

**आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक**  
**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK**  
**(THROUGH VIRTUAL HEARING)**

श्री जार्ज माथन, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND**

**SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

आयकर अपील सं/ITA No.257/CTK/2025

आयकर अपील सं/ITA No.259/CTK/2025

आयकर अपील सं/ITA No.260/CTK/2025

(निर्धारण वर्ष / Assessment Year : 2017-2018)

<b>Maleckunnel Philip Varghese</b> AT/PO/PS: Ainthapali, Dist : Sambalpur-768004	Vs	<b>DCIT, Central Circle, Sambalpur</b>
PAN No. : <b>ABVPV 8418 K</b>		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारित की ओर से / Assessee by	:	Sh P.K.Mishra & Baidyanath Behera, ARs
राजस्व की ओर से / Revenue by	:	Shri Ashim Kumar Chakraborty, CIT-DR
सुनवाई की तारीख / Date of Hearing	:	24/07/2025
घोषणा की तारीख / Date of Pronouncement	:	24/07/2025

**आदेश / ORDER**

**Per Bench :**

These are the appeals filed by the assessee against the separate orders of the Id. CIT(A), Bhubaneswar-2, dated 01.03.2025 & 24.03.2025 for the assessment year 2017-2018.

2. At the outset, Id. AR argued in ITA No.259/CTK/2025 and submitted that there was a search in the BKD Infrastructure Pvt. Ltd. on 03.02.2017. Certain documents and materials were found in the course of search which related to the assessee. The assessee filed its return of income on 22.09.2017. The said return was taken up for assessment under CASS. As the materials found in the course of search in the case of M/s BKD

Infrastructure Pvt. Ltd. was proposed to be used in the case of the assessee. The same was also included in the assessment. The assessment came to be completed u/s.144 of the Act on 28.12.2018. It was the submission by the Id. AR that he was challenging the assessment order on five legal grounds. Ld.AR has also filed his written submission which reads as under :-

**BEFORE THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**I.T.A.NO.259/CTK/2025  
(ASST. YEAR: 2017-18)**

**SRI MALECKUNNEL PHILIP VARGHESE,  
PROP: M/S. SOUTHERN CONSTRUCTION,  
P.O/P.S: AINTHAPALI, DIST: SAMBALPUR,  
768004, PAN: ABVPV8418K.**

**APPELLANT**

**- VRS -**

**DEPUTY COMMISSIONER OF INCOME TAX,  
CENTRAL CIRCLE, SAMBALPUR.**

**RESPONDENT**

**NOTES OF SUBMISSION**

1. That, the Assessee is an individual and proprietor of M/s. Southern Construction, derives income from contract work. For Assessment year 2017-18, filed his return of income showing total income of Rs.30,53,060.00 u/s 139(1) on 20.09.2017.
2. A search and seizure operation u/s. 132 of the Income Tax Act, 1961 (herein after in short referred as to the Act) was conducted in the case of M/s. BKD Infrastructure Pvt. Ltd. A survey u/s 133A was conducted simultaneously in the office

*premises of M/s. Associate Infrastructure (P) Ltd., on 03.02.2017, where the Assessee is a director. Documents identified as BKDO-11 relating to the Assessee was seized from the searched person and documents identified as AIDPL-01 to AIDPL-19 were found and impounded during survey proceeding from M/s. Associate Infrastructure (P) Ltd., and alleged by the Assessing Officer as incriminating in nature.*

3. *In page No. of Para-4 of the assessment order, the learned A.O. has observed as follows:*

*“4. Since the search & seizure operation was conducted in the group cases of M/s. BKD Infrastructure P. Ltd., during the financial year 2016-17 relevant to the assessment year 2017-18 and certain seized document pertains to assessee, the case of the assessee is taken for scrutiny assessment to be completed u/s.143(3) of the Income Tax Act, 1961 as per proviso to section 153B(1)(b). Accordingly, notice u/s.143(2) and u/s,142(1) of the I.T. Act, 1961 dated 01.08.2018 were issued upon the assessee fixing the case on 14.08.2018 which were duly served upon the assessee. In the meantime, the case is selected or complete scrutiny as per Computer Aided Scrutiny Selection (CASS) hence, same is merged being assessment for A.Y 2017-18 has already been invoked as per proviso to section 153B(1)(b) and no separate order is passed. In compliance to issuance of notice, Sri T.R. Kari, Advocate and A/R of the Assessee filed Vakalatnama, audited P & L Account, balance sheet, copy of ITR-V and copy of bank statement only. Then notice u/s.142(1) along with questionnaire dated 15.10.2018 was issued fixing compliance on 23.10.2018”.*

4. *The learned A.O. completed the assessment relying on BKDO-11 and AIDPL-01. Assessment order has been passed vide order dated 28.12.2018 u/s 144 of the Act.*

***Submission:***

5. *In the present appeal, the Appellant/Assessee has challenged the validity and sustainability of the Assessment order passed on the following grounds;*

*(1) Assessment order passed u/s.144 of the Act, being contrary to the statutory provisions is not sustainable in the eye of law.*

*(ii) In absence of issue of service of notice u/s.153C of the Act, assessment order is null and void.*

*(iii) In absence of recording of satisfaction note, impugned assessment order is ab-initio void.*

*(iv) In absence of incriminating material, assessment order cannot be passed u/s.144 of the Act.*

*(v) In absence of valid approval u/s 153D of the Act assessment order is invalid in the eye of law.*

6. *Assessment order passed u/s.144 of the Act being contrary to the statutory provisions is not sustainable in the eye of law.*

*In para No.4 of page No.2 of the assessment order, it is observed by the learned A.O. that "since the search and seizure operation was conducted in the group cases of M/s. BKD Infrastructure PVT, Ltd., during the financial year 2016-17 relevant to Assessment year 2017-18 and certain seized document pertains to Assessee, the case of the Assessee is taken for scrutiny assessment to be completed u/s 143(3) as per proviso to section 153(B)(1)(b) of the Act. Proviso to section 153B(1)(b) of the Act provides the mechanism for completion of assessment u/s 153C of the Act in case of other person. Admittedly, the Assessee is other than the*

searched person. For Assessment year 2017-18, as per the documents supplied by the Department and submitted by the Assessee in Paper Book at page No.36 to 38 clearly indicate that no satisfaction was recorded for the relevant assessment year. However, satisfaction was recorded for the Assessment year 2012-13 only, which clearly shows that it has been recorded on 11.07.2018. Further, from the copy of the order sheet, for Assessment year 2017-18, it is clear that the learned A.O. got the materials on 01.08.2018 i.e. in the Financial year 2018-19 relating to Assessment year 2019-20, as such, the year of search in case of the 153C assessment proceeding is the date of recording of satisfaction or the decision taken to initiate assessment proceeding, therefore Assessment year 2017-18 cannot be treated as search year in case of the Assessee. Therefore, only provision that enables the A.O. to initiate assessment proceeding in case of the Assessee is section 153C and not section 143(3)/144 of the Act. In the present case, the impugned assessment order being passed u/s 144 of the Act, is not sustainable in the eye of law. Hon'ble High Court of Karnataka in the case of Principal Commissioner of Income Tax -vs- VSL Mining Company (P) Ltd., reported in 167 taxmann.com 373 (in para 14 and 15) of the order have held that, once material pursuant to a search is relied upon by the A.O., then it is required to follow the procedure as contemplated u/s.153A, 153B and 153C of the Act and it is impermissible for the A.O. to continue with regular assessment. Hon'ble ITAT Delhi 'F' Bench in the case of Reena Mittal & Ors. -vs-Deputy Commissioner of Income Tax, Central Circle, in para 12 to 14 have held that in the case in hand undoubtedly, the satisfaction u/s 153C of the Act was recorded on 27.09.2022, which falls in the previous year 2022-23 relevant to Assessment year 2023-24, therefore having regard to the first proviso to section 153C of the Act for Assessment year 2023-24 relevant to Financial year 2022-23 would be the year of search and therefore, the A.O, was required to complete the assessment for six assessment year prior to the year of search i.e.

*Assessment year 2023-24 u/s. 143(3) of the Act and for Assessment year 2017-18 to 2022-23 u/s.153C of the Act. However, the A.O. completed the assessment for*

*Assessment year 2021-22 u/s. 143(3) of the Act, which is not permissible under the law, as such is void ab-initio. In view of the above settled principles of law, the assessment order in the present case, being passed u/s 143(3)/144 is not sustainable in the eye of law.*

*7. In absence of issue of service of notice u/s.153C of the Act, assessment order is null and void.*

*From the page 37 to 38 of the paper book, and from the order sheet entry supplied by the learned A.O., it is absolutely clear that no notice u/s.153C was issued to the assessee, even though assessment proceeding was initiated as per proviso to section 153B(1)(b) of the Act, the learned A.O. only issued notice u/s 143(2) of the Act, therefore in absence of issue and service of notice u/s 153C of the Act, the Assessment proceeding initiated and assessment order passed for Assessment year 2017-18 is ab-initio void.*

*8. In absence of recording of satisfaction, impugned assessment order is ab-initio void.*

*From the order sheet, supplied by the learned A.O. and from the page No.36 to 38 of the paper book, it is absolutely clear that no satisfaction was recorded for the Assessment year 2017-18. In absence of recording of valid satisfaction, assessment proceeding u/s.153C cannot be initiated. It has been held by the Hon'ble Madras High Court in case of Commissioner of Income Tax, Central-1 -vs- SRM Systems and Software, reported in [2025] 171 taxmann.com 764 that, where proceeding u/s.153C was initiated against the Assessee company on the basis of search conducted at the premises of the Chairman, since no separate satisfaction was*

*recorded by the A.O. as if, documents seized from searched person belong to Assessee i.e. the other person, the entire proceeding initiated u/s.153C of the Act was void ab-initio*

*(Reference may be drawn to para-49, 50 and 53). Hon'ble Madhya Pradesh High Court in case of Commissioner of Income Tax -vs- Mechmen 11-C reported in [2015] 60 taxmann.com 484 in para 23 of its order, have held that where pursuant to search proceeding carried out in the premises of partners, assessment proceeding were completed in case of Assessee firm u/s.153C r.w.s. 143(3) of the Act. Since, no satisfaction has been recorded prior to issuance of notice u/s.153C of the Act, impugned assessment order passed deserves to be quashed.*

*9. In absence of incriminating material, assessment order cannot be passed u/s.144 of the Act.*

*On the issue of absence of incriminating material, the Assessee wants to draw kind attention of this Hon'ble Court to para No.4.4 to 4.6 at page 16 and 17 of the order passed by the learned CIT(A). It has been held by the learned CIT(A) in para No.4.6 of his order at page 17 that:*

*"It is further seen that even if, without prejudice to the above impugned seized documents were found to be non-incriminating, the said findings would not have a bearing on the validity of assessment order as 'incriminating material' qua the assessment proceeding u/s 153A/153C only has relevant in deciding the validity of assessment order for an unabated / completed assessment. For an abated year or for the year of search, the A.O. has jurisdiction to assess the total income of the Assessee as per the judgment of Hon'ble Supreme Court in the case of Abhisar Buildwell (supra)".*

*The above findings of the learned CIT(A) is highly misplaced as it has been wrongly construed by him as if it is the year of search and*

*there is a search in the case of the assessee, admittedly when, there is no search conducted in the case of the Assessee. So far as, section 153C is concerned, it can be invoked only when, incriminating materials are found from the searched person, which pertains to the Assessee. In the present case, it was decided to initiate the present proceeding for six years, vide order sheet entry dated 01.08.2018, as such, the search year is Assessment year 2019-20 relating to financial year 2018-19. In the present case, time limit for issuance of notice u/s 143(2) expires on 30.09.2018, therefore it is not a case of abated assessment. Further, concept of abatement has no application where proceeding are initiated u/s 153C of the Act because proceeding under this section depends on availability of incriminating material pertaining to the Assessee only. When the learned CIT(A) has clearly held that the Assessee has already disclosed Rs.52,40,000.00 as reported in BKDO-11, as a part of its gross turnover, in the return filed by it and it is recorded in the books of the Assessee, the material cannot be treated as incriminating one as such, in view of the judgment of the Hon'ble Supreme Court in case of Principal Commissioner of Income Tax, Central-3, -vs- Abhisar Buildwell (P) Ltd., reported in [2023] 149 taxmann.com 399 (SC), in absence of incriminating material, impugned assessment proceeding is ab-initio void.*

*10. In absence of valid approval u/s153D of the Act assessment order is invalid in the eye of law.*

*That the Assessee most respectfully wants to draw kind attention of this Hon'ble Court to page No.36 of the paper book which shows the satisfaction recorded for all years consolidated without having any application of mind. The appellant respectfully wants to draw kind attention of this Hon'ble Court to the following judgments of Hon'ble*

*Supreme Court, Hon'ble High Courts and Co-ordinate bench of this Hon'ble Tribunal;*

1. *ACIT -vs- Seerajuddin & Co., reported in [2024] 163 taxmann.com 118 (SC).*
2. *ACIT -vs- Seerajuddin & Co., reported in [2023] 150 taxmann.com 146 (Orissa). (para 17 to 25).*
3. *Principal Commissioner of Income Tax -vs- Shiv Kumar Nayiar, reported in [2024] 163 taxmann.com 9 (para 15 to 17).*
4. *Principal Commissioner of Income Tax -vs- Sapna Gupta, reported in [2023] 147 taxmann.com 288 (Allahabad) (para 13 to 21).*
5. *Deputy Commissioner of Income Tax -vs- Sunil Kumar Sharma reported in [2024] 159 taxmann.com 179)(para 53).*
6. *Principal Commissioner of Income Tax, Central-2 -vs- Anuj Bansal, reported in [2024] 165 taxmann.com 2 (Delhi) (para-15).*
7. *Choudhury Swapan Kumar Mohapatra & Ors. -vs- ACIT, Central Circle-2, Bhubaneswar, (para 11 to 15).*

*In all these judgments, Hon'ble Courts have repeatedly held that approvals granted u/s 153D of the Act in consolidated manner for all years, without having any independent application of mind, while granting approval and without pointing out any discrepancy, particularly when, the facts and circumstances of each year are completely separate is invalid in the eye of law. In the present case, this Hon'ble Tribunal on going through page No.36, will find that the reference from the A.O. was received by the Jt. Commissioner on 28.12.2018 and approval was granted on 28.12.2018. Surprisingly the assessment orders in the present case for all years are also passed on 28.12.2018. The office of the Joint Commissioner is situated at Bhubaneswar and the office of the learned Assessing officer is situated at Sambalpur. The distance between Bhubaneswar to Sambalpur is around 370 KM. It is humanly impossible to keep all records after getting approval on 28.12.2018 from the office of the Joint Commissioner and to travel more than 370 KM and thereafter, to pass assessment order after examining the records and after implementing the discussions, if any, made by*

*the Jt. Commissioner on the same day and the orders were also uploaded on the same day. From this fact, it is absolutely clear that the impugned approval was granted without having any application of mind, as such, is not sustainable in the eye of law. Since, the approval granted u/s.153D of the Act is invalid, consequential assessment orders are also invalid in the eye of law.*

3. The primary ground of the Id. AR was that when materials found in the course of search on a third party was being used in the assessment of the assessee then the proceedings should have been done u/s.153C of the Act and the procedure provided under the provisions of Section 153C of the Act had to be followed and in the present case the same having not been followed, the assessment is liable to be annulled. Ld.AR placed reliance on the decision of the Hon'ble Karnataka High Court in the case of VSL Mining Company (P.) Ltd., reported in [2024] 167 taxmann.com 373 (Karnataka) and drew our attention to para 7.6.4 of the said judgment wherein the Hon'ble High Court held as under :-

*7.6.4 In the case on hand, we find that there was a search under section 132 of the Act in the case of the assessee on 26.10.2007. After the regular assessments proceedings under section 143(3) of the Act were taken up by the assessee and during the pendency thereof; the AO received material / information from the AO of Shri. Manoj Kumar Jain. As per the second proviso to section 153C of the Act, the assessment proceedings pending under section 143 of the Act in the case of the assessee before the AO would abate on the date the AO received the seized material from the AO of Shri. Manoj Kumar Jain and fresh proceedings under section 153C of the Act ought to have been initiated. However, it is seen that, upon receipt of the said information / materials, the AO did not assume jurisdiction under section 153C of*

*the Act, but rather chose to use the said materials/information for making additions in the impugned order of assessment for Assessment Year 2008-09 concluded under section 143(3) of the Act. The AO has discussed these additions in the order of assessment under the caption "Unaccounted Transactions with Shri. Manoj Kumar Jain". The AO noted that the assessment proceedings in the case of Shri. Manoj Kumar Jain were 'being concluded at Central Circle-1, Belgaum'. Thereafter, he has gone on to set-out the issues in the case of Shri. Manoj Kumar Jain, relevant to the assessee in the case on hand. But no satisfaction, it appears, has been recorded that these materials have a bearing on the determination of income. Thus, the AO has not followed the procedure laid down in section 153C of the Act for taking cognizance of the material found / seized in the case of Shri. Manoj Kumar Jain and making an assessment with reference to those materials in the case on hand.*

4. It was further submission of the Id.AR that the coordinate Bench of the Tribunal in the case of Reena Mittal, vide order dated 04.02.2025 passed in ITA No.1238/Del/2024 in paras 6 to 9 has, under similar circumstances, quashed the assessment done u/s.143(3) of the Act in that case, after holding as under :-

*6. The Ld. Counsel submitted that it is a settled law that when provisions of proviso to section 153C are applied, then date of search/ year of search, for the purpose of above section, is substituted by date of handing over of the documents by the Assessing Officer of the person searched to the Assessing Officer of the other person (present assessee). These dates i.e. 09.09.2022 or 27.09.2022 are the dates when the satisfaction by the AO as both the AO of the person searched and that of the other person were recorded and therefore, these dates are relevant for determining the date of handing over the document to the AO for determining the year of search as per first proviso to section 153C.*

*It is submitted that based on these facts, the assessment year 2023-24 relevant to FY 2022-23 is the year of search and in view of the provisions of section 153C of the Act having regard to first proviso thereof, the AO was required to complete assessment for six assessments year prior to the year of search i.e. AY 2023-24 u/s 153C for AY 2017-18 to AY 2022-23.*

*7. It is further submitted that on the above analogy, the assessment for AY 2021-22 would fall in the block period in view of the first proviso to section 153C of the Act. If that be the case, which is the correct position of law, such assessment was required to be completed u/s 153C of the Act after complying with the requirements of the said section. The AO was needed to record necessary satisfaction u/s 153C of the Act and thereafter, to issue a notice u/s 153C calling the assessee to file return of income after considering the impact of the material found in the case of the person searched. It is submitted that in the present case although the AO has recorded separate satisfaction u/s 153C of the Act but the AO failed to issue a notice u/s 153C of the Act without which assessment u/s 153C could not be completed and has not been completed. In view of above, it is submitted that the assessment completed u/s 143(3) of the Act is in defiance of the provisions of section 153C of the Act ignoring the fact that the provisions of section 153A/ 153C is a complete code in itself. Reliance was placed on the decision of the Delhi High Court in the case of Pr. CIT & Anrs vs. Ojjus Medicare P. Ltd. & Ors in ITA No.52/2024 dated 03.04.2024 and also the decision in the case of M.D. Overseas P. Ltd. vs. Dy. CIT W.P. (C) 3092/2023 (Del.).*

*8. The Ld. Counsel further submits that taking cue from the above decision of Hon'ble Jurisdictional Delhi High Court and also on the decision of ITO vs Vikram Sujit Kumar Bhatia 453 ITR 417 (SC), CIT vs Jasjit Singh CA No.6566 of 2023 (SC) dated 26.09.2023, CIT vs RRJ Securities Ltd 380 ITR 612 (Del) and SSP Aviation vs DCIT 346 ITR 177 (Del), the legal proposition emerging*

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

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

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

- CIT v. T. Rangroopchand Chordia [2016] 241 Taxman 221 (Madras HC);
- Dr. K.M. Mehaboob v. DCIT [2012] 26 taxmann.com 54 (Kerala HC);
- Ashok ji Chandu ji Thakur v. PCIT [2021] 130 taxmann.com 130 (Guj. HC)
- Shri Om Prakash Jalkhotia v. ACIT ITA Nos.968, 969, 970 & 971 /Del./2021

- *Mikado Realtors P. Ltd. ITA no. 50/DEL/2021;*
- *Sanjay Thakur v. The DCIT (Central Circle) In ITA No.3559/DEL/2015 ;*
- *DCIT v Vinod Kumar in ITA no. 2550/DEL/2015;*

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

12. Heard rival submissions, perused the orders of the authorities below and the decisions relied on. In this case undoubtedly the addition made in the assessment order passed u/s 143(3) of the Act for the AY 2021-22 was based on the search and seizure operations conducted on Hans Group of cases on 06.01.2021, wherein the mobile phone of Shir Vaibhav Jain was seized and based on the watts app chats on 01.12.2020 in the mobile phone of Shri Vaibhav Jain, the addition came to be made while completing the assessment u/s 143(3) of the Act. The contention of the assessee in this appeal was that when once the assessment of the Assessee was made based on the materials seized in the case of Hans Group, such assessment should have been made u/s 153C of the Act having recorded the satisfaction note u/s 153C of the Act and not u/s 143(3) of the Act as was done by the Assessing Officer.

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

*the Tribunal held that the assessment upto the AY 2021-22 stood covered within the ambit of section 153C of the Act. The Tribunal in the case of Mukul Rani Thakur Vs. DCIT (supra) held as under:*

*"13.3. On perusal of the satisfaction note of the searched person, it is observed that Assessment Year involved is shown to be 2015-16 to Assessment Year 2021-22. The AO of the assessee, in turn, framed the satisfaction note for initiation of proceedings u/s 153C of the Act for Assessment Year 2015-16 to 2020-21. With reference to Assessment Year 2021-22 in question, the AO proceeded to invoke the regular assessment proceedings by issuance of notice u/s 143(2) of the Act. In this backdrop, the assessee contends that in the light of provision of section 153C of the Act, data of search stands substituted by the data of handing the documents by the AO of the person searched to the AO of the other person namely, the present assessee. The date of handing over is 21.06.2021 which falls in previous year 2021-22 relevant to Assessment Year 2022-23 by applying the proviso to section 153C of the Act. The immediate preceding year prior to the year of search i.e. AY 2021-22 in question would fall in block years having regard to proviso to section 153C of the Act. Consequently, it was incumbent upon AO to assess the alleged undisclosed und income pertaining to AY 2021-22 in the hands of the assessee 10 | P a g e under section 153C of the Act and such assessment of income emanating from search is outside the scope of section 143(3) of the Act.*

*14. We find substantial force in the plea raised on behalf of the assessee. While search in the instant case was carried on 06.01.2021 i.e. previous year relevant to Assessment Year 2021-22, the documents were handed over in the previous year relevant to Assessment Year 2022-23. Based on such matrix, the assessment upto Assessment Year 2021-22 stood covered within ambit of section 153C of the Act. This being so, domain for assessment qua undisclosed income for Assessment Year 2021-*

22 falls within sweep of section 153C of the Act. The AO has committed substantive error in proper appreciation of jurisdictional provisions of section 153C of the Act by excluding Assessment Year 2021-22 from the ambit of section 153C of the Act erroneously based on actual date of search rather than based on date of receipts of incriminating documents. In order to frame assessment based on the searched document, the notice ought to have been issued under section 153A r.w.s. 153C of the Act.

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

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

5. It was the submission that the assessment in the case of the assessee is liable to be quashed.

6. Ld.AR further drew our attention to the order-sheet notings for the assessment year 2017-2018, wherein the facts have been brought out that the seized material being BKDO-11 relevant to the assessment year 2017-2018 has been used. The ordersheet notings for the assessment year 2017-2018 reads as follows :-

Order Sheet

A.Y. 2017-18

M. P. VARGHESE  
SAMBALPUR.  
PAN : ABVPV8418K

01.08.2018 Assessee filed return of income u/s.139(1) on 22.09.2017 showing income of Rs. 30,53,060/-.

Earlier, a search & seizure operation u/s. 132 of the I.T. Act, 1961 was conducted in the flagship concern M/s. BKD Infrastructure Pvt. Ltd., Sambalbhumi, NH-6, Dhankauda, Sambalpur and group on 03.02.2017 and books of account and documents were found and seized. Consequent upon said search & seizure action u/s. 132 of the I.T. Act, 1961, survey u/s. 133A was also conducted simultaneously in office premises of the M/s. Associate Infrastructure P. Ltd. at Ainthapali, Sambalpur, wherein assessee is one of the director and key person, on 3.2.2017 and documents identified as AIDPL-01 to AIDPL-19, which are incriminating in nature, were found & impounded.

Subsequently, centralization order u/s. 127(1) of the I.T. Act, 1961 dated 01.12.2017 was passed by the Pr. CIT, Sambalpur vide order communicated under Memo No. Pr. CIT/SBP/127/BKD/2017-18/5557-74 dated 01.12.2017, as per the proposal received from the Pr. CIT, (Central), Visakhapatnam vide letter F. No. Pr. CIT(C)/VSP/Centralization/2017-18 dated 17.07.2017, centralized the case of the assessee with the Asst/Dy. CIT, Central Circle, Sambalpur.

Being the seized document identified as BKDO-06 pertains to assessee for A.Y.2012-13, the proceeding is initiated u/s.153C for A.Y.2012-13 and for A.Y.2011-12, 2013-14 to 2016-17, being the impounding documents constitute part of search & seizure operation, they are also used in the assessment of the assessee. Also, it is seen that the seized document BKDO-11 of page 2, 8 and 12 relates to assessee for A.Y.2017-18.

Accordingly, issue notice u/s.143(2) of I.T.Act,1961, as per proviso to sec.153B(1)(b) of I.T.Act,1961, fixing the date of hearing on 14.8.2018. Also, issue notice u/s.142(1) of the I.T.Act,1961 calling for details.

M. P. Varghese  
DCIT(C)  
14/8/18

7. It was the submission that as the materials found in the course of search representing BKDO-11 has been used in the assessment of the assessee for the impugned assessment year, the proceedings were liable to be done only u/s.153C of the Act and as the notice u/s.153 of the Act has not been issued to the assessee, on this count also the assessment is liable to be annulled. It was the further submission that even the valid satisfaction was not recorded and approval u/s.153D of the Act was not obtained validly.

8. In reply, Id.CIT-DR submitted that in respect of searched assessee being the impugned assessment year 2017-2018, no notice u/s.153C of the Act is required, insofar as the Instruction No.5/2017 required the Assessing Officer to complete the assessment u/s.143(3)/144 of the Act. It was the submission that the assessment order and the order of the Id. CIT(A) are liable to be upheld.

9. We have considered the rival submissions. A perusal of the facts of the present case clearly shows that there was a search in M/s BKD Infrastructure Pvt. Ltd. and connected group on 03.02.2017. The assessment order relevant to the date of search would be the assessment year 2017-2018. A perusal of the ordersheet in the case of the assessee for the assessment year 2017-2018 clearly shows that BKDO-11 is seized material found in the search on M/s BKD Infrastructure Pvt. Ltd. that related to the assessee and the same has been used in the assessment in the case of the assessee for the assessment year 2017-2018. Once the seized material found in the course of search on third party is being used

in the case of an assessee then the provisions of Section 153C of the Act required that a notice u/s.153C of the Act has to be issued and the assessment has to be done u/s.153C/144 of the Act. Admittedly, the assessment has been done u/s.144 of the Act. This is not permissible. In any case, no notice u/s.153C of the Act has been issued in the case of the assessee and as no notice u/s.153C of the Act has been issued in the case of the assessee and there is no satisfaction recorded in the case of the assessee before issuance of the notice u/s.153C of the Act, obviously there would also be no satisfaction recorded in the case of the assessee being third party M/s BKD Infrastructure Pvt. Ltd. in respect of the transfer of materials found in the course of search which related to the assessee. This being so, on all this counts, we are of the view that the assessment order passed u/s.144 of the Act in the case of the assessee for the assessment year 2017-2018 is unsustainable. In these circumstances, respectfully following the decision of the Hon'ble Karnataka High Court in the case of VSL Mining Company (P.) Ltd., referred to supra as also the decision of Delhi Bench of the Tribunal in the case of Reena Mittal, referred to supra, we hold that the assessment order passed u/s.144 of the Act in the case of the assessee for the assessment year 2017-2018 is unsustainable and the same stands quashed.

10. As we have quashed the assessment order on the ground that the assessment being not framed as per the provisions u/s.153C of the Act, we are not adjudicating the other legal grounds raised by the assessee. Thus, the appeal of the assessee is allowed.

11. ITA No.257/CTK/2025 has been filed by the assessee against the order of the Id. CIT(A) confirming the penalty levied by the Assessing Officer u/s.270A of the Act and ITA No.260/CTK/2025 has been filed by the assessee against the order of the Id. CIT(A) confirming the penalty levied u/s.271AAC(1) of the Act.

12. Since we have already quashed the assessment order while adjudicating the quantum appeal of the assessee in ITA No.259/CTK/2025, therefore, the penalties levied by the Assessing Officer and confirmed by the Id. CIT(A) in both the appeals of the assessee would also stand quashed as the very foundation of levy of penalties in both the cases of the assessee would not more survive. Thus, both the appeals of the assessee in ITA No.257&260/CTK/2025 are allowed.

13. In the result, all the three appeals of the assessee are allowed.

Order dictated and pronounced in the open court on 24/07/2025.

**Sd/-**

(राजेश कुमार)

**(RAJESH KUMAR)**

लेखा सदस्य/ **ACCOUNTANT MEMBER**

**Sd/-**

(जार्ज माथन)

**(GEORGE MATHAN)**

न्यायिक सदस्य / **JUDICIAL MEMBER**

दिनांक Dated 24/07/2025

*Prakash Kumar Mishra, Sr.P.S.*

**आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**(Assistant Registrar)**

**आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack**