आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' SM- B' Bench, Hyderabad

Before Shri Vijay Pal Rao, Vice-President
A N D
Shri Manjunatha, G. Accountant Member

Appeal in ITA No.	**Appellant**	**Respondent**	**A.Y**
929/Hyd/2018	Amsri Builders (P) Ltd Hyderabad PAN: AAECA2834R	Dy.CIT Central Circle 1(2) Hyderabad	2009-10
932/Hyd/2018	Amsri Infra Projects (P) Ltd, Secunderabad PAN:AAGCA0788A	- Do -	2009-10
1104/Hyd/2018	JCIT (OSD) Central Circle 1(2) Hyderabad	Amsri Builders (P) Ltd, Hyderabad PAN: AAECA2834R	2009-10
1107/Hyd/2018	-do-	Amsri Infra Projects (P) Ltd, Secunderabad PAN:AAGCA0788A	2009-10

(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri K.C. Devdas, CA	
राजस्व द्वारा/Revenue by::	Shri L.V Bhaskar Reddy, CIT(DR)	
सुनवाई की तारीख/Date of hearing:	28/01/2025	
घोषणा की तारीख/Pronouncement:	24/04/2025	

आदेश/ORDER

Per Vijay Pal Rao, Vice President

These two sets of cross appeals(4 appeals) filed by two assessees as well as the Revenue are directed against the 2 separate orders dated 12/10/2018 and 5/1/2018 respectively of the learned CIT (A)-11 Hyderabad, for the A.Y.2009-10.

2. The assessees and Revenue have raised the following grounds of appeal:

ITA No.929/Hyd/2018 – Assessee

"1. The order of the Hon'ble CIT(A) is erroneous in law as well as facts of the case.

2. The Hon'ble CIT(A) ought to have held that the assessing officer erred in initiation of proceedings u/s.153C of the IT Act without having any material on record.

3. The Hon'ble CIT(A) ought to have observed that the assessing officer erred in arriving at the conclusion that income chargeable to tax has escaped assessment within the meaning of section 153C of the IT Act without any material on record and therefore the assessment order u/s 153C ought to have been held as invalid.

4. The Hon'ble CIT(A) ought to have observed that as the assessing officer accepted that there was no scope for invoking the provisions of section 2(47)(v) of the IT Act which was the ground for initiation of action u/s.153C of the IT Act), ought to have dropped the proceedings initiated u/s.153C of the IT Act.

5. The Hon'ble CIT(A) ought not to have upheld the action of the assessing officer by sustaining the disallowance to the extent of 50% in respect of interest expenditure of Rs.3,21,67,2 76/- as the disallowance made was illegal and improper.

6. The Hon'ble CIT(A) ought to have observed that the assessing officer erred in disallowing interest of Rs.2,95,510/- by invoking provision of section 37(1) of the IT Act and therefore ought not to have upheld the addition to the extent of 50%.

7. The Hon'ble CIT(A) ought to have observed that in the facts and circumstances of the case, the action of the assessing officer in disallowing expenditure of Rs.22,29,654/- was improper and erroneous and hence ought to have deleted the 50% disallowance made by the assessing officer.

8. In summary, the Hon'ble CIT(A) ought not to have upheld the disallowance made by the assessing officer with regard to work-in-progress, interest payment etc. to the extent of 50% as there was no supporting material on record for upholding the disallowance.

9. Any other ground will be raised at the time of hearing."

ITA No 932/Hyd/2018 – Assessee

"1. The order of the Hon'ble CIT(A) is erroneous in law as well as facts of the case.

2. The Hon'ble CIT(A) ought to have held that the assessing officer erred in initiation of proceedings u/s.153C of the IT Act without having any material on record.

3. The Hon'ble CIT(A) ought to have observed that the assessing officer erred in arriving at the conclusion that income chargeable to tax has escaped assessment within the meaning of Section 153C of the IT Act without any material on record and therefore the assessment order u/s.153Cought to have been held as invalid.

4. The Hon'ble CIT(A) ought to have observed that as the assessing officer accepted that there was no scope for invoking the provisions of section 2(47)(v) of the IT Act which was the ground for initiation of action u/s.153C of the IT Act), ought to have dropped the proceedings initiated u/s.153C of the IT Act.

5. The Hon'ble CIT(A) ought not to have upheld the action of the assessing officer by sustaining the disallowance to the extent of 50% in respect of interest expenditure of Rs.4,06,08,847/- as the disallowance made was illegal and improper.

6. The Hon'ble CIT(A) ought to have observed that the assessing officer erred in disallowing interest of Rs.91,288/- by invoking provision of section 37(1) of the IT Act and therefore ought not to have upheld the addition to the extent of 50%.

7. The Hon'ble CIT(A) ought to have observed that in the facts and circumstances of the case, the action of the assessing officer in disallowing expenditure of Rs.19,50,548/-was improper and erroneous and hence ought to have deleted the 50% disallowance made by the assessing officer.

8. In summary, the Hon'ble CIT(A) ought not to have upheld the disallowance made by the assessing officer with regard to work-in-progress, interest payment etc. to the extent of 50% as there was no supporting material on record for upholding the disallowance.

9. Any other ground will be raised at the time of hearing."

ITA 1104/Hyd/2018 – Revenue

i) Whether on the facts and circumstances of the case and in law, the learned CIT(A) is justifying in holding that there is no benefit accruing to the assessee in terms of section 28(iv)?

ii) Whether on the facts and circumstances of the case and in law, the learned CIT(A) is justified in holding that the entitlement on signing the JDA cannot be said to "benefit" arising to the assessee?

iii) Whether on the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate in order that income may accrue to a person, it is necessary that a right to receive the same is vested, though its valuation is postponed or its materialization depends on contingency.

iv) Whether on the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate that the right to receive the entitlement of JDA becomes receivable at the moment the JDA is executed.

v) Whether in facts and circumstances, the CIT(A) failed to appreciate that the on execution of agreement the assessee has received upfront payment of Rs. 20.00 cores in garb of advance which is still unpaid is nothing but the benefit within the meaning section 28(iv)?

vi) Whether in facts and circumstances, the CIT(A) failed to appreciate that whether a receipt of money is taxable or not or whether certain deductions from that receipts are permissible in law or not, the question has to be decided according to the principles of law and not in accordance with accountancy practice.

vii) Whether on the facts and circumstances and in law, the learned CIT(A) justified in restricting the disallowance of interest attributable to diversion of interest bearing fund to so% without going into the merits of the case or without giving any cogent reasons for the same?

viii) Whether on the facts and circumstances and in law, the learned CIT(A) failed to appreciate that the AO has quantified the interest as per the information available on record leaving no scope for ad-hoc disallowance @ 50% as suggested by the ld. CIT(A).

ix) Any other ground that may be urged at the time of hearing."

ITA No.1107/Hyd/2018 - Revenue

i) Whether on the facts and circumstances of the case and in law, the learned CIT(A) is justified in holding that there is no benefit accruing to the assessee in terms of section 28(iv)?

ii) Whether on the facts and circumstances of the case and in law, the learned CIT(A) is justified in holding that the entitlement on signing the JDA cannot be said to be a "benefit" arising to the assessee?

iii) Whether on the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate in order that income may accrue to a person, it is necessary that a right to receive the same is vested, though its valuation is postponed or its materialization depends on contingency.

iv) Whether on the facts and circumstances of the case and in law, the learned CIT (A) failed to appreciate that the right to receive the entitlement of JDA becomes receivable at the moment the JDA is executed.

v) Whether in facts and circumstances, the CIT(A) failed to appreciate that the on execution agreement the assessee has received upfront payment of Rs. 20.00 cores in garb of advance which is still unpaid is nothing but the benefit within the meaning section 28(iv)?

vi) Whether in facts and circumstances, the CIT(A) failed to appreciate that whether a receipt of money is taxable or not or whether certain deductions from that receipts are permissible in law or not, the question has to be decided according to the principles of law and not in accordance with accountancy practice.

vii) Whether on the facts and circumstances and in law, the learned CIT(A) justified in restricting disallowance of interest attributable to diversion of interest bearing fund to so without going it merits of the case or without giving any cogent reasons for the same?

viii) Whether on the facts and circumstances and in law, the learned CIT(A) failed to appreciate that the A0 has quantified the interest as per the information available on record leaving no scope for disallowance @ 50% as suggested by the ld. CIT(A).

ix) The appellant craves leave to amend or alter any ground or add any other grounds which be necessary."

3. As identical grounds have been raised by both the assessee as well as the Revenue, and therefore, for recording the facts, the appeal in ITA No.929/Hyd/2018 and Cross Appeal in ITA No.1104/Hyd/2018 are taken as lead matters. The assessee company is engaged in the business of development, construction and real estate activities. The assessee filed its original return of income for the year under consideration on 09/02/2010 declaring 'Nil' income as all the expenses incurred were capitalized and shown in the work-ion-progress. A search & seizure operation was conducted in the case of M/s. Amsri Builders and its partners on 27/12/2013 wherein certain incriminating material pertaining to the assessee was stated to be found. The Assessing Officer initiated the proceedings u/s 153C of the Act and completed the assessment for the year under consideration on 12/09/2016 whereby the Assessing Officer made the following additions:

A) Rs.6,87,31,937/- as business income in pursuant to the JDA dated 19/04/2008 entered into by the assessee, its group concern with the co-developer.

B) Rs.3,21,67,276/- on account of disallowance of interest on account of interest free advances given to the sister concern.

C) Rs.2,95,510/- on account of disallowance of interest of TDS

D) Rs.22,29,654/- on account of disallowances of site expenses.

4. The assessee challenged the action of the Assessing Officer before the learned CIT (A) who has deleted the additions made by the Assessing Officer in pursuant to the Joint Development Agreement (JDA) entered into by the assessee and

its group concern but, confirmed the other disallowances made by the Assessing Officer either in full or partly. Therefore, both the assessee as well as the Revenue have filed cross appeals.

5. The assessee has challenged the initiation of the proceedings u/s 153C of the I.T. Act, 1961 in Ground Nos.1 to 3 as without jurisdiction and in the absence of any incriminating material having a bearing on the income for the year under consideration.

5.1 The learned AR of the assessee has submitted that the proceedings u/s 153C were initiated by the Assessing Officer without recording a valid satisfaction u/s 153C of the Act and therefore, the initiation of proceedings u/s 153C of the Act as well as framing of the assessment u/s 153C is not valid and liable to be quashed. The Assessing Officer has not specified the incriminating material found during the course of search and belonging to the assessee having a bearing on the assessment of a particular A.Y. or more than one particular A.Y. Whatever documents found during the course of search & seizure action are already part of the books of account of the assessee and therefore, the JDA and supplementary agreements entered into between the assessee and other co-developers cannot be held as incriminating material. The learned AR has submitted that the only document which is referred by the Assessing Officer in the assessment for the year under consideration is the JDA dated 19th April, 2008 which cannot be considered as incriminating material as the assessee has already recorded the transaction pertaining to the land to be developed under the JDA in the books of account as

stock-in-trade and work-in-progress. The Assessing Officer has not disputed that under the JDA, refundable security was received by the assessee and the other co-developer which cannot be treated as income of the assessee until and unless the stock-in-trade reported by the assessee is sold. The amount received under the development agreement as refundable security was duly recorded in the books of account and the same is evident from the balance sheet of the assessee. This fact is also not disputed by the Assessing Officer. Thus, the learned AR has submitted that once all the transactions are already recorded in the books of account of the assessee then the A.Y 2009-10 not pending on the date of recording the satisfaction cannot be re-assessed in the absence of any incriminating material disclosing an undisclosed income for the year under consideration. In the satisfaction recorded by the Assessing Officer, there is no direct or indirect co-relation or linkage mentioned between about the incriminating material and the income escaped the assessment for any of the A.Ys including the A.Y under consideration. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court in the case of *CIT vs. Singhad Technical Education Society, reported in 397 ITR 344* as well as the judgment of the Hon'ble Delhi High Court in the case of *Saksham Commodities Ltd vs. Income Tax Officer reported in 464 ITR 1 (Del.)* and submitted that the Assessing Officer has failed to show as to how the determination of income of a particular A.Y would be effected by the seized material. Thus, the learned AR has submitted that in the absence of any linkage between the seized material and the amount of income assessable to tax has escaped the assessment for each year, the satisfaction recorded by the

Assessing Officer is not valid and therefore, the Assessing Officer has not satisfied the jurisdictional requirement of initiating proceedings u/s 153C of the Act. Hence, he has pointed out that in the absence of valid satisfaction recorded by the Assessing Officer, the initiation of proceedings u/s 153C as well as framing of assessment for the year under consideration is invalid and liable to be quashed.

6. On the other hand, the learned DR has submitted that during the course of search operation in case of M/s. Amsri Builders and its partners, certain incriminating material relating to the JDA was seized. The Assessing Officer has recorded the satisfaction u/s 153C of the Act before issuing notice u/s 153C of the Act. The learned CIT (A) has considered this issue and decided against the assessee in para 4.2 of the order. The learned DR has further submitted that as per the books of account of the assessee, it is clear that the assessee has not undertaken any activity of development of land in pursuant to the JDA entered into between the parties. The expenditure booked towards the work-in-progress is also mainly in the nature of professional fee and therefore, the assessee failed to show that any development activity was undertaken during the year or any normal business activity was carried out by the assessee. Therefore, the amount received by the assessee to the tune of Rs.20 crore as refundable deposit from M/s. Pacifica Hyderabad Projects Developers (P) Ltd is nothing but a business income of the assessee towards transfer of stock-in-trade under the JDA. Thus, he has supported the findings of the learned CIT (A) on this issue.

7. We have considered the rival submission as well as relevant material available on record. There is no dispute that the assessee filed the original return of income for the year under consideration on 9/2/2010 declaring nil income. The Assessing Officer has noted in the assessment order that the assessee has capitalized all the expenditure and added to the work in progress. Thus, it is clear that at the time of recording the satisfaction by the Assessing Officer as on 4th August, 2015, the assessment for the year under consideration i.e. A.Y 2009-10 was not pending and consequently the same would not be considered as abated assessment. Section 153C of the I.T. Act, 1961 makes it clear that in case of the person other than the searched person, the reference to the date of initiation of search u/s 132 of the Act or making requisition u/s 132A shall be construed with reference to the date of receiving the books of account or document or assets seized or requisitioned by the Assessing Officer having jurisdiction of such other person. This is provided in the first proviso to section 153C(1) as under:

> ***"153C. Assessment of income of any other person.***
>
> *(1)Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—*
>
> *(a)any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*
>
> *(b)any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,*
>
> *a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue*

notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A :

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 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 Assessing Officer having jurisdiction over such other person :

Provided further that the Central Government may by rules30 made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated."

8. Therefore, the relevant date for considering the status of particular assessment as pending or completed for initiation of proceedings u/s 153C shall be the date on which the Assessing Officer having the jurisdiction over the person other than such person receives the seized document or material pertaining to such other person. Once the assessment for the A.Y 2009-10 was not pending at the time of recording the satisfaction by the Assessing Officer as on 4/8/2015, then in the absence of any incriminating material, the Assessing Officer cannot make any addition. Further, for initiation of proceedings u/s 153C of the Act, there should be some incriminating material found during the course of search and seizure action and the Assessing Officer

is satisfied that the documents seized or having a bearing on the determination of the total income of such other person for the relevant A.Y or years referred in section 153A(1) of the I.T. Act, 1961. The learned DR has filed a copy of the satisfaction recorded by the Assessing Officer for initiation of proceedings u/s 153C as under:

M/s. Amsri Builders Pvt. Ltd.

D.No.9-1-164, 5th floor,
Amsri Plaza, SD Road,
Secunderabad.

PAN : AAECA2834R

A.Yrs.2008-09 to 2014-15

A search and seizure operation u/s.132 was carried out in the case of M/s.Amsri Builders and its partners Shri P.Amruth Prasad and Shri U.Srinivas on 27.12.2013. On examination of the material seized and handed over by the DDIT(Inv.), certain incriminating documents pertaining to the assessee were found as under :

M/s.Amsri Builders Pvt Ltd

Annexure	Page Nos.	Seized from
A/AB/Off/PO/02	1 to 7	Office premises of Amsri Builders. Sec'bad
A/US/PO/03	1 to 54	Residence of U.Srinivas
A/US/PO/03	57 to 112	Residence of U.Srinivas
A/US/SECBAD/05	165 to 175	Residence of U.Srinivas, Mahendra Hills

The above documents pertaining to M/s.Amsri Builders Pvt Ltd found and seized during the course of search and seizure operations have bearing on the determination of total income of the assessee. Hence, I am satisfied that this is a fit case for issue of notice u/s.153C.

DCIT, CC-1(2), Hyderabad

Office : To issue notice u/s.153C for A.Yrs.2008-09 to 2013-14 and 142(1) for A.Y.2014-15.

115 153C notice issued

9. It is evident from the satisfaction recorded by the Assessing Officer that he has referred certain annexures and page Nos., the place and the person from whose possession the alleged documents were seized but the Assessing Officer has not specified as to which seized document belonging to the assessee is having a bearing on the determination of the income of the assessee for a specific A.Y or more than one A.Y. The Hon'ble Supreme Court in the case of CIT vs. Singhad Technical Education Society (Supra) has observed in para 18 and 19 as under:

> *"18. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.*
>
> *19. We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy."*

10. Thus, it is clear that the incriminating material which was seized had to pertain to the A.Y in question for which the Assessing Officer has issued notice u/s 153C and in the absence of the document which were seized have any co-relation document wise and A.Y-wise, with the income assessable to tax has escaped assessment the requirement u/s 153C of the Act is not satisfied.

11. The Hon'ble Delhi High Court in the case of Saksham Commodities Ltd vs. Income Tax Officer (Supra) has held in Paras 47, 50 to 68 as under:

> *"47. This too speaks of "relevancy" as one of the meanings one may gather where that particular expression is used. This leads us to the inevitable conclusion that the initiation of action under Section 153C would have to be founded on a formation of opinion by the jurisdictional AO that the material handed over and received pursuant to a search is likely to influence the "determination of the total income" and would be of relevancy for the purposes of assessment or reassessment.*
>
> *x.x.x.x.x.x.x.x.x.x.x.x.x.*
>
> *50. What we seek to emphasize is that merely because Section 153C confers jurisdiction upon the AO to commence an exercise of assessment or reassessment for the block of years which are mentioned in that provision, the same alone would not be sufficient to justify steps in that direction being taken, unless the incriminating material so found is likely to have an impact on the total income of a particular AY forming part of the six AYs' immediately preceding the AY pertaining to the search year or for the "relevant assessment year".*
>
> *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.

54. In any case, Abhisar Buildwell, in our considered opinion, is a decision which conclusively lays to rest any doubt that could have been possibly harboured. The Supreme Court in unequivocal terms held that absent incriminating material, the AO would not be justified in seeking to assess or reassess completed assessments. Though the aforesaid observations were rendered in the context of completed assessments, the same position would prevail when it comes to assessments which abate pursuant to the issuance of a notice under Section 153C. Here too, the AO would have to firstly identify the AYs' to which the material gathered in the course of the search may relate and consequently it would only be those assessments which would face the spectre of abatement. The additions here too would have to be based on material that may have been unearthed in the course of the search or on the basis of material requisitioned. The statute thus creates a persistent and enduring connect between the material discovered and the assessment that may be ultimately made. The provision while speaking of AYs' falling within the block of six AYs' or for that matter all

years forming part of the block of ten AYs', appears to have been put in place to cover all possible contingencies. The aforesaid provisions clearly appear to have been incorporated and made applicable both with respect to Section 153A as well as Section 153C ex abundanti cautela. Which however takes us back to what had been observed earlier, namely, the existence of the power being merely enabling as opposed to a statutory compulsion or an inevitable consequence which was advocated by the respondents.

55. Take for instance a case where the material gathered in the search is contemplated to have an adverse impact on the declarations and disclosures made by an assessee pertaining only to AYs' 2016-17 and 2017-18. What we seek to emphasize is that pending assessments for those two years could validly form subject matter of action under Section 153C and pending assessments in that respect would surely abate. However, that by itself would not be sufficient to either reopen or issue notices in respect of AYs' prior to or those falling after those two AYs' and which may otherwise fall within the maximum block period of ten years merely because the statute empowers the AO to do so. Unless the material gathered and recovered is found to have relevancy to the AY which is sought to be subjected to action under Section 153C, it would be legally impermissible for the respondents to invoke those provisions. Consequently, the AO would be bound to ascertain and identify the year to which the material recovered relates. The years which could be then subjected to action under Section 153C would have to necessarily be those in respect of which the assessment is likely to be influenced or impacted by the material discovered. Section 153C neither mandates nor envisages a mechanical or an en blanc exercise of power, or to put it differently, one which is uninformed by a consideration of the factors indicated above.

56. We also bear in mind the pertinent observations made in RRJ Securities when the Court held that merely because an article or thing may have been recovered in the course of a search would not mean that concluded assessments have to "necessarily" be reopened under Section 153C and that those assessments are not liable to be revised unless the material obtained have a bearing on the determination of the total income. This aspect was again emphasized in para 38 of RRJ Securities with the Court laying stress on the existence of material that may be reflective of undisclosed income being of vital importance. All the aforenoted judgments thus reinforce the requirement of incriminating material having an ineradicable link to the estimation of income for a particular AY.

57. It becomes pertinent to note that both Sections 153A and 153C require the assessee upon being placed on notice to furnish ROIs' for the six AYs' or the "relevant assessment year". All that the two provisions mandate is that notwithstanding the submission of those ROIs', the AO would frame one assessment order in respect of each of the years which were made subject matter of the notice and which would deal with both disclosed and undisclosed income. This too reinforces our view that Section 153C would apply only to such AYs' where the jurisdictional AO is satisfied and has incriminating material for those AYs' and which may be concerned with disclosed and undisclosed income.

58. The aforesaid position stands further fortified from a reading of the First Proviso to Section 153A and which speaks of the power of the AO to assess or reassess the total income in respect of "each assessment year". The aforesaid phraseology stands replicated in Section 153B(1)(a) which again alludes to "each assessment year" falling within the six AYs or the "relevant assessment year". The aforesaid language is then reiterated in Section 153D and which prescribes that no order of assessment or reassessment shall be passed by an AO in respect of "each assessment year" referred to in Section 153A or 153B of the Act, except with the prior approval of the Joint Commissioner. We note that once the aforesaid principles are borne in mind, there would exist no discernible distinction between abated and completed assessments. This, since in both situations, the AO would be bound to base its decision to abate or reopen on material that is likely to impact the assessment of the total income for a particular AY. In case of assessment proceedings which are ongoing on the date when the AO proceeds to draw its satisfaction and in respect of which no incriminating material has been discovered, there would exist no justification to initiate proceedings under Section 153C.

59. It would be pertinent to recall that Section 153C essentially seeks to merge ongoing assessments with a search assessment which may be triggered by the discovery of material obtained in a search and which was the statutory procedure which prevailed in terms of the provisions contained in Chapter XIV B. However, and in cases where on facts it is found that the material gathered is unlikely to have any impact on the computation of total income for a particular year, there would exist no justification to invoke the powers conferred by Section 153C.

60. Before concluding, we also deem it imperative to briefly notice certain aspects which emerge from a reading of the Satisfaction Notes themselves. As is manifest from a reading of the Satisfaction Note drawn by the jurisdictional AO of the assessee in W.P. (C) 1459/2024, after noticing the material

which was recovered during the search and related to FYs' 2009-10, 2010-11 and 2011-12 [corresponding AYs' thus being AYs' 2010-11, 2011-12 and 2012-13], it has proceeded to observe that the assessments which were liable to abate or be reopened would be AYs' 2010-11 to 2020-21. A similar note appears in W.P. (C)1117/2024. Here again, after referring to the material pertaining to FY 2009-10 [and thus relating to AY 2010-11], the AO proceeded to seek approval for initiating action under Section 153C in respect of AYs' 2010-11 up to 2020-21.

61. A reading of the aforesaid Satisfaction Notes would establish that jurisdictional AOs' appear to have proceeded on the premise that the moment incriminating material is unearthed in respect of a particular AY, they would have the jurisdiction and authority to invoke Section 153C in respect of all the assessment years which could otherwise form part of the "relevant assessment year" as defined in Section 153A. In our considered opinion, the aforesaid understanding of Section 153C is clearly erroneous and unsustainable. As explained hereinabove, the discovery of material likely to implicate the assessee and impact the assessment of total income for a particular AY is not intended to set off a chain reaction or have a waterfall effect on all AYs' which could form part of the "relevant assessment year". This, more so since none of the Satisfaction Notes record any reasons of how that material is likely to materially influence the computation of income for those AYs'.

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.

G. CONCLUSIONS

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 inculpate 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.*

12. Therefore, it is a mandatory condition for initiation of proceedings u/s 153C of the Act that the Assessing Officer is satisfied that the seized document is an incriminating material and also having a bearing on determination of total income for a particular A.Y or for all the A.Ys. In the case in hand, what is referred by the Assessing Officer is JDA which is otherwise duly recorded in the books of account as the amount received by the assessee as refundable security is reported in the balance sheet of the assessee as well as in the cash book and bank account of the assessee. Therefore, at the first stage, the JDA would not constitute an incriminating material as the amount received on account of refundable security would not be held as income even

in case of transfer of immovable property as defined u/s 2(47)(v) r.w.s. 53 of Transfer of Property Act as held by the Hon'ble jurisdictional High Court in case of *Smt. Shanta Vidya Sagar Annam vs Income Tax Officer reported in 170 Taxmann.com 754.* In the case in hand, the JDA is not an agreement to sell and further the Assessing Officer has not disputed the fact that the assessee has treated the land in question as stock-in-trade and therefore, the receipt of refundable security under the JDA would not ipso facto be an income much less an undisclosed income or income assessable to tax has escaped the assessment. Accordingly, in the facts and circumstances of the case as well as the judgments cited (Supra), the satisfaction recorded by the Assessing Officer is very vague without specifying the linkage between the seized material and bearing on the income of a particular assessment year or more than one particular assessment year and therefore, the same is not in accordance with the provisions of the Act and consequently, the proceedings initiated by the Assessing Officer u/s 153C of the I.T. Act, 1961 on the basis of invalid satisfaction are also not sustain able in law and liable to be quashed. We order accordingly.

13. Since the initiation of proceedings u/s 153C of the Act has been quashed by us, therefore, the other grounds raised by the assessees as well as by the Department becomes infructuous. Since the facts and grounds raised in both the appeals of the related assessees are identical, therefore, the finding on this issue of validity of initiation proceedings u/s 153C is applicable in both the cases and consequently, the initiation of proceedings u/s 153C in case of Amsri Infra Projects (P) Ltd also stands quashed.

14. In the result, assessee's appeals are allowed and Revenue's appeals are dismissed.

Order pronounced in the Open Court on 24th April, 2025.

Sd/-	Sd/-
(MANJUNATHA, G.) **ACCOUNTANT MEMBER**	**(VIJAY PAL RAO)** **VICE-PRESIDENT**

Hyderabad, dated 24th April, 2025

Vinodan/sps

Copy to:

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2	Dy.CIT Central Circle/ JCIT(OSD) Central Circle 1(2) Hyderabad
3	Pr. CIT – Central Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order