

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 2621/DEL/2023 (A.Y 2011-12)**

<p>Ganesh Das Taneja, Ajmal Khan Road, Najibabad, Uttar Pradesh, 246763, <b>PAN No. AAWPT0826H</b> <b>(APPELLANT)</b></p>	Vs.	<p>Deputy Commissioner of Income Tax Central Circle, Income Tax Office, Civil Lines Moradabad, Uttar Pradesh <b>(RESPONDENT)</b></p>
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**I.T.A. No. 2613/DEL/2023 (A.Y 2012-13)**

<p>Ganesh Das Taneja, Ajmal Khan road, Najibabad, Uttar Pradesh, 246763, <b>PAN No. AAWPT0826H</b> <b>(APPELLANT)</b></p>	Vs.	<p>Deputy Commissioner of Income Tax Central Circle, Income Tax Office, Civil Lines Moradabad, Uttar Pradesh <b>(RESPONDENT)</b></p>
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<b>Assessee by :</b>	<b>Sh. Ganesh Das Taneja, Self and Sh. Vidit Taneja, CA</b>
<b>Department by:</b>	<b>Sh. Surender Pal, CIT DR</b>

<b>Date of Hearing</b>	<b>08.10.2024</b>
<b>Date of Pronouncement</b>	<b>17.10.2024</b>

**ORDER****PER YOGESH KUMAR U.S., JM**

Both the captioned appeals pertaining to single Assessee for the Assessment Years 2011-12 and 2012-13, the Assessee has challenged the orders of the Ld. CIT(A) dated 04/08/2023, wherein the Ld. CIT(A) confirmed the assessment orders passed u/s 153C read with Section 143(3) of the Act dated 30/12/2021.

2. Since both the Appeals are involved with identical issues and the Assessee has raised the common grounds of appeal, the Grounds of appeal for A.Y 2011-12 are reproduced hereunder: -

*“1. On the facts and in the circumstances of the case, the learned C.I.T. has legally erred in sustaining the assessments made u/s.153C of the Act when the initiation of proceedings itself was bad in law and void ab initio.*

*2. On the facts and in the circumstances of the case, the learned C.I.T. has legally erred in sustaining the assessments made u/s 153C of the Act when the initiation of proceedings itself was bad in law and void ab initio as notice u/s 153C cannot be issued six years and up-to 10 years when the income escaped is less than Rs. 50 Lakhs in any of the one year or in aggregate in the four years i.e. in appellant's case from AY 2008-09 to AY 2011-12 and in the case of the appellant the alleged income escaping assessment as per the seized material as well as that of the observation of the Assessing officer is only Rs. 48,00,000/- which is less than Rs. 50,00,000/-.*

3.. *That the learned CIT(A) erred in dismissing the ground raised by the appellant regarding validity of initiation of proceedings u/s 153C. That on the facts and in the circumstances of the case, the initiation of proceedings u/s 153C in the case of the appellant being illegal and bad in law, the assessment proceedings is liable to be quashed.*

4. *In the law and in the facts and circumstances of the case, the Ld. CIT(A) failed to appreciate the fact that the proceedings-initiated u/s 153C are void-ab- initio as wherein the satisfaction note has been found to be in violation of the guidelines laid down by the Hon'ble CBDT Circular/Apex court judgement, the courts have rendered the proceedings u/s 153C of the Act as void. The Ld. CIT have ignored the facts of the case and case laws cited on this issue.*

5. *The Ld. CIT has erred in dismissing the ground that aforesaid additions u/s 69 merely on the basis of seized material found from the residence of third party Viral Patel and his statement, without providing the appellant an opportunity of cross- examination and in absence of such an opportunity, impugned addition(s) were not justified and the order is liable to be quashed.*

6. *In the law and in the facts and circumstances of the case, the Ld. CIT is not justified in sustaining the issuance of modified show cause notice by the Assessing Officer by observing it as a rectification when the said notice was contradictory to the Assessing Officer's own observation made in the earlier notice as well as was an afterthought and was unjustified.*

7. *In law and in facts and circumstances of the case, the Ld. CIT has erred in confirming the addition made of Rs. 48,00,000/- on account of unexplained investment u/s 69 of the Income Tax Act, 1961 ('the Act') by the AO's consideration that the said payment was made in cash for*

*purchase of property. The addition so confirmed being illegal and wrong, the same, therefore, requires to be deleted as no such cash payment was made by the appellant.*

*8. In law and in facts and circumstances of the case, the Ld. CIT has erred in confirming the addition of Rs. 5,20,000/- paid through banking channel as unexplained investment u/s 69 of the Income Tax Act, 1961 ('the Act'). The addition so confirmed being wrong and unjustified, the same, therefore, requires to be deleted as the said payment was made through explained sources and the said addition was made just to justify the initiation of proceedings U/s 153C by making the addition of more than 50 lacs.*

*9. On the facts and in the circumstances of the case, the learned C.I.T. has erred in confirming the addition of Rs. 5,20,000/- paid through banking channel as unexplained investment u/s 69 of the Income Tax Act, 1961 ('the Act'). The said addition so confirmed being not based on any incriminating material found in this regard is wrong and unjustified.*

*10. In the law and facts of the case, the Ld. CIT has passed the order U/s 250 and confirmed the additions made by the AO by relying on the remand report. The remand report is bad in law and unjustified as the same is made without granting personal hearing to the appellant as the AO was not present in the office on 16.05.2023 and therefore the appellant could only provide the submission and no explanations or clarifications could be furnished before the AO*

*11. Without prejudice to the above, the LD. CIT has erred in relying on the remand report as the said order is passed without getting an opportunity of filing the rejoinder to the remand report of the AO dated 25.05.2023 as the appellant didn't receive the mail/ mail went to spam folder and the appellant didn't come to know that remand report*

*was issued by the AO. Your Honour is requested to kindly consider giving an opportunity of being heard to the appellant.*

*12. In law and in the facts and circumstances of case of the appellant, the Ld. CIT has not adjudicated the ground taken for wrong initiation of penalty proceedings under section 271(c) of the Act.”*

3. Brief facts of the case for A.Y 2011-12 are culled out from the order of the CIT(A) and for the sake of convenience the same are reproduced as under: -

*“2.1 A search and seizure operation u/s 132 of the Act was conducted on 06.03.2018 in the case of ‘SSS (Satyam, Sangini, Shaligram)’ group of company at ahmedabad. During the search and seizure action, the residential premises of Shri Viral K. Patel at B/104, Shailgram Flora, near Sangini Banglow, opposite Shaligram-3, thaltej, Ahemdabad was also covered u/s 132 of the Act. During the course of search action various incriminating document and digital data was found and seized. Verification of information reveals that Shri Ganesh Das Taneja had purchased bearing unit C-52 in project 'Satyam Sentessa Greenland Phase C-D' on 26.07.2011 for a total cost of Rs. 80,00,000/-, out of which Rs. 50,00,000/- had been paid in cash. In the facts the case was centralized with Central Circle, Moradabad vide order dated 15.12.2021 by Pr. CIT, Bareilly.*

*2.2 The assessee filed his original return of income on 25.03.2012 disclosing total income of Rs. 1,99,924/-. After recording satisfaction as required u/s 153C, the notice u/s 153C of the Act was issued on 10.11.2021 requiring the assessee to file the return of income. In response, the assessee filed his return of income for the year under consideration on 18.12.2021 disclosing total income of Rs. 1,99,799/-.*

*2.3 After considering the reply of the assessee and on perusal of seized documents, it has been noted by the Assessing Officer that in the year under consideration, the assessee has made payment of Rs. 71,00,000/- for purchase of above said property out of which Rs. 48,00,000/- has been paid in cash. No explanation or documentary evidence has been submitted by the assessee in relation to the source of aforesaid cash payment. Further, out of the remaining amount of Rs. 23,00,000/- paid through banking channels, the assessee claimed Rs 2,50,000/- have been received from his wife Seema Taneja, Rs. 2,00,000/- from his son Vidit Taneja, Rs. 3,35,334/- from his earlier savings/income (in cash), Rs. 2,85,000/- through loans and the remaining amount was paid out of his investments in FDs, Shares and Mutual Funds. However, in respect of funds received from his son Vidit Taneja amounting to Rs. 2,00,000/-, out of his earlier savings/income Rs. 3,35,334/- and the loan amount of Rs. 2,85,000/-, no documentary evidence was submitted & hence the same was disallowed and added to the total income of the assessee. Thus, an addition of Rs. 48,00,000/- on account of cash payment and Rs.8,20,334/- as above was made to the income of the assessee for AY 2011-12 u/s 69 of Act as unexplained investment.*

*2.4 Therefore, assessment has been completed at the total income of Rs. 58,20,133/- vide order dated 30.12.2021.*

4. The Assessment Order also been framed on 30/12/2021 for AY 2012-13 under section 153C r.w.s 153A/143(3) of the I.T Act, 1961 by making an addition of Rs. 2,00,000/- on account of cash payment and Rs. 1,00,000/- on account of cash received from Kanchan.

5. Aggrieved by the Assessment orders for AY 2011-12 and 2012-13, the Assessee preferred the Appeals before the CIT(A) and the Ld. CIT(A) vide orders dated 04/08/2023 confirmed the additions made by the Assessee, which are under challenged in the above Appeals.

6. The Ld. Counsel for the Assessee addressing on the Ground No. 1 & 2 submitted that, the initiation of the assessment u/s 153C of the Act itself is illegal and void *ab-initio* as notice u/s 153C of the Act cannot be issued beyond six years and up to 10 years when the income escaped is less than 50,00,000/- in any of the one year or in aggregate in four years and the alleged income escaping assessment for Assessment Year 2008-09 to 2011-12 as per the seized material as well as that of the observation of the A.O. is only Rs. 48,00,000/- which is less than 50,00,000/-. Thus submitted that, the initiation of the proceedings u/s 153C itself is erroneous. The Ld. Counsel for the Assessee relied on the Judgment of Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. Jasjeet Singh reported in 155 Taxman.com 155, thus, sought for deleting the additions.

7. Per contra, the Ld. Departmental Representative relied on the findings and the conclusion of the Lower Authorities and prayed for dismissal of the Appeal.

8. We have heard both the parties and perused the material available on record. In the present case, a search and seizure operation u/s 132 of the Act was carried out on 06/03/2018 in the case of SSS (Satyam, Sangini, Shaligram) group of Companies, the date of satisfaction note was recorded by the A.O. of the search person on 19/02/2021 and the date of satisfaction note recorded by the Jurisdictional A.O. on 10/11/2021. There was eight month gap between the date of satisfaction note recorded by the A.O. of the searched person and the date of satisfaction note recorded by the Jurisdictional A.O., Thus, it is quite evident that the seized material was received by the Jurisdictional A.O. only later in November 2021. In respect of issuing the notice u/s 153C of the Act is concerned, the counting of 10 years would commence only from the date when the materials were forwarded to the Jurisdictional A.O. i.e. on 10/11/2021 for Assessment Year 2022-23. The Explanation 1 to Section 153C of the Act contemplates the manner of

computation of 10 Assessment Years for the sake of convenience

Explanation 1 to Section 153C of the Act is reproduced as under: -

*“Explanation 1. For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made”.*

9. The question regarding application of the first proviso to Section 153C (1) of the Act has been considered by the Hon'ble Supreme Court in the case of Jasjit Singh (155 Taxman.com158), wherein the Hon'ble Supreme Court held that the application of first proviso to section 153C(1) of the Act would not be confined to question of abatement, but also with regard to date from which six year period was to be reckoned in respect of which returns were to be filed by third party and thus, period for which other persons i.e. Assessee is required to file returns, would commence only from date when materials were forwarded to their jurisdictional A.O. in following manners:-

*“9. It is evident on a plain interpretation of Section 153C(1) that the Parliamentary intent to enact the proviso was to cater not merely to the question of abatement but*

*also with regard to the date from which the six year period was to be reckoned, in respect of which the returns were to be filed by the third party (whose premises are not searched and in respect of whom the specific provision under Section 153-C was enacted. The revenue 4 argued that the proviso [to Section 153(c)(1)] is confined in its application to the question of abatement. 10. This Court is of the opinion that the revenue's argument is insubstantial and without merit. It is quite plausible that without the kind of interpretation which SSP Aviation adopted, the A.O. seized of the materials of the search party, under Section 132-would take his own time to forward the papers and materials belonging to the third party, to the concerned A.O. In that event if the date would virtually "relate back" as is sought to be contended by the revenue, (to the date of the seizure), the prejudice caused to the third party, who would be drawn into proceedings as it were unwittingly (and in many cases have no concern with it at all), is dis-proportionate. For instance, if the papers are in fact assigned under Section 153-C after a period of four years, the third party Assessee's prejudice is writ large as it would have to virtually preserve the records for at latest 10 years which is not the requirement in law.*

*(Case law is enclosed vide Annexure A)*

*Such disastrous and harsh consequences cannot be attributed to Parliament. B 11. For the foregoing reasons, the Court finds no merit in these appeals; they are accordingly dismissed, without order on costs."*

10. In the present Appeals the requisition was made and satisfaction note recorded by the Jurisdictional A.O. on 10/11/2021 the Assessment Year is 2022-23 the end of the Assessment Year 2022-23 is 31/03/2022. The computation of 10

years has to run backward from the said date i.e. 31/03/2022 starting from the Assessment Year 2022-23 to 10<sup>th</sup> Assessment Year 2013-14. The captioned appeals are pertaining to Assessment Years 2011-12 and 2012-13 which are beyond 10-year outer ceiling limit prescribed in the statute, thus the Assessment framed by the A.O. for A.Y 2011-12 and 2012-13 are beyond the periods contemplated under section 153C(1) of the Act. Considering the above facts and circumstances, we find merit in Ground No. 1 &2 of the Assessee, accordingly we set aside the Assessment Orders framed by the A.O. for the A.Y 2011-12 and 2012-13.

11. In the result, Appeals of the Assessee in ITA No. 2621/Del/2023 and 2623/Del/2023 are allowed.

Order pronounced in the open court on 17<sup>th</sup> October, 2024.

**Sd/-**

**( PRADIP KUMAR KEDIA )  
ACCOUNTANT MEMBER**

Dated : 17/10/2024

*R.N, Sr. PS\**

**Sd/-**

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

Copy forwarded to :

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI