IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No. 1421/Bang/2024
Assessment Year: 2015-16

Sunitha Singh Muralidhara, SVK House, 9th Cross, 16th Ward, Basaveshwara Badavane, Hospet – 583 201. **PAN – ASXPM 3139 K**	Vs.	The Dy. Commissioner of Income Tax, Central Circle – 1(4), Bengaluru. .
APPELLANT		RESPONDENT

Assessee by	:	Shri G Venkatesh, Advocate
Revenue by	:	Shri V Parithivel, JCIT (DR)

Date of hearing	:	04.09.2024
Date of Pronouncement	:	19.11.2024

O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the ld. CIT (A) - 11, Bengaluru dated 31/05/2024 in ITA No. ITBA/APL/M/250/2024-25/1065304892(1) for the assessment year 2015-16.

2. The assessee has raised the following grounds of appeal:

"1.The impugned order of the Commissioner of Income Tax (Appeals)-11, Bangalore, [for short `the CIT(A)'] passed under section 250 of the Income Tax Act, 1961, in so far the same is against the appellant, is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.
2. The appellant denies herself liable to be assessed to Rs. 51,78,781/- pursuant to the impugned assessment order u/s 153C of the Act as against returned income of Rs. 7,72,630/- on the facts and circumstances of the case.

3. The learned CIT(A) failed to appreciate that the order of assessment passed by the AO under section 153C of the Act is bad in law since the mandatory conditions as envisaged in the Act to assume jurisdiction did not exist or having not been complied with and consequently, the assessment is vitiated and requires to be cancelled on the facts and circumstances of the case.

4. The learned CIT(A) ought to have appreciated that the notice issued under section 153C of the Act is bad in law and more so as it contains material irregularity on the facts and circumstances of the case.

5. The learned CIT(A) failed to appreciate that the notice issued u/s 153C of the Act is barred by limitation and consequently the assessment order could not have been passed on the facts and circumstance of the case.

6. The learned CIT(A) failed to take into consideration that by construing 22.03.2022 which is the date on which the seized materials were handed over to the jurisdictional Assessing Officer as the date of search in terms of first proviso to section 153C of the Act, the AY 2015-16 falls beyond the stipulated 6 preceding years and accordingly the said year is beyond the reach of any notice u/s 153C of the Act.

7. The learned CIT(A) grossly erred in not following the binding judicial precedents relating to the limitation, amongst others, namely PCIT v. Ojjus Medicare (P.) Ltd [2024] 161 taxmann.com 160 (Delhi), on the facts and circumstances of the case.

8. The learned CIT(A) also failed to appreciate that there being no incriminating material at all and the seized material not being in the nature of any incriminating material, the issuance of notice u/s 153C of the Act is not in accordance with law on the facts and circumstances of the case.

9. The learned CIT(A) is not justified in confirming the addition of Rs.41,85,100/- by holding that the same is unexplained investment on the facts and circumstances of the case.

10. The learned CIT(A) erred in disbelieving the explanation of the appellant as to the source of the above cash available with her on the facts and circumstances of the case.

11. The learned CIT(A) erred in confirming the denial of the deduction under Chapter VI-A of Rs. 81,540/- being the deduction u/s 80C on the facts and circumstances of the case.

12. The learned CIT(A) erred in confirming the addition to the extent of Rs. 56,000/- deposits in the form of cash deposit as unexplained money u/s 69A of the Act on the facts and circumstances of the case.

13. The learned Assessing Authority is not justified in levying interest u/s 234A and u/s 234B of the Act on the facts and circumstances of the case and further the quantum period and are not discernible from the assessment order.

14. The appellant craves leave to add, alter, delete, amend or substitute any or all of the above grounds urged above as may be necessary at the time of hearing.

15. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity."

.

2.1 The assessee in its ground of appeal has challenged the validity of the assessment framed under section 153C r.w.s. 143(3) of the Act.

3. The assessee, an individual, filed a return of income for the assessment year under consideration, declaring income derived from rental income and profits from a contracting business in accordance with the presumptive provisions of **Section 44AD** of the Act. Subsequently, on **11th April 2019**, a search and seizure operation under **Section 132** of the Act was conducted at the premises of one **Shri Syed Mustafa Kamal Pasha**. During the course of this search, a copy of a sale deed dated **24th November 2014** was discovered and seized, which indicated that the assessee had purchased immovable property from **Smt. Rajeshwari** and **Shri Ramamurthy**.

4. As per the sale deed, the assessee acquired the property for a consideration of **₹39,23,000**. In addition, stamp duty and registration charges amounting to **₹2,62,100** were paid on the said transaction, thereby totaling an investment of **₹ 41,85,100** made by the assessee in the property.

5. Based on this finding during the search conducted at the premises of Shri Syed Mustafa Kamal Pasha, proceedings under **Section 153C** of the Act, were initiated against the assessee. A notice was duly issued to the assessee on **5th April 2022**, calling for the reassessment of income for the relevant assessment year.

6. The Assessing Officer (AO) finalized the assessment vide order dated **30th March 2023**, determining the assessee's income for the

.

relevant assessment year at **₹ 51,78,781**, as opposed to the originally declared income of **₹ 7,72,630**.00 only.

7. The assessee, being aggrieved, filed an appeal before the learned CIT(A), challenging the legality and validity of the proceedings initiated under **Section 153C** of the Income Tax Act, 1961, on multiple grounds. However, the learned CIT(A) dismissed the grounds of appeal raised by the assessee and affirmed the findings of the Assessing Officer (AO).

7.1 The assessee, being aggrieved by the order of the learned Commissioner of Income Tax (Appeals) [CIT(A)], has preferred an appeal before us, challenging the legality and validity of the proceedings initiated under **Section 153C** of the Income Tax Act, 1961, on multiple grounds.

8. Before us, the learned Authorized Representative (AR) for the assessee among other contentions submitted that the proceedings initiated under **Section 153C** for the assessment year under consideration are **void ab initio**. The AR contended that the assessment year in question does not fall within the six-year period immediately preceding the assessment the year relevant to the previous year in which the search was conducted.

9. According to the first proviso to **Section 153C(1)** of the Act, the date of initiation of the search, for the purpose of computing the six-years period, is to be considered from the date on which the search materials are received by the Assessing Officer (AO) having jurisdiction over the other person. In the present case, although the search was

.

conducted on **11th April 2019**, the document based on which satisfaction was recorded was provided to the jurisdictional AO of the assessee on **22nd March 2022**. Thus, as per the AR, the six preceding assessment years should be reckoned from **22nd March 2022**, not from **11th April 2019**. Accordingly, the six-year period would end at **Assessment Year (A.Y.) 2016-17**.

10. Consequently, the year under consideration, i.e., **A.Y. 2015-16**, falls outside the six-year period and is therefore **time-barred and beyond the scope of the provisions of section 153C** of the Act.

10.1 On the other hand, the learned DR vehemently supported the finding of the authorities below.

11. We have heard the rival contentions of both the parties and perused the materials available on record. The primary contention of the assessee is that the proceedings initiated under **Section 153C** of the Income Tax Act, 1961, for the assessment year under consideration are invalid, as the relevant assessment year falls outside the prescribed six-years period. The learned Authorized Representative (AR) for the assessee argued that the six-years period should be reckoned from the date when the Assessing Officer (AO) having jurisdiction over the assessee received the seized documents, not the date of the original search. The relevant provision of section 153C(1) and the proviso reads as under:

> ***153C.*** *(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—*
> *(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*

.

> *(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,*
> *a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A :*
> ***Provided** that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :*

11.1 On perusal of the above provision, we note that the first proviso to **Section 153C(1) of the Act** specifies that the six-year period must be calculated from the date the AO receives the seized materials, not from the date of the search itself. In the present case, while the search was conducted on **11th April 2019**, the AO with jurisdiction over the assessee received the relevant documents only on **22nd March 2022**. Therefore, the six-year period should be computed starting from **22nd March 2022**, ending with **A.Y. 2016-17**. Thus, in our considered opinion, **A.Y. 2015-16** falls outside the permissible six-years period, making the assessment for this year **time-barred**. In holding so, we also draw support and guidance from the judgment of Hon'ble Supreme court ***CIT vs. Jasjit Singh reported in 155 taxmann.com 155,*** where it was held as under:

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

.

the proviso [to Section 153(c)(1)] is confined in its application to the question of abatement.

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

11.2 We also draw support and guidance from the judgment of Hon'ble Delhi High court in case of ***CIT vs. RRJ Securities reported in 62 taxmann.com 391***. The relevant observation is extracted as under:

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

.

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

11.4 In view of the above findings and the cited judicial precedents, we hold that the proceedings under Section 153C for A.Y. 2015-16 are invalid. The appeal is decided in favour of the assessee, and the assessment order for A.Y. 2015-16 is hereby quashed.

11.5 As the assessee succeeds on the technical ground, we don't want deal with the other grounds raised by the assessee on merit. As such, we dismiss the other ground raised by the assessee on merit as infructuous.

12. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in court on 19th day of November, 2024

Sd/- Sd/-

(KESHAV DUBEY) **(WASEEM AHMED)**
Judicial Member Accountant Member

Bangalore
Dated, 19th November, 2024
/ vms /

.

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore

.