

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.1239/Del/2024
निर्धारणवर्ष/Assessment Year: 2021-22

Arti Dhall H.No.71, Shivaji Park, New Delhi. PAN No.AAJPG3892P	बनाम Vs.	DCIT Central Circle-31, 3 rd Floor, ARA Centre, Jhandewalan Extension, New Delhi.
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

Assessee by	CA Suresh Kumar Gupta
Revenue by	Mr. Javed Akhtar, CIT DR

सुनवाईकीतारीख/ Date of hearing:	09.01.2025
उद्घोषणाकीतारीख/Pronouncement on	28.01.2025

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the Assessee against the order of the Ld. CIT(Appeals)-30, New Delhi dated 29.01.2024 for the AY 2021-22 arising out of the assessment order passed u/s 143(3) and in sustaining the addition made towards long term capital gain u/s 45 of the I.T. Act. The assessee has raised the following grounds of appeal: -

1. "That the Ld. CIT(A) erred in upholding the action of the Ld. Assessing Officer solely on the basis of assessment

order of Ld. AO without considering the facts, case laws and submissions made during the course of CIT(A) proceedings and without providing any opportunity of being heard, which is in gross violation of principles of natural justice.

2. *That the Ld. CIT(A) erred in upholding the action of the Ld. Assessing Officer in making the impugned addition of Rs.2,46,47,879/- solely on the basis of mere conjectures, suspicion and surmises, without having any corroborative/independent evidences.*
3. *That the Ld. CIT(A) has erred in law and in facts to confirm action of the AO on the basis of loose piece of paper which was seized during the search and seizure operations on third party.*
4. *That the assessee prays permission to add, delete or amend one or more grounds of appeal.”*

2. The Ld. Counsel for the assessee further submits that assessee has filed additional legal grounds of appeal with a prayer to admit the additional ground which is in respect of the validity of assessment made u/s 143(3) of the Act. Ld. Counsel for the assessee submits that since the assessee in her additional ground challenges the very validity of assessment made u/s 143(3) as *void ab initio* the legal ground be admitted and adjudicated upon. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of National Thermal Power Ltd. Vs. CIT (229 ITR 383) and Jute Corporation of India Ltd. Vs. CIT (187 ITR 688).

3. Heard rival contentions. The assessee has raised the following additional ground:

“The impugned order of assessment u/s 143(3) of I.T. Act is not valid in law as the same has been passed in complete defiance of the provisions of sec. 153C of the Act as the assessment order has been passed taking adverse view of the material found in the course of search on the third person and the assessment year under consideration was not the year of search in view of the proviso to sec. 153C(1) of the IT Act and the assessment was not an abated assessment.”

By way of the above additional ground the assessee is challenging the very validity of the assessment made u/s 143(3) of the Act. The assessee’s contention is that since the assessment was made pursuant to search and based on materials found in the course of search, the assessment in the case of the Assessee being the person other than the searched person should have been made u/s 153C of the Act instead of regular assessment u/s 143(3) and therefore the assessment made u/s 143(3) is *void ab initio*.

4. The additional ground raised by the assessee is purely a legal ground and going to the very validity of the assessment made u/s 143(3) of the Act and thus, respectfully following the decision of the Hon’ble Supreme Court in the cases of NTPC Vs. CIT and Jute Corporation of India Ltd. Vs. CIT (supra) the additional ground filed by the assessee is admitted.

5. The Ld. Counsel for the assessee submits that in the present case, a search and seizure operation u/s 132 was carried out at the premises of Hans Group on 06.01.2021 during which certain Whats App chat pertaining to the appellant was found. The Assessing Officer, in the present cases, is the same as in the case of the person searched which fact is evident from the satisfaction notes which have been framed by him both as the AO of the person searched and that of the other person i.e. the appellant is the same. It is submitted that based on the above satisfaction note, the AO was inclined to reopen the assessment for seven AY's i.e. AY 2015-16 to AY 2021-22. But having done so, the Ld AO, despite recording a satisfaction u/s 153C, opted to proceed with the assessment in the present case for AY 2021-22 u/s 143(3) of the Act. The reason may be that the AO was under incorrect impression that since the year under consideration is search year in the case of the searched person, the assessment in the case of other person i.e. the Assessee need be completed u/s 143(3) of IT Act.

6. The Ld. Counsel submitted that it is a settled law that when provisions of proviso to section 153C are applied, then date of search/ year of search, for the purpose of above section, is substituted by date of handing over of the documents by the

Assessing Officer of the person searched to the Assessing Officer of the other person (present assessee). These dates i.e. 09.09.2022 or 27.09.2022 are the dates when the satisfaction by the AO as both the AO of the person searched and that of the other person were recorded and therefore, these dates are relevant for determining the date of handing over the document to the AO for determining the year of search as per first proviso to section 153C. It is submitted that based on these facts, the assessment year 2023-24 relevant to FY 2022-23 is the year of search and in view of the provisions of section 153C of the Act having regard to first proviso thereof, the AO was required to complete assessment for six assessments year prior to the year of search i.e. AY 2023-24 u/s 153C for AY 2017-18 to AY 2022- 23.

7. It is further submitted that on the above analogy, the assessment for AY 2021-22 would fall in the block period in view of the first proviso to section 153C of the Act. If that be the case, which is the correct position of law, such assessment was required to be completed u/s 153C of the Act after complying with the requirements of the said section. The AO was needed to record necessary satisfaction u/s 153C of the Act and thereafter, to issue a notice u/s 153C calling the assessee to file return of income after

considering the impact of the material found in the case of the person searched. It is submitted that in the present case although the AO has recorded separate satisfaction u/s 153C of the Act but the AO failed to issue a notice u/s 153C of the Act without which assessment u/s 153C could not be completed and has not been completed. In view of above, it is submitted that the assessment completed u/s 143(3) of the Act is in defiance of the provisions of section 153C of the Act ignoring the fact that the provisions of section 153A/ 153C is a complete code in itself. Reliance was placed on the decision of the Delhi High Court in the case of Pr. CIT & Anrs vs. Ojjus Medicare P. Ltd. & Ors in ITA No.52/2024 dated 03.04.2024 and also the decision in the case of M.D. Overseas P. Ltd. vs. Dy. CIT W.P. (C) 3092/2023 (Del.).

8. The Ld. Counsel further submits that taking cue from the above decision of Hon'ble Jurisdictional Delhi High Court and also on the decision of ITO vs Vikram Sujit Kumar Bhatia 453 ITR 417 (SC), CIT vs Jasjit Singh CA No.6566 of 2023 (SC) dated 26.09.2023, CIT vs RRJ Securities Ltd 380 ITR 612 (Del) and SSP Aviation vs DCIT 346 ITR 177 (Del), the legal proposition emerging is that relevant AY's for the purpose of issue of notice u/s 153C will be counted backward taking the assessment year of the search under proviso to sec 153C

as the starting point. If period of six years computed from AY 2022-23 being the year of search as per proviso to sec 153C(1), the present assessment year i.e. AY 2021-22 will fall in the block assessment year for which assessment is required to be completed on the basis of material found in the case of searched person by taking recourse to section 153C of IT Act despite recording satisfaction as per requirement of 153C but without issuing notice to invoke provision of sec 153C of IT Act.

9. It is further submitted that the present issue was identically covered in the decision of Santosh Hospital P Ltd vs DCIT ITA No.282/Del/2020 dated 03.08.2022 and also the decision of the coordinating bench in the case of Mukul Rani Thakur ITA No. 1483/Del 2024 dated 20.11.2024 which pertains to assessment u/s 143(3) for the same assessment year i.e. 2021-22 and based on the material and search involved in the present case. Copy of the order enclosed.

10. Therefore, Ld. Counsel submits that it is not in dispute in view of facts stated above, that assessment under appeal has been framed under incorrect provision of law i.e. 143(3) instead of the same mandated under law to be completed u/s 153C only. It is submitted that the judicial courts have dealt the issue of assessment

completed under incorrect section in favor of assessee in the following decisions:

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

11. On the other hand, Ld. DR strongly supported the orders of the authorities below.

12. Heard rival submissions, perused the orders of the authorities below and the decisions relied on. In this case undoubtedly the addition made in the assessment order passed u/s 143(3) of the Act for the AY 2021-22 was based on the search and seizure operations conducted on Hans Group of cases on 06.01.2021, wherein the mobile phone of Shir Vaibhav Jain was seized and based on the watts app chats on 01.12.2020 in the mobile phone of Shri Vaibhav Jain, the addition came to be made while completing the

assessment u/s 143(3) of the Act. The contention of the assessee in this appeal was that when once the assessment of the Assessee was made based on the materials seized in the case of Hans Group, such assessment should have been made u/s 153C of the Act having recorded the satisfaction note u/s 153C of the Act and not u/s 143(3) of the Act as was done by the Assessing Officer.

13. On perusal of the decision of the Tribunal in the case of Mukul Rani Thakur Vs. DCIT in ITA No.1483/Del/2024 dated 20.11.2024 we observed that on identical facts and in same search of Hans Group on 06.01.2021 the Assessing Officer completed the assessment u/s 143(3) of the Act having recorded the satisfaction note u/s 153C of the Act for the assessment years 2015-16 to 2021-22. The Assessing Officer, however, for the AY 2021-22 proceeded to complete the regular assessment u/s 143(3) by issue of notice u/s 143(2) of the Act. In the circumstances, the Tribunal held that while search in the instant case was carried on in Hans Group on 06.01.2021 i.e. previous year relevant to the AY 2021-22 and the documents were handed over in the previous year relevant to AY 2022-23 as the date of handing over is 21.06.2021. Therefore, the Tribunal held that the assessment upto the AY 2021-22 stood covered within the ambit of

section 153C of the Act. The Tribunal in the case of Mukul Rani Thakur Vs. DCIT (supra) held as under:

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

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

ambit of [section 153C](#) of the Act erroneously based on actual date of search rather than based on date of receipts of incriminating documents. In order to frame assessment based on the searched document, the notice ought to have been issued under [section 153A](#) r.w.s. 153C of the Act.

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

14. In the case on hand undoubtedly the satisfaction note u/s 153C of the Act was recorded on 27.09.2022 which falls in the previous year 2022-23 relevant to the AY 2023-24. Therefore, having regard to the first proviso to section 153C, AY 2023-24 relevant to the FY 2022-23 would be the year of search and therefore the Assessing Officer was required to complete the assessment for six assessment years prior to year of search AY 2023-24 u/s 153C for assessment years 2017-18 to 2022-23. However, the Assessing Officer completed the assessment for AY 2021-22 u/s 143(3) which is not permissible under law. In the circumstances, we hold that the regular assessment made u/s 143(3) of the Act despite recording of satisfaction note u/s 153C from Assessing Officer of searched person and also as the AO of the person other than the searched person, is

not permissible in law. Thus, we hold that the assessment framed u/s 143(3) of the Act for AY 2021-22 is *void ab initio* and the same is hereby quashed. The additional ground raised by the assessee is allowed.

15. Since we have quashed the assessment made u/s 143(3) for the AY 2021-22 on legal ground, the other regular grounds raised by the assessee on merits are not adjudicated since they become only academic in nature at this stage.

16. In the result, appeal of the Assessee is partly allowed as indicated above.

Order pronounced in the open court on 28/01/2025

Sd/-
(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 28/01/2025

*Kavita Arora, Sr. P.S.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi