

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No. 1927/Del/2024
(Assessment Year: 2021-22)

Sanjeev Gupta, A-6, Shambhu Nagar, Baghpat Road, Meerut, Uttar Pradesh- 250002 (Appellant) PAN:AARPG1008R	Vs. DCIT, Central Circle, Meerut
	(Respondent)

Assessee by : Shri Ved Jain, Adv
Shri Aman Garg, Adv

Revenue by: Ms. Jaya Chaudhary, CIT DR

Date of Hearing 13/02/2025

Date of pronouncement 27/02/2025

O R D E R

PER MANISH AGARWAL, AM:

1. This appeal by the assessee is directed against the order of the Ld. Commissioner of Income Tax-(Appeals)-3 (in short 'CIT(A)'), New Delhi, Dated 06.03.2024 for to Assessment Year 2021-22.

2. The assessee has raised following grounds of appeals:-

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2 On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the action of the AO despite the fact that order passed by the AO under section 143(3) of the Act is illegal, void and non-est as the same has been passed under section 143(3) of the Act as against the specific provisions under section 153C of the Act.

3. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the action of the AO despite the fact that the assessment order passed under section 143(3) of the Act is null and void as the same has been passed in violation of CBDT Circular No. 19/2019 requiring mandatory DIN in the body of the assessment order.*

4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under section 143(3) and the assessment order passed in consequence thereto are bad in law in the absence of any incriminating material belonging to the assessee being found during the search.*

5. *On the facts and circumstances of the case, the proceedings initiated under Section 143(3) of the Act and the assessment framed under the said section is bad and liable to be quashed in the absence of any valid satisfaction being recorded by the assessing officer of the searched person as well as the assessing officer of the assessee.*

6. *On the facts and circumstances of the case, the learned AO has erred in issuing notice under section 143(3) of the Act and completing the assessment on the basis of satisfaction recorded by the assessing officer of the searched person and the assessing officer of the assessee are invalid and non-est as no Document Identification Number (DIN) has been quoted in the body of the said satisfaction notes in violation of the instructions issued by the CBDT Circular No.19/2019.*

7. *On the facts and circumstances of the case, learned CIT (A) has erred, both on facts and in law, in rejecting the contention of assessee that the proceedings initiated against the assessee and the assessment framed under section 143(3) of the Act are in violation of mandatory provisions of Section 153D of the Act and as such the same is bad in eyes of law. The purported approval u/s 153D of the Act is illegal, bad in law and also without any application of mind.*

8. (i) *On the facts and circumstances of the case, learned CIT (A) has erred, both on facts and in law, in confirming the addition of Rs. 78,75,000/- on account of interest received on the allegedly cash investment made with M/s. Gulshan Homes & Infrastructure Private Limited.*

(ii) *That the abovesaid addition has been confirmed without there being any corroborative evidence against the assessee with the AO that the assessee has made such investment and received such interest*

(iii) *That the abovesaid addition has been confirmed by arbitrarily rejecting the detailed submissions and explanations brought on record by the assessee in this regard.*

On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the abovesaid addition despite the fact that the same has been made by the AO on the basis of image extracted from whatsapp chats seized during the course of search on third persons, are not related to the assessee and thus having no evidentiary value.

10. The appellant craves leave to add, amend or alter any of the grounds of appeal."

3. Brief facts of the case:- The assessee is an individual and filed his return of income on 26-11-2021 declaring total income of Rs.3,91,97,160/-. A search and seizure action was carried out on 06.01.2021 in the cases of Praveen Jain of Hans Group. As per AO during the course of search certain transactions of the assessee with Shri Praveen Jain were found in the WhatsApp chat in the mobile of Shri Praveen Jain. As per these chats, assessee has made unexplained investment in cash in property and received interest on cash investment which were not disclosed by the assessee. Then proceedings u/s 153C were initiated in the case of assessee after recording satisfaction by the AO of the assessee on 10-10-2022 based on the satisfaction note dt. 03-08-2022 alongwith the material supplied by the AO of person searched. Consequently, notices u/s 153C dt. 31-10-22 were served upon the assessee for A. Yrs. 2015-16 to 2020-21. For AY 2021-22, notice u/s 143(2) was issued on 30-06-2022. Thereafter a notice u/s 142(1) was issued on 13-10-2022 which was duly complied with by the assessee on 28-10-2022. After considering the replies from the assessee, assessment order was passed u/s 143(3) dt. 28.12.2022 by making addition of Rs 78,75,000/- towards undisclosed interest income.

4. In first appeal, Id. CIT(A) has dismissed the appeal of the assessee, thus the assessee is in appeal before the Tribunal.

5. Before us, in support of the ground of appeal No. 2 taken by the assessee, Id. AR submitted that the assessing officer of the person searched i.e. Dy. CIT, Central Circle-31, New Delhi based on the documents seized from the premises of Pravin Kumar Jain recorded the satisfaction proposing for the action u/s 153C in the case of the assessee. Thereafter, the satisfaction was recorded by AO of the assessee on 10/10/202 i.e. the date when he received the material alongwith the satisfaction note from the AO of the person searched. For this he drew our attention to the copy of satisfaction note dated 10.10.2022 recorded

for initiating proceedings u/s 153C of the Act which is available in the paper book page 15. The said note reads as under:

"Satisfaction Note under section 153C of the Act in the case of Shri Sanjeev Gupta, Meerut about seized assets belonging to Shri Sanjeev Gupta, the person, other than person searched (AARPG1008B)

A search and seizure operation was conducted in the case of Shri Praveen Jain on 60/01/2021 during which clone data of Praveen K Jain mobile was found and seized from the premises of at C4Z, C-Block, Preet Vihar, Delhi- 92 containing images of of whatsapp chat between Shri Praveen Jain and Vaibhav Jain having details of investment in cash and property and disclosed interest income on cash by Shri Sanjeev Gupta. On examination of seized digital data and information contained therein it is noticed that the seized digital data and information contained therein found during the course of search in the case of Shri Sanjeev Gupta. Further, on the basis of above mentioned Digital data and information contained therein, it is notice that Sanjeev Gupta has made unexplained cash transaction of ₹5,25,00,000 with Shri Gulshan Nagpal C/o. MS Gulshan Homes Private Ltd and received undisclosed interest income on aforementioned cash transactions which has bearing upon the determination of income of Shri Sanjeev Gupta. Therefore, I am satisfied that the case of Shri Sanjeev Gupta is fit for initiation of proceedings under section 153C of the Act."

6. Ld. AR further submitted that the notice u/s 143(2) for the impugned year was issued on 30.06.2022, and the assessment has completed us/ 143(3) of the Act. According to the Id. AR in terms of the provisions of section 153C of the Act, block period of six assessment years has to be reckoned from the date of receipt of the documents by the AO of the assessee from the AO of the person searched. In this regard, he placed reliance on the relied upon the decision of the Co-ordinate Bench of the Tribunal in following cases:

- Raja Varshney Vs. DCIT, CC-31, Delhi in ITA No. 1459/Del/2024 order dt. 26-09-24
- Tejinder Kaur Vs. ACIT CC-31, Delhi in ITA No. 936/Del/2024 order dt. 11-10-2024
- Akansha Gupta Vs. ACIT,CC-4 Delhi in ITA No. 3074/Del/2023 order dt. 10-07-2024

7. Ld. AR further submitted that in the case of Akansha Gupta (supra) the facts are identical as in that case also proceedings u/s 153C were initiated based on the documents found and seized during the course of search conducted in the

case of Praveen Jain and others. The assessment was also done u/s 143(3) of for AY 2021-22 when the proceedings were initiated u/s 153C in AY 2022-23 based on the material supplied by the Id AO in case of person searched. Ld. AR thus submitted that in the instant case, for making the assessments u/s 153C of the Act, the period of six years immediately preceding the assessment year relevant for the previous year, in which search was conducted has to be reckoned from the date of receipt of the documents by the AO of the assessee which in the present case is 10-10-2022 and accordingly, assessment years relevant for the previous year in which search was conducted is AY 2023-24 and the six assessment years immediately preceding the assessment year, relevant for the previous year in which search was conducted must be from AY 2017-18 to 2022-2023, where notices u/s 153C could be issued. Therefore, for the impugned assessment year, the assessment proceedings should have been initiated u/s 153C of the Act by way of issuance of notice u/s 153C of the Act on or after 10-10-2022 when the satisfaction was recorded by the AO of the assessee after receiving the seized material and the proceedings already commenced by virtue of notice u/s 143(2) dt. 30-6-2022 must be abated. Accordingly, he prayed that the assessment framed u/s 143(3) for AY 2021-22 deserves to be quashed.

8. Per contra, Id. CIT DR vehemently supported the order of lower authorities.

9. We have heard the parties. On careful consideration of the facts we find that in the instant case the assessment for AY 2021-22 was completed u/s 143(3) of the Act. The proceedings for AY 2015-16 to 2020-21 were initiated u/s 153C of the Act vide notices served on 31-10-22 after recording satisfaction on the material found and seized from the possession of Praveen Jain group which was received by the AO of the assessee on 10-10-2022. Under similar circumstances, the coordinate bench of Tribunal in the case of Akansha Gupta (supra) has held the order passed u/s 143(3) as bad in law. The relevant observations of the tribunal are as under:

"8.1. On perusal of the satisfaction note, it is seen that the same was recorded on 30.06.2022 by the AO after giving a finding that the clone data of Pravin Kumar Jain's Mobile marked as Annexure-5 belongs to the assessee, which has bearing on the determination of total income of the assessee for the relevant assessment years referred to in sub section-1 of section 153A of the Act and it was a fit case for initiating proceedings in the case of the assessee for AY 2015-16 to 2020-21 u/s 153C of the Act and for AY 2021-22 u/s 143(2) of the Act. Thereafter, he issued a notice u/s 143(2) on 30.06.2022 for AY 2021-22. On similar facts, the Coordinate Bench of the Tribunal in the case of Jasjit Singh(supra) referred to the decision in the case of Co-ordinate Bench in the case of V.K. Fiscal Services Pvt. Ltd. ITA Nos.5460 to 5465/Del/2012, wherein, it was held 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. The findings of the Tribunal in the case of Jasjit Singh (supra) in para-15 to para -20 is reproduced 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/s132 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 sub-section (1) of section 153A. That section 153(1) and its first and second provisions read as under: -

"153A. [(1)] Notwithstanding anything contained in section139, section 147, section 148, section149, 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 afterthe 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 [sub-section] 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 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 along with 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 AO can issue the notice for the previous year in which search is conducted (for the purpose of Section 153C 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:

<i>Previous Year</i>	<i>Assessment Year</i>
<i>1.4.2009 to 31.3.2010</i>	<i>2010-11</i>
<i>1.4.2008 to 31.3.2009</i>	<i>2009-10</i>
<i>1.4.2007 to 31.3.2008</i>	<i>2008-09</i>
<i>1.4.2006 to 31.3.2007</i>	<i>2007-08</i>
<i>1.4.2005 to 31.3.2006</i>	<i>2006-07</i>
<i>1.4.2004 to 31.3.2005</i>	<i>2005-06</i>

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/s153C 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, i.e., 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 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 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."

9. Therefore, in view of the above decision, the date of recording of the satisfaction will be the deemed date for the possession of the seized documents, which is 30.06.2022 in the present case and the date of search and six years period would be reckoned from this date i.e. 30.06.2022. Therefore, there is merit in the submission of the assessee 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 the six assessment years immediately preceding the assessment year relevant for the previous year in which search was conducted for initiating proceeding u/s 153C of the Act will be AY 2018-19 to 2022-23. Therefore, respectfully following the decision of the cited case, it is held that in the present case, 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 as done by the AO in this case. No other contrary facts or decision was brought on record by the Ld. DR Therefore, it is held that the assessment order dated

29.12.2022 passed u/s 143(3) of the Act by the issuance of notice u/s 143(2) of the Act dated 30.06.2022 is bad in law and hence the notice u/s 143(2) of the Act, dated 30.06.2022 and the consequent assessment order dated 29.12.2022 passed u/s 143(3) of the Act are hereby quashed. The additional grounds filed by the assessee are allowed."

10. Since the facts of the case of the assessee are identical to the aforesaid case of Aakansha Gupta, as in the case of the assessee also the satisfaction note for initiating the proceedings u/s 153C were recorded by the AO of the assessee on 10-10-2-2022 thus assessment year relevant for previous year in which search was conducted in the case of the assessee should be the Assessment Year AY 2023-24 and the six assessment years immediately preceding the assessment year relevant for the previous year in which search was conducted for initiating proceeding u/s 153C of the Act will be AY 2017-18 to 2022-23 and the impugned year i.e. AY 2021-22 is fallen in such block period thus the assessment should have been completed u/s 153C and not u/s 143(3) as has been done in the present case. In view of this discussion and by respectfully following the judgement of referred and also in the case of Jasjit Singh Vs. ACIT reported in 2014 (11) TMI 1012 which has been affirmed by the Hon'ble jurisdictional high court as reported in 2015(8) TMI 982, the assessment order passed u/s 143(3) dt. 28.12.22 is hereby quashed.

11. As we have allowed the assessee's legal ground regarding the legality of the order passed u/s 143(3) thus all the other grounds of appeal become academic and thus not adjudicated.

12. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 27/02/2025.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Dated:27/02/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi