

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

ITA No.180/Del/2025
Assessment Year: 2021-22

| | | |
|--------------------|------------|---|
| DCIT, Delhi | Vs. | Sh. Aditya Agarwal, WZ-17, 3 rd Floor, Meenakshi Garden, Shubhash Park, Delhi |
| | | PAN: BCQPA0865C |
| (Appellant) | | (Respondent) |

| | |
|---------------|--------------------------|
| Assessee by | None |
| Department by | Sh. Ramesh Chand, Sr. DR |

| | |
|-----------------------|------------|
| Date of hearing | 13.05.2025 |
| Date of pronouncement | 13.05.2025 |

ORDER

PER SATBEER SINGH GODARA, JM

This Revenue's appeal for assessment year 2021-22, arises against the Commissioner of Income Tax (Appeals)-30, [in short, the "CIT(A)"], New Delhi's DIN and order no. ITBA/APL/M/250/2024-25/1069943789(1), dated 25.10.2024 involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Case call twice. None appears at the respondent-assessee's behest. He is accordingly proceeded ex-parte.

3. The Revenue's instant appeal raises the following substantive grounds:

1. *Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the Addition of Rs. 1,75,50,000/- u/s 69 of the Income Tax Act..*
2. *Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the Addition of Rs. 3,05,500/- u/s 69C of the Income Tax Act.*
3. *Whether the computation of the block period under Sections 153C and 153A of the Income Tax Act. as interpreted by the Hon'ble High Court in the case of Ojjus Medicare Pvt. Ltd., aligns with the legislative intent and procedural flexibility outlined in CBDT Circular No. 2/2018 dated 15 February 2018.*
4. *Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in relying on the judgements in the cases of Ojjus Medicare Pvt. Ltd. & Jasjit Singh and ignoring the fact that these matters are currently pending adjudication in the Supreme Court. The revenue has filed SLP in the case of Ojjus Medicare Pvt. Ltd. (SLP No. 2856/2024) and review application in the case of Jasjit Singh*
5. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in holding that block periods for assessment u/s 153C of the Income-tax Act, 1961, have to be calculated from the date of receipt of the books of accounts, documents or assets seized, by the jurisdictional AO of the non-searched person, even when this interpretation is contrary to the legislative intent since for the years after the search there can never be incriminating seized material and as such assessment in years cannot be made u/s 153C of the Act?*
6. *That the order of the CIT (A) is perverse, erroneous and is not tenable on facts and in law.*
7. *The grounds of appeal are without prejudice to each other.*
8. *The appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either on or before the final hearing of the appeal.*

4. Learned departmental representative next invites our attention to the CIT(A)'s lower appellate discussion quashing the impugned section 153C assessment itself as not sustainable in law, reading as under:

"8. I have carefully examined the assessment order and the written submissions of the appellant. The grounds of appeal raised by the appellant are decided as under.

9. The assessee through the ground of appeal no.2 has challenged the validity of the assessment proceedings and the consequent order passed u/s 143(3) of the Act. The assessee contended that the assessment order for the impugned assessment year should have been passed u/s 153C of the Act since the year under consideration falls within the block period of six AYs from the date of recording satisfaction by the AO of the third party.

9.1 The assessee stated that the addition for the impugned assessment year was made based on What's App chats extracted from the mobile phone of the searched person, Sh. Parveen Kumar Jain. The search took place on 06.01.2021. The AO of the searched person recorded his satisfaction note on 27.06.2022 and handed over the relevant seized documents and data relating to Sh. Aditya Agarwal to the AO of the assessee, i.e. ITO, Ward-34(5), New Delhi. The AO of the assessee in the capacity of AO of "person other than searched person" recorded his satisfaction note and initiated the proceedings u/s 153C of the Act in the case of the assessee for the AYs 2015-16 to 2020-21. The AO computed the six-year block period from the date of the search rather than from the date of handing over the seized documents or the date of recording satisfaction by the jurisdictional AO. Consequently, the assessments for the assessment years 2015-16 to 2020-21 were completed and framed under Section 153C of the Act. However, the assessment for the impugned assessment year i.e. A.Y. 2021-22 was completed under Section 143(3) of the Act, following the normal scrutiny assessment procedure, treating it as the year of the search.

9.2 The assessee argued that the AO considered the date of search as the "terminal date" for counting the six preceding AYs u/s 153C of the Act instead of date of handing over the seized documents/ date of recording satisfaction. The assessee stated that for the purpose of making assessment under section 153C of the Act, by operation of the first proviso to Section 153C, the reference to the date of initiation of

the search under section 132 or making of requisition under section 132A in the case of the third party is to 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. Thus, the assessee contended that the AO had grossly erred in computing the block period of six AYs from the date of search on 06.01.2021 rather than from the date of handing over the seized documents to the AO of the third party. Therefore, as per the assessee by virtue of the first proviso to Section 1530, the six preceding assessment years in his case shall be counted from the date of recording the satisfaction note and in the present case, the six assessment years will be from the AY 2017-18 to AY 2022-23. Since AY 2021-22, which is the year under consideration, falls within the block of six preceding assessment years, the assessment for this assessment year ought to have been made as per the provisions of Section 153C and not under Section 143(3) of the Act.

10. Legal position regarding the contentions raised by the assessee for the ground of appeal no.2:

10.1 The assessee submitted that the issue of the "terminal date" or "relevant date," being the date of handing over of the seized documents or the date of recording satisfaction by the AO, for computing the six-year block period in the case of a non-searched person, is no longer res integra.

Appellant mainly relied on the Hon'ble Supreme Court judgment in the case of CIT-14 vs. Jasjit Singh [2023] 458 ITR 437 (SC)[26-09-2023] which has interpreted the legislative intent behind inserting the first proviso to Section 153C(1) of the Act and stated that that the Parliamentary intent to enact the proviso was to cater not merely to the question of abatement but also with regard to the date from which the six year period was to be reckoned, in respect of which the returns were to be filed by the third party (whose premises are not searched and in respect of whom the specific provision under Section 153-C was enacted. The Hon'ble Supreme Court has finally concluded that in case of non-searched person, the date of receipt of books of accounts by the jurisdictional officer of such other person shall be the date of reference for calculation of six assessment years for which the Assessing Officer may initiate assessment in terms of section 153C of the Act.

10.2 Further, appellant relied on the very recent decision of Hon'ble Delhi in the case of OJJUS MEDICARE PVT. LTD. [2024] 161 taxmann.com 160 (Delhi)[03-04-2024] which has dealt this issue in length after considering the history of amendments made in Section 153A and 153C by various Finance Acts including the Finance Act,

2017 and also took into consideration the various decisions on this issue including the decision of the Hon'ble Supreme Court in the case of Jasjit Singh [2023 SCC Online SC 1265] and held that Block period of six preceding AYs u/s 153C shall be computed from the date of receipt by the AO of the non-searched person of the books or documents or assets seized or requisitioned.

10.3 In view of the aforesaid decisions of the Hon'ble Supreme Court and the Jurisdictional Hon'ble High Court of Delhi, the assessee submitted that the terminal date for counting six preceding assessment years for the purpose of making assessment u/s 153C in the case of person other than searched person shall be the date of handing over of the seized documents/date of recording satisfaction by the AO of that other person.

10.4 In the case of the assessee, such date of recording satisfaction by the AO is 29.06.2022. Therefore, the six preceding assessment years for the purpose of making an assessment under Section 153C will be counted from this date, i.e., 29.06.2022 and the six preceding assessment years will cover the AY 2017-18 to AY 2022-23.

10.5 The assessee, thus, submitted that since AY 2021-22, the year under consideration, falls within the block of six preceding assessment years, the assessment for this year should have been conducted in accordance with the provisions of Section 153C, rather than Section 143(3) of the Act.

10.6 The assessee also submitted that the assessment order for the relevant assessment year was passed under Section 143(3) without issuing notice u/s 153C, which are the primary statutory conditions for making assessment u/s 153C, therefore, the impugned assessment order passed u/s 143(3) of the Act is suffered from jurisdictional defect and the same is bad in law and hence, deserves to be quashed.

10.7 The assessee also placed heavy reliance on the recent decision of the Hon'ble Delhi ITAT in the case of Akansha Gupta vs ACIT Central Circle-04, Delhi vide ITA no. 3074/Del/2023; dated 10.07.2024:

"The facts of this case are par-materia to the case of the assessee. A search and seizure operation took place on 06.01.2021 concerning the Hans Group, Praveen Jain, and Janco Limited. During the search, the AO seized certain documents, including clone data from Praveen Kumar Jain's mobile, which revealed evidence of unaccounted cash receipts of Rs.94 lakhs and a commission payment of Rs.2.50 lakhs related

to a property sale by the assessee to Ms. Navita Malhotra and Mr. Gurdeep Singh.

Before the ITAT, the assessee raised an additional ground, challenging the validity of the assessment order under Section 143(3) dated 29.12.2022, which followed a notice under Section 143(2) issued on 30.06.2022. The assessee argued that the assessment for the relevant year should have been made under Section 153C, as the satisfaction note was recorded on 30.06.2022. The six-year block for assessments under Section 153C thus runs from this date, encompassing AY 2018-19 to AY 2022-23. Since the impugned AY 2021-22 falls within this block, the assessment should have been conducted under Section 153C rather than Section 143(3).

The ITAT accepted the additional ground, referencing a similar case (Jasjit Singh) that relied on the precedent set by V.K. Fiscal Services Pvt. Ltd. (ITA Nos. 5460 to 5465/Del/2012), which determined that the date of receiving seized documents serves as the date of the search, establishing the six-year period from that date.

Therefore, the ITAT concluded that the assessment for AY 2021-22 should have been initiated with a notice under Section 153C instead of Section 143(2) as performed by the AO. The Ld. DR did not present any contrary evidence or decisions. Consequently, the assessment order dated 29.12.2022, issued under Section 143(3) following the notice under Section 143(2) dated 30.06.2022, is deemed invalid. Both the notice and the assessment order are hereby quashed."

10.8 I have considered the facts of the case, the legal contentions raised by the assessee through the above said ground, the written submissions made in this regard, and the order passed by the Assessing Officer.

10.9 The following dates and events are relevant to resolve this controversy. The primary issue raised by the assessee through the above said ground of appeal no.2 is whether the assessment order for the relevant assessment year (AY 2021-22) should have been passed under Section 153C of the Act, supported by a recorded satisfaction note and a notice under Section 153C. The satisfaction note of searched person and appellant is scanned as below:

Proforma for recording of satisfaction about seized assets belonging to person other than the person searched

(To be filled in by the Assessing Officer of searched person)

| | | |
|----|---|--|
| 1. | Name of the group, if any, searched | HANS Group |
| 2. | Name of the searched assessee in whose case assets (money, bullion, jewellery or other valuable article or thing) or papers (books of account or documents) seized u/s 132 of the Act | Sh. Praveen k. Jain, C-42, C-Block, Preet Vihar, Delhi-110092 |
| 3. | PAN of searched person | ABUPJE133E |
| 4. | Name and address of the person to whom seized assets/papers as in (2) above belong | Sh. Aditya Agarwal, R/u- WZ-17, 3rd Floor, Meenakshi Garden, Tilak Nagar, Delhi-110018. |
| 5. | PAN of the other persons | BCQPA0865C |
| 6. | Identification of seized assets/papers which in the opinion of the AO of the searched assessee (S.No.2), belong to the other person (S.No.4) | (i) Cloned data of Sh. Praveen K. Jain's mobile I-phone marked as Annexure A-E seized from the premise at C-42, C-Block, Preet Vihar, Delhi-110092. |
| 7. | Details of panchnama & annexure through which relevant asset/document was seized/requisitioned | Panchnama at C-42, C-Block, Preet Vihar, Delhi-110092, Annexure - A5 |
| | Date of above panchnama | 10.01.2021 |
| | Address of the place/premises from where asset/paper was seized/impounded | C-42, C-Block, Preet Vihar, Delhi-110092. |
| | (iv) Description of relevant asset/paper(s) | During the course of search u/s 132 of the Act conducted at C-42, C-Block, Preet Vihar, Delhi-110092 following assets/documents/digital data were seized:- Cloned data of Praveen K Jain's mobile marked as Annexure A-5 containing image of agreement to sell found from the whatsapp chat between Praveen Kumar Jain and Sh. Valbhav Jain having the details of actual sale consideration of property at E-76, 2nd and 3rd Floor, Preet Vihar, Delhi- |

| | | |
|----|---|---|
| | <p>(v) The brief reasons on the basis of which the AO reached to the conclusion that the relevant seized asset/paper belongs to the other persons (use Annexure if required).</p> | <p>110092.</p> <p>While examining the seized assets and seized documents/digital data and information contained therein, it is noticed that the seized documents/digital data and information contained therein relate to Sh. Aditya Agarwal i.e. the person other than the searched person.</p> <p>As per the whatsapp chat between Praveen Kumar Jain and Vaibhav Jain extracted from the i-phone seized as above, it is noticed that, Sh. Aditya Agarwal has Purchased the 50% share in property at E-76, 2nd and 3rd Floor, Preet Vihar, Delhi-110092 in which huge amount paid in cash by Sh. Aditya Agarwal.</p> <p>During the course of assessment proceedings in the case of Sh. Parveen Kumar Jain and M/s. Jainco Ltd. it has been observed that, Sh. Parveen Kumar Jain helped many a persons including renowned person in purchase/sale of property partly in cash and partly through cheque which was evident from his whatsapp chat and images found in his mobile.</p> <p>On the basis of the seized documents/digital data and information contained therein, I am satisfied that the seized document/data as stated supra relate to Sh. Aditya Agarwal. Accordingly, the AO/holding jurisdiction over the case of Sh. Aditya Agarwal is being intimated to take appropriate action as per LT. Act, 1961.</p> |
| 8. | Assessment years involved | 2015-16 to 2021-22 |

Date: 27.06.2022


 (Kapil Kumar Singh)
 Dy. Commissioner of Income Tax
 Central circle-31, New Delhi

A.Y. 2021-22

SATISFACTION NOTE

For initiating proceedings under Section 153C read with section 153A of the Income Tax Act, 1961 in the case of Sh. Aditya Agarwal (PAN: BCQPA0965C), A.Ys. 2015-16 to 2021-22.

Action under section 132 of the Income Tax Act was conducted in HANS Group of cases by investigation wing, New Delhi on 06.01.2021. It has been brought to the notice of the undersigned by the AO of Sh. Parveen K. Jain (in the instant case both the AO is same), being one of the persons covered in group search and in whose case action under section 132 of the Income tax Act was taken, that during the search and seizure action, the seized Assets and documents/digital data and information contained therein relate to, Sh. Aditya Agarwal the person other than the searched person. The Assessing officer of the searched person has recorded his satisfaction dated 27.06.2022 that seized Assets and documents/digital data and information contained therein relate to the assessee i.e. Sh. Aditya Agarwal.

| Premises from where assets and documents/digital data found and Seized : | | |
|--|---|---|
| Premise at C-42, C-Block, Preet Vihar, Delhi-110092. | | |
| Annexure | Page No./File Description | Remarks |
| A-5 | Cloned data of Parveen Jain's mobile i-phone. | Cloned data of Parveen Jain's mobile marked as Annexure A-5 seized from the premise at C-42, C-Block, Preet Vihar, Delhi-110092 having details of the actual sale consideration of the property at E-76, 2 nd Floor and 3 rd Floor, Preet Vihar, Delhi-110092 and payments in cash thereof. It is noticed that, Sh. Aditya Agarwal has purchased the above said property in which huge amount of cash paid by Sh. Aditya Agarwal. |

2. After examining the seized documents/digital data and information contained therein, it is observed that, The assessee i.e. Sh. Aditya Agarwal has purchased the above mentioned property in which huge cash component involved thereof. After examining the documents/digital data and information contained therein, I am satisfied that documents/digital data and information contained therein, also relate to Sh. Aditya Agarwal and have a bearing on the determination of total income of this person. In view of the same, I am further satisfied that it is a fit case for initiating proceedings u/s 153C r.w.s 153A of the Income Tax Act, 1961 for the A.Ys. 2015-16 to 2021-22.

3. Accordingly, notices u/s 153C r.w.s. 153A are being issued as per provisions of the Income Tax Act, 1961 for the A.Ys. 2015-16 to 2021-22.

Date: 29.06.2022


(Surender Singh)
Income Tax Officer,
Ward-34(5), New Delhi

Following facts emerged from above scanned satisfaction note:

(i) Date of search on Hans group of cases: 06.01.2021.

(ii) During the course of search, the mobile phone of a broker namely, Shri Parveen Kumar Jain was seized. Certain What's app chats were extracted from his mobile phone. On the basis of some addition was made.

(iii) The AO of the searched person recorded a satisfaction note on 27.06.2022 for initiating proceedings u/s 153C of the Act in case of the assessee, who was a non-searched person for the AYs 2015-16 to 2021-22.

(iv) The AO of the assessee, being ITO Ward-34(5), recorded satisfaction note in the capacity of "other person" on 29.06.2022 for the AYs 2015-16 to 2021-22.

(v) while making the assessment for the impugned assessment year the six-year block period for commencing the proceedings u/s 153C has been counted from the date of search i.e. 06.01.2021 by the AO.

(vi) The assessment for the relevant assessment year, i.e. AY 2021-22, was conducted under Section 143(3) of the Act, following the issuance of a notice under Section 143(2). It is undisputed that no notice under Section 153C was issued for A.Y. 2021-22. Addition was made in this AY based on the what's app chat/receipt extracted from the mobile phone of the searched person, Parveen Kumar Jain.

10.10 All the aforesaid facts make it clear that the AO initiated proceedings u/s 153C of the Act in the case of the assessee for the AYs 2015-16 to 2020-21 on the basis of what's app chat/receipt extracted from the mobile phone of the searched person, Sh. Praveen Kumar Jain. However, that seized receipt pertained to the year under consideration i.e. AY 2021-22 which was assessed u/s 143(3) of the Act.

10.11 Another important fact is that the AO calculated the six-year block period for assessments under Section 153C of the Act from the date of the search on 06.01.2021 on the main party Sh. Praveen Kumar Jain, which is clearly not the correct position in law.

10.12 This issue as to what will be the terminal date for computing six assessment years block period in case of a non-searched person is no longer res integra. The Hon'ble Supreme Court in the case of CIT 14 vs. Jasjit Singh [2023] 458 ITR 437 (SC)[26-09-2023] has in very clear terms held that in case of non-searched person, the date of receipt of books of accounts by the jurisdictional officer of such other person shall be the date of reference for calculation of six assessment years for making assessment under section 153C of the Act.

The relevant extract of the judgement is reproduced herewith for reference:

“9. It is evident on a plain interpretation of Section 153C(1) that the Parliamentary intent to enact the proviso was to cater not merely to the question of abatement but also with regard to the date from which the six year period was to be reckoned, in respect of which the returns were to be filed by the third party (whose premises are not searched and in respect of whom the specific provision under Section 153-C was enacted. The revenue argued that the proviso to Section 153(c)(1) is confined in its application to the question of abatement.

10. This Court is of the opinion that the revenue's argument is insubstantial and without merit. It is quite plausible that without the kind of interpretation which SSP Aviation adopted, the A.O. seized of the materials of the search party, under Section 132 - would take his own time to forward the papers and materials belonging to the third party, to the concerned A.O. In that event if the date would virtually "relate back" as is sought to be contended by the revenue, (to the date of the seizure), the prejudice caused to the third party, who would be drawn into proceedings as it were unwittingly (and in many cases have no concern with it at all), is dis-proportionate. For instance, if the papers are in fact assigned under Section 153-C after a period of four years, the third-party assessee's prejudice is writ large as it would have to virtually preserve the records for at latest 10 years which is not the requirement in law. Such disastrous and harsh consequences cannot be attributed to Parliament. On the other hand, a plain reading of Section 153-C supports the interpretation which this Court adopts.

11. For the foregoing reasons, the Court finds no merit in these appeals; they are accordingly dismissed, without order on costs.”

10.13 Further, the Hon'ble Jurisdictional High Court of Delhi also in the case of OJJUS MEDICARE PVT. LTD. [2024] 161 taxmann.com 160 (Delhi)[03-04-2024] after taking into consideration the various decisions on this issue including the decision of the Hon'ble Supreme Court in the case of Jasjit Singh (supra) held that Block period of six preceding AYs u/s 153C shall be computed from the date of receipt by the AO of the non-searched person of the books or documents or assets seized or requisitioned which in the present case will commence from A.Y. 2023-24.

Relevant conclusion para of this decision is reproduced as below:

"D. The First Proviso to Section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is governed by the First Proviso to Section 153C, which significantly shifts the reference point spoken of in Section 1534(1), while defining the point from which the period of the "relevant assessment year" is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the non-searched person. The shift of the relevant date in the case of a non-searched person being regulated by the First Proviso of Section 153C(1) is an issue which is no longer res integra and stands authoritatively settled by virtue of the decisions of this Court in SSP Aviation and RRJ Securities as well as the decision of the Supreme Court in Jasjit Singh. The aforesaid legal position also stood reiterated by the Supreme Court in Vikram Sujitkumar Bhatia. The submission of the respondents, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted.

E. The reckoning of the six AYs' would require one to firstly identify the FY in which the search was undertaken and which would lead to the ascertainment of the AY relevant to the previous year of search. The blocks of six AYs' would consequently be those which immediately precede the AY relevant to the year of search, In the case of a search assessment undertaken in terms of Section 153C, the solitary distinction would be that the previous year of search would stand substituted by the date or the year in which the books of accounts or documents and assets seized are handed over to the jurisdictional AO as opposed to the year of search which constitutes the basis for an assessment under Section 153A"

10.14 Further, similar controversy arose before the Hon'ble ITAT Delhi in the case of Akansha Gupta vs ACIT Central Circle04 Delhi in ITA no. 3074/Del/2023; dated 10.07.2024 where the facts were exactly similar as present in the case of the assessee. A search and seizure operation occurred on 06.01.2021 involving the Hans Group, Praveen Jain, and Jainco Limited. During the search, the AO seized various documents, including cloned data from Praveen Kumar Jain's mobile phone, which provided evidence of unaccounted cash receipts amounting to Rs.94 lakhs and a commission payment of Rs.2.50

lakhs related to a property sale by the assessee to Ms. Navita Malhotra and Mr. Gurdeep Singh.

Before the ITAT, the assessee presented an additional ground, contesting the validity of the assessment order under Section 143(3) dated 29.12.2022, which followed a notice under Section 143(2) issued on 30.06.2022. The assessee contended that the assessment for the relevant year should have been conducted under Section 153C, as the satisfaction note was recorded on 30.06.2022. Consequently, the six-year block for assessments under Section 153C runs from this date, covering AY 2018-19 to AY 2022-23. Since the assessment year in question, 2021-22, falls within this block, the assessment should have been carried out under Section 153C rather than Section 143(3). The ITAT accepted the additional ground and concluded that the assessment for AY 2021-22 should have been conducted under Section 153C instead of Section 143(3). As a result, the ITAT quashed both the notice under Section 143(2) and the assessment order issued under Section 143(3) of the Act.

Relevant paras of the decision are reproduced as follows:

**4. The assessee is an individual and filed her return of income on 24.12.2021 declaring total income of Rs.63,67,760/-. The return was processed u/s 143(1) of the Act on 29.03.2022. A search and seizure action was carried out on 06.01.2021 in the cases of Hans Group/Praveen Jain/Janco Limited and the close associates and few transacting parties with whom the assessee Ms. Akansha Gupta had entered into unaccounted cash transactions. According to the AO, during the course of search action u/s 132 of the Act, conducted at C-42, C block, Preet Vihar, Delhi-110092, certain documents/digital evidences in from of clone data of Praveen Kumar Jain's mobile were seized. In this clone data, a Kachi Parchi was found from where the AO found evidence of receipt of unaccounted cash of Rs.94 lakhs and payment of commission of Rs.2.50 lakhs in respect of sale of a property situated at E-92, 2nd Floor, Preet Vihar, Delhi-110092 by the assessee to Ms. Navita Malhotra and Shri Gurdeep Singh. This property was registered on 28.01.2021. After considering the submissions of the assessee, the Assessing Officer passed an assessment order u/s 143(3) of the Act on 29.12.2022 determining total income at Rs. 1,60,17,760/-after making an addition of Rs.94,00,000/- towards undisclosed sales consideration and Rs.2.50 lakhs as unexplained expenditure.*

8. We have considered the rival submissions and perused the material available on record. We find merit in the submission of

the assessee that the legal ground raised by way of additional ground goes to the root of the matter as it challenges the legal validity of the order u/s 143(3) dated 29.12.2022 passed in pursuance of notice u/s 143(2) of the Act issued on 30.06.2022. Therefore, we first take up the additional ground for adjudication. These additional grounds were not raised before the Ld. CIT(A) nor any similar plea was taken before the AO, but since the additional grounds are purely legal ground and all the facts relating to the same are already part of record, therefore, the same is admitted in view of the decision of the Hon'ble Apex Court in the case of National Thermal Power Corporation [1998] 229 ITR 383(SC) and is hereby adjudicated.

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.....

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."

10.15 Further, the above view has been affirmed by the Hon'ble Delhi High Court and the Hon'ble Delhi Tribunal in the following cases, where the Hon'ble Courts decided the aforementioned issue in favour of the assessee and quashed the order passed u/s 143(3) in the case of third party for the assessment year in which the search took place on the main party, holding that the order should have been passed under Section 153C of the Act:

- a. The Hon'ble Delhi High Court in the case of CIT v. Jasjit Singh in ITA no. 337/2015, order dated 11.08.2015.*
- b. The Hon'ble Delhi High Court in the case of PCIT (Central)-3 v. M/s Pavitra Realcon Pvt Ltd in ITA nos. 579, 587 & 590/2018; dated 29.05.2024.*
- c. The Hon'ble Delhi ITAT in the case of D.L. Heera Bhai Jewellery Arcade (P.) Ltd. (2024) 161 taxmann.com 49 (Delhi-Trib.) (Third Member).*

10.16 Lastly it is important to highlight the fact that the Hon'ble Delhi High Court in the case of PCIT (Central)-3 v. M/s Pavitra Realcon Pvt Ltd in ITA nos. 579, 587 & 590/2018; dated 29.05.2024 took similar view. In this case, the assessee challenged the validity of the assessment proceedings through additional ground before the ITAT that the assessment being wrongly framed u/s 143(3) of the Act, whereas assessment should have been framed u/s 153C since the period under consideration (AY 2011-12) falls in six years block period prescribed u/s 153C of the Act. The ITAT admitted the aforesaid additional ground and set aside the assessment order passed u/s 143(3) of the Act vide order dated 04.10.2017 by holding that the assessment proceedings should have been conducted as per the provisions of Section 153C of the Act since the AY 2011-12 fell into the block period of six years from the date of recording satisfaction on 27.07.2012, which was the deemed date of search u/s 153C of the Act. The Hon'ble High Court affirmed the order of the ITAT by holding at para 36 that we find no reason to intermeddle with the order of the ITAT which has rightly set aside the assessment order and deleted the additions made therein."

10.17 Respectfully following the decisions of the Hon'ble Supreme Court in the case of Jasjit Singh(supra) and the Hon'ble Delhi High Court in the case of OJJUS MEDICARE PVT. LTD. (supra) and M/s

Pavitra Realcon Pvt. Ltd. (supra), I concur with the contention of the assessee that the six preceding assessment years in his case should be calculated from the date of recording satisfaction note by the AO of the third party and not from the date of search on the main party. Therefore, the correct six assessment years block period for the purpose of making assessment u/s 153C in case of the present assessee would be the AY 2017-18 to AY 2022-23. Admittedly, the year under consideration falls in this correct block period of six AYs, therefore, the assessment for the impugned AY 2021-22 should have been carried out in accordance with the provisions of Section 153C of the Act and consequent order should also be passed under that section only. Accordingly, the ground of appeal no.2 raised by the assessee is allowed and the assessment order passed is quashed.”

5. We have given our thoughtful consideration to the Revenue's above extracted pleadings seeking to restore the Assessing Officer's section 143(3) assessment framed on the assessee's case on 30th December, 2022. We find no merit in the Revenue's instant sole substantive grievance. We wish to make it clear first of all that the learned Assessing Officer had recorded his section 153C satisfaction in the assessee's case on 30th June, 2022 followed by his assessment framed herein under section 143(3) of the Act. This being the clinching factual position, it is only in this factual backdrop that the learned CIT(A) has not only quoted various judicial precedents (supra), but also section 153C(i) first proviso that the date of search in such an instance is that of recording satisfaction; coming to 29th June, 2022, and, therefore, section 143(3) assessment framed in the impugned assessment year 2021-

22 is not sustainable since falling within the block of six assessment years. We accordingly see no reason to interfere with the learned CIT(A)'s detailed discussion deciding the instant legal issue against the department in very terms. Ordered accordingly.

6. This Revenue's appeal is dismissed.

Order pronounced in the open court on 13th May, 2025

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 13th May, 2025.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi