

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

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI YOGESH KUMAR U.S., JUDICIALMEMBER**

**ITA No.3281/DEL/2024
(Assessment Year : 2014-15)**

**ITA No.3282/DEL/2024
(Assessment Year : 2015-16)**

**ITA No.3283/DEL/2024
(Assessment Year : 2016-17)**

**ITA No.3284/DEL/2024
(Assessment Year : 2017-18)**

**ITA No.3285/DEL/2024
(Assessment Year : 2018-19)**

**ITA No.3286/DEL/2024
(Assessment Year : 2019-20)**

**ITA No.3287/DEL/2024
(Assessment Year : 2020-21)**

Blue Ocean Travels Pvt. Ltd.,
13-D, Gopala Towers,
Rajindra Place,
Delhi – 110 008.

**(PAN: AACCB3915C)
(APPELLANT)**

vs. DCIT, Central Circle 15,
Delhi.

(RESPONDENT)

**ASSESSEE BY : Shri Amit Goel, CA
Shri Pranav Yadav, Advocate
REVENUE BY : Ms. Amisha S. Gupt, CIT DR**

Date of Hearing : 06.11.2024
Date of Order : 04.12.2024

ORDER

PER S. RIFAUR RAHMAN, AM :

1. The assessee has filed seven appeals against the separate orders of Id. Commissioner of Income-tax (Appeals)-26, New Delhi (hereinafter referred to 'Ld. CIT (A)') dated 27.05.2024 for AY 2014-15 and 28.05.2024 for Assessment Years 2015-16 to 2020-21.
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. For the purpose of brief facts of the case, we take up the facts from Assessment Year 2014-15 as per which, a search operation in the case of Sushen Mohan Gupta and others initiated under section 132 of the Income-tax Act, 1961 (for short 'the Act') was carried out at the residence of Shri Ramesh Hemrajani and Shri Munish Hemrajani situated at 38/19, East Patel Nagar, New Delhi-110 008 on 02.01.2020. During the course of search proceedings, various documents including digital data were seized from the residential premises of assessee's Directors, which were compiled in annexures, namely, Annexure A-1 to A-27, apart from the cash and jewellery which were also found and seized from the abovesaid premises.

4. Further a survey action u/s 133A of the Act was also carried out in the case of assessee situated at 13-D, Gopala Tower, Rajendra Place, New Delhi-110 008 on 03.01.2020. During survey proceedings, various documents including digital data were impounded from the residential premises of assessee which were compiled in five annexures, namely, Annexure A-1 to A-5. Further statements u/s 132(4)/131(1A) of the Act were recorded on oath from many persons including directors of the assessee.
5. The Assessing Officer observed that on perusal of said incriminating documents, satisfaction was duly recorded for initiating proceedings u/s 153C of the Act in the case of the assessee for AYs 2010-11 to 2020-21. The case of the assessee was centralized u/s 127 of the Act. Accordingly, notices u/s 153C were issued and served on the assessee. In response, assessee filed its return of income for AY 2014-15 on 26.10.2021 declaring total income of Rs.66,85,880/-. Subsequently, other notices u/s 143(2) and 142(1) were issued and served on the assessee. In response, ld. AR for the assessee appeared and submitted the informations as called for.
6. The assessee is a Private Limited Company incorporated in the year 2003 as per provisions of the Companies Act having its registered office at 13-D, Gopala Tower, Rajendra Place, New Delhi-110 008. It is engaged in the business of the Travel Agency, providing travel related and other ancillary

services to its clients. During the assessment proceedings, based on the soft data and statements recorded during the search proceedings, assessee was asked to substantiate the transactions related to forex transactions and other transactions which were not recorded in regular books of accounts. After considering various submissions made by the assessee, the AO analysed seized documents and statements of employees and directors, the Assessing Officer observed that assessee was engaged in the arrangements/facilitation of forex transactions for his clients and on which some referral income was earned during the assessment year but the same was not offered for taxation. Further he observed that assessee was also engaged in providing event managements services to its clients and had earned some fixed percentage or agreed amount on such event transactions. This income was also not recorded by the assessee in its books of account. A separate show-cause notice was issued on 30.04.2022 and same was reproduced by the Assessing Officer at pages 18 to 21 of the order. In response, the assessee has submitted as under:-

“7.1.1 The reply of the assessee is considered and taken on record. For the sake of convenience, the relevant para of reply is reproduced herein below:

In respect of captioned proceeding, it is submitted that proceeding initiated u/s 153C of the Income Tax Act, 1961 (tile Act) is bad in law, without jurisdiction.

Without, prejudice to tire above, in compliance to your notice u/s 142(1), I am submitting the following:

In your Show cause notice, YOII hate mentioned certain transactions relating to forex and event management which was alleged to be not recorded in our books of accounts, we would like to submit that the transactions referred by you are just the quotes / proposal given to various clients, however, the actual transactions has not taken place, most of the additional income mentioned the transactions referred in the how cause notice are just quotation / proposals given to the client / customers, without prejudice to the above you have mentioned the basis on which income is earned by the assessee company on foreign currency transaction.

I would like to submit that the assessee company is engaged in the business of the Travel agency, providing travel related and other ancillary services. The Company is recognized by the Ministry of Tourism, Government of India, as a Tour Operator and Travel Agent. Apart from this Company, is a member of :-

- International Air Transport Authority (IATA)*
- Indian Association of Tour Operators (IATO)*
- Travel Agent Association of India (TAAI)*
- Travel Agent Federation of India (TAFI)*

The revenue streams of the Company are as follows :

- Ticketing*
- Passport & Visas*
- Hotel Booking*
- Customized services*
- Domestic train bookings*
- Travel Insurance arrangements*

However, sometimes our customers request us to arrange forex currency, so that they get all the services under one umbrella. In order to retain our clients we refer our clients to the forex agents. We are not trading in foreign currency. In lieu of the reference made to the forex agents we receive referral income from forex agent in case, the deal is executed. In order to determine the rate of our introduction or referral income there are two registers seized from the residence of Ramesh Hemrajani and Munish Hemrajai at 38/19, East Patel Nagar, New Delhi -110008 as Annexure - 3 and Annexure - 7. The total income earned from the forex transactions in the registers given below :

<i>Annexure No.</i>	<i>Referral Income in INR as per seized registers (A)</i>	<i>Total Forex transaction in INR (B)</i>	<i>Percentage of referral income i.e. A/B*100</i>
<i>Annexure – 3</i>	<i>240942</i>	<i>88790839</i>	<i>0.27%</i>
<i>Annexure – 7</i>	<i>103697</i>	<i>30927465</i>	<i>0.34%</i>

Hence, the referral income varies from 0.27% to 0.34%.”

7. After considering the submissions of the assessee, the Assessing Officer observed as under :-

“7.1.6. Further, it was observed from the submission of the assessee in response to show cause notice that the referral Income on forex transaction was calculated in the range of 0.27% to 0.34% and no specific rate was provided. So for arriving at a logical base of calculating income on total "forex" transactions, this office has analysed some sample transactions from the pages of Annexure A-3. From the pages of annexure A-3, it was observed that, transactions a mentioned on these pages are related to forex (currency) arrangements, where the assessee company has facilitated arrangement of forex requirements of it clients through an authorised money changer after charging a certain percentage as commission. For better understanding of the same, a working in tabular format of seized papers of Annexure A- are summarised as under:

S.No.	Page No.	Name of Person	Total Forex required	Net Rate	Quoted Rate	Difference	Commission Percentage
1	8	Sharad Gupta	2500 USD	67.65	67.85	.20	0.30%
2	8	Mr. Neetu Kumar	1500 USD	67.65	67.90	.25	036%
3	8	Mrs. Madhu	2500 EURO	75.60	75.60	.10	013%
4	12	Sanjay Sen Gupta	1000 EURO	78.10	78.30	.20	025%
5	12	Mrs. Ritu Kumar	1800 EURO	75.30	75.50	.20	026%
6	32	Anubhav Arora	700 EURO	69.90	70.10	.20	029%

7.1.8 From the perusal of above chart, it can be observed that the average profit margin rate (referral fees) on fore transactions varies from 0.13% to 0.36% which can be safely taken at 0.30% for calculating referral/ facilitation fees/ income of the assessee in respect of total value of forex transactions arranged by it.

7.1.9 Accordingly, by considering the rate @.3% on total forex transaction of Rs.34,97,000/- as per Annexure A-11, referral income of Rs.10491/- was not offered for tax by the Assessee Company during the year and the same is added to its taxable income of the relevant year as business income. Further, as per annexure A-3, there was income of Rs.1,850/- on facilitation of forex transaction and assessee has calculated this amount in its submissions but not declared in its ITR, the same is also added back to total Income.

(Addition of Rs.6,76,171/- + Rs.3,86,600 + Rs.10,491 + Rs.1,850 = Rs.10,75,112/-)"

8. Further Assessing Officer analysed the event management income and after analysing the submissions of the assessee, he determined the profit rate relating to event management/facilitation fees income @ 4%. Accordingly he proceeded to make the addition of Rs.21,10,083/- out of management/facilitation fee income of Rs.5,27,52,082/-. Further, he observed that certain transactions found in spread sheets in the Pen Drive which contained the details of total funds received and total expenditure incurred by the assessee, this income was also not recorded by the assessee in its books of account and the assessee was asked to explain the same by issuing a show-cause notice which also reproduced by the Assessing Officer at page 29 of the order. After considering the submissions of the assessee, he proposed an addition of Rs.20,00,516/-.
9. Aggrieved, assessee preferred an appeal before the Id. CIT (A) and Id. CIT(A) dismissed the appeal of the assessee due to non-compliance to various notices/opportunities allowed to the assessee. Ld. CIT (A)

dismissed the appeals filed by the assessee by relying on the facts available on record.

10. Aggrieved, assessee is in appeal before us raising following grounds of appeal :-

“1. On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is liable to be quashed as it is contrary to provisions of section 153D of the Income Tax Act, 1961 and CIT(A) erred in not holding so.

2. On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is non-est as it does not have valid DIN.

3 On the facts and circumstances of the case and in law, the addition made by the AO is erroneous and without jurisdiction. The addition made is beyond the scope / jurisdiction of provisions of section 153C read with section 153A of the Income Tax Act, 1961 and CIT(A) erred in not holding so.

4. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the addition made by the AO of Rs.10,75,112/- as alleged income on account of facilitation fees.

5. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the addition made by the AO of Rs.21,10,083/- as alleged income on account of events management/facilitation fees

6. On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the addition made by the AO of Rs.2,516/- as alleged income on account of hotel booking, ticketing and other ancillary services,

7. *On the facts and circumstances of the case and in law, the CIT(A) erred in passing ex-parte order without providing proper opportunity of being heard.*

8. *On the facts and circumstances of the case and in law, the CIT (A) erred in not adjudicating the grounds of appeal on merit and is also against the principles of natural justice.*

9. *On the facts and circumstances of the case and in law, the notice u/s 153 C issued by the AO is bad-in-law, barred by limitation and without jurisdiction and, therefore, the said notice along with the assessment order passed on the foundation of such notice are liable to be quashed and CIT(A) erred in not holding so.*

10. *On the facts and circumstances of the case and in law, the notice u/s 153C issued by the AO is illegal and without jurisdiction. The AO has not complied with the provisions of section 153C and other allied provisions for issuance of such notice. Accordingly, the notice u/s 153C along with the assessment order passed on the foundation of such notice are liable to be quashed and CIT(A) erred in not holding so.*

11. *On the facts and circumstances of the case and in law, the satisfaction note(s) recorded u/s 153C of the Act are bad-in-law and without jurisdiction and, accordingly, the assessment proceedings initiated on the foundation of such satisfaction note(s) and also the consequent assessment order passed are liable to be quashed and CIT(A) erred in not holding so.”*

11. At the time of hearing, ld. AR for the assessee submitted that the search was conducted in the case of Sushen Mohan Gupta and others on 02.01.2020 and based on above search, the case of the assessee was initiated u/s 153C of the Act. He submitted that the Assessing Officer recorded the satisfaction for AYs 2014-15 to 2019-20 on 30.09.2021. Therefore, the relevant search

assessment in the case of the assessee is AY 2022-23. That be the case, the six years relevant for revision of AYs relevant for AYs 2016-17 to 2019-20. Therefore, AYs 2014-15 and 2015-16 are outside the provisions of section 153C of the Act.

12. Coming to other AYs under consideration, he submitted that the Assessing Officer has not recorded satisfaction year-wise rather recorded a satisfaction in single consolidated satisfaction. In this regard, he relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Jagjit Singh (2023) 10 TMI 572 and further he relied on the decision of coordinate Bench in the case of Raja Varshney vs. DCIT in ITA No.1459/Del/2024 dated 26.09.2024 and Akansha Gupta vs. ACIT in ITA No.3074/Del/2023 dated 10.07.2024.
13. On the other hand, ld. DR for the Revenue accepted the fact that the Assessing Officer has recorded the satisfaction only on 30.09.2021. Assessment Years 2014-15 and 2015-16 are outside the provisions of section 153C of the Act. With regard to other Assessment Years, ld. DR submitted that with regard to the case law relied upon by the ld. AR in the case of Sunil Kumar Sharma, he submitted that it is not a *ratio decidendi* and the real issue decided by Hon'ble Court is only on the issue of section 153C/153A applicability and it is not the issue of separate satisfaction note. She submitted that ld. AR heavily relied on the above decision on the issue of

satisfaction note is misleading. Further ld. DR submitted that during the course of assessment proceedings, assessee admitted certain commission income, therefore, the issue has to be decided on merits of the case. She prayed that the findings of the Assessing Officer may be sustained considering the various documents and material found during the search.

14. In the rejoinder, ld. AR for the assessee submitted as under :-

“The proceedings-initiated u/s 153C of the Act is bad-in-law and without jurisdiction for the following reasons:-

- 1. In this satisfaction note there is reference to statements recorded u/s 131 during Survey. There is no reference to any statement u/s 132(4) during search. **The statement u/s 131 recorded during survey cannot be said to be material found and seized during search and therefore, such statement cannot be a basis for initiation of proceedings u/s 153C of the Act.***
- 2. The satisfaction recorded u/s 153C is vague as there is **no reference to any seized material which may have bearing on the determination of total income.** There is no year wise analysis of any seized material and how they have bearing on the determination of total income. **The statutory requirement is that in the satisfaction note, the assessing officer has to record satisfaction that particulars seized material is incriminating in nature and to further record satisfaction that such seized material is likely to have a bearing on the determination of the total income of the ‘other person’. In the present case, this statutory requirement has not been fulfilled.***
- 3. The submission by the Ld. DR that during the course of assessment proceedings, the assessee admitted certain commission income is totally out of context. The issue before your honour is with regard to validity of initiation of*

*assessment proceedings u/s 153C of the Act. **The foundation/jurisdiction for initiation of proceeding u/s 153C is the satisfaction note recorded u/s 153C of the Act. If the satisfaction note recorded u/s 153C is not in accordance with law, the assessment order passed on the foundation of such satisfaction note will also not survive. Moreover, in the assessment order, the assessing officer cannot go beyond the satisfaction recorded u/s 153C of the Act. In the present case, the assessing officer has made the addition on account of commission income whereas in the satisfaction note there is no reference to any commission income.***

4. *The satisfaction recorded by the AO u/s 153C of the Act is bad in law and contrary to apex court decision in the case of **Commissioner of Income Tax-III, Pune Versus Sinhgad Technical Education Society 2017 (8) TMI 1298 - Supreme Court.**In the case of Sinhgad Technical Education Society (Supra) the Hon'ble apex court has held that the AO is required to make a year wise analysis of the incriminating seized material. In the present case, no such year wise analysis has been done.*
5. *The jurisdictional Delhi High Court in the case of **Saksham Commodities Limited &ors v. Income Tax Officer Ward 22 (1) &ors 2024 (4) TMI 461 - Delhi High Court** has held as under:*

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51. Ultimately Section 153C is concerned with books, documents or articles seized in the course of a search and which are found to have the potential to impact or have a bearing on an assessment which may be undergoing or which may have been completed. The words "have a bearing on the determination of the total income of such other person" as appearing in Section 153C would necessarily have to be conferred pre-eminence. Therefore, and unless the AO is satisfied that the material gathered could potentially impact the determination of total income, it would be unjustified in mechanically reopening or assessing all over again all

the ten AYs' that could possibly form part of the block of ten years.

52. The decisions which hold that an assessment is liable to be revised only if incriminating material be found, even if rendered in the context of Section 153A, would clearly govern the question that stands posited even in the context of Section 153C. It would be relevant to recall that the Division Bench in Kabul Chawla had observed that in the absence of any incriminating material, a completed assessment may be reiterated and the abated assessment or reassessment be concluded. The importance of incriminating material was further underlined in Kabul Chawla with the Court observing that completed assessments could be interfered with, only if some incriminating material were unearthed. This aspect came to be reiterated in RRJ Securities when the Court held that it would be impermissible to either reopen or reassess a completed assessment which may not be impacted by the material gathered in the course of the search and which may have no plausible nexus. The aforesaid position also comes to the fore when one reads para 17 of ARN Infrastructure and which annulled an action aimed at reopening assessments for years to which the incriminating document which was found did not relate.

53. *Sinhgad Technical Education Society also constitutes a binding precedent in respect of the aforesaid proposition as would be evident from the Supreme Court noticing that the material disclosed pertained only to AY 2004-05 or thereafter and that consequently the Section 153C action initiated for AYs' 2000-01 to 2003-04 would not sustain. It was this position in law as enunciated in that decision which came to be reiterated by our Court in Index Securities.*

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62. Hypothetically speaking, it may be possible for the material recovered in the course of a search having the potential or the probability of constituting incriminating material for more than one assessment year. However, even if such a situation were assumed to arise, it would be incumbent upon the AO to duly record reasons in support of such a conclusion. The Satisfaction Notes would thus have to evidence a formation of opinion that the material is likely to be incriminating for more than a singular assessment year and thus warranting the drawl of Section 153C proceedings for years in addition to those to which the material may be directly relatable.

63. On an overall consideration of the structure of Sections 153A and 153C, we thus find that a reopening or abatement would be triggered only upon the discovery of material which is likely to “have a bearing on the determination of the total income” and would have to be examined bearing in mind the AYs’ which are likely to be impacted. It would thus be incorrect to either interpret or construe Section 153C as envisaging incriminating material pertaining to a particular AY having a cascading effect and which would warrant a mechanical and inevitable assessment or reassessment for the entire block of the “relevant assessment year”.

64. In our considered view, abatement of the six AYs’ or the “relevant assessment year” under Section 153C would follow the formation of opinion and satisfaction being reached that the material received is likely to impact the computation of income for a particular AY or AYs’ that may form part of the block of ten AYs’. Abatement would be triggered by the formation of that opinion rather than the other way around. This, in light of the discernibly distinguishable statutory regime underlying Sections 153A and 153C as explained above. While in the case of the former, a notice would inevitably be issued the moment a search is undertaken or documents requisitioned, whereas in the case of the

latter, the proceedings would be liable to be commenced only upon the AO having formed the opinion that the material gathered is likely to inculcate the assessee. While in the case of a Section 153A assessment, the issue of whether additions are liable to be made based upon the material recovered is an aspect which would merit consideration in the course of the assessment proceedings, under Section 153C, the AO would have to be prima facie satisfied that the documents, data or asset recovered is likely to “have a bearing on the determination of the total income”. It is only once an opinion in that regard is formed that the AO would be legally justified in issuing a notice under that provision and which in turn would culminate in the abatement of pending assessments or reassessments as the case may be.

65. We would thus recognize the flow of events contemplated under Section 153C being firstly the receipt of books, accounts, documents or assets by the jurisdictional AO, an evaluation and examination of their contents and an assessment of the potential impact that they may have on the total income for the six AYs’ immediately preceding the AY pertaining to the year of search and the “relevant assessment year”. It is only once the AO of the non-searched entity is satisfied that the material coming into its possession is likely to “have a bearing on the determination of the total income” that a notice under Section 153C would be issued. Abatement would thus be a necessary corollary of that notice. However, both the issuance of notice as well as abatement would have to necessarily be preceded by the satisfaction spoken of above being reached by the jurisdictional AO of the non-searched entity.

66. Therefore, and in our opinion, abatement of the six AYs’ or the “relevant assessment year” would follow the formation of that opinion and satisfaction in that respect being reached.

67. *On an overall consideration of the aforesaid, we come to the firm conclusion that the “incriminating material” which is spoken of would have to be identified with respect to the AY to which it relates or may be likely to impact before the initiation of proceedings under Section 153C of the Act. A material, document or asset recovered in the course of a search or on the basis of a requisition made would justify abatement of only those pending assessments or reopening of such concluded assessments to which alone it relates or is likely to have a bearing on the estimation of income. The mere existence of a power to assess or reassess the six AYs’ immediately preceding the AY corresponding to the year of search or the “relevant assessment year” would not justify a sweeping or indiscriminate invocation of Section 153C.*

68. The jurisdictional AO would have to firstly be satisfied that the material received is likely to have a bearing on or impact the total income of years or years which may form part of the block of six or ten AYs’ and thereafter proceed to place the assessee on notice under Section 153C. The power to undertake such an assessment would stand confined to those years to which the material may relate or is likely to influence. Absent any material that may either cast a doubt on the estimation of total income for a particular year or years, the AO would not be justified in invoking its powers conferred by Section 153C. It would only be consequent to such satisfaction being reached that a notice would be liable to be issued and thus resulting in the abatement of pending proceedings and reopening of concluded assessments.

69. *When tested in light of the aforesaid principles, we find that except for a few exceptions which were noticed in the introductory parts of this judgment, the writ petitions forming part of this batch, impugn the invocation of Section 153C in respect of AYs’ for which*

no incriminating material had been gathered or obtained. The Satisfaction Notes also fail to record any reasons as to how the material discovered and pertaining to a particular AY is likely to “have a bearing on the determination of the total income” for the year which is sought to be abated or reopened in terms of the impugned notices. The respondents have erroneously proceeded on the assumption that the moment any material is recovered in the course of a search or on the basis of a requisition made, they become empowered in law to assess or reassess all the six AYs’ years immediately preceding the assessment correlatable to the search year or the “relevant assessment year” as defined in terms of Explanation 1 of Section 153A. The said approach is clearly unsustainable and contrary to the consistent line struck by the precedents noticed above.”

In view of the above decisions of Jurisdictional high court and also the Apex court, the proceeding initiated in the present case of the appellant company before your honour is liable to be quashed.

6. There is yet another reason because of which the notice issued u/s 153C in this case is liable to be quashed as there is no year wise satisfaction note recorded. With regard to submission of the Ld. DR that in the case of DCIT V Sunil Kumar Sharma (supra), there was no issue for consideration as to whether separate satisfaction note was required to be recorded, it is submitted that this is factually erroneous. The issue before the Hon’ble High Court was whether the notice u/s 153C issued was valid and in that context the issue of consolidated satisfaction note was specifically argued which is evident from para 36 of the decision of High Court which is as under:

36. Further, learned Senior Counsel argued that satisfaction note is required under Section 153C of the Act for each Assessment Year and in the impugned proceedings, consolidated satisfaction note has been

recorded for different Assessment Years which vitiates entire assessment proceedings. In this regard, he placed reliance on the judgment of the Hon'ble Apex Court in the case of **L K VERMA v. HMT AND ANOTHER**, reported in (2006)2 SCC 269 and in the case of **JEANS KNIT PVT LTD v. COMMISSIONER OF INCOME TAX**, reported in (2017)390 ITR 10 (SC) and argued that this Court is having jurisdiction to interfere with the impugned notices issued by the Revenue as the same is without jurisdiction and hence sought for interference of this court in those writ petitions.

Thereafter, the Hon'ble High Court in para 53 of the decision held as under: -

53. Further, satisfaction note is required to be recorded under Section 153C of the IT Act for each Assessment Year and in the impugned proceedings, a consolidated satisfaction note has been recorded for different Assessment Years, which also vitiates the entire assessment proceedings. In view of all these findings, it is said that the appeals do not have any substance for seeking intervention as sought for by the appellant / Revenue

In the present case of the appellant company before your honour the appellant is challenging the validity of notice u/s 153C which is based upon consolidated satisfaction note. Therefore, the decision of Hon'ble Karnataka High Court (SLP dismissed by Apex Court) will squarely apply to the present cases of the appellant companies."

15. Both the parties confirmed that the issues involved in these appeals are exactly similar.
16. Considered the rival submissions and material placed on record. We observed that the search proceedings were initiated in the case of Sushen

Mohan Gupta and others u/s 131 of the Act on 02.01.2020 and subsequently a survey action u/s 133A was initiated in the case of the assessee. Based on various informations available on record, the case of the assessee was initiated u/s 153C of the Act relying on various documents found in the case of Sushen Mohan Gupta and others. Based on the date of search initiated in the case of Sushen Mohan Gupta and others, the proceedings were initiated in the case of the assessee. However, as per the record, we noticed that satisfaction note was recorded by the Assessing Officer of the assessee only on 30.09.2021. Based on the date of satisfaction, the relevant assessment year for the assessee is AY 2022-23. Therefore, the date of search relevant for the assessee is only AY 2022-23, the AYs 2014-15 and 2015-16 are outside the provisions of section 153C of the Act. Therefore, it is a settled position of law relevant for assessment year under consideration. In the case of Raja Varshney vs. DCIT (supra) relied upon by ld. AR for the assessee, it is held as under :-

“12. On perusal of the satisfaction note it reveals that same was recorded on 10-10-2022 by the AO after giving the findings that the seized assets and documents /digital data and information relates to assessee and it is a fit case for initiating proceedings u/s 153C r.w.s153A of the Act for the A.Y. 2015-16 to 2020-21. The AO has issued the notice u/s.143(2) of the Act. On the similar facts, the coordinate Bench of the Tribunal in the case of Jasjit Singh (supra), it was held that the date of receiving of the seizes documents would become the date of

search and six 11 years period would be reckoned from this date. In the case of Jasjit Singh held as under :-

“15. We find that an identical issue has been decided by Delhi Bench of the Tribunal in the case of DSL Properties P. Ltd. (supra) in favour of the assessee accepting the similar contention of the assessee. Similar view has been expressed by the Delhi Bench of the Tribunal in the case of V.K. Fiscal (supra) holding that the date of receiving of the seized documents would become the date of search and six years period would be reckoned from this date. For a ready reference para no. 19, 21, 22 & 23 of the decision of Delhi Bench of the Tribunal in the case of DSL Properties (supra) are being reproduced hereunder:

“19. "We have carefully considered the rival submissions. Proviso to section 153C reads as under:

"Provided that in case of such other person, the reference to the date of initiation of the search u/s 132 or making of requisition u/s 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the AO having jurisdiction over such other person."

20. The above proviso refers to second proviso to subsection (1) of section 153A. That section 153(1) and its first and second provisions read as under:-

"153A. ((1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a

search is initiated u/s 132 or books of account, section 132A after the 31st day of May, 2003, the AO shall

– (a) Issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished u/s 139;

(b) Assess or reassess the total income or six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:

Provided that the AO shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this subsection) pending on the date of initiation of the search u/s 132 or making of requisition u/s 132A, as the case may be, shall abate."

21. From the above, it is evident that as per clause (b) of subsection (1) of section 153A and second proviso, the AO can be issue notice for assessment or reassessment of total six assessment years immediately preceding the assessment year relevant to previous year in which search is conducted. As per proviso to section 153C, the date of search is to be substituted by the date of receiving the books of account or documents or assets seized by the AO having jurisdiction over such other person. Ld. DR has stated that since the AO of the person searched and the AO of such other person was the same, no 14 handing over or taking over of the document was required. That section 153C(1) and its proviso have to be read together in a harmonious manner. While interpreting section 153C, we have already held that for initiating valid jurisdiction u/s 153C, even if the AO of the person searched and the AO of such other person is the same, he has to first record the satisfaction in the file of the person searched and thereafter, such note alongwith the seized document/books of account is to be placed in the file of such other person. The date on which this exercise is done would be considered as the date of receiving the books of account or document by the AO having jurisdiction over such other person. Though while examining the facts of the assessee's case we have arrived at the conclusion that no such exercise has been properly carried out and, therefore, initiation of proceedings u/s 153C itself is invalid, however, since both the parties have argued the issue of period of limitation also, we deem it proper to adjudicate the same. Since in this case satisfaction is recorded on 21st June, 2010 and notice u/s 153C is also issued on the same date, then only conclusion that can be drawn is that the AO of such other person has taken over the possession of seized document on 21st June, 2010. Accordingly, as per section 153(1), the 15 AO can issue the notice for the previous year in which search is conducted (for the purpose of

Section 1530 the document is handed over) and six assessment years preceding such assessment year. Now, in this case, the previous year in which the document is handed over is 1st April, 2010 to 31st March, 2011. The assessment year would be A.Y. 2011-12. Six preceding previous years and relevant assessment year would be as under:

Previous Year Assessment Year 1.4.2009 to 31.03.2010 2010-11 1.4.2008 to 31.03.2009 2009-10 1.4.2007 to 31.03.2008 2008-09 1.4.2006 to 31.03.2007 2007-08 1.4.2005 to 31.03.2006 2006-07 1.4.2004 to 31.03.2005 2005-06

22. The Assessing Officer has issued notice u/s 153C for A.Y. 2004-05 which is clearly barred by limitation. Therefore, issue of notice u/s 153C issued by the Revenue cannot be sustained on both the above counts, i.e., it is legally not valid as conditions laid down u/s 153C has not been fulfilled and it is barred by limitation. In view of the above, we quash the notice issued u/s 153C and consequently, the assessment completed in pursuance to such notice, is also quashed.

23. Since we have quashed the assessment order itself, the additions challenged by the assessee by way of other grounds of appeal do not survive, and, therefore, do not require any adjudication.

16. We thus, find that the issue raised in the additional ground has been answered in favour of the assessee, by the Coordinate Delhi Bench of the Tribunal in the case of DSL Properties (supra).

17. So far as decision of Hon'ble Delhi High Court in the case of SSP Aviation Ltd. vs. DCIT (supra) relied upon by the Id. CIT(DR) is concerned, we find that it is not helpful to the revenue as in that case also in para no. 14 of the judgment it has been held as under.

14. "Now there can be a situation when during the search conducted on one person u/s 132, some documents or valuable assets or books of account belonging to some other person, in whose case the search is not conducted, may be found. In such case, the AO has to first be satisfied u/s 153C, which provides for the assessment of income of any other person, Le., any other person who is not covered by the search, that the books of account or other valuable article or document belongs to the other person (person other than the one searched). He shall hand over the valuable article or books of account or 17 document to the AO having jurisdiction over the other person. Thereafter, the AO having jurisdiction over the other person has to proceed against him and issue notice to that person in order to assess or reassess the income of such other person in the manner contemplated by the provisions of section 153A. Now a question may arise as to the applicability of the second proviso to section 153A in the case of the other person, in order to examine the question of pending proceedings which have to abate. In the case of the searched person, the date with reference to which the proceedings for assessment or reassessment of any assessment year within the period of the six assessment years shall abate, is the date of initiation of the search u/s 132 or the requisition u/s 132A. For instance, in the present case, with reference to the Puri Group of Companies, such date will be 5.1.2009. However, in the case of the other person, which in the present case is the petitioner herein, such date will be the date of receiving the books of account or documents or assets seized or requisition by the AO having jurisdiction over such other person. In the case of the other person, the question of

pendency and abatement of the proceedings of assessment or 18 reassessment to the six assessment years will be examined with reference to such date."

18. In view of the above finding, the assessment framed u/s 143(3) of the Act for the A.Y. 2009-10 in the present case is not valid. Respectfully following the above cited decisions on an identical issue, the additional ground no. 4 in the present case is decided in favour of the assessee and in the result the assessment order is quashed as void.

19. Since in the above finding on the issue raised in additional ground no. 4 we have quashed the assessment order itself, the additions questioned by the assessee by way of other grounds of the appeal do not survive and, therefore, do not require any adjudication.

20. In the result, the appeal of the assessee is allowed."

13. From the above discussion the date of recording of the satisfaction will be the deemed date for the possession of the seized documents which is 03-10-2022 and six years would be reckoned from this date. The submission made by Ld AR is tenable that the assessment year relevant for previous year in which search was conducted in the case of the assessee will be AY 2023-24 and six years immediately preceding the assessment year relevant for u/s 153C of the Act will be AY 19 2018-19 to 2022-23. The assessment for AY 2021-22 should have been carried out by issuing notice u/s 153C of the Act and not u/s 143(2) of the Act. Therefore the assessment order dated 29-12-22 passed u/s 143(3) of the Act is bad in law and liable to be quashed and quashed accordingly. The additional grounds filed by the assessee are allowed."

In view of the above, the assessment proceedings initiated for AYs 2014-15 and 2015-16 are quashed.

17. Coming to the revision proceedings initiated for AYs 2016-17 to 2020-21, we observed that the Assessing Officer has recorded the satisfaction as a single consolidated satisfaction note, which constitutes 17 pages, was placed on record in the paper book. On careful consideration, we observed that the Assessing Officer has recorded the satisfaction summarily. We are inclined to reproduce the satisfaction note in paras 10 and 12 as under :-

“10. The assesee as per its own submission filed before the investigation wing during post search proceedings had admittedly furnished following details of its cash transactions :

As it is already stated that we received cheque, RTGS as well as cash against the sale various travel related services and duly record the receipts on the books of Blue Ocean Travels Private Limited whether it is by cheque or by RTGS or through cash. The total amount received against sale in the year 2018-19 was Rs.53,18,28,738/-, in the year 2017-18 the figure was Rs.41,56,10,247/-, in the year 2016-17 it was Rs.44,60,30,811/-, in the year 2015-16 was Rs.58,13,88,829/-, in the year 2014-15 the figure was Rs.46,21,90,673/-, in the year 2013-14 was 45,07,03,172/-.

The above mentioned figures include cash, cheques and RTGS, the bifurcation of which is as under :-

<i>Year</i>	<i>Total</i>	<i>Cheque</i>	<i>Cash</i>
<i>2018-19</i>	<i>Rs.53,18,28,738</i>	<i>Rs.34,06,10,590</i>	<i>Rs.19,12,18,148</i>
<i>2017-18</i>	<i>Rs.41,56,10,247</i>	<i>Rs.27,85,94,340</i>	<i>Rs.13,70,15,807</i>
<i>2016-17</i>	<i>Rs.44,60,30,811</i>	<i>Rs.24,48,97,771</i>	<i>Rs.20,11,33,040</i>
<i>2015-16</i>	<i>Rs.58,13,88,879</i>	<i>Rs.25,24,31,426</i>	<i>Rs.32,89,57,453</i>
<i>2014-15</i>	<i>Rs.46,21,90,673</i>	<i>Rs.23,69,42,883</i>	<i>Rs.22,52,47,790</i>
<i>2013-14</i>	<i>Rs.45,07,03,172</i>	<i>Rs.26,22,14,758</i>	<i>Rs.18,81,88,114</i>

There is some difference at the amount of sale during the year and the amount which the company had received during the year against the same, this is due to the debtors as opening debtors were received during the year and closing balance of debtors would have been received in next financial year. The balance of debtors is also reflecting in the books of the company.

12. *Also, during post search investigation, the assessee was asked to give details of the topmost 5 clients to whom various services were provided by BOTPL as per its books of accounts and as per the details found in the seized material (Annexure A1- A23) so that a comparison could be drawn with respect to the transactions which were unaccounted and accounted for with the same clients. In response to the same, the assessee vide its submissions gave details of clients from whom it had received cash from FY 2013-14 onwards. The details are tabulated as under:*

S. No.	Name of the client	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	Total sum of the Rows
1	Chaurasia	26778595	34913829	48477321	42074199	27093853	26837299	206175096
2	Makhija	0	0	0	0	0	1496969	1496969
3	Sushen/ Sushant Group	3197940	5341774	2190661	3418776	115886	0	14308012
4	Garg	18466007	21598854	20538191	26345425	18714181	36102744	141765402
5	Jain	7992067	9230271	23053716	11023104	1636291	12396346	65331795
6	Lalwani	31441964	32690829	52042654	38505930	26776947	32932372	214390696
	TOTAL	87876573	103775557	146302543	121367434	74380133	109765730	643467970

In view of the above detailed facts, as well as upon analysis and examination of the seized as well as impounded material, I the undersigned being the jurisdictional assessing officer of Sh. Sushen Mohan Gupta & others (SMG Group) is satisfied that the seized documents (Annexures A-I to A-23) as well as in impounded documents (Annexures A-I to A-3 & A-S) do not pertain to and the information contained therein, do not relate to Sushen Mohan Gupta Group of cases (being persons searched). No ownership of the aforesaid said seized as well as impounded documents, has been claimed by any assessee in the case of Sushen Mohan Gupta & Group cases. A satisfaction in this regard has been recorded in the assessment records and is placed in the file of Sh. Sushen Mohan Gupta (being the lead case of Sushen Mohan Gupta & group) for AY 2020-21.

Also, the relevant Survey Folder (including their annexures) as well as the above referred statements of various employees of M/s Blue Ocean Travels Private Limited (PAN: AACCB3915C) have been perused and have been considered before drawing the above satisfaction that the seized/impounded documents/digital material did not pertain to and the

information contained therein did not relate to the person searched (i.e. Sushen Mohan Gupta & Group)."

18. Further we observed that the satisfaction recorded under section 153C is recorded without there being any reference to any specific assessment year and most of the informations were based on survey proceedings carried out in the case of the assessee. Further there is no reference to any seized material which may have bearing on the determination of total income of the assessee relevant assessment year-wise. The statutory requirement requires the Assessing Officer to record the satisfaction based on the particular seized material considered as incriminating material and records satisfaction having bearing on the other person as well as relating to relevant assessment year for the purpose of revision of income of the relevant assessment years.
19. Hon'ble Supreme Court in the case of CIT-III vs. Sinhgad Technical Education Society 2017 (8) TMI 1298 held as under :-

"62. Hypothetically speaking, it may be possible for the material recovered in the course of a search having the potential or the probability of constituting incriminating material for more than one assessment year. However, even if such a situation were assumed to arise, it would be incumbent upon the AO to duly record reasons in support of such a conclusion. The Satisfaction Notes would thus have to evidence a formation of opinion that the material is likely to be incriminating for more than a singular assessment year and thus warranting the drawl of Section 153C proceedings for years in addition to those to which the material may be directly relatable.

63. *On an overall consideration of the structure of Sections 153A and 153C, we thus find that a reopening or abatement would be triggered only upon the discovery of material which is likely to “have a bearing on the determination of the total income” and would have to be examined bearing in mind the AYs’ which are likely to be impacted. It would thus be incorrect to either interpret or construe Section 153C as envisaging incriminating material pertaining to a particular AY having a cascading effect and which would warrant a mechanical and inevitable assessment or reassessment for the entire block of the “relevant assessment year”.*

64. *In our considered view, abatement of the six AYs’ or the “relevant assessment year” under Section 153C would follow the formation of opinion and satisfaction being reached that the material received is likely to impact the computation of income for a particular AY or AYs’ that may form part of the block of ten AYs’. Abatement would be triggered by the formation of that opinion rather than the other way around. This, in light of the discernibly distinguishable statutory regime underlying Sections 153A and 153C as explained above. While in the case of the former, a notice would inevitably be issued the moment a search is undertaken or documents requisitioned, whereas in the case of the latter, the proceedings would be liable to be commenced only upon the AO having formed the opinion that the material gathered is likely to inculcate the assessee. While in the case of a Section 153A assessment, the issue of whether additions are liable to be made based upon the material recovered is an aspect which would merit consideration in the course of the assessment proceedings, under Section 153C, the AO would have to be prima facie satisfied that the documents, data or asset recovered is likely to “have a bearing on the determination of the total income”. It is only once an opinion in that regard is formed that the AO would be legally justified in issuing a notice under that provision and which in turn would culminate in the abatement of pending assessments or reassessments as the case may be.*

65. We would thus recognize the flow of events contemplated under Section 153C being firstly the receipt of books, accounts, documents or assets by the jurisdictional AO, an evaluation and examination of their contents and an assessment of the potential impact that they may have on the total income for the six AYs' immediately preceding the AY pertaining to the year of search and the "relevant assessment year". It is only once the AO of the non-searched entity is satisfied that the material coming into its possession is likely to "have a bearing on the determination of the total income" that a notice under Section 153C would be issued. Abatement would thus be a necessary corollary of that notice. However, both the issuance of notice as well as abatement would have to necessarily be preceded by the satisfaction spoken of above being reached by the jurisdictional AO of the non-searched entity.

66. Therefore, and in our opinion, abatement of the six AYs' or the "relevant assessment year" would follow the formation of that opinion and satisfaction in that respect being reached.

67. On an overall consideration of the aforesaid, we come to the firm conclusion that the "incriminating material" which is spoken of would have to be identified with respect to the AY to which it relates or may be likely to impact before the initiation of proceedings under Section 153C of the Act. A material, document or asset recovered in the course of a search or on the basis of a requisition made would justify abatement of only those pending assessments or reopening of such concluded assessments to which alone it relates or is likely to have a bearing on the estimation of income. The mere existence of a power to assess or reassess the six AYs' immediately preceding the AY corresponding to the year of search or the "relevant assessment year" would not justify a sweeping or indiscriminate invocation of Section 153C.

68. The jurisdictional AO would have to firstly be satisfied that the material received is likely to have a bearing on or impact the total income of years or years which may form part of the block of six or ten AYs' and thereafter proceed to place

the assessee on notice under Section 153C. The power to undertake such an assessment would stand confined to those years to which the material may relate or is likely to influence. Absent any material that may either cast a doubt on the estimation of total income for a particular year or years, the AO would not be justified in invoking its powers conferred by Section 153C. It would only be consequent to such satisfaction being reached that a notice would be liable to be issued and thus resulting in the abatement of pending proceedings and reopening of concluded assessments.

69. When tested in light of the aforesaid principles, we find that except for a few exceptions which were noticed in the introductory parts of this judgment, the writ petitions forming part of this batch, impugn the invocation of Section 153C in respect of AYs' for which no incriminating material had been gathered or obtained. **The Satisfaction Notes also fail to record any reasons as to how the material discovered and pertaining to a particular AY is likely to "have a bearing on the determination of the total income" for the year which is sought to be abated or reopened in terms of the impugned notices.** The respondents have erroneously proceeded on the assumption that the moment any material is recovered in the course of a search or on the basis of a requisition made, they become empowered in law to assess or reassess all the six AYs' years immediately preceding the assessment correlatable to the search year or the "relevant assessment year" as defined in terms of Explanation 1 of Section 153A. The said approach is clearly unsustainable and contrary to the consistent line struck by the precedents noticed above."

20. Similarly, the Hon'ble Delhi High Court while considering the similar issue in the case of Saksham Commodities Ltd. vs. ITO 2024 (4) TMI 461, relying on the decision of Sinhgad Technical Education Society (supra), decided the issue in favour of the assessee by observing as under :-

“53. Sinhgad Technical Education Society also constitutes a binding precedent in respect of the aforesaid proposition as would be evident from the Supreme Court noticing that the material disclosed pertained only to AY 2004-05 or thereafter and that consequently the Section 153C action initiated for AYs’ 2000-01 to 2003-04 would not sustain. It was this position in law as enunciated in that decision which came to be reiterated by our Court in Index Securities.”

21. From the above, it is clear that the Assessing Officer has to record the satisfaction note relevant to each assessment years considered for revision purpose. Respectfully following the above decisions, we are inclined to decide the issue in favour of the assessee holding that Assessing Officer has not recorded the satisfaction as per rule of law cited by Hon’ble Supreme Court and Hon’ble jurisdictional High Court. Accordingly, the assessments made in AYs 2016-17 to 2020-21 are quashed and decided in favour of the assessee.
22. Since we have decided jurisdictional issue, other grounds raised on merits by the assessee are not adjudicated at this stage.
23. In the result, all the appeals filed by the assessee relevant to AYs 2014-15 to 2020-21 are allowed.

Order pronounced in the open court on this 4th day of December, 2024.

**Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

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

**Dated : 04.12.2024
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-26, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI