



**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "E" BENCH: NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.1483/Del/2024
[Assessment Year : 2021-22]**

Mukul Rani Thakur, H.no.8, Cross 10, B- Tapovan Enclave, Amwala Tarala, Dehradun-248008. PAN-AERPT3941E	vs	DCIT, Central Circle-31, Delhi.
APPELLANT		RESPONDENT
Appellant by		Shri Suresh Gupta, CA
Respondent by		Shri Amit Shukla, Sr. DR
Date of Hearing		23.10.2024
Date of Pronouncement		20.11.2024

ORDER

PER PRADIP KUMAR KEDIA, AM :

The instant appeal has been filed at the instance of the assessee seeking to assail the First Appellate order dated 08.02.2024 passed by Ld. Commissioner of Income Tax (A)-30, New Delhi ["Ld.CIT(A)"] u/s 250 of the Income Tax Act, 1961 ["the Act"] arising from the assessment order dated 30.12.2022 passed u/s 143(3) of the Act pertaining to Assessment Year 2021-22.

2. The grounds of appeal raised by the assessee read as under:-

1. *"The Ld.CIT(A) has erred both on facts and in law in not quashing the assessment order ignoring the fact that no approval u/s 153D was obtained before passing of the above order.*
2. *The impugned order of assessment u/s 143(3) of IT Act is not valid in law as the same has been passed in complete defiance of the provision of sec 153C of IT Act as the assessment order has been passed taking adverse view of the material found in the course off*



search on the third person and the assessment year under consideration was not the year of search in view of the provision to sec 153C(1) of IT Act and the assessment was not an abated assessment.

3. *The Ld.CIT(A) has erred in confirming the addition of Rs.97,37,300/- under the head long term capital gain on the basis of the digital evidences found from the digital devices of other individuals without appreciating the fact that same were not found corroborated from the facts on record and the digital evidences shared were not backed by a valid certificate of authentication required u/s 65B of Indian Evidence Act.*
4. *The assessment order under appeal is unsustainable in law as the same has been passed taking cognizance of the so called incriminating material found from a third person without the third person and also the counter party i.e. buyer in the deal of sale of flat, examined by the Ld.AO with reference to the material adversely relied upon and without providing opportunity of cross examination of the said witness to the appellant assessee to link the appellant to so called incriminating material.*
5. *The impugned assessment is invalid and without jurisdiction as the said assessment is completed without complying with the mandatory CBDT instructions/guidelines.”*

3. The assessee is a senior citizen and 66 years old lady. The assessee filed her return of income for Assessment Year 2021-22 on 02.11.2021, declaring total income of INR 6,98,900/-. The assessee declared income from sale of equity shares and income from other source in the form of interest and dividend from Indian companies. During the year under consideration, the assessee sold house property situated at Preet Vihar, Delhi for INR 49,00,000/- and invested the sale proceeds in purchase of capital gain bonds u/s 54EC of the Act of the same amount and thus, declared capital gains from property at



ITA No.1483/Del/2024

NIL. The case of the assessee was subjected to scrutiny assessment u/s 143(3) of the Act. In the course of assessment, in a show cause notice dated 15.11.2022, the Assessing Officer (“AO”) referred to search conducted at the premises of one Shri Praveen Kumar Jain, a third party and also referred to a *kachchi parchi* image which is stated to be found from the mobile phone of Shri Vaibhav Jain which is allegedly pertain to sale of property at Preet Vihar, Delhi. The assessee filed reply and denied any privy to such *kachchi parchi* found on the mobile phone of such party. The AO however, relied upon some whatsapp chat and held that the assessee has under reported sale consideration on sale of Long Term asset being property at Preet Vihar, Delhi to the tune of INR 1,05,50,000/-. The AO re-computed the Long Term Capital Gain (“LTCG”) and made addition of INR 97,37,300/- at estimated sale consideration based on *kachchi parchi*. The income was accordingly, assessed at INR 1,04,36,200/- u/s 143(3) of the Act. As per para 13 of the assessment order, it was asserted by the AO that the assessment order was passed with the prior approval of the Ld. Additional CIT, Central Range-8, New Delhi as accorded vide F.No.Addl.CIT.CR-8/Approval/2022-23/1887 dated 30.12.2022.

4. Aggrieved by the additions, the assessee preferred appeal before the Ld.CIT(A) without any avail.

5. Further aggrieved, the assessee preferred appeal before the Tribunal.

6. The Ld. Counsel for the assessee at the outset, adverted to Ground No.2 of the grounds of appeal and pointed out that this Ground is essentially in the nature of additional ground. An application for admission of ground, treating the same as additional ground was referred. It was submitted that the aforesaid ground seeks to challenge the jurisdiction of the AO assumed u/s 143(2) of the Act in the light of decision rendered by the Hon’ble Delhi High Court in the case of *Pr.CIT & Anrs vs Ojjus Medicare P.Ltd. & Ors.* in ITA No.52/2024 dated 03.04.2024. The Ld. Counsel for the assessee pointed out that the ground raised is legal ground for which, relevant facts are available on record and thus, urged for admission thereof in the light of judgements



rendered in the case of *National Thermal Power Co.Ltd. vs CIT 229 ITR 383 (SC)* and *Jute Corporate of India Ltd. vs CIT 187 ITR 688 (SC)*.

7. The issue raised as per additional ground touches the jurisdictional aspects and thus, goes to the root of the matter. The relevant facts are stated to be emanating from records and do not call for examination of any fresh facts. Hence, additional grounds are admitted for adjudication purposes.

8. The assessee essentially raised following grounds:

[i] *“non-compliance of section 153C of the Act as per additional ground rendering the assessment order in question to be void, ab-initio and challenged to the additions on aspects of merits; and*

[ii] *Assessment order passed without approval u/s 153D of the Act and rendering the assessment order to be bad in law.”*

9. With reference to the additional ground, challenging the assessment order passed u/s 143(3) of the Act, Ld. Counsel for the assessee essentially submitted that:-

[i] *“that a search and seizure operation u/s 132 was carried out at the premises of Sh Praveen K Jain on 06.01.2021 during which certain WhatsApp chat pertaining to the appellant were found. The Assessing Officer of the above searched person sent intimation about the whatasap chat to the AO on 28.06.2022. On that basis, the AO was inclined to reopen the assessment for six AY's including AY 2021-22 under section 153C of the Act. But having done so, the AO took the view that since the year under consideration is search year, he proceeded with the assessment u/s 143(3) of the Act.*

[ii] *that it is a settled law that when provisions of proviso to section 153C are applied, then date of search is substituted by date of handing over of the documents by the Assessing Officer of the person searched to the Assessing Officer of the other person (present*



ITA No.1483/Del/2024

assessee). This date was 28.06.2021 which fell in the previous year 2021-22 and the relevant assessment year was 2022-23.

[iii] in terms of the recording of satisfaction under Section 153C of the Act, i.e., 30.06.2021 by the AO 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 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. On that analogy insofar as assessee is concerned, the AY 2021-22 would fall in the block years in view of the first proviso to section 153C of the Act. If that be the case, which is the correct position of law, such assessment for AY 2021-22 was required to be necessary completed u/s 153C of the Act after complying with the requirements of the said section. The AO's of both the person searched and that of the assessee need to record necessary satisfaction u/s 153C of the Act and thereafter, the AO of the assessee was required to issue a notice u/s 153C calling the assessee to file return of Income after considering the impact of the material found in the case of the person searched. In the present case although both the AO's have recorded separate satisfaction u/s 153C of the Act but the AO of the appellant failed to issue a notice u/s 153C of the Act without which assessment u/s 153C could not be completed and has not been completed.

[iv] that the Hon'ble Jurisdictional Delhi High Court in the case of Pr CIT & Anrs vs Ojjus Medicare P Ltd & Ors in ITA No.52/2024 dated 03.04.2024 came across the identical issue. Your Kind attention is invited to para 119(D) to (F) of the decision which is reproduced in the decision of M.D. Overseas P Ltd vs Dy CIT W.P.(C) 3092/2023 (Del) and same is extracted as under:



"PARA 119.....

- D. *The First Proviso to Section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten-year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is governed by the First Proviso to Section 153C, which significantly shifts the reference point spoken of in Section 153A(1), while defining the point from which the period of the "relevant assessment year" is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the non-searched person. The shift of the relevant date in the case of a non-searched person being regulated by the First Proviso of Section 153C(1) is an issue which is no longer res integra and stands authoritatively settled by virtue of the decisions of this Court in SSP Aviation and RRJ Securities as well as the decision of the Supreme Court in Jasjit Singh. The aforesaid legal position also stood reiterated by the Supreme Court in Vikram Sujitkumar Bhatia. The submission of the respondents, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted.*
- E. *The reckoning of the six AYs' would require one to firstly identify the FY in which the search was undertaken and which would lead to the ascertainment of the AY relevant to the previous year of search. The block of six AYs' would consequently be those which immediately precede the AY relevant to the year of search. In the case of a search assessment undertaken in terms of Section 153C, the solitary*



ITA No.1483/Del/2024

distinction would be that the previous year of search would stand substituted by the date or the year in which the books of accounts or documents and assets seized are handed over to the jurisdictional AO as opposed to the year of search which constitutes the basis for an assessment under Section 153A.

F. While the identification and computation of the six AYs' hinges upon the phrase "immediately preceding the assessment year relevant to the previous year" of search, the ten-year period would have to be reckoned from the 31st day of March of the AY relevant to the year of search. This, since undisputedly, Explanation 1 of Section 153A requires us to reckon it "from the end of the assessment year". This distinction would have to necessarily be acknowledged in light of the statute having consciously adopted the phraseology "immediately preceding" when it be in relation to the six-year period and employing the expression "from the end of the assessment year" while speaking of the ten-year block."

Taking cue from the above decision of Hon'ble Jurisdictional Delhi High Court and also relying on the decision of ITO vs Vikram Sujit Kumar Bhatia 453 ITR 417 (SC), CIT vs Jasjit Singh CA No.6566 of 2023 (SC) dated 26.09.2023, CIT vs RRJ Securities Ltd 380 ITR 612 (Del) and SSP Aviation vs DCIT 346 ITR 177 (Del), the legal proposition emerging is that relevant AY's for the purpose of issue of notice u/s 153C will be counted backward taking the assessment year of the search under proviso to sec 153C as the starting point. If period of six years computed from AY 2022-23 being the year of search as per proviso to sec 153C(1), the present assessment year i.e AY 2021-22 will fall in the block assessment year for which assessment year is required to be completed on the basis of material found in the case of searched person by taking recourse to section



ITA No.1483/Del/2024

153C of IT Act despite recording satisfaction as per requirement of 153C but without issuing notice to invoke provision of sec 153C of IT Act. The present issue was identically covered in the decision of *Santosh Hospital P Ltd vs DCIT ITA No.282/Del/2020* dated 03.08.2022.

[iv] in view of facts stated above, that assessment under appeal has been framed under incorrect provision of law i.e. 143(3) instead of the same mandated under law to be completed u/s 153C only. The judicial courts have dealt the issue of assessment completed under incorrect section in favour of assessee in the following decisions:

- *CIT v. T. Rangroopchand Chordia [2016] 241 Taxman 221 (Madras HC);*
- *Dr. K.M. Mehaboob v. DCIT [2012] 26 taxmann.com 54 (Kerala HC);*
- *Ashokji Chanduji Thakor v. PCIT [2021] 130 taxmann.com 130 (Guj. HC)*
- *Shri Om Prakash Jalkhotia v. ACIT ITA Nos.968, 969, 970 & 971/Del./2021*
- *Mikado Realtors P. Ltd. ITA no. 50/DEL/2021;*
- *Sanjay Thakhur v. The DCIT (Central Circle) In ITA no.3559/DEL/2015;*
- *DCIT v Vinod Kumar in ITA no. 2550/DEL/2015.”*

10. With reference to the challenge to the impugned assessment order passed under section 143(3) of the Act in question, the Ld. Counsel for the assessee also contended that such order being covered u/s 153B(1)(b) of the Act, the approval u/s 153D of the Act was incumbent upon the assessee. The approval in the instant case has been taken from the Ld. Addl. CIT u/s 119 of the Act and not under section 153D of the Act, rendering such assessment order to be invalid. The gist of the submissions made on the point in issue on behalf of the assessee is noted hereunder:-



ITA No.1483/Del/2024

“As per the provisions of section 153D of the Act, no order of assessment / reassessment for any AY's relating to the search action u/s 132 of the Act could have been passed by the AO without prior approval of the Joint Commissioner. To be precise, the requirement of the approval under above provision is in relation to the assessment referred in clause (b) of section 153A(1) or those referred in clause (b) of section 1538 of the Act. The present assessment relates to AYY 2021-22 which covered by section 1538(1)(b) of the Act and that is the reason why the AO has completed the assessment u/s 143(3) treating the assessment being the search year assessment.

There is mention in para 13 of the assessment order that the approval is obtained from Addl CIT, Central Range 08, New Delhi vide communication dated 30.12.2022 (PB 62) and the same is undisputedly obtained on the date of passing of the above impugned order. The request for approval was made by the assessing officer to Addl CIT, Central Range-08, New Delhi vide communication dated 29.12.2022 (PB 63) and the above communication shows that approval has been sought under section 119 of IT Act in accordance Board's order dated 15.07.2022 under above section. Accordingly, the above authority granted approval dated 30.12.2022 (PB 62) and the approval was accorded u/s 119 of IT Act in accordance with CBDT order dated 15.07.2022. The important facts emerging from above details are as under:

- 1. There is no authority/power/mechanism of granting approval in the provision of sec 119 of IT Act which provision merely deals with the condonation/relaxations/clarifications to mitigate hardship to the taxpayers in the taxation administration. No burden of compliance is added through the circular/notification issued under above section. There is no CBDT order found from the research done by the appellant under which approval is mandated to be taken by the AO under any CBDT order. As a*



matter of no CBDT order of above file number was found in the public domain. Without prejudice, the fact remains that the department has taken approval, be it rightly or wrongly but u/s 119 of IT Act not u/s 153D of the Act before passing of the impugned assessment order.

- 2. In the absence of any such approval taken by the assessing officer prior to passing of order u/s 143(3), the resultant assessment order is non-est and invalid in law. The wordings and language used in Sec. 153D of the Act and the heading "prior approval necessary for assessment in cases of search or requisition" to Sec. 153D do not leave iota of doubt about the very intention of the legislature to make the compliance of sec153D mandatory. It is a trite law that if a provision is mandatory, an act done in breach thereof will be invalid.*

The CBDT Circular No. 3 of 2008, dated 12.3.2008, clarifies that the legislature in its highest wisdom made it compulsory that the assessments of search cases should be made with the prior approval of superior authority, so that the superior authority applies his mind on the materials and other attending circumstances on the basis of which the officer is making the assessment and after due application of mind and on the basis of seized materials, the superior authority have to approve the draft Assessment order. To support the above proposition of law, reliance is placed on following decisions:

- * Ajay Sharma, New Delhi vs DCIT, Ghaziabad ITAT Delhi - ITA.No.3554/Del./2015 dt.14.2.2020;*
- * PCIT v. Sunrise Finlease (P.) Ltd. 252 Taxman 407 (Guj) (HC);*
- * Shri Jaykumar Uttamchand Pokarna ITAT Pune -ITA NO. 549/PN/2011, dt.5.10.2012;*



ITA No.1483/Del/2024

* *CIT vs. Shri. Akil Gulamali Somji ITA (L) HC Bom NO.1416-19 OF 2012 dt. 15.1.2013 SC dismissed SLP no.19389 of 2013 on 5.8.2013;*

* *Ch. Krishna Murthy ITA No. 766/Hyd/2012- dt.13.2.2015*

The above legal ground had been dismissed by the Ld CIT(A) In para 9.3 page 29 of the Appellate order with the observation that since the Impugned order is not u/s 153C of the Act and therefore there was no requirement for the AO to obtain prior approval u/s 153D of the Act. The above view of the Ld CIT(A) Ld CIT(A) is contrary to the provisions of the section 153D of the Act which requires the prior approval even in the cases where the assessment is completed u/s 143(3) in the year of search, the year covered by section 1538(1)(b) of the Act. It may kindly be noted that since the addition is made on the basis of the material found in the case of search on other assessee, the assessment is clearly the assessment covered by section 1538(1)(b) of the Act requiring prior approval u/s 153D of the Act and absence of such approval invalidates the assessment order impugned in the present appeal. The appellant has requested number of times to the AO about the circular on the basis of which approval has been obtained u/s 119 before passing of the order. But the Ld AO is unable to provide such circular and appellant is unable to find such circular.”

11. The Ld. Counsel for the assessee then contended that the assessment order giving rise to present appellate proceedings, is not sustainable in law on both Courts.

12. The Ld.Sr.DR for the Revenue, on the other hand, relied upon the actions taken by the AO and the Ld.CIT(A). On the additional ground raised by the assessee, challenging the jurisdiction assumed towards regular assessment instead of proceedings u/s 153C of the Act, the Ld.Sr.DR for the Revenue pointed out that the provision of section 143(2) r.w.s 143(3) of the Act entitles the AO to make regular assessment subject to available time limit for invoking such jurisdiction. The jurisdiction available for making regular assessment



ITA No.1483/Del/2024

u/s 143(2) of the Act is very wide and broader and as long as time limit is available for issuance of notice u/s 143(2) of the Act, the notice issued under section 143(2) of the Act cannot be assailed. There is no statutory bar on the AO to frame the assessment under section 143(3) of the Act. The Ld. Sr. DR for the Revenue thus, contended that no fault can be found with assessment order framed under section 143(3) of the Act.

12. We have carefully considered the rival submissions and perused the case records.

13. We shall advert to the additional ground at the threshold, since it strikes to the root of the matter. As per the additional ground, the assessee seeks to submit that pursuant to search and seizure operation carried out u/s 132 of the Act on 06.01.2021, a satisfaction note was drawn under section 153C of the Act by the AO of the searched person that seized documents/digital data/information found in the course of search indicates that the other person namely, the assessee herein has purchased a property in which some cash component is involved and such information/document etc. has bearing on the determination of total income of other person namely, the assessee.

13.1. The relevant satisfaction note drawn by the AO of the searched person is reproduced as under:-

1.	Name of the group, if any, searched	HANS Group
2.	Name of the searched assessee in whose case assets (money, bullion, jewellery or other valuable article or thing) or papers (books of account or documents) seized u/s 132 of the Act	M/s. Jainco Ltd., G-5, Sikka Complex, Preet Vihar, New Delhi-110092.
3.	PAN of searched person	AADCJ6207E
4.	Name and address of the person to whom seized assets/papers as in (2) above belong	Smt. Mukul Rani Thakur, R/o-B-132, Preet Vihar, Delhi-110002.
5.	PAN of the other persons	AERPT3941E
6.	Identification of seized assets/papers which in the opinion of the AO of the searched assessee (S.No.2), belong to the other person (S.No4)	(i) cloned data of Vaibhav Jain's mobile marked as Annexure A-4 seized from the premise at G-2, Plot No.5, Sikka Complex, Preet Vihar, New Delhi.
7.	(i) Details of panchnama & annexure through which relevant asset/document was seized/requisitioned	Panchnama at G-2, Plot No.5, Sikka Complex, Preet Vihar, New Delhi, Annexure-A4



	<i>(ii) Date of above panchnama</i>	<i>10.01.2021</i>
	<i>(iii) Address of the place/premises from where asset/paper was seized/impounded</i>	<i>G-2, Plot No.5, Sikka Complex, Preet Vihar, New Delhi-110092.</i>
	<i>(iv) Description of relevant asset/paper(s)</i>	<i>During the course of search u/s 132 of the Act conducted at G-2, Plot No.5, Sikka Complex, Preet Vihar, New Delhi-110092 following assets/ documents/digital data were seized. Cloned data of Vaibhav Jain's mobile marked as Annexure A-4 containing images of kachchi parchi of whatsapp chat between Vaibhav Jain and thakur having the details of total sale consideration of the property at B-132, First Floor, Preet Vihar, in which unaccounted cash amounting to Rs. 1,05,50,000/- received by Smt. Mukul Rani Thakur.</i>
	<i>(v) The brief reasons on the basis of which the AO reached to the conclusion that the relevant seized asset/paper belongs to the other persons (use Annexure if required).</i>	<i>While examining the seized assets and seized documents/digital data and the data seized and Smt. Mukul Rani Thakur i.e. the person other than the searched person. the basis of the documents/digital data seized and information contained therein, I am satisfied that action u/s 153C of I.T. Act, 1961 is required in the case of Smt. Mukul Rani Thakur. Accordingly, the AO holding jurisdiction over the case of Smt. Mukul Rani Thakur is being intimated to take action u/s 153C r.w.s. 153A of the I.T. Act, 1961.</i>
8.	<i>Assessment Years involved</i>	<i>2015-16 to 2021-22</i>

13.2. It is further noticed that based on satisfaction note and the seized documents/digital data pertaining to the assessee, as supplied by the AO of the searched person, the AO of the assessee drew the satisfaction note in relation to the assessee which reads as under:-

“For initiating proceedings under Section 153C read with section 153A of the Income Tax Act, 1961 in the case of Smt. Mukul Rani Thakur (PAN: AERPT3941E), AYs. 2015-16 to 2021-22.

Action under section 132 of the Income Tax Act was conducted in HANS Group of cases by Investigation wing, New Delhi on 06.01.2021. It has been brought to the notice of the undersigned by the AO of M/s. Jainco Ltd. (in the instant case both the AO is same), being one of the persons covered in group search and in whose case action under section 132 of the Income tax Act was taken, that during the search and seizure action, the



ITA No.1483/Del/2024

seized Assets and documents/digital data and information contained therein relate to, Smt. Mukul Rani Thakur the person other than the searched person. The Assessing officer of the searched person has recorded his satisfaction dated 28.06.2022 that seized Assets and documents/digital, data and information contained therein relate to the assessee i.e. Smt. Mukul Rani Thakur

Premises from where assets and documents/digital data found and seized:		
Premises at G-2, Plot No.5, Sikka Complex, Preet Vihar, New Delhi.		
Annexure	Page No./File Description	Remarks
A-4	Cloned data of Vaibhav Jain's mobile i-phone.	Cloned data of Vaibhav Jain's mobile marked as Annexure A-4 seized from the premise at G-2, Plot No. 5. Sikka Complex, Preet Vihar, New Delhi having the details of the actual sale consideration of the property at B-132, First Floor, Preet Vihar, and payments in cash thereof, it is noticed that, Smt. Mukul Rani Thakur has sold the above said property in which amount of Rs. 1,05,50,000/- was received in cash by Smt. Mukul Rani Thakur.

2. After examining the seized documents/digital data and information contained therein, it is observed that the assessee i.e. Smt. Mukul Rani Thakur has purchased the above mentioned property in which huge.cash component involved thereof. After examining the documents/digital data and information contained therein, I am satisfied that documents/digital data and information contained therein, also relate to Smt. Mukul Rani Thakur and have a bearing on the determination of total income of this person. In view of the same, I am further satisfied that it is a fit case for initiating proceedings u/s 153C of the Income Tax Act. 1961 for the A.Ys. 2015-16 to 2020-21. Proceeding u/s 143(3) of the Income Tax Act, 1961 is also being initiated for A.Y. 2021-22 by issuance of notice u/s 143(2) of the Act.

3. Accordingly, notices u/s 153C for the A.Ys. 2015-16 to 2020-21 and notice u/s 143(2) for AY 2021-22 are being issued as per provisions of the income Tax Act, 1961.”



ITA No.1483/Del/2024

13.3. On perusal of the satisfaction note of the searched person, it is observed that Assessment Year involved is shown to be 2015-16 to Assessment Year 2021-22. The AO of the assessee, in turn, framed the satisfaction note for initiation of proceedings u/s 153C of the Act for Assessment Year 2015-16 to 2020-21. With reference to Assessment Year 2021-22 in question, the AO proceeded to invoke the regular assessment proceedings by issuance of notice u/s 143(2) of the Act. In this backdrop, the assessee contends that in the light of provision of section 153C of the Act, data of search stands substituted by the data of handing the documents by the AO of the person searched to the AO of the other person namely, the present assessee. The date of handing over is 21.06.2021 which falls in previous year 2021-22 relevant to Assessment Year 2022-23 by applying the proviso to section 153C of the Act. The immediate preceding year prior to the year of search i.e. AY 2021-22 in question would fall in block years having regard to proviso to section 153C of the Act. Consequently, it was incumbent upon AO to assess the alleged undisclosed income pertaining to AY 2021-22 in the hands of the assessee under section 153C of the Act and such assessment of income emanating from search is outside the scope of section 143(3) of the Act.

14. We find substantial force in the plea raised on behalf of the assessee. While search in the instant case was carried on 06.01.2021 i.e. previous year relevant to Assessment Year 2021-22, the documents were handed over in the previous year relevant to Assessment Year 2022-23. Based on such matrix, the assessment upto Assessment Year 2021-22 stood covered within ambit of section 153C of the Act. This being so, domain for assessment qua undisclosed income for Assessment Year 2021-22 falls within sweep of section 153C of the Act. The AO has committed substantive error in proper appreciation of jurisdictional provisions of section 153C of the Act by excluding Assessment Year 2021-22 from the ambit of section 153C of the Act erroneously based on actual date of search rather than based on date of receipts of incriminating documents. In order to frame assessment based on



ITA No.1483/Del/2024

the searched document, the notice ought to have been issued under section 153A r.w.s. 153C of the Act.

15. The regular assessment passed by issuance of notice u/s 143(2) of the Act without aid of section 153C of the Act despite 'satisfaction note' from AO of searched person thus, is not supportable in law. The impugned assessment framed under section 143(3) of the Act thus, is void *ab-initio* as rightly pleaded on behalf of the assessee. Hence, the assessment order passed is vitiated in law and requires to be quashed at the threshold.

16. In the light of delineation, we do not consider it necessary on other legal aspects and aspects of merits raised to indulge.

17. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 20th November, 2024.

Sd/-

Sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI