

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA Nos. 411, 407, 404, 403 & 402/MUM/2024
Assessment Years: 2013-14, 2014-15, 2015-16, 2016-17 & 2017-18**

D G Land Developers Pvt. Ltd.,
104/105 Raghunath Kripa Building,
Aarey Road, Goregaon East,
Mumbai-400063.

**PAN NO. AAECD 4091 M
Appellant**

Asst. CIT, Central Circle-4(4),
Room No. 1922, 19th floor, Air
India Building, Nariman Point,
Mumbai-400021.

Vs.

Respondent

Assessee by : Mr. Sanjeev Mehta a/w Saurabh
Parasrampuria
Revenue by : Mr. Manish Sareen, CIT-DR

Date of Hearing : 31/07/2024
Date of pronouncement : 22/08/2024

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against a common order dated 30.11.2023 passed by the Ld. Commissioner of Income-tax (Appeals) -52, Mumbai [in short 'the Ld. CIT(A)'] for assessment years 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 respectively.



2. All these appeals are arising from assessments made consequent to a search action u/s 132 of the Income-tax Act, 1961 (in short 'the Act') dated 18.12.2016 on one person namely 'Shri Ishwardev Shukla' and therefore, issue in dispute raised in these appeals being common, all these appeals were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

3. First of all, relevant grounds raised by the assessee for assessment year 2017-18 are reproduced as under:

1. The Ld. CIT(A) erred in confirming the action of the Ld. AO in making addition of Rs. 5,25,04,953/- as business income.

2. The Ld. CIT(A) erred in upholding the action of Ld.AO in estimating the on-money received for the year under reference using extrapolation technique.

3. The Ld. CIT(A) erred in upholding the action of Ld.AO in assuming the profit element in the on-money received for new construction at 36% instead the reasonable profit that is earned in appellants line of business being in the range of 10% to 12%. Similarly, the learned A.O. erred in assuming profit element at 16% for redevelopment projects instead at 8% to 10% being the reasonable profit.

Without prejudice to above, the learned A.O. erred in taxing the profit element of the gross receipts in

4. the year under reference for projects where no sales are booked during the year since no income was accrued following percentage completion method.

5. The Ld. CIT(A) erred in confirming the action of the Ld. AO in making disallowing of Rs.1,08,40,272/- being difference in stamp duty value and sale price of some properties sold during the year, under section 43CA of the Act.

6. The Ld. AO has erred in initiating penalty proceedings u/s 274 r.w.s 271AAB(IA) of the Act vide letter dated 30.12.2018. The Appellant prays that the penalty proceedings u/s 274 r.w.s 271AAB(1A) of the Act be dropped.



7. The Ld. CIT (A) has erred upholding the action of AO in levying interest u/s 234B of the Act of Rs. 47,09,940/- and u/s 234C of Rs. 2,57,430/- of the Act.

3.1 The assessee also filed additional grounds for AY 2017-18, which are reproduced as under:

9.0 The assessment order passed u/s.143(3) of the Income Tax Act, 1961 by the assessing officer is bad in law.

9.1 In doing so, he has not considered the fact that the cases were centralized on 12.07.2018 and his satisfaction note was recorded on 16.07.2018 and as such the initial year for assessment u/s. 143(3) would be assessment year 2019-2020 and not the assessment year 2017-2018.

9.2 In doing so, he has disregarded the decision of the honourable Apex Court in Commissioner of Income-tax v. Jasjit Singh [2023 155 Taxmann.com 155 (SC)] in as much as the initial year for invocation of proceedings u/s.153C would be the year in which the case material is handed over to the assessee which would in this case be assessment year 2019-2020 and not 2017-2018.

3.2 The grounds raised in AY 2013-14 to AY 2016-17 are identical, therefore, for brevity, the grounds raised in AY 2013-14 are only reproduced as under:

1. The notice issued u/s 153C of the Act dated 16.07.2018 is bad in law and the Ld. AO has erred in assuming jurisdiction u/s 153C of the Act as the mandatory condition to invoke the jurisdiction under Sec. 153C of the Act did not exist and consequently the assessment is liable to be set aside.

2. The order u/s 143(3) r.w.s. 153C of the Act dated 30.12.2018 is bad in law and liable to be set aside.

3. The Ld. CIT(A) erred in confirming the action of the Ld. AO erred in making addition of Rs. 77,07,062/- treated as business income.

4. The Ld. CIT(A) erred in upholding the action of Ld. AO erred in making the impugned addition of Rs. 77,07,062/- as the entire assessment is made on the basis of documents found at the time of survey u/s. 133A and not on the basis of documents found and seized in the course of search u/s. 132 of the Act. The use of documents collected during survey u/s. 133A for the assessment u/s. 153C is not permissible under law.



5. The Ld. CIT(A) erred in upholding the action of Ld. AO in estimating the on-money received for the year under reference using extrapolation technique.

6. The Ld. CIT(A) erred in upholding the action of Ld. AO in assuming the profit element in the on-money received for new construction at 36% instead the reasonable profit that is earned in appellants line of business being in the range of 10% to 12%. Similarly, the learned A.O. erred in assuming profit element at 16% for redevelopment projects instead at 8% to 10% being the reasonable profit.

7. Without prejudice to above, the learned A.O. erred in taxing the profit element of the gross receipts in the year under reference for projects where no sales are booked during the year since no income was accrued following percentage completion method.

8. The Ld. AO has erred in initiating penalty proceedings u/s 274 r.w.s 271(1)(c) of the Act vide letter dated 30.12.2018. The Appellant prays that the penalty proceedings u/s 274 r.w.s 271(1)(c) of the Act be dropped.

9. The Ld. CIT (A) has erred upholding the action of AO in levying interest u/s 234A of the Act of Rs. 47,630/-, u/s 234B of the Act of Rs. 13,57,445/- of the Act.

3.3 The additional grounds raised being purely legal in nature and not requiring any investigation of the fresh facts, therefore, after hearing both the parties, the additional grounds are admitted for adjudication in view of the settled law in the case of **NTPC Ltd. 229 ITR 283 (SC)**.

4. Briefly stated, facts of the case for disposal of the legal issues raised are that the assessee company was engaged in the business of real estate development during the period under consideration i.e AY 2013-14 to AY 2017-18. The Assessing Officer noted that Shri Ishwardev Shukla (Director of the assessee company), was carrying cash of Rs.12.26 lakhs while travelling from Delhi to Mumbai, by Spice Jet Flight SG-161 on 16.12.2016. The Air Intelligence Unit



(AIU) of the Investigation Wing Income-tax Department, Mumbai intercepted him on 16.12.2016, at Mumbai Airport on his arrival.

4.1 Thereafter, a survey proceeding u/s 133A of the Act was carried out on 17.12.2016 at business premises of assessee. In the survey proceedings various documents including diaries and data on computer relating to real estate business transactions were found and impounded. During the survey proceedings, statement of Shri Ishwardev Shukla was recorded u/s 131 of the Act on 17.12.2016 and 18.12.2016.

4.2 Subsequently, on 18.12.2016, a search action u/s 132 of the Act was carried out on Shri Ishwardev Shukla and cash of Rs.12.26 lakhs was seized. The Place of the search has been mentioned in 'panchnama' (paper book page 1 to 2) as Air Intelligence Unit (AIU) Office Terminal-1-B Chatrapati Shivaji Maharaj International Airport, Mumbai. A statement of Shri Ishwardev Shukla was recorded u/s 132(4) of the Act on 18.12.2016, wherein he stated that said cash found with him represented unaccounted income of the company M/s D.G. Land Developers Pvt. Ltd. (i.e. the assessee company) and he was unable to produce any documentary evidence to support the source thereof in respect of cash of Rs.12.26 lakhs, therefore, he requested to treat the same as undisclosed income of the assessee company for financial year 2016-17 i.e. corresponding to assessment year 2017-18.



4.3 The case of the assessee was centralized with the Assistant Commissioner of Income-tax, Central Circle 4(4), Mumbai (i.e. the Assessing Officer) and thereafter the Assessing Officer recorded satisfaction for invoking section 153C of the Act on 16.07.2018. This fact has been noted by the Assessing Officer in the assessment order for assessment year 2013-14. After recording satisfaction, the Assessing Officer issued notice u/s 153C of the Act for assessment years 2010-11 to 2016-17 and issued notice u/s 143(2) of the Act for assessment year 2017-18. The Assessing Officer in the assessment proceedings u/s 153C of the Act for assessment year 2013-14 to 2016-17 and assessment proceeding u/s 143(3) of the Act for assessment year 2017-18, has referred to material impounded during the course of survey at the premises of the assessee, *inter alia*, Annexure A-1 and A-12 containing entries related to cash received in financial year 2015-16 and 2016-17 respectively. The assessee submitted entity-wise break-up of receipts and expenses in respect of various entities of the group. The assessee also provided details of nature of receipt. The Assessing Officer has tabulated year-wise receipt in the nature of the income on account of 'on-money' received on sale of flats by the assessee totaling to Rs.36,85,32,734/- from assessment years 2014-15 to assessment year 2017-18. Then, he worked out average on-money for one year, and that average 'on-money' was then applied for all the years under assessment before him. The project-wise extrapolated amount computed by the Assessing Officer is



available on page 16 of the assessment order for AY 2017-18. For ready reference, said table is reproduced as under:

Project	Extrapolated Amount (in Rs.)					
	2013-14	2014-15	2015-16	2016-17	2017-18	Total (in Rs.)
Aniket				1,05,11,704	4,16,45,786	5,21,57,490
Anjali			22,61,056	70,45,612	2,51,68,668	3,44,75,336
Deep	2,11,74,805	3,19,58,660	41,67,120	2,91,67,155	2,57,78,685	11,22,46,425
Height		3,16,07,198	1,64,31,590	1,99,80,352	1,81,70,642	8,61,89,782
Jtyot	2,33,700	47,52,720	36,86,310	25,41,795	17,35,530	1,29,50,055
Kund		52,18,598	88,78,394	13,67,87,296	3,23,08,834	18,31,93,122
Kutir			2,51,41,634	1,81,82,696	6,16,94,262	10,50,18,592
OJA		20,39,832	40,79,664	1,53,48,492	1,99,42,260	4,14,10,248
Sejal		2,07,30,360	5,88,61,968	3,09,04,916	79,07,492	11,84,04,736
Shakutala		1,29,59,550	1,39,68,444	1,60,53,120	38,46,060	4,68,27,174
Sweet Seven		13,22,392	91,16,064	1,56,82,303	32,07,504	2,93,28,263
Walawalkar					93,81,042	93,81,042
Total	2,14,08,505	11,05,89,310	14,65,92,244	30,22,05,441	25,07,86,765	83,15,82,265

4.4 The Assessing Officer justified the extrapolation for the reason that during the search or survey full evidences (of on-money) could not be recovered as no assessee would keep full evidences against itself and therefore, extrapolation was held to be a logical and reasonable method to arrive at the correct income of the assessee. Further, after extrapolation of the income for the search period from assessment year 2013-14 to 2017-18 to Rs. **83,15,82,265/-**, the Assessing Officer show caused to the assessee as why the 36% profit on 'on-money' receipts from 'new projects' and 16% profit on 'on-money' received from 'redevelopment projects' be assessed in the case of the assessee. The assessee however without prejudice, submitted that his profit in both new as well as redevelopment



projects was not more than 8% to 10% and therefore, profit if any should be restricted to 8% of the on-money. The Ld. Assessing Officer however rejected the contention of the assessee and made addition estimating profit at the rate of 36% on new projects and 16% on redevelopment projects in respect of AY 2013-14 to AY 2017-18.

4.5 The detail of the profit of Rs.5,25,04,953/- computed on the 'on-money' of Rs.23,57,56,179/-, which was claimed by the AO to be received for assessment year 2017-18, is reproduced as under:

"9.20 In view of discussion made above and facts & circumstances of the case, net on-money receipts of the assessee for A.Y. 2017-18 are worked out at Rs. 23,57,56,179/-. Considering the nature of business of the assessee, 36% of the extrapolated amount of on-money for the projects done with land and 16% of the extrapolated amount for the redeveloped projects is determined to be income of the assessee. The net extrapolated amount for the normal real estate projects is Rs. 7,39,19,826/- and 36% of the same Rs. 2,66,11,137/-. Similarly, net extrapolated amount for the redeveloped real estate projects is Rs. 16,18,36,353/- and 16% of the same comes at Rs. 2,58,93,816/-. Thus, the addition of Rs. 5,25,04,953/- has been taken as the profit of the assessee and the same is added back to the total income of the assessee for A.Y. 2017-18 as business income.

In the instance case assessee received on-money but not admitted in the returns filed for the year under consideration. Accordingly, penalty proceedings are initiated u/s 271AAB (IA) (b) of the IT Act separately."

4.6 For assessment year 2017-18, the Assessing Officer also made addition invoking section 43CA of the Act, wherever difference between the agreement value for sale of the flats and stamp duty value recorded in registered sale deed of the flat was found. The addition u/s 43CA of the Act has been worked out at Rs.1,08,40,272/- for AY 2017-18.



5. On further appeal, the assessee challenged the reassessment proceedings u/s 153C of the Act for assessment year 2013-14 to 2016-17 and challenged the addition on merit in all the years including AY 2017-18. The assessee challenged that in absence of any 'incriminating material' belonging or pertaining to the assessee or any information contained therein relating to assessee, found or seized in the search of searched person, no addition could have been made in the hands of assessee, in respect of unabated assessment years. The Ld. CIT(A) rejected the contention of the assessee challenging the validity of the assessment proceedings u/s 153C of the Act holding that the seizure of the cash and the admission by Shri Ishwardev Shukla that such cash is unaccounted for, was the starting point of the entire proceedings and the survey action had only taken place to strengthen/validate/corroborate his finding and there being a complete interlinked and nexus between the cash seizure, admission of undisclosed income and other things and therefore, he justified the 153C proceedings invoked in the case of the assessee. He further relied on the judicial decisions cited in the impugned order and held that cash which was admitted to be undisclosed income, is fungible in nature and is generated over a period of time on regular basis. Therefore, seizure of the said cash gives a valid jurisdiction u/s 153C of the Act for the year in which it was generated. The relevant finding of the Ld. CIT(A) is reproduced as under:



“Seen in the above context, it is clear that the unaccounted cash which was carried by the Director of the appellant and admitted to have been undisclosed income is "incriminating" in nature and definitely gives rise to jurisdiction of the AO for invoking S. 153C of the Act. Cash is fungible in nature and is generated over a period of time although it may be found in the possession of a person at a particular point of time. But that doesn't mean that the cash was generated only on that day or only in that year. It is apparent enough that the cash has been generated on a regular basis giving rise to a valid jurisdiction u/s 153C for the years in which it was generated. Hence, the appellant's contention that the AO does not have S. 153C jurisdiction stands REJECTED. The Additional Ground No. 1 & 2 are DISMISSED.”

6. Before us, the Ld. counsel for the assessee has challenged the assessment proceedings completed u/s 143(2) of the Act in assessment year 2017-18 and assessment proceedings u/s 153C of the Act completed for assessment years 2013-14 to assessment year 2016-17. According to the Ld. counsel for the assessee since satisfaction for invoking section 153C of the Act was recorded on 16.07.2018, therefore, the assessment year corresponding to the date of recording satisfaction i.e. assessment year 2019-2020 would be the initial year for assumption of jurisdiction u/s 153C of the Act and preceding six assessment years would be from assessment year 2018-19 to assessment year 2013-14. The Ld. counsel submitted that since, the assessment year 2017-18 i.e. present assessment year should have been completed u/s 153C of the Act, whereas the Assessing Officer has completed the said assessment u/s 143(3) of the Act, therefore, entire assessment proceeding for AY 2017-18, is invalid. The Ld. counsel relied on the Hon'ble Supreme court in the case of **CIT v. Jasjit Singh (2023) 155 Taxmann.com 155 (SC)**.



7. In respect of assessment years 2013-14 to 2016-17, the Ld. counsel for the assessee relied on the Hon'ble Supreme Court in the case of **CIT v. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC)** wherein it is held that for invoking section 153C of the Act the 'incriminating material' which was seized in the case of searched person should pertain to the assessment year in question. The Ld. counsel submitted that only cash of Rs.12.26 lakhs was issued from Shri Ishwardev Shukla and for which no addition has been made by the Assessing Officer. In the assessment years in question from AY 2013-14 to 2016-17, the On-Money received appearing in the impounded material (which has been further extrapolated by AO) has been made basis for addition and net profit has been estimated on the basis of the presumption without any evidence on record and therefore, the assessment has been completed without there being any 'incriminating material' seized during the course of the search, qua the assessment years therefore, entire proceedings u/s 153C of the Act for assessment years 2013-14 to 2016-17, is without valid authority of law, hence, invalid and bad in law and need to be quashed.

8. We have heard rival submission of the parties and perused the relevant material on record. For assessment year 2017-18, the assessee has challenged the assessment proceedings completed by the Assessing Officer u/s 143(3) of the Act. We find that in the instant case, the Assessing Officer has invoked section 153C of the



Act. Under the provisions of section 153C of the Act if any cash, ,
bullion, jewellery or valuable article or thing belonging to other
person has been found in the course of the searched person or any
books of account or documents pertaining to other person is seized
in the course of the searched person or any information contained
thereon related to other person, then, **firstly**, the Assessing Officer
of the searched person shall record a satisfaction that said cash,
bullion, jewellery or valuable article or things belongs to other
person or books of account or documents pertains to other person
or any information contained therein relates to other person and he
will hand over the said cash, bullion, jewellery or valuable article or
documents to the Assessing Officer of the other person. Thereafter,
secondly, the Assessing Officer of the other person, will record
satisfaction that cash, bullion, jewellery. valuable article or things
or book of account or documents etc handed over to him , have a
bearing on the determination of total income of other person **for six
assessment yeas immediately preceding the assessment year in
which search is conducted** , then he will commence assessment
proceedings by way of issue of notice u/s 153A of the Act .

8.1 In view of provisions of section 153C of the Act, the initial
condition for invoking section 153C of the Act is that cash or
bullion or jewellery or valuable articles belonging to the assessee
should be found in the course of the search action of the searched
person. In the instant case only cash of Rs.12.26 lakhs has been



seized from Shri Ishwardev Shukla from the office of the AIU, Airport Mumbai. But in the assessment orders for the assessment year 2017-18 and from 2013-14 to 2016-17, the Assessing Officer has computed the amount of on-money on the basis of the diaries impounded in the course of the survey action at the premises of the assessee and thereafter, he extrapolated said on-money amount and applied net profit rate on assumption . There is no reference of any documents in assessment orders, which are seized from Shri Ishwardev Shukla during the course of the search action him at premises of “AIU Wing, Airport Mumbai.

8.2 Regarding the assessment years 2013-14 to 2016-17, the Ld. counsel for the assessee has relied on the decision of Hon’ble Supreme Court **Sinhgad Technical Education Society** (supra). The Hon’ble Supreme Court held that incriminating material which was seized had to pertain the assessment year in question. The relevant finding of the Hon’ble Supreme Court is reproduced as under:

“14. We have bestowed our due consideration to the respective submissions of the counsel for the parties.

15. At the outset, it needs to be highlighted that the assessment order passed by the AO on August 7, 2008 covered eight Assessment Years i.e. Assessment Year 1999-2000 to Assessment Year 2006-07. As noted above, insofar as Assessment Year 1999-2000 is concerned, same was covered under Section 147 of the Act which means in respect of that year, there were re-assessment proceedings. Insofar as Assessment Year 2006-07 is concerned, it was fresh assessment under Section 143(3) of the Act. Thus, insofar as assessment under Section 153C read with Section 143(3) of the Act is concerned, it was in respect of Assessment Years 2000-01 to 2005-06. Out of that, present appeals relate to four Assessment Years, namely, 2000-01 to 2003-04 covered by notice under Section 153C of the Act. There



is a specific purpose in taking note of this aspect which would be stated by us in the concluding paragraphs of the judgment.

16. In these appeals, qua the aforesaid four Assessment Years, the assessment is quashed by the ITAT (which order is upheld by the High Court) on the sole ground that notice under Section 153C of the Act was legally unsustainable. The events recorded above further disclose that the issue pertaining to validity of notice under Section 153C of the Act was raised for the first time before the Tribunal and the Tribunal permitted the assessee to raise this additional ground and while dealing with the same on merits, accepted the contention of the assessee.

17. First objection of the learned Solicitor General was that it was improper on the part of the ITAT to allow this ground to be raised, when the assessee had not objected to the jurisdiction under Section 153C of the Act before the AO. Therefore, in the first instance, it needs to be determined as to whether ITAT was right in permitting the assessee to raise this ground for the first time before it, as an additional ground.

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 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 therefrom 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.

20. Insofar as the judgment of the Gujarat High Court relied upon by the learned Solicitor General is concerned, we find that the High Court in that case has categorically held that it is an essential condition precedent that any money, bullion or jewellery or other valuable articles or thing or books of accounts or documents seized or requisitioned should belong to a person



other than the person referred to in Section 153A of the Act. This proposition of law laid down by the High Court is correct, which is stated by the Bombay High Court in the impugned judgment as well. The judgment of the Gujarat High Court in the said case went in favour of the Revenue when it was found on facts that the documents seized, in fact, pertain to third party, i.e. the assessee, and, therefore, the said condition precedent for taking action under Section 153C of the Act had been satisfied.

21. Likewise, the Delhi High Court also decided the case on altogether different facts which will have no bearing once the matter is examined in the aforesaid hue on the facts of this case. The Bombay High Court has rightly distinguished the said judgment as not applicable giving the following reasons:

"8. Reliance on the judgment of the Division Bench of the High Court of Delhi reported in case of SSP Aviation Ltd. v. Deputy Commissioner of Income Tax [2012] 346 ITR 177 is misplaced. There, search was carried out in the case of "P" group of companies. It was found that the assessee before the Hon'ble Delhi High Court had acquired certain development rights from "P" group of companies. Based thereon, the satisfaction was recorded by the Assessing Officer and he issued notice in terms of Section 153C. Thereupon the proceedings were initiated under section 153A and the assessee was directed to file returns for the six assessment years commencing from 2003-04 onwards. The assessee filed returns for those years but disclosed Nil taxable income. These returns were accepted by the Assessing Officer, however, in respect of the assessment year 2007-08 there was a significant difference in the pattern of assessment for this year also, the return was filed for Nil income but there were certain documents and which showed that there were transactions of sale of development rights and from which profits were generated and taxable for the assessment year 2007-08. Thus, the receipt of Rs.44 crores as deposit in the previous year relevant to the assessment year 2008-09 and later on became subject matter of the writ petition before the Delhi High Court. That was challenging the validity of notice under section 153C read with section 153A. In dealing with such situation and the peculiar facts that the Delhi High Court upheld the satisfaction and the Delhi High Court found that the machinery provided under section 153C read with section 153A equally facilitates inquiry regarding existence of undisclosed income in the hands of a person other than searched person. The provisions have been referred to in details in dealing with a challenge to the legality and validity of the seizure and action founded thereon. We do not find anything in this judgment which would enable us to hold that the tribunal's understanding of the said legal provision suffers from any error apparent on the face of the record. The Delhi High Court judgment, therefore, will not carry the case of the revenue any further."

We, thus, do not find any merit in these appeals."



It is evident from the above scanned copies of impounded material that there are cash receipts, cash expenses, transactions of cash taken for safe custody by the key persons of the family and similar transactions. It can be simply described as "cash book" related to the various projects done by the different concerns of the group.

9.1 The nature of the transactions recorded in these materials was explained by the key person i.e. Ishwardev D. Shukla, Director of the assessee vide his statement on oath u/s.131 of the Act on 17.12.2016, The relevant portion of the statement is reproduced hereunder:

Q16. I am showing you Brown Colour Jagruti Diary having written pages 1 to 350 marked as Annexure A-I. Please confirm that the same is impounded from this premise te. Ist Floor, Sheetal Kripa Butlding, Beside Saraswat Co.Op. Bank, Naikwadi, Aarey Road, Goregaon (E), Mumbai-400063.

A. I have gone through Brown Colour Jagruti Diary having written pages 1 to 350 marked as Annexure A-I. I confirm that Annexure A-I is impounded from this premise i.e. 1st Floor, Sheetal Kripa Building, Beside Saraswat Co.Op. Bank, Naikwadi, Aarey Road, Goregaon (E), Mumbai 400063.

Q17. Kindly explain the contents of the diary (Brown Colour) marked as

Annexure A-1?

A. Sir, the said diary is having date-wise entries of cash receipt and cash payments for the financial year F.Y.2015-16. Each page of this diary is having the details of cash receipts and cash payments with the name of the person and amount of transactions. These transactions were not recorded in regular books of account forF. Y.2015-16.

Q18. Kindly provide the source of these cash receipt and their complete details?

A. Sir, these cash deposits are mainly cash receipts from the sale of flats, cash loans taken etc. I will provide the complete details in due course.

Q19. I am showing you Red Colour Jagruti Diary having written pages 1 to 175marked as Annexure A-2. Please confirm that the same is impounded from thispremise i.e. Ist Floor, Sheetal Kripa Building, Beside Saraswat CO.Op. Bank,Naikwadi, Aarey Road, Goregaon (E), Mumbai-400063.



A. I have gone through Red Colour Jagruti Diary having written pages 1 to 175 marked as Annexure A-2. I confirm that Annexure A-2 is impounded from this premise i.e. 1st Floor, Sheetal Kripa Building, Beside Saraswat Co.Op. Bank, Naikwadi, Aarey Road, Goregaon (E), Mumbai-400063.

Q20. Kindly explain the contents of the diary (Red Colour) marked as Annexure A-2?

A. Sir, the said diary is having date-wise entries of cash receipt and cash payments for the financial year F.Y.2016-17. Each page of this diary is having the details of cash receipts and cash payments with the name of the person and amount of transactions.. These transactions were not recorded in regular books of account for F. Y.2016-17.

Q21. Kindly provide the source of these cash receipt and their complete details?

A. Sir, these cash deposits are mainly cash receipts from the sale of flats, cash loans taken etc. I will provide the complete details in due course.

Q22. I am showing you Green and White Colour Diary having written pages 1 to 72 marked as Annexure A-3. Please confirm that the same is impounded from this premise i.e. 1st Floor, Sheetal Kripa Building, Beside Saraswat Co. Op. Bank, Naikwadi, Aarey Road, Goregaon (E), Mumbai-400063.

A. I have gone through Green and White Colour Diary having written pages 1 to 72 marked as Annexure A-3. I confirm that Annexure A-3 is impounded from this premise i.e. 1st Floor, Sheetal Kripa Building, Beside Saraswat Co.Op. Bank, Naikwadi, Aarey Road, Goregaon (E), Mumbai-400063.

23. Kindly explain the contents of the Green and White Colour Diary marked as Annexure A-3?

A. Sir. I do not know the exact contents of this diary. I will provide the complete details in due course.

Q24. I am showing you Pink Colour Diary having written pages 1 to 67 marked as Aye Pire A4. Please confirm that the same is impounded this premise i.e. Sheetal Kripa Building, Beside Stras precisep. Bank, Naikwad, Aarey Road, Goregaon (E), Mumbai-400063.



A. have gone through Pink Colour Diary having written pages 1 to 6" marked as Annexure A-4. I confirm that Annexure A-4 is impounded from this premise i.e. 1stFloor, Sheetal Kripa Building, Beside Saraswat Co.Op. Bank, Naikwadi, Aarey Road, Goregaon (E), Mumbai-400063.

Q25. Kindly explain the contents of the Pink Colour Diary marked as AnnexureA-4?

A. Sir, I do not know the exact contents of this diary. I will provide the completedetails in due course.

Q26. I am showing you Green Colour Jagruti Diary having written pages 1 to 36 marked as Annexure A-5. Please confirm that the same is impounded from thispremise i.e. Ist Floor, Sheetal Kripa Building, Beside Saraswat Co.Op. Bank, Naikwadi, Aarey Road, Goregaon (E), Mumbai-400063.

A. I have gone through Green Colour Jagruti Diary having written pages 1 to 36marked as Annexure A-5. I cenfirm that Annexure A-5 is impounded from thispremise i.e. 1stFloor, Sheetal Kripa Building, Beside Saraswat Co.Op. Bank, Naikwadi,Aarey Road, Goregaon (E), Mumbai-400063.

Q27. Kindly explain the contents of the Green Colour Diary marked as Annexure A-5?

A. Sir, I do not know the exact contents of this diary. I will provide the complete details in due course.

Q28. I am showing you Grey Colour Diary having written pages 1 to 184 markedas Annexure A-6. Please confirm that the same is impounded from this premisei.e. Ist Floor, Sheetal Kripa Building, Beside Saraswat Co.Op. Bank, Naikwadi,Aarey Road, Goregaon (E), Mumbai-400063.

A. I have gone through Grey Colour Diary having written pages 1 to 184 markedas Annexure A-6. I confirm that Annexure A-6 is impounded from this premise i.e. IstFloor, Sheetal Kripa Building, Beside Saraswat Co.Op. Bank, Naikwadi, Aarey Road, Goregaon (E), Mumbai-400063.

Q29. Kindly explain the contents of the Grey Colour Diary marked as AnnexureA-6?

A. Sir, I do not know the exact contents of this diary. I will provide the complete details in due course.



Q30. I am showing you Red Colour Dhanlaxmi Notebook having written pages Ito 158 marked as Annexure A-7. Please confirm that the same is impounded from this premise te. Ist Floor, Sheetal Kripa Building, Beside Saraswat Co.Op. Bank, Naikwadi, Aarey Road, Goregaon (E), Mumbai-400063.

A. I have gone through Red Colour Dhanlaxmi Notebook having written pages 1 to 158 marked as Annexure A-7. I confirm that Annexure A-7 is impounded from this premise i.e. Ist Flor, Sheetal Kripa Building Beside Saraswat Co.Op. Bank, Naikwadi, Aarey Road, Goregaon (E), Mumbai-400063.

Q31. Kindly explain the contents of the Red Colour Dhanlaxmi Notebook marked as Annexure A-7?

A. Si, I do not know the exuet contents of this diury. I will provide the complete details in due course.

Q32. I am showing you Yellow Colour Receipt Book having written pages 1 to 56 marked as Annexure A-8. Please confirm that the same is impounded from this premise i.e. Ist Floor, Sheetal Kripa Building, gone through Yellow Colour Receipt Book having written Saraswat Co.Op. Bank, Naikwadi, Aarey Road, Goregaon (E), Mumbai-400063.

A. I have pages 1 to 56 marked as Annexure A-8. I confirm that Annexure A-8 is impounded from this premise i.e. 1st Floor, Sheetal Kripa Building, Beside Saraswat Co.Op. Bank, Naikwadi, Aarey Road, Goregaon (E), Mumbai-400063.

Q33. Kindly explain the contents of the Yellow Colour Receipt Book marked as Annexure A-8?

A. Sir, the entries are related to amount received in cheque and cash from the parties. I will provide the complete details in due course.

Q34. I am showing you Pink Colour Receipt Book having written pages 1 to 54 marked as Annexure A-9. Please confirm that the same is impounded from this premise i.e. Ist Floor, Sheetal Kripa Building, Beside Saraswat Co.Op. Bank, Naikwadi, Aarey Road, Goregaon (E), Mumbai-400063.

A. I have gone through Pink Colour Receipt Book having written pages 1 to 54 marked as Annexure A-9. I confirm that Annexure A-9 is impounded from this premise i.e. 1st Floor, Sheetal Kripa Building, Beside Saraswat Co.Op. Bank, Naikwadi, Aarey Road, Goregaon (E), Mumbai-400063.



It was revealed during the course of search/survey proceedings that the said diaries were maintained and written by Smt. Shefali Sivram Naik who is working in the group at the post of accountant and her statement was recorded. In her statement on oath recorded u/s.131 of the Act on 17.12.2016, Smt. Shefali Shivram Naik had been confronted with the impounded materials. The relevant portion of the same is reproduced hereunder:

Q.5 Please state in what capacity are you working, which company are you working for and how many years are you working for the company.

Ans: Sir, I am working in the accounts department for the past 3 months. Previously I used to work as receptionist for M/s.D.G. Land Developers Put Ltd. I am working in M/s.D.G.Land Developers Put Ltd since 25.05.2012.

Q.6 I am showing you two diaries marked as Annexure A-1 and 4-2 respectively. Kindly go through the same and confirm?

Ans: I confirm that I have gone through these diaries marked as Annexure A-1 and Annexure A-2 and also confirm that it is written in my handwriting.

Q.7 Kindly explain the contents of the diaries marked as Annexure A-1 and Annexure A-2?

Ans: Sir, these diaries contain the entry of cash. receipts and cash payments from different parties. It has mentioned date wise entry of cash receipts and payments for the Financial years 2015-16 and F.Y. 2016-17 (till date) for DGS Group.

Q.8 What are the source of cash receipts mentioned in diaries marked as Annexure A-1 and Annexure-2?

Ans: sir, I am not aware of the source of these cash receipts. I am doing entry as and when instructed by shr Ishwardev shukla. He only instructs to enter the entries when cash is received and paid in the group concerns."

9.3 It is seen that Shri Ishwardev D. Shukla had admitted that the impounded materials in Annexure A-1 & A-12 contains unaccounted entries related to cash receipt and paid by the group companies in various projects related to F.Ys. 2015-16 and 2016-17 respectively.



With regard to impounded materials in Annexure A-13, it was stated that the entries related to cash receipts on account of flat bookings by customers in different projects of D.G. Land Developers Pvt. Ltd. With regard to Annexure A-14, it was stated that it includes brokerage file to be paid to brokers or broker firm for the flats or property sold by acting as agent on our behalf. Thus, it was specifically submitted by Shri Ishwardev D. Shukla that cash entries made in the impounded materials are not reflected in regular books of account of any of the group concerns and these entries / receipts are unaccounted in nature.”

8.4 The assessee contended that in absence of any incriminating material seized from the premises of Shri Ishwardev Shukla qua, the assessment year under consideration no addition could have been made in the hands of the assessee under u/s 153C of the Act. The ld CIT(A) has held that cash seized was incriminating in nature , which was generated over a period, hence, condition of availability of incriminating material stands satisfied for AY 2013-14 to AY 2016-17. We don't agree with this proposition of ld CIT(A) for the reason that AO in his order has no where determined the cash found as unexplained. It is sh Inshvardev Shukla, who stated during search action dated 18/12/2016 that said cash was undisclosed income of assessee company for AY 2017-18 but there is no finding by the AO on this issue. The AO has nowhere mentioned in his order that cash found was of unexplained nature and addition was not made because addition for unexplained cash subsumed in addition for on-money. The ld Counsel for the assessee raised an another question that sh Ishvasrdev shukla arrived at Mumbai airport on 16/12/2016, then how cash was seized from him from the office of AIU, Mumbai airport on



18/12/2016 i.e. after a gap of two days, whereas on 17/12/2016 his statement has been recorded from business premises of the assessee. The ld Counsel raised doubt on entire search action and seizure of quantum of cash from sh Ishwerdev shukla. He submitted that cash found was in his personal capacity and only after survey at the premises of assessee company, he was forced to speak that cash belonged to assessee company. Without going into the controversy raising doubt on search action , we are of the view that AO in impugned order has nowhere considered or held the cash found as unexplained cash of the assessee and same can't be automatically considered as subsumed in the addition in relation to 'on-money', without express finding by the ld AO. The AO has made addition in relation to on-money, on the basis of material impounded during the survey and not under search action, therefore no addition could have been made by the AO in assessments completed for AY 2013-14 to AY 2016-17 invoking section 153C/153A of the Act. Even for a moment, it is presumed that cash found was undisclosed income for AY 2017-18 i.e. the year in which cash was found, no addition can be made in AY 2013-14 to AY 2016-17. Therefore, additions made by the AO for AYs 2013-14 to AY 2016-17, without there being any incriminating material found in search, are deleted. The legal ground challenging validity of assessment made u/s 153C for AYs 2013-14 to AY 2016-17 are accordingly allowed.



9. Now, we take up the additional ground raised in AY 2017-18. The contention of the assessee is that six preceding assessment years for invoking section 153C of the Act have been taken by the AO from AYs 2016-17 to AY 2010-11, corresponding to six assessment years, preceding the assessment year in which search was conducted on searched person. The ld counsel for the assessee relied on the decision of the Hon'ble Supreme Court in the case of **Jasjit Singh (supra)** wherein it is held *that application of the first proviso to section 153C(1) of the Act would not only be confined to question of abatement, but also with regard to the date from which the six years period was to be reckoned in respect of which the returns were to be filed by the third party and thus, period for which other person i.e. the assesses were required to file returns, would reference only from the date when material was forwarded to the jurisdictional Assessing Officer.* Thus, the initial year would be assessed u/s 143(3) of the Act and preceding six assessment years are assessable u/s 153C read with section 153A of the Act. According to the assessee, the case of the assessee was centralized with the Assessing Officer only on 12/07/2018 and satisfaction has been recorded by the AO in the capacity of AO of searched person i.e. sh Ishwardev Shukla as well as AO of other person i.e. the assessee, only on 16/07/2018 , it is presumed that only after this date seized cash could be transferred to the AO of the assessee, therefore, the initial assessment year would be assessment year 2019-20 and the preceding six assessment years would be from



assessment year 2018-19 to assessment year 2013-14. The ld Counsel submitted that the Assessing Officer was required to complete assessment for the assessment year 2017-18 invoking section 153C of the Act, being part of six assessment years whereas, the Assessing Officer has completed assessment u/s 143(3) of the Act, which has rendered entire assessment proceeding for AY 2017-18 as invalid and bad in law. Accordingly, the entire assessment proceedings for assessment year 2017-18 should be quashed.

9.1 The ld DR on the other hand submitted that proviso to section 153C(1) refer to the period for which assessment of other person shall abate and not to be construed for six assessment years to be assessed under section 153C read with section 153A of the Act.

9.2 We have heard rival submission of the parties. According to the Revenue, six assessment years to be assessed under section 153C read with section 153A of the Act are governed by section 153A(1), according to which, six assessment year for assessment u/s 153C would be six assessment years preceding the assessment year in which search was carried out on searched person and not with reference to proviso to section 153C, which refers to the period for abatement of assessment. For ready reference, section 153A and proviso to section 153C are reproduced as under:



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 [but on or before the 31st day of March, 2021], 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 :**

XXX

153C. Assessment of income of any other person.

(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 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 :

XXX.....”

9.3 But the assessee has relied on decision of Hon’ble Supreme Court in the case of CIT vs Jasjit Singh (supra), wherein Hon’ble Supreme Court has held that six assessment years in case of other person i.e. person other than searched person, are to be reckoned from the assessment year, preceding to assessment year in which seized material was handed over to the AO of other person. The relevant finding of Hon’ble Supreme Court is reproduced as under:

“8. *In SSP Aviation (supra) the High Court inter alia reasoned as follows:-*

"14. Now there can be a situation when during the search conducted on one person under Section 132, some documents or valuable assets or books of account belonging to some other person, in whose case the search is not conducted, may be found. In such case, the Assessing Officer has to first be satisfied under Section 153C, which provides for the assessment of income of any other person, i.e., any other person who is not covered by the search, that the books of account or other valuable article or document belongs to the other person (person other than the one searched). He shall hand over the valuable article or books of account or document to the Assessing Officer having jurisdiction over the other person. Thereafter, the Assessing Officer having jurisdiction over the other person has to proceed against him and issue notice to that person in order to assess or reassess the income of such other person in the, manner contemplated by the provisions of Section 153A. Now a question may arise as to the applicability of the second proviso to Section 153A in the case of the other person, in order to examine the question of pending proceedings which have to abate. In the case of the searched person, the date with reference to which the proceedings for assessment or reassessment of any assessment year within the period of the six assessment years shall abate, is the date of initiation of the search under Section 132 or the requisition under Section 132A. For instance, in the present case, with reference to the Puri Group of Companies, such date will be 5.1.2009. However, in the case of the other person, which in the present case is the petitioner herein, such date will be the date of receiving the books of account or documents or assets seized or requisition by the Assessing Officer having jurisdiction over such



other person. In the case of the other person, the question of pendency and abatement of the proceedings of assessment or reassessment to the six assessment years will be examined with reference to such date."

9. It is evident on a plain interpretation of Section 153C(1) that the Parliamentary intent to enact the proviso was to cater not merely to the question of abatement but also with regard to the date from which the six year period was to be reckoned, in respect of which the returns were to be filed by the third party (whose premises are not searched and in respect of whom the specific provision under Section 153-C was enacted. The revenue argued that the proviso [to Section 153(c)(1)] is confined in its application to the question of abatement.

10. This Court is of the opinion that the revenue's argument is insubstantial and without merit. It is quite plausible that without the kind of interpretation which SSP Aviation adopted, the A.O. seized of the materials – of the search party, under section 132 – would take his own time to forward the papers and materials belonging to the third party, to the concerned A.O. In that event if the date would virtually "relate back" as is sought to be contended by the revenue, (to the date of the seizure), the prejudice caused to the third party, who would be drawn into proceedings as it were unwittingly (and in many cases have no concern with it at all), is dis-proportionate. For instance, if the papers are in fact assigned under Section 153-C after a period of four years, the third party assessee's prejudice is writ large as it would have to virtually preserve the records for at latest 10 years which is not the requirement in law. Such disastrous and harsh consequences cannot be attributed to Parliament. On the other hand, a plain reading of section 153-C supports the interpretation which this Court adopts."

9.4 The decision of Hon'ble Supreme Court, being binding precedent, respectfully, following the same, we hold that in the case of assessee, the assessment year 2017-18 falls within the six assessment years, which should be assessed under section 153C read with section 153A of the Act but the Assessing Officer has wrongly assessed the same under section 143(3) of the Act, which being an invalid action, same is not sustainable in law, hence quashed. The additional ground of appeal of the assessee is allowed.



9.5 Since, we have already held the assessment order for assessment year 2017-18 as is invalid and for assessment years 2013-14 to 2016-17, deleted the addition on the legal requirement therefore, adjudication of the arguments of the assessee for AY 2013-14 to AY 2016-17 on merit are rendered merely academic hence, we are not adjudicating upon and are left open.

9. In the result, the appeals of the assessee for assessment year 2017-18 and 2013-14 to 2016-17 are allowed.

Order pronounced in the open Court on 22/08/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 22/08/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai