

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI
BEFORE
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No. 3449/Del/2023, (A.Y.2011-12)

ITA No. 3450/Del/2023, (A.Y.2012-13)

ITA No. 3451/Del/2023, (A.Y.2013-14)

ITA No. 3452/Del/2023, (A.Y.2014-15)

ITA No. 3453/Del/2023, (A.Y.2015-16)

ITA No. 3454/Del/2023, (A.Y.2016-17)

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| Social Realtors (P) Ltd. 2599/4, Beodan Pura, Karol Bagh, New Delhi PAN No: AALCS5871M | Vs. | ACIT Central Circle-II New Delhi |
| (Appellant) | | (Respondent) |

| | |
|---------------|-------------------------|
| Appellant by | Shri S. S. Nagar, Adv |
| Respondent by | Ms. Monika Dhami, CITDR |

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| Date of Hearing | 05/11/2024 |
| Date of Pronouncement | 20/11/2024 |

ORDER

PER YOGESH KUMAR U.S., JM :

All the above captioned appeals are filed by the Assessee against the common order of Learned Commissioner of Income Tax (Appeals [“Ld. CIT(A)”, for short], dated 29/09/2023 for the Assessment Year 2011-12 to 2016-17 respectively.

2. The common grounds of Appeal have been urged by the Assessee. For the sake of convenience, the Grounds of appeal for Assessment Year 2011-12 are reproduced as under: -

“1. That the learned Commissioner of Income Tax (Appeals)-3, Gurgaon has erred both in law and on facts in upholding the assumption of jurisdiction u/s 153C of the Act and, framing of assessment u/s 153A/143(3) of the Act.

1.1 That both the notice issued u/s 153C of the Act and assessment framed u/s 153C of the Act were without satisfying the statutory preconditions contained in the Act and therefore without jurisdiction and therefore deserves to be quashed as such..

1.2. That while upholding the assumption of jurisdiction the learned Commissioner of Income Tax (Appeals) has failed to appreciate that since neither money, bullion, jewellery or other valuable article or thing belonging to the appellant and nor any books of accounts or documents pertaining to the appellant or any information contained therein relating to the appellant were seized as a result of search the assumption of jurisdiction u/s 153C of the Act was illegal, invalid and unsustainable.

1.3 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in upholding the assumption of jurisdiction despite the fact that in absence of any valid satisfaction having been recorded both in the case of searched person and, the appellant action u/s 153C of the Act was in excess of jurisdiction.

2. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that addition made and upheld was without

jurisdiction since there was no incriminating material detected as a result of search on the searched person.

3 That since no valid approval has been obtained u/s 153D of the Act, order of assessment made u/s 143(3)/153A(1)(b)/153C of the Act is invalid and deserves to be quashed as such.

4. That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in law in upholding an addition of Rs. 1,08,16,307/- by applying rate of 1% is figure of Rs. 10,81,63,077/- representing alleged income from commission on total credits and debits reflected in the bank statement of the appellant company.

4.1 That the learned Commissioner of Income Tax (Appeals) has proceeded on arbitrary assumptions and, presumptions and overlooked the evidence and, explanation tendered by the appellant company, the addition thus sustained is based on surmises, conjectures and suspicion and therefore untenable.

4.2. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in recording various adverse inferences which are contrary to the facts on record, material placed on record and, are otherwise unsustainable in law and therefore, addition so sustained is absolutely unwarranted.

4.3. That in any case and without prejudice that addition made is highly arbitrary and excessive and therefore unsustainable.

Prayer

It is therefore, prayed that, it be held that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) be quashed. It be further held that addition sustained by the learned Commissioner of Income Tax (Appeals) is not tenable and therefore be deleted and appeal of the appellant company may kindly be allowed.”

ITA No. 3449& 3450/Del/2023 (A.Y 2011-12 & 2012-13)

3. Briefs facts of the case in the above appeals are that, a search and seizure operation u/s 132 of Income Tax Act, 1961 ('Act' for short) was conducted on 21/07/2016 at the residential premises of M3M Group of cases. Among the documents seized contained information pertaining to the Assessee and the Assessing Officer recorded his satisfaction that those documents have bearing on the determination of total income of the Assessee. The assessment proceedings have been initiated and the assessment order came to be passed u/s 153A (1)(b) of the Act on 18/12/2018 for Assessment Year 2011-12 and 2012-13 by making certain additions. Aggrieved by the assessment orders for Assessment Year 2011-12 and 2012-13, the Assessee preferred Appeals before the CIT(A) and the Ld. CIT(A) vide order dated 29/09/2023 upheld the partial addition by applying rate of 1% on the income from commission on total credits and debits reflected in the bank statement of the Assessee. Aggrieved by the order of the Ld. CIT(A) dated 29/09/2023, the Assessee preferred the present Appeals on the grounds mentioned above.

4. The Ld. Counsel for the Assessee vehemently submitted that in the years under consideration, the satisfaction has been recorded on 25/09/2018, but the block years were opened for the period Assessment Year 2011-12 to 2016-17, considering the amendment brought to Section 153C of the Act, vide Finance Act, 2017 w.e.f. 01/04/2017, the assessment order passed for the Assessment Years under consideration (A.Y 2011-12 & 2012-13) are void ab initio. Further the Ld. Counsel has also relied on the order of the Co-ordinate Bench in the case of Marconi Infratech Vs. ACIT in ITA No. 3126 to 3132/Del/2023, thus, sought for setting aside the impugned assessment orders.

5. Per contra, the ld. Assessee's Representative relying on the orders of the Lower Authorities sought for dismissal of the Appeal filed by the Assessee.

6. Pursuant to the search and seizure operation conducted on 21/07/2016 on M3M Group, a satisfaction u/s 153C was recorded in the case of the Assessee on 25/09/2018, pursuant to the said satisfaction, the block assessments were open for the period 2011-12 to 2016-17. It is the case of the Assessee that considering the amendment to Section 153C of the Act and in terms of CBDT Circular 2/2018 dated 15/02/2018 the block six years ought to be considered from reopening was Assessment Year 2013-14 and not 2011-12 or 2012-13. Therefore, the assessment order passed for

Assessment Year 2011-12 and 2012-13 are beyond jurisdiction which is void ab initio.

7. The very same issue has been considered by the Co-ordinate Bench of the Tribunal in one of the Companies on which proceedings u/s 153C has been initiated in the case of M/s Marconi Infrastructure Vs. ACIT in ITA No. 3126/Del/2023 and other connected matters, wherein the Co-ordinate bench of the Tribunal quashed the assessment order in following manners: -

“6. We have heard the rival contentions made by the respective parties and we have also perused the relevant materials available on record. The bone of contention of the Assessee’s Counsel is this that in a case where Section 153C is applicable, date of receipt of asset and document by Assessing Officer of the Assessee other than the searched person is construed as the date of search. As the date of recording satisfaction by the AO of the Assessee was 31.10.2018, the past 6 years ought to have been considered for reopening was from A.Y. 2013-14 not A.Y. 2011-12 or 2012-13. Precisely the search of M3M Group was conducted though on 21.07.2016, the starting point of computation of block period under Section 153C of the Act would be the date of recording of satisfaction on the basis of seized documents and notice issued to the assessee and the reassessment proceedings for assessment years 2011-12 and 2012-13 is, therefore, beyond jurisdiction, not maintainable and void ab initio.

7. We note that the Learned DR has not been able to controvert such submissions made by the Assessee’s Counsel.

8. We have further considered the CBDT Circular being No.2/2018 dated 15.02.2018 annexed at page 2 of the paper book filed before us, the relevant portion thereof is as follows:

“80.1 The provisions of clause (c) of the section 197 of the Finance Act, 2016 provide that where any income has accrued, arisen or been received or any asset has been acquired out of such income prior to commencement of the Income Declaration Scheme, 2016 (the Scheme), and no declaration in respect of such income is made under the Scheme, then, such income shall be deemed to have accrued, arisen or received, as the case may be, in the year in which a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or section 148 or section 153A or section 153C of the Income-tax Act

is issued by the Assessing Officer, and provisions of the said Act shall apply accordingly.

80.2 In view of the various representations received from stakeholders, section 197 of the Finance Act, 2016 has been amended so as to omit clause (c) of the said section.

80.3 Applicability: This amendment takes effect retrospectively from 1st June, 2016.

80.4 However, in order to protect the interest of the revenue in cases where tangible evidence(s) are found during a search or seizure operation (including section 132A cases) and the same is represented in the form of undisclosed investment in any asset, section 153A of the Income-tax Act relating to search assessments has been amended to provide that notice under the said section can be issued for an assessment year or years beyond the sixth assessment year already provided up to the tenth assessment year if

(i) the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant four assessment years(falling beyond the sixth year);

(ii) such income escaping assessment is represented in the form of asset;

(iii) the income escaping assessment or part thereof relates to such year or years.

80.5 Applicability: The amended provisions of section 153A of the Income-tax Act shall apply where search under section 132 of the Income-tax Act is initiated or requisition under section 132A of the Income-tax Act is made on or after the 1st day of April, 2017.

80.6 Section 153C of the Income-tax Act has also been amended to provide a reference to the relevant assessment year or years as referred to in section 153A of the Income-tax Act.

80.7 Applicability: These amendments take effect from 1st April, 2017.”

9. Along with the judgement relied upon by the Learned AR, we have also considered the judgment passed by the Co-ordinate Bench in the matter of Shalimar Town Planners Pvt. Ltd. (supra) as relied upon by the Learned AR wherein the identical issue has been discussed in the following manner:

“32. Before answering these question certain facts further need to be noted. On 03.09.2008 notice u/s 153A was issued by the ld AO in case of BPTP Ltd for Assessment Year 2003-04 to 2007-08. This company was incorporated on 11.08.2003 so the effective years were

assessment Asst.Years : 2011-12 to 2017-18 - 7 - year 2004-05 to 2007-08. No satisfaction note was recorded by the ld. AO in the file of BPTP Ltd with respect to the documents belonging to the Assessee. For this proposition, the Assessee has shown the order sheet of BPTP Ltd as well as letter dated 04.01.2016 of the ld. AO, wherein, in response to RTI Query, it was stated that since the ld. AO of BPTP Ltd and the Assessee was same, therefore, no separate satisfaction was recorded in the file of BPTP Ltd before assuming jurisdiction in case of Assessee u/s 153C of the Act. Further satisfaction was recorded in the case of the Assessee on 19.08.2009 by the ld AO which is placed at page No. 17 to 20 of the PB. However, on 19.08.2009 itself, notice u/s 153C of the Act were issued to the Assessee for Assessment Years 2005-06, 2006-07 and 2007-08. Admittedly, no notice u/s 153C was issued for Assessment Year 2009-10 and assessment was concluded on 15.12.2011 u/s 143(3) of the Act. In case of Shri Jasjit Singh (supra) the revenue challenged the order of the coordinate bench dated 05.11.2014 wherein, it was held that in case of the assessee the date of receipt of the seized material would be the date of search and six-year period would be reckoned from that date. The coordinate bench in that case quashed the assessment framed u/s 143(3) of the Act for Assessment Year 2009-10 where the satisfaction note was recorded and material belonging to the assessee was received on 16.06.2009. The Hon'ble Delhi High Court on appeal upheld the order of the coordinate bench quashing the assessment. In the present case also identical facts are on record. The satisfaction was recorded on 19.08.2009 and assessment for Assessment Year 2009-10 is passed u/s 143(3) of the Act. Therefore, respectfully following the decision of the Hon'ble Delhi High Court for CIT Vs. Jasjit Singh [supra] we quashed the order passed by the ld AO u/s 143(3) of the Act for impugned assessment order. In view of this, additional ground raised by the assessee is allowed.”

10. In this matter we find that the Hon'ble Delhi High Court in Revenue's appeal confirmed the order passed by the Coordinate Bench which was further confirmed by the Hon'ble Apex Court by under the judgement and order dated 21 March 2024 in favour of the assessee.

Thus the ratio laid down therein to this effect that the starting point of computation of block period under Section 153C of the Act would be the date of recording of satisfaction on the basis of seized documents and notice issued to the assessee has attained finality.

11. The assessee further relied upon a judgment passed by the Coordinate Bench of Tribunal in the case of Karina Airlines International Ltd. vs. ACIT in ITA No.203/Del/2021 dated 09.06.2021. On this issue the relevant discussion made by the Bench is as follows:

“5. Insofar as the issue of limitation covered by ground No. 1 is concerned, it is argued by the Ld. AR that in case of a “searched

person”, provisions of section 153A are applicable, in accordance with which, the assessing officer is to assess or reassess total income of “searched person” for six assessment years immediately preceding the assessment year relevant to the assessment year in which search is conducted or requisition is made; whereas the second proviso to subsection (i) of section 153A also provides that assessment or reassessment of these six assessment years, if pending on the date of initiation of search u/s 132 or making of requisition u/s 132A, as the case may be, shall abate. On this basis he submits that, inasmuch as the search u/s 132 was conducted in the case of Sh Harvansh Chawla on 07.04.2016, the date of search falls in A.Y. 2017-18 in the case of Sh Harvansh Chawla, and consequently, the assessing officer in the case of Sh Harvansh Chawla was empowered to initiate the proceedings u/s 153A for immediately preceding six years from A.Y. 2011-12 to A.Y. 2016-17. He, however, submits that in case of the assessee who happens to be the “person other than the searched person”, provisions of section 153C are applicable and in such case, the “date of search or date of requisition” as referred to in section 153A is substituted by the “date of handing over of documents by the assessing officer of searched person to the assessing officer of other person”.

- 6. On this premise, he continues to submit that, the assessing officer in his capacity as A.O. of the searched person has recorded satisfaction on 29.03.2019, which establishes that, at the earliest, it is the date of 29.03.2019, when the assessing officer can be presumed to have got the documents in his capacity as assessing officer of the appellant, on the basis of which proceedings u/s 153C have been initiated. Since the date of such recording of satisfaction on 29.03.2019 falls in previous year 2018-19 relevant to A.Y. 2019-20, the immediately preceding six years are A.Y. 2013-14 to A.Y. 2018-19, and, therefore, the notice u/s 153C for A.Y. 2012-13 could not have been issued by the learned Assessing Officer, as the same are barred by limitation.

7. Per contra, Ld. DR submits that the implementation provisions have to be interpreted in consonance with the charging provision and there cannot be any anomalous situation created by the interpretation of the implementation provision; that the provisions under sections 153A of the Act and 153C of the Act have to be construed in such a harmonious way that there will not be any different sets of 6 years for reopening of the assessments in case of the person searched and the other person. She also referred to the amendment brought by the Finance Act, 2017 w.e.f. 1/4/2017 to the effect that the 6 assessment years to be reckoned shall be the 6 previous years immediately preceding the assessment year relevant to the previous year in which the search was conducted. The sum and substance of the argument of Ld. DR is that there cannot be two sets of 6 years for the purposes of section 153A of the Act and 153C of the Act respectively.

8. In reply, Ld. AR submitted that in Pr. CIT v Sarwar Agency P. Ltd. [2017]185 taxmann.com 269 (Delhi) the Hon'ble jurisdictional High Court held that the amendment is only prospective in nature and has no retrospective application, and since the search in this case happened to be on 7/4/2016 it is earlier to the amendment and the amendment has, therefore, no application to the facts of the case. He further placed reliance on the decisions of the Hon'ble jurisdictional High Court in the cases of CIT v RRJ Securities Ltd. 120151-taxmann.com 391 (Delhi) and ARN Infrastructure India Ltd v ACIT [2017] 81taxmann.com 260 (Delhi) and the view taken by a coordinate Bench of this Tribunal in the case of MIKADOREALTORS P. LTD. VERSUS PR. CIT (CENTRAL) GURUGRAM. 2021 (5)TMI 722 - ITAT DELHI I.T.A. NO. 50/DEL/2021 in support of his argument that the assessment is time-barred.

9. We have gone through the record in the light of the submissions made on either side. Insofar as the facts are concerned there is no dispute. Search in the case of Harvesh Chawla took place on 7/4/2016, the satisfaction by the learned Assessing Officer of the searched person was recorded on 29/3/2019 and the seized material was handed over to the learned Assessing Officer of the assessee who had recorded his satisfaction on 15/9/2019. It is clear that the date of search had fallen in the A.Y. 2017-18 which is relevant for the case of the person searched; whereas the satisfaction recorded by the learned Assessing Officer of the searched person on 29/3/2019 had fallen in the assessment year 2019-20 in which case the immediately preceding 6 assessment years would be assessment years 2013-14 to 2018-19; and the date of satisfaction recorded by the learned Assessing Officer of the assessee on 15/5/2019 falls in the assessment year 2020-21 in which case the immediately preceding 6 assessment years would be the assessment years from 2014-15 to 2019-20.

10. It is, therefore, clear that when we reckon the 6 assessment years with reference to the recording of satisfaction by the learned Assessing Officer of the searched person or with reference to the recording of satisfaction by the learned Assessing Officer of the other person, in either case the assessment year 2012-13 is well beyond such period. So far as this factual position is concerned, it remains unassailable.

11. In respect of the starting point for computation of the block period, the Hon'ble Delhi High Court in the case of Pr. CIT v Sarwar Agency (P.)Ltd. [2017]185 taxmann.com 269 (Delhi) clearly held that in case of other person u/s 153C of the Act, the starting point for computation of the block period would be the date from on which based on the seized documents, notice is issued to the other person. It was further held by the Hon'ble court that the amendment made in section 153C by Finance Act 2017 w.e.f. 1st April 2017 which states that block period for the "searched person" as well as the "other

person” would be same six AYs immediately preceding the year of search is only prospective. It makes the things clear that the search that took place on 7/4/2016 in this case is prior to amendment unaffected by the amendment made by way of Finance Act 2017.

12. We find that the order passed on the identical issue in the case of Pr. CIT vs. Sarwar Agency P. Ltd (supra) as relied upon by the Learned AR has been duly taken care of in the above matter and the issue has been decided in favour of the Assessee.

13. In the case in hand, the AO of the Assessee recorded satisfaction on 31.10.2018 and issued notice under Section 153C of the Act to the Assessee on 22.11.2018 directing him to file its return of income in respect of block Assessment Years from 2011-12 to 2017-18 immediately preceding the Assessment Year relevant to the previous year in which search was conducted considering the amendment brought to Section 153C of the Act in terms of the notification dated 01.04.2017. But the search took place on 21.07.2016 prior to the amendment of Section 153C of the Act having prospective effect. Therefore, the case made out by the Assessee is found to be acceptable.

14. Having regard to the aforesaid facts, since admittedly, the satisfaction was recorded by the Learned AO of the assessee on Asst.Years : 2011-12 to 2017-18 - 12 - 31.10.2018, falls in the Assessment year 2018-19, the immediately preceding 6 Assessment Years would be the Assessment Years from 2013- 14 to 2018-2019 . Therefore, the notice under Section 153C of the Act could not have been issued for A.Ys. 2011-12 and 2012-13 as rightly pointed out by Learned Counsel appearing for the assessee. Thus, taking into consideration the entire aspect of the matter and further having regard to the amendment under 2017 Act w.e.f 01.04.2017 with prospective effect as clarified by CBDT Circular No.2/2018 dated 15.02.2018, as the recording of satisfaction was made by the Learned AO of the assessee only on 30.10.2018, the issuance of notice under Section 153C of the Act for A.Ys. 2011-12 & 2012-13 since had not fall in the previous 6 years, the assumption of jurisdiction in reopening of assessment under Section 153C of the Act for A.Ys. 2011-12 and 2012-13, therefore, found to be not maintainable. The same is void ab initio and thus, quashed.

15. In the result, the assessee’s appeals for A.Ys. 2011-12 and 2012-13 are allowed.”

8. In the present case, the satisfaction has been recorded on 26/09/2018 by the A.O. of the Assessee which falls in the Assessment Year 2018-19, the immediate preceding six years would be Assessment Year

2013-14 to 2018-19, thus, in our considered opinion, the notice issued by the A.O. u/s 153C of the Act for Assessment Year 2011-12 and 2012-13 are beyond the jurisdiction of the A.O. Further we have also considered the fact of the amendment to Section 153C of the Act w.e.f 01/04/2017 having prospective effect as clarified by the CBDT Circular of 2/2018 dated 15/02/2018, thus we find no reason to justify the action of the A.O. to issue notice u/s 153C of the Act for Assessment Year 2011-12 and 2012-13 as the same are not filing in the 'previous six years', accordingly, we are of the opinion that assumption of jurisdiction in reopening of assessment u/s 153C of the Act for Assessment Year 2011-12 and 2012-13 are void ab initio. Thus the impugned assessment orders for Assessment Year 2011-12 and 2012-13 are hereby quashed.

9. In the result, the appeal of the Assessee in ITA Nos. 3449/Del/2023 and 3450/Del/2023 are allowed.

ITA No. 3451, 3452, 3453 & 3454/Del/2023 (A.Y 2013-14 to 2016-17)

10. In the above captioned appeals for (Assessment Year 2013-14 to 2016-17) the Assessee aggrieved by the order of the Ld. CIT(A) in upholding the partial addition by applying rate of 1% representing the income from commission and total credits and debits reflected in the bank statement of the Assessee company.

11. The Ld. Counsel for the Assessee submitted that the Ld. CIT(A) has erred in both law and in facts in upholding the assumption of jurisdiction despite the fact that in absence of any valid satisfaction having been recorded both in the case of searched person and the Assessee u/s 153C of the Act. Further submitted that in identical case in one of the Companies, similarly situated like the Assessee out of five Companies searched in connection with the search and seizure operation conducted in the group of M3M cases dated 21/07/2016 the Co-ordinate Bench of the Tribunal has quashed the assessment as invalid, thus by seeking the parity, sought for quashing the assessment orders.

12. We have heard both the parties and perused the material available on record. For the sake of adjudicating issue regarding the valid or otherwise of the satisfaction recorded by the A.O., the copy of the satisfaction dated 25/09/2018 is produced as under: -

“Reasons/Satisfaction note for taking up the case of M/s Social Realtech Pvt. Ltd., under section 1530 of the Income Tax Act, 1961:-

| | |
|---|--------------------------------------|
| <i>Name and address of the Assessee</i> | <i>M/s Social Realtech Pvt. Ltd.</i> |
| <i>Asst. Year</i> | <i>2011-12 to 2017-18</i> |
| <i>PAN</i> | <i>AALCS5871M</i> |
| <i>Status</i> | <i>Company</i> |

By virtue of the authorization of the Director of Income Tax (Investigation), Chandigarh, a Search & Seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter called the Act) was carried out on 21.07.2016 at the residential/business premises of the persons associated with the M/s MSM Group

2. During search & seizure operation u/s 182 of the Income Tax Act carried out at Chamber No: Paras Twin Towers, Tower-B, 6 Floor, Golf Course Road, Sector-54, Gurgaon-122002 belonging to M3M Group seized material te, Annexure A-3 was seized from the aforementioned premises.

3. In view of the above and as per the provisions of subsection (1) of the section 153C of the Act, I am satisfied that the document seized an mentioned above contains information relating to the assessee M/s Social Realtech Pvt. Ltd. and will have beating on the determination of total income for the A.Y. 2011-12 to 2017-18 0 M/s Social Realtoch Pvt. Ltd. Accordingly, after consideration, it is decided to issue such other person (M/s Social Realtech Pvt. Ltd.) notice as per provisions of section 153C read with section 153A of the Act.

Date: 25.09.2018

*Sd/-
(Sudeep Dabas)
Asstt. Commissioner of Income Tax
Central circle-II, Faridabad*

26.09.2018: Notice u/s 153C r.w. Section 153A of the Act issued.

*Sd/-
ACIT”*

13. From the above satisfaction note, it is observed that A.O. failed to narrate the specific documents which he was relying upon for initiating the proceedings u/s 153C of the Act and not year wise satisfaction was recorded so as to assess or reassess the total income of the Assessee for the years under consideration. It is found that the A.O. satisfied with the documents seized containing the information relating to ‘searched person’

and decided to issue notice to 'other person' who is Assessee u/s 153C r.w. Section 153A of the Act. Thus the satisfaction note fails to depict the details of information. In the case of the one of the Company which was also subject to the proceedings u/s 153C of the Act pursuant to the very same search and seizure operation conducted on 21/07/2016, in the case of M/s Marconi Infratech, the Coordinate Bench of the Tribunal has deleted the addition on account of absence of valid satisfaction having been recorded in following manners: -

"16. Apart from the above fact, the Learned Counsel appearing for the assessee submitted before us that the Learned CIT(A) erred in law and also in fact in upholding the assumption of jurisdiction in the absence of a valid satisfaction note recorded in the case of searched person and the appellant under Section 153C of the Act. Rather the same is issued in excess of jurisdiction.

In this regard, he has taken us to the satisfaction note recorded by the ACIT, Central Circle – II, Faridabad dated 30.10.2018 in respect of the entire block period commencing from A.Ys. 2011-12 to 2017-18 appearing at page 88 of the paper book filed by the assessee before us. The contest whereof is as follows:

"Reasons/Satisfaction note for taking up the case of M/s. Marconi Infratech Pvt. Ltd. under section 153C of the Income Tax Act, 1961

| | |
|---|--|
| <i>Name and address of the Assessee</i> | <i>M/s Marconi Infratech Pvt. Ltd.</i> |
| <i>Asst. Year</i> | <i>2011-12 to 2017-18</i> |
| <i>PAN</i> | <i>AAGCM1219E</i> |
| <i>Status</i> | <i>Company</i> |

By virtue of the authorization of the Director of Income Tax (Investigation), Chandigarh, a search & seizure operation u/s 132 of the Income Tax Act, 1961 (hereinafter called 'the Act') was carried out associated with the M/s. M3M Group.

2. During search & seizure operation u/s 132 of the Income Tax Act carried out at Chamber No. Paras Twin Towers, Tower B, 6th Floor, Golf Course Road, Sector 54, Gurgaon 122002 belonging to M3M Group seized material i.e. Annexure A-3 was seized from the aforementioned premises.

3. In view of the above and as per the provisions of sub section (1) of the section 153C of the Act, I am satisfied that the document seized as mentioned above contains information relating to the assessee M/s. Marconi Infratech Pvt. Ltd. and will have bearing on the Marconi Infratech Pvt. Ltd. Accordingly, after consideration, it is decided to issue such other person (M/s. Marconi Infratech Pvt. Ltd.) notice as per provisions of Section 153C r.w.s 153A of the Act.

Date : 31.10.2018

Sd/-

[SUDEEP DABAS]
Asstt. Commissioner of Income Tax,
Central Circle – II, Faridabad”

17. It appears from the above satisfaction note that the material being Annexure A-3 belonging to M3M Group was seized during the search and seizure operation under Section 132 of the Act carried out at Chamber No. Paras Twin Towers, Tower-B, 6th Floor, Golf Course Road, Sector – 54, Gurgaon – 122002. It was further noted by the Learned AO that he is satisfied by the said documents seized containing information relating to the Marconi Infratech Pvt. Ltd. and the same have bearing on the determination of the total income for the A.Ys. 2011-12 to 2017-18 of M/s. Marconi Infratech Pvt. Ltd. and therefore, decided to issue notice to that other person being the assessee before us under Section 153C r.w.s 153A of the Act. The satisfaction note is, thus admittedly fails to demonstrate the details of the information contained in the Annexure A-3 which could lead to recording of satisfaction that the same have bearing on the determination of the total income of the assessee. The reason assigned to the satisfaction note is, thus, not found to be logical, rather vague.

18. A decision of the Hon’ble Supreme Court in the case of CIT vs. Singhad Technical Education Society [2017] taxmann.com 146 (Delhi) as relied upon by the Learned AO already settled the issue and held this to be an essential requirements as submitted by Learned AR. The relevant para of the same are reproduced 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.”

19. In that particular of case, the assessee raised the additional ground questioning the validity of the notice under Section 153C of the Act on the ground that the satisfaction note was not properly recorded and also the notice under Section 153C of the Act was time barred in respect of A.Ys.2001-02 and 2003-04. The Tribunal allowed the assessee to raise issues against such Assessment Years and decided the issue in favour of the assessee by quashing the notice issued in respect of the said Assessment Years. It was held that the documents as claimed to be incriminating material, should establish co-relation with the Assessment Years in questions, in default the notice issued under Section 153C of the Act is not maintainable. With the above observation, the order passed by Tribunal quashing the notice under Section 153C of the Act was upheld.

20. In the case in hand the satisfaction note simply referred the seized material i.e. Annexure A-3 seized during the search and seizure operation carried out on 21.07.2016 at Chamber No. Paras Twin Towers, Tower-B, 6 th Floor, Golf Course Road, Sector – 54, Gurgaon – 122002. Whereas from the plain reading of the language of Section 153C of the Act and judicial pronouncement cited hereinabove it is abundantly clear that in order to reopen

assessment of the other person under Section 153C of the Act for the Assessment Year earlier to the year of search, direct co relation must exist between existence of incriminating material and relevant Assessment Year. Therefore, the reasoning should be logical while recorded satisfaction; the same must be valid having regard to the provision of Section 153C of the Act. The Annexure A-3 as relied upon by the Learned AO being the seized document neither even speaks about the issue in respect of the respective Assessment Year sought to be reopened which could ultimately be said to be unexplained and addition thereon could be made. It is an undisputed fact that these documents did not establish co relation, document wise with these six Assessment Years. The very essential element for invoking the provision of Section 153C is therefore, found to be missing. In that view of the matter, the reason assigned by the Learned AO while recording satisfaction is found to be logical one rather vague; the material seized does not properly disclosed how the same belongs to be appellant; neither has it established any co relation document wise with these Assessment Years sought to be reopened and finalized upon making addition thereon. We, thus, respectfully relying upon the judgment passed by the Hon'ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society (supra) do not find any force in such satisfaction note recorded by the Learned AO as the said is recorded not in terms of the provision of Section 153C of the Act and thus, found to be invalid. The entire reassessment proceedings under Section 153C of the Act are, therefore, quashed."

14. In the instant case, the satisfaction note marked as Annexure:A-3 which has been seized during the searched and seizure operation dated 21/07/2016 in the residential as well as office premises of M3M group cases. On plain reading of the provision of Section 153C it is clear that in order to reopen the assessment of the other person u/s 153C of the Act for the Assessment Years earlier to the year of search, direct co relation must exist between the existence of incriminating material and relevant Assessment Year and the reasoning should be logical while recording the

satisfaction. In the present case, the seized document at Annexure A-3 does not speak about the issue in respect of the respective Assessment Years sought to be reopened which could ultimately be said to be unexplained and addition thereupon could be made and the said document is not establishing any co-relation, document wise with years under consideration. The essential element for invoking the provision of Section 153C is found missing in the satisfaction recorded on 25/09/2018. By following the ratio laid down by the Tribunal in the case of Marconi Info tech (supra) and finding the parity in the facts and circumstances of the case, we find no reason to sustain the assessment order in question, accordingly, the impugned assessment orders for the year under consideration are quashed, Accordingly, the appeal of the Assessee in ITA No. 3499/Del/2023, ITA No. 3450/Del/2023, ITA No. 3451/Del/2023, ITA No. 3452/Del/2023, ITA No. 3453/Del/2023 and ITA No. 3454/Del/2023 are allowed.

Order pronounced in open Court on 20th November, 2024

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated: 20/11/2024

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