

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIALMEMBER**

**ITA Nos.1120/DEL/2023
(Assessment Year : 2011-12)**

**ITA Nos.1121/DEL/2023
(Assessment Year : 2012-13)**

**ITA Nos.1122/DEL/2023
(Assessment Year : 2013-14)**

**ITA Nos.1123/DEL/2023
(Assessment Year : 2014-15)**

**ITA Nos.1124/DEL/2023
(Assessment Year : 2015-16)**

**ITA Nos.1125/DEL/2023
(Assessment Year : 2016-17)**

K.R. Chawla Consulting Pvt. Ltd.,
Khasra No.172, Neel House,
Opposite Qutab Minar,
New Delhi – 110 030.

vs. DCIT, Central Circle 25,
New Delhi.

(PAN: AACCK2723P)

(APPELLANT)

(RESPONDENT)

**ASSESSEE BY : Shri Madhur Aggarwal, Advocate
REVENUE BY : Shri Sumer Singh Meena, CIT DR**

**Date of Hearing : 19.09.2024
Date of Order : 20.11.2024**

ORDER**PER S. RIFAUR RAHMAN, AM :**

1. The assessee has filed six appeals against the separate orders of Id. Commissioner of Income-tax (Appeals)-29, New Delhi (hereinafter referred to 'Ld. CIT (A)') all dated 24.02.2023 for Assessment Years 2011-12 to 2016-17.
2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order.
3. At the time of hearing Id. AR for the assessee submitted that the issue under consideration is, the assessment was completed by the Assessing Officer from AYs 2011-12 to 2016-17 based on the search conducted in the case of Harvansh Chawla, Delhi. As per the information recorded by the Assessing Officer that certain papers/documents belonging to the assessee were found and seized in the abovesaid search operation conducted in the case of Harvansh Chawla on 07.04.2016. Based on the above fact on record, the Assessing Officer proceeded to issue notice under section 153C of the Income-tax Act, 1961 (for short 'the Act') and proceeded to reopen the assessment for six years from the search assessment year 2017-18 i.e. from AY 2011-12 to 20.06.2017. He submitted that as per the provisions of section 153C of the Act, the searched assessment year should have been

from the date of recording of satisfaction in the case of the assessee. He submitted that the satisfaction note was recorded by the jurisdictional Assessing Officer of the assessee on 18.01.2021. Accordingly, the search year for the case of the assessee should have been AY 2021-22. Accordingly, the assessment year should have been reopened from AY 2015-16 to 2020-21. Therefore, the AYs 2011-12 to 2014-15 is beyond jurisdiction. In this regard, he submitted that the assessee has raised ground no.3 before the ld. CIT (A) and the ld. CIT (A) on the legal issue dismissed the appeal by observing as under :-

“Further, no dispute has been raised on the serve of notice u/s 153C during the course of assessment proceedings as perused form the records. Therefore, the ground of the appellant that the initiation of proceedings u/s 153C is bad in law does not hold any merit.”

4. With reference to ground no.3, ld. AR submitted that the assessments framed for AYs 2011-12 to 2013-14 u/s 153C of the Act are bad in law, without jurisdiction and barred by limitation, since six years have to be reckoned from the date of recording of satisfaction by the AO of the assessee (AO of searched person and assessee are common) which in the instant case is 18.01.2021 and thus assessment could have been validly framed u/s 153C of the Act for AYs 2014-15 to 2019-20 only. Therefore, he submitted that assessment framed for AYs 2011-12 to 2013-14 are bad in law, without

jurisdiction and beyond the scope of assessment framed u/s 153C of the Act and thus, are liable to be quashed as such. In this regard, he placed reliance on the judicial pronouncements i.e. Pr. CIT vs. Karina Airlines International Ltd. (Del.) 165 taxmann.com 421 and CIT vs. Jasjit Singh 458 ITR 437 (SC).

5. On the other hand, ld. DR for the Revenue agreed that the satisfaction was recorded on 18.01.2021, however he also brought to our notice page 3 of the paper book filed by the Revenue wherein the satisfaction was recorded by the AO of the searched person on 15.05.2019. Based on various decisions on this issue, he agreed that the first three years are outside the scope of section 153C assessment, not four years.
6. After considering the submissions of both the parties, we noticed that the satisfaction recorded by the Assessing Officer of the assessee was only on 18.01.2021, therefore, the assessment proceedings initiated u/s 153C in AYs 2011-12, 2012-13 & 2013-14 are outside the jurisdiction. Accordingly, the assessment of these assessment years are set aside as *void ab initio*. Hence, grounds raised by the assessee in this regard are allowed in AYs 2011-12, 2012-13 & 2013-14 and the Appeals being ITA Nos.1120, 1121 & 1122/Del/2023 are allowed.

7. Coming to the AYs 2014-15, 2015-16 & 2016-17, we are taking AY 2014-15 as base year.
8. Brief facts of the case are, a search was conducted u/s 132(1) of the Act in the case of Shri Harvansh Chawla, Delhi and based on the material found, a notice u/s 153C of the Act was issued online through ITBA system on 19.01.2021. In response, assessee had filed return of income on 01.02.2021 showing income of Rs.25,45,846/-. The notices u/s 143(2) and 142(1) were issued and served on the assessee. In response, ld. AR of the assessee attended and submitted the relevant information as called for. The Assessing Officer observed in the assessment order that based on the information available on record, it was noticed that assessee has taken a bank limit of Rs.20 crores @ 12.3% interest per annum and the repayment was made on monthly basis, the assessee was asked to furnish copy of loan account, etc. Further the assessee has taken loan of Rs.65.50 crores against the mortgage property at Gurgaon and the assessee was asked to submit the details of loan taken etc. Further it was found that in the Valuation Report dated 08.04.20210 submitted by K.R. Tawlar, Chartered Engineer, Government Approved Valuer, commercial property of K.R. Chawla Consulting Pvt. Ltd., Gurgaon, monthly rental of the said property was reported at Rs.1,90,53,692/-. On analysing the ITR, it was noticed that the

assessee has not shown any rental income from the said property during the relevant year. Based on the above, the assessee was asked to submit the relevant information. Since the addition was proposed by the Assessing Officer relating to rental income, we shall discuss only the issue relating to rental income only. We observed from the assessment order that assessee has submitted as under :-

“C. With reference to your query in respect of estimated monthly rental value of property at Gurgaon of Rs.1,90,53,692/- reported by the valuer in his valuation report dated 08.04.2010 not shown in the ITR of the assessee we would like to submit that the agreement for letting out the property on rent was never been materialized and hence rent was neither accrued nor received by the assessee company. As no rent was received and hence there is no question of showing rental income in the return of the assessee company.”

9. After considering the above submissions, the Assessing Officer observed that in the Valuation Report dated 08.04.2010 which was found and seized during the course of search shows that K.R. Tawlar, Chartered Engineer has valued the monthly rental for the commercial property at Gurgaon was reported at Rs.1,90,53,692/-. Since the assessee has not shown abovesaid rental income in its return of income, he proceeded to determine the income for the year based on the above valuation report and he determined the income from house property after giving credit to the rental income declared by the assessee in the return of income and standard deduction, he

determined the income from house property at Rs.7,56,21,407/-

10. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A)-29, New Delhi. Ld. CIT (A) issued several notices for hearing from 11.03.2022 to 09.12.2022. Since there was no compliance from the assessee side, the Id. CIT (A) proceeded to dispose off the case based on the material available on record. After considering the facts on record, he dismissed the appeals filed by the assessee.
11. Aggrieved, assessee is in appeal before us raising following grounds of appeal :-

“1 That having regard to the facts and circumstances of the case, and in law Ld. CIT (A) erred in dismissing the appeal without giving reasonable opportunity of being heard and is contrary to the principles of natural justice and the order so passed is not sustainable on various legal and factual grounds.

2 That having regard to the facts and circumstances of the case, and in law addition of Rs.7,56,21,407/- made in the order passed u/s 153C /143(3) of the Income Tax Act on the basis of valuation report dated 08/04/2010 on account of alleged rental income from property at Sector -44, Gurgaon which have not been confronted is arbitrary, against law and facts on record

3 That having regard to the facts and circumstances of the case, and in law assessment proceedings initiated u/ 153C in this case is bad-in law, without jurisdiction and barred by limitation and accordingly the assessment proceedings initiated and assessment order passed u/s 153C / 143(3) are liable to be quashed.

3.1 *That having regard to the facts and circumstances of the case, and in law addition of Rs.7,56,21,407/- in the order passed u/s 153C in the absence of incriminating material and in respect of unabated assessment is bad in law and is without jurisdiction and hence liable to be quashed.*

4 *That having regard to the facts and circumstances of the case, and in law the ld. CIT (A) ignored the fact that rental income from let out of property at Sector -44, Gurgaon were shown in the return of income as per the lease deed entered into with tenant and as such addition made to the returned income is against the facts on record and as such the same is liable to be deleted*

4.1 *That having regard to the facts and circumstances of the case, and in law the learned AO while making the above addition arbitrarily and, mechanically rejected the explanation and evidence tendered by the appellant and made the addition by drawing subjective, premeditated and preconceived inferences therefore the same is not sustainable.”*

12. At the time of hearing, ld. AR for the assessee submitted as under :-

“8. *That, at this juncture, it is submitted that, the finding of CIT(A) on merits of the addition at page 6, para 7 of his order is extracted as under -*

"It has been recorded by AO in the assessment order that the document regarding valuation report submitted by KR Talwar, government approved valuer dated 8.4.2010 has been found and seized during the course of search. Thus, the ground of the appellant that the notice u/s 153C of the Act has been issued in the absence of incriminating material in case of unabated assessment does not seem to be factually correct and convincing.”

9. *Furthermore, with respect it is stated that assessments for A Y 2014-15 to 2016-2017 were final/completed on the date of recording of satisfaction by the AO of the assessee i.e. 15.5.2019.*

Hence, additions could have been made in the assessment proceedings for A Y 2014-15 to 2016-2017 only on the basis of incriminating material unearthed during the course of search. Reliance is placed on following case laws –

- a) CIT vs Kabul Chawla (Del) reported in 380 ITR 573*
- b) Pro CIT vs. Abhisar Buildwell (P) Ltd. (SC) reported in 454 ITR 2121*

9.1 That, it is submitted that, valuation report dated 8.4.2010 seized from premises of Harvansh Chawla is the only basis made by the AO to make an addition on account of alleged rental income earned by assessee in an assessment framed u/s 153CII43(3) of the Act dated 21.6.2021 for A Y 2014-15 to 2016-2017 in case of the assessee. At this juncture, it is submitted that, firstly, the valuation report dated 8.4.2010 prepared by government approved valuer seized during the course of search from Harvansh Chawla on 7.4.2016 without any corroborative material, in respect of commercial property of the assessee at Gurgaon, can by no stretch of imagination be termed as an 'incriminating material'. Valuation report so seized and prepared by government valuer was a mere estimation and a projection, that property of the assessee might fetch Rs. 1.90 crore rent monthly and nothing more.

Secondly, for the sake of argument even if it is held to be 'incriminating material' found during the course of search, than also, it does not pertain to years in question i.e. A Y 2014-15 to 2016-2017, but pertains to A Y 2011-12. It is reiterated, that incriminating material so found during the course of search should be year specific so as to warrant addition in case of completed/unabated assessments as held in the following judicial pronouncements-

- a) CIT vs. Sinhgad Technical Education Society (SC) reported in 397 ITR 344 (Page 59- 66 Assessee PB)*
- b) Pr. CIT vs. Index Securities (P) Ltd. (Del) reported in 86 taxmann.com 84.*

9.2 In view of the above, it is prayed that the addition so made by AO for A Y 2014-15 to 2016-2017 and sustained by CIT(A) be deleted as such and the appeals of the assessee company be allowed.”

13. On the other hand, ld. DR for the Revenue submitted that assessee has not utilised various opportunities granted by the ld. CIT (A) and ld. CIT (A) has sustained the addition made by the Assessing Officer and he relied on the findings of the Assessing Officer.
14. Considered the rival contentions and material placed on record. We observed that a document was found during the search conducted in the case of Harvansh Chawla and valuation report was dated 08.04.2010 seized from the premises of Harvansh Chawla. Since the valuation report was 09.04.2010, the material found in the search pertains to AY 2011-12. Since the valuation report was dated 08.04.2010, we are in agreement with the submission of the ld. AR that it was only a valuation per se and there is no record which shows that the above said property was rented out as per the valuation report found during the search. It is another matter whether the valuation report can be termed as incriminating material without corroborating with the assessee's books of account or return of income. It is settled law that incriminating material found during the course of search is year specific was that addition could be made in the case of unabated

assessment. Since the material found/valuation report is dated 08.04.2010 it cannot be considered as an incriminating material. Even the Assessing Officer has not verified and recorded a satisfaction that this valuation report was actual or the same was acted upon by the assessee. Merely because certain documents were found in the premises of third party, the same cannot be utilised to make the addition as incriminating material without there being corroboratory evidence to show that such income was not offered to tax. In this case, we observed that merely based on the availability of valuation report, the Assessing Officer proceeded to make addition without properly giving explanation how it can be treated as incriminating material in the case of the assessee, as held in the case of CIT vs. Sinhgad Technical Education Society 397 ITR 344 (SC) wherein Hon'ble Supreme Court observed as under :-

“18. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through

the Satisfaction Note and the material which Was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.”

15. Respectfully following the same, we are inclined to delete the addition made by the Assessing Officer and sustained by the Id. CIT (A) and the appeal for AY 2014-15 being ITA No.1123/Del/2023 is allowed.
16. Since the facts in other AYs i.e. 2015-16 & 2016-17 are exactly similar, our above findings in AY 2014-15 are applicable *mutatis mutandis* in AYs 2015-16 and 2016-17. Accordingly, the appeals being ITA Nos.1324 & 1325/Del/2023 for AYs 2015-16 & 2016-17 filed by the Assessee are allowed.
17. In the result, all the six appeals filed by the assessee stand allowed.

Order pronounced in the open court on this 20TH day of November, 2024.

**SD/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**SD/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated : 20.11.2024
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-29, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI