

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

माननीय श्री वी. दुर्गारव, न्यायिक सदस्य एवं  
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।

BEFORE HON'BLE SHRI V. DURGA RAO, JM AND  
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकरअपील सं./ ITA No.125/Chny/2023  
(निर्धारण वर्ष / Assessment Year: 2015-16)

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2. आयकरअपील सं./ ITA No.126/Chny/2023  
(निर्धारण वर्ष / Assessment Year: 2016-17)

&

3. आयकरअपील सं./ ITA No.127/Chny/2023  
(निर्धारण वर्ष / Assessment Year: 2017-18)

DCIT Central Circle-2(2) Chennai.	बनाम / Vs.	Shri Karuppagounder Palaniswami 171/1B, Rajapuram 1 <sup>st</sup> Street, Nedunchalai Nagar, Salem-636 004.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AYXPP-6611-P</b>		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

&

4. आयकरअपील सं./ ITA No.213/Chny/2023  
(निर्धारण वर्ष / Assessment Year: 2015-16)

&

5. आयकरअपील सं./ ITA No.214/Chny/2023  
(निर्धारण वर्ष / Assessment Year: 2016-17)

&

6. आयकरअपील सं./ ITA No.215/Chny/2023  
(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Karuppagounder Palaniswami 171/1B, Rajapuram 1 <sup>st</sup> Street, Nedunchalai Nagar, Salem-636 004.	बनाम/ Vs.	DCIT Central Circle-2(2) Chennai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AYXPP-6611-P</b>		
((अपीलार्थी/Appellant))	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ <b>Revenue by</b>	:	Shri V. Nandakumar (CIT) - Ld. DR
प्रत्यर्थीकीओरसे/ <b>Assessee by</b>	:	Shri Sushil Kumar (Advocate) - Ld. AR

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	10-01-2024
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	03-04-2024

## आदेश / ORDER

### Per Bench

1. Aforesaid cross appeals for Assessment Years (AY) 2015-16, 2016-17 & 2017-18 arises out of a common order passed by learned Commissioner of Income Tax (Appeals)-19, Chennai [CIT(A)] on 05-12-2022 in the matter of separate assessments framed by DCIT, Central Circle 2(2), Chennai [AO] u/s. 143(3) r.w.s 153C of the Act vide orders dated 18-03-2022. It is admitted position that facts as well as issues are quite identical in all the years. For the purpose of adjudication, facts from case records of AY 2015-16 have been culled out in this order.

2. The Registry has noted delay of 16 days in the appeals filed by the assessee, the condonation of which has been sought by Ld. AR appearing for the assessee. The Ld. CIT-DR opposed the condonation of delay. However, considering the period of delay, the bench deems it fit to condone the delay and proceed for adjudication of the appeals on merits.

### 3.1 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.

2.1 The Ld. CIT(A) erred in deleting the addition of Rs.12,00,00,000/- made towards payment received from M/s S.R.S. Mining and associates based on the incriminating material seized from the premises of SRS Mining.

2.2 The Ld. CIT(A) erred in accepting the explanation of the assessee that there is no mention anywhere in the statement of Shri Srinivasulu that the assessee was recipient of payments shown against the abbreviated names, without considering

the fact that the assessing officer has clearly mentioned in the Para 3.2 of the order that Shri Srinivasulu admitted in his sworn statement dated 10.12.2013 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 expenses to various persons. In response to Q. No.4, he has stated that "HW" represents "High Way Minister". The CIT(A) failed to appreciate that the assessee was the Highway Minister in the Government of Tamil Nadu during the period the payments were made.

2.3 The Ld. CIT(A) 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 the question of not writing the name in full but in abbreviated form and not recording acknowledgement for the payments made, the 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.

2.4 The Ld. CIT(A) erred in holding that such seized material is liable to be treated as dumb document which 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 the seized material Shri Srinivasulu admitted that nature of payments and expansion of abbreviation.

2.5 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 statement 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, a retraction of statement of Shri Srinivasulu, after a gap of 106 days was not relied upon by the assessing officer.

2.6 The Ld. CIT(A) failed to appreciate that the assessing officer has correctly arrived presumption u/s 132(4A) and 292C of the Act in respect of materials seized during the course of search which was further strengthened by sworn statement recorded from Shri Srinivasulu.

3. For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

### 3.2 The assessee has revised / amended the original grounds of appeal. The revised / amended grounds read as under: -

On the facts and in the circumstances of the case the learned CIT(A) erred in upholding the assumption of jurisdiction by the learned AO under section 153C and therefore not quashing the assessment order passed by him under section 143(3) read with section 153C when the learned AO had failed to record the necessary and valid satisfaction mandated under section 153C.

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.

3.3 The Ld. CIT-DR, drawing attention to various grounds of appeal, supported the additions made in the assessment order whereas Ld. AR while supporting the impugned order on merits, assailed the validity of assessment proceedings on legal grounds. The Ld. AR submitted that no proper satisfaction was drawn by Ld. AO before assuming jurisdiction u/s 153C. To support the submissions, reliance has been placed on various judicial decisions, the copies of which have been placed on record.

3.4 The Ld. CIT-DR has filed written submissions wherein it has been submitted that earlier proceedings u/s 147 for AYs 2015-16 & 2016-17 were abated upon issuance of notice u/s 153C. The proceedings for AY 2017-18 were closed before issuance of notice u/s 153C. The Ld. CIT-DR further submitted that satisfaction was drawn based on the incriminating material seized during the course of search action in the group case of M/s. SRS Mining, Shri. J Sekhar Reddy, Shri. M. Premkumar, Shri. K. Srinivasulu & others. It has further been submitted that the impugned additions were based on notings in the diary found and seized during search. The entries found in diary were duly explained by Shri. K. Srinivasulu, who was maintaining these notings on the instructions of the partners of M/s. SRS Mining. The Ld. CIT-DR further submitted that satisfaction note was forwarded by the ACIT, Central Circle 2(4), Chennai vide letter dated 15-07-2021 along with proforma for recording satisfaction u/s 153C dated 15-07-2021, which is based on

notings found in the Incriminating material seized vide annexure ANN/KGAR/MPKSSR/B&D/S1 to 3 from premises at No.47, 49 VBC Solitaire, 3rd Floor, Bazuallah Road, T. Nagar, Chennai and two long size books vide Annexure No. ANN/MPK/NS/B&D/S-19 & 20 from premises at New No.26, Old No. 14, Yagambal Street, T. Nagar, Chennai. It has been submitted that the entries carried an initial "HW(M)" which has been identified by Shri. K. Srinivasulu as "Highways Minister". The present assessee was the then Highways Minister. Therefore, the conclusions drawn by Ld. AO were logical and it would be incorrect to say that the satisfaction was based on mere suspicion, surmise and false conjectures. The satisfaction note along with relevant copy of seized material was received from ACIT, Central Circle 2(4), Chennai. The notings made in the seized material were examined and the statement made by Shri. K. Srinivasulu was perused wherein he had explained that the entry indicated as "HW(M)" was payment to then Highway Minister. On analyzing the above facts, an independent satisfaction was recorded by Assessing Officer of the assessee satisfying himself that the seized materials contained information that related to the assessee and the same would have bearing on the determination of total income of the assessee. Further, notice was issued u/s 153C which was based on satisfaction note of the searched party as well as the satisfaction note of AO of the assessee. Both the officers have recorded their satisfaction after analyzing the incriminating material seized by the department. Therefore, the claim that Ld. AO only copied the contents of the satisfaction drawn by AO of the searched person was incorrect. The conclusion drawn by both officers is based on

the same material and hence the assessee is not correct in claiming that the AO of the assessee has failed to apply his independent thought and judgment before drawing such satisfaction. Further, it cannot be termed as borrowed satisfaction. The Ld. CIT-DR further submitted that the entries found in seized material were recorded and maintained by Shri. K. Srinivasulu on instructions of partners of M/s SRS Mining. Accordingly, Shri K. Srinivasulu is the correct person to explain the entries in seized material and hence, the statement has been recorded from Shri. K. Srinivasulu. Further, retractions from his statement may be due to pressure from parties i.e., political leaders as mentioned in the seized material and hence, the same need not be entertained. It has further been held that AO has recorded satisfaction note after going through the seized material and after independently applying his mind with regard to contents of seized material. The conclusion drawn by the Ld. CIT(A) is based on detailed appreciation of facts of the case and hence, the assessee is not correct in claiming that the Ld. Appellate Commissioner's view is lopsided and there is a gross omission in appreciating the fact. Further, upon perusal of satisfaction note and relevant copy of seized material as received from the ACIT, Central Circle 2(4), Chennai, an independent satisfaction was recorded by the DCIT Central Circle 2(2), Chennai satisfying himself that the seized material contained information that relate to the assessee and information therein had got a bearing on the determination of total income of the assessee.

3.5 The Ld. AR, on the other hand, continued to maintain that there was lack of satisfaction before issuance of notice u/s 153C. It has been

submitted that the assessee was nowhere named in the seized material or in the statement made by Shri. K. Srinivasulu. Therefore, the assumption of jurisdiction u/s 153C was bad-in-law. The Ld. AR also submitted that the proceedings for AY 2015-16 are barred by limitation considering the decision of Hon'ble Supreme Court in the case of **CIT vs. Jasjit Singh (155 Taxmann.com 155)**.

3.6 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 assessee being resident individual acted as Highway Minister of Tamilnadu Government at the relevant point of time.

#### **4. Assessment Proceedings**

4.1 The assessment was so framed against the assessee pursuant to search and seizure action by department u/s 132 in the case of M/s SRS mining, Shri J. Sekar Reddy, Shri K. Rethinam and Shri S. Ramachandran at T. Nagar on 08-12-2016. During search proceedings in the case of Shri Sekar Reddy, certain incriminating material was seized which was marked as ANN/MPK/NS/B&D/S-19 and 20 and ANN/KGRA/MPKSSR/B&D/S-1 to 3 from the premises of M/s SRS mining. Pursuant to the same, a satisfaction note was received from DCIT, Central Circle-2(4), Chennai vide AC-CC2(4)/153C/2021-22 on 15-07-2021 wherein the firm M/s SRS mining was assessed since the seized material allegedly contained date wise notings of the amounts paid to various persons in public service. The name and designation of the public servants involved were confirmed by the partners / employees of M/s SRS mining in sworn statements recorded u/s 132(4) of the Act.

Upon perusal of seized material which contained Oswal note book, certain entries were found relatable to the assessee, the then Highway Minister during the period 2014 to 2016. These entries have been tabulated in para 3.1 of the assessment order.

4.2 The Ld. AO noted that a sworn statement was recorded from Shri K. Srinivasulu, an associate of Shri Sekar Reddy on 10-12-2016 wherein in response to question no.3, he stated that entries in the three Oswal note books were maintained by him as per the instructions of partners Shri S. Ramachandran, Shri J. Sekar and Shri K. Rethinam. He submitted that the entries were incidental expenses paid to various persons.

4.3 Considering the same, a notice u/s 153C was issued by Ld. AO to the assessee on 23-07-2021 which was followed by statutory notices u/s 143(2) and 142(1) wherein the assessee was directed to substantiate its case. In response, the assessee filed his return of income on 16-08-2021 declaring the same income as admitted in the return of income originally filed u/s 139. The assessee, opposing the allegation of Ld. AO, denied having undertaken any transaction with any of the parties as alleged. The assessee also assailed jurisdiction u/s 153C on the ground that in the absence of any incriminating material, the notices issued u/s 153C may be withdrawn.

4.4 However, Ld. AO continued to allege that the payments were made to various persons including the assessee, the then Highway Minister (represented by the abbreviation HM). The decision of Hon'ble Supreme Court in the case of **Common cause V/s UOI (394 ITR 220)**, as relied upon by the assessee, was held to be distinguishable. The Ld. AO also

held that the denial by the assessee was not backed by any logic or evidence. In the present case, the entries in the seized material were in the form of proper accounts, maintained systematically on daily basis with tick-marks showing that the entries were verified with some basic documents. The entries were logically explained by the authors of the entries during the course of search. Therefore, the inference was not on the basis of surmises but on the basis of evidences and the explanations furnished during the course of search proceedings. Finally, the amount of Rs.1200 Lacs as allegedly written against the name of the assessee in the note books was added to the income of the assessee as 'income from other sources' and assessment was concluded.

4.5 The substantive observations of Ld. AO, while making the impugned addition, were as under: -

- (i) The denial of any transactions with M/s. SRS Mining and its associated persons is vague and not backed by any logic or evidences.
- (ii) From the nature of entries in the seized materials and the explanation furnished by the author of the seized materials it is dear that payments have been made to various persons, in public life, including the assessee, who was then the High Ways Minister represented by the abbreviation 'HM)
- (iii) The decision of the Hon'ble Supreme Court in the case Common Cause (A Registered Society) Vs. Union of India (394 ITR 220) is distinguishable in the case of the assesses, for the simple reason that the evidences found were not simple loose sheets or arbitrary notings. The entries found in the seized materials were in the form of proper accounts, maintained systematically, on daily basis, with tick marks showing that the entries have been verified with some basic documents. The entries have been logically explained by the author of the entries, during the course of search. Hence, inferences are drawn not on the basis of surmises but on the basis of evidences and the explanations furnished.
- (iv) It is to be noted that Shri Srinivasulu is a close associate of Shri Sekar Reddy of M/s. SRS Mining and looking after his operations. The nature of seized materials are undisclosed account books containing monthly income-expenditure accounts. Considering the nature of the transactions and the nature of the personalities involved, maintenance of Formal, clear and unambiguous books of accounts cannot be expected in such transactions. for obvious reasons. Sworn statement given during the course of search only will give the correct picture, as the deponent is free to depose the actual facts known to him/her without being under the compulsive influence of his/her masters. Further, no other logical explanation has been given for the entries found in the seized materials,

4. In this case, due to the nature of entries as aforesaid and its explanation furnished by Shri. Srinivasulu, author of the entries based on the hypothesis of preponderance of probability, it can be understood that, the assessee has received the payments mentioned as stated above. Accordingly, Rs.12,00,00,000/- is added as income from other sources to the total income of the assessee for the year.

4.6 The additions were made on similar lines while framing the assessments for AYs 2016-17 and 2017-18. Aggrieved as aforesaid, the assessee challenged the action of Ld. AO before first appellate authority which was disposed-off by way of common order dated 05-12-2022 which is in further challenge before us by way of present cross-appeals.

### **Appellate Proceedings**

5.1 During appellate proceedings, the assessee assailed the jurisdiction u/s 153C on the ground that the satisfaction of jurisdictional AO was based on 'reasons to suspect' rather than on 'reasons to believe' and the satisfaction was not based on independent application of mind but was on account of borrowed satisfaction. The same was evident from the fact that the satisfaction note drawn by AO of the assessee was an exact verbatim replica of the satisfaction note drawn by the AO of searched persons. The satisfaction recorded by AO of the assessee was as under:-

A search and seizure action u/s 132 of the Income Tax Act, 1961 was conducted in the case of Shri J. Sekar Reddy, Shri M. Premkumar, Shri K. Srinivasulu and M/s SRS Mining on 08.12.2016. During the search, certain incriminating books, documents and loose sheets were seized. During the above-mentioned search, sworn statements u/s 132(4) of the IT Act were recorded from Shri K. Srinivasulu, who was maintaining the above documents, and from the three partners of M/s SRS Mining namely Shri J. Sekar Reddy, Shri S. Ramachandran and K. Rethinam. The above persons were confronted with the material evidences during the course of search. From the sworn statements recorded from the above persons u/s 132 of the IT Act, 1961 and also from the verification of the seized materials, it is apparent that illegal payments had been made to people who were in public service for facilitating mining and transportation of sand in the state of Tamil Nadu.

2. Three small Oswal Note books seized from No. 47, 49 VBC Solitaire, 3<sup>rd</sup> floor, Bazullah road, T Nagar, Chennai-17 annexed as ANN/KGAR/MPKSSR/B&D/S-1 to 3 and two long size books seized from New No. 26, Old No. 14, Yogambal Street, T.Nagar, Chennai - 17 annexed as ANN/MPK/NS/B&D/S-19 & 20 contain date wise notings of the amounts paid to persons in public

service. The name and designation of the public servants involved were confirmed by the partners/employees of M/s SRS Mining in their sworn Statements recorded from them u/s 132(4) of the Income Tax Act, 1961.

3. The Table in Para 4 below lists the illegal payments made on various dates to the public servant who was me,

Date	Name of the Public Servant as mentioned in the seized material	Amount Rs.
16.08.2016	HW	30000000
06.09.2016	HW	30000000
15.06.2016	HW	2000000
16.08.2016	HW	60000000
16.08.2016	HW	30000000
04.02.2016	HW(M)	20000000
23.03.2016	HW(M)	20000000
06.09.2016	HW	30000000
05.10.1016	HW	30000000
26.07.2016	HW(M)	70000000
01.09.2014	HW(M)	20000000
09.10.2014	HW(M)	20000000
03.11.2014	HW(M)	20000000
04.12.2014	HW(M)	20000000
04.02.2015	HW(M)	20000000
03.03.2015	HW(M)	20000000
04.04.2015	HW(M)	20000000
04.05.2015	HW(M)	20000000
05.06.2015	HW(M)	20000000
04.07.2015	HW(M)	20000000
06.08.2015	HW(M)	20000000
04.09.2015	HW(M)	20000000
01.10.2015	HW(M)	20000000
04.11.2015	HW(M)	20000000
18.12.2015	HW(M)	20000000
24.03.2016	HW(M)	20000000
22.02.2016	HW/S	20000000
18.01.2016	HW/S	10000000
11.03.2016	HW Secretary	10000000

4, In response to Q4 of the sworn statement recorded from Shri K Srinivasulu u/s 132(4) of the IT Act on 10/12/2016, Shri K Srinivasulu confirmed that HW/HW(M)' implies Highways Minister. The relevant portion of the sworn statement is reproduced as under:

Q4 In Annexure ANN/KGAR/MPKSSR/B&D/S-I, the following entries are found. Please furnish the details of the entry.

			Remarks by Shri K Srinivasulu
- - -	- - -	- - -	- - -
<b>06.09.2016</b>	<b>HW</b>	<b>30000000</b>	<b>Highways Minister</b>

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I have given my answer in the remarks column above.

5. The assessee, Shri E. K. Palanisamy was the Highways Minister in the Government of Tamil Nadu during the period in which illegal payments were made.

6. Thus it is evident from the seized materials that the assessee, Shri E. K. Palanisamy had received illegal payments from M/s SRS Mining or its associates. The amount of illegal payments is Rs. 12,00,00,000/- for the FY 2014-15, Rs. 28,00,00,000/- for the FY 2015-16, and Rs. 28,20,00,000/- for the FY 2016-17.

7. The above seized materials were handed over to the undersigned on 15.07.2021. On perusal of the seized material, I am satisfied that the seized materials contain information that relate to the assessee, Shri E.K. Palanisamy and the information therein has got a bearing on the determination of total income for the A.Ys. from 2011-12 to 2017-18. Hence, in accordance with the provision of Income Tax Act, 1961 notice u/s. 153C is issued for AY 2017-18.

On the basis of these arguments, the assessee assailed assumption of jurisdiction u/s 153C.

5.2 The Ld. CIT(A), upon perusal of satisfaction note, observed that AO extracted all the entries in the seized material containing date wise details of amounts paid to a person who has been referred to as “HW” or “HW(M)” therein. Shri K. Srinivasulu from whose possession the said material was found and seized stated that the seized material contained entries regarding incidental expenses paid to various persons. It was stated by Shri K. Srinivasulu that the persons referred to as “HW” in the seized material was Highway Minister. Having regard to the fact that the assessee was Highway Minister in Govt. of Tamilnadu during the relevant period when the payments were made as per the seized material, Ld. AO arrived at the inference in the satisfaction note that the assessee was in receipt of the payments as found noted in the seized material. The satisfaction required u/s 153C was in the nature of *prima-facie* satisfaction only and there was no requirement that the satisfaction was to be based on conclusive establishment of the fact that the seized

material had bearing on the determination of total income of the assessee. This proposition was analogous to the well settled position of law with regard to the reasons recorded for reopening of assessment u/s. 147 of the Act. In the present case, the inference drawn by the AO in the satisfaction note *prima-facie* arose from the contents of the seized material and the statement of Shri. K. Srinivasulu with regard to the said seized material. Since the statement of Shri K. Srinivasulu explained that the person referred to as "HW" in the seized material meant the 'Highways Minister' and since the assessee acted as Highways Minister during the relevant period, the same could be considered to be adequate reason for arriving at the *prima-facie* inference that the payments found noted against the person referred to as "HW" in the seized material have been received by the assessee though there was no specific mention in the statement of Shri K. Srinivasulu that the said payments were actually made to the assessee. Such a specific mention along with corroborative evidence to establish that the payments were actually made to the assessee would be required for conclusively proving that the assessee was in receipt of the said payments for the purpose of making assessment only. However, the same would not be required at the stage of recording of the satisfaction note for the purpose of assuming jurisdiction u/s 153C and *prima-facie* inference was all that was required at the said point of time. Accordingly, the legal grounds urged by the assessee were dismissed.

5.3 The Ld. CIT(A) also appreciated the satisfaction recorded by AO of the searched person and concluded that the contention of the assessee that there was no independent application of mind by the AO of the

assessee was not tenable. Though a major part of the satisfaction note of the AO appeared to be a replica of the satisfaction note of the AO of the searched person, the same would not automatically lead to the inference that the AO of the assessee had not applied his mind independently. Though the language employed may be similar, the contents of paragraphs 2 to 5 of the satisfaction note of the AO give a clear indication that the AO had gone through the relevant seized material and identified the payments noted therein with the name of the person mentioned as "HW" and HW(M)". Considering the statement of Shri K. Srinivasulu and the fact that the appellant served as the Highways Minister during the relevant period, AO arrived at the *prima-facie* satisfaction that the assessee was in receipt of illegal payments from M/s. SRS Mining or its associates during the previous year relevant to AYs 2015-16 to 2017-18. Further, as explicitly stated by the AO at para 6 of the satisfaction note, AO had arrived at the satisfaction that the information contained in the seized material had a bearing on the determination of the total income of the assessee on his perusal of the seized material. Finally, it was held by Ld. CIT(A) that AO had recorded the satisfaction note after going through the seized material and after independently applying his mind with regard to the contents of the said material. Therefore, this legal ground was also rejected.

5.4 The assessee's further objection that there were parallel proceedings u/s 147 & 153C was also rejected on the ground that the notices u/s 148 were issued on 24-04-2021 for AYs 2016-17 & 2017-18 and on 28-06-2021 for AY 2015-16. The reassessment proceedings for AYs 2015-16 & 2016-17 abated on issuance of notice u/s 153C on 23-

07-2021. The reassessment proceedings for AY 2017-18 were dropped on 22-07-2021 i.e., prior to issuance of notice u/s 153C. The proceedings for AYs 2015-16 & 2016-17 shall abate as per first proviso to Sec.153C read with second proviso to Sec.153A. Therefore, there was no parallel proceedings as alleged by the assessee. The reassessment proceedings were already dropped prior to issuance of notice u/s 153C. The other legal grounds as urged by the assessee were also dismissed. However, the same are not relevant here since no arguments have been made on those grounds. Aggrieved by rejection of legal grounds, the assessee is in further appeal before us.

5.5 On merits, the assessee contended that the seized material was in the nature of dumb document which would not possess any stand-alone evidentiary value since it did not contain the complete particulars of the relevant transactions and the persons involved in the said transactions. The addition as made on the basis of such a dumb document would not be sustainable. The assessee also contended that the reliance placed on the statement of Shri K. Srinivasulu, an employee, would not be tenable as the said statement did not directly implicate the assessee in as much as he merely explained the expanded form of the initials "HW" and nowhere stated that the assessee was the beneficiary of the transactions as noted in the seized material. The assessee also drew attention to the subsequent retraction of the statement by Shri K. Srinivasulu and submitted that the original sworn statement would have no evidentiary value when such retraction was not countered by the AO by re-examination of the deponent. The assessee contended that the addition made by relying on the statement of Shri K. Srinivasulu without providing

the opportunity of cross-examination of the said person to the assessee would not be tenable in law. The assessee further contended that the burden was on revenue to prove that the assessee was in receipt of income which was sought to be taxed. The Ld. AO was wrong in requiring the assessee to discharge a reverse burden of proof that such payments were not received by the assessee. It was evident that the assessee was implicated into the web of transaction based on mere suspicion and surmise. In the absence of any mark or sign of having acknowledged the receipt by the assessee or his associates, a document which was self-serving only to the employees of M/s SRS Mining, there is no provision either under the Income Tax Act or under The Evidence Act, that empowers the AO to presume that the same relates to the assessee. The presumption u/s 292C was only with reference to the person searched and it could not be extended to another person i.e., the assessee. This presumption would not apply against the assessee. A non-speaking document, without any corroborative material / evidence or without a finding that such document had materialized into transactions giving rise to income of the assessee, was to be disregarded fully. Unless these persons making statements against the assessee were allowed to be examined by the assessee, no adverse conclusion could be drawn against the assessee. To support all these submissions, the assessee referred to various judicial decisions rendered under similar circumstances.

5.6 The assessee further submitted that in the seized material, nowhere the name of the assessee was specified. The same only carried the abbreviation "HW(M)" as having received payments. The only

evidence that linked the assessee with the seized material was the statement made by Shri K. Srinivasulu which was later on retracted on the ground that the statement was obtained under pressure. The Ld. AO erred in attaching standalone evidentiary value to the said statement without their being any solid corroborative evidence on record. The assessee referred to the decision of Hon'ble Supreme Court in the case of **Common Cause vs. UOI (77 Taxmann.com 245)** as well as another decision in **Andaman Timber Industries vs CCE (62 Taxmann.com 3)** to support its submissions.

5.7 The Ld. CIT(A), upon perusal of relevant entries in the seized material, concurred that the name of the assessee did not appear in any of the entries considered by AO to be pertaining to assessee. All the entries contained only the abbreviations "HW" or "HW(M)" and different extensions of the same. The Ld. AO merely relied on the statement made by Shri K. Srinivasulu u/s 132(4) to decipher that "HW" would refer to Highway Minister. Since the assessee was Highway Minister during the relevant period 2014 to 2016, Ld. AO drew inference that the aforesaid entries represent payment made to the assessee. However, in the statement of Shri K. Srinivasulu there was no mention anywhere that the assessee was recipient of payment shown against the said abbreviated names. Therefore, the prime question that would arise would be that whether such entries found against the abbreviation of the assessee's official position in the material seized from a third-party could be used to draw adverse inference against the assessee without there being anything more in record in corroboration of the same. Further, the aforesaid material was not seized from the premises of the assessee nor

the same was found in the handwriting of the assessee. Therefore, the same would not constitute adequate evidence to draw any adverse inference against the assessee in the absence of any corroborative evidence as held by Hon'ble Delhi High Court in the case of **CIT vs. Sant Lal (118 Taxmann.com 432)**. The Hon'ble Court, in similar circumstances, held that such kind of entries could not form the basis of addition when the revenue failed to produce any other cogent material to link the assessee to the dairy. Similar was the situation in the present case.

5.8 The Ld. CIT(A) also concurred with the submissions of the assessee that the seized material did not contain complete information to facilitate drawing of such an inference. There was no mention as to the nature of said transaction of cash payment, the purpose of such payment and precise identity of the assessee. There was no mention in the seized material as to whether the payment was made to a particular person in his own right or it was paid 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 abbreviated names appeared therein and the said amount represents the income of the said persons. An entry made in the diary or notebook by a third-person with scant details could not be used to fasten the tax liability on the persons whose abbreviated name appears therein, in the absence of any corroborative evidence. Such seized material was liable to be treated as dumb document which did not have any evidentiary value in respect of entries found therein in the absence of corroborative evidence which can provide necessary reliable basis for

deciphering the nature and character of the said entries. To support the conclusion, Ld. CIT(A) 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 45 & 46 of the impugned order. Further, Mumbai Tribunal in the case of **Riveria Properties Pvt. Ltd. Vs ITO (ITA No.250/Mum/2013)** held that AO was required to bring further evidence on record to show that the money was actually exchanged between the parties in case where there was no other evidence on record to prove that on-money was paid except the loose sheets found in the premise of third-party and admission made by the third-party. Also, Hon'ble Supreme Court in the case of **Common Cause vs. UOI (supra)** held as under: -

We are constrained to observe that the Court has to be on guard while ordering investigation against any important constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence and not admissible in evidence, we have apprehension whether it would be safe to even initiate investigation. In case we do so, the investigation can be ordered as against any person whosoever high in integrity on the basis of irrelevant or inadmissible entry falsely made, by any unscrupulous person or business house that too not kept in regular books of account but on random papers at any given point of time. There has to be some relevant and admissible evidence and some cogent reason, which is prima facie reliable and that too, supported by some other circumstances pointing out that the particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period, which may have co-relations with the random entries. In case we do not insist for all these, the process of law can be abused against all and sundry very easily to achieve ulterior goals and then no democracy can survive in case investigations are lightly set in motion against important constitutional functionaries on the basis of fictitious entries, in absence of cogent and admissible material on record, lest liberty of an individual be compromised unnecessarily.

The aforesaid decision of Hon'ble Supreme Court stresses the need for exercising caution and for bringing on record relevant, reliable and

cogent evidence to corroborate the entries found in loose sheets and note books regarding the payments allegedly made to important constitutional functionaries so that the process of law is not abused by unscrupulous persons in order to achieve ulterior goals. Therefore, it was important that the corroborative evidence was available on record in support of the entries in the seized material found in the premises of third- party.

5.9 The Ld. CIT(A) also concurred that the statement of Shri K. Srinivasulu u/s 132(4) would not serve as corroborative evidence in respect of entries in the seized material. That person gave a general statement that the entries represent incidental expenses paid to various persons. When there were numerous pages and entries in the seized material, such a general statement would not inspire confidence for drawing any conclusion in respect of specific entries appearing therein allegedly with the abbreviated name of the assessee to conclude that the entries represent payment made to the assessee only. There was nothing in the statement even to remotely suggest that the entries appearing with the abbreviated name actually represent payment made to the assessee. The statement merely stated that the entries were maintained on the instructions of the partners of M/s SRS mining. It was very clear that Shri K. Srinivasulu had no first-hand knowledge of the payments noted in the seized material and had merely noted whatever was told to him by the partners. In such a situation, the statement 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 on the instructions of the partners, it is the partners who were required to

explain the exact identity of the recipients, the nature of payments, the purpose of payments and the identity of the person who made the payments etc. However, there was no material on record which would show that any of the partners was examined with regard to relevant entries in the seized material. There was no reference to any such statement of the partners in the assessment order. Therefore, the statement of Shri K. Srinivasulu could barely be considered as corroborative evidence against the assessee with regard to the entries in the seized material. This was further fortified by the fact that the said statement was retracted vide letters dated 21-03-2017 and 23-03-2017 addressed to DDIT (Inv.) which was submitted by Shri K. Srinivasulu through the Jail Superintendent when he was lodged in the Jail. In the retraction letters, it was claimed that the earlier statement was given under coercion and duress and in a state of mental shock, depression and physical exhaustion at the relevant point of time due to continuance of search action continuously for more than 3 days without a break and he not being allowed to sleep or to take rest. He further stated that he was not allowed to read the typed statement and his signature was obtained by force. He stated that he never paid any money to various persons as recorded in the typed assessment.

5.10 It was further noted by Ld. CIT(A) that similar additions were made in the case of another assessee by the name Shri P. Ramamohan Rao. That assessee sought cross-examination during the course of assessment proceedings. However, Shri K. Srinivasulu became non-cooperative and hostile during the course of preliminary examination of the said person before Ld. AO on 19-12-2018. Since the witness turned

hostile, it was concluded that cross-examination would not serve any useful purpose. That 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 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 let in other reliable evidence to corroborate the same. Similarly, the Hon'ble Court in the case of M/s SRS mining Vs UOI (141 Taxmann.com 272), at para 9, observed that the statement of Shri K Srinivasulu could not be relied upon as he turned hostile by giving specific retraction statement and there was no need to accord permission to cross-examine him in view of the said reason. Considering these observations, it was to be held that the statement of Shri K. Srinivasulu could not be used against the assessee unless some other evidence to corroborate the same was made available on record.

5.11 In the present case, AO did not rely on any other corroborative evidences except for relying on the statement of Shri K. Srinivasulu since in the sworn statements of three other partners recorded on 08-12-2016, no questions were posed to them at all regarding the seized material allegedly containing the details of incidental charges paid to various persons. It was thus evident that no other corroborative evidence was available in record in respect of notings in the seized material.

5.12 The Ld. CIT(A) also concurred that the assessee denied having any transaction with the groups and therefore, he could not be expected to discharge a reverse burden as per legal principles laid down by Hon'ble Supreme Court in the case of **K.P. Varghese vs ITO (131 ITR 597)** holding that onus of establishing that the conditions of taxability are fulfilled would be on revenue and throwing this burden on the assessee would be to cast an almost impossible burden upon him to establish the negative. Finally, the impugned additions, on merits, for all the three years, were deleted by Ld. CIT(A), by observing as under: -

58. As already discussed in detail in the preceding paragraphs, the seized material is in the nature of a dumb document which does not contain complete and unambiguous information to arrive at any conclusion based solely on the said material that the appellant was in receipt of the payments found noted therein against the abbreviated name "HW" and "HW(M)". There is no corroborative evidence to support and supplement the details in the seized material other than the statement of Shri K. Srinivasulu, which cannot be taken in to cognizance on account of his retraction and due to him turning in to a hostile witness which has deprived that the appellant of the opportunity of cross-examination of the said person. Once the statement of Shri K. Srinivasulu is disregarded, there is no other evidence to conclusively establish that the abbreviated names "HW" and "HW(M)" found in the seized material refer to the appellant only. There is no corroborative evidence to prove that the payments noted in the seized material have actually materialized and transfer of money has actually taken place. In view of these reasons, it is required to be considered that the AO has not discharged the onus cast on the revenue to prove that the appellant was actually in receipt of the payments reflected in the seized material with reliable and cogent evidences to corroborate the entries in the seized material.

59. In view of the detailed discussion hereinabove, it is held that the addition made in the assessment orders for AY 2015-16 to AY 2017-18 towards undisclosed income represented by the receipt of incidental charges from M/s SRS mining is not sustainable on facts. Hence, the AO is directed to delete the said addition for all the 3 assessment years. The relevant grounds of appeal are allowed.

Aggrieved as aforesaid, the revenue is in further appeal before us. The assessee has also filed appeals for all the years assailing rejection of legal grounds by Ld. CIT(A).

### **Our findings and Adjudication**

6. From the detailed facts and discussions as enumerated by us in the preceding paragraphs, it emerges that the impugned additions have been made 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 which was marked as ANN/MPK/NS/B&D/S-19 and 20 and ANN/KGRA/MPKSSR/B&D/S-1 to 3 from the premises of M/s SRS mining. During the course of search, a sworn statement was recorded u/s 132(4) from Shri K. Srinivasulu who acted as an employee of M/s SRS mining and who is stated to have made entries in the Oswal & other notebooks as found during the course of search. These entries were maintained by him at the instructions of partners of M/s SRS mining. The abbreviations "HW" and "HW(M)" were marked against certain entries and Shri K. Srinivasulu admitted that the same referred to Highway Minister. However, he has not specifically named the assessee in the sworn statement. The name of the assessee also does not specifically figure in the seized material. However, Ld. AO, by deciphering the abbreviations solely on the basis of statement of Shri K. Srinivasulu alleged that such money was paid to the assessee who acted as Highway Minister at the relevant point of time. The conclusions of Ld. AO are solely based on the deposition of Shri K. Srinivasulu. It is pertinent to note that this statement has been retracted by Shri K. Srinivasulu subsequently by way of letters dated 21-03-2017 and 23-03-2017 addressed to DDIT (Inv.) which was submitted by him through the Jail Superintendent when he was lodged in the Jail. In the retraction letters, it was claimed by him that the earlier statement was given under

coercion, duress and in a state of mental shock, depression and physical exhaustion at the relevant point of time due to continuance of search action continuously for more than 3 days without a break and he not being allowed to sleep or to take rest. He further stated that he was not allowed to read the typed statement and his signature was obtained by force. He stated that he never paid any money to various persons as recorded in the typed assessment. It could thus be seen that the person whose statement forms the very basis of Ld. AO to conclude that the assessee was in receipt of such sum as noted in the Oswal notebook, turned hostile and non-cooperative. This being the case, whole case of Ld. AO is liable to fall flat since there is no other admission, corroborative material or evidence whatsoever in the possession of Ld. AO to arrive at such a conclusion and to support the allegations.

7. We further find that considering the search action and aforesaid statement, a satisfaction note was drawn against the assessee by AO of searched person i.e., DCIT, Central Circle-2(4), Chennai vide AC-CC2(4)/153C/2021-22 on 15-07-2021 where M/s SRS mining was assessed since the seized material allegedly contained date-wise notings of the amounts paid to various persons in public service. The AO of the assessee drew identical satisfaction note and issued notice u/s 153C to the assessee. The assessee offered same return of income as originally returned u/s 139 and denied having undertaken any such transaction with the said group. The assessee also assailed jurisdiction u/s 153C on the ground that in the absence of any incriminating material, the notices issued u/s 153C would be bad-in-law. In such an eventuality, it was the burden of Ld. AO to prove his allegations. However, except for

retracted statement of Shri K. Srinivasulu, there is no other material or evidence which would support the allegations of Ld. AO.

8. The Ld. AO continued to allege that payments were made to various persons including the assessee, the then Highway Minister (represented by the abbreviation HM). The Ld. AO also concluded that the denial by the assessee was not backed by any logic or evidence. In the present case, the entries were found recorded in a systematic manner and logically explained by the authors of the entries during the course of search. Considering this fact, it was to be concluded that the inference was not on the basis of surmises but on the basis of evidences and the explanations furnished during the course of search proceedings. We find that though the burden was on AO to prove its allegations, a negative burden was casted on the assessee to establish that such transactions had not happened and the assessee had not received the impugned amount from the searched group. The same run contrary to the decision of Hon'ble Supreme Court in the case of **K.P. Varghese vs ITO (131 ITR 597)** as enumerated by us in preceding paragraph 5.12. The Hon'ble Court held that onus of establishing that the conditions of taxability are fulfilled would be on revenue and throwing this burden on the assessee would be to cast an almost impossible burden upon him to establish the negative.

9. We further find that during appellate proceedings, the assessee's legal ground as well as ground on merits stressed the point that the assessee was nowhere named in the seized material and the satisfaction note drawn by AO of searched person as well as jurisdictional AO of assessee could not lead to a conclusion that such a

payment, as alleged, was ever received by the assessee. The assessee, all along, denied having undertaken any such transaction with the group. It could also be seen that no incriminating material whatsoever has been found from the possession / premises of the assessee. Except for certain abbreviated entries and the statement of Shri K. Srinivasulu u/s 132(4), there is nothing with Ld. AO to corroborate such an allegation. The presumption of Sec.292C would operate only with reference to the person searched and it could not be extended to the assessee who is not a searched person. Therefore, in our considered opinion, the burden was on Ld. AO to prove that it was actually the assessee who was named in the seized material and such transactions had actually taken place between the parties and lastly, the assessee was in receipt of such money from the group. However, there is nothing on record to corroborate the allegation of Ld. AO. In our opinion, Ld. AO erred in requiring the assessee to discharge a reverse burden of proof that such payments were not received by the assessee. If the statement of Shri K. Srinivasulu is ignored, there is nothing with Ld. AO to conclusively establish the aforesaid allegations against the assessee.

10. So far as the veracity of statement of Shri K. Srinivasulu is concerned, we find that this statement has subsequently been retracted by him. The copies of retraction have been placed on record. As rightly noted by Ld. CIT(A), one of the similarly placed assessee i.e., Shri P. Ramamohan Rao filed 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, 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.

In the said case, that 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 has been dismissed by Hon'ble Court 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 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 let in on other reliable evidence to corroborate the same. In other words, as per the aforesaid decision, the statement of Shri K. Srinivasulu, on standalone basis, would lose its evidentiary value and AO has to rely on other reliable evidence to corroborate the same. In the present case before us, there is no other evidence with Ld. AO to support his allegations. The statement of Shri K. Srinivasulu, as held by Hon'ble Court, is to be ignored since that witness turned hostile and in

such a case, there was even no requirement to allow his cross-examination. Similarly, the Hon'ble Court in the case of M/s SRS Mining Vs UOI (141 Taxmann.com 272), at para 9, similarly observed that the statement of Shri K Srinivasulu could not be relied upon as he turned hostile by giving specific retraction statement and there was no need to accord permission to cross-examine him in view of the said reason. Considering these observations, it was to be held that the statement of Shri K. Srinivasulu could not be used against the assessee unless some other evidence to corroborate the same was made available on record. We find that no such material has been brought on record by Ld. AO to corroborate the same.

11. Finally, considering the entirety of facts and circumstances of the case, we concur with the adjudication of Ld. CIT(A) that the additions were made merely on the basis of dumb document which would not possess any stand-alone evidentiary value since it did not contain the complete particulars of the relevant transactions and the persons involved in the said transactions. The seized material did not contain complete information to facilitate drawing of such an inference as done by Ld. AO. There was no mention as to the nature of said transaction of cash payment, the purpose of such payment and precise identity of the assessee. Further, there was no mention in the seized material as to whether the payment was made to a particular person in his own right or it was paid 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 abbreviated names appeared therein and the said amount

represents the income of the said persons including the assessee. An entry made in the diary or notebook by a third-person with scant details could not be used to fasten the tax liability on the persons whose abbreviated name appears therein, in the absence of any corroborative evidence. Such seized material was liable to be treated as dumb document which would not have any evidentiary value in respect of entries found therein in the absence of corroborative evidence which can provide necessary reliable basis for deciphering the nature and character of the said entries. The addition made on the basis of such a dumb document could not be sustained. We concur with these observations of Ld. CIT(A).

12. For the sake of discussion, even if the statement of Shri K. Srinivasulu was to be considered, we find that the statement of Shri K. Srinivasulu do not directly implicate the assessee. He has only maintained the diary on the instructions of partners of M/s SRS Mining and his role is nothing more. The assessee has nowhere been named in the seized material. Therefore, the impugned additions would have no legs to stand.

13. It is trite law that no addition could be made merely on the basis of presumption, conjectures or surmises. The ratio of decision of Hon'ble Supreme Court in the case of **Common Cause vs. UOI (77 Taxmann.com 245)** would squarely apply to the facts of the case. The ratio of decision of Hon'ble Delhi High Court in the case of **CIT vs. Sant Lal (118 Taxmann.com 432)** would also apply wherein, in similar circumstances, it was held that the entries found from the premises of a third-party could not form the basis of addition when the revenue failed to

produce any other cogent material to link the assessee to the entries. We find that similar is the situation in the present case. Therefore, the conclusions drawn by Ld. CIT(A), in this regard, could not be faulted with.

14. In view of foregoing, the appeal of the revenue, for all the three years, stands dismissed.

15. The assessee, in its appeal, has taken a ground that Ld. CIT(A) has erred in upholding the assumption of jurisdiction by Ld. AO since AO had failed to record the necessary and valid satisfaction mandated u/s 153C. The submissions of Ld. AR are that Ld. AO of the assessee has not arrived at independent satisfaction and merely extracted the satisfaction note drawn by Ld. AO of searched person. Another argument assailing the assessment for AY 2015-16 is the 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.

We proceed to adjudicate the assessee's sole ground of appeal.

16. In the present case, it is undisputed fact that the AO of the present assessee has received satisfaction note from DCIT, Central Circle-2(4), Chennai vide AC-CC2(4)/153C/2021-22 on 15-07-2021 where the firm M/s SRS mining was assessed. 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., 15-07-2021 which falls within Assessment Year 2022-23. As per relevant statutory provisions of Sec.153A, Ld. AO would have jurisdiction u/s 153C to assess or reassess the total income of the assessee for 6 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 only from AY 2016-17 onwards and not before that. Therefore, respectfully following the aforesaid decision of Hon'ble Supreme Court, we would hold that assessment for AY 2015-16 was without jurisdiction. The same is accordingly liable to be quashed. We order so. The corresponding grounds raised in assessee's appeal for AY 2015-16 stands allowed.

17. Another legal argument of assessee for all the years is that there was no satisfaction drawn by Ld. AO of the assessee before assuming jurisdiction u/s 153C. In our opinion, Ld. AO was free to evaluate and adopt the satisfaction recorded by AO of searched person and could concur with the same. In the present case, satisfaction has been received by AO of the assessee on 15-07-2021 which is primarily derived from the statement of Shri K. Srinivasulu. The Ld. CIT(A), upon perusal of satisfaction note, observed that AO extracted all the entries in the seized material containing date wise details of amounts paid to a person who has been referred to as "HW" or "HW(M)" therein. Shri K. Srinivasulu from whose possession the said material was found and seized stated that the seized material contained entries regarding incidental expenses paid to various persons. It was stated by Shri K. Srinivasulu that the persons referred to as "HW" in the seized material was Highway Minister. Having regard to the fact that the assessee was Highway Minister in Govt. of Tamilnadu during the relevant period when the payments were made as per the seized material, Ld. AO arrived at

the inference in the satisfaction note that the assessee was in receipt of the payments as found noted in the seized material. The satisfaction required u/s 153C was in the nature of *prima-facie* satisfaction only and there was no requirement that the satisfaction was to be based on conclusive establishment of the fact that the seized material had bearing on the determination of total income of the assessee. We concur with the findings of Ld. CIT(A) as enumerated in preceding paras 5.2. & 5.3 of this order. In the present case, the inference drawn by the AO in the satisfaction note *prima-facie* arose from the contents of the seized material and the statement of Shri. K. Srinivasulu with regard to the said seized material. Since the statement of Shri K. Srinivasulu explained that the person referred to as "HW" in the seized material meant the 'Highways Minister' and since the assessee acted as Highways Minister during the relevant period, the same could be considered to be adequate reason for arriving at the *prima-facie* inference that the payments found noted against the person referred to as "HW" in the seized material have been received by the assessee though there was no specific mention in the statement of Shri K. Srinivasulu that the said payments were actually made to the assessee. Such a specific mention along with corroborative evidence to establish that the payments were actually made to the assessee would be required for conclusively proving that the assessee was in receipt of the said payments for the purpose of making assessment only. However, the same would not be required at the stage of recording of the satisfaction note for the purpose of assuming jurisdiction u/s 153C and *prima-facie* inference was all that was required at the relevant point of time. Accordingly, the other legal grounds as

urged by the assessee, in all the years, stands dismissed. We confirm the findings of Ld. CIT(A) in the impugned order, in this respect.

### **Conclusion**

18. Finally, all the appeals of the revenue stand dismissed. The appeal of the assessee for AY 2015-16 stands partly allowed. The appeals of the assessee for AYs 2016-17 & 2017-18 stands dismissed in terms of our above order.

*Order pronounced on 3<sup>rd</sup> April, 2024*

**Sd/-**  
**(V. DURGA RAO)**  
**न्यायिक सदस्य/JUDICIAL MEMBER**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखासदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 03-04-2024  
DS

### **आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

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