IN THE INCOME TAX APPELLATE TRIBUNAL
*KOLKATA BENCH "**B**" KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and
Shri K.Narsimha Chary, Judicial Member

ITA No.819/Kol/2010 Assessment Year:2003-04

Shri Jyoti Mohan Mall 216, Mahatma Gandhi Road, Kolkta-700 007 [**PAN No.AEAPM 5914 K**]	बनाम / **V/s.**	Commissioner of Income Tax, XV, 3 Govt. Place, (West], Kolkata-700 001
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri B.C. Jain, FCA,
प्रत्यर्थी की ओर से/By Respondent	Shri Niraj Kumar, CIT-DR
सुनवाई की तारीख/Date of Hearing	18-10-2016
घोषणा की तारीख/Date of Pronouncement	21-12-2016

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal has been filed by the assessee relating to Assessment Year 2003-04 is against the order passed by the Commissioner of Income Tax-XV, Kolkata under the provision of Sec. 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act')dated 12.08.2013.

Shri B.C. Jain, Ld. Authorized Representative appeared on behalf of assessee and Shri Niraj Kumar, Ld. Departmental Representative appeared on behalf of Revenue.

2. The facts of the case are that the assessee, an individual, has declared its income from salary, business, house property, capital gain and other sources for the year under consideration. A search & seizure operation was conducted on 30-06-2003

and on subsequent date on the MALL GROUP of cases. The assessee is a member of the group. During the period of search certain documents belonging to the assessee were found and accordingly the proceedings against assessee under section 153C of the Act were initiated. The assessment was framed under section 143(3)/153C of the Act after making certain additions and disallowances to the total income of the assessee. Thereafter the ld. CIT u/s 263 of the Act opined that the order passed by the AO u/s. 143(3)/153C of the Act is erroneous in so far as prejudicial to the interest of revenue on account of the non-examination by the AO of certain aspects as detailed under :

1) The loss incurred on the purchase and sale of shares for Rs. 38,48,205.00 was not examined with respect to followings :
    a) The shares purchased in the year were shown as stock in trade though the assessee has been showing purchase of shares as investment in the earlier years.
    b) The shares were purchased for Rs. 40,79,070.00 but were sold for Rs. 2,38,865.00 resulting the loss of Rs. 38,48,205. The circumstances which compelled the assessee to sell the shares at loss were not verified by the AO.
    c) The status of the share broker whether listed on the stock exchange during the period of the transactions.
2) The transaction of land was not verified with respect to its purchase and sales.
3) The transaction of loan taken from M/s H.R. Global Finance Limited was not verified.

3. In view of above the ld. CIT issued notice on 19-03-2009 u/s. 263 of the Act to the assessee. In response to such notice, the assessee challenged the assessment proceedings initiated under section 153C of the Act on the ground that no satisfaction note was recorded by the AO having jurisdiction over the searched party. In fact there was no undisclosed income found based on the documents seized belonging to the assessee in the course of search and seizure of the MALL GROUP of cases. The same objection was also raised before the AO at the time of assessment u/s 153C of the Act.

There were also no adverse action on the assessee by the AO during the assessment proceedings under section 153C of the Act.

3.1 The assessee further submitted that the shares were purchased in the AY 2002-03 and shown as stock in trade which was accepted by the AO in the assessment under section 143(3) of the Act. There is no bar under the Act to show the purchases of shares as stock in trade and investment. The assessee can show the shares as stock-in-trade and investment as per his discretion. Similarly it was the decision of the assessee to sell the shares which was based on his wisdom. The transaction for the purchase & sale of shares resulting loss cannot be the criteria for holding the order of AO as erroneous and prejudicial to the interest of Revenue. Similarly, whether the share broker is listed or delisted in the stock exchange at the time of transaction of the shares is not relevant at all.

Similarly, all the details with regard to the purchase and sale of land were available to the AO which was duly considered at the time of assessment.

Similarly, the transactions with the H.R. Global Finance limited were carried forward from the earlier years and those were accepted and the AO was satisfied with the genuineness of the party.

3.2 The assessee also submitted that the action of the ld. CIT u/s 263 of the Act for reviewing the assessment proceedings u/s 153C of the Act is not valid. The action u/s 263 of the Act should have been done with regard to the processing of original return income tax filed by the assessee. The transaction of the sale & purchase of shares and land was not subject matter of the proceedings u/s 153C of the Act.

However the ld. CIT disregarded the plea of the assessee by observing as under:-

> *Ï have gone through the assessment record for A.YY 2003-04 and ode sheet of the original assessment made us. 143(3)/153C of the IT Act, and the assessee's reply, it is claimed that there was no proceedings us. 153C of the IT Act in this case but on various order sheet for the AY 2003-04 and 2002-03 shows that queries on seized materials has been raised by the AO and the satisfaction received from ACIT, Central Circle-XXII, Kolkata which has been considered by the AO for issuance of notice u/s. 153C of the IT Act. The assessee has shown share transactions as investment in AY 2002-03 and again in AY 2004-05 as investment. It is observed that to nullify the profit from the sale of land, the assessee booked the loss on share trading. The assessee further claimed that he wants more time for representation being very old matter but in this case order u/s. 143(3)/153C was passed on 31.12.07. Therefore, order u/s.263*

can be passed within two years from the end of the financial year in which the order sought to be revised was passed.

I have carefully considered the issue involved. The assessee was allowed due opportunity of being heard, which he availed. Thus upon careful consideration, I am in the opinion that the order passed by the AO u/s 143(3)/153C on 31.12.2007 is erroneous in so far as it is prejudicial to the interest of the revenue for the reasons stated above.

Accordingly, the assessment is set-aside and the AO is directed to make a fresh assessment as per law in accordance with the observation stated above, and after making proper enquiries on the above issues as called for in the circumstances of the case."

4. Aggrieved by the order of the ld.CIT, the assessee is in appeal before us on the following grounds of appeal :

"1. That in the facts and circumstances of the case the Ld. Commissioner of Income Tax-XV/Kolkata erred in assuming jurisdiction u/s. 263 of the IT Act.

2. That in the facts and circumstances of the case, the Ld. Commissioner of Income tax erred in passing order u/s. 263 of the Income Tax Act, 1961 without giving reasonable opportunity to the assessee and without properly considering the submissions made in reply to show cause notice.

3. That in the facts and circumstances of the case, the Ld. Commissioner of Income Tax erred in observation that the ld. AO passed the assessment order without so called lack of details regarding loss in share trading and purchase and sale of land.

4. That in the facts and circumstances of the case the appellant craves leave to add, alter, modify and/or submit further or more ground(s) of appeal either before or at any time during the hearing of the appeal."

5. The ld. AR before us filed a paper book running from pages 1 to 53 and reiterated the submission made before the ld. CIT under section 263 of the Act. The ld. AR further submitted that the similar loss claimed by the searched party in the assessment under section 153A of the Act was allowed by the Hon'ble ITAT in the case of Man Mohan mall in **I.T.(SS).A.No. 95/Kol/2008** vide order dated 23/04/2009. The ledger copy of M/s HR Global Finance limited was also provided in the paper book placed on pages 11 to 13 and submitted that it was a running account with the said party. The ld. AR also submitted that the ld. CIT(A) has selected Rs. 25 lacs loan

from the aforesaid party without any base. The ld. AR also drew our attention on pages 23 to 40 of the paper book where the necessary details in respect of share trading transactions along with supporting evidence were placed. Similarly our attention was drawn on pages 17-18 of the paper book where the details sale of land was placed.

On the contrary the ld. DR before us submitted that certain information belonging to the assessee were found during the course of search & seizure operation and those information can be verified under the proceedings of section 153C of the Act. It is not in doubt that the ownership of the papers were belonging to the assessee and accordingly the satisfaction note was recorded by the AO having jurisdiction on the searched party. The ld. DR in support of his claim has relied in the order of Hon'ble High Court of Delhi in the case of SSP Aviation Ltd. Vs. DCIT in WPC No. 309/2011 vide order dated 29th March 2012 wherein it was held as under:-

> *"15. It need to be appreciated that the satisfaction that is required to be reached by the AO having jurisdiction over the searched person is that the valuable article or books of account or documents seized during the search belong to a person other than the searched person. There is no requirement in Section 153C(1) that the Assessing Officer should also be satisfied that such valuable article or books of account or documents belonging to the other person must be shown to show to conclusively reflect or disclose any undisclosed income.*
>
> *16. It will be appreciated from the above that the procedure envisaged by Section 153C which is applicable to the petitioner herein, does not in any way infringe any rights of the petitioner or curtail or curb his right to be heard by the Assessing Officer or to file appeals and question the assessments made pursuant to the notice under Section 153A. There is no ground for any extension that the petitioner will not be heard before the assessments or reassessments for the six assessment years are completed. In fact in the case of the petitioner itself the Assessing Officer has not made any addition in the assessments completed under Section 153A read with Section 153C for the am years 2003-04 to 2006-07 and 20008-09. He has made the addition of Rs.86 crores only in the assessment year 2007-08 against which an appeal has already been filed, as stated by the ld. senior standing counsel. This also finds mention in para VI of the counter affidavit filed by the respondent. Thus, full opportunity of being heard is available, and in fact was made available to the petitioner herein to represent against the proposed assessments or reassessments. The apprehension expressed by Kr Bjpai, ld. senior counsel for*

> *the petitioner seems to be futile and spartan in the present case, as no adverse order / ad has been made except in one year, i.e 2007-08 in respect of which documents were found. This addition is also pending in appeal."*

The ld. DR further submitted that the AO at the time of assessment has not conducted enquiries on the issue raised by the ld CIT u/s 263 of the Act. Therefore, it is a clear case of lack of enquiry. The ld DR also submitted that the loss on shares was manipulated by the assessee to set off the income arose from the sale of land. The share broker through which the shares transaction was done by the assessee was suspended from the stock exchange. The transaction recorded by the assessee in the books with regard to the purchase and sale of shares was not matching with the transaction of the stock exchange therefore, the impugned loss was bogus. The learned DR vehemently supported the order of learned CIT u/s 263 of the Act.

In the rejoinder, the ld AR submitted that the events which have taken place subsequent to the assessment proceedings cannot be the basis for picking up the case u/s 263 of the Act. It is well settled law that the assessee cannot be held guilty for the fault of stock broker. The ld. AR relied on the order of AO and request the bench to decide the issue according to merit.

6. We have heard the rival contentions of both the parties and perused the materials available on record. From the foregoing discussion we find that the ld. CIT u/s 263 has held the order of the AO as erroneous and prejudicial to the interest of the revenue on account of non-examination of certain facts emerging from the assessment order. However, the ld. AR before us has challenged the validity of assessment proceedings and further submitted that all the necessary details were submitted at the time of assessment. Now, the following issues before us emerge for our adjudication.

1. Whether the assessment proceeding under section 153C of the Act is valid in the light of above stated facts & circumstances.
2. Whether the order passed under section 263 of the Act is valid in the light of above stated facts & circumstances.

We have given a very careful consideration to the rival submissions and carefully perused the order of the AO and CIT. The provisions of Sec.153C(1) after its amendment by the Finance Act, 2014, reads as under :

> Section 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 any money, bullion, jewellery or valuable article or thing or books of account or documents seized or requisitioned belongs or belong 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 the relevant assessment year or years referred to in sub-section (1) of section 153A** :"

It can be seen from the amended provisions which are underlined above that the law has been amended by laying down a condition that the Assessing Officer can proceed against the other person and issue notice and assess or reassess the income of the other person in according with the provisions of Sec.153A of the Act only **"if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned has a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in Sub-Section (1) of Sec.153A of the Act".**

With the aforesaid amendment, the Assessing Officer of the other person on receipt of the seized document from the Assessing Officer of the person who was subjected to a search u/s.132 of the Act cannot blindly proceed to issue notice to the other person for the period referred to Sec.153A(1) of the Act, but has to apply his mind and reach to a satisfaction that the seized document received by him and belonging to the other person, has a bearing on the determination of the total income of such other person for the relevant assessment year or assessment years referred to Sec.153A(1) of the Act.

The aforesaid amendment has been held to be clarificatory in nature and therefore held as applicable retrospectively from the inception of Sec.153C of the Act in the statue, by the ITAT Kolkata Bench in the case of *Trishul Hi-Tech Industries Vs. DCIT IT(SS)A.Nos.84-86/Kol/2011* (AY 04-05, 05-06 & 06-07) order dated 24.9.2014. In the aforesaid decision the Hon'ble Kolkata Bench of ITAT, after considering the amended provisions of Sec.153C of the Act by the Finance Act, 2014, held that the provisions of Sec.153C of the Act as amended by Finance (No.2) Act, 2014 though is made applicable on and from 1.10.2014, is also relevant for earlier assessment years as it cures the infirmities of the previous legislation and also makes the provisions workable by avoiding absurd consequences. Accordingly, such provision is to be given retrospective effect and is also applicable to pending proceedings. The Bench finally concluded that in the absence of incriminating material found in the course of search belong to the other person which is handed over to the Assessing officer of the person who is searched, the assessing officer of the other person cannot assume jurisdiction u/s.153C of the Act. Such assumption of jurisdiction was quashed as being *ab initio void*, *ultra vires* and *ex facie* null in law.

Admittedly, the Assessee was not subjected to a search u/s.132 of the Act and therefore proceedings u/s.153A of the Act could not be initiated against the Assessee.

7. On 30.6.2003, there was a search and seizure operation u/s.132 of the Act in the premises MALL GROUP OF CASES and not in the case of the Assessee. As to what were the documents found in the course of search and how they were incriminating in so far as the Assessee is concerned has not been spelt out anywhere by the AO. In fact no incriminating material whatsoever in so far as the Assessee is concerned was found. In terms of Sec.153-C of the Act, if in the course of search of a person u/s.132 of the Act, any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person who is searched u/s.132 of the Act, then the AO of the person in whose case search u/s.132 of the Act has been carried out, has to arrive at a satisfaction that money, bullion, jewellery or other valuable article or thing or books of account or documents seized belong to some other person. On arriving at such

satisfaction, he has to hand over the documents or assets seized or requisitioned to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of Section 153A of the Act. As observed that the provisions of Sec.153C of the Act, prior to its amendment by the Finance Act, 2014 w.e.f. 1-10-2014, does not impose any condition on the AO of the other person to proceed to issue notice u/s.153C of the Act for making an assessment of income for the periods referred to in Sec.153A of the Act. This would cause undue hardship. Take for instance the case of the Assessee. What found in the course of search were Demat accounts, a valuation report of registered valuer of the property, MOU for payment etc. There was no adverse inference drawn on this document. The AO, however, has to make an assessment in the case of the Assessee u/s.153C of the Act for the six assessment years referred to in Sec.153A of the Act, even if no incriminating material was found in the course of search. This created hardship and this was the reason why the provisions of Sec.153C of the Act were amended by the Finance Act, 2014. The Kolkata Bench of the ITAT in the case of *Trishul Hi-Tech Industries (supra)* dealt with the purpose behind the aforesaid amendment and as to why it should held to be retrospective. The following were the relevant observations:-

> "The provisions of s.153C of the Act was amended to obviate practical difficulties which arose in its interpretation from time to time. The amendment made by Finance (No.2) Act, 2014 as the Legislature found that different authorities were assigning different meanings to the provisions. As such, a state of affairs resulted in ambiguities which gave rise to conflicting decisions on subject, the Legislature in its wisdom thought it prudent to change the language thoroughly explicit. It so happened from time to time that during the course of conducting a search and seizure operation u/s 132 of the Act, money, bullion, jewellery or other valuable article or thing or books of account or documents belonging to another person were seized. On one hand, the seized materials were sent to the Assessing Authority having jurisdiction over the other person and on the other hand, the Assessing Authority receiving such seized material acts mechanically initiates proceedings u/s 153C of the Act without any verification. Such interpretation is never the intendment of the Legislature. The Legislature found that multiplicity of proceedings resulted and confusion reigned supreme. In order to eliminate such contradictory situations, it was made clear that the Assessing Authority while receiving such seized material

belonging to the other person shall be satisfied that such material must be of "incriminating nature". Thus, the Amending Act, in fact, explained the procedure to deal with a situation where incriminating materials found in course of a search belonged to a third person. The provision was amended to stop unintended consequences and to prevent undue hardship on the third party who is not being searched. The scheme that even a partnership deed or a disclosed bank statement or projected statement was enough to assume jurisdiction u/s 153C of the Act was curtailed to the extent of incriminating materials found. In fact a logical conclusion was drawn to that effect. In fact, the interpretation of the existing provisions was defeating the object and purpose of the enactment and was leading to infructuous litigation without any rhyme or reason. By such interpretation, there were two assessment orders standing on the same issues raising identical tax demands for the same assessment years which is an absurd proposition. This based on the maxim Ut Res Magis Valeat Quam Pareat. The construction which would reduce the legislation to a futility should be avoided; an alternative that will introduce uncertainty, friction or confusion into the working of the system should be rejected. An interpretation which leads to unworkable results and brings about absurdity cannot be accepted. In any case, such a situation was never the intention of the Legislatures. To do away with this judicial error, the Act was amended to cure the obvious omission and to clarify the intention behind the enactment.

There is no doubt or dispute to the fact that the provision of s.153Cof the Act is a procedural provision. Law of procedure are meant to regulate effectively, assist and aid of substantial and real justice and not to foreclose even an adjudication on the substantial rights of citizens of property, personal and other laws. In the case of STATE OF UTTAR PRADESH VS SINGHARA SINGH (AIR 1964 SC 358),the Apex Court quoted with approval the decision in the case of TAYLOR VS TAYLOR (1875) 1 CH D 426, for the proposition that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of dealing with the matter are necessarily forbidden. Further, in contrast to statutes dealing with substantive rights, statutes dealing with merely matters of procedure are presumed to be retrospective unless such a construction is textually inadmissible [DELHI CLOTH & GENERAL MILLS CO.LTD. VS CIT (AIR 1927 PC 242)]. Further, as stated by Lord Denning that the rule that an act of Parliament is not to be given retrospective effects applies only to statues which affect vested rights. It doesn't apply to statues which only alter the form of procedure or the admissibility of evidence, or the effect which the IT(SS).A.82,84-86/Kol/2011 Trishul Hi-Tech Industries A.Yrs.2004-05 to 2006-07 8 courts give to evidence [BLYTH VS BLYTH (1966) 1 ALL ER 524 (HL)]. If the new act affects matters of procedure only, then, prima facie, it applies to all action pending as well as future [K.EAPIN CHACKO VS PROVIDENT FUND INVESTMENT COMPANY(P) :TD (AIR 1976 SC 2610)]. In stating the principle that a change in the law of procedure operates

retrospectively, it was settled that with approval the reason of the rule as expressed by Maxwell that no person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending, and if, by an act of Parliament the mode of procedure is altered, he has no other right than to proceed to the altered mode [TIKARAM & SONS VS CST (AIR 1968 SC 1286)]. The factum of satisfaction of the Assessing Officer that the documents seized are incriminating in nature so as to castigate the other person is a matter of procedure. No substantive or vested right of a party is affected thereby. Thus, the provision is remedial of the erstwhile legislation, designed to eliminate unintended consequences which was causing undue hardship on the subjects and is also clarificatory in nature. It is settled that rule 1BB is essentially a rule of evidence as to the choice of one of the well-accepted methods of valuation in respect of certain kinds of properties with a view to achieving uniformity in valuation and avoiding disparate valuations resulting from application of different methods of valuation respecting properties of a similar nature and character and accordingly is a procedural law which is applicable to pending cases [CWT VS SHARVAN KUMAR SWAMP & SONS (1992) 210 ITR 886 (SC)]. In the facts of the instant case, due to the unintended interpretation of the scope of the provisions of s.153C of the Act, the law was amended to ensure a reasonable approach or as otherwise, due to conflicting decisions on the subject, the construction of such provisions was leading to absurdity. Without taking the aid of the amended provision, the scope and ambit of such provision was leading to ambiguous proposition which is not the intendment of the Legislature. It, therefore, follows that the amended provision of s.153C of the Act is also declaratory. It seeks to clarify the law so as to remove doubts leading to the Courts giving conflicting decisions. Being clarificatory in nature, it must be held to be retrospective in the facts and in the circumstances of the case. The Legislature may pass a declaratory Act to set aside what the Legislature deems to have been a judicial error in the interpretation of statute. It only seeks to clear the meaning of a provision of the principal Act and make explicit that which was already implicit. It is settled that section 154 is a procedural provision. It is settled law that an amendment of a procedural law is normally regarded as retrospective in operation because no one has any vested right in a procedural law and the Tribunal was therefore, justified in holding that section 154(1)(bb) which was inserted during the financial year 1964-1965, could be applied for the assessment year 1963-1964, and the IAC had jurisdiction under section 154(1)(bb) to rectify the mistake in the penalty order dated 4-3-1970 for the assessment year 1963-64 [NURUDDIN & BROS VS CIT (1979) 116 ITR 704 (CAL)]. Thus, the provisions of s.153C of the Act as amended by Finance (No.2) Act, 2014 was made applicable on and from 01-10-2014 and is relevant for the assessment year under dispute as it cures the infirmities of the previous legislation and also makes the provisions workable by avoiding absurd consequences. Accordingly, such provision is to be given retrospective operation and is also applicable to pending proceedings. That being so, the action of the Ld. Assessing Officer is

> fraught with illegality as he proceeded de hors any incriminating materials to assume jurisdiction u/s 153C of the Act in the instant case and accordingly, his action is liable to be quashed being ab initio void, ultra vires and ex-facie null in law."

8. We are in respectful agreement with the view expressed as above. In view of the statutory amendment to the law, we are of the view that the initiation of assessment proceedings against the Assessee u/s.153C of the Act is invalid for the absence of proper satisfaction for proceeding against the Assessee u/s.153C of the Act. We may also add that it is settled rule of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Ordinarily the Courts are required to gather the intention of the legislature from the overt language of the provision as to whether it has been made prospective or retrospective, and if retrospective, then from which date. What happens sometimes is that the substantive provision, as originally enacted or later amended, fails to clarify the intention of the legislature. In such a situation, if subsequently some amendment is carried out to clarify the real intent, such amendment happens to be retrospective from the date the earlier provision was made effective. Such clarificatory or explanatory amendment is declaratory. As the later amendment clarifies the real intent and declares the position as was originally intended, it takes retroactive effect from the date the original provision was made effective. Normally such clarificatory amendment is made retrospectively effective from the earlier date. It may so happen that sometimes the clarificatory or explanatory provision introduced later to depict the real intention of the legislature is not specifically made retrospective by the statute. Notwithstanding the fact that such amendment to the substantive provision has been given prospective effect, nonetheless the judicial or quasi-judicial authorities, on a challenge made to it, can justifiably hold such amendment to be retrospective. The justification behind giving retrospective effect to such amendment is to apply the real intention of the legislature from the date such provision was initially introduced. The intention of the legislature while introducing the provision is gathered, *inter-alia*, from the Finance Bill, Memorandum Explaining the Provision of the Finance Bill. Any amendment to the substantive provision which is aimed at clarifying the existing position or removing unintended consequences to make the provision workable has to

be treated as retrospective notwithstanding the fact that the amendment has been given effect prospectively. The above principles, if applied to the amendment to the provisions of Sec.153C of the Act by the Finance Act, 2014, can lead to only one conclusion that the said amendment is clarificatory and therefore should be held to be retrospective in operation.

From the above, it is clear that the AO before proceeding u/s.153C of the Act has not recorded any satisfaction as it is necessary for initiating proceedings u/s.153C of the Act. Therefore assessments framed u/s.153C of the Act is a nullity. For the reasons given above, we hold that the assessment order in itself is invalid. Hence, the ground of appeal of the assessee is allowed.

As the appeal of the assessee is allowed on technical ground, we are not inclined to adjudicate the appeal of the assessee on the issues based on merits.

9. **In the result, assessee's appeal stands allowed.**

Order pronounced in open court on 21/12/2016

Sd/-	Sd/-
(K.Narsimha Chary)	(Waseem Ahmed)
Judicial Member	Accountant Member

*Dkp, Sr.P.S

दिनांकः- 21/12/2016 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Shri Jyoti Mohan Mall, 216, M.G. Road, Kolkata-07
2. प्रत्यर्थी/Respondent-CIT, XV-Kolkata, 3 Govt. Place (West) Kolkata-07
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता