

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI

**BEFORE SHRI. SHRI. ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

I.T.A 3636/Mum/2024 - A.Y. 2018-19
I.T.A 3637/Mum/2024 - A.Y. 2017-18
I.T.A 3638/Mum/2024 - A.Y. 2016-17
I.T.A 3639/Mum/2024 - A.Y. 2015-16
I.T.A 3640/Mum/2024 - A.Y. 2014-15
I.T.A 3641/Mum/2024 - A.Y. 2013-14

Karan Vyapaar Private Limited 207, Maharshi Devendra Road Kolkata-700 007 PAN: AACCK3689G	vs	Assistant Commissioner of Income Tax, Central Circle-2, Thane 6 th Floor, Road No.16-Z, Ashar I.T. Park, Wagle Industrial Estate, Thane (W)-400 604
APPELLANT		RESPONDENT

Assessee by : Shri Rakesh Joshi
Respondent by : Shri Biswanath Das – CIT DR

Date of hearing : 22/10/2024
Date of pronouncement : 24/10/2024

ORDER

PERBENCH:

The bunch of 6 appeals of the assessee are filed against the common order of the Learned Commissioner of Income-tax (Appeals), Pune-11 [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the

Act'), for Assessment Years 2013-14 to 2018-19, date of order 21.05.2024. The impugned orders emanated from the orders of the Learned Assistant Commissioner, Central Circle-2, Thane passed under section 143(3) read with section 153C of the Act, date of orders 29/04/2021 for all the assessment years.

2. All the appeals have same nature of facts and common issues. After considering the consent of both the parties, appeals in **ITA No.3640/Mum/2024** and **ITA No.3641/Mum/2024** for A.Ys. 2014-15 & 2013-14 respectively are taken as lead case.

2.1 The assessee has raised the following grounds of appeal: -

A.Y. 2014-15

1. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in passing the ex-parte order without granting sufficient opportunity of being heard to the appellant.*

2. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in passing the Assessment Order u/s.143(3) r.w.s. 153C of the Income Tax Act, 1961, which is bad in law and null and void as the same is passed in violation of the provisions of the Income Tax Act, 1961.*

3. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in restricting the disallowance made by the Learned Assessing Officer to Rs. 19,00,000/-u/s.40A(3) of the Income Tax Act, 1961, without considering the facts and circumstances of the case.*

4. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in rejecting the books of accounts of the appellant u/s.145(3) of the Income Tax Act, 1961, without considering the facts and circumstances of the case.*

5. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in not considering the fact that the Learned Assessing Officer has rejected the books of accounts u/s.145(3) of the Income Tax Act, 1961, without issuing the show cause notice, which is in violation of the provisions of Act.*

6. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in making an addition of Rs.30,64,980/- as alleged Undisclosed Business income of the appellant, without considering the facts and circumstances of the case.*

7. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in making an addition without having any incriminating document for the relevant assessment year.*

8. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in not appreciating the fact that the Learned Assessing Officer has initiated the penalty proceeding U/s 271B without appreciating the fact that the appellant has maintained proper books of account duly audited under Companies Act, 2013.*

9. *The appellant craves leave to add, amend, alter or delete the said ground of appeal."*

A.Y. 2013-14

"1. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in passing the ex-parte order without granting sufficient opportunity of being heard to the appellant.*

2. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in passing the Assessment Order u/s.143(3) r.w.s. 153C of the Income Tax Act, 1961, which is bad in law and null and void as the same is passed in violation of the provisions of the Income Tax Act, 1961.*

3. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in issuing notice U/s 153C of the Income Tax Act, which is beyond six years hence void ab- initio.*

4. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in restricting the disallowance made by the Learned Assessing Officer to Rs.5,70,000/- u/s.40A(3) of the Income Tax Act, 1961, without considering the facts and circumstances of the case.*

5. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in rejecting the books of accounts of the appellant u/s.145(3) of the Income Tax Act, 1961, without considering the facts and circumstances of the case.*

6. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in not considering the fact that the Learned Assessing Officer has rejected the books of accounts u/s.145(3) of the Income Tax Act, 1961, without issuing the show cause notice, which is in violation of the provisions of Act.*

7. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in making an addition of Rs 46,08,088/- as alleged Undisclosed Business income of the appellant, without considering the facts and circumstances of the case.*

8 *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in making an addition without having any incriminating document for the relevant assessment year.*

9. *On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in not appreciating the fact that the Learned Assessing Officer has initiated the penalty proceeding U/x271B without appreciating the fact that the appellant has maintained proper books of account duly audited under Companies Act, 2013.*

10 *The appellant craves leave to add, amend, alter or delete the said ground of appeal."*

3. The brief facts of the case are that search and seizure operations under section 132 of the Act was conducted in Antariksh group on 14/02/2019. M/s Antariksh Park LLP is one of the entities of Antariksh group and also covered

under section 132 of the Act. The assessee is one of the partners in M/s Antariksh Business Park LLP. The assessee was a Kolkata based company and 99.8% of the shareholding in the company is held by two other Kolkata based companies, viz. M/s Starmark Dealtrade Pvt Ltd and M/s Seamarine Management Consultant Pvt Ltd. As per the revenue, during the search operation, various incriminating documents were seized indicating the cash transactions for and on behalf of the assessee company and it is found that the assessee company was engaged in activities of providing accommodation entries. In the statement under section 131 of the Act recorded during post search investigation, the director of the company, Shri Manish Vaishnav admitted that he is only a signing authority and works are carried out on the instructions of shareholders of the assessee-company. Considering the transactions, the notices under section 153C were issued for all the impugned assessment years to the assessee company. Finally, the assessment was completed under section 143(3) read with section 153C of the Act. The addition was made on account of section 40A(3) amount to Rs.11,40,000/- and commission @3% was calculated for providing the accommodation entries which works out to Rs.46,08,088/-, total of which comes to Rs.57,48,088/- which was added back with the total income of the assessee. Being aggrieved on the assessment order, the assessee filed an appeal before the CIT(A). The assessee challenged both the legal and merit before the appellate authority. The appeal order was passed exparte. But considering the available documents a speaking order was passed by the Ld.CIT(A) by upholding the impugned assessment order. Being aggrieved, the assessee has challenged the appeal order before us.

I.T.A 3641/Mum/2024-A.Y. 2013-14,

Ground -3.

4. The Ld.AR vehemently argued and filed a written submission which is kept in the record (in short, 'APB'). The Ld.AR stated that the appeal order is passed exparte but the assessee is only challenged the legal issues of the impugned assessment years. In argument for A.Y. 2013-14, the Ld.AR argued that the search operation was held on 14/02/2019 and was concluded on 12/04/2019. The case of the assessee was centralized to Central Circle-2, Thane, vide order under section 127 of the Act by the PCIT-3, Kolkata bearing order No.78 /2019-20, date of order 10/10/2019. Considering this, the Ld.AR invited our attention in assessment order page 2. The relevant paragraphs are reproduced as below: -

"CENTRALISATION:

03 The case of the assessee was centralized to Central Circle-2, Thane vide order u/s 127 of the I.T. Act, 1961 of the Pr. Commissioner of Income Tax-3 Kolkata having order no. order no. 78/2019-20 dated 10/10/2019.

04 Since the search u/s. 132A of the Act was carried out in the case of the assessee, section 153C of the Act is triggered, which is mandatory in nature. Thus, according to the provisions of section 153C of the Act, the notice u/s. 153C of the Act was issued on 02.11.2019, which was duly served upon the assessee for filing the return of income for AY 2013-14. In response to notice u/s 153C of the Act, assessee has filed its return of income for AY 2013-14 on 21.01.2020 declaring total income at Rs. 8,88,470/-. Thereafter, statutory notice u/s. 143(2) of the Act was issued on 12.10.2020, which was duly served upon the assessee. Subsequently, notice u/s. 142(1) of the Act along with questionnaire was issued on 05.02.2021 calling for details, which was duly served on to the assessee."

5. The Ld.AR argued that the assessee was originally assessed at Kolkata. There was search operation on Antariksh group on 14/02/2019 which was concluded on 12/04/2019. The case of the assessee was centralized from Kolkata to Mumbai on 10/10/2019 and notice under section 153C was issued on 02/11/2019. As per provisions of section 153C, notice under section 153C can be issued 6 years prior to the date of search and in case of person whose records were found during search operation at 3rd party, date of search will be treated as date on which the books of accounts of such person were handed over to the Id. AO of such person. Since the case was centralized in 10/10/2019 hence the date of hand over of the documents will be treated as on the date when the records were handed over, which is 10/10/2019. Therefore, six years start from AY 2014-15 and accordingly notice issued for AY 2013-14 is time barred.

The issue is squarely covered by the order of the **CIT-14 vs Jasjit Singh (2023) 155 taxmann.com 155 (SC)**. The relevant paras 9 to 11 are reproduced as below: -

"9. It is evident on a plain interpretation of Section 153C(1) that the Parliamentary intent to exact 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 153C(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. For the foregoing reasons, the Court finds no merit in these appeals, they are accordingly dismissed, without order on costs."

I.T.A 3640/Mum/2024-A.Y. 2014-15

Ground-2.

6. This ground is taken on legal issue that no satisfaction recorded before issuing notice u/s 153C of the Act. The Id. AR argued that the Id. AO issued notice U/s 153C of the Act for the impugned year on 02/11/2019. The assessee requested to provide copy of satisfaction note. However, the same was not provided to the assessee. So, there is a gross violation of natural justice. The assessment order passed under section 153C is void ab initio. During the course of hearing before the ITAT, the issue was further agitated by the Id. AR. Therefore, the notice issued U/s 153C without satisfaction note is violation of statute and void ab-initio as held by the Hon'ble Supreme Court in case of **CIT v. Calcutta Knitwears [2014] 362 ITR 673 (SC)** held that the Hon'ble Supreme Court concluded that the recording of the satisfaction note is an essential requirement for invoking Section 158BD, and its absence renders the proceedings void. The Hon'ble Court upheld that without the proper recording of satisfaction, any notice or assessment made under this section is bad in law. The decision in Calcutta Knitwears established that adherence to this procedural requirement is

mandatory to ensure the legality of proceedings involving third parties in search-related assessments.

7. The Id. AR further argued that disallowance u/s.40A(3) of the Act on ad hoc basis on the plea that assessee has withdrawn cash from banks and that cash must have been used for booking expenses without bringing any material on record. Ld. CIT(A) restricted such disallowance to the 50% of the addition U/s 40A(3) of the Act. The year wise details of such disallowance is placed in record by the Id. AR which is reproduced as under: -

<i>Assessment year</i>	<i>Amount disallowed by AO</i>	<i>Addition confirmed by CIT(A)</i>
<i>2014-15</i>	<i>38,00,000</i>	<i>19,00,000</i>
<i>2015-16</i>	<i>29,50,000</i>	<i>14,75,000</i>
<i>2016-17</i>	<i>22,53,000</i>	<i>11,26,500</i>

The Id. AR stated that the addition was made on the basis of presumptions and without any incriminating documents.

7.1. He further argued that the Id. AO also made addition of commission @ 3% of the total debit and credit entry in the bank account of the assessee on the plea that as per documents found during the course of search the transaction recorded therein appears to be accommodation in nature. The Id. AO has rejected books of the assessee and estimated commission income @ 3% of the total bank transactions without looking into the nature of transactions. None of the bank

account of the assessee was undisclosed before the revenue. The year wise details addition of commission is placed in record which is reproduced below: -

<i>Assessment year</i>	<i>Amount disallowed</i>
<i>2014-15</i>	<i>30,64,980</i>
<i>2015-16</i>	<i>16,85,545</i>
<i>2016-17</i>	<i>15,52,290</i>
<i>2017-18</i>	<i>2,85,277</i>
<i>2018-19</i>	<i>16,76,866</i>

The additions are also without any incriminating document and on general assumption that assessee is in the accommodation business. Further the documents relied upon by the assessing officer is related to AY 2013-14 and not for the other years. Therefore, a general presumption drawn on the basis of a particular year cannot be applied in subsequent years as held by the Hon'ble **Supreme Court** in case of **CIT Vs. Sinhgad Technical Education Society, 397 ITR 344(SC)**.

7.2. He also argued that the Id.AO also made addition on account of undisclosed interest and commission income from M/s Govind Mahima Real Mart Pvt. Ltd in AY 2016-17 of Rs. 41,01,040/- and Rs. 5,68,600/- in AY 2017-18. This addition is based on one document found from the residence of one Mr Brijesh Khandelwal, copy of which is placed on **page 7-8 of APB**. As per this page total interest earned by the assessee from the above party is Rs. 34,17,533/- which was duly recorded in the books of the assessee, copy of ledger account of the said party in the books of appellant is enclosed on **APB page 10**. In addition to this there is reference of

some commission on such loan, which was earned by Mr. Brijesh Khandelwal as he has facilitated this loan transaction to the above party and he has offered the said commission in the application filed before Income Tax settlement commission, copy of relevant page is enclosed in **APB page 11-12**.

Accordingly, this addition is also not sustainable as assessee has already offered income in its regular books of account to the extent related to it and also claimed TDS on such income in the return of income filed for the respective year.

7.3. The Id. AR stated that the said additions in impugned assessment years are without considering any incriminating documents. So, the additions cannot be sustained. He respectfully relied on the order of the Hon'ble Supreme Court in case of **Abhisar Buildwell P Ltd (454 ITR 212) (SC)**. The relevant paragraphs are reproduced as below: -

"14. In view of the above and for the reasons stated above, it is concluded as under:

(i) that in case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

(ii) all pending assessments/reassessments shall stand abated;

(iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

(iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of

powers under sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs."

8. The Ld.DR vehemently argued and invited our attention in appeal order page 7, para 15 which is reproduced as below: -

"15. Vide Ground no. 2, the appellant has contended that no notice u/s 153C could have been issued as the assessment year under consideration is falling beyond the period of six assessment years. As mentioned earlier, no submission has been made by the appellant during the appellate proceedings. I have considered the said ground of the appellant and it is seen that the search in Antriksh group was conducted on 14/02/2019. Thus, AY 2019-20 is the search assessment year and the notice u/s 153C of the Act could have been issued for six assessment years preceding the search assessment year. Therefore, AY 2013-14 falls within a period of six assessment years and hence, the contention raised by the appellant is rejected. The ground no. 2 raised by the appellant is DISMISSED."

9. We have heard the rival submissions and considered the documents available in the record. The argument of the Ld.AR is only focused pertaining to the legal issues related to assessment under section 153C read with section 143(3) of the Act. For A.Y. 2013-14, in question of limitation the issuance of notice U/s 153C is time barred beyond six years. The Id. CIT(A) has reckoned from the date of search i.e. 14/02/2019. On contrary the plea of the assessee is that the limitation of six years is reckoned from date of handover of documents on 10/10/2019 as per provision of Section 153C of the Act. During the appeal proceedings, the issue was agitated by the assessee. But it was rejected because

the CIT(A) has taken the date of search, i.e. 14/02/2019 for counting the limitation. The argument of the Id. AR is fully covered by the order of the **Jasjit Singh** (supra) and the notice U/s 153 C for AY 2013-14 is time barred. So, the assessment order is barred by the limitation.

9.1. Regarding, the second issue concerning the issuance of the satisfaction note, the revenue has failed to submit any such document, or a copy of the satisfaction note before this bench. The Id. DR repeatedly sought adjournments to produce the satisfaction note, and the Bench granted several opportunities for its submission. The matter was even treated as part-heard to allow for this purpose. Despite a final opportunity being provided, the Id. DR expressed an inability to furnish the satisfaction note. The revenue was also unable to present any evidence showing that the satisfaction note had been served on the assessee. In the absence of the satisfaction note, the issuance of the notice under Section 153C of the Act is void ab initio. We respectfully rely on the decision in **Calcutta Knitweaves** (supra) to support this conclusion.

Accordingly, the assessment framed under Sections 153C/143(3) is bad in law.

9.2. In relation to the third issue, which concerns the consideration of incriminating material in the contested assessment, we find that no such incriminating documents were discovered for the purpose of completing the assessment under Section 153C of the Act. Although this issue was raised before the Id. CIT(A)], the Id. CIT(A) did not address it and failed to provide any ruling on the matter.

We observe that the additions made under Section 40A(3), the calculation of commission at 3%, and the interest on loan debtors were not based on any incriminating material. Under the provisions of Section 153C, any addition in the assessment must be supported by incriminating evidence. In this context, we respectfully rely on the decision of the Hon'ble **Supreme Court** in **Abhisar Buildwell Pvt. Ltd** (supra), wherein it was held that an assessment under Section 143(3) read with Section 153C, if not based on incriminating material, is invalid in law. The Id. DR has not cited any contrary judgments to rebut the submissions made by the Id. AR. Furthermore, the Id. AO exceeded their jurisdiction by issuing a notice under Section 153C without preparing a proper satisfaction note, and the assessment was not grounded on incriminating materials.

Therefore, we reverse the impugned order. Accordingly, the assessment order passed under Sections 153C/143(3) is quashed, and the demand raised against the assessee is dismissed.

10. Accordingly, appeal of the assessee in **Ground-3** of **ITA 3641/Mum/2024** and **Ground-2** of **ITA No. 3640/Mum/2024** are allowed. Since we have decided the appeals on the legal issue, adjudication on merit would only be an academic purpose; hence, not discussed.

11. Since the facts and circumstances as also the issues agitated in other appeals are identical to above appeals, the decision arrived at above shall apply *mutatis mutandis* to rest of the appeals in this order.

12. In the result, all the appeals of assessee in **ITA Nos.3636 to 3641/Mum/2024** are allowed.

Order pronounced in the open court on 24th day of October 2024.

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 24/10/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, Mumbai**