

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE
SHRI G.S PANNU, HON'BLE VICE PRESIDENT
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA Nos. 1703 &1704/DEL/2024
Asstt. Years 2011-12 & 2012-13

Samant Jerath G-1, Green Park, New Delhi – 110 016 PAN AADPJ3649K	Vs.	ACIT, Central Circle-16, New Delhi.
(Appellant)		(Respondent)

Assessee by:	Dr. Rakesh Gupta, Advocate Shri Deepesh Garg, Advocate
Department by:	Shri Ram Dhan Meena, Sr. DR
Date of Hearing:	20.06.2024
Date of pronouncement:	12.07.2024

ORDER

PER VIMAL KUMAR, JM

The assessee's appeals are against orders dated 19.3.2024 of the Learned Commissioner of Income Tax (Appeals) [hereinafter referred as "Learned CIT(A)"] dismissing the appeals arising out of assessment orders dated 26.12.2022 of the Learned Assistant Commissioner of Income Tax (hereinafter referred as "Learned AO") assessing incomes of AYs. 2011-12 and 2012-13 as Rs. 1,86,78,520/- and Rs. 2,93,49,503/- respectively.

2. Brief facts of the case are that search under section 132 of the Income Tax Act was conducted in the case of Rakesh Jain

Group on 2.11.2017. Shri Prahlad Kumar Aggarwal was also covered under search operation. During the search of Shri Prahlad Kumar Aggarwal certain documents pertaining to Shri Samant Jerath were found. The Assessing Officer of Shri Prahlad Kumar Aggarwal had recorded his satisfaction dated 24.9.2021 and handed over the seized material to the Learned AO of appellant / assessee. The seized material were perused and arriving at satisfaction that the information contained in seized documents pertained to assessee and have a bearing on determination of income of assessee recorded satisfaction note on 24.3.2022. Notice under section 153C was issued on 29.3.2022. Notices under section 142(1) of the Income Tax Act, 1961 were issued on 26.10.2022 and along with questionnaire dated 24.11.2022. Thereafter vide assessments order dated 26.12.2022 for AY 2011-12 and 2012-13 were completed at an income of Rs. 1,86,78,520/- and Rs. 2,93,49,503/- respectively.

3. Being aggrieved appellant/assessee preferred present appeals.

4. Learned AR for the appellant/assessee submitted assessment years involved are AYs 2011-12 & 2012-13 and impugned years could not be taken up for the assessment under section 153C. Date of satisfaction note was 24.09.2021 and handed over date is also the same which was 01.04.2021 to 31.03.2022 and was beyond the period of 10 years. Reference to judgment dated 3.4.2024 of Hon'ble Court of Delhi in ITA No. 52/2024 titled as the Principal Commissioner of Income Tax Central-1 vs. Ojjus Medicare Pvt. Ltd. was made.

5. Learned Authorised Representative for department of revenue submitted that impugned orders are legal.

6. From examination of record it is crystal clear that no search was conducted on appellant/assessee. On 2.11.2017, during search of Shri Prahlad Kumar Aggarwal documents pertaining to Samant Jerath appellant/assessee were found. The Assessing Officer of searched persons recorded satisfaction dated 24.09.2021 and handed seized material to Learned AO of appellant/assessee. After perusal of seized material Learned AO of appellant/assessee recorded a satisfaction note on 24.3.2022 that information contained in seized documents pertained to assessee had bearing on determination of total income of assessee. Notice under section 153C was issued to assessee on 29.3.2022. Thereafter vide assessments order dated 26.12.2022 for AY 2011-12 and 2012-13 were completed at an income of Rs. 1,86,78,520/- and Rs. 2,93,49,503/- respectively.

7. Hon'ble High Court of Delhi in ITA 52/2024 titled as the Principal Commissioner of Income Tax Central-1 vs. Ojjus Medicare Pvt. Ltd. decided on 3.4.2024 has held as under:-

"86. In the present batch, List I pertains to writ petitions which have Satisfaction Notes recorded or Section 153C notices issued between the period 01 April 2021 to 31 March 2022. Undisputedly, the First Proviso to Section 153C, and which has been consistently recognized to also embody the commencement point for reckoning the six or the ten AYs', shifts the relevant date from the date of initiation of search or a requisition made to the date of receipt of books of account or documents and assets seized by the jurisdictional AO of the non searched person. Consequently, the block of six or ten AYs' would have to be reckoned bearing the aforesaid date in mind. Although in the present batch of writ petitions, the date of actual handing over has not been explicitly mentioned in a majority of the writ petitions, learned counsels for respective sides had addressed submissions based on the assumption that it would be the date of issuance of the Satisfaction Note by the AO of the non-searched person and in the case of nonavailability of such a note, the date of issuance of the Section

153C notices which would be pertinent for the purposes of the First Proviso to Section 153C.

87. Assuming, therefore, that the handover of material gathered in the course of the search and pertaining to the non-searched person occurred between 01 April 2021 to 31 March 2022, the same would essentially constitute FY 2021-22 as being the previous year of search for the purposes of the non-searched entity. As a necessary corollary, the relevant AY would become AY 2022-23. AY 2022-23 would thus constitute the starting point for the purposes of identifying the six years which are spoken of in Section 153C. The six AYs' are envisaged to be those which immediately precede the AY so identified with reference to the previous year of search. It would thus lead us to conclude that it would be the six AYs' immediately preceding AY 2022-23 which could have formed the basis for initiation of action under Section 153C. Consequently, and reckoned backward, the six relevant AYs' would be:-

Computation of the six-year block period as provided under Section 153C of the Act	No. of years
AY 2021-22	1
AY 2020-21	2
AY 2019-20	3
AY 2018-19	4
AY 2017-18	5
AY 2016-17	6

Consequently, AY 2021-22 would become the first of the six preceding AYs' and would as per the table set out hereinabove terminate at AY 2016-17.

88. Section 153A replicates the basis on which the six AYs' are to be identified and computed with the solitary distinction being that in the case of the searched person, the six AYs' are liable to be computed from the AY pertaining to the FY in which the search was conducted. The starting point for the purposes of identifying the six AYs' in the case of Section 153A would thus turn upon the year of search as opposed to the handover of material which is spoken of in the First Proviso to Section 153C. If one were to therefore assume that a search took place on a person between 01 April 2021 to 31 March 2022, the pertinent AY would become AY 2022-23 and the corresponding six AYs' would be as follows:-

Computation of the six-year block period as provided under Section 153C of the Act	No. of years
AY 2021-22	1
AY 2020-21	2
AY 2019-20	3
AY 2018-19	4
AY 2017-18	5
AY 2016-17	6

89. That takes us then to the issue of identifying the “relevant assessment year” for the purposes of computing the ten year block. Explanation 1 to Section 153A specifies the manner in which the entire ten AY period is to be computed. While the computation of six AYs’ follows the position as enunciated and identified above, Explanation 1 prescribes that the ten AYs’ would have to be computed from the end of the AY relevant to the FY in which the search was conducted or requisition made. The ten AY period consequently is to be reckoned from the end of the AY pertaining to the previous year in which the search was conducted as distinct from the preceding year which is spoken of in the case of the six relevant AYs’.

90. Viewed in that light, and while keeping the period of 01 April 2021 to 31 March 2022 as the constant, the relevant AY would be AY 2022-23. The ten AYs’ would have to be computed from 31 March 2023 with the said date indubitably constituting the end of the AY relevant to the previous year of search. Viewed in light of the above, the block period of 10 AYs’ would be as follows:-

Computation of the ten-year block period as provided under Section 153C read with Section 153A of the Act	No. of years
AY 2022-23	1
AY 2021-22	2
AY 2020-21	3
AY 2019-20	4
AY 2018-19	5
AY 2017-18	6
AY 2016-17	7
AY 2015-16	8
AY 2014-15	9
AY 2013-14	10

91. Tested on the aforesaid precepts, it would be manifest that AY 2022-23 would form the first year of the block of ten AYs’ and with the maximum period of ten AYs’ terminating in AY 2013-14. We, in this regard also bear in consideration the following instructive passages as appearing in the decision handed down by a learned Judge of the Madras High Court in A.R. Safiullah. We deem it appropriate to extract the following paragraphs from that decision:-

“9. Explanation-1 is clear as to the manner of computation of the ten assessment years. It clearly and firmly fixes the starting point. It is the end of the assessment year relevant to the previous year in which search is conducted or requisition is made. There cannot be any doubt that since search was made in this case on 10.04.2018, the assessment year is 2019-20. The end of the assessment year 2019-20 is 31.03.2020. The computation of ten years has to run backwards from the said date ie., 31.03.2020. The first year will of course be the search assessment year itself. In that event, the ten assessment years will be as follows :

1st Year	2019-20
2nd Year	2018-19
3rd Year	2017-18
4th Year	2016-17
5th Year	2015-16
6th Year	2014-15
7th Year	2013-14
8th Year	2012-13
9th Year	2011-12
10th Year	2010-11

The case on hand pertains to AY 2009-10. It is obviously beyond the ten year outer ceiling limit prescribed by the statute. The terminal point is the tenth year calculated from the end of the assessment year relevant to the previous year in which search is conducted. The long arm of the law can go up to this terminal point and not one day beyond. When the statute is clear and admits of no ambiguity, it has to be strictly construed and there is no scope for looking to the explanatory notes appended to statute or circular issued by the department.

10. In the case on hand, the statute has prescribed one mode of computing the six years and another mode for computing the ten years. Section 153A(1)(b) states that the assessing officer shall assess or reassess the total income of six years immediately preceding the assessment year relevant to the previous year in which search is conducted. Applying this yardstick, the six years would go up to 2013-14. The search assessment year, namely, 2019-20 has to be excluded. This is because, the statute talks of the six years preceding the search assessment year. But, while computing the ten assessment years, the starting point has to be the end of the search assessment year. In other words, search assessment year has to be including in the latter case. It is not for me to fathom the wisdom of the parliament. I cannot assume that the amendment introduced by the Finance Act, 2017 intended to bring in four more years over and above the six years already provided within the scope of the provision. When the law has prescribed a particular length, it is not for the court to stretch it. Plasticity is the new mantra in neuroscience, thanks to the teachings of Norman Doidge. It implies that contrary to settled wisdom, even brain structure can be changed. But not so when it comes to a provision in a taxing statute that is free of ambiguity. Such a provision cannot be elastically construed.

11. One other contention urged by the standing counsel has to be dealt with. It is pointed out that the petitioner has invoked the writ jurisdiction at the notice stage. Since the petitioner has demonstrated that the subject assessment year lies beyond the ambit of the provision, the respondent has no jurisdiction to issue the impugned notice. Once lack of jurisdiction has been established, the maintainability of the writ petition cannot be in doubt."

In our considered opinion, the decision in A.R. Safiullah correctly expounds the legal position and the interpretation liable to be accorded to the identification of the ten AYs' which are spoken of in Sections 153A and 153C.

92. List II, forming part of this batch pertains to cases where Satisfaction Notes of the AO of the non-searched person were drawn between the period 01 April 2022 to 31 March 2023 and 01 April 2023 to 31 March 2024. Tested on the principles enunciated by us in the preceding passages of this judgment, we come to the conclusion that the relevant six AYs' would comprise the following years, when computed for the period 01 April 2022 to 31 March 2023:-

Computation of the six-year block period as provided under Section 153C of the Act	No. of years
AY 2022-23	1
AY 2021-22	2
AY 2020-21	3
AY 2019-20	4
AY 2018-19	5
AY 2017-18	6

93. The relevant block of six AYs' when computed for the period of 01 April 2023 to 31 March 2024 would be the following:

Computation of the six-year block period as provided under Section 153C of the Act	No. of years
AY 2023-24	1
AY 2022-23	2
AY 2021-22	3
AY 2020-21	4
AY 2019-20	5
AY 2018-19	6

94. Similarly, and in light of what has been held by us hereinabove, the relevant block of ten AYs' when computed for the period 01 April 2022 – 31 March 2023, and where the Satisfaction Note was drawn by the AO of the non-searched person between those two dates, would be as under:-

Computation of the ten-year block period as provided under Section 153C read with Section 153A of the Act	No. of years
AY 2023-24	1
AY 2022-23	2
AY 2021-22	3
AY 2020-21	4
AY 2019-20	5
AY 2018-19	6
AY 2017-18	7
AY 2016-17	8
AY 2015-16	9
AY 2014-15	10

95. The relevant block of ten AYs' when computed for the period 01 April 2023 – 31 March 2024, with the date of the Satisfaction Note drawn by the AO of the non-searched person falling within that period, would come to be identified as under:

Computation of the ten-year block period as provided under Section 153C read with Section 153A of the Act	No. of years
AY 2024-25	1
AY 2023-24	2
AY 2022-23	3
AY 2021-22	4
AY 2020-21	5
AY 2019-20	6
AY 2018-19	7
AY 2017-18	8
AY 2016-17	9
AY 2015-16	10
AY 2014-15	10

96. To recall, the petitions forming part of List I pertain to AYs' 2010-11, 2011-12 and 2012-13. So far as the aforementioned writ petitions are concerned, undisputedly AY 2010-11, 2011-12 and 2012-13 fall beyond the maximum period of ten AYs'. Since the ten AYs', when computed from the end of AY 2022-23 would terminate upon AY 2013-14, AYs' 2010-11, 2011-12 and 2012-13 would clearly fall outside the block period of ten AYs' and cannot legally or justifiably be reopened under Section 153C read with Section 153A of the Act.

97. Proceeding then to List II, we find that the petitions placed in that list pertain to cases where the hand over occurred in FYs 2022-23 and 2023-24. Consequently, the relevant AYs's would be AY 2023-24 and AY 2024-25 respectively. In light of the principles enunciated by us and which explain how the period of six and ten AYs' is liable to be computed, the reopening of assessment pertaining to AYs' 2010-11, 2011-12, 2012-13 and 2013-14 would clearly fall beyond the ambit of ten A.Ys' as provided under Section 153C read with Section 153A. We note in this behalf that all of the writ petitions forming part of List II pertain to the aforementioned AYs' 2010-11, 2011-12, 2012-13 and 2013-14.

98. We are therefore of the opinion that the Section 153C notices issued against the writ petitioners placed in List 1 and insofar as they pertain to AYs' 2010-11, 2011-12 and 2012-13 would not sustain being beyond the "relevant assessment year" which could have possibly formed the basis for initiation of action under that provision. Similarly, the Section 153C notices impugned by the writ petitioners placed in List II and insofar as they pertain to AYs' 2010-11, 2011-12, 2012-13 and 2013-14 and which have been found to fall outside the net of "relevant assessment year", being the ten year block, would be liable to be set aside on this score alone."

8. In view of abovesaid material facts and well settled principles of law the additions made in the impugned order dated

26.12.2022 for assessment year 2011-12 and 2012-13 in pursuance to satisfaction note dated 24.9.2021 are barred by time. The impugned orders are beyond jurisdiction and illegal, also for the reason that such addition could not have been made since no incriminating material has been found as a result of search.

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

Order pronounced in the open court on 12th July 2024.

sd/-
(G.S. PANNU)
VICE PRESIDENT

sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

Dated: 12/07/2024
Veena

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	