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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री **अमिताभ शुक्ला,** लेखा सदस्य **के समक्ष**

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.1044/Chny/2023** निर्धारण वर्ष**/Assessment Year: 2019-20**		
Shri Bondalapati Shivaji Rao, 121, Shankar Nagar, M.G. Road, Pammal, Chennai-600 075.	**v.**	The DCIT, Central Circle-1(2), Chennai.
[**PAN: AAHPB 0083 D**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
आयकर अपील सं./**ITA No.1103/Chny/2023** निर्धारण वर्ष**/Assessment Year: 2019-20**		
The DCIT, Central Circle-1(2), Chennai.	**v.**	Shri Bondalapati Shivaji Rao, 121, Shankar Nagar, M.G. Road, Pammal, Chennai-600 075.
		[**PAN: AAHPB 0083 D**]
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
Assessee by	:	Shri B. Ramakrishnan, FCA Shri S. Dwarakesh, CA Shri Shrenik Chordia, CA
Department by	:	Shri V. Nandakumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	08.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	18.09.2024

आदेश **/ O R D E R**

PER ABY T. VARKEY, JM:

These appeals preferred by the assessee and the Revenue are against the order of the Learned Commissioner of Income Tax (Appeals)-18, Chennai (hereinafter in short 'the Ld.CIT(A)') dated 26.07.2023 passed for Assessment Year (hereinafter in short 'AY') 2019-20.

2. Brief facts as noted by us are that, a search u/s 132 of the Act was conducted on 29.01.2019 (AY 2019-20) in the case of M/s. G. Square Lotus Group of cases. Later, the case of the assessee was centralized to Central Circle-1(2), Chennai by order u/s 127 of the Act dated 01.03.2021. It is an admitted fact that, the AO has recorded his satisfaction note on 12.03.2021 and thereafter initiated proceedings u/s.153C of the Act albeit for AYs 2013-14 to 2018-19 by issuing notice u/s.153C of the Act dated 12.03.2021. For the relevant AY 2019-20, the AO is noted to have issued notice u/s. 143(2) of the Act also dated 12.03.2021. Pursuant thereto, the AO is noted to have completed the income-tax assessment for AY 2019-20 u/s. 143(3) of the Act vide order dated 30.09.2021 at a total income of Rs.45,28,53,878/-. Aggrieved by this assessment order, the assessee went in appeal before the Ld. CIT(A) who is noted to have partially deleted the disallowance/addition made by the AO. Being aggrieved by the order of Ld. CIT(A), both the assessee and the Revenue are in appeal before us.

3. The assessee before us has raised *inter-alia* additional grounds of Appeal wherein, he has challenged the legal validity of the impugned assessment order dated 30.09.2021. By raising the additional grounds of Appeal, the contention of the assessee *inter-alia* is that, the impugned assessment for AY 2019-20 was framed without issuance of the

mandatory notice u/s 153C of the Act, which is *sine qua non* to assume jurisdiction for this AY. It has therefore been urged that impugned order passed by the AO ought to be held *ab- initio void* and bad in law. Since this plea is purely legal in nature and goes to the root of the matter, we admit the additional-grounds and take this up first and the legal issue framed with the consent of both parties for our consideration, is as under;-

> "1) That on the facts and circumstances of the case, the date of search for purpose of section 153C of the Act ought to be construed as the date on which satisfaction note is prepared by AO i.e., 12.03.2021 and in that view of the matter, the AO had grossly erred in passing the impugned order dated 30.09.2021 without issuing notice u/s 153C of the Act, thereby rendering the impugned order bad in law."

4. According to the assessee, in terms of provisions of Sec.153C of the Act, the reference to the date of search u/s.132 of the Act was to be construed as the date of receiving the books of accounts/documents/assets/material pertaining to the other person i.e., the assessee, by the AO of such other person. It was the case of the assessee that, the date on which the satisfaction note was recorded by the AO, i.e., 12.03.2021 [AY 2021-22] was the relevant date for the purposes of proviso to Section 153C of the Act. Referring to the aforesaid date, the assessee had contended that the period of six (6) assessment years preceding the year/date of search, was to be reckoned from AY 2021-22 for the initiation of assessments u/s 153C of the Act. It was the

case of the assessee that, the AO was therefore duty bound to first issue notices u/s 153C of the Act for the six (6) assessment years preceding the year of search i.e., AY 2021-22, in the present case. The relevant AY 2019-20 being the second (2nd) assessment year preceding the deemed date of search i.e., 12.03.2021, the AO was duty bound to first issue notice u/s.153C of the Act in order to assume jurisdiction to frame the assessment for this AY. Since the AO didn't issue notice u/s.153C of the Act for this year, but completed the assessment without issuing the notice for this AY, the assessee has claimed that the impugned assessment order stood vitiated in law. In support thereof, the Ld. AR has relied on the following decisions:-

- CIT v. Jasjit Singh (458 ITR 437) (SC)
- ITO v. Vikram Sujitkumar Bhatia (453 ITR 417) (SC)
- Pr.CIT Vs Ojjus Medicare (P) Ltd (465 ITR 101) (Del HC)
- A.R. Safiullah v. ACIT (W.P (MD) No.4327 of 2021) (Mad HC)
- SSP Aviation Ltd. v. DCIT (346 ITR 177) (Del HC)
- Pepsi Foods Pvt. Ltd. v. ACIT (367 ITR 112) (Del HC)
- CIT v. RRJ Securities Ltd. (380 ITR 612) (Del HC)
- PCIT v. R.L. Allied Industries (ITA No.370/2015) (Del HC)
- CIT v. Gopi Apartments (365 ITR 411) (All.HC)

5. Per contra, the Ld. CIT, DR appearing for the Revenue countered the assessee's contention by relying on the amendment made in Sec.153C(1) by Finance Act, 2017 w.e.f. 01.04.2017, which was applicable in the present case, as the date of search was 29.01.2019. According to Ld. CIT, DR, by virtue of this amendment, the Parliament has made it clear that, both the searched person and for the other person (assessee in this case), the period of re-assessment would be six assessment years preceding the year of search. For this, he referred to the decision of the Hon'ble Delhi High Court in the case of **PCIT v. Sarwar Agency Pvt. Ltd. (397 ITR 400)** and argued that post the 2017 amendment, the calculation of period of 6/10 AYs must be reckoned from the date of search and not from when documents are either handed over to jurisdictional AO or when the satisfaction note in respect of non/searched person is drawn. According to the Ld. CIT DR therefore, having regard to the date of original search, the relevant AY 2019-20 was the year of search and thus it has been rightly assessed u/s.143(3) of the Act. The Ld. CIT DR also referred to the decision of the Hon'ble Madras High Court in the case of **RKM Powergen (P) Ltd. v. ACIT (459 ITR 792)** and which according to him laid down the principles as to how the "go back" period in terms of sec.153C is to be computed. The Ld. DR argued that, the purpose of the first proviso to Section 153C of the Act

was restricted to the second proviso to sub-sec.(1) of Section 153A of the Act i.e. to ascertain the abatement/un-abatement of assessment and not for reckoning for six AYs. The Ld. CIT, DR alternatively contended that, non-issuance of notice u/s 153C of the Act was only a procedural irregularity and the same ought to be ignored in light of Section 292BB of the Act. Therefore, according to the Ld. CIT DR, the AO was unjustified in law by not issuing notice u/s.153C of the Act for AY 2019-20 and that he had rightly framed the assessment u/s. 143(3) of the Act. He thus urged us to dismiss this legal issue/contention of the assessee.

6. Heard both the parties. The undisputed facts before us are that, the date of search of the searched person i.e. M/s. G. Square Lotus Group of cases, was 29.01.2019 (AY 2019-20). Admittedly, the assessee was not the 'searched person'. The case of the assessee was centralized only on 01.03.2021 pursuant to which the AO assumed jurisdiction upon the assessee. Although the date of actual handing over of the books of accounts/seized material pertaining to the assessee is not available, but both the parties agreed and addressed on the presumption that it would be the date of recording of satisfaction note by the AO, which in the present case was 12.03.2021.

7. Having taken note of the above contemporaneous facts, let us now first analyze the statutory framework of Section 153C of the Act. The

relevant provisions of Section 153C of the Act, as it stood during the relevant year, read as under: -

"**Assessment in case of any other persons**

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

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

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

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

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years 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 as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.

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

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A."

8. It is noted that the Finance Act, 2003 w.e.f. 01-06-2003, introduced the provisions of Section 153A/153C of the Act. It replaced the provisions relating to block assessment contained in Chapter XIV-B and introduced the new procedure for making assessment u/s 153A/153C of the Act, which formed part of Chapter XIV of the Act - *"Procedure for Assessment"*. Section 153A of the Act deals with *"Assessment in case of Search or requisition"*. It is a special provision for framing assessment in case of an assessee against whom search action has been carried out by the Department. It provided that where a search has been initiated or where books of account or other documents or assets has been requisitioned, the AO would require the searched person to furnish a

return of income in respect of each AY falling within six AYs' immediately preceding the AY relevant to the previous year in which search may have been conducted or requisition made. The First Proviso further stipulated that the AO would assess or reassess the total income in respect of each AY falling within the block of six AYs'. Of equal significance was the Second Proviso which prescribed that if any proceedings relating to assessment or reassessment was pending on the date of initiation of the search or on the making of a requisition, the same would abate.

9. While section 153A pertained to assessment in case of the person searched, it undoubtedly laid in place the assessment machinery for the *non-searched person* and in respect of whom, the search may have led to the identification of money, bullion, jewellery or other valuable article or thing, belongs to that *"other person" or any* books of account, or documents, pertains to or information contained therein relates to that *"other person"*. Section 153C did not lay in place a separate procedure for assessment and merely postulated that assessment or reassessment, as the case may be, would have to be undertaken in accordance with the provisions of section 153A. In terms of Finance Act, 2005, *inter-alia* the first proviso came to be inserted in section 153C(1) in the following terms:-

> "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 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."

10. Later on, the Finance Act, 2014 further amended section 153C to provide that the AO of the *"other person"* was empowered to issue notice to such *"other person"* if he was satisfied that the books of accounts or documents or assets seized *"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"*.

11. The crucial amendment, which has been particularly relied upon by the Revenue, came in Section 153A, 153B & 153C by the Finance Act, 2017 wherein for the first time adopted the concept of the *"relevant assessment year"* was incorporated and provided an explanation for the said term. By virtue of this amendment, Section 153C enabled the AO of a non-searched party to commence proceedings for assessment or reassessment for six AYs' immediately preceding the AY relevant to the previous year in which search is conducted or requisition made and for the *"relevant assessment year"* as defined by section 153A.

12. Reading of the main provision of Section 153C (as it stood during the year) along with the first proviso reveals that, the reference point

which is spoken of, in section 153A(1) from which the period of six AYs' is to be calculated, and which stipulates it to be the date of search or requisition, stands shifted to the date of receipt of books of account, documents or assets seized or requisitioned by the AO of the non-searched person. For this, we gainfully refer to the decision of the Hon'ble Delhi High Court in the case of **CIT v. RRJ Securities Ltd. (supra)**, wherein the Hon'ble Delhi High Court held as under:

> " As discussed hereinbefore, in terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/ reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment years 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years prior to the assessment year relevant to the previous year in which the search was conducted. If this interpretation as canvassed by the Revenue is accepted, it would mean that whereas in case of a person searched, assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be reopened would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to the AO would be subsequent to the date of the search. This,

in our view, would be contrary to the scheme of Section 153C(1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one searched) as the date of the search on the Assessee. The rationale appears to be that whereas in the case of a searched person the AO of the searched person assumes possession of seized assets/documents on search of the Assessee; the seized assets/documents belonging to a person other than a searched person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee's income for that year."

13. It is noted that the **Hon'ble Supreme Court** in **Jasjit Singh (supra)** has affirmed the above view with the following significant observations:-

"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."

[emphasis supplied by us]

14. We further note that, the above proposition that, in the case of assessment under Section 153C, the starting point is ordained to be the

handing over of books of account or documents or assets seized and that event constituting the point from which the preceding six AYs' or the "relevant assessment year" is to be computed stands reiterated by the Hon'ble Supreme Court in **Vikram Sujitkumar Bhatia (supra)** whose relevant observations are noted to be as follows:-

> "41. Thus, as per the proviso to section 153C as inserted vide Finance Act, 2005, and the effect of the said proviso is that it creates a deeming fiction wherein any reference made to the date of initiation of search is deemed to be a reference made to the date when the Assessing Officer of the non-searched person receives the books of account or documents or assets seized etc. Thus, in the present case, even though the search under section 132 was initiated prior to the amendment to section 153C w.e.f.01.06.2015, the books of account or documents or assets were seized by the Assessing Officer of the non-searched person only on 25.04.2017, which is subsequent to the amendment, therefore, when the notice under section 153C was issued on 04.05.2018, the provision of the law existing as on that date, i.e., the amended section 153C shall be applicable."
>
> [emphasis supplied by us]

15. In this context, we may also gainfully refer to the following findings of the Hon'ble Delhi High Court in the case of **Pr.CIT Vs Ojjus Medicare (P) Ltd (supra)** wherein it was held as under:-

> "80. The aforesaid discussion thus renders a determinative quietus to the identification of the starting post from which the block of six AYs' or the "relevant assessment year" would have to be calculated. The contention of the respondents that the said block periods would have to be reckoned with reference to the date of search thus can neither be countenanced nor possibly accepted. That submission is clearly addressed contrary to a long and consistent line of precedents which have held to the contrary and which unequivocally accepted the point of commencement for the purposes of identifying the six or the "relevant

> assessment year" to be etched from the date of handover of documents, assets or things to the AO of the non-searched party.

16. Before us, the Revenue has urged that, subsequent to the amendment by Finance Act, 2017, the first proviso to Section 153C(1) is only relevant for the purposes of abatement of pending assessment or reassessment proceedings, which is mentioned in Section 153A(1) of the Act and that it cannot be viewed as the reference point from which the block of six AYs is to be computed. According to Ld. CIT DR therefore, the decisions cited by the assessee were of no relevance, post this amendment. We however are unable to countenance this argument of the Revenue as there is no such indication contained in Section 153C of the Act that, the first proviso is only concerned with abatement or non-abatement of assessments and that it does not regulate the date from which the block of six AYs is to be computed. We find that, this identical line of argument was raised by the Revenue before the Hon'ble Delhi High Court in the case of **Pr. CIT Vs Karina Airlines International Ltd (165 taxmann.com 421)** which was repelled by the Hon'ble High Court, by observing as follows:-

> "14. It becomes pertinent to recall that Section 153A, as it stood prior to 01 April 2017, envisaged a search assessment being undertaken "in respect of each assessment year falling within six assessment years" referred to in clause (b) thereof. Clause (b) of Section 153A(1) provided for the identification of the six AYs' with reference to the "previous year in which the search is conducted or requisition is made". The block of six AYs' were to be identified commencing from the AY "immediately

preceding the assessment year relevant to the previous year" in which the search may have been conducted. The Finance Act, 2017 stretched the search assessment to an additional four AYs' with the introduction of the concept of "relevant assessment year" and which was defined by Explanation 1 to Section 153A(1) as being the period which would fall beyond "six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year" in which search was conducted. A block period of ten AYs' consequently became liable to assessment in the case of a search post the enactment of Finance Act, 2017.

15. The constitution of a block of ten AYs' in Section 153A was contemporaneously added and introduced in Section 153C. Post Finance Act, 2017, an assessment triggered by a search could thus hypothetically extend to a block period of ten years both in the case of a searched as well as a non-searched entity. In our opinion, the amendments introduced in Section 153C, and on which reliance was placed by Mr. Mann, were essentially intended to place both Sections 153A and 153C at par and for both statutory provisions being available to be invoked for the purposes of assessment covering a block of ten AYs'.

…….

17. The First Proviso to Section 153C (1) has been consistently recognized as not being concerned merely with the aspect of abatement, which is spoken of in the Second Proviso to Section 153A (1) of the Act, but also to regulate the date from which the six-year period or the "relevant assessment year" insofar as the non-searched entity is concerned, is to be reckoned. This position has been consistently followed not just by this Court but also by the Supreme Court in Commissioner of Income Tax 14 v. Jasjit Singh [2023] SCC Online SC 1265. The relevant paragraphs of the said decision are reproduced hereinbelow: -

"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."

18. Insofar as the present appeal is concerned, on facts we find that while it is true that AO of the searched person as well as that of the respondent assessee was the same, undisputedly while in the case of the former, satisfaction was recorded on 29 March 2019, the AO in the case of the respondent assessee drew up a Satisfaction Note on 15 May 2019.

19. In order to appreciate the essential legislative objective underlying the handover of material and formation of opinion by the AO of the non-searched entity, we would have to bear the following aspects in mind. We firstly take note of the fact that Section 153C would get triggered firstly upon the Assessing Authority of the searched entity identifying documents or material which are found to relate to a person other than the entity which was subjected to search. In such a contingency, that Assessing Authority is obligated to transmit the relevant material to the AO of the "other person". The AO of the non-searched entity is thereafter required to scrutinize the material so received and evaluate whether the same is likely to have an impact "on the determination of the total income of such other person..". This becomes evident from the plain text of Section 153C requiring the AO of the non-searched party being "satisfied that the books of account or documents or assets seized have a bearing on the determination of total income of such other person..". The material and documents unearthed in the course of the search have to be independently evaluated before a reassessment exercise can be initiated against a non-searched person. Unless the AO of that "other person" is satisfied that the material so gathered is likely to have an impact "on the determination of the total income of such other person", the mere receipt of documents would not suffice.

20. It thus becomes apparent that it is the satisfaction arrived at under Section 153C which constitutes the cornerstone of that provision and the primary ingredient for Section 153C being set into motion. In our considered opinion, the actual or physical act of transmission of documents is merely a step in aid of formation of opinion whether an assessment under Section 153C is liable to be initiated. It is in that sense merely a machinery provision put in place to enable the AO of the non-searched person to examine whether an assessment is liable to be commenced under Section 153C of the Act. Thus, even in a case where the AO of the searched and the non-searched party be one and the same, it would be the formation of an opinion that the material is likely

> to "have a bearing on the determination of the total income.." which would constitute the core and the heart of Section 153C.
>
> 21. A harmonious interpretation of the main part of Section 153C and its Proviso lead us to hold that in cases where the jurisdictional AO is common, the commencement point would have to be construed as the date when the satisfaction is formed by the said AO with respect to such other person. In our considered view, even though there may not have been an actual exchange of material unearthed in the course of the search between two separate authorities, it would be the date when the AO records its satisfaction with respect to the non-searched entity which would be of seminal importance and constitute the bedrock for commencement of action under Section 153C.

17. As far as the reliance placed by Revenue on the decision rendered by Single Judge Bench of Hon'ble Madras High Court in the case of **R.K.M.Powergen (P) Ltd (supra)** is concerned, it is noted that the Hon'ble Single Judge while disagreeing with the view taken in **Sarwar Agency (supra)** as well as **RRJ Securities (supra)** didn't take cognizance of the fact that the aforesaid decisions were rendered following the decision in the case of **SSP Aviation (supra)** which has since been affirmed by the Hon'ble Supreme Court in **Jasjit Singh (supra)** by holding as under:-

> "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."

18. Moreover, according to us, the interpretation being sought to be propounded by the Revenue is incongruous. This incongruity may be explained by way of illustration. Say, a search u/s 132 of the Act was conducted in FY 2017-18. In such a scenario, the assessment of the searched person can be reopened for the preceding six AYs and relevant assessment year i.e. further 4 AYs, aggregating to 10-year block viz., FYs 2008-09 to 2016-17. Further, in terms of Section 153B of the Act, the AO would be required to complete the assessment in a time bound manner i.e. within twenty one months from the end of the year of search i.e. 31st December 2019. The searched person will therefore get a finality in its assessments by 31.12.2019. Now if there is some seized incriminating material pertaining to a non-searched person and the year of handover of books of accounts is FY 2023-24, then according to Revenue, for the purposes of issue of notice u/s 153C of the Act, it shall be saved by the first proviso to Section 153C of the Act. Further, even the time limit for completion of assessment shall be saved by first proviso to Section 153B as the period of twenty-one months shall be computed from the end of the year of search viz., year of handover of books of accounts, which would be 31st December 2025. However only for computing the six year block period and 'relevant assessment year', the original date of search shall be relevant and the Revenue can re-open FYs 2008-09 to 2016-17 in

FY 2022-23 as well. Likewise, if the date of handing over of books of accounts is further delayed, the Revenue would still be at liberty to reopen FYs 2008-09 to 2016-17. Going by this logic of the Revenue, the prejudice caused to the non-searched person, who would be drawn into proceedings as it were unwittingly is highly dis-proportionate to the searched person. In such a scenario, there would be a Sword of Damocles hanging over head of any non-searched person (for no fault of his) and unlike the searched person, whose assessment shall be completed in a time bound manner, the non-searched person would be required to preserve the records virtually for eternity. According to us, such disastrous and harsh consequence cannot be the intent of the Legislature and in that view of the matter the line of argument taken by the Revenue is rejected.

19. Moreover, we note that, the Hon'ble Delhi High Court in the case of **Pr.CIT Vs Ojjus Medicare (P) Ltd (supra)** at **Paras 51 to 84** has in detail analyzed the entire statutory framework of Section 153C of the Act from its introduction to the amendment by Finance Act, 2017 and its grandfathering by the Finance Act, 2021 and the relevant decisions on this subject including the decisions of **Sarwar Agency Pvt. Ltd.** (supra) & **RKM Powergen** (P) Ltd. (supra) relied upon by the Revenue. The Hon'ble High Court is noted to have accordingly concluded that, even post

the amendment by Finance Act, 2017, the first proviso to section 153C shifts the relevant date from the date of initiation of search or a requisition made, to the date of hand-over of books of account or documents and assets seized to the AO of the non-searched person (or in its absence to the date of satisfaction note) and the said date shall be commencement point for reckoning the six or the ten AYs'. The relevant findings of the Hon'ble Delhi High Court, in this regard, which is found applicable in the present case, is noted to be as follows:-

> "7. …..On 18 October 2019, a search and seizure operation is stated to have been carried out in respect of the Alankit Group of Companies6 . On 22 March 2022, the petitioner was served with a notice purporting to be under Section 153C of the Act requiring it to submit a true and correct return of its total income for AY 2011-12. The aforesaid notice was followed by a communication dated 22 December 2022 under Section 142(1) requiring the petitioner to produce accounts and documents as per the annexure appended thereto. A follow-up notice under Section 142(1) of the Act was thereafter issued on 01 February 2023. It is alleged by the respondents that since the petitioner did not respond to the aforesaid communications, they were constrained to issue notices under Section 144 of the Act and which were dated 22 February 2023 and 03 March 2023. In response to the aforesaid, the petitioner submitted its response on 15 March 2023.
>
> 8. In order to appreciate the challenge which stands raised, we deem it apposite to extract the Satisfaction Note which came to be recorded by the AO of the writ petitioner. The Satisfaction Note which is dated 17 February 2022 is extracted hereinbelow:
>
> ……..
>
> 86. In the present batch, List I pertains to writ petitions which have Satisfaction Notes recorded or section 153C notices issued between the period 01 April 2021 to 31 March 2022. Undisputedly, the First Proviso to section 153C, and which has been consistently recognized to also embody the commencement point for reckoning the six or the ten AYs', shifts the relevant date from the date of initiation of search or a requisition made to the date of receipt of books of account or documents and assets seized by the jurisdictional AO of the non-searched person. Consequently, the block of six or ten AYs' would have to be reckoned bearing the aforesaid date in mind. Although in the present batch of writ petitions, the date of actual handing over has not been explicitly

mentioned in a majority of the writ petitions, learned counsels for respective sides had addressed submissions based on the assumption that it would be the date of issuance of the Satisfaction Note by the AO of the non-searched person and in the case of nonavailability of such a note, the date of issuance of the section 153C notices which would be pertinent for the purposes of the First Proviso to section 153C.

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

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

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

20. The Hon'ble Delhi High Court is further noted to have finally concluded with the following observations:-

"D. The First Proviso to section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is governed by the First Proviso to section 153C, which significantly shifts the reference point spoken of in section 153A(1), while defining the point from which the period of the "relevant assessment year" is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the non-searched person. The

shift of the relevant date in the case of a non-searched person being regulated by the First Proviso of section 153C(1) is an issue which is no longer res integra and stands authoritatively settled by virtue of the decisions of this Court in SSP Aviation and RRJ Securities as well as the decision of the Supreme Court in Jasjit Singh. The aforesaid legal position also stood reiterated by the Supreme Court in Vikram Sujitkumar Bhatia. The submission of the respondents, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted.

E. The reckoning of the six AYs' would require one to firstly identify the FY in which the search was undertaken and which would lead to the ascertainment of the AY relevant to the previous year of search. The block of six AYs' would consequently be those which immediately precede the AY relevant to the year of search. In the case of a search assessment undertaken in terms of section 153C, the solitary distinction would be that the previous year of search would stand substituted by the date or the year in which the books of accounts or documents and assets seized are handed over to the jurisdictional AO as opposed to the year of search which constitutes the basis for an assessment under section 153A."

21. Following the decisions (supra), we hold that the date of receiving the books of account/documents/assets from the AO of the assessee was to be construed as the date of search, in terms of the first proviso to Section 153C of the Act. In the present case, it has been agreed that the date of satisfaction note is to be taken as the date of receipt of books of accounts/ documents/ assets which is 12.03.2021 (AY 2021-22). Accordingly, the relevant AY 2019-20 impugned before us preceded the date of search and fell within the six (6) assessment years preceding the year of search. Accordingly, we hold that the AO was legally required to issue notice u/s 153C of the Act in relation to AY 2019-20.

22. Now we address the Revenue's contention that, non-issuance of notice u/s 153C of the Act was not mandatory but only a procedural defect. We are afraid we cannot countenance such a contention because sub-section (2) of section 153C mandates that AO of the other person (assessee in this case) after receiving the books of account or documents or assets seized (of the other person/assessee), shall issue notice and assess or re-assess total income of such other person (assessee) in the manner provided under section 153A of the Act. And sub-section (1) of section 153A of the Act, mandates issue of notice for six (6) assessment years preceding the searched assessment year. Therefore, the AO of the assessee was duty bound to follow the mandate of law and ought to have issued notice under section 153C of the Act and the omission to do so, vitiates the consequent actions/assessment order framed for AY 2019-20, because the AO's action tantamount to arbitrariness which offends Article 14 of the Constitution of India and the basic feature of Constitution, the 'Rule of Law'. And so, we hold that, in the facts and circumstances noted (supra), the framing of assessment order by AO u/s 143(3) of the Act, without issuance of notice under section 153C of the Act for AY 2019-20, is *ab-initio* void. Further, we find that, this view of ours gets support of Tribunal decision in the case of **Pavitra Realcon Pvt Ltd Vs ACIT (87**

taxmann.com 142) wherein the Delhi Bench of this Tribunal held as follows:

> "15.3 Since the satisfaction was recorded on 27th July, 2012, therefore, deemed date of search in the case of other person for computing the period of six years is 27th July, 2012 and the six assessment years immediately preceding the assessment year relevant to previous year in which such search is conducted is assessment years 2006-07 to 2012-13. However, it is an admitted fact that no such notice u/s 153C was issued by the Assessing Officer in the above two cases for the impugned assessment years and the ld. DR also fairly admitted the same. It is a fact that the Assessing Officer mentioned in the body of the assessment order that the same has been passed u/s 153C/143(3). However, the Assessing Officer has not assumed jurisdiction u/s 153C as per the copies of order sheet entries filed during the course of hearing and the ld. DR also confirmed that no notice u/s 153C has been issued by the Assessing Officer in the above two cases. As per the requirement of the proceedings under Income Tax Act, the assessment proceedings has to be done as per Section 153C of the Act in case of the searched party. But the Assessing Officer choose to follow procedure u/s. 143(3) of the Act, yet while conducting the proceedings under the said Section chooses to use the material which was found during search with the third party without confronting the same to the present assessees. This is not permissible as per the provisions of the Income Tax Act, 1961. The contention of the Ld. DR that Principle of natural justice is a flexible concept is not permissible. The statute has to be strictly followed and the Revenue cannot ignore the procedure given under Section 143(2) or Section 153A/153C of the Act. If we admit the submissions made by the Ld. DR that the Assessing Officer has rightly issued notice u/s 143(2) dated 13/9/2012 then how the Assessing Officer has used the material which was found during the search in this particular Assessment Year 2011-12. Section 143(2) and Section 153C are not only governing the procedure to be followed by the Assessing Officer but there is an obligation upon the Assessing Officer to properly fulfill the provisions of the Income-tax Act. Section 143(2) notice is given when the returns are furnished u/s 139 or in response to notice under sub section 1 of Section 142 when the assessee has not stated the income properly. Section 153C begins with non obstante clause that notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 & Section 153, the Assessing Officer will issue notice as per provisions of 153A. The intention of the parliament for separate Sections for issuing notice u/s 143(2) and Section 153A is specifically different

and falls in particular circumstances mentioned in those particular Sections. It cannot be interlocated or inter related. Clearly, here the Assessing Officer was prima facie of the opinion that there was a search in the premises of BPTP Group. But instead of the searched material whether belong to the assessee or not which is in doubt cannot be simply taken in proceedings u/s 143(2) by the Assessing Officer. The Assessing Officer cannot take the benefit of both the Sections. It has to be specifically mentioned in the assessment order why he is invoking that particular Section because each Section has its own procedure and if there is a procedure which has to be followed the same cannot be ignored by the Assessing Officer. All the Sections to Income tax Act has given its own formats and whenever necessary they have given specific Sections in that particular Section and why the other Section has to be taken in cognizance while interpreting that particular Section. Thus, the legal ground of the assessee that Assessing Officer as well as the CIT(A) has not carried out proper proceedings against the assessee by invoking Section 143(2) in case of Pavitra and Dedicate sustains to the test of legal scrutiny. The Ld. DR relied upon the various Hon'ble Supreme Court and Hon'ble High Court judgments. The legal principle in all these judgments does not give the right to the Revenue to overlook the Sections or misinterpret the Section as per the convenience of the Department. In-fact, all the Hon'ble Supreme Court as well as the Hon'ble High Court judgments have rather reiterated each and every factual aspect of each case and after that have come to the conclusion whether that particular Section in the particular case has been properly followed or not. The decision is not only based on the legal principle but how the legal principle has to be applied to the factual aspect of each case has been taken care of by the Apex Court and the Hon'ble High Court.

16. We find the year for which the impugned assessment order has been passed u/s 143(3) is for assessment year 2011-12. This year falls within the period of six years when counted from the date of recording of satisfaction note u/s 153/153C of the I.T. Act which is deemed date of search. The Act has been amended recently by the Finance Act, 2017 with prospective effect i.e. from assessment year 2018-19. Thus, the period is same now only for the searched parties as well as the other person as per the amended provisions of the said section. In view of the above, we hold that the assessment completed u/s 143(3) is invalid.

17. So far as the argument of the ld. DR that although no notice u/s 153C has been issued but the assessment has been completed u/s 153C/143(3) and therefore, the error is curable u/s 292B is concerned, the same in our opinion cannot be read to confer the jurisdiction on the Assessing Officer where none exists. The said section, in our opinion,

only protects return of income, assessment, notice, summons or other proceedings from any mistake in such return of income, assessment notices, summons or other proceedings provided the same are in-substance and in-effect are in conformity with the intent or purposes of the Act, i.e., 292B cannot save an order not passed in accordance with the provisions of the Act. We have also gone through the order-sheet entries, copies of which were filed during the course of hearing and find that no notice u/s 153C has been issued for the period under consideration. Since the assessment order has not been passed in conformity with the provisions of the law, the same is liable to be quashed since such assessment is palpably and patently illegal."

23. We may also gainfully refer to the decision of the Delhi Bench of this Tribunal in the case of **Bina Fashions N Foods (P.) Ltd. v. Dy. CIT (77 ITR (Trib.) 68)** rendered on similar facts and circumstances, wherein also the assessment order was quashed by this Tribunal, by holding as under: -

"4. We have heard the Learned Representatives of both the parties. Learned Counsel for the Assessee submitted that A.O. should have passed the assessment order under section 153C since satisfaction note was prepared by the A.O. on 29.01.2014 which became the substitute date of search under section 153C and A.Y. 2012-2013 under appeal fell within six preceding assessment years i.e., from A.Y. 2008-2009 to 2013-2014 for the purpose of assessment under section 153A of the I.T. Act, 1961. Thus, the assessment framed under section 143(3) is not valid and should be annulled.....

.....

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that A.O. has correctly passed the order under section 143(3) of the I.T. Act, 1961.

.....

6.1. Considering the facts of the case in the light of above decisions, it is clear that the impounded documents have been received by A.O. on 29.01.2014 when satisfaction under section 153C have been recorded. The First Proviso to Section 153C of the I.T. Act provides that six

> assessment years in which assessment or re-assessments could be made under section 153C of the I.T. Act would also have to be considered with reference to the date of handing over of the assets or documents to the A.O. of the assessee. Therefore, the six assessment years under section 153C of the I.T. Act in the case of assessee would be A.Ys. 2008- 2009 to 2013-2014. The A.O, therefore, shall have to pass the assessment order under section 153C of the I.T. Act. Further, the A.O. has not issued any notice under section 153C of the I.T. Act, therefore, the issue is covered by the above decision in favour of the assessee. The A.O. in the satisfaction note initiated the proceedings under section 153C only for A.Ys. 2006-2007 to 2011-2012 instead of A.Ys. 2008-2009 to 2013-2014. In view of the above, we are of the view that assessment order is illegal and bad in law and cannot be sustained in Law."

24. Following the above judgments (supra), we note that this Tribunal has expressed identical view on similar facts & circumstances, in the decision rendered in the case of **DCIT Vs Dr. D. Y. Patil Sports Academy in ITA No. 1295/Mum/2021 dated 28-09-2022**. In the decided case also, the AY 2016-17 in question fell within the six (6) assessment years preceding the date of search (date of satisfaction note) in terms of proviso to Section 153C of the Act. The AO had completed the assessment u/s 143(3) of the Act, which was challenged by the assessee for want of issue of notice u/s 153C of the Act. On appeal, this Tribunal upheld the order of the Ld. CIT(A) holding that the non-issuance of notice u/s 153C of the Act vitiated the entire assessment proceedings for AY 2016-17 rendering the assessment order passed u/s 143(3) of the Act to be *ab initio* void.

25. Before us, the Ld. DR for the Revenue laid heavy emphasis upon the provisions of Section 292B to suggest that the procedure contemplated under Section 292B would cure the irregularities committed by the authorities concerned (non-issuance of notice u/s 153C of the Act, in this case) and therefore, the order passed by the AO cannot be quashed. We however are unable to countenance this contention of the Revenue. According to us, Section 292B of the Act cannot be read to cure jurisdictional errors on the part of Assessing Officer. The said section only protects return of income, assessment, notice, summons or other proceedings from any mistake in such return of income, assessment, notices, summons or other proceedings, provided the same are in substance and in effect, in conformity with the intent of the Act. Section 292B of the Act cannot save an order not passed in accordance with the provisions of the Act. The non-issuance of notice u/s 153C of the Act, according to us, does not constitute a curable mistake committed in the assessment or the order. But it constitutes a jurisdictional defect which goes to the root of the matter; and exposes the arbitrary action of AO in following the special law u/s153C of the Act. In our considered view, the lapse on the AO's part of not issuing notice u/s 153C of the Act was not a mere procedural irregularity, but a jurisdictional illegality, which is incurable, as the mistake in not following the mandate contemplated u/s

153C hits at the substratum of the assessee's rights [which will be discussed infra].

26. To elucidate the above, we gainfully refer to the decision of Hon'ble Bombay High Court in the case of **CIT Vs B.G. Shirke Construction Technology (P) Ltd (395 ITR 271)**. In the instant case, it was held that in case of an abated assessment year, the return originally filed u/s 139 of the Act stands replaced by the return of income u/s 153A of the Act. The AO is therefore required to conduct the assessment for such abated AY taking into account the return as filed u/s 153A of the Act. The Hon'ble High Court held that, pursuant to a notice u/s 153A of the Act for an abated assessment year, an assessee can raise a new claim which he omitted to claim in original return u/s 139 of the Act. Taking note of the judgment which was rendered in the case of **CIT Vs Sun Engineering Works Pvt Ltd (198 ITR 297)** in the context of Section 147/148 of the Act, the Hon'ble High Court found the same to be distinguishable and it accordingly held as under:

> "..Consequently, the return filed under Section 153A(1) of the Act is a return furnished under Section 139 of the Act. Consequently, the respondent-assessee is being assessed in respect of abated assessment for the first time under the Act. Therefore, the provisions of the Act which would be otherwise applicable in case of return filed in the regular course under Section 139(1) of the Act would also continue to apply in case of return filed under Section 153A of the Act and the case laws on the provision of the Act would equally apply."

27. In the present case also, the income-tax assessment for the relevant AY 2019-20 was pending as on the deemed date of search viz., by virtue of the proviso to Section 153C of the Act. Accordingly, in terms of the second proviso to Section 153A of the Act, the pending proceedings for AY 2019-20 stood abated. We therefore find that, non-issuance of notice u/s 153C of the Act for the abated AY 2019-20 deprived the assessee of the opportunity to file fresh return of income u/s 153C of the Act. The assessee was thus divested of the opportunity to raise any new/fresh claims in the return of income u/s 153C of the Act. As rightly pointed out by the Ld. AR, the assessee is otherwise prevented from making any new claim in the course of assessment before the AO other than by way of revised return of income **[Goetze (India) Ltd Vs CIT (284 ITR 323)]**. This shows that a vested right of the assessee was taken away by the inaction/omission on the part of AO, by not issuing notice u/s 153C of the Act, and hence it cannot be said to be a mere procedural irregularity and we find the same to be an illegality/incurable defect.

28. Similarly, we note that, the issuance of notice u/s 153C of the Act for an abated AY also gives an opportunity to the other person (third party) to come clean and offer any additional income, if so desired, in the fresh return of income filed u/s 153C of the Act. By doing so, the

assessee may get saved from penal and prosecution consequences under the Act. We find that the Hon'ble Bombay High in the case of **PCIT Vs Rajkumar Gulab Badgujar (111 Taxmann.com 256)** has held that where no addition is made by the AO to the income voluntarily declared by the person in the return filed u/s 153C of the Act, then no penalty is leviable. The Hon'ble High Court held that Explanation 5A to Section 271(1)(c) of the Act applies only in case of the searched person and not the persons covered u/s 153C of the Act. It was therefore held that, only in case of a searched person, it may be open for the Revenue to levy penalty in a case where income is surrendered in the return filed u/s 153A of the Act, pursuant to search.

29. In view of the above discussion, we find that the provisions contained in Section 153C of the Act is not only a self-contained code dealing with the manner in which assessment is to be framed, but any non-compliance thereto viz., non-issuance of notice u/s 153C of the Act affects the substantive right of the assessee. We are therefore unable to agree with the Revenue that it is a mere procedural violation, not affecting the rights of the assessee. If the contention of the Revenue is accepted, then it would literally render all the provisions of the Income Tax Act subservient to Section 292B and in effect, any error or omission or mistake committed by the Revenue at any stage of a proceeding would

be sought to be cured by taking shelter under Section 292B of the Act. Allowing such a contention would be misreading the intention of the Parliament in enacting Section 292B of the Act.

30. Hence, for the reasons as set out above, we therefore hold that the AO was legally bound to issue notice u/s 153C of the Act prior to framing the assessment for AY 2019-20 and that non-issuance of notice u/s 153C of the Act vitiated the assessment proceedings rendering the impugned order passed u/s 143(3) of the Act to be *ab initio* void. We accordingly quash the assessment order dated 30.09.2021 impugned before us and the addition/s made therein are consequently directed to be deleted.

31. Since we have already held the order u/s 143(3) of the Act for AY 2019-20 to be unsustainable in law for the reasons set above, all other issues raised in the cross-appeals by the assessee and Revenue have now become academic in nature and are left open.

32. In the result, appeal filed by the assessee stands allowed and appeal filed by the Revenue is dismissed.

Order pronounced on the 18th day of September, 2024, in Chennai.

Sd/-	**Sd/-**
(अमिताभ शुक्ला)	**(एबी टी. वर्की)**
(AMITABH SHUKLA)	**(ABY T. VARKEY)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 18th September, 2024.
TLN, Sr.PS

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF