IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M BALAGANESH, ACCOUNTANT MEMBER

ITA Nos.1342, 1343, 1344, 1345, 1346, 1347 & 1348/DEL/2024
Assessment Years: 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 & 2018-19

Amol Awasthi, C/o Vinod Kumar Bindal & Co. Chartered Accountants Shiv Sushil Bhawan D-219, Vivek Vihar, Phase-I New Delhi	Vs.	**DCIT, Central Circle-I** New Delhi
TAN/PAN: AACPA8416E		
(Appellant)		(Respondent)

Assessee by:	Shri Vinod Kumar Bindal, AR Ms. Rinky Sharma, ITP		
Respondent by:	Shri Vijay B Vasanta, CIT-DR		
Date of hearing:	03	07	2024
Date of pronouncement:	13	09	2024

O R D E R

PER BENCH:

These are bunch of seven appeals filed by the assessee challenging the final assessment orders passed under Section 144C and 153C r.w. section 143(3) of the Income Tax Act, 1961, in pursuance to the directions of learned Dispute Resolution Panel (DRP) pertaining to assessment years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 & 2018-19.

2. In the memorandum of appeal, the assessee has raised multiple grounds, more or less, common in all the assessment years. The grounds raised can be divided into two categories. The first category contains grounds on merits, whereas, the second category containing grounds on legal issues challenging the validity of the proceedings initiated under Section 153C of the Act and the assessment orders passed in pursuance thereof. Since facts involved in all these appeals are more or less identical, for the sake of brevity we take up ITA No.1342/Del/2024 pertaining to A.Y. 2011-12 as the lead appeal and discuss facts obtaining there from.

3. Briefly stated, the assessee is a Non Resident Indian (NRI) individual, being a resident of Dubai in United Arab Emirates (UAE). As discussed by the Assessing Officer (AO), a search was conducted by the Deputy Director of Income Tax, [DDIT)-Investigation, Unit 7(3) on Sanjay Jain and others on 30.06.2019. During the search and seizure operation, incriminating evidence in the form of mail and chat communication was found revealing that Shri Pankaj Jain and his brother Shri Sanjay Jain, in connivance with some other persons, namely, Shri Udai

Shankar Awasthi, his son Shri Amol Awasthi, Shri Parvinder Singh Gahlaut, his son Shri Vivek Gahlaut, Shri Amrendra Dhari Singh were working with close proximity to Indian Potash Limited (IPL) and Indian Farmers Fertilizer Co-operative Organization (IFFCO) and have been influencing the fair price/market price at which fertilizer/fertilizer products are procured by them and other Indian consumers. He observed that various incriminating chats between Shri Udai Shankar Awasthi, Managing Director of IFFCO, Shri Parvinder Singh Gahlaut, Managing Director of IPL and Shri Sanjay Jain showed manipulation of fertilizer prices. Since, the assessee was also covered under the said search and seizure operation, proceedings under Section 153A of the Act were initiated against the assessee.

4. In course of such proceedings, the AO also sought information from FT & TR to corroborate the information found/gathered in pursuance of search and seizure operation. However, as observed by the AO, during the pendency of proceedings initiated under Section 153A of the Act, he received information from another AO that on 30.06.2019, another search and seizure operation under

Section 132 of the Act was also conducted in case of Shri Rajeev Saxena, allegedly, a Dubai based middleman who facilitates receipt of kick-backs by Indians in offshore accounts and ultimately channelizes them to India through his connection with Indian entities to whom payments were used to be made sans any economic or business rationale.

5. After examining the evidences found in the search of Shri Rajeev Saxena and perusing the satisfaction note prepared by the AO in his case, the AO of the assessee was of the view that such material and satisfaction note needs to be considered along with material found as a result of search and seizure operation conducted on Shri Sanjay Jain and others. Thus, the AO held that the proceedings initiated under Section 153A, having abated, needs to be dropped and fresh proceedings under Section 153C needs to be initiated against the assessee. Thus, he initiated proceedings under Section 153C of the Act against the assessee.

6. Subsequently, he received some more information from another AO having jurisdiction over search cases related to Alankit group, where search and seizure

operation was conducted on 18.10.2019. Thus, he was of the view that all these materials have to be taken into consideration while framing the assessment of the assessee. In the course of assessment proceedings, the AO examined the mail and chat communication found during the search and seizure operation in the case of Shri Sanjay Jain and noticed that the exchange of such mail/chat communication was between Shri Sanjay Jain and Shri P.S. Gahlaut. On examination of such material, he found that, though, certain foreign suppliers were willing to supply fertilizers directly to Indian market, however, Shri Sanjay Jain and Shri Gahlaut were not willing for direct supply to Indian market, which would have been a better deal and at a more competitive price. On the contrary, the major buyers in the Indian market viz., IPL and IFFCO prefer to buy fertilizers from foreign suppliers indirectly through intermediaries only for the purpose of keeping certain amount of profit as commission. This resulted in escalation of price of the fertilizer. He observed that the mails and chats revealed that Shri Sanjay Jain and his associate in collusion with the suppliers and Indian buyers manipulate the fertilizer

business in India. Such *modus operandi* was adopted to artificially inflate the price of fertilizer for making significant profit through commission. In this context, he also relied upon the statement recorded from Shri Sanjay Jain by the Enforcement Directorate (ED).

7. Thus, he observed that the seized material clearly revealed the role of Shri Pankaj Jain and Shri Sanjay Jain and their associate Shri A.D. Singh in the fertilizer trade sector in India. He observed that given their significant influence and proximity with the foreign suppliers as well as Shri U.S. Awasthi and Shri P.S. Gahlaut, Shri Sanjay Jain and his associates are instrumental in getting contracts for their foreign suppliers and getting part of their commission income as well as commission income of Shri U.S. Awasthi and Shri P.S. Gahlaut which were routed through Dubai based entities to avoid tax in India.

8. Proceeding further, he ventured into examining the information/material seized in the course of search and seizure operation conducted in case of Shri Rajeev Saxena. From the information available, he found that the Indian fertilizer market is dominated by IPL and IFFCO.

Various foreign suppliers engaged in manufacturing and trading of potash fertilizers, have increased the competition to tap the lucrative Indian market. For achieving their objective, the foreign companies took the help of their Indian agents, Shri Sanjay Jain, Shri A.D. Singh and others to secure the supply in Indian market. Thus, to align IFFCO and IPL, the major buyers of fertilizers, towards the supplies, Shri Sanjay jain and his associate were engaged to secure deal from IFFCO and IPL. In this context, he observed that Shri Rajeev Saxena, an Indian citizen based in Dubai and running an accountancy firm, has received huge unaccounted funds from various companies on behalf of his clients. From the statement recorded under Section 132(4) of the Act from Rajeev Saxena, it was found that money was received from certain foreign fertilizer companies, viz., M/s. Uralkali in accounts of his entities were actually commission income arising out of imports made by IFFCO and IPL from Uralkali. From the statement recorded, he further found that in order to secure the supply contracts from Indian buyers, extra amount over and above the agreed commission amount was paid by the various

foreign fertilizer companies, which was routed to the beneficiaries' account namely Shri Amol Awasthi, Shri Pankaj Jain and Shri Vivek Gahlaut through the entities controlled by Shri Rajeev Saxena. He observed that the whole arrangement was done to get the fertilizer business with IFFCO and IPL. Shri Rajeev Saxena acted as a conduit to pass the commission income on account of import of fertilizer made by IFFCO and IPL. He observed that all the entities created by Shri Rajeev Saxena to pass the said commission are paper companies and no services were provided by them in lieu of money received. According to the AO, Shri Rajeev Saxena is the key person in the business cycle of IFFCO and IPL.

9. From the ledger of assessee appearing in the books of Shri Rajeev Saxena, which according to the AO is a seized material, it was found that commission income has been received by the assessee through various entities in Dubai controlled by the assessee. However, he observed that such commission income was received by the assessee only as a pass through entity as it was ultimately passed onto Shri Udai Shankar Awasthi. In this context, he exhaustively referred to statement

recorded from Shri Rajeev Saxena. Thus, based on such information and material, the AO ultimately concluded that the commission income has been received in the accounts of various entities controlled by the assessee as a pass through entity for ultimate benefit of Shri Udai Shankar Awasthi and Shri Parvinder Singh Gahlaut. Thus, he held that since the assessee is a mere pass through entity, addition of commission income has to be made on protective basis at the hands of the assessee. Whereas, it has to be made on substantive basis at the hands of Shri Udai Shankar Awasthi (assesee's father). Accordingly, he framed the draft assessment orders making addition of commission income of various amounts in different assessment years, on protective basis. Against the draft assessment orders so passed, assessee raised objections before learned DRP. However, learned DRP did not entertain the objections raised by the assessee.

10. Before us, Shri Vinod Kumar Bindal, learned counsel appearing for the assessee made exhaustive submissions. In addition, he also filed a written synopsis running into 21 pages, which is reproduced below:-

"The impugned assessment orders are illegal because.

(i) being only protective additions in an assessment order passed after initiating assessment proceedings u/s 153C of the Act that too u/s 69A of the Act not applicable;

(ii) assessment order passed u/s 153C r.w.ss. 143(3)/144C of the Act and not r.w.ss. 153A/144C of the Act;

(iii) the assessee being a Non-Resident under the Income-tax Act and cannot at all be assessed in respect of his alleged overseas income though the said income is not at all admitted;

(iv) the assessee cannot be assessed for any income, though not admitted, alleged by the revenue to have been earned or received overseas for which no services at all were rendered in India or could at all be assumed to have been rendered in India because the alleged amount received as commission / service charges from an overseas supplier was received overseas in respect supplies effected from overseas;

(v) ignoring the mandatory Article 22 of the DTAA with UAE of Indian government and no such income can be otherwise assessed under the Income-tax Act, 1961 in India as admittedly the assessee was a permanent resident of UAE and Non-Resident under the Income-tax Act, 1961;

(vi) no assessment order can be passed u/s 153C of the Act which just authorizes an AO to assume jurisdiction to pass an assessment order u/s 153A of the Act and not to pass any assessment order therein;

(vii) the section 153C of the Act is nowhere mentioned in the section 246A of the Act against which an appeal can be filed to the CIT(A) and therefore, is not at appealable provision and only u/s 246A(1)(ba) of the Act section 153A of the Act, except an order passed as per DRP directions, has been mentioned as appealable order;

(viii) since, the Legislature categorically directed that an assessment order after a search action u/s 132 of the Act must be passed in accordance with the provision u/s 153A of the Act, even in the case of a person not searched where the assessment proceedings were initiated u/s

153C of the Act,

(ix) any order passed u/s 153C of the Act is not at all an assessment order and cannot be put into effect being nullity and void ab initio;

x) (as the draft assessment order passed on 31/03/2023 is a void ab initio order containing not only approval of the Addl. CIT u/s 153D of the Act but was also accompanied with a proper notice of demand, computation of sheet etc. which could not be issued till the final assessment order was passed after proceedings u/s 144C of the Act.

***2.* <u>The impugned assessment proceedings initiated by the AO u/s 153C of the Act for issuing notices u/s 153A of the Act is bad in law because:</u>**

(i) it is based on a void ab initio satisfaction note recorded u/s 153C of the Act by the AO of the appellant on 29/09/2021, for 11 assessment years whereas even as per the AO, the alleged incriminating information was only for the 7 AYs and even otherwise the AO could not assume jurisdiction for any of the AY prior to the AY 2013-14 as the extended backward period of 10 years expired then u/s 153C of the Act.

(ii) it lacks application of mind as per the specified provisions of the law that such proceedings could only be initiated for the AYs for which the alleged incriminating information was found and the same cannot be accepted as legal in any manner, even for the AYs where there could be some alleged incriminating information besides many other reasons as the law does not permit to legalise a satisfaction note partially;

(iii) in such case only the issue required to be considered was whether the received material allegedly seized from Mr Rajiv Saxena had any bearing on the income of the assessee and not the irrelevant/ alien material dragged in;

(iv) in drawing satisfaction based upon the alleged seized electronic record without first considering its admissibility u/s 65B of the Indian Evidence Act r/w section 2(1)(t) of the Information Technology Act and section 132 (iib) of Act not before the AO;

(v) simultaneous satisfaction in the case of father of assessee as well as in case of the assessee on the basis of the same seized material for the very same amounts.

3. The impugned assessment order, based upon an illegal draft order is bad in law and against settled law as:

(i) the impugned additions are not based on any incriminating material seized in a search elsewhere including Rajiv Saxena and could not have been made even on merits on protective basis;

(ii) referring to some later search on another assessee in these proceedings without initiating fresh proceedings u/s 153C of the Act by abating the earlier proceedings-initiated u/s 153C of the Act;

(iii) by relying on the impugned statement of Mr Rajiv Saxena solely based upon hearsay and vague belief and not upon his direct knowledge; (iv) against the facts narrated by other persons searched then; and

(iv) when copies of all the statements were not given to the assessee and no cross examination of the said persons was granted though specifically demanded during the assessment proceedings.

4. The order of the DRP lacks DIN and is time barred because of the proceedings undertaken u/s 144C of the Act, but which GsOA are not pressed.

Void ab initio Satisfaction notes u/s 153C of the Act

5. However, at the threshold the assessee submits by relying judgment of the Hon'ble jurisdictional Delhi High Court in the case of PCIT vs Ojjus Medicare (P) Ltd and others [2024] 161 taxmann.com 160 (Delhi) [DoD: 03/04/2024] wherein it has been categorically stated in para 86 onwards, particularly in the table given in para 90 therein that where a satisfaction note u/s 153C of the Act was recorded at a date falling within the FY 2021-22 (as is here recorded on 10/06/2021), being a date relevant to the AY 2022-23, then the ten years period backwards for the purpose of initiating proceedings u/s 153C of the Act would commence from the AY 2013-14. Therefore, the impugned proceedings for the AYs before AY 2013-14 here i.e. for the two AYs 2011-12 and 2012-13 were illegally initiated and void ab initio. The same must

be quashed, though the impugned satisfaction note perse is void as the same was recorded without application of mind by the AO.

6. The impugned satisfaction note on the assessee, is based on a satisfaction note made u/s 153C of the Act, sent by the AO of Rajiv Saxena being the DCIT, Central Circle-20, New Delhi and not of Jains being the AO of the assessee also being the DCIT, Central Circle-1, New Delhi. The AO has placed his reliance in the impugned satisfaction note recorded to initiate proceedings u/s 153C of the Act on the income-tax searches conducted on Jains, A D Singh but also referring to the searches conducted on Mr Rajiv Saxena, all these persons were searched on 30/06/2019 under separate search warrants and not joint search warrants at different premises and also on the Alankit Group who was searched on 19/10/2019 much later than a date when Jains/Saxena were searched. No assessment proceedings were undertaken based on the material referred to in the search conducted on Mr Alok Aggarwal of Alankit Group and no satisfaction has been recorded in the case of the assessee based on any incriminating material found in the searches conducted on Jains but which has only been mentioned in the opening paras of impugned assessment order as a reason of the impugned assessment proceedings though as per the impugned satisfaction note u/s 153C of the Act dated 29/09/2021 drawn by the AO, Central Circle 1 New Delhi of the assessee, the same is solely based on the corresponding satisfaction note u/s 153€ of the Act received from the AO, Central Circle 20 New Delhi assessing Rajiv Saxena and no separate satisfaction note u/s 153C of the Act based on the income- tax searches on Jains on 30/06/2019 as well Alankit on 19/10/2019 was ever prepared by their respective AOs vis a vis the assessee nor given to the assessee besides there is reference only to the search on Mr Rajiv Saxena. The law requires that for each separate search warrant, separate satisfaction note u/s 153C of the Act must be prepared by the respective AOs of the searched person for the material seized from each of them and also by the AO of the person not searched on receipt of each such satisfaction note. In fact, no material found or statements recorded therein can be used in these proceedings for which a separate legal procedure has been laid down by the Statute.

7. Thus, the satisfaction notes and the consequent notices issued u/s 153C of the Act were in relation to the search

on Rajiv Saxena as is clearly mentioned in the two satisfactions notes provided by the AO and in all the notices/ SCN. The seizure/ information collected during another search on Sanjay Jain, A D Singh and Alankit Group is grossly irrelevant to the impugned proceedings at all as separate notice u/s 153C of the Act was to be issued on the basis of satisfaction notes received from the AOs of the other persons by abating the pending assessment proceedings initiated earlier u/s 153C of the Act, a procedure specifically codified for the purpose. Since, the impugned satisfaction note was prepared after considering impermissible and irrelevant material, the said satisfaction note is vitiated as influence of irrelevant cannot be determined therein. It is trite law that when irrelevant material has been taken into consideration, entire proceeding is vitiated as held in Ascu Arch Timber Protection Ltd 2004 taxmann.com 1408 (SC), Dhirajlal Girdharilal Vs. CIT 26 ITR 736 (SC), Sagar Enterprises (2002) 124 Taxman 641 (Guj), Indian Metals And Ferro Alloys Limited Vs UOI 195 ITR 539 (Ori), Choithram Begraj Lalvaney Vs CIT 197 ITR 302 (Bom). Thus, the impugned satisfaction note is illegal ab initio and the consequent all assessment orders in appeal need to be quashed.

No such addition u/s 69A of the Act is permissible

8. Further, no addition u/s 69A of the Act could be made as the said section is not applicable here. The AO has also incorrectly applied the provisions of the section 69A of the Act which are applicable only if and if, any undisclosed moveable asset e.g. money, bullion, jewellery or other valuable article is found (physically at the time of search) in a financial year. Thus, the said section is not applicable in respect of any book entry or information about any income in any year which was not found in the form of any physical asset during the course of a search or otherwise. Thus, the impugned addition made by non-application of mind and appreciation of the law must be deleted.

Illegal assessment order passed u/s 153C r.w.s. 143(3) of the Act (section 144C of the Act is a directive provision and does not affect the section of an assessment order)

9. The assessment order passed u/s 153C r.w.s. 143(3)/144C of the Act on 31/03/2023 is void ab initio because no assessment order can be passed u/s 153C of the Act which is only a machinery provision to assume

jurisdiction to initiate assessment proceedings in consequence to an income-tax search and not a substantive provision to make an assessment which is only the section 153A of the Act in pursuance to an income-tax search, as has been specifically held by the Hon'ble Apex Court in Vikram Sujitkumar Bhatia (2023) 149 taxmann.com 123 (SC) (paras 4.7, 5.2 and 10.6 of the judgment). The Hon'ble Apex Court in Calcutta Knitwear (2014) 362 ITR 673 (SC) while analyzing the section 158BD of the Act which is similar to the section 153C of the Act held that the said provision is a machinery provision. Thus, the assessee submits that an assessment order in pursuance to an assessment proceedings-initiated u/s 153C of the Act can only be passed u/s 153A of the Act r.w.s. 153C of the Act and not u/s 143(3) r.w.s. 153C of the Act. The relevant provisions of the above three sections are as below:

Section 143(3) in the Act

(3) On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on. specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment:

Section 153A in the Act

153A. Assessment in case of search or requisition.

(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.

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

.....

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

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the Ist day of April, 2017.

.....

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

.....

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

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

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

Section 153C in the Act

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 1534, 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 1534, 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 1534:

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:

……

(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.

……

10. Thus, on perusal of the above sections, it is unambiguously clear that the section 153C of the Act specifically refers to an assessment of income, after the said section 153C of the Act has been put into force, in accordance with the provisions of the section 153A of the Act and there is no mention at all of the section 143(3) of

the Act despite the fact that u/s 153C(2) of the Act as above, there is a specific reference to a notice u/s 143(2) of the Act and also to a notice u/s 142(1) of the Act. The Legislature in its wisdom has deliberately not mentioned the provisions of the section 143(3) of the Act u/s 153C of the Act for assessment applicability but has specifically mandated to complete an assessment in accordance with the provisions of the section 153A of the Act because the sections 153A to 153D of the Act are special non obstante provisions legislated to complete assessment of income in consequence to an income-tax search or requisition and were simultaneously introduced by the Finance Act, 2003 w.e.f. 01/06/2003.

11. Further, it can also be seen that the section 143(3) of the Act, mentions that the assessing officer shall by an order in writing make an assessment of the total income or loss of the assessee. Similarly, the section 153A(1)(b) of the Act states the assessing officer shall assess or reassess the total income of the six years immediately preceding the assessment year..... and for the relevant assessment year under this section. Thereafter, the first proviso u/s 153A of the Act also mandates that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years.

12. Thus, when two separate specific provisions are mentioned to make an assessment of the total income, then the AO has to adopt the provisions which have been specifically mandated u/s 153A of the Act by the Legislature for search related assessments. The AO does not have any power even with the consent of the assessee to make an assessment in any section other than the section 153A of the Act relating to assessment proceedings in consequence to an income-tax search which is a code in itself and has to be mandatorily applied in assessment proceedings post search because the sections 153A to 153D are non-obstante provisions brought into the statute for the specific purpose of assessments in consequence to an income-tax search. Had it been not so, then the provisions of the sections 147 and 148 of the Act as existed earlier and which have been brought back into the statute w.e.f. 01/04/2021 were sufficient to take care of the assessments in consequence to an income-tax search. The Legislature in its wisdom carved out special provisions for such assessments w.e.f. 01/06/2003 till

31/03/2021 u/s 153A to 153D of the Act.

13. The assessee relies on the judgment of the Hon'ble Supreme Court in Kanwar Singh Saini vs High Court of Delhi (2012) 4 SCC 307 reconfirmed by the Hon'ble Supreme Court as 2023-TIOL-65-SC-IT in the case of PCIT vs S. S. Con Build Pvt Ltd where the Hon'ble jurisdictional Delhi High Court took the same view reported as 2022-TIOL-656-HC-DEL-IT that the jurisdiction is the function solely of the Legislature and to make an assessment under the particular provision of the Act also a jurisdictional aspect and earlier also in the case of Sinhgad Technical Education Society 2017-TIOL-309-SC-IT in para 18 therein.

14. Further, it would also be seen that to make an assessment in pursuance to a search whether on the person searched or not searched but whose incriminating material was found, the Legislature in its wisdom had also mandatorily provided u/s 153A of the Act itself to issue a notice to the assessee to file a return of income as may be prescribed and then to proceed to make an assessment therein. Thus, even, no assessment of income can be made u/s 153A of the Act if no mandatory notice had been issued therein. Similarly, there is no provision u/s 153C of the Act to issue any notice to file a return of income for assessment. After recording a satisfaction u/s 153C of the Act, the AO has to mandatorily issue a notice u/s 153A of the Act only as has also been issued here on 29/09/2021. Just on a notice issued u/s 153C of the Act, no assessment post search can be made. It just refers to record a satisfaction to initiate the assessment proceedings post an income-tax search elsewhere as otherwise for the normal course of assessment/ reassessment such provisions already exist u/s 142(1) of 148 of the Act. Thus, it is mandatory for an AO, after recording a satisfaction u/s 153C of the Act, to initiate assessment proceedings, to mandatorily issue a notice u/s 153A of the Act seeking return of income for the particular period and then to proceed to make an assessment only and only u/s 153A of the Act. There is no ambiguity in the language and the courts are bound to follow the mandate of the legislated jurisdictional issue as per the Hon'ble Apex Court in many judgments relied hereinabove. In fact, there is also no requirement u/s 153A of the Act to issue any notice u/s 143(2) of the Act or similar to commence

assessment proceedings in pursuance thereto as has also been held in Ashok Chaddha (2012) 20 taxmann.com 387 (Del) by the Hon'ble jurisdictional Delhi High Court, distinguishing the legal requirement of the same which did exist u/s 158BC of the Act earlier, prescribing procedures of block assessments post search from 01/07/1995 till 31/05/2003 as below:

Section 158BC in the Act

158BC. Procedure for block assessment. - Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132-A. in the case of any person, then,-

(a) the Assessing Officer, shall-

(i)in respect of search initiated or books of accounts or other documents or any assets requisitioned after the 30th day of June, 1995 but before the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days; (ii) in respect of search initiated or books of accounts or other documents or any assets requisitioned on or after the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days, as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under clause (i) of sub-section (1) of section 142, setting forth his total income including the undisclosed income for the block period:

Provided that no notice under section 148 is required to be issued for the purpose of proceeding under this Chapter:

Provided further that a person who has furnished a return under this clause shall not be entitled to file a revised return;

(a) the Assessing Officer shall proceed to determine the undisclosed income of the block period in the manner laid down in section 158-BB and the provisions of section 142, sub-sections (2) and (3) of section 143, section 144 and section 145 shall, so far as may be, apply:

(b)the Assessing Officer, on determination of the

undisclosed income of the block period in accordance with this Chapter, shall pass an order of assessment and determine the tax payable by him on the basis of such assessment:

(c) the assets seized under section 132 or requisitioned under section 132-A shall be dealt with in accordance with the provisions of section 132-B.

15. Thus, the requirement to seek a return of income u/s 153A of the Act has been specifically mandated therein, overriding the provisions of section 142(1) of the Act which otherwise authorizes the assessing officer to call for a return of income to make an assessment u/s 143 of the Act. The provisions of the section 142(1)(1) are similar to the clause (a) u/s 153A(1) of the Act which is as below:

142. Inquiry before assessment.

(1) For the purpose of making an assessment under this Act, the Assessing Officer may serve on any person who has made a return under section 115WD or section 139 or in whose case the time allowed under sub-section (1) of section 139 for furnishing the return has expired a notice requiring him, on a date to be therein specified.-

(i) where such person has not made a return within the time allowed under sub- section (1) of section 139 or before the end of the relevant assessment year, to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, or

16. Thus, while enacting special provisions for income-tax assessment in pursuance to an income-tax search, provisions of the sections 142 and 143 of the Act were specifically excluded from application besides the requirement of the section 139 of the Act to file a return of income as the same have been specifically provided u/s 153A of the Act and also the procedures of assessment / reassessment in pursuance to an income-tax search where incriminating material was found which was earlier provided u/s 148 of the Act for issuing a notice of any

escaped income. All such assessment/ reassessment procedures for the assessment, in pursuance to an income-tax search, were excluded and thereafter mandated u/s 153A to 153D of the Act.

17. It is also stated that the section 153C of the Act is nowhere mentioned in the section 246A of the Act against which an appeal can be filed to the CIT(A) and therefore, is not at appealable provision. Only u/s 246A(1)(ba) of the Act the section 153A of the Act, except an order passed as per DRP directions, has been mentioned as appealable order. Thus, the legislature in an unambiguous language mandated the procedure to assess an income post search anywhere while making consequential amendments in the law. Therefore, it was mandatory for an assessing officer to pass an assessment order u/s 153A of the Act only in an assessment proceeding-initiated u/s 153C of the Act and not u/s 143(3) of the Act which is void ab initio.

18. This is also supported from the fact that in terms of the section 153D of the Act, the mandatory prior approval from the Joint /Addl. CIT is required for each assessment year separately for an assessment order passed u/s 153A(1)(b) of the Act and not for an assessment order passed u/s 153C of the Act. The said section 153D of the Act is as below:

Prior approval necessary for assessment in cases of search or requisition.

153D. No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of sub-section (1) of section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner:

Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner under sub-section (12) of section 144BA.

Protective addition in proceedings-initiated u/s 153C of the Act based on an illegal satisfaction note therein

19. There is also no provision in the Act which prescribes

to pass any assessment order by making additions on protective basis in an assessment-proceedings initiated in pursuance to a notice issued u/s 153C of the Act and thus, the same is void ab initio and beyond the mandate of the legislature. Therefore, cannot be upheld.

20. The legislature in its worthy wisdom has specifically mandated in the section 153C of the Act that where the AO is satisfied

(a)……..

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

a person other than the person referred to in section 1534, 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 the 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 1534 having jurisdiction over such other person

21. Thus, it is clear that the legislature, in an unambiguous language, has mandated that firstly the AO of the person searched must be satisfied that the alleged incriminating information relates to a person (specific person by name) other than the person searched. Thus, it is clear that the first satisfaction about the material seized must be with regard to a particular person and not many persons or alternative persons in respect of the same information. This is also because the said AO has to identify the particular person out of the entire population on the earth to remit the material seized to the AO of the said particular person, otherwise where the same would be sent by him. It is a mandatory exercise though may mammoth but was legislated in the Statute and the said AO was duty bound to identify a particular person for

further action. The same cannot at all be for more than one person for the same amount.

22. However, interestingly here, on perusal of the impugned satisfaction note dated 23/09/2021 recorded by the AO of Mr Rajiv Saxena, the person searched in the case of the assessee and also on perusal of a separate satisfaction note dated 25/09/2021 recorded in the case of Mr Udai Shanker Awasthi, the father of the assessee, sent by the same AO of Mr Rajiv Saxena, the searched person, it would be seen that the entire content is identical and without stating who is the actual beneficiary as two satisfaction notes for the same amounts and transactions were recorded in the case of both the persons.

23. If the AO of the searched person was satisfied on 23/09/2021 on perusal of the material seized that those very information seized was relevant to initiate assessment proceedings u/s 153C of the Act on the assessee then how the very AO, just 2 days thereafter, could arrive at another satisfaction on the same material on 25/09/2021 that the material seized relates to Shri Udai Shanker Awasthi, the father of the assessee. The letters sent by the said AO are absolutely identical, verbatim. This itself shows that the AO of the searched person was definitely not sure to whom out of the two persons, the same belonged to and proves the contention of the assessee that no material seized at all was seized by the revenue anywhere so as to incriminate the assessee nor his father Mr U S Awasthi. Interestingly to make a mockery of the law, there is no mention also of any protective assessment of any income in any of the two satisfaction notes on the said facts/amounts and/or that a similar satisfaction has already been recorded two days earlier on the same material and same amount in the case of the assessee.

24. Further, interestingly the AO of the assessee, who is also the AO of Mr Udai Shanker Awasthi, father of the assessee, recorded two separate satisfaction notes at his end simultaneously on 29/09/2021, the same day, on the same set of identical information, where the Performa and the Annexure A thereto are completely identical till para 12 and except a few sentences in the closing paras changed to suit the requirements on facts. This proves that still at the same time with the same pen stroke, the AO of the assessee and his father, could not decide to

whom the said income belonged to out of the two persons.

25. The concluding paragraph in both the cases are identical as reproduced below:

Mentioned in the satisfaction note of the assessee Amol Awasthi

"17. After careful analysis of seized documents and provisions of section 153C of the Act, I am satisfied that the above documents relates to Sh. Amol Awasthi who is assessed with DCIT, CC-01, New Delhi and may have a bearing on his Income. Therefore, I am satisfied that Sh. Amol Awasthi is covered under Section 153C of the Income Tax Act, 1961. Accordingly, notices u/s 153C of the L.T.Act, 1961 are issued for AYs 2010-11 to AY 2020-21."

Mentioned in the satisfaction note of Mr Udai Shanker Awasthi, the father- of the assessee

"16. After careful analysis of seized documents and provisions of section 153C of the Act, I am satisfied that the above documents relates to Sh. Udai Shanker Awasthi who is assessed with DCIT, CC-01, New Delhi and may have a bearing on his Income. Therefore, I am satisfied that Sh. Udai Shanker Awasthi is covered under Section 153C of the Income Tax Act, 1961. Accordingly, notices u/s 153C of the I. T. Act, 1961 are being issued for AYs 2011-12 to AY 2020-21."

26. This clearly indicates that both the AOs was not sure as to whom the alleged information much less the undisclosed income belonged to.

27. It must also be appreciated that the provisions of the section 153C of the Act are more draconian and have to be applied strictly as has been mandated by the law with no ifs and buts. There can be no doubt that the same income cannot be assessed in two hands of the two different assessees, particularly when the same is based on seized incriminating material where there can be no question of any protective addition.

28. Thus, on perusal of the entire section 153C of the Act, it would be seen that the legislature has used only the

word "such other person" which means a specific person and not more than one for the same material and income. Therefore, any assessment made on protective basis perse is void ab initio and must be quashed. Interestingly the AO has also not mentioned as to what incriminating material, the AO was having in the concluding para of the satisfaction note to make the addition in the case of the assessee. One of the matters going to the root of the issue is whether any amount received overseas can be said to accrue to an NRI in India who has no business/ profession/ employment in India and who has taken absolutely no part in sale /purchase/ price fixation of the fertiliser's transactions by the concerned seller/ buyer where none had even alleged that the NRI was ever a party to the impugned transactions. Further, it is also brought to the notice that as per the satisfaction note dated 29/09/2021, the AO contends in the conclusion that "may have bearing on his income" whereas the section 153C of the Act requires "have a bearing on total income" which is definite. Thus, the invocation of the strict section 153C of the Act for reopening an assessment has to be based on specific evidence, not on preponderance of probabilities otherwise the presumption u/s 132(4) would hold good that the same pertained to the person searched.

No incriminating material seized anywhere to instigate the provisions of the section 153C of the Act or to make any addition therein

29. Further, addition in a case of assessment proceedings-initiated u/s 153C of the Act is possible where the proceedings are initiated only and only on the basis of incriminating material found as a surprise and then seized during a search on another person and this proposition has been upheld by the Hon'ble Supreme Court in DCIT v U. K. Paints (Overseas) Ltd. [2023] 150 taxmann.com 108 (SC) and PCIT v Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399 (SC). It is also submitted that without first determining what was seized/its nature if at all and how was it incriminating to the assessee, the impugned additions have been made on surmises.

30. The DRP also admitted in para (g) page 6 of its directive order the contention of the appellant that a search operation conducted has a surprise element and then a long story has been mentioned therein. Here, the Revenue miserably failed to show that the alleged information was seized in a surprise search. All the

statements of Rajiv Saxena clearly prove that nothing was seized and nothing as well was found in his computers seized by the Revenue. This is clearly mentioned in his statements and has also been admitted by the DRP that on instructions of the Authorised Officer, Saxena was collecting piecemeal information from his office in Dubai that too by tampering, as desired by the revenue officer then, the original information there, and not in the form in which the same was maintained in the regular course of accounting in the books. The alleged information handed over to the revenue officer were some statements made / drawn on some Excel sheets or otherwise, definitely prepared on the instructions of the revenue officer and then handed over to the revenue officer. Thus, the same was never seized and nor is part of the regular books of account maintained in Dubai to which the revenue officers never had any access in any manner and were always at the sole mercy of Saxena. All the information given by Saxena was created to suit the Revenue with no independent corroborative material available against the assessee in any manner nor given by him. Any information, if any collected / gathered post search through the FT & TR Division of the Ministry of Finance, Government of India also has no meaning as nothing is mentioned in the assessment order nor was ever confronted to the assessee. Rather, the same has been stated first time in the assessment order with no adverse specific averment proving that nothing adverse was found. The story written by the DRP in that para is of no purpose as the assessee has nothing to disprove the alleged information as there was no information with the Revenue which was found to proceed u/s 153C of the Act as the same is completely an illegal-proceedings. The allegation of the DRP is completely baseless rather far from the truth on record as no such information was ever maintained by Rajiv Saxena nor was ever detected in any surprise action. This tampered information was prepared in Dubai on the specific directions of the Authorised Officers of the revenue since he was brought to India without any laptop or such information in January 2019 by the ED and during the course of enquiries before the search and then in the search on him from 30/06/2019 when Rajiv Saxena collected the same from Dubai office on email and then handed over to the authorized officer thereafter with no supporting evidence. Nowhere the Revenue has shown the flow of the alleged funds in the bank accounts of the assessee.

31. The averment of the AO that during the search operation on Saxena, it was found that these companies did not render / provide any services in lieu of the money and the transactions are not supported with any evidence in any manner is vague on facts. Factually, nothing was found during the search on Saxena. However, the alleged information / evidence found rather handed over by Rajiv Saxena to the revenue officer clearly showed invoices raised by Rajiv Saxena's different companies on Uralkali Gibraltar who had never supplied any material to Indian Potash Ltd (IPL). The MoP (rock potash fertilizer) was supplied by Uralkali, Russia to IPL and the said companies are two independent companies in two independent countries.

32. In para (b) page 8 of the order of the DRP, it has been alleged that some unaccounted commission was due to illegal involvement of Mr Udai Shanker Awasthi, though not admitted otherwise also, then how could it become income of his son in Dubai who was never a party to any such deal, merely on presumption of the AO. This otherwise shows the allegation of the AO though not admitted yet that the funds of his father were parked with him which per se did not become his income in any manner. It is important to appreciate that no person ever admitted to have given any payment to assessee including the father of the assessee. No cross examination was given despite specific demand. All the statements / copies of the accounting statements submitted by Saxena do not corroborate the allegations of the revenue. Saxena was repeatedly making false statements besides changing / shifting his stands on practically all the issues. Nothing was found during the search and whatever was purportedly seized in the search was voluntarily produced and handed over by Saxena after obtaining the same from his Dubai office and was tempered information.

33. There must had been some effort by the assessee to earn any income the Indian territory. Any windfall or gifted amount by anyone else much less the parent in Dubai can by no stretch of imagination becomes taxable in India. It is also very interesting to note that in the impugned entire material alleged to have been seized from Saxena, there is no whisper at all in any manner about or of Mr Udai Shanker Awasthi. No alleged paper has any reference to him. Further, even Saxena also categorically stated in his statement recorded by the ED that he had never met Mr Udai Shankar Awasthi nor had ever spoken

to him. He, on query form the officer, just made his guess on the connection of the assessee with Jains probably because of relationship of the assessee with Mr Udai Shanker Awasthi, which cannot be a reason to consider the unproven remittance by Saxena as income of the assessee or his father Mr Udai Shanker Awasthi in assessment proceedings-initiated u/s 153C of the Act in their cases without any material seized which could be claimed to have been found in a surprise check. The jurisdiction to apply the said provision is strictly restricted to the material seized in an income-tax search elsewhere and neither on any information available through any other source or on hearsay or on guess.

34. The DRP also states that it has been gathered by the panel that in January 2019, Rajiv Saxena was deported from Dubai and brought by ED to India in relation to high profile corruption cases like Augusta Westland, VVIP Chopper money laundering case. Initially Rajiv Saxena was being called to the Investigation Unit of the Income Tax department to record his statement u/s 131 of the Act. During recording of statements, he submitted data as supporting documents. Subsequently, in order to procure the entire data, in its authentic form, a search and seizure operation was conducted on him on 30.06.2019. Simultaneously operation was also launched other connected persons, Sanjay Jain & others. During recording of statements, the data which had been given by Rajiv Saxena prior to the search operation, was recovered from 2 laptops during the search operation, which not only authenticated the information before the department but also gave it a more complete form. Therefore, the fact of the matter is that not only data was submitted by Rajiv Saxena before the department, it was also recovered during search operation and many search operations emanated from the data recovered from the said laptops. Prior to the search operation, during search operation, in post search enquiries, during assessment proceeding, from the data called from other countries through FT & TR references etc., time and again it has come to light that Shri Rajiv Saxena was functioning as an international entry operator, was engaged in dubious deals, and facilitated money laundering for Indian clients based in India and abroad. Assessee has rightly pointed out that he has been changing his statements, but that does not affect the data that was recovered and authenticated with backward / forward linkages for all his clients including the assessee whereas the fact is that there is no such

information much less any evidence. The entire averment is not more than a surmise and conjecture.

35. Thus, when the income-tax department had already come in possession of the said material without any search and if the said information was very much found in those laptops seized thereafter, it cannot be said that the said information was seized and was found during the course of a search so as to trigger action u/s 153C of the Act where the fundamental condition is to have the same during the course of search and any information already in possession of the revenue cannot lead to any such action. Further, since the same was collected from his Dubai office on emails to be given to the revenue officers those were necessarily to be in those laptops. Something which the Revenue had with it in this manner cannot be considered seized.

36. It is also an admitted fact that the ED has submitted before the Hon'ble Delhi High Court in its application dated 18/10/2019, already submitted during the proceedings before the DRP at PB page nos. 2092 to 2095 that Rajiv Saxena had been regularly submitting fabricated, forged, false papers / evidence before the government authorities to mislead the authorities. This application was filed after the alleged facade of the income-tax search by 03/07/2019 had already been created by the revenue, then how could such information given by him in such a cloudy and suspicious manner be considered reliable and in fact worthy of any consideration.

37. Undisputedly, nothing was found in the hotel room of Saxena at the time of search. The very statement of Rajiv Saxena itself records that every document/ detailed were produced by him which clearly demonstrates beyond doubt and any apprehension that those were not at found by the search party. Please refer to: Ans. 5: Copy of passport, chart of companies etc. produced marked as Exhibit 1, Ans. 9: Agreement with Midas etc. produced and the same 'I have been made part of Annexure 1', Answers 10-11-12 and 31 etc. A very important fact is clear from the above that the said information was not at all found and seized but was provided by Rajiv Saxena on the directions of the revenue officers given earlier after collecting those details from his Dubai office before

recording of the said statement as the revenue officers never stated in any question therein that we have found or some similar words but were always demanding to provide the information and very importantly not a reply. Further, Saxena categorically stated that he had collected the same from his Dubai office in the last 2-3 days as far as possible, reference Answer 33,35.36.37. Answer to Question 64 was" I am providing some of the details which have been obtained and the same have been seized...

38. The Table on para 45 page 31 of the Assessment order- serial numbers 10 to 13 'to be identified' and serial numbers 53 to 55. 57, 60 to 61 on subsequent pages with narration 'details awaited' leaves not an iota of doubt that the entire seizure cum production was a drama enacted under some inhuman pressure of the agencies. It also buttresses the submission that the impugned data entered on this Lenovo Laptop and other digital devices was not at all maintained in the normal course of business by Rajiv Saxena but was migrated from some source under control/ influence of the search party.

39. The AO falsely stated that the assessee was the beneficiary owner of Rare Earth whereas factually the assessee was nowhere held to be beneficiary owner of Rare Earth in any manner. This company belongs to Jains or someone else but not to the assessee as has been admitted by all persons in their statements as is mentioned in the impugned assessment order also.

40. It is undisputed fact that Saxena was extradited from Dubai in peculiar circumstances all of sudden, then Saxena cannot be in possession of any valuables or important documents at the time of deportation. After deportation, he was staying in hotel with his wife. The Investigation Wing of the income-tax department thereafter recorded his statements u/s 131(1A) of the Act on 05/05/2019 and 23/06/2019 as has been referred in the questions nos. 65 and 13 of his statement dated 03/07/2019 by the income-tax department (copies of those statements not provided to the assessee despite of repeated requests), when the income tax authorities had already recorded statements and impounded documents, these cannot be considered as incriminating material recovered in search at hotel. When no scope of any secret chambers / concealed places in a hotel room existed, the very purpose of the alleged search at a hotel room was simply to exercise pressure and to make him voluntarily

hand over document after obtaining from his Dubai staff as has been mentioned in the above statement and this search in a hotel room for 86 hours with one DDIT, one ADIT, Four Inspectors, two panchas, Digital experts, Saxena and his wife Mrs Shivani could make Saxena state that sun rises in the west. No evidentiary value for such a statement under pressure, especially when cross examination was not provided.

41. Such voluntarily produced documents cannot at all be treated as 'seized' under section 132 of the Act. Mr. Saxena was not in possession of these documents at the time of search nor these were available in the hotel room and thus, no question of any seizure within the provisions of the section 132 of the Act arises. As held in Laxmipat Choraria [1971] 82 ITR 306 (Calcutta) approved by the Hon'ble Apex Court in CIT v Tarsem Kumar [1986] 161 ITR 505 (SC) "The expression used here for the recovery of the possession is "seizure". Seizure is again an expression which implies a forcible exaction or taking possession from either the owner or one who has the possession and who is unwilling to part with possession." Kind reference to Bafna Textiles [1975] 98 ITR 1 (Karnataka) 7 G.M. Agadi (1973) 2 MysLJ, 1973 32 STC 243 Kar.

No addition in the hands of a Non-resident under the Act alleging income received overseas

42. The assessee undisputedly is a Non-Resident under the Income-tax Act for the last 20 years and thus, cannot at all be assessed in respect of his alleged overseas income though the said income is not at all admitted as per the revenue who has just presumed the same to be his income earned with his business connection in India though no evidence has been brought on record. Merely, the father of the assessee has been Managing Director of IFFCO who also did not purchase any rock MoP from Uralkali Russia, is no reason to presume the same. Thus, the assessee cannot be assessed for any income, though not admitted, alleged by the revenue to have been earned or received overseas for which no services at all were rendered in India or could at all be assumed to have been rendered in India because the alleged amount received as commission / service charges from an overseas supplier was received overseas in respect supplies effected from overseas. Further, the mandatory Article 22 of the DTAA with UAE of Indian government is applicable and no such income can be otherwise assessed under the Income-tax

Act, 1961 in India as admittedly the assessee was a permanent resident of UAE and Non-Resident under the Income-tax Act, 1961;

Section 65B of the Indian Evidence Act for digital data and evidentiary value of other information given by Rajiv Saxena from time to time to the revenue

43. It is submitted that purity of data on digital devices have to be maintained as provided in the CBDT's Digital Evidence Investigation Manual, a Manual to guide the field officers in the matter of collection, handling and utilization of digital evidences. The Chapter 6 prescribes SOP for forensic collection of digital evidences and admittedly those were not adhered to.

44. NO DOCUMENT IS PROVED -Not a single document produced by Saxena through his Dubai office has been proved as is required under Evidence Act, in the sense that contents are proved with the original books/ vouchers, certified bank statements etc. Kind reference is drawn to Mohammed Yusuf and Anr. Vs D. And Anr. On 14th July, 1961 Equivalent citations: AIR 1968 Bom 112 (1966) 68 Bom LR 228, ILR 1966 Bom 420.....

45. It has been held in Prakash Cotton Mills Pvt. Ltd. AIR 1982 Bom 387 that the contents or the truthfulness of the contents of a document can be proved only by the executor of the document. The Supreme Court in Madan Mohan Singh v. Rajni Kant (2010) 9 SCC 209 examined various pronouncements of the Supreme Court and held that "13. In State of Bihar & Ors. Vs. Radha Krishna Singh & Ors. AIR 1983 SC 684, this Court dealt with a similar contention and held as under: - "Admissibility of a document is one thing and its probative value quite another these two aspects carinot be combined. A document may be admissible and yet may not carry any conviction and weight of its probative value may be nil.

46. UNSIGNED DOCUMENTS VALUELESS Further, it is also an admitted position that various statements/documents/exhibits were called by Saxena from his Dubai Office during the course of searches but these are unsigned by the author. It is established law that unsigned documents have little evidentiary value. Unless signed by author, veracity cannot be vetted by the party against whom these unsigned documents are used

as has been held in HASSAN ALI KHAN 2015-TIOL-2063-ITAT-MUM approved by the Bombay High Court in 2019-TIOL-464-HC-MUM-IT.

47. Thus, the impugned assessment order passed u/ss 153C/144C/143(3) of the Act must be quashed as illegal and void ab initio."

11. Propositions put forward by learned counsel for the assessee can be summarized as under:

Proposition 1 – The initiation of proceedings and completion of assessment under Section 153C of the Act is *void ab initio* as the AO had powers to initiate the proceedings under Section 153C of the Act for a block of 10 assessment years prior to the Financial Year 2021-22 corresponding to A.Y. 2022-23. Therefore, initiation of proceedings and completion of assessment under Section 153C of the Act for A.Y. 2011-12 and A.Y. 2012-13 are *void ab initio*. The decision relied upon in the case of *PCIT vs. Ojjus Medicare Pvt. Ltd & Others, (2024) 161 taxmann.com 160 (Delhi).*

Proposition 2 – The additions made are not based on any incriminating material seized in a search that too on protective basis.

Proposition 3 – the additions could not have been made under Section 69A of the Act. The ld. counsel submitted

that provisions of Section 69A are applicable only if any undisclosed movable asset, money, bullion, jewellery is found in possession of the assessee, therefore, the Section 69A is not applicable in respect of book entry or information about any income in any year which was not found in the form of any physical asset during the course of search or otherwise.

Proposition 4 – The AO could not have passed the assessment order under Section 153C r.w. Section 144(3) of the Act. The ld. counsel submitted that as per the scheme of the Act, the AO can only assume jurisdiction to initiate assessment proceedings in consequence to a search and seizure operation in the cases of another person under Section 153C of the Act. However, the substantive provision to make an assessment is Section 153 of the Act. Proceeding further, he submitted that though the AO can initiate the assessment proceedings under Section 153C of the Act. However, he has to complete the assessment under Section 153A. Drawing our attention to Section 153C of the Act, he submitted that the provisions itself makes it clear that assessment has to be made in terms of Section 153A of the Act. He

further submitted that for this reason Section 153 refers only to Section 153A. He submitted that even Section 246A of the Act provides for an appeal against an assessment order passed under Section 153A of the Act and not under Section 153C of the Act. He further submitted when the AO proceeds under Section 153C r.w. Section 153A of the Act, there is no need for him to make an assessment under Section 143(3). Thus, he submitted that the AO having not completed the assessment under Section 153A of the Act, the assessment order is *void ab initio*. Decisions relied upon in the case of *ITO vs. Vikram Sujit Kumar Bhatia, (2023) 149 taxmann.com 123 (SC)*; *CIT vs. Calcutta Knitwear (2014) 362 ITR 673 (SC)*. He submitted that when two separate specific provisions are mentioned to make an assessment, the AO has to adopt the provisions which have been specifically mandated under Section 153A of the Act by the legislature for search related assessments. The AO does not have any power even with the consent of the assessee to make an assessment in any section other than the Section 153A of the Act relating to assessment proceedings in consequence to an income tax search which is a code in

itself and has to be mandatorily applied in assessment proceedings post search because Sections 153A to 153D are overriding provision starting with *non obstante* clause brought to the statute for a specific purpose for assessment in consequence to search and seizure operation. He submitted that when the registration in his wisdom has mandatorily provided for assessment under Section 153A of the Act, the AO should have completed the assessment under the said provision and not under Section 153C of the Act. In this context, he relied upon the following decisions:

- Kanwar Singh Saini vs. High Court of Delhi (2012) 4 SCC 307
- PCIT vs. S.S. Con Build Pvt. Ltd., 2022-TIOL-656-HC-DEL-IT
- CIT vs. Sinhgad Technical Education Society, 2017-TIOL-309-SC-IT;
- Ashok Chaddha vs. ITO, (2012) 20 taxmann.com 387 (Del)

Proposition 5 – Based on same material satisfaction note could not have been recorded in respect of two different persons, Shri Udai Shankar Awasthi and Shri Amol Awasthi

Proposition 6 – In absence of any incriminating material,

proceedings under Section 153C could not have been initiated. The decision relied upon in the case of *DCIT vs. U.K. Paints (Overseas) Ltd., (2023) 150 taxmann.com 108 (SC)* and *PCIT vs. Abhisar Buildwell (P) Ltd. (2023) 149 taxmann.com 399 (SC).*

Proposition 7 – No addition can be made at the hands of the non-resident in respect of alleged income received overseas as taxability of non-resident has to be governed under the treaty provisions.

Proposition 8 - No addition can be made based on adverse material including statements of 3rd parties without confronting them before the assessee and align opportunity of cross examination.

12. Learned Departmental representative submitted, though, in case of the assessee, proceedings were initially initiated under section 153A of the Act as a result of search and seizure operation conducted in case of the assessee, however, subsequently, information was received from the Assessing Officer of another searched person relating to incriminating material pertaining to assessee. He submitted, since, the assessment

proceedings initiated under section 153A of the Act abated as a result of the recording of satisfaction under section 153C of the Act in respect of the assessee, the Assessing Officer dropped the proceedings initiated under section 153A of the Act and initiated the proceedings under section 153C of the Act. He submitted, since, the Assessing Officer is empowered to initiate the assessment proceedings under section 153C of the Act in respect of a person, other than the searched persons, he has rightly invoked such power. He submitted, section 153C of the Act is machinery provisions provided for assessment of a person, other than the searched persons, however, the procedure to be followed for such assessment is as prescribed under section 153A of the Act. Therefore, there is no need for the Assessing Officer to pass the assessment order under section 153A of the Act. He further submitted that in course of search and seizure operation in case of Sh. Rajeev Saxena, various incriminating materials were seized, which revealed undisclosed income of the assessee. He submitted, merely because the satisfaction notes recorded in respect of two different persons referred to same incriminating material,

it will not invalidate the proceedings as per the requirement of section 153C of the Act. It is sufficient for the Assessing Officer to note in the satisfaction note that document seized from searched person belong to other persons. He submitted, the document seized may belong to more than one persons. Therefore, based on such document, the Assessing Officer can initiate proceedings under section 153C of the Act in respect of more than one persons. In support of such contention, he relied upon the decision of the Hon'ble Gujarat High Court in case of Bhagwandas Rupchand Parwani Vs. ACIT, [2024] 160 taxmann.com 7(Gujarat). He submitted, section 153C also does not require recording of separate satisfaction note for each assessment year, for which, proceedings under section 153C were initiated. He submitted, a composite satisfaction note can be recorded referring to the details of materials gathered in course of search pertaining to assessment year forming part of block as a whole. For such proposition, he relied upon a decision of Hon'ble Delhi High Court in case of Indian National Congress Vs. Deputy Commissioner of Income-tax, [2024] 160 taxmann.com 606 (Delhi). Opposing contention of learned

counsel for the assessee that except statement recorded from some third parties, such as, Sh. Rajeev Saxena and without any other incriminating materials, proceedings under section 153C of the Act were initiated. Learned Departmental Representative submitted that based on statement recorded under section 132(4) of the Act, proceedings under section 153C can be initiated. In support, he relied upon a decision of the Hon'ble Delhi High Court in case of PCIT Vs. Nau Nidh Overseas Pvt. Ltd., [2017] 88 taxmann.com 665 (Delhi).

13. As regards the contention of the assessee that the addition could not have been made under section 69A of the Act, learned Departmental Representative submitted, as per section 110 of the Evidence Act, a person found in possession of anything, the onus of proving that he is not the owner is on the person from whose possession the thing was recovered. He submitted, though, Evidence Act is not strictly applicable to the tax proceedings, however, the tax authorities are not prevented from invoking the principles of Evidence Act. He submitted, since, Sh. Rajiv Saxena, the searched person, had categorically stated that commission income has been transferred to the

account of the entities controlled by the assessee, addition under section 69A was justified. In support of such contention, he relied upon a decision of the Hon'ble Supreme Court in case of Chuharmal Vs. CIT, 1988 AIR 1384 (SC).

14. Thus, he submitted, not only the proceedings have been validly initiated under section 153C of the Act, but the additions made under section 69A of the Act are also valid.

15. We have carefully considered rival submissions in the light of decisions relied upon and perused materials placed on record. The first issue which arises for consideration is what can be the block of 10 years for which the Assessing Officer could have assumed jurisdiction under section 153C of the Act. At the time of hearing, learned counsel for the assessee has placed before us the relevant facts concerning this issue and has taken us through various materials placed in the paper-books, including the satisfaction notes recorded by the Assessing Officer of the searched person as well as by the Assessing Officer of the assessee. As discussed earlier, though, based on a search and seizure operation carried

out on the assessee, proceedings under section 153A were initiated earlier, however, subsequently, based on the satisfaction note recorded by the AO of Sh. Rajeev Saxena, a person searched under section 132 of the Act, proceedings under section 153C were initiated against the assessee. Whereas, proceedings earlier initiated under section 153A were dropped.

16. Thus, the fulcrum of the proceedings initiated under section 153C of the Act against the assessee is the satisfaction note recorded by the Assessing Officer of searched person, Sh. Rajiv Saxena. This is so because, though, the Assessing Officer has also referred to a search and seizure operation conducted in case of Alankit group, however, the satisfaction note based on which proceedings under section 153C were initiated against the assessee, do not refer to any incriminating/seized materials found in the said search and seizure operation. On a reading of the satisfaction note recorded in case of searched person, namely, Sh. Rajiv Saxena, it is observed that it was recorded by the Assessing Officer on 23.09.2021. Through this satisfaction note, the Assessing Officer of the searched person, viz., Sh. Rajiv Saxena,

sent the seized materials to the Assessing Officer of the assessee.

17. After receiving the seized materials and satisfaction note from the Assessing Officer of the searched person, the Assessing Officer of the assessee recorded his satisfaction note under section 153C of the Act on 29.09.2021. Thus, both the satisfaction notes, viz., satisfaction note of the Assessing Officer of the searched persons as well as the satisfaction note of the assessee were recorded in financial year 2021-22 corresponding to assessment year 2022-23. Section 153C read with section 153A as existed prior to its amendment by Finance Act, 2017 provided for reopening of assessment/assessments for a block of six assessment years immediately preceding the assessment year, wherein, the search and seizure operation was carried out. However, the proviso to section 153C carves out a distinction regarding what should be the date of search in case of a person other than the searched person. As per the said provision, in case of a person other than the searched person, the date of search would be reckoned to be the date on which the Assessing Officer of the other person receives the seized materials

or records the satisfaction note under section 153C of the Act. However, by virtue of the amendment made to section 153A and 153C by Finance Act, 2017, the relevant assessment year was defined to include a block of 10 assessment years beginning with the assessment year, wherein, search and seizure operation was carried out and 9 preceding assessment years.

18. Admittedly, in the facts of the present appeals, the search and seizure operation was carried out on a date posterior to the amendment brought to section 153A read with section 153C of the Act by virtue of Finance Act, 2017. Therefore, the amended provisions of section 153C read with section 153A would be applicable. Hence, the relevant assessment year would constitute a block of 10 assessment years comprising of the assessment year, wherein, the search and seizure operation has taken place and preceding 9 assessment years. However, in case of a person other than the searched person, the date of search would be reckoned to be the date on which the Assessing Officer received seized material and recorded satisfaction in terms with section 153C of the Act. Since, the assessee is not the searched person but the other

person, the date of search would be reckoned to be the date on which the Assessing Officer of the assessee received the seized material and recorded satisfaction.

19. Undisputedly, the materials placed on record clearly demonstrate that the Assessing Officer of the assessee has recorded the satisfaction note under section 153C of the Act on 29.09.2021 falling in Financial Year 2021-22 corresponding to assessment year 2022-23. Therefore, the relevant assessment year for the purpose of computing 10 year block has to be reckoned from assessment year 2022-23 till assessment year 2013-14. In other words, the block of 10 assessment years for the purpose of section 153C would be assessment years 2013-14 to 2022-23. Hence, the Assessing Officer could have assumed jurisdiction under section 153C of the Act for the aforesaid block of 10 assessment years and not beyond that. Whereas, in the facts of the present appeals, the Assessing Officer has gone beyond the block of 10 assessment years and instituted proceedings under section 153C of the Act in respect of assessment years 2011-12 and 2012-13, as well. This, in our view, is against the statutory mandate.

20. While considering identical issue in case of PCIT vs. Ojjus Medicare Pvt. Ltd. & Ors. [2024] 161 taxmann.com 160 (Delhi), the Hon'ble Jurisdictional High Court has held as under:

> *"G. COMPUTATION OF THE SIX AND TEN YEAR BLOCK IN THE PRESENT BATCH OF WRIT PETITIONS*
>
> *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 non-availability 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*

Computation of the six-year block No. of years period as provided under Section 153C of the Act Consequently, AY 2021-22 would become the first of the six preceding AYs' and would as per the table set out hereinabove terminate at AY 2016-17.

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

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

89. That takes us then to the issue of identifying the "relevant assessment year" for the purposes of computing the ten year block. Explanation 1 to Section 153A specifies the manner in which the entire ten AY period is to be computed. While the computation of six AYs' follows the position as enunciated and identified above, Explanation 1 prescribes that the ten AYs' would have to be computed from the end of the AY relevant to

the FY in which the search was conducted or requisition made. The ten AY period consequently is to be reckoned from the end of the AY pertaining to the previous year in which the search was conducted as distinct from the preceding year which is spoken of in the case of the six relevant AYs'.

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

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

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

> *"9. Explanation-I is clear as to the manner of computation of the ten assessment years. It clearly and firmly fixes the starting point. It is the end of the assessment year relevant to the previous year in which search is conducted or requisition is made. There cannot be any doubt that since search was made in this case on 10.04.2018, the assessment year is 2019-20. The end of the assessment year 2019-20 is 31.03.2020. The*

computation of ten years has to run backwards from the said date ie., 31.03.2020. The first year will of course be the search assessment year itself. In that event, the ten assessment years will be as follows :

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

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

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

stretch it. Plasticity is the new mantra in neuroscience, thanks to the teachings of Norman Doidge. It implies that contrary to settled wisdom, even brain structure can be changed. But not so when it comes to a provision in a taxing statute that is free of ambiguity. Such a provision cannot be elastically construed.

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

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

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

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

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

Computation of the six-year block period as provided under section 153C of the Act	*No. of years*

AY 2023-24	*1*
AY 2022-23	*2*
AY 2021-22	*3*
AY 2020-21	*4*
AY 2019-20	*5*
AY 2018-19	*6*

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

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

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

Computation of the ten-year block period as provided under section 153C read with Section 153A of the Act	*No. of years*
AY 2024-25	*1*
AY 2023-24	*2*
AY 2022-23	*3*
AY 2021-22	*4*
AY 2020-21	*5*
AY 2019-20	*6*

AY 2018-19	*7*
AY 2017-18	*8*
AY 2016-17	*9*
AY 2015-16	*10*

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

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

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

21. Thus, keeping in view the ratio laid down by Hon'ble Jurisdictional High Court reproduced above, since,

assessment years 2011-12 and 2012-13 fall outside the net of relevant assessment year, being the block of 10 years, the assumption of jurisdiction under section 153C of the Act is unsustainable. Hence, the assessment orders passed in consequence thereof have to be declared as void. That being the legal position, we hold that the assessment orders passed under section 153C of the Act for assessment years 2011-12 and 2012-13 are legally unsustainable, hence, quashed.

22. Having held so, we can move to the other contentions put forward by the assessee. It is the case of the assessee that the disputed additions are not based on any incriminating materials found as a result of search and seizure operation. It has further been submitted that since no undisclosed movable assets, viz., cash, bullion, jewellery, cash etc. were recovered from the possession of the assessee, no addition could have been made under section 69A of the Act based on certain book entries made by a third party, which was not found from the possession of the assessee. As found from the materials on record, initially a search and seizure operation was conducted in case of Sh. Sanjay Jain, his brother Sh.

Pankaj Jain. Simultaneously, a search and seizure operation was also conducted in case of assessee's father, Sh. Uday Shankar Awasthi, which continued till 03.07.2019. Even though, the assessee was not physically present in India and was a resident of Dubai, however, he was also covered under the said search and seizure operation.

23. It is the allegation of the Assessing Officer that in course of search and seizure operation in case of Sh. Sanjay Jain, certain email and chat communication between various parties were recovered, however, from the subsequent factual discussions made in the assessment order relating to such email and chat communications, it appears that those are between Sh. Sanjay Jain, Sh. Pankaj Jain and Sh. A.S. Gehlot, the Managing Director of Indian Potash Limited (IPL). There is nothing in the observations of the Assessing Officer to show that any of these email/chat communications recovered during the search and seizure operation in case of Sh. Sanjay Jain were with Sh. Uday Shankar Awasthi or assessee. This must be the reason for which the Assessing Officer has not only dropped the proceedings

under section 153A of the Act in case of the assessee but in the entire assessment order he has not referred to any incriminating/seized material found from the possession of Sh. Sanjay Jain/Sh. Pankaj Jain to implicate assessee's father or the assessee.

24. Basis of entire addition is primarily the statement recorded from Sh. Rajeev Saxena and other information furnished by him to the Authorised Officer, including the alleged ledger copy, though, apparently a statement pertaining to the assessee was compiled to handover to the Authorised Officer. Therefore, it is quite clear that the assessment orders in case of the assessee are based on the materials handed over in the search and seizure operation carried out in case of Sh. Rajeev Saxena.

25. It is the allegation of the Assessing Officer that as per the statement recorded from Sh. Rajiv Saxena, the commission income received from various foreign parties selling fertilizer to IFFCO/IPL were transferred to beneficiaries' accounts held in the name of various entities controlled by the assessee. However, the Assessing Officer has not made any discussion, whatsoever, in the assessment orders regarding

assessee's relationship/role in the entities in whose bank accounts the alleged commission income was transferred for onward transmission to India. Though, the Assessing Officer has alleged that the entities are under the control of the assessee, however, such fact has not been demonstrated through cogent evidence. It is also quite surprising to note that, though, the commission income has not directly come to the assessee or credited to assessee's individual account, but, as alleged, has been credited in the bank accounts standing in the name of various entities in Dubai, however, the Assessing Officer has not made any effort to find out the real identity of the entities and their promoters. It further appears that no proceeding has been initiated against those entities, though, as per the Assessing Officer's own version, the commission income was transferred to the accounts of these entities, allegedly, controlled by the assessee. Though, the Assessing Officer has mentioned that information was received through FT &TR, however, what is the nature of such information and its relevancy with the assessee, has not been discussed by him.

26. A careful reading of the entire assessment order

would reveal that the Assessing Officer has made assessment primarily relying upon the statement recorded from Sh. Rajiv Saxena and the materials furnished by him at the time of search or during post search proceeding. At this stage, it will be material to note that the said search and seizure operation was carried out at a hotel room where Sh. Rajiv Saxena was staying after his extradition to India. It is relevant to observe, though, assessment has been made primarily relying upon the statement recorded from Sh. Rajeev Saxena, however, no opportunity of cross-examination was given to the assessee.

27. In fact, repeated request by the assessee for permitting him to cross-examine Sh. Rajeev Saxena has fallen into deaf ears and ultimately rejected. Cross-examination of Sh. Rajeev Saxena was of paramount importance, considering his misleading statements, unreliability and fraudulent activities, which has been exposed by Enforcement Directorate (ED) in the form of an affidavit before the Hon'ble Courts. The ED has clearly stated that due to his prevaricating stand and unreliability, the statements recorded from Sh. Rajiv

Saxena cannot be relied upon. Thus, in our view, utilization of statement of Sh. Rajiv Saxena and evidences furnished by him adversely against the assessee without permitting him to cross-examine Sh. Rajiv Saxena, whose statement was strongly relied upon by the Assessing Officer to make the assessment, is in gross violation of Rules of Natural Justice, hence, cannot be countenanced. Therefore, as per the ratio laid down by Hon'ble Supreme Court in case of Andaman Timber Industries vs. Commissioner of Central Excise, Kolkata-II (2015, 62 taxmann.com 3 SC), the addition made without following the Principles of Natural Justice is unsustainable.

28. Even otherwise also, at more than one place in the assessment order, the Assessing Officer has specifically and categorically stated that the assessee is merely a pass-through entity and the real beneficiary is someone else in India. The Assessing Officer has also observed that the commission income has ultimately been transferred to the real beneficiary in India. That being the factual finding of the Assessing Officer himself, in our view, no addition under section 69A could have been made at the hands of the assessee even on protective

basis.

29. Pertinently, in the statement recorded in course of search and seizure operation, Sh. Rajiv Saxena has repeatedly stated that the commission from Uralkali was received in the accounts of the entities controlled by him and thereafter transferred to three sets of beneficiaries. The first beneficiary being entities controlled by Sh. Pankaj Jain; the second set of beneficiary is entity controlled and managed by assessee and the third set of beneficiary is entities held and controlled by Sh. Vivek Gehlot, s/o Sh. Parvinder Singh Gahlaut, MD of IPL. These observations have been made by the Assessing Officer in paragraph 51 of the assessment order. Thus, as could be seen from the aforesaid observations, the alleged commission income came directly to the entities controlled by Sh. Rajeev Saxena and thereafter, as alleged, were transferred to entities controlled by various beneficiaries. Thus, it is very much clear that even as per the statement of Sh. Rajeev Saxena, alleged commission did not come directly to the assessee.

30. The identity of the entities allegedly controlled by the assessee has not been disclosed by the Assessing

Officer. Who are the promoters of those entities have not been discovered. Even, what is assessee's relationship and stake in the said entities have not been discussed at all. Though, the Assessing Officer has observed that information has been collected through FT&TR, however, what is the nature of such information and whether such information contained the details of entities, which received the alleged commission income and their relationship with the assessee have not been established. If the Assessing Officer had in his possession specific information in relation to the identity and status of the entities receiving commission from the entities controlled by Sh. Rajiv Saxena, he should have identified such entities and initiated proceedings under section 153C read with section 153A of the Act against them. It appears, without undertaking any exercise to identify the entities, who according to Sh. Rajeev Saxena had received the commission income from entities controlled by him, has picked up the assessee as a soft target to make the addition.

31. A reading of the assessment order would reveal that though the Assessing Officer at more than one place has

stated that commission income has come to the assessee through entities controlled by him, however, he has contradicted himself by saying that the assessee is merely a pass-through entity and not the real beneficiary. This is the specific reason, why the Assessing Officer has made the additions on protective basis. In other words, the Assessing Officer was more or less convinced that the income does not belong to one of the two assessees at whose hands additions were made. Even though, the Assessing Officer has alleged that the commission is meant for the real beneficiaries in India, however, he has failed to establish the money trail. The Assessing Officer has not brought on record any material to even demonstrate that the alleged commission received in the accounts of the entities allegedly controlled by the assessee have been transferred to India in any manner and if so, to which accounts they have been transferred and such accounts were controlled by whom. Nothing in this regard has been discussed by the Assessing Officer in the assessment order.

32. It is relevant to note that in the assessment order as well as in DRP's directions, it has been observed that the

statement given by Sh. Rajiv Saxena and evidences furnished by him regarding receipt of commission has been corroborated through the evidences collected in course of search on Mr. A.D. Singh, Mr. Sanjay Jain and Alankit group. However, not only the statement recorded from Sh. A.D. Singh and Sh. Sanjay Jain were retracted within a short time, but they do not reveal any direct link either with the assessee or Sh. Uday Shankar Awasthi. Insofar as the search on Alankit group is concerned, the Assessing Officer has not even recorded a satisfaction note qua the said search and seizure operation. These facts clearly reveal that no incriminating materials concerning the assessee were found in course of such search and seizure operation. Even, the assessment orders demonstrate such fact, as, while making additions, the only evidences relied upon by the Assessing Officer are the statement recorded from Sh. Rajeev Saxena and some other documents furnished by him including the so called ledger in the name of the assessee appearing in his books of account, though, no such books of account were found during the search on Sh. Rajiv Saxena. Thus, it is telltale that no direct evidence was available in the record

of the Assessing Officer to establish that the assessee received commission income from Uralkali either directly or through intermediaries.

33. At this stage, it would be apposite to look into the satisfaction note recorded by the Assessing Officer of Sh. Rajiv Saxena as well as the Assessing Officer of the assessee and Sh. Uday Shankar Awasthi. On a perusal of the said satisfaction notes, it is observed that the Assessing Officer of Sh. Rajiv Saxena has primarily relied upon the statement recorded from Sh. Rajiv Saxena and certain documents recovered from him or submitted by him. The concerned authority after analyzing the documents has recorded that such documents and information may have a bearing on the income of the assessee. After receiving the satisfaction note and the seized documents from the Assessing Officer of the searched person, the Assessing Officer of the assessee recorded a satisfaction note stating that the seized documents relate to the assessee and may have a bearing on his income. Accordingly, he issued notice under section 153C of the Act. Interestingly, the Assessing Officer of Sh. Uday Shankar Awasthi recorded verbatim

identical satisfaction note stating that the very same documents related to Sh. Uday Shankar Awasthi and may have a bearing on his income.

34. It is further relevant to note that the Assessing Officer who recorded satisfaction note for initiating proceedings under section 153C of the Act in case of the assessee and Sh. Uday Shankar Awasthi is the same person. The aforesaid facts reveal that the Assessing Officer, while initiating proceedings under section 153C of the Act was himself not sure, whether the seized documents belong/pertain to the assessee or Sh. Uday Shankar Awasthi and whether such documents would have a direct bearing on the income of either the assessee or Sh. Uday Shankar Awasthi. Since, the Assessing Officer was ambivalent as to whether the seized materials belong/pertain to the assessee or Sh. Uday Shankar Awasthi, he was not certain whether such information/document would have a direct bearing on the income of either the assessee or Sh. Uday Shankar Awasthi. That is why, the Assessing Officer has stated that such information/documents '**MAY'** (emphasis by us) have a bearing on the income of the assessee or Sh. Uday

Shankar Awasthi. In fact, such uncertainty in the mind of the Assessing Officer has percolated into the assessment proceedings and while framing assessment under section 153C of the Act in case of the assessee, as, he was doubtful as to whether the assessee is the real beneficiary of the alleged commission income found from the information/documents seized from Sh. Rajeev Saxena. At this stage, we must observe, learned Departmental Representative has relied upon a judicial precedent to submit that identical satisfaction note can be made in case of two persons. However, on careful examination we have found that the said decision refers to satisfaction notes recorded by the Assessing Officers of searched person and non searched person and not by Assessing officers of two non searched persons.

35. In fact, to put it simply, the Assessing Officer has recorded a finding of fact that the assessee is not the real owner of the income and only a pass-through entity. Thus, when the Assessing Officer was himself not sure as to whether the information/seized document reveal any of undisclosed income of the assessee and when he himself has expressed the view that the assessee is merely a

pass-through entity, he could not have assumed jurisdiction under section 153C of the Act at all. Inasmuch as, proceedings under section 153C of the Act could not have been initiated for merely making protective additions.

36. Thus, in our considered opinion, the satisfaction note recorded by the Assessing Officer, while assuming jurisdiction under section 153C of the Act, is mechanical without making any inquiry or investigation and by merely relying upon the statement recorded from Sh. Rajeev Saxena and the information/document submitted by him and such information also fails to meet the test of a seizure. Each and every material found and seized from the searched person cannot be considered to be incriminating material to initiate proceedings under section 153C of the Act in respect of a non-searched person unless the seized information/material would have a direct bearing on the income of the non-searched person. In the facts of the present case, the very action of the Assessing Officer in treating the assessee as a pass-through entity and making protective addition proves that the information/seized material received from the

Assessing Officer of the searched person cannot be considered as incriminating material to implicate the assessee. Thus, in our view, not only the addition made under section 69A of the Act on protective basis is unsustainable, but the proceeding initiated under section 153C of the Act itself is without jurisdiction.

37. One more issue which has been raised before us by the assessee is regarding the completion of assessment under section 153C read with section 143(3) of the Act. It is the say of the assessee that though the Assessing Officer can initiate proceedings in case of non-searched person under section 153C of the Act, however, he has to pass the assessment order under section 153A read with section 153C of the Act.

38. In the context of these submissions of assessee, on perusal of the satisfaction note recorded under section 153C of the Act, the notice issued under section 153C of the Act and the final assessment order, we have noted that the Assessing Officer has nowhere referred to section 153A of the Act. After carefully considering the submissions of learned counsel for the assessee, we find some merit in them. On a conjoint reading of section

153A, 153C and 153D of the Act, it becomes clear that in case of non-searched persons, the Assessing Officer has to initiate assessment proceedings under section 153C of the Act. However, after initiating the proceedings, he has to assess or reassess the income of the non-searched person in accordance with the provisions of section 153A of the Act. While considering somewhat similar issue, the Hon'ble Delhi High Court in case of Indian National Congress Vs. DCIT, [2024] 160 taxmann.com 606 (Del) has observed as under:

> *"16. It must at the outset be noted that the Satisfaction Note which has been drawn in unambiguous terms, and more particularly in paragraph 140 thereof, recites that the AO was satisfied that this was a fit case for initiating proceedings under Section 153C read with Section 153A of the Act for AY 2014-15 to AY 2020-21. There is thus an explicit reference not only to Section 153A but also to the block of ten assessment years which were proposed to be made subject matter of the impugned proceedings. The submission, therefore, that Section 153A was not invoked is untenable."*

39. In case of M/s. Nilesh Bharani Vs. DCIT, ITA No. 612/Mum/2020, dated 28.03.2020, the Coordinate Bench analyzing the provisions contained under section 153C and 153A of the Act has held as under:

> *"55. Thus, on a bare perusal of the plain language of the above explanation in respect of the amendment introduced in the section 153C of the Act w.e.f. 01/06/2015, we find that it*

mandates that in case any information is found during the course of any search anywhere in respect of a person not searched, then for the purpose of reassessment of income on the basis of the same, it can only be considered by taking recourse to the provisions of the section 153C to make a reassessment of income u/s 153A of the Act and not under section 148 of the Act to make an assessment u/s 147 of the Act.

.....

64. The law as culled out from these amendments and as we have understood, the revenue officer can initiate the proceedings under section 147 or u/s 153C

- *Firstly, in case, where some material is received from the AO of another person, the AO of the assessee verifies it from the information on his record of the assessee, determines its character whether incriminating or not and being an escaped income, then records a satisfaction by way of reasons¬in different circumstances; u/s 148 of the Act, issues a notice u/s 148 of the Act to file a return of income and then makes a reassessment u/s 147*

- *Secondly, in the case of the person searched, after the search, the AO of the person searched transmits the relevant information as found by the revenue which even relates to another person not searched to the AO of the non-searched person who thereafter conducts his proceedings under same¬of the Act. I .T . A . No . 6 1 2 / M u m / 2 0 2 0 Mr. Nilesh Bharani procedure, i.e., the AO of the said assessee verifies it from the information on his record, determines its character, whether incriminating or not and being an escaped income, then records satisfaction by way of a note u/s 153C of the Act, issues a notice u/s 153C to file a return of income for reassessment, then he makes an assessment / reassessment of such income u/s 153A of the Act.*

.....

85. Further, it is also not disputed that as per the order of the CIT (A) in this case, the Revenue came in possession of the said information in some searches carried out by the Investigation Unit on the brokers / operators of the listed scrip DB International (Stockbrokers) Ltd. Further, as noted by AO in his reasons recorded in para 2 of reasons that, this

information surfaced from the search of M/s Evergreen Enterprises, so all the more it was an information pertaining to the assessee found during the course of search of a person covered u/s 153A. On perusal of the provisions of the section 153C of the Act, it is apparent that after the amendment w.e.f. 01/06/2015 therein, if the AO of the person not searched comes into possession of any information, which may not be the books of account but by way of any other document pertaining to or any information contained therein relating to the assessee not searched, then the only course available with the AO of the said non-searched person is to only proceed by recording a satisfaction u/s 153C of the Act to make a reassessment of income u/s 153A of the Act even for an extended assessment year after 31/03/2017.

86. During the course of hearing of this appeal, the above facts were not at all disputed by the CIT DR, because the CIT (A) has mentioned those very explicitly in his appellate order. It has also been observed that when an amendment in the section 153C of the Act was made by the law makers therein w.e.f. 01/06/2015, changing applicability of the provisions of the said section, no simultaneous corresponding amendment in any manner was made u/s 153A of the Act. It has also been noted that whenever amendments were made in the section 153C of the Act on other occasions, then simultaneous amendments were also made u/s 153A of the Act to make applicability of the both the provisions harmonious for the period to which these two non-obstante sections applied. For example, in the years 2003 and 2017, substantial amendments were made in the search assessment provisions and applicability of dates of those amendments were specifically inserted therein for the searches conducted after 31/05/2003 and 31/03/2017 respectively.

87. However, while amending the provisions of the section 153C of the Act applicable w.e.f. 01/06/2015 there was no reference at all that the same is to be applied only in respect of the searches conducted after 31/05/2015 as has been specifically provided therein by the legislature on two other occasions as above. Thus, the provisions of the section 153C of the Act have to be seen by the AO as on the date when he receives the material from the AO of the person searched may be at any date and then apply accordingly. Therefore, it is also held that application of the provisions of the section 153C of the Act will be compulsory for all the assessment years extendable up to 10 years in the case of a non-searched person as is compulsorily for the assessee

searched till 31/03/2021, even for the searches conducted prior to 01/06/2015 where the AO of the person not searched receives the alleged incriminating information after 31/5/2015.

88. However, in the case of a person not searched, the AO is permitted to issue the said notice u/s 153C r.w.s. 153A of the Act, only for the assessment year for which any definite incriminating information was found during the course of search for any of the preceding 6 assessment years. But for the extended 4 relevant assessment years therein, the said notice u/s 153C of the Act can be issued only when the incriminating material points escapement of income backed by an undisclosed asset of Rs 50 lakh and above and the said incriminating may not be the seized material in physical form belonging / pertaining to the assessee not searched.

89. Further, since the section 153C of the Act begins with a non- obstante wording overriding the application of the sections 147/148/149/151 of the Act, the AO is legally bound to take recourse to section 153C of the Act only in case of receipt of any information about any undisclosed income in any material found/ seized during the course of search in the premises of some other assessee. This is a jurisdictional fact which needs to be strictly adhered to and any lapse on jurisdictional issue cannot validate the action.

90. Even for the sake of argument, we do not go by the proposition that no such intimation can be passed on or given by the Investigation Unit of the income-tax department to the AO of the person not searched as the sole domain for remitting the said information to the said AO is only with the AO of the person searched as discussed above in terms of section 13(9A); but then also, if the information has otherwise been received by the AO of the person not searched from the Investigation Unit or any other AO which has come into the knowledge of the Revenue in a search conducted, then in that case, the only course available to the AO of the person not searched is to take recourse to the provisions of the section 153C of the Act for any assessment or reassessment of the said amount. Any proceedings initiated based on the said information u/s 148 of the Act cannot be held to be legal as it will be beyond the codified provisions of the law. Because, the legislature has mandated assumption of jurisdiction in such cases to assess or reassess any alleged undisclosed income found during the course of search anywhere under section 153C of the Act, by carving out non-obstante clause for applicability of section 147 and other sections.

91. We have already observed in our earlier paragraphs that the entire procedure to make an assessment or reassessment of income of the alleged escaped income either u/s 148 or section 153C of the Act practically is the same except the jurisdiction and root cause which are different. The legislature has specifically carved out scope of assessment / reassessment of income of a person not searched of such alleged escaped income based on some incriminating information found during a search on some other person searched by taking recourse to the section 153C of the Act. The AO has not been empowered to extend the scope of an assessment/ reassessment u/s 153A read with the section 153C of the Act beyond the alleged incriminating material found during the course of search in the case of some other person, because assessment / reassessment in such case is specifically restricted to the income based on the said incriminating information only. Whereas, in the proceedings initiated u/s 148 of the Act, the AO may extend the scope of the assessment / reassessment on other amounts also if any information about those is on his record over and above the alleged escaped income as per the reasons recorded. The purpose of restriction of assessment for amount of income by taking recourse to the provisions u/s 153C of the Act to alleged incriminating material and not on suspicion has been upheld by the Hon"ble Supreme Court in the case of Sinhgad Technical Education Society (supra).

92. Accordingly, we hold that any incriminating information of any undisclosed income of the person not searched which was found during the course of a search having taken place up to 31/03/2021 on some other assessee, can only be taken into consideration for an assessment / reassessment in the hands of the said person not searched through the domain of the section 153C of the Act. Thus, any assessment / reassessment proceedings-initiated u/s 148 of the Act in respect of the said incriminating information found during the course of a search up to 31/03/2021 on some other assessee is illegal and is ab initio as the same can be considered only by taking recourse to the provisions of the section 153C r.w.s. 153A of the Act. Thus, the assessment of the said amount of LTCG, which was claimed to be exempt u/s 10(38) of the Act by the assessee, made u/s 147 of the Act is beyond the scope of section 147, albeit it can be roped in only u/s 153C.

93. If on overall appreciation of the scheme of assessment / reassessment of income after the income-tax searches on the assessee searched and also for the persons not searched based on detection of some incriminating information during

the said searches conducted upto 31/03/2021, the following legal course of action is open for the AOs, which can be summed up, in the following manner:

(i) It is mandatory for the AO of the person searched to make an assessment / reassessment of income of the said assessee u/s 153A of the Act for the 6 assessment years prior to the date of search and also for the extended 4 relevant assessment years, subject to fulfillment of the prescribed conditions for the same, on the basis of an income-tax search conducted on him.

(ii) However, in the assessment / reassessment orders passed within the scope of section 153A of the Act, the AO cannot consider any undisclosed income detected by way of an incriminating information pertaining / relating to the said assessee, during an income-tax search conducted in the premises of some other assessee(s), even conducted at the same time or in some connected matter. In such a case where AO gets any information or material about any assessee from the search of some other person, he can, make assessment of the undisclosed income/ amount emanating from such information or material for the assessment / re assessment vide separate assessment / reassessment orders to be passed u/s 153A by taking recourse to the provisions of the section 153C of the Act. Because the cause of action for the said incriminating information for different amounts had originated in different search(es) in the different premises of other assessees and for the same, the mandatory route legislated u/s 153C of the Act must be followed.

(iii) Further, an assessee can also be assessed multiple times u/s 153C r.w.s 153A of the Act, despite having already been assessed u/s 153A of Act on the basis of an income-tax search in his premises, where the incriminating information has been received u/s 153C of the Act by the AOs of the searched person as well as of the person not searched, which information originates in different searches at different times on different persons as well."

40. Viewed in the context of observations made by the Hon'ble Jurisdictional High Court and the Coordinate Bench in the decisions referred to above, the Assessing

Officer assuming jurisdiction under section 153C of the Act in case of a non-searched person, though has power to initiate proceedings under section 153C of the Act upon receipt of incriminating material from the Assessing Officer of the searched person, however, he has to complete the assessment under section 153C read with section 153A of the Act. An assessment order passed in any other manner, in our view, may not muster judicial scrutiny.

41. Thus, on overall consideration of facts and materials on record and keeping in view the principles laid down in the judicial precedents cited before us by both the parties we hold that not only the additions are unsustainable, but, the assumption of jurisdiction under section 153C of the Act, itself, is invalid. We order accordingly.

42. In view of our decision above, we do not intend to dwell upon some other propositions advanced before us by learned counsel for the assessee including the proposition relating to applicability of DTAA, as, they are of mere academic interest.

43. In the result, appeals are allowed, as indicated

above.

Order pronounced in the open Court on 13th September, 2024.

Sd/-	Sd/-
[M. BALAGANESH]	**[SAKTIJIT DEY]**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

DATED: 13th September, 2024
Prabhat/Rajesh, Sr. P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar