisetty. The provisions of Sec.153A were not applicable to the assessee since the search warrant was not issuedin the name of the assessee. The Ld. AO issued 153A notices inadvertently and this mistake was notified by withdrawing these notices on 24-09-2018. Simultaneously, notices u/s 153C was issued on the same date. In the satisfaction note recorded by Ld. AO before issuance of 153C notices, AO made reference to documents seized during the course of search in the case of M/s SRS Mining &Ors. The Ld. AO recorded a finding that the material seized during those searches pertained to and information contained therein related to the assessee having regard to the statements of Shri K. Srinivasulu in respect of contents of the said seized material and that the same had bearing on determination of total income of the assessee. Thus, Ld. AO took correct step of issuing notices u/s 153C. The issue of notices u/s 153A without sanction of law and there was no alternative but to withdraw such legally invalid notices. Therefore, there was no legal infirmity in withdrawal of notices u/s 153A and issuing fresh notices u/s 153C.

7.6 The assessee also emphasized that Shri K. Srinivasulu retracted his statement at the earliest. Further, there was no mention of assessee's name in the seized material. The code names like "Temple" and "S-2" did not refer to him at all. There was no basis to come to the conclusion that those codes referred to assessee. There was no corroborative evidence to indict the assessee in any manner. The Ld. CIT(A) held that all that was required to initiate proceedings u/s 153C was only a 'prima facie satisfaction' and not a 'conclusive satisfaction'. On careful perusal of the satisfaction note as recorded by Ld. AO, it

could be concluded that AO had a *prima facie* case to believe that the assessee was the recipient of the incidental charges paid by M/s SRS Group and the same represented his unaccounted income for the concerned assessment years as the same were not disclosed by him in the returns of income. The said *prima facie* view of the AO was arrived at based on the notings found in the seized documents (notebooks) regarding payments made to various persons on various dates. The payments were explained to be incidental expenses paid to various persons by Shri K.S. Srinivasulu in his sworn statement. It was explained by him that the seized Oswal deluxe note books vide ANN/KGAR/MPKSSR/B&D/S1 to 4 were maintained by him in his handwriting as per the instructions of the partners of M/s SRS Mining and that they contained details of incidental expenses paid to various persons. He also furnished his remarks with regard to the names/abbreviations noted in the seized material in respect of persons to whom such payments were made in order to give more details regarding the identity of such persons. The payments recorded in the seized material with the code names like “S2” and “temple” was explained to be Secretary-2. Based on said seized material and sworn statement of Shri K. Srinivasulu explaining the contents of the said seized material written and maintained by him, Ld. AO formed a *prima facie* opinion and recorded his satisfaction that payments were made to the assessee during the previous year relevant to AYs 2014-15 to 2017-18 and that the same represent unaccounted income of the assessee. The sworn statement of Shri K. Srinivasulu recorded u/s 132(4) at the time of search had evidentiary value unless it was shown that the

statement was recorded under duress or it was based on mistaken understanding/belief of facts. Though Shri K. Srinivasulu retracted the said statement subsequently vide letters dated 21.03.2017 and 23.03.2017, the validity of such retraction or otherwise is the subject matter of consideration at the time of assessment proceedings and the same would not have a bearing on the *prima facie* satisfaction drawn by Ld. AO at the time of recording the satisfaction note for the purpose of issuance of notices u/s 153C for initiating the assessment proceedings. The prima facie belief as arrived on the basis of sworn statement of Shri K. Srinivasulu recorded at the time of search would not get erased by the said letters of retraction unless more detailed and comprehensive examination of all the evidences as available on record including the initial sworn statement and subsequent retraction letters is made during the course of assessment proceedings. Therefore, the plea of the assessee that there was no proper recording of satisfaction and that there was mis-appreciation of facts by the AO while recording the satisfaction note for the issue of notice u/s 153C, was rejected.

7.7 The assessee also sought cross-examination of all the persons whose statements were being relied upon by Ld. AO to come to adverse conclusion which militates against the assessee. The Ld. CIT(A) noted that opportunity of examination of Shri K. Srinivasulu was provided to the assessee by Ld. AO on 19.12.2018 by issuing summons u/s 131. However, Shri K. Srinivasulu turned non-cooperative and hostile while making preliminary examination of the said person on 19.12.2018. The AO postponed the cross examination to 20.12.2018 and on that date also, the position remained the same. Since that person tuned hostile,

AO was of the opinion that the cross-examination would not serve useful purpose. This position was informed to the assessee by Ld. AO vide letter dated 20-12-2018. The assessee filed a Writ Petition before Hon'ble Madras High Court praying for issue of directions to the AO to permit the assessee to cross-examine the witnesses as relied on by the AO. While dismissing the petition vide order dated 27-12-2018, Hon'ble Court, at para 5, held that there was no infirmity in the order of the AO in refusing the request for cross-examination since the witness had turned hostile. The Hon'ble Court however directed that if AO was to rely on that part of the statement of Shri K. Srinivasulu which is in favour of the revenue, the AO has to let in other reliable evidence to corroborate the same. Considering the same, the grounds raised by the assessee, on the issue of cross-examination, were dismissed.

7.8 The assessee also assailed quantum additions on merits. It was submitted that there was no material evidence to hold that the assessee received the alleged incidental charges. The same was merely on presumption. The seized note book belonged to a third-party which merely had notings regarding alleged payments made, noted in codes and construed as payment made to assessee. The same lack nature as well as purpose of payment. Apart from coded notings, there was no corroborative material evidencing that these payments have been made. Mere notings in an unauthenticated document could not form the basis of addition. The assessee relied on the decision of Hon'ble Supreme Court in the case of **CIT vs. Daulat Ram Rawat Mull (87 ITR 349)** holding that onus was on revenue to bring on record evidence / material to show that the alleged investment was made by the assessee. The assessee also

relied on the decision of Hon'ble Supreme Court in the case of **CBI vs. V.C. Shukla (AIR SC 410)** holding that loose sheets and entries in diaries could not be considered as account books of a party. Such entries would not have any evidentiary value. Similarly in **Common Cause vs. UOI (77 Taxmann.com 245),** it was held that dumb documents which are not part of books of accounts do not possess any evidentiary value and liable to be rejected in *toto.*

7.9 The assessee also contended that as per the directions given by Hon'ble High Court on 27-12-2018, the corroborative evidences which support the statement of Shri K. Srinivasulu should be given to the assessee before passing the assessment order. However, the assessment order was already passed on 26-12-2018 i.e., a day prior which fact was not informed by Ld. AO to Hon'ble Court on 27-12-2018. Considering this plea, a remand report was called by Ld. CIT(A) from Ld. AO vide letter dated 18-03-2022. The Ld. AO, in remand report dated 27-04-2022, submitted that all documents were supplied at the time of assessment proceedings except one relating to M/s Kirtilal Kalidas Jewellers Pvt. Ltd. The copies of sworn statement of Shri NPS Kanagaraj (as recorded therein) and seized material relating to purchase of jewellery from M/s Kirtilal Kalidas Jewellers Pvt. Ltd. was also provided subsequently as informed by Ld. AO on 05-05-2022.

7.10 The assessee countered the remand report in the light of decision of Hon'ble Delhi High Court in the case of **CIT vs. Sant Lal (118 Taxmann.com 432).** It was also submitted that coded words should have been deciphered with independent and corroborative evidences. Mere mention of coded words could not be relied upon by Ld. AO to

make any additions. The AO should have sufficient material to establish the person through whom the payment was made. Regarding sworn statement of Shri Kanagaraj and seized documents relating to alleged purchase of jewellery from M/s Kirtilal Kalidas Jewellers Pvt. Ltd., as supplied by Ld. AO vide letter dated 05-05-2022, the assessee submitted that this material was not used by Ld. AO during assessment proceedings. Further, there was no value for such a vague statement. The assessee also submitted that the sworn statement of a third-party i.e., Shri Kanagaraj and other evidences were provided much after the conclusion of assessment and hence, no credence need be placed on the entire material provided. The statement of Shri Kanagaraj was a vague statement.

7.11 The Ld. CIT(A) observed that Ld. AO made addition ofunaccounted income represented by the incidental charges received by the assessee from M/s SRS Mining based on the entries found in the note books seized from the office premises of the said firm during the course of search conducted in the cases of M/s SRS group on 08-12-2016 and after considering the statement of Sri. K. Srinivasulu u/s 132(4) dated 10.12.2016 (from whose possession the material was seized) with regard to the contents of the said seized material. The prime argument of the assessee was the absence of the name of the assessee as the recipient of the incidental charges in the seized material and the conjectural and presumptive nature of the inference drawn by Ld. AO that the assessee was the beneficiary of the incidental charges found recorded with code names like “S2” and “Temple” in the seized material. Upon perusal of relevant entries in the seized material as extracted by

Ld. AO in the assessment orders, Ld. CIT(A) concurred that the name of the assessee did not appear in any of the entries as considered by Ld. AO to be pertaining to the assessee. All the entries contained only code names like “S2” or “Temple” or different variations/extensions of “S2” and “Temple”. The only material to decode the same was the sworn statement of Shri K. Srinivasulu wherein he stated that such codes referred to the assessee since the assessee functioned as Secretary-2 in the office of the Chief Minister. However, the said conclusion was factually incorrect since in it was stated in the statement that the code “S2” means Secretary-2' and he did not state anything more than that. No question was posed to him as to the identity of the person who was referred to as ‘Secretary-2' nor any explanation was given by him voluntarily. Thus, the reliance placed by Ld. AO on the statement of Shri K. Srinivasulu to conclude that the code name “S2” refers to the assessee was without any factual basis and therefore, unsustainable.

7.12 The Ld. CIT(A) further noted that AO also relied on clarification given by the assessee in his answer to question no.20 of his statement as recorded u/s 132(4) on 21-12-2016 that the code S-4 used by him in some *whatsapp* conversation with a person named 'GK' dated 18.12.2016 referred to one of his IAS colleagues who was Secretary-4 to the Chief Minister. The AO concluded that as per own analogy of the assessee, “S2” would mean Secretary-2 and since the assessee functioned as Secretary-2 to the Chief Minister during the relevant period, the payments made to the person with the code name “S2” have to be treated as payments made to the assessee. However, this analysis of the AO was to be considered to be contrived and unconvincing. The

scheme of code words used by the assessee could not be equated axiomatically with the scheme of code words used by Sri. K. Srinivasulu. In the context of the working environment of the assessee, “S2” may be used to refer to Sectreary-2 in the office of the Chief Minister. However, the same could not be automatically imported to the situational context of Sri. K. Srinivasulu, who is an aide to a businessman, unless there is evidence on record to show that he was in liaison with the officers in the Chief Minister's office on a regular basis and therefore, aware of the said scheme of code words in vogue in the said office. Since no such facts were evident from the assessment order, such conclusions drawn by Ld. AO were untenable. Therefore, the additions made in the hands of the assessee on the basis of such entries appearing in seized material against such codes were not justified.

7.13 Similarly, the code name “Temple” appearing in the seized material as considered by AO to be referring to the assessee, Shri K.Srinivasulu had stated that the said code word referred to the assessee as his residence was near to the temple of Lord Ayyappan at Anna Nagar, Chennai. The said explanation was given by Sri. K. Srinivasulu in his answer to Q.No.5 of his statement, when he was requested to explain the entries appearing under 'temple son' account. He stated in his reply that that 'temple son' refers to Shri Vivek, son of assessee residing near Ayyappan Temple. Based on the same, AO had treated all the entries reflected in the seized material with the code name 'temple' as well as other variations such as 'KS/Temple', ‘TML Temple', 'Ayyappan Temple', 'JSR Temple', JSR (TSS) Temple', 'Temple (TSS) Amad' etc. as the incidental charges received by the assessee. The pertinent issue would

be whether such entries found against the coded name of the assessee in the material seized from a third-party could be used to draw adverse inference against the assessee without there being anything more on record in corroboration of the same. The said material was seized from the premises of a third-party during the course of search conducted in the case of the said third-party. The said material was neither seized from the premises of the assessee nor was the same found to be in the handwriting of the assessee. Therefore, such material, unless backed by corroborative evidence, would not constitute adequate evidence to draw any adverse inference against the assessee as held by Hon'ble Delhi High Court in the case of **CIT vs. Sant Lal [2020] 118 Taxmann.com 432 (Del).** It was held therein that where a diary was seized in search of premises of a third-party allegedly containing entries of hundi transactions on behalf of various parties including the assessee, no addition could be made based on the said entries since the diary was neither found from premises of assessee nor was it in the handwriting of assessee and revenue failed to produce cogent material to link the assessee to the diary. The ratio of the said decision was squarely applicable to the case of the assessee as the AO had not referred to any cogent material to corroborate the entries made in the material seized from a third-party which are purportedly the transactions made by the said third-party with the assessee. The Ld. CIT(A) also referred to the decision of Jabalpur Bench of Tribunal in the case of **ACIT vs Satyapal Wassan [TS-5104-ITAT-2007 (Jabalpur)-O]** and also various other decisions which have been enumerated in paras 63 and 64 of the impugned order. It was further held that even the seized material did not

contain complete information to facilitate drawing of such an inference. The information available in the relevant seized material merely contained the date, amount and the code name of the recipient. There was absolutely no mention in the seized material regarding the nature of the said transactions and the purpose of the payments made. There was no mention whether the payment was made to a particular person in his own right, or it was made to him on behalf of another person. In the absence of such essential and critical information, it could not be inferred with a reasonable degree of certainty that the payments were made to a person whose name (or code name) appears therein and that the said amounts represent the income of the said person. An entry made in a diary or notebook by a third person with scant details could not be used to fasten tax liability on the person whose name appears therein, in the absence of corroborative evidence. Further the assessee did not acknowledge receipt of any such payment by way of appending his signature/initial against the said payments. If a third party unilaterally makes entries in a diary/note book showing payments to a person to suit his convenience, the payments could not be inferred to have been made to the said person unless there is corroborative evidence to establish the actual making of payments to the said person. There was no reference to such corroborative evidence in the assessment order.

7.14 The Ld. CIT(A) also concurred that the statement of Shri K. Srinivasulu would not serve as corroborative evidence in respect of the entries in the seized material which allegedly have shown cash payments to the assessee. This was clearly evident from his answer to Question No.3 of the statement wherein he gave a general statement

that the entries in the seized note books represent incidental expenses paid to various persons. When there are numerous pages and entries in the seized material, such a general statement would not inspire confidence for drawing any conclusions in respect of specific entries appearing therein allegedly with the code name of the assessee. There was no specific reference in the statement to the entries in the seized note books appearing allegedly with the code name of the assessee. There was nothing in the statement even to remotely suggest that the entries appearing with the code name of the assessee actually represent payments made to the assessee, the details of services rendered by the assessee for which the impugned payments were made and the identity of the person(s) who actually made the payments to the assessee. The statement of Shri K. Srinivasulu merely mentioned that the entries were made by him on the instructions of the partners of M/s SRS Mining. It was very clear that he had no first-hand knowledge of the payments noted in the seized material and he had merely noted whatever had been told to him by partners. In such an event, the statement of Shri K. Srinivasulu would serve a very limited purpose of ascertaining the identity of the person who made the entries and nothing more. Since the entries were made by him on the instructions of the partners, it is the partners who were required to explain the identity of the recipients, the nature of payments, the purpose of payments and the identity of the person who made the payments. However, the material available on record does not suggest that the partners were examined on oath u/s 132(4) with regard to the relevant entries of cash payments allegedly made to the assessee. There was no reference to any such statement in

the assessment order. In the said facts and circumstances, the statement of Sri. K. Srinivasulu could barely be considered as corroborative evidence against the assessee with regard to the entries in the seized material.

7.15 Pertinently, the statement made by Shri K. Srinivasulu was retraced by him vide his letters dated 21.03.2017 and 23.03.2017 addressed to the DDIT(Inv), which were submitted by him through the Jail Superintendent when he was lodged in the jail. In the retraction, it was claimed by him that the statement u/s 132(4) was given under coercion and duress and that he was under a state of mental shock, depression and physical exhaustion at the relevant point of time due to the continuance of search action continuously for more than 3 days without a break and he not being allowed to sleep or take rest. He stated that he was not allowed to read the typed statement and his signature was obtained by force on the statement. He stated that he never paid any money to various persons as recorded in the typed statement. He stated that he signed the statement in order to end the prolonged ordeal of intimidation, harassment and mental torture. As against this, Ld. AO has held that the statement was required to be treated as a truthful statement since he was not under the influence of his employers while giving the said statement and that he deposed without any fear or favour at that time. The Ld. AO observed that retraction was under fear. The assessee pleaded for cross-examination of the said person and Ld. AO issued summons u/s 131 to Sri. K. Srinivasulu. However, the said person became non-cooperative and hostile in the course of preliminary statement recorded by him on 19-12-2018 and 20-12-2018 and

therefore, the assessee was informed that cross examination was not feasible on account of witness turning hostile. Aggrieved, the assessee preferred Writ Petition before Hon'ble High Court of Madras praying for issue of directions to the AO to permit the assessee to cross-examine the witness being relied upon by Ld. AO. The writ petition was dismissed vide order dated 27.12.2018. The Hon'ble Court held that there was no infirmity in the order of AO in refusing the request for cross-examination since the witness turned hostile. The same would only stand to the benefit of the assessee. The Hon'ble Court further observed that if AO was to rely on the statement of Shri K. Srinivasulu which is in favor of the revenue, the AO has to rely on other reliable evidence to corroborate the same. However, Ld. AO passed assessment orders on 26-12-2018 itself and in the assessment orders, Ld. AO relied on same statement of Shri K. Srinivasulu recorded u/s 132(4) during the course of search, which is in favour of the revenue disregarding the subsequent retractions.

7.16 Considering this fact, a remand report was sought by Ld. CIT(A) from Ld. AO vide letter dated 18.03.2022 on this issue. The AO was requested to supply the corroborative evidence, if any, to the assessee and submit a remand report after considering the objections of the assessee in respect of such evidence. The AO furnished remand report vide letter dated 27.04.2022. In the report, the AO stated that the assessee was supplied with copies of all the seized material and statements during the course of assessment proceedings itself, except the material seized during the search in the case of M/s Kirtilal Kalidas Jewellers Pvt. Ltd. as the same had not been received from the concerned DDIT(Inv). The AO stated that the same would be provided to

the assessee as and when it would be received from the DDIT (Inv). In continuation of the same, the AO submitted another remand report vide letter dated 05.05.2022. The AO forwarded the copies of sworn statement recorded from Shri NPS Kanagaraj and seized material related to the purchase of jewellery from M/s Kirtilal Kalidas Jewellers Pvt. Ltd and stated that the same represent corroborative evidences. The AO stated that the copies of the same had been furnished to the assessee on 05.05.2022.

7.17 Upon perusal of these evidences as forwarded by the AO, Ld. CIT(A) noticed that the same were purportedly pertaining to the purchase of jewellery by the family members of the assessee in August 2016 from M/s Kirtilal Kalidas Jewellers Pvt. Ltd. The said jewellery company was searched u/s.132 on 12.09.2016 and it was noticed that there were several cash sale bills for amounts below Rs.2 Lacs with regard to sale of loose diamonds on the same date and the same were seized vide ANN/PMS/KKJPL/LS/S-2. The statement of Shri NPS Kanagaraj (senior manager) was recorded u/s 132(4) during the course of the search on 12-09-2016 and he was requested to explain the contents of the cash sale bills for loose diamonds forming part of the seized material. While explaining the same in his answer to question no 16, he stated that in cases where any customer approaches them for purchases exceeding Rs.2 Lacs without providing his/her PAN, the value of the bill is split in to several small bills in various bogus names. He stated that the loose diamond, cash sale bills in the seized material pertain to the purchase of diamond jewellery by the family members of the assessee, the Chief Secretary of Tamil Nadu. He stated that one Shri

Shivakumar called and informed him on 04-08-2016 that the family members of the assessee would come to the showroom for purchase of jewellery and they needed to be taken care of. He stated that one lady and girl came to the showroom on the same day and purchased diamond jewellery for a total value of Rs.87.94 Lacs. He stated that no bill was given to them as they did not insist on a bill. He stated that one person came after one hour and paid cash of Rs.87.94 Lacs. He explained that the said cash sales were accommodated in the books of accounts by showing loose diamond bills for Rs.65.88 Lacs in the name of 40 bogus persons and gold bills for Rs.22.05 Lacs in the name of 7 bogus persons. The AO also forwarded the copies of the relevant bills along with the copy of statement of Shri NPS Kanagaraj. The Ld. AO clarified in his subsequent letter dated 20-10-2022 that the said evidences served as corroborative evidence in respect of the unaccounted receipts of the assessee as they bring out the application of a part of the said receipts.

7.18 However, the assessee controverted the remand report vide letter dated 25-05-2022 and submitted that the sworn statement of Shri NPS Kanagaraj was required to be discarded as non-existent as the same was found to be vague. The assessee pointed out that though Shri Kanagaraj had taken the name of the assessee in his answer lo question no. 16, it was stated by Shri Kanagaraj that the same was based on a phone call received from one Shri Shivakumar, which clearly shows that Shri Kanagaraj did not have first-hand knowledge. The assessee pointed out that Shri Kanagaraj has merely referred to some lady and a girl, whose names have not even been mentioned by him. The assessee also

pointed out that Shri Kanagaraj has not named the person who came and settled the bill by cash. The assessee therefore contended that there was absolutely no value for such a vague statement and no credence could be placed on the said material which had been presented as corroborative evidence by the AO. Further, the assessee pointed out that the jewellery found during the course of the search at his residential premises as per the inventory were 574.70 grams valued by the departmental valuer at Rs.17.37 Lacs.

7.19 The Ld. CIT(A) concurred that the said evidences as furnished by Ld. AO could not be regarded as conclusive evidence of application of unaccounted income of the assessee. It was quite evident from the contents of the reply given by Shri NPS Kanagaraj to question no.16 that he did not have authentic knowledge regarding the identity of the persons who visited the show room on 04-08-2016 and made cash purchase of loose diamonds and gold jewellery. His statement regarding their identity as family members of the assessee was solely based on a phone call from one Mr. Shivakumar, whose identity and nexus with assessee was also not ascertainable from the statement of Shri Kanagaraj. Further, the identity and nexus of the person who is stated to have settled the bill in cash was also not ascertainable from the statement of Shri Kanagaraj. The copies of the cash sale bills dated 04-08-2016 forwarded by the AO along with the statement of Shri Kanagaraj are found to be in the names of various persons whose identity was also not ascertainable. This being so, such purchases could not be conclusively attributed to the family members of the assessee merely on the basis of the vague and ambiguous statement of Shri NPS Kanagaraj.

Further, the value of jewellery found and inventorized during the course of the search at the residence of the assessee amounted to Rs.17.37 Lacs only which militates against the evidentiary value of the statement of Shri NPS Kanagaraj.

7.20 Finally, it was held that the evidences as furnished by Ld. AO through his remand report dated 05-05-2022 could not be regarded as corroborative evidence in support of the receipt of unaccounted incidental charges from M/s SRS mining by the assessee, as deposed by Shri K Srinivasulu in his statement u/s 132(4) on 10-12-2016. The Hon'ble High Court clearly held in its order dated 27-12-2018 that AO has to let in other reliable evidence to corroborate the contents of the statement of Shri K Srinivasulu, if the AO seeks to rely on the said statement against the assessee. In the assessment orders, the AO made addition of the unaccounted income represented by the entries in the material seized from the premises M/s SRS mining by placing reliance on the statement of Shri K Srinivasulu recorded u/s 132(4) on 10-12-2016. As per the directions of the Hon'ble High Court, such reliance on the statement of Shri K Srinivasulu is not tenable unless the AO brings on record corroborative evidence in support of the said statement. As the evidence brought on record by the AO in the form of the statement of Shri Kanagaraj and the copies of cash bills of purchase of loose diamonds and gold jewellery do not constitute corroborative evidence as held above, the reliance placed by the AO on the statement of Shri K Srinivasulu in the assessment orders to conclude that the appellant was in receipt of incidental charges from M/s SRS mining was unsustainable.

7.21 In the assessment orders, Ld. AO quoted the statement of Shri Vivek Papisetty (son of the assessee) recorded u/s 132(4) on 21-12-2016 during the course of search at his residence as an evidence which corroborates the entries in the material seized from the premises of M/s SRS mining and the statement of Shri K Srinivasulu with regard to the contents of the said seized material. The relevant seized material of M/s SRS mining which contained entries of payment of incidental charges to various persons contained some entries with the code name "Temple son", The amounts noted against the said code name aggregated to Rs.4 Crores and Rs.6 Crores during AYs 2016-17 and AY 2017-18 respectively. In his statement u/s 132(4), Shri K Srinivasulu explained that the said code name referred to Shri Vivek, son of Shri Rama Mohan Rao residing near Ayyappan temple. The said entries in the seized material were shown to Shri Vivek Papisetty during the course of his statement u/s 132(4) on 21-12-2016 and he was requested to explain the said transactions. In his answer to question no.13, Shri Vivek Papisetty agreed that he received Rs.10 Crores in total from Shri Sekar Reddy of SRS mining towards facilitation charges, out of which Rs.4 Crores were received during FY 2015-16 and Rs.6 Crores were received during FY 2016-17. He stated that the said amounts have not been disclosed in his books of account. Further, in his answer to question no.15 regarding the manner in which the said unaccounted income wasutilized by him, Shri Vivek Papisetty stated that he invested the said income to make unaccounted payments for purchasing immovable properties in Ennore, where he was doing a project. Apart from the statement of Shri K Srinivasulu, Ld. AO placed reliance on the said statement of Shri Vivek

Papisetty to conclude that the assessee was also in receipt of unaccounted facilitation charges in cash from M/s SRS mining as per the entries found in the seized material with the code names “S2" and "Temple".

7.22 However, it was observed by Ld. CIT(A) that pertinently, Shri Vivek Papisetty retracted his statement dated 21-12-2016 vide letter dated 23-12-2016 addressed to the DDIT (Inv), Unit -3(1), Chennai. In the said letter, Shri Vivek Papisetty stated that the statement was recorded from 9.00 pm to 11.30 pm on 21-12-2016 and from 2.00 am to 5.00 am on 22-12-2016 (though signed as 21-12-2016) and that he was completely drained out and dizzy by that time and he was put under extreme mental duress, pressure and harassment to sign the statement prepared by the officer, especially related to some entries of "Temple son" and "son a/c" in a paper which was not found in his premises. He stated that he was also worried about his wife at that time, as she was admitted in hospital on 20-12-2016 due to pregnancy complication and she was alone in the hospital. He stated that he did not have any business connection or any cash transactions with Shri Sekar Reddy or any of his associates. Though Shri Vivek Papisetty retracted his statement on 23-12-2016 itself, Ld. AO omitted to mention this fact in the assessment orders of the assessee while placing reliance on the said statement by way of corroborative evidence. The retraction was made by Shri Vivek Papisetty within two days of the recording of statement from him. The fact regarding hospitalization of the wife of Shri Vivek Papisetty at the time of search in his residential premises was not disputed by the AO either in the assessment orders of the assessee or in the assessment orders of

Shri Vivek Papisetty. The mental stress and anxiety suffered by Shri Vivek Papisetty on account of such hospitalization was therefore required to be taken in to cognizance in evaluating the genuineness of the retraction made by him. Further, no evidence was brought on record by Ld. AO in the course of the assessment proceedings in the case of Shri Vivek Papisetty with regard to the purchase of properties at Ennore by him by way of utilization of his unaccounted receipts from M/s SRS mining as stated by him in the statement u/s 132(4) dated 21-12-2016, in order to discredit the subsequent retraction of the said statement. In view of these reasons, it was to be held that the said statement of Shri Vivek Papisetty, which had been retracted immediately after it was recorded, would not constitute corroborative evidence to conclude that the assessee was in receipt of unaccounted incidental charges from M/s SRS mining as per the entries found in the seized material and the statement of Shri K Srinivasulu with regard to the said entries.

7.23 The Ld. CIT(A) took a view in favor of the assessee considering the fact that the assessee was also subjected to search wherein no incriminating material was found to show that the assessee had received any unaccounted cash either from the said parties or from any other source. Further, no incriminating material was found during the search to show that the assessee had made any unaccounted investments or unaccounted expenditure from undisclosed sources of income. When this crucial fact is taken into consideration in the background of incompleteness of the entries in the seized material to establish any nexus between the payments mentioned therein with the assessee and lack of proper corroborative evidence in respect of such seized

materials, the only conclusion that could reasonably be drawn was that there was no adequate and reliable material to infer that the assessee was in receipt of alleged unaccounted cash by way of incidental charges from M/s SRS mining which was sought to be taxed in his hands. Accordingly, the impugned additions were held to be not sustainable and Ld. AO was directed to delete the same. Aggrieved, the revenue is in further appeal before us whereas the assessee has filed cross-objections against the same.

7.24 In further submissions before Ld. CIT(A), the assessee also contended that prior approval was not taken u/s 153D which was found to be factually incorrect. The findings, in this regard, are given in para-82 of the impugned order.

7.25 The assessee also submitted that the provisions of Sec.153C would be applicable for AY 2017-18 whereas the assessment was framed u/s 144. It was submitted that the search on M/s SRS mining had taken place on 08-12-2016 whereas search had taken place on assessee on 21-12-2016. Both dates were before amendment made by Finance Act, 2017 wherein the words "*for six assessment years immediately preceding the assessment year relevant to previous year in which search is conducted or requisition is made and"* were introduced in Sec.153C. Prior to the amendment, the period of six years would be counted from the previous years in which satisfaction was recorded. In the case of the assessee, the notification was issued by Pr.CIT on 29-06-2017 and therefore, the satisfaction could have been recorded only on or after 29-06-2017. Therefore, the year of search fall within the financial year 2017-18 relevant to AY 2018-19. The regular assessment

has to be completed u/s 143(3) for AY 2018-19. Six years prior to AY 2018-19 as covered u/s 153C will be from AYs 2012-13 to 2017-18. The assessment thus made u/s 144 was invalid.

7.26 The Ld. CIT(A) concurred with the aforesaid legal plea of the assessee and decided this issue in assessee's favor by observing as under: -

> 84. I have carefully considered the written submission of the appellant and the material available on record. The issue arising for consideration is whether the assessment for AY 2017-18 ought to have been made u/s 153C as per law and whether the assessment made by the AO for the said assessment year u/s 143(3) is unsustainable in law. The AO treated the AY 2017-18 as the assessment year relevant to the previous year in which search was conducted in the case of M/s SRS Mining &Others (date of search is 08.12.2016) and made assessment of the said assessment year u/s 144 The six assessment years immediately preceding the said assessment year i.e AY s 2011-12 to 2016-17 were accordingly considered by the AO to be the assessment years which fall under the scope of section 153C.
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> 85. However, the appellant contended that the assessment year relevant to the previous year in which the AO recorded satisfaction for issue of notice u/s 153C is to be regarded as base year and the six assessment years preceding the said base assessment year have to be considered as falling within the ambit of section 153C. The appellant contended that since the case of the appellant was centralised / notified to the AO by issue of notification u/s 127 on 24.06.2017, the satisfaction note could not have been recorded prior to the said date and consequently, the base assessment year could not have been earlier than AY 20*18-19.* Accordingly, the appellant contended that AY 2017-18 falls within the ambit of six assessment years preceding such base assessment year, which are required *to* be assessed u/s 153C. Since AO has not issued notice u/s153C for the said AY 2017-18 and assessment was not made u/s 153C, the appellant contended that the assessment made u/s 143(3) for AY 2017-18 is bad in law.
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> 86. On careful examination of the facts of the case and the judicial precedents, the contention of the appellant is considered to be acceptable. As per the first proviso to Section 153C, the reference to date of initiation of search u/s.132 in the second proviso to section 153A(1) is required to be construed as reference to date of receiving the seized books of account/documents or assets by the AO having jurisdiction over the person other than the searched person. Prior to the amendment made to section 153C(1) by the Finance Act, 2017 with effect from 01.04.2017, there was no specific mention therein regarding the manner of ascertaining the period of six assessment years. The amendment made by the Finance Act made it explicit that the period of six assessment years for the purpose of section 153C will be reckoned with reference to the assessment year relevant to the previous year in which search was conducted and that the same will be six assessment years immediately preceding such assessment year. The amended provisions are applicable for the searches conducted on or after 01.04.2017.

87. However, for the searches conducted prior to 01.04.2017, the pre-amended law is applicable. The said pre-amended provisions of section 153C were the subject matter of litigation with regard to the issue raised by the appellant. The said issue has been adjudicated by the Hon'ble Delhi High Court in the case of CIT Vs.RRJ Securities Ltd [2015] 62 taxmann.com 391 (Delhi). The Hon'ble Court held that in terms of first proviso to section l 53C, a reference to the date of the search under the second proviso to section 153A 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 Assessing Officer having jurisdiction to assess the said assessee and where the AO of the searched person and the person other than the searched person is the same, the date of search under the second proviso section 153A has to be construed as the date of recording the satisfaction by the AO of the other person. The Hon'ble High Court held that it would follow from the same that the six assessment years for which assessments/reassessments could be made under section 153C would also have to be construed with reference to the date of handing over of assets/documents to the Assessing Officer of the assessee or the date of recording of satisfaction by the AO as the case may be.

88. In a subsequent decision in the case of *PCIT Vs. Sarwar Agency (P) Lid* [2017] 85 taxmann.com 269 (Delhi), the Hon'ble Delhi High Court observed that its decision in the case of RRJ Securities Ltd (supra) has not been challenged by the revenue in the Hon'ble Supreme Court and held that the amendment made to Section 153C(1) of the Act by the Finance Act, 2017 has stated for the first time that the period of re-assessment would be six assessment years preceding the year of search for both the searched person and the other person. The Hon'ble High Court held that the said amendment is prospective. There are no contrary decisions of other High Courts on this issue.

89. In the case of the appellant, the AO of the searched person and the AO of the appellant are one and the same. Hence, the date of initiation of search as referred to in the second proviso to section 153A(1) is required to be construed as the date of recording of satisfaction by the AO of the other person, by following the above mentioned decisions of the Hon'ble Delhi High Court. It is noticed from the records that the satisfaction note was recorded by the AO of the appellant on 24.09.2018. Hence, the six assessment years have to be reckoned as the assessment years immediately preceding the AY 2019-20 relevant to the previous year in which the satisfaction has been recorded by the AO. The 6 assessment years which are required to be assessed u/s 153C would therefore be AY 2013-14 to 2018-19.

90. As a consequence, the assessment for the assessment year 2017-18 should have been completed u/s 153C as opposed to the completion of the same 144 by the AO. In view of this reason, it is held that the assessment made u/s 144 for AY 2017-18 is without jurisdiction as the same is not in accordance with the provisions of the Act and the same is hereby quashed. The ground of appeal on this issue is allowed.

The Ld. CIT(A) thus observed that the satisfaction note was recorded by Ld. AO on 24-09-2018 and the period of six years was to be reckoned by considering this date. Therefore, the assessment for AY 2017-18 should

have been completed u/s 153C as opposed to the fact that the same was completed u/s 144. Accordingly, the assessment for AY 2017-18 was quashed.

7.27 For AY 2017-18, the assessee raised an additional ground of appeal contending that notice u/s 143(2) was issued on 27-11-2018 and therefore, the same was barred by limitation. The assessee submitted that such a notice should have been issued within 6 months from the end of the financial year in which the return of income was furnished. The return of income was furnished on 01-08-2017 and accordingly, notice u/s 143(2) on 27-11-2018 was barred by limitation. The Ld. CIT(A) concurred with this legal ground also and held that AO should have issued notice u/s 143(2) on or before 30-09-2019. Section 143(2) was a mandatory provision. The notice issued beyond prescribed time was invalid and therefore, the assessment was void ab initio as held by Hon'ble Delhi High Court in **CIT vs. Lunar Diamonds Ltd. (281 ITR 1).** However, since it was held that the assessment for this year should have been completed u/s 153C, such alternative ground as taken by the assessee was held to be superfluous and accordingly, dismissed.

7.28 The adjudication of Ld. CIT(A) has led to present appeals of the revenue while the assessee has filed cross-objections.

Our findings and Adjudication

8. From the detailed facts and discussions as enumerated by us in the preceding paragraphs, it emerges that the impugned additions have been made by Ld. AO in the hands of the assessee pursuant to the search and seizure action by the department u/s 132 in group cases of M/s SRS mining and its partners on 08-12-2016. During the course of

search action, certain incriminating material was found from the premises of M/s SRS Mining which was marked as ANN/MPK/NS/B&D/S-19-20, ANN/KGAR/MPKSSR/B&D/S-1 to 3, ANN/KGA/SRS/B&D/S-1, ANN/MPK/NS/B&D/S-3 and ANN/KGAR/MPKSSR/LS/S-1. The said material allegedly contained details of cash payment / incidental charges paid to several persons including the assessee and his son. The assessee was allegedly paid a sum of Rs.525 Lacs in the capacity of then Chief Secretary of Tamilnadu. In the note books, the assessee was vaguely described as “Temple” and “S-2” and his son was described as “Temple Son”. The codes were deciphered by Ld. AO by relying on the statement made by one Shri K. Srinivasulu u/s 132(4) in whose possession those incriminating books and documents were found. Shri K. Srinivasulu is stated to be an employee of M/s SRS mining who maintained diaries / note-books on the instructions of partners of M/s SRS mining. The relevant part of the statement has been extracted on Page No.2 of the assessment order. Shri K. Srinivasulu stated that the codes “S2” and “Temple” would refer to Secretary-2. Drawing analogy from separate statement recorded from assessee that “S4” means Secretary-4 to CM, Ld. AO concluded that “S2” as contained in the incriminating material would refer to the payments made to Secretary-2 to the office of Chief Minister and since the assessee functioned as Secretary-2 at the office of Chief Minister, it was obvious that the seized notebooks refer to the assessee only. Though the assessee denied having received any such payments, Ld. AO continued to allege that the aforesaid payments were received by the assessee.

9. Subsequently, another search was carried out in the case of the assessee as well as his son Shri Vivek Papisetty on 21-12-2016. The assessee's son, in sworn statement u/s 132(4), admitted to have received facilitation charges from Shri Sekar Reddy of M/s SRS Mining. It was also admitted by him that unaccounted income was invested towards unaccounted payments to purchase immoveable properties. However, Shri Vivek Papisetty retracted from the statement within two days i.e., on 23-12-2016. It is also a fact that no warrant was issued in the name of the assessee. Considering this fact, initial notices issued u/s 153A were withdrawn by Ld. AO and notices u/s 153C were issued since the material seized from a third-party premises during search was being used against the assessee to make the impugned additions.

10. During the course of assessment proceedings, considering the fact that the statement of Shri K. Srinivasulu was being used against the assessee, the assessee demanded cross-examination of that person. The assessee was requested to come for cross-examination on 19-12-2018. However, it turned out Shri K. Srinivasulu retracted his earlier statements. On the date of cross examination, the witness turned hostile and remained non-cooperative. Accordingly, Ld. AO expressed inability to provide the cross-examination of the witness. Finally, disregarding assessee's plea, the impugned amount was added to the income of the assessee as unaccounted receipts.

11. Aggrieved by aforesaid act of Ld. AO in refusing to grant cross-examination, the assessee preferred Writ Petition before Hon'ble High Court of Madras and sought cross-examination of Shri K. Srinivasulu vide WP No.34626 of 2018 and WMP No.40141 of 2018. An order was

passed by Hon'ble Court in the same on 27-12-2018. Dismissing the petition filed by the assessee, Hon'ble Court pertinently observed as under: -

> 4. The fact that the witness had turned hostile would only stand to the benefit of the petitioner as the entire evidence of the witness could be considered and this court is unable to understand as to how it would be adverse to that of the petitioner. Even if the respondent was to rely on that part of the evidence of Shri K. Srinivasulu which is in their favour they have to let in other reliable evidence to corroborate the same. During the course of the arguments, it was informed by the learned Senior Counsel that the copies of the evidence had not been provided to the petitioner and this court directs the respondents to give copies of the evidence to the petitioner.
> 5. I do not find any infirmity in the order of the respondent in refusing the request for cross examination since the witness had turned hostile to the respondent's contentions. Needless to state that in the light of the amendment to Section 154 by insertion of Sub Section (2) by the Act 2 of 2006 w.e.f. 16.04.2006, it is well open to the petitioner to work out his right in accordance with law on receipt of the evidence directed to be given.
> 6. In the result, this writ petition shall stand dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

The Hon'ble Court thus held that since the witness turned hostile, Ld. AO was right in refusing the request for cross-examination. The fact that the witness tuned hostile would only stand to benefit the assessee. Further, if Ld. AO was to rely on the statement, he has to let in other reliable evidences to corroborate the statement and to sustain the additions. However, it could be noted that the assessment stood already concluded by Ld. AO for all the years a day prior i.e., on 26-12-2018. In other words, at the time of above order of Hon'ble High Court of Madras, the assessment had already been culminated against the assessee and the assessee was in the process of assailing the same before first appellate authority.

12. From the aforesaid directions of Hon'ble High Court of Madras, it is crystal clear that the statement of Shri K. Srinivasulu could not be relied upon by Ld. AO to make the impugned additions in the hands of the

assessee. To sustain the additions, Ld. AO was under an obligation to bring on record other reliable evidences to corroborate the statement and to make the impugned additions. However, quite clearly, Ld. AO had already made the additions primarily by relying on the statement of Shri K. Srinivasulu. No other evidences were brought on record by Ld. AO to corroborate the statement of Shri K. Srinivasulu. The statement of Shri Vivek Papisetty already stood retracted within 2 days of recording thereof. Such retracted statement, on standalone basis, could not justify impugned additions in the hands of the assessee. Another fact is that the assessee was also subjected to search action wherein the department is unable to recover any incriminating material which would establish that the assessee was in receipt of such unaccounted money as alleged by Ld. AO.

13. Considering the fact that assessment had already culminated before the aforesaid order of Hon'ble High Court of Madras, a remand report was sought by Ld. CIT(A) during appellate proceedings vide letter dated 18-03-2022. The Ld. AO was requested to supply the corroborative evidences, if any, to the assessee and submit a remand report after considering the objections of the assessee in respect of such evidences. The AO furnished remand report vide letter dated 27-04-2022. In the report, the AO stated that the assessee was supplied with copies of all the seized material and statements as recorded during the course of assessment proceedings itself, except the material seized during the search in the case of M/s Kirtilal Kalidas Jewellers Pvt. Ltd. as the same had not been received from the concerned DDIT (inv). The AO also stated that the same would be provided to the assessee as and

when it was received from the DDIT (inv). Subsequently, Ld. AO submitted another remand report vide letter dated 05-05-2022. The AO forwarded the copies of sworn statement recorded from Shri NPS Kanagaraj and seized material related to the purchase of jewellery from M/s Kirtilal Kalidas Jewellers Pvt. Ltd and stated that the same represent corroborative evidences. The AO stated that the copies of the same were furnished to the assessee on 05-05-2022. In the light of these facts, it is crystal clear that the sworn statement as recorded from Shri NPS Kanagaraj and seized material related to the purchase of jewellery from M/s Kirtilal Kalidas Jewellers Pvt. Ltd. was never used by Ld. AO to make the impugned additions in the hands of the assessee. This material has been received by Ld. AO from DDIT (inv.) during April / May, 2022 only. Quite clearly, no opportunity of cross-examination of Shri NPS Kanagaraj has ever been provided to the assessee and this material was never confronted to the assessee during the course of assessment proceedings. In such an eventuality, no credence was to be placed on these evidences or statements as rightly held by Ld. CIT(A). These evidences, as rightly concluded by Ld. CIT(A), could not be regarded as conclusive evidence of application of unaccounted income of the assessee. It was also evident from the contents of the reply given by Shri NPS Kanagaraj to question no.16 that he did not have authentic knowledge regarding the identity of the persons who visited the show room on 04-08-2016 and made cash purchase of loose diamonds and gold jewellery. His statement regarding their identity as family members of the assessee was solely based on an anonymous phone call received from one Shri Shivakumar, whose identity and nexus with the assessee

was also not ascertainable from the statement of Shri Kanagaraj. Further, the identity and nexus of the person who is stated to have settled the bill in cash was also not ascertainable from the statement of Shri Kanagaraj. This being so, such purchases could not be conclusively attributed to the family members of the assessee merely on the basis of the vague and ambiguous statement of Shri NPS Kanagaraj. Further, the value of jewellery found and inventorized during the course of the search at the residence of the assessee amounted to Rs.17.37 Lacs only which militates against the evidentiary value of the statement of Shri NPS Kanagaraj. We concur with the findings of Ld. CIT(A), in this regard, as contained in preceding para 7.19.

14. Proceeding further, we also concur with the findings of Ld. CIT(A) that the name of the assessee did not appear in any of the entries as considered by Ld. AO to be pertaining to the assessee. All the entries contained only code names like “S2” or “Temple” or different variations / extensions of “S2” and “Temple”. The only material to decode the same was the sworn statement of Shri K. Srinivasulu wherein he stated that such codes referred to the assessee since the assessee functioned as Secretary-2 in the office of the Chief Minister. The said conclusion is factually incorrect since Shri K. Srinivasulu merely stated that the code “S2” means Secretary-2' and he did not state anything more. No question was posed to him as to the identity of the person who was referred to as ‘Secretary-2' nor any explanation was given by him voluntarily. Pertinently, this statement was retracted by him and therefore, no credence was to be given to the same as held by Hon’ble High Court of Madras in assessee’s Writ Petition. The same, on

standalone basis, was not sufficient enough to sustain the impugned additions in the hands of the assessee.

15. It could also be seen that the impugned additions have been made in the hands of the assessee merely on the basis of vague entries found in the material seized from a third-party premise. The said material was seized from the premises of a third-party during the course of search conducted in the case of the said third-party. The said material was neither seized from the premises of the assessee nor was the same found to be in the handwriting of the assessee. Therefore, such material, unless backed by corroborative evidence, would not constitute adequate evidence to draw any adverse inference against the assessee as held by Hon'ble Delhi High Court in the case of **CIT Vs Sant Lal [2020] 118 Taxmann.com 432 (Del).** The Hon'ble Court, in similar situation, held that no addition could be made merely on the basis of such entries. The ratio of the said decision was squarely applicable to the case of the assessee as the Ld. AO has not referred to any cogent material to corroborate the entries made in the material seized from a third-party which are purportedly the transactions made by the said third-party with the assessee. The other decisions including the decision of Jabalpur Bench of Tribunal in the case of **ACIT vs. Satyapal Wassan [TS-5104-ITAT-2007 (Jabalpur)-O]** further supports this proposition. We also concur with the findings of Ld. CIT(A) that the seized material did not contain complete information to facilitate drawing of such an adverse inference against the assessee. The information merely contained the date, amount and the code name and nothing more. In such a situation, it could not be inferred with a reasonable degree of certainty that the

payments were made to a person whose name (or code name) appears therein and that the said amounts represent the income of the said person. As rightly held by Ld. CIT(A), an entry made in a diary or notebook by a third person with scant details could not be used to fasten tax liability on the person whose name appears therein, in the absence of corroborative evidence. If a third-party unilaterally makes entries in a diary/note book showing payments to a person to suit his convenience, the payments could not be inferred to have been made to the said person unless there is corroborative evidence to establish the actual making of payments to the said person. Proceeding further, considering the decision of Hon'ble High Court of Madras in assessee's Writ Petition, the statement of Shri K. Srinivasulu was to be disregarded and the same would completely lose its evidentiary value unless the same was backed by other material corroborating the same. However, except for this statement, there is nothing more with Ld. AO to sustain the impugned additions. We, therefore, endorse the findings of Ld. CIT(A) as contained in preceding paras 7.11 to 7.14 and 7.20 of this order.

16. So far as the statement of Shri Vivek Papisetty (son of the assessee) is concerned, we find that this statement was recorded u/s 132(4) on 21-12-2016 during the course of search at his residence. However, this statement stood retracted by him within two days on 23-12-2016. The circumstances under which the statement was given by him has also been enumerated in detail in preceding para 7.22. In our considered opinion, Ld. CIT(A) has correctly accepted the retraction considering the fact that no evidence was brought on record by Ld. AO during the course of his assessment proceedings with regard to the

purchase of properties at Ennore by him by way of utilization of his unaccounted receipts from M/s SRS mining as stated by him in the statement u/s 132(4) dated 21-12-2016, in order to discredit the subsequent retraction of the said statement. Therefore, such a statement would not constitute corroborative evidence to conclude that the assessee was in receipt of alleged unaccounted incidental charges. We confirm the findings given by Ld. CIT(A) as enumerated in para 7.22 of this order.

17. Finally, considering the entirety of facts and circumstances of the case, we concur with the adjudication of Ld. CIT(A) that there was no adequate and reliable material to infer that the assessee was in receipt of alleged unaccounted cash by way of incidental charges from M/s SRS mining which was sought to be taxed in his hands. Accordingly, the impugned additions have rightly been held to be unsustainable. The appeal of the revenue, for AY 2015-16 & 2016-17 stands dismissed. The corresponding grounds raised by revenue in AY 2017-18 also stand rejected.

18. The revenue, in its appeal for AY 2017-18 has raised another Ground No.3 and sub-grounds assailing the finding of Ld. CIT(A) that the assessment framed u/s 144 was without jurisdiction and the assessment was to be framed u/s 153C since the satisfaction note was recorded by AO in the case of the assessee on 24-09-2018. Upon perusal of factual matrix and contentions of the assessee as enumerated in preceding para 7.25, it could be seen that search on M/s SRS mining had taken place on 08-12-2016 whereas search had taken place on assessee on 21-12-2016. Both dates were before amendment made by Finance Act, 2017

wherein the words "*for six assessment years immediately preceding the assessment year relevant to previous year in which search is conducted or requisition is made and"* were introduced in Sec.153C. Prior to the amendment, the period of six years would be counted from the previous years in which satisfaction was recorded. In the case of the assessee, the notification was issued by Pr.CIT on 29-06-2017 and therefore, the satisfaction could have been recorded only on or after 29-06-2017. The assessee thus submitted that the year of search falls within the financial year 2017-18 relevant to AY 2018-19. Therefore, the regular assessment has to be completed u/s 143(3) for AY 2018-19. Six years prior to AY 2018-19 as covered u/s 153C will be from AYs 2012-13 to 2017-18.

19. The Ld. CIT(A) has rendered its finding on this issue which is contained in preceding para 7.26. The Ld. CIT(A) noted that since the assessee's case was centralized / notified to the AO by issue of notification u/s 127 on 29-06-2017, the satisfaction note could not have been recorded prior to the said date and consequently, the base assessment year could not have been earlier than AY 2018-19. As per assessee's contention, the assessment for AY 2017-18 falls within the ambit of six assessment years preceding such base assessment year and therefore, the assessment was required to be framed u/s 153C. Since AO did not issue notice u/s 153C for the said AY 2017-18 and assessment was not made u/s 153C, the assessment thus framed u/s 144 was bad-in-law. The Ld. CIT(A) concurred with the submissions of the assessee since as per the first proviso to Section 153C, the reference to date of initiation of search u/s.132 in the second proviso to Sec. 153A(1) is required to be construed as reference to date of

receiving the seized books of account/documents or assets by the AO having jurisdiction over the person other than the searched person. Prior to the amendment made to section 153C(1) by the Finance Act, 2017 with effect from 01-04-2017, there was no specific mention therein regarding the manner of ascertaining the period of six assessment years. The amendment made by the Finance Act made it explicit that the period of six assessment years for the purpose of section 153C will be reckoned with reference to the assessment year relevant to the previous year in which search was conducted and that the same will be six assessment years immediately preceeding such assessment year. The amended provisions are applicable for the searches conducted on or after 01.04.2017. Since searches were conducted prior to 01.04.2017, the pre-amended law would be applicable. This issue was decided by Hon'ble Delhi High Court in the case of **CIT Vs. RRJ Securities Ltd [2015] 62 Taxmann.com 391 (Delhi)** wherein it was held by Hon'ble Court that in terms of first proviso to Sec. 153C, a reference to the date of the search under the second proviso to section 153A 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 Assessing Officer having jurisdiction to assess the said assessee and where the AO of the searched person and the person other than the searched person is the same, the date of search under the second proviso section 153A has to be construed as the date of recording the satisfaction by the AO of the other person. The Hon'ble High Court held that it would follow from the same that the six assessment years for which assessments/reassessments could be made under section 153C

would also have to be construed with reference to the date of handing over of assets/documents to the Assessing Officer of the assessee or the date of recording of satisfaction by the AO as the case may be. In a subsequent decision in the case of **PCIT Vs. Sarwar Agency (P) Lid [2017] 85 Taxmann.com 269 (Delhi)**, the Hon'ble Delhi High Court observed that its decision in the case of RRJ Securities Ltd (supra) has not been challenged by the revenue in the Hon'ble Supreme Court and held that the amendment made to Section 153C(1) of the Act by the Finance Act, 2017 has stated for the first time that the period of re-assessment would be six assessment years preceding the year of search for both the searched person and the other person. The Hon'ble High Court also held that the said amendment would be prospective. There are no contrary decisions of other High Courts on this issue. In the case of present assessee, the AO of the searched person and the AO of the assessee were one and the same. Therefore, the date of initiation of search as referred to in the second proviso to section 153A(1) is required to be construed as the date of recording of satisfaction by the AO of the other person, by following the above mentioned decisions of the Hon'ble Delhi High Court. It was noticed from the records that the satisfaction note was recorded by the AO of the assessee on 24-09-2018. Hence, the six assessment years have to be reckoned as the assessment years immediately preceding the AY 2019-20 relevant to the previous year in which the satisfaction has been recorded by the AO. The six assessment years which are required to be assessed u/s 153C would therefore be AYs 2013-14 to 2018-19. Consequently, the assessment for the assessment year 2017-18 should have been completed u/s 153C as

opposed to the completion of the same u/s 144 by the AO. Therefore, the assessment made u/s 144 for AY 2017-18 was held to be without jurisdiction and accordingly, quashed.

20. We are of the considered opinion that Ld. CIT(A) has clinched the issue in correct perspective. The relevant dates as mentioned by Ld. CIT(A) are not in dispute. Even otherwise, this issue is now covered in assessee's favor by the recent decision of Hon'ble Supreme Court in the case of **CIT vs. Jasjit Singh (155 Taxmann.com 155)** wherein it has been held by Hon'ble Court as under: -

> 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.

Applying the ratio of aforesaid decision of Hon'ble Court, 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 i.e., 24-09-2018 which falls within Assessment Year 2019-20. As per relevant statutory provisions of Sec.153A, Ld. AO would have jurisdiction u/s 153C to assessor reassess the total income of the assessee for six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. In other words, Ld. AO would have jurisdiction to assess the income of the present assessee u/s 153C from AYs AY 2013-14 to 2018-19. Therefore, impugned order does not require any interference on this issue. The ground raised by revenue stand dismissed. The appeal for AY 2017-18 stand dismissed.

Assessee's Cross-Objections

21. So far as the assessee's cross-objections for AY 2015-16 are concerned, we find that Ground No.1 of assessee's cross-objection is general in nature. In ground No.2, the assessee has assailed completion

of assessment u/s 144 which do not require any specific adjudication on our part. We concur with the findings of Ld. CIT(A) that adequate opportunities of hearing was granted to the assessee. No specific arguments have been advanced with respect to Ground No.3. In ground no.4, the assessee has raised the issue of natural justice. We do not find any such violation. The issue of cross-examination of Shri K. Srinivasulu has already been settled by Hon'ble High Court of Madras by way of dismissal of assessee's writ petitions. Therefore, ground nos. 5 to 7 stands dismissed. Ground No.8 is related to the statement of Shri KPS Kanagaraj. The evidences, in this respect, have already been furnished by Ld. AO during remand proceedings and the remand report has duly been confronted to the assessee. Therefore, this ground is dismissed. In Ground Nos.9 & 10 are infructuous since all the grounds in revenue' appeal has been dismissed by us. In ground nos.11& 12, the assessee has assailed the findings of Ld. CIT(A) that the withdrawal of notice u/s 153A was valid one. After going through the impugned order, in this regard, we concur with the adjudication of Ld. CIT(A) that since warrant was not issued in assessee's name, issuance of notices u/s 153A was not valid one and therefore, the same were rightly withdrawn by Ld. AO. We concur with these findings. Ground No.13 is only a supporting ground. Similar are the grounds for AY 2016-17. Accordingly, cross-objections for AYs 2015-16 and 2016-17 stands dismissed. The corresponding grounds raised in cross-objection for AY 2017-18 stand disposed-off on similar lines. Ground Nos.11 to 13 of cross-objection for AY 2017-18 are only in support of impugned order. In Ground No.14, the assessee has submitted that since revenue has not raised any ground

with regard to quashing of assessment order by Ld. CIT(A) on the issue of notice u/s 143(2), it should have refrained from filing appeal on any other ground. However, this ground has been rendered infructuous in view of the fact that we have dismissed the appeals of the revenue and therefore, this issue has been rendered academic in nature. The cross-objections for AY 2017-18 stand dismissed.

Conclusion

22. Finally, the appeals of the revenue as well as cross-objections filed by the assessee stand dismissed in terms of our above order.

Order pronounced on 2nd April, 2024

Sd/-	**Sd/-**
(V. DURGA RAO)	**(MANOJ KUMAR AGGARWAL)**
न्याियक सदस्य/JUDICIAL MEMBER	**लेखासदस्य / ACCOUNTANT MEMBER**

चेन्नईChennai; दिनांकDated :02-04-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF