

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SHRI G. S. PANNU, VICE PRESIDENT AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

**I.T.A. Nos. 2867 /Del/2023
(Assessment Year : 2018-19)**

Umrao Hotels and Resorts Pvt. Ltd., The Umrao, NH-48, Vill Samalkha, Near Rajori Crossing, New Delhi – 110037

Vs. ACIT
Central Circle – 16
Delhi

PAN: AAACU 6777 D

(Appellant)

..

(Respondent)

And

**I.T.A. Nos. 3045/Del/2023
(Assessment Year : 2018-19)**

DCIT
Central Circle – 16
Delhi-110055

Vs. Umrao Hotels and Resorts Pvt. Ltd., The Umrao, NH-48, Vill Samalkha, Near Rajori Crossing, New Delhi - 110037

PAN: AAACU 6777 D

(Appellant)

..

(Respondent)

**Appellant by : Shri S. C. Garg, C.A.
Respondent by : Shri T. James Singson, CIT-D.R.**

**Date of Hearing : 27.06.2024
Date of Pronouncement : 24.07.2024**

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ORDER

PER MS. MADHUMITA ROY – JUDICIAL MEMBER :

The cross appeals filed by the respective parties are directed against the order dated 31.08.2023 passed by the Commissioner of Income Tax (CIT) – 26, New Delhi under Section 250 of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) arising out of the order dated 27.03.2023 passed by the ACIT, Central Circle – 16, New Delhi, under Section 153C read with Section 143(3) of the Act for Assessment Year 2018-19.

2. Since both the matters relate to the same assessee, these are heard analogously and are being disposed of by this common order.

ITA No. 2867/Delhi/2023 (AY: 2018-19)

3. The brief fact leading to the case is this that a search and seizure operation under Section 132 of the Act was conducted in Kohli Tent Group of cases by the Investigation wing, New Delhi on 03.05.2018. During the course of assessment proceedings, the Assessing Officer of the searched person recorded satisfaction on 12.02.2021 that information contained in the seized materials pertain to the assessee M/s. Umrao Hotels and Resorts Pvt. Ltd. Such satisfaction was recorded on the basis of the seized document being excel file titled as “The Umrao_149” which was retrieved from the laptop copied in hard drive marked as “Annexure A-7” seized from the residence of one Shri Sumit Kohli at 59/15 Ramjas

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Road, Karol Bagh, New Delhi. Details of cash and cheque receipts, functions dates etc. has been claimed to have been noted therein. The same is appearing at Page 74 of the paper book filed before us by the assessee. The said AO handed over the seized material to the AO of the assessee and after perusal of the same, the AO of the assessee concluded that the seized documents and information pertain to the assessee and they have a bearing on the determination of the total income of the assessee. Such satisfaction was recorded by the AO of the assessee on 15.02.2021 and proceedings under Section 153C read with Section 153A of the Act was initiated upon fulfillment of the prescribed condition mandated under Section 153C of the Act as claimed by the Revenue. Upon centralization of this case in the circle, notice under Section 153C of the Act was issued on 15.02.2021 directing the assessee to file its return of income within 7 days, in response whereof, the assessee filed its return of income on 20.02.2021 under Section 153C of the Act. Further that, notice under Section 143(2) of the Act dated 25.06.2021 followed by notice under Section 142(1) of the Act along with questionnaire was served upon the assessee and upon perusal of the objection raised by the assessee, the assessment was finalized upon making addition of Rs.4,28,40,001/- on account of undisclosed business receipt and Rs.8,91,18,681/- on account suppressed business receipt totaling to Rs.13,19,58,682/- to the total income of the assessee which was restricted to Rs.7,91,46,164/- by the Learned CIT(A) in the appeal preferred by the assessee. Hence, the instant appeal before us filed by the assessee.

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We have heard the rival contentions made by the respective parties and we have also perused the relevant materials available on record.

4. It is the case of the assessee that the satisfaction note was recorded by the Assessing Officer of the searched person without mentioning any date of transaction and only mentioned the cash and cheque receipts in respect of the functions held at Milap and Elroy Banquets, at the premises owned by M/s. Umrao Hotel & Resorts Pvt. Ltd.; the transaction recorded on the said sheets speaks about cash totaling to Rs.7,14,00,001/- received against such functions held. It further mentioned that the payment was splitted in the ratio of 60:40 to assessee before us and M/s. Key Events. In this regard, he has drawn our attention to page 74 of the paper book filed before us which contains the satisfaction note recorded by the AO of the searched person dated 12.02.2021, which specifically mentions that the seized document and information contained therein pertain to M/s. Key Events, person other than the searched person and they have a bearing on the determination of the income of M/s. Key Events and accordingly, action under Section 153C of the Act was recorded in the case of M/s. Key Events. In that view of the matter, the documents and / or materials were being handed over with the said satisfaction note to the jurisdictional AO in the case of the M/s. Key Event for taking action under Section 153C read with Section 153A of the Act. The assessee's Counsel joins issue here to this effect that having regard to the contents of the note dated 12.02.2021, it could be gathered that the AO of the searched person did not handover seized material to the AO to the assessee before us. Further, the

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Assessing Year mentioned therein was commencing for A.Ys. 2013-14 to 2019-20. Surprisingly, another satisfaction note was replaced, which was also claimed to have been recorded on 12.02.2021 appearing at Pages 88-89 of the paper book filed before us.

5. Upon perusal of the contents of page 89, in column No.7 therein it appears that for the first time the seized documents/information contained therein said to be pertained to M/s. Umrao Hotels and Resorts Pvt. Ltd., the assessee before us, person other than the searched person and they have a bearing on the determination of the income of the assessee and being satisfied that action under Section 153C of the Act is required to be taken in the case of the assessee seized materials were being handed over with the said satisfaction note to the AO of the assessee by invoking jurisdiction for taking action under Section 153C read with Section 153A of the Act. In addition to these two documents, he further drew our attention at Page 76 of the paper book filed before us being the satisfaction note recorded by the AO of the assessee, the ACIT, Central Circle – 16, New Delhi dated 15.02.2021.

6. We have noted that the satisfaction note though claimed to have been recorded on 12.02.2021 in respect of the action to be taken against the assessee before us under Section 153C read with Section 153A of the Act appearing at Page 89 of the paper book (Performa for recording satisfaction), the same has though signed by the ACIT, Central Circle – 16, New Delhi, the date is not mentioned under his signature by the said Officer whereas while rendering satisfaction on the same day by the AO

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of the searched person being the same Officer, ACIT, Central Circle -16, New Delhi in respect of M/s. Key Events appearing at Page 75, of the paper book, duly mentioned the date under his signature. Relevant to mention that the said officer also mentioned date under his signature at Page 76 of the paper book while recording satisfaction dated 15.02.2021. Thus, missing of mentioning date while recording satisfaction in respect of the assessee's case at page 89 creates confusion above the sanctity of the document as he always mentions date while issuing order under his signature.

7. Relying upon these three documents, we have considered the submissions made by the Learned AR that the notice dated 23.02.2021 issued under Section 142(1) of the Act appearing at Page 98 of the paper book filed before us was only after the objection raised by the assessee dated 18.02.2022 (page 92), in response to the notice under Section 142(1) of the Act dated 14.02.2022 contending that the AO was of the opinion that the seized document pertained to M/s. Key Events and having bearing on the determination of the total income of the said assessee and accordingly, handed over the satisfaction note along with those seized documents to the AO holding the jurisdiction over the case of the Key Events under Section 153C read with Section 153A of the Act and therefore, the notice dated 14.02.2022 issued under Section 142(1) of the Act along with the satisfaction recorded by the AO of the searched person was not relating to the case of the assessee. Meaning thereby, the seized documents relied upon by the said AO does not satisfy that the same pertains to the case of the assessee before us. From the aforesaid

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fact, it is further clear that till 14.02.2022 i.e. the date of recording of satisfaction by the Learned AO for all Assessment Years i.e. Assessment Years 2013-14 to 2019-20 claiming the alleged seized documents pertaining to all these years though issued but the Assessing Officer was not sure as to which period the contents of those seized documents belong to the assessee. It was only upon issuance of notice dated 23.02.2022 under Section 142(1) of the Act, the ld. A.O claimed that the contents of the seized documents pertaining to Assessment Year 2018-19 only.

8. In that view of the matter, it is further clear that at the time of recording satisfaction, both the Assessing Officers of the searched person and assessee did not have any clue as to which dates or Assessment Year, the sheets alleged to have been retrieved from the laptop found at the residence of searched person were pertaining to the assessee. Having regard to this particular aspect of the matter the issuance of notice under Section 153C of the Act for Assessment Years 2013-14 to 2018-19 has no legs to stand upon and, therefore, not sustainable in the eyes of law as was the crux of AR's submission. In this regard, he has relied upon the judgement passed by the Hon'ble Delhi High Court in the case of Saksham Commodities Ltd. & Ors. vs. ITO in W.P. (C) 1459/2024 & CM Appeal 6031/2024.

9. It is relevant to note that the contents of the annexure of the notice dated 23.02.2022 issued under Section 142(1) of the Act appearing at page 99 wherein table mentioning the cash and cheque alleged to have

been received by the assessee from its clients mentioned though the dates of function but the year is not found to have been mentioned in the said table.

10. He has also placed reliance on the order passed by the Co-ordinate Bench in assessee's own case for Assessment Years 2016-17 and 2017-18 in the case of same search conducted being part of the said block assessment whereby and whereunder the appeal preferred by the department challenging the order passed by the Learned CIT(A) deleting the addition has been rejected. A copy whereof has also duly been submitted before us.

11. On the other hand, the Learned DR relied upon the judgement passed by the Hon'ble Delhi High Court in the case of Indian National Congress vs. DCIT reported in (2024) 463 ITR 431. It was argued by him that it is not the duty incumbent upon to the Learned AO to draw separate or independent satisfaction note for each assessment year rather composite satisfaction note would suffice the requirements of Section 153C of the Act provided it embody the details of the material gathered in course of search and pertaining to the Assessment Years forming part of the block as a whole.

12. Per contra, it was submitted by the Assessee's Counsel that this judgment has no manner of application to the case in hand. It appears from the satisfaction note recorded by the Learned AO of the searched

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person initially on 12.02.2021 appearing at pages 74 and 75 and further satisfaction note claimed to have been recorded on the same day i.e. 12.02.2021, which was actually been supplied to the assessee before us only on 23.02.2022 along with the notice under Section 142(1) of the Act only upon being brought to the notice of the Assessing Officer on 18.02.2022 by the assessee of the fact of having no relevance of recording satisfaction on the basis of the documents claimed to have been seized pertained to M/s. Key Events as appearing at page 74 for the Assessment Years 2013-14 to 2019-20 and not pertained to the assessee, which has not been able to be objected by the Learned DR.

13. In this regard, we would like to refer the satisfaction recorded by the AO of the assessee appearing at page 76 of the paper book filed before us dated 15.02.2021, the contents whereof is as follows:

“Satisfaction note for initiating proceedings under Section 153C read with Section 153A of the Income Tax Act, 1961 in the case of M/s Umrao Hotels & Resorts Pvt. Ltd. (PAN AAACU6777D) - Assessment years 2013-14 to 2019-20

Action under section 132 of the Income Tax Act was conducted in Kohli Tent Group of cases by the Investigation Wing, New Delhi on 03.05.2018. The AO of Shri Sumit Kohli, the case of Kohli Tent Group In whose case action under section 132 of the Income Tax Act, 1961 was taken recorded his satisfaction that certain information contained on the material seized in the cases of searched persons pertain to M/s Umrao Hotels & Resorts Pvt. Ltd, the person other than the searched person. The Assessing Officer of the searched persons (undersigned is the AO of persons searched as well as other person) has recorded his satisfaction dated 12.02.2021 and handed over the following seized

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material to the AO of the other person le. M/s Umrao Hotels & Resorts Pvt. Ltd.

An excel file titled "The Umrao_149" was retrieved from the laptop copied in hard drive marked as Annexure A-7 seized from the residence of Shri Sumit Kohli at 59/15 Ramjas Road, Karol Bagh, New Delhi. These sheets contain details of cash and cheque receipts, functions dates etc.

As per the satisfaction note an excel file titled "The Umrao_149" containing six sheets retrieved from the laptop copied in hard drive marked as Annexure A-7 seized from the residence of Shri Sumit Kohli at 59/15 Ramjas Road, Karol Bagh, New Delhi. These sheets contain details of cash and cheque receipts, functions dates etc. in respect of functions held at Milap and Elroy Banquets at the premises owned by M/s Umrao Hotel & Resorts Pvt. Ltd. As per transaction recorded on the said sheets cash totaling to Rs. 7,14,00,001/- was received against functions held. It may be mentioned that the payments were split in the ratio of 60:40 between M/s Umrao Hotel & Resorts Pvt. Ltd. M/s Key Events.

The above satisfaction note recorded as the AO of the person searched has been placed on record. As AO of the person other than searched person I have also examined the above referred seized material and the contents of the same. After examining the entries in these documents and records of M/s Umrao Hotels & Resorts Pvt. Ltd. available in this office, I am satisfied that these documents pertain to M/s Umrao Hotels & Resorts Pvt. Ltd. and entries appearing therein have a bearing on the determination of the Income of M/s Umrao Hotels & Resorts Pvt. Ltd.

In view of the same I am satisfied that it is a fit case for initiating proceeding under section 1530 r.w.s section 153A of the I.T. Act, 1961 for A.Y. 2013-14 to 2019-20.

Dated: 15.02.2021

*Sd/-
(Praduman Chauhan)
Asstt. Commissioner of Income Tax
Central Circle – 16, New Delhi”*

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14. Thus, it appears from the above that the total figure claimed to have been recorded on the sheet being the cash components of Rs.7,14,00,001/- alleged to have been received against the functions held by the assessee in 60:40 ratio between the assessee and M/s. Key Events was the main basis of formation of opinion by the Assessing officer that these documents pertain to the assessee and entries appearing therein having a bearing on the determination of the total income of the assessee before us, leading to the initiation of proceedings under Section 153C read with Section 153A of the Act. Thus, it is crystal clear that the satisfaction as recorded by the AO of the searched person is a consolidated satisfaction note mentioning Assessment Years from 2013-14 to 2019-20. Admittedly, such recording of satisfaction is perfunctory manner without application of mind, arbitrary whimsical and erroneous in nature. Further that no reference to seized materials so to ascertain the year to which the material belonged to the assessee is not made by the AO of the searched person while recording satisfaction. In fact, a single document being the excel file titled as "The Umrao_149" containing 6 sheets retrieved from the laptop copied in hard drive marked as Annexure A-7 seized from the residence of Shri Sumit Kohli at 59/15, Ramjas Road, Karol Bagh, New Delhi has been claimed to be pertaining to all Assessment Years. No dates are mentioned therein which could have been the basis of formation of opinion regarding any particular Assessment Year as claimed by the AO of the searched person. Further perusal of the document so reveals that notice under Section 142(1) of the Act dated 25.01.2022 for A.Ys. 2013-14 to 2019-20, seeking

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information in each of these years with regard to aforementioned sheets were issued. A further notice under Section 142(1) of the Act dated 14.02.2022 for all these years was issued. A reply whereof was filed by the assessee on 18.02.2022 and then by issuance of notice under Section 142(1) of the Act dated 23.02.2022 for A.Y. 2018-19, it was alleged that the payment schedule found in the incriminating documents were perfectly matched to the books along with the functions. Whereas, while recording satisfaction, it was inferred that said sheets were pertaining to only A.Y. 2018-19, therefore, till 14.02.2022 when notices to all Assessment Years 2013-14 to 2019-20 claiming the alleged seized documents to be pertaining to all these years, were issued, the Assessing Officer was not sure to which period the contents of the alleged seized sheets belonged to and only on 23.02.2022, it was claimed that the contents of the said sheets pertained to A.Y. 2018-19 only. Having regard to this particular aspect of the matter, it is established that while recording satisfaction the Assessing Officer of the searched person did not have any clue as to which dates or assessment year the sheets alleged to have been retrieved from the laptop found at the residence of searched person were pertaining to the assessee. The satisfaction recorded, therefore, found to be not only incomplete but also vague. No authority acting judicially would have acted on the basis of such satisfaction recorded and proceeded against the assessee in the manner it has been done under Section 153C of the Act. The same is found to be a project of non application of mind and thus cannot be said to be the valid basis of

initiation of proceeding under Section 153C of the Act. The entire proceeding is, therefore, liable to be quashed.

In this aspect we have further considered the judgment passed by the Hon'ble Delhi High Court in the case of Saksham Commodities Limited Vs. ITO & Anr. in W.P.(C) 1459/2024 & CM APPL 6031/2024 & Ors. While deciding this particular aspect of the matter the Hon'ble Court has been pleased to pass order with the following observations:

“40. It is thus apparent that it is only when the transmitted documents and material reaches the desk of the jurisdictional AO that it becomes empowered to initiate action under Section 153C of the Act. This is evident from a plain textual reading of that provision and which speaks of the commencement point being the handing over of documents or assets seized or requisitioned to the AO of the "other person" and it in turn proceeding to issue notice to assess or reassess the income of the non-searched entity in accordance with Section 153A. However, the initiation of action under Section 153C is significantly premised upon the AO being satisfied that the books of account or documents and assets seized or requisitioned having "a bearing on the determination of the total income of such other person" This is manifest from the provision employing the expression "if, that Assessing Officer is satisfied.....". It would therefore necessarily follow that the issuance of a notice under Section 153C is clearly not intended to be an inevitable consequence to the receipt of material by the jurisdictional AO. That the AO before commencement of action under Section 153C is also obliged to be satisfied that the material so received would "have a bearing on the determination of the total income of such other person" is an aspect of significance and constitutes a fundamental point of distinction between Section 153A and Section 153C This distinguishing element of the two provisions would become further apparent from the discussion which ensues.

41. Firstly, and from a historical perspective of the legislation itself, we find that one of the significant amendments which came to be introduced in Section 153C was ushered in 2014. The Finance (No. 2) Bill, 2014, while seeking to explain the objective of the amendments which were proposed to be incorporated declared as follows.

“Assessment of income of a person other than the person who has been searched

Section 153C of the Act relates to assessment of income of any other person. The existing provisions contained in sub-section (1) of the said section 153C provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to any 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 such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A

It is proposed to amend section 153C of the Act to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to any person, other than the person referred to in section 153A, then 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 such other person notice and assess or reassess income of such other person in accordance assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A.

The amendment will take effect from 1st October, 2014."

42. It would also be apposite to notice the Notes on Clause 53 of the Finance Bill, 2014, which sought to amend Section 153C and which is reproduced hereinbelow:

"Clause 53 of the Bill seeks to amend section 153C of the Income-tax Act relating to assessment of income of any other person.

The existing provisions contained in sub-section (1) of the aforesaid section provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section

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153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong 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 such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

*It is proposed to amend the said sub-section so as to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong 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, such 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 for the relevant assessment year or years referred to in sub-section (1) of section 153A.***

This amendment will take effect from 1st October, 2014"

43. *It was consequent to the passing of the aforesaid Act that Section 153C came to incorporate provisions relating to the AO being satisfied that the books of accounts, documents or assets seized or requisitioned must "have a bearing on the determination of the total income of such other person" for the six preceding AYs' or the "relevant assessment year" as referred to in Explanation 1 to Section 153A. Prior to the promulgation of these amendments, the AO of the non-searched party was not obliged to form an opinion that the material received by it was likely to impact the estimation of income of that person. Significantly, although this prerequisite came to be incorporated in Section 153C, no such corresponding precondition was included in Section 153A. This, although the legislative history of the search assessment provisions placed in the Act would indicate that they were amended from time to time in order to constitute a complete and homogeneous code. This becomes apparent from the legislative mandate of*

those two provisions being applicable to searches undertaken in a particular time period, the principles of abatement being replicated and the search assessment power being available to be invoked for the "relevant assessment year", and which extended the power to be exercised over a ten year block, being simultaneously introduced in those provisions. The Legislature clearly intended both these provisions to form part of a cohesive scheme and to be complementary to each other. However, the aspects of satisfaction and of the material likely to implicate or influence were not added in Section 153A. The fact that any additions that may be ultimately made upon a culmination of assessment under Section 153A being indelibly founded on the material gathered in the course of the search is a separate issue all together.

44. *The usage of the expression "have a bearing" would necessarily lead one to conclude that the mere discovery of books, documents or assets would not justify the initiation of proceedings under that provision. Upon receipt of that material, the jurisdictional AO must additionally be satisfied that those are likely to have an impact on "the determination of the total income". The Shorter Oxford English Dictionary assigns the following meaning to the word "bearing".*

"1. The action of BEAR verb: carrying, bringing, supporting, sustaining, enduring, giving birth, producing, thrusting, pressing

2. Manner of carrying oneself, bodily attitude; demeanour

3. A material support, a supporting surface

4. A heraldic charge or device: in pl., that which is depicted on a coat of arms, a heraldic achievement, a coat of arms

5. The direction in which a place, object, etc, lies, direction of movement, orientation, in pl., (knowledge of) relative position

6. sing. & (freq) in pl. Part of a machine which bears friction, esp. between a rotating part and its housing

7. Practical relation or effect (up)on, influence, relevance....."

As is manifest from the aforesaid extract, "bearing" would include something which would lend support or credence It has also been defined to mean something which may have a practical relation or effect upon, influence or relevance

45. *The Major Law Lexicon", authored by P. Ramanatha Aiyar explains "Bearing on, Having as referring to something having a relation with. For*

ease of reference, the meaning assigned to the aforesaid expression is reproduced hereinbelow.

"Bearing on, Having. Having relation with"

46. *The New Lexicon Webster's Dictionary" defines the word "bearing" as follows:*

"The action of carrying // carriage, deportment// (heraldry) a single charge // relevancy, that has no bearing on the matter // endurance, the capacity to tolerate, behaviour past all bearing // (pl) position in relation to some reference point // (pl) grasp of one's situation, to find one's bearings // a part of a machine that bears the friction set up by a moving part. Sliding friction is reduced by making the bearing of Babbitt metal, and by separating it and its moving part by a thin film of lubricant By the introduction of ball bearings (or roller bearings) sliding friction is replaced by rolling friction, which is must less in effect // an angle measured from true north, magnetic north, or from some given survey line to lose one's bearings to be lost to be puzzled."

47. *This too speaks of "relevancy" as one of the meanings one may gather where that particular expression is used. This leads us to the inevitable conclusion that the initiation of action under Section 153C would have to be founded on a formation of opinion by the jurisdictional AO that the material handed over and received pursuant to a search is likely to influence the "determination of the total income" and would be of relevancy for the purposes of assessment or reassessment.*

F. INCRIMINATING MATERIAL-CASCADING EFFECT?

48. *In terms of the Second Proviso to Section 153A, all assessment or reassessment proceedings relating to the six AYs' or the "relevant assessment year" pending on the date of search are statutorily envisaged to abate. Abatement is envisioned to be an inevitable consequence of the initiation of action under Section 153A. Neither issuance of notice nor abatement are predicated upon a formation of opinion by the AO of the searched person that the material is likely to impact the total income of that assessee. However, the spectre of abatement insofar as the "other person" is concerned would arise only after the jurisdictional AO has formed the requisite satisfaction of the material having "a bearing on the determination of the total income of such other person" and having formed the opinion that proceedings under Section 153C are liable to be initiated. It would be pertinent to bear in mind that Kabul Chawla was a decision rendered in the context of Section 153A. It was in the aforesaid backdrop that the Court significantly observed that once a*

search takes place under Section 132 of the Act, notice under Section 153A(1) would mandatorily issue. The abatement of assessment and reassessment pending on that date would, in the case of a Section 153A assessment, be a preordained consequence. However, and in light of what has been observed hereinabove, it is apparent that Section 153C constructs a subtle and yet significant distinction insofar as the question of commencement of proceedings or assumption of jurisdiction is concerned.

49. *That takes us to the principal question and which pertains to the nature of the incriminating material that may be obtained and the years forming part of the block which would merit being thrown open. Regard must be had to the fact that while Section 153C enables and empowers the jurisdictional AO to commence assessment or reassessment for a block of six AYs' or the "relevant assessment year", that action is founded on satisfaction being reached that the books of accounts, documents or assets seized "have a bearing on the determination of the total income of such other person" We in this regard bear in mind the well settled distinction which the law recognizes between the existence of power and the exercise thereof. Section 153C enables and empowers the jurisdictional AO to assess or reassess the six AYs' or the "relevant assessment year". The Act thus sanctions and confers an authority upon the AO to exercise the power placed in its hands for up to a maximum of ten AYs'. Despite the conferral of that power, the question which would remain is whether the facts and circumstances of a particular case warrant or justify the invocation of that power. It is the aforesaid aspect which bids us to reiterate the distinction between the existence and exercise of power.*

50. *What we seek to emphasise is that merely because Section 153C confers jurisdiction upon the AO to commence an exercise of assessment or reassessment for the block of years which are mentioned in that provision, the same alone would not be sufficient to justify steps in that direction being taken, unless the incriminating material so found is likely to have an impact on the total income of a particular AY forming part of the six AYs' immediately preceding the AY pertaining to the search year or for the "relevant assessment year".*

51. *Ultimately Section 153C is concerned with books, documents or articles seized in the course of a search and which are found to have the potential to impact or have a bearing on an assessment which may be undergoing or which may have been completed. The words "have a bearing on the determination of the total income of such other person" as appearing in Section 153C would necessarily have to be conferred pre-eminence. Therefore, and unless the AO is satisfied that the material gathered could potentially impact the determination of total income, it would be unjustified in*

mechanically reopening or assessing all over again all the ten AYs' that could possibly form part of the block of ten years.

52. *The decisions which hold that an assessment is liable to be revised only if incriminating material be found, even if rendered in the context of Section 153A, would clearly govern the question that stands posited even in the context of Section 153C. It would be relevant to recall that the Division Bench in Kabul Chawla had observed that in the absence of any incriminating material, a completed assessment may be reiterated and the abated assessment or reassessment be concluded. The importance of incriminating material was further underlined in Kabul Chawla with the Court observing that completed assessments could be interfered with, only if some incriminating material were unearthed. This aspect came to be reiterated in RRJ Securities when the Court held that it would be impermissible to either reopen or reassess a completed assessment which may not be impacted by the material gathered in the course of the search and which may have no plausible nexus. The aforesaid position also comes to the fore when one reads para 17 of ARN Infrastructure and which annulled an action aimed at reopening assessments for years to which the incriminating document which was found did not relate.*

53. *Sinhgad Technical Education Society also constitutes a binding precedent in respect of the aforesaid proposition as would be evident from the Supreme Court noticing that the material disclosed pertained only to AY 2004-05 or thereafter and that consequently the Section 153C action initiated for AYs' 2000-01 to 2003-04 would not sustain. It was this position in law as enunciated in that decision which came to be reiterated by our Court in Index Securities.*

54. *In any case, Abhisar Buildwell, in our considered opinion, is a decision which conclusively lays to rest any doubt that could have been possibly harboured. The Supreme Court in unequivocal terms held that absent incriminating material, the AO would not be justified in seeking to assess or reassess completed assessments. Though the aforesaid observations were rendered in the context of completed assessments, the same position would prevail when it comes to assessments which abate pursuant to the issuance of a notice under Section 153C. Here too, the AO would have to firstly identify the AYs' to which the material gathered in the course of the search may relate and consequently it would only be those assessments which would face the spectre of abatement. The additions here too would have to be based on material that may have been unearthed in the course of the search or on the basis of material requisitioned. The statute thus creates a persistent and enduring connect between the material discovered and the assessment that may be ultimately made. The provision while speaking of AYs falling within*

the block of six AYs' or for that matter all years forming part of the block of ten AYs', appears to have been put in place to cover all possible contingencies. The aforesaid provisions clearly appear to have been incorporated and made applicable both with respect to Section 153A as well as Section 153C ex abundanti cautela. Which however takes us back to what had been observed earlier, namely, the existence of the power being merely enabling as opposed to a statutory compulsion or an inevitable consequence which was advocated by the respondents.

55. *Take for instance a case where the material gathered in the search is contemplated to have an adverse impact on the declarations and disclosures made by an assessee pertaining only to AYs' 2016-17 and 2017-18. What we seek to emphasise is that pending assessments for those two years could validly form subject matter of action under Section 153C and pending assessments in that respect would surely abate. However, that by itself would not be sufficient to either reopen or issue notices in respect of AYs' prior to or those falling after those two AYs' and which may otherwise fall within the maximum block period of ten years merely because the statute empowers the AO to do so. Unless the material gathered and recovered is found to have relevancy to the AY which is sought to be subjected to action under Section 153C, it would be legally impermissible for the respondents to invoke those provisions. Consequently, the AO would be bound to ascertain and identify the year to which the material recovered relates. The years which could be then subjected to action under Section 153C would have to necessarily be those in respect of which the assessment is likely to be influenced or impacted by the material discovered. Section 153C neither mandates nor envisages a mechanical or an en blanc exercise of power, or to put it differently, one which is uninformed by a consideration of the factors indicated above.*

...

“69. *When tested in light of the aforesaid principles, we find that except for a few exceptions which were noticed in the introductory parts of this judgment, the writ petitions forming part of this batch, impugn the invocation of Section 153C in respect of AYs' for which no incriminating material had been gathered or obtained. The Satisfaction Notes also fail to record any reasons as to how the material discovered and pertaining to a particular AY is likely to "have a bearing on the determination of the total income" for the year which is sought to be abated or reopened in terms of the impugned notices. The respondents have erroneously proceeded on the assumption that the moment any material is recovered in the course of a search or on the basis of a requisition made, they become empowered in law to assess or reassess all*

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the six AYs' years immediately preceding the assessment correlatable to the search year or the "relevant assessment year" as defined in terms of Explanation 1 of Section 153A. The said approach is clearly unsustainable and contrary to the consistent line struck by the precedents noticed above."

15. As relied upon by the Learned AR, we have further considered the judgment passed by the Co-ordinate Bench in the case of DCIT vs. Umrao Hotels and Resorts Pvt. Ltd. in ITA Nos.2927 & 2927/Del/2023 dealt with the same identical aspect of the matter for A.Ys. 2016-17 & 2017-18, the relevant portion whereof is as follows:

"2. The facts in brief are that during assessment proceedings in the case of searched person, Shri Sumit Kohli, it was noticed that an excel file titled "The Umrao_149" containing six sheets retrieved from the laptop copied in hard drive marked as Annexure A-7 seized from the residence of Shri Sumit Kohli at 59/15 Ramjas Road, Karol Bagh, New Delhi, contain details of cash and cheque receipts, functions dates etc. in respect of functions held at Milap and Elroy Banquets at the premises owned by M/s Umrao Hotel & Resorts Pvt. Ltd. As per transaction recorded on the said sheets cash totaling to Rs. 7,14,00,001/- was received against functions held. It was found mentioned that the payments were split in the ratio of 60:40 between M/s Umrao Hotel & Resorts Pvt. Ltd. M/s Key Events. Accordingly, recording a satisfaction note about seized assets pertaining to person other than the persons searched. The notice u/s 153C was issued upon the assessee and consequently the assessment proceedings were concluded in which additions were made which stood deleted by the CIT(A) for which the Revenue is in appeal for the two AY and as the grounds are common, except referring to the amounts, we consider it relevant to reproduce the grounds for AY 2017-18:-

"1. Whether on facts of the case and in law, the Ld. CIT(A) has erred in quashing the proceeding initiated u/s 153C of the Act by relying on the judgment of the Hon'ble Supreme Court in the case of Pr.CIT (Central)-3, Delhi vs Abhisar Buildwell Pvt. Ltd. while holding that that there was no incriminating material for the year under consideration found during the search whereas the said decision of

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Hon'ble Supreme Court is not applicable in this case as the additions have been made based on the incriminating material seized during the search?

2. *Whether on facts of the case and in law, the Ld. CIT(A) has erred in quashing the proceeding initiated u/s 153C of the Act while not appreciating that the appeals in the case of the assessee for AY 2018- 19, having the same facts and circumstances, have been decided the Ld. CIT(A) himself wherein he has restricted the addition to Rs. 7,91,46,164 from Rs. 13,19,58,682/- made on account of suppressed business receipts/unrecorded business receipts?*
3. *Whether on facts of the case and in law, the Ld. CIT(A) has erred in quashing the proceeding- initiated u/s 153C of the Act while not appreciating that it is modus operandi of the assessee wherein a portion of the total receipts is received by him in cash which remains unaccounted?*
4. *Whether on facts of the case and in law, the Ld. CIT(A) has erred in quashing the proceeding initiated u/s 153C of the Act while not appreciating that when the modus operandi of the assessee of receiving unaccounted cash has been established for AY 2018-19 based on incriminating material, it is clear that, as per the principle of preponderance of probability, the assessee adopted the same modus operandi in the year under consideration also and judgement of Hon'ble Supreme Court in the case of Abhisar Buildwell is not applicable in this case?*
5. *Whether on facts of the case and in law, the Ld. CIT(A) has erred in quashing the proceeding initiated u/s 153C of the Act while not appreciating that the decision of Hon'ble Supreme Court in the case of the Pr.CIT (Central)-3, Delhi vs Abhisar Buildwell Pvt. Ltd. is not applicable in this case as Hon'ble Apex Court has upheld the decision of Hon'ble Delhi High Court in the case of Smt. Dayawanti vs Commissioner of Income Tax in Civil Appeal No. 15617/2017, 10267/2017, 10266/2017 & 10268/2017, wherein it has been held that the assessing authority can draw inference in respect of activities carried on by the assessee in other years as well if it has*

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some reasonable nexus with the statements recorded and documents seized ?

6. *It is, therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of the AO may be restored to the above extent.*

7 *(a) Whether on law and facts of the case, the order of the Ld. CIT(A) is erroneous and not tenable in law and on facts?"*

3. *After hearing the rival sides it comes up that the ld First Appellate Authority had given a factual finding in regard to assessment orders involved in these two appeals that the so called incriminating materials seized during the search dated 03.05.2018 on Kohli Tent Group had nothing qua the present assessee.*

4. *As we appreciate the matter on record it comes up that the AO of the searched person had recorded that action is required to be taken against M/s. Key Event and accordingly seized material was handed over to the jurisdictional AO of Key Events. Ld. AR has claimed that this satisfaction note of the AO of the searched person nowhere had any mention of the name of the assessee.*

5. *At the same time the ld DR could not dispute the fact that the contents of excel sheets did not pertain to the relevant two years before us and additions on the basis of said material have been made for AY 2018-19 in which there are separate appeals pending. The CIT(A) has relied on the settled proposition of law in Kabul Chawla Case reported in 380 ITR 573, which now stand upheld by the Hon'ble Supreme Court in PCIT vs Abhisar Buildwell P Ltd reported in 454 ITR 212 (SC), that in absence of incriminating material, no addition can be made in re-assessment u/s 153C of the Act. There is no force in the ground that the assessing authority can draw inference in respect of activities carried on by the assessee in other years as well if it has some reasonable nexus with the statements recorded and documents seized as admittedly there was no such material with AO.*

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6. *In the light of the aforesaid, we find that there is no substance in the grounds of the Revenue and the appeals of the revenue are dismissed.”*

In the above matter the recording of satisfaction for taking action against M/s Key Events and since not the assessee, the entire proceedings against the assessee was found to have been vitiated and therefore, quashed by the Co-ordinate bench.

15. We have further considered that a judgment relied upon by the Learned DR in the case of Indian National Congress (supra). The Learned DR relied upon the following observation made :

“Satisfaction note merely forms foundation for initiation of action which would enable to evaluate whether an opinion has been validly formed and as long as it rests on incriminating material which pertains to assessment years in question, same would qualify requirement of section 153C.”

16. In that particular judgment, at paragraph 20, the chart in respect of the amount of alleged escapement of income *qua* each Assessment Year separately commencing from 2014-15 to 2020-21 recorded in the satisfaction note under Section 142(1) of the Act dated 1st March 2024 has been reproduced. Further that, specific reference to unaccounted transaction pertaining to A.Ys 2014-15, 2015-16 & 2016-17 as impugned therein were mentioned which is not found in the case in hand before us.

Therefore, the fact on the basis of which the above matter has been decided by the Hon’ble Delhi High Court is completely different to that

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of the fact emanates from the documents herein before us particularly the satisfaction note which is the formation of opinion in initiation of proceedings under Section 153C of the Act against the assessee based on the documents namely “The Umrao_149” containing 6 sheets reiterated from the laptop copied in hard drive marked as Annexure A-7 seized from the residence of Shri Sumit Kohli at 59/15, Ramjas Road, Karol Bagh, New Delhi wherein no specific data qua assessment year separately is found to have been recorded. Thus on a different recording of satisfaction note the case decided by the Delhi High Court, found to have no relevance in the case in hand before us.

17. It is the settled position of law that before commencement of the action under Section 153C of the Act, the AO requires to have satisfaction that the material so received would have a bearing on the determination of the total income of such other person. Further that, unless the incriminating material so seized is likely to have any impact on the total income of a particular Assessment Year forming part of the Assessment Year immediately preceding the Assessment Year pertaining to the searched year or for the relevant Assessment Year, invoking jurisdiction under Section 153C of the Act for reassessment for a block of years would not be sufficient.

18. Thus having regard to the facts and circumstances of the matter, we find that the case made out by the assessee is acceptable as the satisfaction recorded on the basis of the seized material is without mentioning the amount escaping assessment in each assessment year

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particularly in the year under consideration. The same is also not in terms of the ration laid down by the Hon'ble Delhi High Court in case of Saksham Commodities Ltd. (Supra). Thus respectfully relying upon the same, the satisfaction recorded in the instant case is found to be not in terms of the statutory provision envisaged under Section 153C of the Act and, therefore, the entire proceedings is vitiated. Thus, the initiation of proceedings under Section 153C of the Act is not found to be maintainable in the eyes of law and hence quashed.

19. Once the entire proceeding has been quashed, the appeal preferred by the department is found to have no basis and thus dismissed as infructuous.

20. In the result, assessee's appeal is allowed and the appeal preferred by the Revenue is dismissed.

Order pronounced in the open court on 24/07/2024

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

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

Dated 24/07/2024

*Priti Yadav, Sr.PS**

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI