

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1527/Chny/2023
निर्धारण वर्ष/Assessment Year: 2014-15
&
Cross Objection No.13/Chny/2024
(in ITA No.1527/Chny/2023)
निर्धारण वर्ष/Assessment Year: 2014-15

The Asst. Commissioner – of Income Tax, Central Circle-1, Trichy.	v.	Shri Arunachalm Srinivasan, No.274-C, Turiyur Road, Perambalur-621 212, Tamil Nadu.
		[PAN: ARHPS 0482 Q]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent/Cross-Objector)
आयकर अपील सं./ITA No.1607/Chny/2023 निर्धारण वर्ष/Assessment Year: 2014-15		
Shri Arunachalm Srinivasan, No.274-C, Turiyur Road, Perambalur-621 212, Tamil Nadu.	v.	The Asst. Commissioner of Income Tax, Central Circle-1, Trichy.
		[PAN: ARHPS 0482 Q]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
Assessee by	:	Shri G. Baskar, Advocate & Shri P.M.Kathir, Advocate
Department by	:	Shri V. Nandakumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	06.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	31.05.2024



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आदेश / ORDER

PER ABY T. VARKEY, JM:

These are appeals preferred by the Revenue in ITA No.1527/Chny/2023 and by the assessee in ITA No.1607/Chny/2023 against the order of the Learned Commissioner of Income Tax (Appeals)-19 (hereinafter "Ld.CIT(A)"), Chennai-34, dated 27.10.2023 & 30.10.2023 for AY 2014-15. Cross Objection filed by the assessee in CO No.13/Chny/2025 for AY 2014-15 in ITA No.1527/Chny/2023.

2. At the outset, it is noted that the Revenue has challenged the action of the Ld.CIT(A) in holding that the AO did not have the power to usurp jurisdiction u/s.153C of the Income Tax Act, 1961, (hereinafter "the Act") in order to frame Assessment Order u/s.153C r.w.s.153A of the Act. The grounds of appeal raised by the Revenue are as under:

2. The Ld.CIT(A) erred in observing that the AO had passed the order u/s.153C without any valid satisfaction note and made addition without relying upon any incriminating material as mandated in the provision of Sec. 153C of the Act.

2.1 The CIT(A) erred in failing to appreciate that as per the provisions of Sec.153C w.e.f 01/04/2017, once the materials seized in the case of searched person have bearing on the determination of total income of other person, the issuance of notice for all six assessment years preceding the previous year in which search was conducted is mandatory. The Assessing officer had no option to choose any one of the assessment year based on the information in the seized material and issue notice for such assessment year only. He had to issue notice u/s.153C mandatorily for 6 assessment years.

2.2 The Ld.CIT(A) failed to appreciate that the satisfaction derived from the seized materials referred in the satisfaction note is only prima facie evidence for arriving satisfaction and initiating proceedings u/s.153C. But the AO had to



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examine and consider all the seized material while completing the assessment u/s.153C.

2.3 The Ld.CIT(A) failed to appreciate that the addition was made on the basis of materials seized vide annexure ANN/BVAK/KM/LOOSE/S- S.No.1 reflecting details of sale consideration paid by M/s.V.V Minerals for purchase of M/s.Dhanalakshmi Srinivasan Sugars Limited and the reference to seized material is clearly mentioned in the assessment order.

3. Brief facts relevant only for consideration of the legal issue are that the Revenue conducted a search on 15.02.2018 u/s.132 of the Act in the case of M/s. Dhanalakshmi Srinivasan Educational Trust; and during the search, according to the AO, certain incriminating material pertinent to the assessee, Shri A. Srinivasn [who was the Chairman of the Charitable Trust] was discovered. According to the AO, Shri A. Srinivasan/assessee was holding 80% of shares in M/s.Dhanalakshmi Sugars Ltd (a company incorporated on 03.08.2007 and hereinafter in short "M/s.DSL") and the remaining 28% of shares was held by P.Neelraj. According to the AO, M/s.DSL was sold to M/s.VV Minerals Group between June-July, 2013 for a total consideration of Rs.4,10,93,00,000/-. According to the AO, in this transaction there was on-money given to the assessee to the tune of Rs.37.50 Crs. and since, assessee was shareholder of 80% of M/s.DSL, he added a sum of Rs.30 Crs. (being 80% of Rs.37.50 Crs) in assessee's hand for AY 2014-15, treating the same to be his share of unaccounted income from the transaction.



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4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A), wherein, the assessee raised the legal issue of assumption of jurisdiction by the AO u/s.153C of the Act, qua assessee qua AY 2014-15 and also the consequent addition of Rs.30 Crs as bad in law for non-satisfaction of conditions precedent to usurp such a jurisdiction; and the Ld.CIT(A) was pleased to allow both the legal issues as well as on merits.

5. Aggrieved the Revenue is before us preferring ITA No.1527/Chny/2023; and assessee has preferred CO No.13/Chny/2024 supporting the action of the Ld.CIT(A) allowing the legal issues as well as on merits. And ITA No.1607/Chny/2023 is an appeal preferred by the assessee against the interest levied u/s 234A & 234B by AO u/s 154 of the Act.

6. Since the Revenue has assailed the impugned action of the Ld.CIT(A) on the legal issue of jurisdiction of the AO to issue notice u/s.153C of the Act for AY 2014-15, we are inclined to first adjudicate the legal issue because it questions the jurisdiction of Assessing Officer to invoke jurisdiction u/s.153C of the Act and to issue notice u/s.153C of the Act against the assessee for AY 2014-15. It has to be kept in mind that the special provision for proceedings u/s.153C of the Act is an off-shoot of section 153A of the Act which gets triggered only when search u/s.132 of



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the Act is carried out by the department against an assessee. So, in order to adjudicate the legal issue let us examine both the provisions (Section 153A & 153C), as it stood on the date of search 15.02.2018 on Dhanalakshmi Srinivasan Charitable & Educational Trust. It is to be taken note that even though we are at present considering the appeal for A.Y. 2014-15, nevertheless, since the search happened at M/s.Dhanalakshmi Srinivasan Charitable & Educational Trust on 15.02.2018 and the amendment made by Parliament as per Finance Act 2017 w.e.f. 01.04.2017 in the relevant provisions also applies and needs to be also considered.

7. The relevant provisions of section 153A and 153C of the Act are reproduced below:

153A. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall-

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause

(b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139; (b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years;



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Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years:

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless-

- (a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;
- (b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and
- (c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.-For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation 2.-For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from



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the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

Explanation.-For the removal of doubts, it is hereby declared that,-

(i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

153C. (1) Notwithstanding anything contained in section-139, section-147, section-148, section-149, section-151 and section-153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section-153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section-153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person 2[for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section-153A:

Provided that in case of such other person, the reference to the date of initiation of the search under section-132 or making of requisition under section-132A in the second proviso to sub-section (1) of section-153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years



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immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made 3[and for the relevant assessment year or years as referred to in sub-section (1) of section-153A] except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section-132 or requisition is made under section-132A and in respect of such assessment year—

- (a) no return of income has been furnished by such other person and no notice under sub-section (1) of section-142 has been issued to him, or
- (b) a return of income has been furnished by such other person but no notice under sub-section (2) of section-143 has been served and limitation of serving the notice under sub-section (2) of section-143 has expired, or
- (c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section-153A.

8. We note that Section 153A/153C of the Act was introduced by Finance Act, 2003 w.e.f. 1.6.2003. It replaced the provisions relating to block assessment contained in Chapter XIVB and introduced the new procedure for making assessment u/s. 153 of the Act, which is now a part of Chapter XIV of the Act, "Procedure for Assessment" and contains provisions from section 139 - 158A of the Act. The sub-heading of Section 153A of the Act is "Assessment in case of Search or requisition" which is a special provision for assessment in case of an assessee against whom search u/s. 132 or requisition under section 132A of the Act is carried out by the department; Section 153B of the Act prescribes the time limit for



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completion of assessment under section 153A and 153C of the Act; Section 153C of the Act bears the heading "Assessment of income of any other person" is a special provision in respect of assessment of income of "any other person" (third party) against whom no search u/s. 132 or requisition u/s. 132A of the Act was carried out provided certain condition precedents are satisfied as envisaged under section 153C of the Act; and section 153D of the Act is the provision regarding approvals if necessary for assessment in case of search or requisition. As earlier noted, section 153A of the Act is a special provision for assessment of an assessee in case of search or requisition in accordance to section 132 or 132A of the Act after the 31st day of May, 2003; and section 153C of the Act is a special provision for assessment of income of 'any other person' means a third party who is not searched by the department will be assessed u/s. 153A of the Act, provided the AO is satisfied that -

- a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or
- b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to a person other than the person referred to in section 153A.

9. So, from a reading of section 153A of the Act we note that where a search u/s. 132 of the Act or requisition under section 132A of the Act is made after the 31st day of May, 2003, the jurisdictional AO of the searched person gets power to issue notice to the searched person



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requiring him to furnish within such period as may be specified in the notice, return of income in respect of each assessment order falling within six assessment years and for the relevant assessment year or years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. However, during the search u/s. 132 or requisition under section 132A of the Act if it is found that any third party's money, bullion, jewellery or other valuable articles or things seized or requisitioned belongs to or any books of account or documents seized or requisitioned pertains to or any information contained therein relates to "other than the person" searched u/s. 153A of the Act, [i.e a third party in this case the 'assessee' foundation], then the AO of the searched person has to record his satisfaction that the money, bullion, jewellery or other valuable articles or things seized or requisitioned belongs to the other person (third party, the assessee foundation in this case) or any books of account or documents seized or requisitioned pertains to the other persons (third party, the assessee in this case) or any information contained therein relates to the other person (third party, the assessee in this case), then the AO of the searched person has to prepare a satisfaction note that during the search u/s. 132 of the Act of a person (Charitable Trust in this case), the search team has found/un-earthed money, bullion, jewellery or valuable articles or things,



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which were seized and the AO has found that among the such seized material, certain specific valuable article or thing belongs to a third party (other person as referred in section 153C of the Act who was not searched and in this case, the assessee) or books of account or documents seized contained information, pertained or relates to that of the other person (third party in this case the assessee), and for recording such a satisfaction note the AO of the searched person has to segregate the seized material of the other person (third party in this case the assessee) from that of the searched person (Charitable Trust); and then the AO of the searched person should examine the seized material and should be able to satisfy himself that the segregated seized assets belong to the third party (in this case that of the assessee) or books/documents/information, pertains or relates to the third party (in this case the assessee who was not covered by the search u/s. 132 of the Act) and thereafter prepare the "Satisfaction Note" and then he has to hand over the seized materials, which belongs/pertains/relates to the third party to the AO having jurisdiction over such other person (third party assessee in this case), then only the AO of such other person (third party, the assessee in this case) gets jurisdiction u/s. 153C of the Act to assess the income of other person (third party) as per section 153A of the Act. The rationale behind this exercise discussed (supra) will be explained



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(infra). And since it is a special provision against an assessee who has not been searched by the department, the safe-guard stipulated by the provisions contained in section 153A & 153C has to be scrupulously followed.

10. According to us, the aforesaid exercise which has been discussed has to be carried out by the AO of the searched person and the condition precedent as discussed are *sine qua non* before the AO of the other person (third party) gets jurisdiction u/s. 153C of the Act to issue notice u/s. 153C of the Act to the third party. However, it has to be taken note that an additional requirement/satisfaction of AO has been brought in Finance Act, 2014 w.e.f. 01.10.2014 which is an additional conditional precedent inserted by the Parliament which also need to be complied before the AO of the other persons (third party, the assessee in this case) before he issues notice to assess or reassess income of such "other persons". By this amendment in section 153C of the Act, the following part of the earlier provision/section has been substituted (pre-amendment) which reads "and that Assessing Office shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A". And this part of Section 153C was substituted by insertion by the Finance (No.2) Act, 2014 with the following amendment w.e.f



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01.10.2014 which reads "and that assessing officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person". [Emphasis given by us]

11. Thus, we note that by the aforesaid amendment brought in section 153C of the Act, the Parliament has stipulated another condition-precedent before the Assessing Officer of the third party, (i.e, the assessee in this case) can resort to issue notice u/s 153C read with 153A of the Act only when he (AO) is satisfied from a perusal of the books of account or documents or assets seized or requisitioned have a bearing in the determination of the total income of the such other person (third party, the assessee in this case) then he should proceed as per sec. 153C(2) of the Act and assess or reassess the total income of such other person, (the assessee in this case)in the manner provided in section 153A of the Act. So in this case before us, since the AO of the searched person as well as that of the other/third party/assessee are the same, he/AO of assessee can issue notice u/s 153C of the Act only after satisfaction of this condition precedent also in addition to the requirement



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of Satisfaction of searched person of AO as discussed supra. [Emphasis given by us]

12. The rationale behind the exercise to be carried out by the AO as discussed in Para 6 (supra) is because, the special provision for persons who are subjected to search u/s. 132 of the Act, would be triggered only against the searched party u/s. 153A of the Act and if any valuables of a third party is found in the searched premises which belongs or books/documents pertain/relate to a third party is found, then third party's assessment for six years and for relevant AY's would be subject to assessment/re-assessment as per section 153C of the Act, so the safeguards prescribed by the statute has to be scrupulously followed. Therefore, it has to be kept in mind that satisfaction of AO before proceeding against a person like assessee which has not been searched cannot be done in a casual manner. The satisfaction of Assessing Officer should be based upon cogent material. The reason for it is that section 132(4A)(i) of the Act clearly stipulates that when inter alia any document is found in the possession or control of any person in the course of a search, it may be presumed that such document belongs to such person (the searched person). The presumption as to asset, books of accounts, etc. is governed by section 292C(1)(i) of the Act belong or belongs to the person from whom said assets/documents were found during the course



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of search u/s. 132 or survey u/s. 133A of the Act. In other words, whenever an asset/ document is found from a person who is being searched, the normal presumption is that the said asset/document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or 'satisfaction' that the asset/document in fact belongs/pertains/relates to somebody else (third party like assessee in this case). There must be some cogent material available which was unearthed during search with the Assessing Officer before he/she arrives at the satisfaction that the seized asset/document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of 'satisfaction' and the same interpretation has been given by various Hon'ble courts. [refer 55 [2019] taxmann.com 202 (Gujarat) PCIT v. Himanshu Chandulal Patel (Para 20, 21)].

13. It is noted from the scheme of the Act u/s. 153A of the Act, the Assessing Officer gets jurisdiction to assess six assessment years prior to the previous year on which search is conducted. The assessment under section 153A of the Act can be broadly divided in two categories, one is in respect of "completed assessment" on the date of search by the AO already made under section 143(3)/147/153A/153C and will also cover those years which period of notice u/s. 143(2) of the Act has expired and



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only processing of return u/s. 143(1) of the Act has been made. The second category "Pending Assessment" is related to the years for which the assessments are pending before the AO on the date of search meaning notices have been issued by the AO u/s. 143(2)/ 148 have been issued. For determining the abated/unabated assessment the date of search is significant since as per second proviso to Section 153A of the Act, if any, assessment year falling within the period of six assessment years of an assessee who has been subjected to search are pending before the AO on the date of search, then the assessment for those years need to be treated as abated and the AO is at liberty to frame assessment or reassessment. In other words, it is open to the AO to complete the assessment by verifying the contents of the original return as well as the income unearthed out of the incriminating material/documents seized from search conducted on the assessee. However, on the date of search, assessment years are not pending before the AO [i.e. in case where the searched assessee's assessments are completed u/s. 143(3) or 148 or 153A/153C of the Act or if the mandatory scrutiny assessment notices u/s. 143(2) of the Act has become time barred], then those assessment years to be treated as un-abated assessment and by virtue of second proviso to section 153A(1) of the Act, assessment u/s. 153A or 153C has to be essentially based on the documents unearthed during the course of



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search and seizure operations. Then, the assessment under section 153A and under section 153C of the Act can be made only by considering the incriminating material found/unearthed during search. For this proposition we rely on the judgment of Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla in ITA 707/2014 dated 28.08.2015 wherein it has held as under:

"Summary of the legal position

37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.



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vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

14. And it is noted that the department preferred an S.L.P against the aforesaid order, which has been dismissed by the Hon'ble Supreme Court. And the ratio of the decision has been upheld by the Hon'ble Supreme Court recently in the case of **M/s.Abhisar Buildwell**. And, when it comes to assessment of third party u/s. 153C of the Act [like assessee in this case], the concept of unabated /abated assessment are mutatis mutandis. However, only difference is when the assessment/reassessment has to be made invoking section 153C of the Act, then even though assessment /reassessment has to be carried out u/s. 153A of the Act, however, by virtue of the first proviso to section 153C by operation of law reference to the date of initiation of the search u/s. 132 of the Act or making of requisition u/s. 132A of the Act in the second proviso to sub-section (1) of section 153A shall be considered as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the AO having jurisdiction over such other person. For this, we rely on the decision of the Hon'ble Delhi High



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Court in the case of CIT Vs. RRJ Securities Ltd. (2015) 62 taxmann.Com
391 (Delhi), wherein the Hon'ble Delhi High Court held as under:

"1. As discussed hereinbefore, once the AO of the searched person is satisfied that the seized assets/documents belong to another person and the said assets/documents have been transferred to the AO of such other person, the proceedings for assessment/reassessment of income of the other person has to proceed in accordance with provisions of Section 153A of the Act. Section 153A requires that where a search has been initiated under Section 132 of the Act, the AO is required to issue notice requiring the notice to furnish returns of income in respect of six assessment years relevant to the six previous years preceding the previous year in which the search is conducted. As discussed hereinbefore, by virtue of second proviso to Section 153A, the assessment/reassessment pending on the date of initiation of search abate. In the context of proceedings under Section 153C of the Act, the reference to the date of initiation of the search in the second proviso to Section 153A has to be construed as the date on which the AO receives the documents or assets from the AO of the searched person. Thus, by virtue of second proviso to Section 153A of the Act as it applies to proceedings under Section 153C of the Act, the assessment/reassessment pending on the date on which the assets/documents are received by the AO would abate. In respect of such assessments which have abated, the AO would have the jurisdiction to proceed and make an assessment. However, in respect of concluded assessments, the AO would assume jurisdiction to reassess provided that the assets/documents received by the AO represent or indicate any undisclosed income or possibility of any income that may have remained undisclosed in the relevant assessment years. This Court in CIT v. Kabul Chawla [2015] 61 taxmann.com 412 (Delhi) has held that completed assessments could only be interfered with by the AO on the basis of any incriminating material unearthed during the course of the search or requisition of the documents. In absence of any incriminating material, the AO does not have any jurisdiction to interfere in concluded assessments. This Court had summarized the legal position in respect of Section 153A of the Act as under:—

'37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

- i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.
- ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.



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iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.'

22. The aforesaid principles would be equally applicable to proceedings initiated under Section 153C of the Act as Section 153C(1) of the Act expressly provides that once the AO has received "money, bullion, jewellery or other valuable articles or thing or books of account or documents seized" from the AO of the searched person, he would proceed to assess or reassess the income of the person to whom such assets/books belong in accordance with Section 153A of the Act.

23. In the present case, the Assessee had claimed that the assessments for the concerned assessment years were not pending on the date of recording of satisfaction by the AO and, therefore, would not abate by virtue of the second proviso to Section 153A of the Act. Further, the period of six years would also have to be reckoned with respect to the date of recording of satisfaction note – that is, 8th September, 2010 – and not the date of search. (Emphasis supplied)."



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15. So as noted in this case before us, the date of 'satisfaction note' prepared by the AO u/s 153C of the Act is not dated (but since notice u/s.153C was first issued on 27.08.2019, it is presumed to be date of receipt of satisfaction, and even though the search has been conducted in respect of Charitable Trust (searched person) on 15.02.2018 (AY 2018-19) by virtue of first proviso to section 153C of the Act, the satisfaction note the AO has recorded for satisfying himself that "the other persons" (third party i.e. the assessee in this case) assets/documents belongs/pertains to the other persons (third party) was made on 27.08.2019 (AY 2020-21) and this date has to be reckoned for the purpose of assessment u/s. 153A for determining the total income for six assessment years preceding the AY 2020-21. In this assessment year i.e. AY 2014-15 it is undisputed that this assessment year was not pending before the AO on the date when the *satisfaction note* was prepared by the Assessing Officer i.e. 27.08.2019, then the assessment year i.e. AY 2014-15 needs to be treated as non-abated / non-pending assessment and then any addition/disallowance u/s.153C read with sec. 153A/143(3) of the Act can be made only on the basis of incriminating material unearthed during search qua the assessee (third party) qua the assessment year as held by the Hon'ble Calcutta High Court in the case of CIT Vs. Veeraprabhu Marketing Ltd. (2016) 73 taxman.com (Cal) as under:



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"1. The subject matter of challenge is a judgment and order dated December 28, 2007 by which the learned Income Tax Appellate Tribunal, "E" Bench, Kolkata, in CIT v. Veerprabhu Marketing Ltd. ITA Nos.2172 and 2174/Kol/2006, pertaining to the assessment years 1998-99 and 1999-2000, and I.T.(SS) A. Nos.61-63/Kol/2007, pertaining to the assessment years 2001-02, 2002-03 and 2003-04, allowed the appeals preferred by the assessee.

The aggrieved revenue has come up in appeal.

.....

2. Mr. Jain, learned Advocate appearing for the assessee, submitted as follows:

(a) The assessment under section 153C read with section 153A read with section 144 of the Income Tax Act was altogether without jurisdiction because such assessment was made for all the five years on the basis of survey conducted under section 133A of the Income Tax Act. He submitted that the power under section 153C read with section 153A cannot be exercised on the basis of any discovery made during survey under section 133A.

(b) His next submission was that in any event, during the survey, no incriminating material was found which may have led the revenue to exercise power under section 153C read with section 153A.

4. He contended that even when assessment is made on the basis of a search under section 132 or a requisition made under section 132A, the power can only be resorted to provided any incriminating material is found. Existence of incriminating material is necessary before exercising power under the aforesaid sections. He, in support of his submission, relied upon the words "have a bearing on the determination of the total income of such other person". If the search or requisition did not unearth any incriminating material, the search or requisition was futile and can have no bearing on the determination of the total income of such other person. There shall thus be no occasion for exercise of power under section 153C. He, however, added that the portion which he relied upon from section 153C is of a recent origin which was not there in the statute at the relevant point of time and has been introduced with effect from 1st June, 2015. He however contended that Karnataka High Court is of the opinion that even without these expressions 'incriminating material' was the sine qua non for exercise of power under section 153C read with section 153A.

5. He relied upon the following views expressed in paragraph 50 of the judgment in the case of CIT v. IBC Knowledge Park (P.) Ltd. [2016] 69 taxmann.com 108 (Kar.):-

"Materials such as books of account, documents or valuable assets found during a search should belong to a third party which would lead to an inference of undisclosed income of such third party. Such an inference should be recorded by the Assessing Officer having jurisdiction over the searched persons and communicated to the Assessing Officer having jurisdiction over such third party along with the seized documents and other incriminating materials on the basis of which the Assessing Officer having jurisdiction over such third party would issue notice under Section 153C. On receipt of the aforesaid material, the Assessing Officer having jurisdiction over such third party would proceed against the said third party. Thus, where no material belonging to a third party is found during a search, but only an inference of an undisclosed income is drawn during the course of enquiry, during search or during post-search enquiry, Section 153C would have no application. Thus, the detection of incriminating material leading to an inference of undisclosed income is a sine qua non for invocation of Section 153C of the Act."



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7. With respect to the second submission advanced by Mr. Jain, we called upon Mr. Nizamuddin in vain to show us the incriminating material, if any, found either during the search or during the requisition or even during the survey which is or may be relatable to the assessee. Mr. Nizamuddin as unable to show that any such incriminating material was unearthed at any of the three stages pertaining to the assessee.

8. We are in agreement with the views expressed by the Karnataka High Court that incriminating material is a pre-requisite before power could have been exercised under section 153C read with section 153A.

9. In the case before us, the assessing officer has made disallowances of the expenditure, which were already disclosed, for one reason or the other. But such disallowances were not contemplated by the provisions contained under section 153C read with section 153A. The disallowances made by the assessing officer were upheld by the CIT(A) but the learned Tribunal deleted those disallowances.

10. We find no infirmity in the aforesaid act of the learned Tribunal. The appeal is, therefore, dismissed.”(emphasis supplied)

16. In the light of the aforesaid discussion and case laws let us examine the legal issue raised before us. In order to test the validity of the jurisdiction of AO to legally usurp the jurisdiction u/s. 153C against a third party who has not been searched as well as to test whether Assessing Officer satisfied the condition-precedent before issue of notice u/s.153A read with Section 153C of the Act, we need to examine the ‘satisfaction note’ recorded by the AO dated 27.08.2019 which is reproduced as under:

6.5.8 The AO at Col 7 of the satisfaction note has narrated the following:-

1. Cash amounting to Rs.9,09,300/- was found in the residential premises of Shri. A. Srinivasan. In his sworn statement. Shri. A. Srinivasan failed to explain the source of the cash found with evidences for an amount of Rs.7,50,000/-

2. Loose sheets were seized vide annexure ANN/SM/DS/LS/S-1 dated 15.02.2018. The loose sheet contents the P&L statement of M/s. Dhanalakshmi Srinivasan Chit Funds P Lid for F. Y 2015-16 and 2016-17. On verification of return salary was not offered for taxation.



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I am satisfied that the seized material of books and documents vide Annexure ANN/SM/DS/LS/S-1 dated 15.02.2018 has bearing in determining true and correct income of the assessee.

In view of the above, notice u/s. 153C r.w.s 153A of the Income Tax Act, 1961 has to be issued."

and further the AO at Col.8 of the satisfaction note has described the assessment years involved to be AY 2012-13 to 2018-19.

17. It has to be kept in mind that when the challenge is to the validity of the satisfaction note which the AO has recorded to assume jurisdiction, we have to examine the satisfaction recorded as it is. There are case laws which throws light in the context of examining the legal validity of Satisfaction recorded by the AO while re-opening the assessment u/s. 147 of the Act. It is settled law that reasons as recorded for reopening the reassessment are to be examined on a 'stand-alone' basis. Neither anything can be added to the reasons so recorded nor any thing can be deleted from the reasons so recorded. The Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. (2004) 268 ITR 332 have, inter alia, held "it is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No addition can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded by him. He has to speak through the reasons." Their Lordships added that " the reason recorded should be self explanatory and should not keep the assessee guessing for reasons. Reasons provided the link between the conclusion and the



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evidence.....". Therefore, reasons are to be examined only on the basis of reasons as recorded by the AO. This analogy/ratio decidendi of the Hon'ble High court is applicable to the 'Satisfaction-Note' prepared by the AO when he recorded his satisfaction note in respect of a third person (assessee in this case) against whom he/AO proposed to invoke the special provision and issue notice under section 153C of the Act. For that the AO of the searched person (Charitable Trust in this case) is duty bound to record his satisfaction that during search conducted on those persons, the third party (assessee's) assets which belongs to it (assessee) or documents, pertained/relates to the third party/ other person/assessee as envisaged in section 153C of the Act was seized; and therefore there is a need to proceed against the said party (assessee in this case). And that the Satisfaction Note spelling out these facts are *sine qua non* for usurping the jurisdiction u/s. 153C of the Act; and an additional condition precedent is also required to be satisfied by the AO of the assessee w.e.f. 01.10.2014 which has been discussed (supra) by virtue of Finance Act, 2014, (refer para 8 supra). The AO of the assessee before issuing notice u/s. 153C of the Act should also record the additional-satisfaction that the assets/documents seized from the searched person, belong/pertains/relates to the assessee and have a bearing on the



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determination of the total income of the assessee. [Emphasis given by us].

18. So we have to examine the materials pointed out by the AO in his satisfaction note dated 27.08.2019 (supra) which are discussed below with the help of chart, which will give clarity as to whether there was any incriminating material seized during search in Charitable Trust against the assessee qua the AY 2014-15.

19. We will discuss each document seized during search which according to AO is incriminating against the Assessee qua AY 2014-15. And against each such document, we will give our finding of fact whether these documents can be termed as incriminating material against the Assessee qua AY 2014-15.

Sl.No.	Document Seized	Our finding of fact on the assessee's explanation in respect of the document seized
1.	Cash amounting to Rs.9,09,300/- found in the residential premise of Shri Srinivasan	Rs.9,09,300/- was found and seized from the residential premise of the assessee during search on 05.11.2019 which relates to AY 2020-21 and therefore, not relevant for assessment of AY 2014-15, and therefore cannot be termed as 'incriminating qua assessee qua AY 2014-15
2	Loosesheets marked as Annexure ANN/SM/DS/LS/S-1 dated 15.02.2018	We note that the AO himself admits in Satisfaction Note itself that contents of this loose-sheet are P&L A/c statement of M/s.Dhanalakshmi Srinivasan Chits Pvt. Ltd., for FY 2015-16 & 2016-17. Therefore, we find that Annexure ANN/SM/DS/LS/S-1 cannot be termed as an incriminating material qua assessee qua AY 2014-15.



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20. From a perusal of the aforesaid finding of fact it can be seen that the cash/loose sheet referred supra are in no way related to AY 2014-15 and so it cannot be termed as incriminating material for AY 2014-15. Since there was no incriminating material/jurisdictional fact stated in the Satisfaction Note against the assessee qua AY 2014-15, the satisfaction note prepared by the AO does not satisfy the requirement of law as stipulated u/s. 153C of the Act; and since the legal requirement has not been met in the "satisfaction note" recorded by the AO, the very assumption of the jurisdiction for AY 2014-15 is bad in the eyes of law as held by the Hon'ble Supreme Court in the case of CIT Vs. Singhad Technical Education Society 397 ITR 344 (SC) and, therefore, we hold that AO without requisite jurisdiction usurped jurisdiction u/s 153C to assess for AY 2014-15, which is bad in law. We note that the Hon'ble Apex Court in the case of Singhad Technical Education Society (supra) had passed the judgment with specific reference to the invocation of jurisdiction u/s. 153C, and while doing so their Lordship has upheld the decision of the Hon'ble Bombay High Court in CIT Vs. Singhad Technical Education Society (2015) 63 taxmann. Com 14/235 Taxman 163 (Bom) wherein the Hon'ble Supreme Court observed as under;-

"6. The tribunal has found that incriminating material seized and stated to be pertaining to all six assessment years did not establish any co-relation document-wise with the assessment year in question. In other words, the tribunal concluded that the present matter indicates that the issue of notice could be on the basis



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that there is specific incriminating information in possession of the Assessing Officer. It is in these circumstances that the tribunal found and as indicated in paragraph 8 of the impugned order that the revenue's assertion that the Assessing Officer is empowered under the statute to assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted and therefore the satisfaction which is recorded in the satisfaction note is enough, is erroneous. Therefore, the notice cannot be upheld and such stand of the revenue cannot be accepted. The reasons, therefore are to be found in paragraph 9 and 10 of the impugned order. If certain items pertain to assessment year 2004-05 or thereafter then it cannot be assumed, that the documents seized or incriminating material giving information are specific and to all assessment years. The tribunal found that they were concluded assessments. They could not have been disturbed. The documents in question are neither incriminating ones nor unaccounted transactions of the assessee. They also did not relate to the four assessment years. It is in these circumstances that the tribunal found that it will not be possible to uphold the stand of the revenue that overall approach in matters of concealment by the group assessee and all the discoveries of the search on Shri Navale and it concerns, will have to be taken into account while forming the satisfaction. The satisfaction note was very closely examined and the reasons assigned by the Assessing Officer were found to be silent about the assessment year in which specific incriminating information or unaccounted or undisclosed hidden information was discovered or seized by the revenue from the assessee. In the circumstances, the general satisfaction and as recorded in the note is not enough. The tribunal has found that with regard to cash and jewellery, the explanation of the assessee was that he had agricultural properties and derived agricultural income. That income was utilised to acquire jewellery that was belonging to him and his family. With regard to cash and stated to be recovered from the students for granting admissions, we do not find that any inquiries were made. There is absolutely nothing to indicate as to in which educational courses, the education is imparted and institution-wise. Whether the admissions are granted to the technical courses merit-wise or on the basis of marks obtained in XIIth standard HSC exam. If any fee structure is approved and cash component is therefore collected over and above the sanctioned fees are matters which ought to have been gone into and there cannot be a general or vague satisfaction as is relied upon.

9. We are of the opinion that the tribunal's conclusion cannot be termed as perverse and given the above-noted factual background. None of these appeals raises any substantial question of law. They are accordingly dismissed. No costs."

21. And the aforesaid finding of Hon'ble High Court has been affirmed by the Hon'ble Supreme Court by observing as under:

18. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the



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provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges there from is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.

19. We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy.” (Emphasis supplied)

22. In the light of the binding judicial precedent of Hon’ble Apex Court (supra), and having found that ‘Satisfaction Note’ prepared by the AO to invoke jurisdiction u/s 153C of the Act for AY 2014-15 does not satisfy the requirement of law as stipulated u/s. 153C of the Act, the very assumption of the jurisdiction u/s 153C of the Act for assessment of AY 2014-15 is held to be bad in the eyes of law as rightly held by the Ld CIT(A), which impugned action is confirmed and Revenue Appeal stands dismissed. And since we have concurred with the impugned action of Ld CIT(A) on the legal issue (supra), the other grounds raised by Revenue on merits are academic and doesn’t deserve adjudication.



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CO No.13/Chny/2024:

23. Cross-objection filed by the assessee is only supporting the decision of Ld.CIT(A), which we have upheld; and hence, it is infructuous and is dismissed.

ITA No.1607/Chny/2023 for AY 2014-15:

24. This is an assessee's appeal challenging the action of the Ld.CIT(A) dated 30.10.2023 for AY 2014-15 confirming the action of AO passed u/s.154 of the Act dated 21.01.2022, wherein, the AO rectified the assessment order passed on 19.12.2019 u/s. 153C of the Act.

25. Since, we held (supra) that the AO didn't had the jurisdiction to invoke jurisdiction u/s.153C of the Act for AY 2014-15 and consequently, the assessment order dated 19.12.2019 is null/non-est in eyes of law; and the AO had rectified the assessment order dated 19.12.2019, exercising his power u/s 154 of the Act, making impugned adjustments u/s 234A/B of the Act, the additions made are also non-est in eyes of law, because, the case of assessee is squarely covered by the legal maxim "*sublato Fundmento Credit opus*" meaning in case a foundation is removed, the super-structure falls. In Badarinath v. Tamil Nadu AIR 2000 SC 3243, the Hon'ble Supreme Court held that once the basis of proceedings is gone, all consequential orders & acts would fall on the ground automatically which is applicable to judicial and quasi judicial



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proceedings. Therefore, it is held that the order of AO passed u/s.154 of the Act dated 21.01.2022 is also null/non-est in the eyes of law.

26. In the result, appeal filed by the Revenue for AY 2014-15 in ITA No.1527/Chny/2023 is dismissed; and Cross Objection filed by the assessee in CO No.13/Chny/2024 for AY 2014-15 is dismissed; and appeal filed by the Assessee in ITA No.1607/Chny/2023 for AY 2014-15 is allowed.

Order pronounced on the 31st day of May, 2024, in Chennai.

Sd/-

(एस. आर. रघुनाथा)

(S.R.RAGHUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 31st May, 2024.

TLN, Sr.PS

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्डफाईल/GF