

**IN THE INCOME-TAX APPELLATE TRIBUNAL "D" BENCH,
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 4024/MUM/2024
(A.Y. 2011-12)**

Rupesh Kantilal Savla, 601, Dev-in-Apartment Adenwaal Road Plot No. 211, Matunga, Mumbai 400 019, Maharashtra	v/s. बनाम	The Assistant Commissioner of Income Tax Circle 20(3), 6 th Floor, Piramal Chambers, Parel, Lalbaug, Mumbai 400012, Maharashtra
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AACPS6257P		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

&

**ITA No. 4512/MUM/2024
(A.Y. 2011-12)**

The Assistant Commissioner of Income Tax Circle 20(3), 6 th Floor, Piramal Chambers, Parel, Lalbaug, Mumbai 400012, Maharashtra	v/s. बनाम	Rupesh Kantilal Savla, 601, Dev-in-Apartment Adenwaal Road Plot No. 211, Matunga, Mumbai 400 019, Maharashtra
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AACPS6257P		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Dr. K Shivaram a/w Mr. Shashi Bekal
Respondent by :	Ms. Sanyogita Nagpal (CIT - DR)

Date of Hearing	19.11.2024
Date of Pronouncement	20.12.2024

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The above captioned appeals arising from the appellate order dated 11.07.2024 are filed by the assessee and the Revenue respectively



against the order passed by the Learned Commissioner of Income-tax (Appeals) [hereinafter referred to as "CIT(A)"] pertaining to assessment order passed u/s. 143(3) r.w.s. 153C of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment Year [A.Y.] 2011-12. Since both the appeals are inter related, they are being adjudicated vide this composite order for the sake of convenience and brevity. Assessee's appeal as below is taken up first.

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2. The grounds of appeal are as under:

1. *On facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) (CIT(A)) has erred in confirming the order of the Ld. Assessing Officer (AO) passed under section 153C read with section 143(3) of the Income-tax Act, 1961 (Act) of the Act, for AY 2011-12 as the same is time-barred hence the assessment order may be quashed as void ab initio.*
2. *Without prejudice to the above, on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming the order of the Ld. AO passed under section 153C read with section 143(3) of the Income-tax Act, 1961 without a satisfaction note which is the mandate of the law.*
3. *Without prejudice to the above, on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming an addition of Rs. 77,50,000/- under section 69A of the Act as on-money when the assessee has not made any cash payments and the consideration made by the appellant is more than the stamp duty value assessed by the registering authority*
4. *On facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming an addition of Rs. 77,50,000/- under section 69A of the Act as on-money when the provisions of section 69A of the Act are not applicable to the facts of the assessee as the documents relied on by the Revenue which was found in the third- party premises, has no evidentiary value as the same is authenticated as required by the Indian Evidence Act, 1872.*



5. *On facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming an addition of Rs. 77,50,000/- under section 69A of the Act as on-money, in violation of principles of Natural justice by not providing the documents, statements relied on by the Department and an opportunity of cross-examination.*
6. *Without prejudice to the above, on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in confirming an addition of Rs. 77,50,000/- under section 69A of the Act as on-money when the assessee is only 50 per cent owner of the property hence the addition may be deleted.*

4. Since ground no.1 challenges the very validity of the assessment order claiming that it barred by time limitation, the same is taken up by us for adjudication at the outset.

5. Facts in brief are that the assessee filed original return of income u/s.139 of the Income Tax Act,1961 declaring total income at Rs. 19,72,435/-. Assessment order u/s 143(3) of the Act was passed on 31.01.2014 assessing total income at Rs. 19,74,250/-. Subsequently, information was received from the office of the Pr. DIT(Inv.), Ahmedabad that the search and survey action was carried in the case of Globe Group. Ahmedabad on 23.01.2015. As per the statement recorded during the course of survey proceeding, these were the only paper companies and scrips were traded on stock exchange only by limited persons who had brought the shares off market and availed bogus Long Term Capital Gains. As per information, the he had sold 1,07,000/- shares for Rs. 2,51,38,729/-. As per the return of income and computation of income the assessee had shown sale price of the shares of Rs. 2,45,83,280/- and claimed exempt income from LTCG of Rs. 2,44,82,483/- u/s 10(38). Thus,it was observed that the assessee had obtained bogus LTCG of Rs. 2,44,82,483/-.On the basis of this information, the assessment was reopened u/s 147 and notice u/s 148 of the Act was issued on 29.03.2018 and duly served on the appellant. Subsequently, notice u/s 153C was



issued on 04.04.2018 and the assessment u/s.143(3) r.w.s.153C of the Act was completed on 28/12/2018, assessing the total income of the assessee for the year under consideration at Rs. 3,98,57,530/-. While doing so, the AO made addition of Rs. 1,33,00,000/- towards unexplained money u/s.69A & Rs. 2,45,83,280/- towards unexplained cash credits u/s 68 of the act u/s. 143(3) r.w.s. 153C of the Act.

5.1 Before the Id.CIT(A), the Id.AR of the assessee has, in support of the additional ground relating to validity of assessment order on the issue of time limitation, submitted that initially the assessment was reopened u/s. 147 of the I.T. Act. on 29.03.2018 on the basis of information received by the A.O. regarding the availing of accommodation entries of bogus long term capital gains. During the pendency of this assessment proceedings u/s. 147, an information was received on 31.03.2018 from the office of DCIT CC-1(2) Ahmedabad that Search and seizure action was carried out u/s 132 in the case of Shri Anil H Shah, Sanket J Shah and Sarthav Infrastructure Pvt Ltd & Others on 4.12.2014 and in this search incriminating documents pertaining to the appellant were found. On the basis of this information, notice u/s 153C of the I.T. Act was issued on 04.04.2018. Apparently proceedings initiated u/s. 147 were abated and assessment was completed u/s 153C r.w.s 143(3) of the Act. Before the Id.CIT(A) the appellant claimed that in view of the decision of Hon'ble Supreme Court in case of Jasjit Singh, the proceedings initiated u/s 153C are time-barred. However, he rejected the ground with the observation that the information regarding the documents found pertaining to the appellant was received by the A.O on 31.03.2018. As per the decision of Hon'ble Supreme Court in case of Jasjit Singh, the First Proviso to Section 153C introduces a legal fiction based on 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 153A(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. Hence, from the date 31.03.2018 i.e. the date on which the information was received by the jurisdiction A.O of the appellant, limitation period has to be considered. It's a fact that the A.Y 2011-12 is beyond the period of 6 Assessment Years but within 10 Years from the A.Y in which the documents pertaining to the assessee had been received.

6. In the course of hearing before us, it was pleaded by the learned Counsel that the material to AO was forwarded on 31/03/2018 by the Builder's AO, Ahmadabad though notice u/s.153C was issued on 04/04/2018. According to the Supreme Court judgment in **CIT v/s Jasjit Singh (2023) 458 ITR 437 (SC) or (2023) 155 Taxmann.com 155 (SC)**, the assessment u/s 143(3) to be made for the A.Y. 2018-19 and for six years preceding the AY 2018-19 will be made u/s.153C i.e. (1) AY 2017-18 (2) AY 2016-17 (3) AY 2015-16 (4) AY 2014-15 (5) A.Y. 2013-14 (6) A.Y. 2012-13 **(Thus the AY 2011-12 will not form part of block period)**. In view of the Supreme Court decision (supra) **assessment completed for the AY 2011-12 u/s 153C read with section 143(3) on 28/12/2018 is invalid and hence this assessment is liable to be cancelled.**



6.1 Per contra, the ld.CIT(DR) has supported the appellate order of the ld.CIT(A) reiterating that it is deemed that the date of search invoking provisions of section 153C in the case of non searched person is the date of receipt of seized materials by the AO of such non searched person. In this case, the relevant date being 31.03.2018, all the requisite conditions stand fulfilled. Thus the ground of the assessee on assessment being time barred deserved to be dismissed.

7. We have carefully pondered over all the relevant facts of the case, position of law in this regard as also various judicial decisions on the issue involved. We find that in the recent past, in various decisions of courts have deeply analysed the issue in hand at length. It is worthwhile to mention some of such important decisions. In Co-ordinate Bench of Ahmedabad Tribunal had an occasion to decide an issue involving almost identical facts where also the assessment order was claimed to be time barred in terms of section 153C/143(3) of the Act. Relevant parts of the said order passed in the case of ***DCIT Vs Suraj Limited (ITAT Ahmedabad) Appeal Number : I.T (SS).A. No. 398/Ahd/2019*** are reproduced as under for the sake of clarity:

“ 2. The brief facts of the case are that a search under Section 132 of the Act was carried out in Suraj Group of cases on 18.12.2013. Certain incriminating documents belonging to the assessee was found during the course of search proceeding. Therefore, the AO initiated proceeding under Section 153C of the Act against the assessee for the A.Y. 2008-09 by issuing notice under Section 153C of the Act on 11.01.2016. In response, the assessee had filed e-return on 20.01.2016 declaring Nil income. The assessment was completed under Section 143(3) r.w.s. 153C of the Act on 29.03.2016 at total income of Rs.11.06 Crores.

*7. It was noticed by us that proceeding under Section 153C of the Act was initiated in this case on 11.01.2016 for the A.Y. 2008-09. **The Hon'ble Supreme Court had held in the case of CIT vs. Jasjit Singh, [2023] 155 taxmann-com 155 (SC)** that the block period for the proceeding under Section 153C of the Act has to be computed from the date of receipt of books of accounts or documents by the AO of the non-searched person. The Co-ordinate Bench of this Tribunal has also taken an identical view in the case of ***Ushaben Jayantilal Patel vs. ITO in IT(SS)A No. 12/Ahd/2024 dated 01.07.2024****



[authored by one of us (Accountant Member)]. As the notice under Section 153C of the Act was issued in this case on 11.01.2016, it prima facie transpired that the six years for which proceeding under Section 153C of the Act could have been initiated in this case were the A.Ys. 2015-16 to 2010-11 only. Thus, the proceeding under Section 153C of the Act initiated for the A.Y. 2008-09 in this case was found to be not in order and beyond the permissible period.

11. We have given a thoughtful consideration to the issue and deeply pondered over the rival submissions. The contention of the Revenue is that the AO of the searched person and the AO of the other person was the same in this case and there was no requirement to transfer the seized documents belonging /pertaining to the assessee. Therefore, according to the Revenue, only the date of search needs to be applied in the present case as the reference point to calculate the block period of six years for initiating proceeding under Section 153C of the Act. As per the scheme of the Act, the year of search is considered as the reference point to determine the preceding six years only in respect of the searched person, where the proceeding is initiated u/s 153A of the Act. In case of non-searched person, proceeding is initiated u/s 153C of the Act and not u/s 153A of the Act. as no warrant of authorization was issued in the name of the assessee, even though the search was conducted in the group, we have to find out the reference point for considering the preceding six years in this case, u/s 153C of the Act.

12. As per provision of Section 153C of the Act, if the AO of the searched person is satisfied that any books of accounts or documents or assets belong or pertain to other than the searched person (other person), then such books of accounts or documents or assets shall be handed over by the AO of the searched person to the AO of the other person. In the present case the AO of the searched person and the AO of the other person was same. Therefore, there was no requirement of actual handing over of the seized documents belonging to the assessee to any other AO. Nevertheless, in order to assume jurisdiction on the case of the other person it is necessary for the common AO to record his satisfaction that the seized document pertains/belongs to the other person. Until and unless he records such satisfaction, he can't assume the jurisdiction to initiate proceedings u/s 153C of the Act in the case of other person. The condition of recording satisfaction note by the AO of the searched person was, therefore, required to be mandatorily complied in this case as well.

13. Even if we accept the contention of the Revenue that there was no requirement of transfer of seized documents from one AO to another in this case, the proceeding under Section 153C of the Act could have been initiated only after recording of satisfaction by the AO of the searched person. It has been held by the **Hon'ble Supreme Court in the case of Super Malls (P.) Ltd. vs. Pr. CIT [2020] 273 Taxman 556 (SC)** that before



issuing notice under Section 153C of the Act the AO of the searched person must be satisfied that any document seized or requisitioned belongs to a person other than the searched person. The recording of satisfaction by the AO of the searched person is sine qua non to initiate proceeding u/s 153C of the Act, even in a case where the AO of the searched person and AO of the other person is common. **To quote from the order of the Hon'ble Supreme Court:**

“ 6. This Court had an occasion to consider the scheme of Section 153C of the Act and the conditions precedent to be fulfilled/complied with before issuing notice under Section 153C of the Act in the case of Calcutta Knitwears (supra) as well as by the Delhi High Court in the case of Pepsi Food Pvt. Ltd. (supra). As held, before issuing notice under Section 153C of the Act, the Assessing Officer of the searched person must be “satisfied” that, inter alia, any document seized or requisitioned “belongs to” a person other than the searched person....

6.1.... At the same time, the satisfaction note by the Assessing Officer of the searched person that the documents etc. so seized during the search and seizure from the searched person belonged to the other person and transmitting such material to the Assessing Officer of the other person is mandatory. However, in the case where the Assessing Officer of the searched person and the other person is the same, it is sufficient by the Assessing Officer to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, then the requirement of Section 153C of the Act is fulfilled. In case, where the Assessing Officer of the searched person and the other person is the same, there can be one satisfaction note prepared by the Assessing Officer, as he himself is the Assessing Officer of the searched person and also the Assessing Officer of the other person. However, as observed hereinabove, he must be conscious and satisfied that the documents seized/recovered from the searched person belonged to the other person. In such a situation, the satisfaction note would be qua the other person. The second requirement of transmitting the documents so seized from the searched person would not be there as he himself will be the Assessing Officer of the searched person and the other person and therefore there is no question of transmitting such seized documents to himself. (Emphasis supplied.)

15. Thus, the recording of satisfaction by the AO of the searched person is a mandatory requirement for initiation of proceeding under Section 153C of the Act. It is only by recording the satisfaction that the common AO assumes the jurisdiction to issue notice u/s 153C of the Act in respect of the other person.



Further, it is only on the date of recording of satisfaction that the AO of the other person will assume the jurisdiction to initiate proceeding under Section 153C of the Act in respect of the other person. Therefore, the submission of the Revenue that only the date of search needs to be applied to calculate the time limit in the present case, is neither correct nor in accordance with the provision of law as well as the decision of Hon'ble Supreme Court in the case of Super Malls (P.) Ltd.(supra). It doesn't matter whether the assessee is related or unrelated to the searched group. The date of recording of satisfaction by the AO of the searched person will be the relevant date to initiate the proceeding under Section 153C of the Act and the time limit of six assessment years has to be computed with reference to the date of recording of satisfaction by the AO of the searched person. The seized documents pertaining to the other person will be deemed to be transferred to the AO of the other person on the date of recording of satisfaction by the common AO. Since, the Revenue has not produced the satisfaction note recorded by the common AO in this case, one can only presume that satisfaction was recorded immediately prior to the issue of notice under Section 153C of the Act. As per standard practice of the Department the notice u/s 153C is issued immediately after recording of satisfaction. Since the notice under Section 153C of the Act was issued on 11.01.2016 in this case, the year in which the satisfaction note was recorded and the documents were deemed to be transferred to the AO of the present assessee has to be taken as the financial year 2015-16 relevant to A.Y. 2016-17. Therefore, the six preceding years for which proceeding under Section 153C of the Act could have been validly initiated in this case were A.Ys. 2015-16 to 2010-11 only. The proceeding under Section 153C of the Act for A.Y. 2008-09 as initiated in this case is, therefore, not found within the permissible limit of 6 years from the date of deemed handing over of documents by the AO of the searched person to the AO of the other person.

16. It will be relevant to refer to **first proviso of Section 153C of the Act** which explains the date of initiation of search for the proceedings under Section 153C of the Act as under:

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:

The above proviso makes it crystal clear that the date of initiation of search as referred in 2nd Proviso of Section 153A of the Act shall be construed as reference to the date of receiving the books of accounts or documents or assets seized or requisitioned by the AO having jurisdiction



over such other person. Thus, the date of receiving of the books of accounts by the AO of the other person shall be treated / deemed as date of search and six years preceding to that year will be construed as the relevant years for which proceedings under Section 153C of the Act can be initiated in respect of such other person.

17. The Hon'ble Delhi Court has categorically held in the case of **PCIT vs. Ojju Medicare (P.) Ltd.[2024] 161 com 160 (Delhi)** that in case of a search assessment undertaken under Section 153C of the Act, **the previous year of search would stand substituted by the date or the year in which the books of accounts / documents and assets seized are handed over to the jurisdictional AO of the other person as opposed to the year of search which constitutes the basis for an assessment under Section 153A of the Act.** Thus, the block period for the proceedings under Section 153C of the Act has to be computed from the date of receipt of books of accounts or documents by the AO of the non-searched person. This principle has been upheld by the **Hon'ble Supreme Court in the case of CIT vs. Jasjit Singh (supra), wherein it was held that in case of other person the period for which they were required to file returns u/s 153C of the Act, commenced only from date when materials were forwarded to their jurisdictional Assessing Officers.** The Apex Court categorically held that the proviso to section 153C(1) catered not merely to question of abatement but also with regard to date from which six year period was to be reckoned, in respect of which returns were to be filed by third party whose premises were not searched and in respect of whom specific provision of section 153C was enacted.

18. In view of the above legal position, there is no ambiguity that for the proceedings under Section 153C of the Act, **the year of search shall be substituted by the year of receipt of books or documents by the AO of the other person and thereafter the period of six years has to be counted backwards from that year.** In the instant case, seized documents were deemed to be transferred to the common AO on the date of recording of satisfaction by the common AO in F.Y. 2015-16 relevant to A.Y. 2016-17. Therefore, the proceeding u/s 153C could have been validly initiated in the case of the assessee for the six years preceding the A.Y. 2016-17 i.e. for the A.Y.2015-16 to A.Y.2010-11 only.

19. In view of the above facts, we are of the considered opinion, that the AO had no jurisdiction to initiate proceeding under Section 153C of the Act for the A.Y. 2008-09. As the issue of jurisdiction goes to the root of the matter the order of the AO passed under Section 153C r.w.s. 143(3) of the Act, is found to be beyond jurisdiction and is liable to be quashed. The law as declared by the Hon'ble Supreme Court in the case of Jasjit Singh (supra) is binding



and we can't shut our eyes to the fact that the proceeding initiated u/s 153C of the Act in this case was not in accordance with the law as laid down by the Hon'ble Court in that case. After carefully examining the facts as available in the assessment order itself, we have already held that the AO had no jurisdiction to initiate proceedings under Section 153C of the Act for the A.Y. 2008-09, as it was beyond the permissible period of six years from the date of recording of satisfaction of the common AO and deemed handing over of the seized documents pertaining /belonging to the assessee. Therefore, the assessment order passed u/s 153C of the Act for the A.Y. 2008-09 is quashed due of the lack of jurisdiction of the AO to initiate the proceeding u/s 153C for this year.

29. Since, the assessment order is quashed due to AO's lack of jurisdiction to initiate proceeding u/s 153C of the Act for the Y.2008-09, we do not deem it necessary to adjudicate the grounds taken by the Revenue as well as by the assessee."

7.1 In another case, the Co-ordinate bench of ITAT, Delhi has dealt with identical issue on the issue of applicability of section 153C of the Act and held that the assessment order was barred by time limitation. In **CIT Vs Opal Buildwell P. Ltd. (ITAT Delhi) Appeal Number : ITA No. 2899/Del/2019** ITAT Delhi held that issuance of notice u/s 153C of the Income Tax beyond six Assessment Year immediately preceding the Assessment year from the date of recording of satisfaction note/ handing over of relevant material is not in accordance with law. In this case, the facts were that the assessee filed its return of income for A.Y. 2010-11 declaring income of Rs. 2,81,421/- which was processed u/s. 143(1) of the Act. Subsequently, the assessment was reopened u/s. 153C of the Act on the allegation that certain documents/papers belonging to the appellant were found during the course of search u/s. 132 at the premises of Appu Ghar Group of cases. Addition of Rs. 12,60,33,832 /- was made by him. CIT(A) allowed the appeal. Being aggrieved, revenue has preferred the present appeal. It was decided that the ld.CIT(A) rightly held that the date of writing satisfaction note/ handing over of the relevant material being 14.10.2016, the AY in which the date of handing over of the relevant



material falls would be AY 2017-18. Therefore, the (block) period for issuing notices u/s 153C (r.w.s 153A) would be from AY 2011-12 to AY 2016-17(six AYs immediately preceding the A.Y. 2017-2018). Consequently, the notices issued (u/s 153C) for AY 2009-10 and 2010-11 were beyond mandate of the law.

7.2 **Hon'ble Delhi High Court** in a recent decision in the case of **KARINA AIRLINES INTERNATIONAL LTD. Vs PR. COMMISSIONER OF INCOME TAX-CENTRAL-1 in ITA No.690/2023 dated 2.8.2024** dealt with similar issue and decided in favour of the assessee with regard to assessment being time barred. The relevant portions are extracted below:

1. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal dated 09 June 2021 and posits the following questions of law for our consideration:

"2.1 Whether the Id. ITAT erred in law by quashing the assessment only on the basis that the amendment under section 153C came into effect from 01.04.2017 while the search was conducted in 2016. The Id. ITAT ignored the fact that this amendment was only clarificatory in nature and the intention of the law with regard to the assessment years relevant for action under section 153C was always clear and had to be calculated from the date of the search?

2.2 Whether the Id. ITAT has erred in law by quashing the assessment under section 153C on grounds that the relevant assessment year should be decided based on the date of recording satisfaction and not in accordance with the date of the search. The Id. ITAT ignored the fact that the satisfaction was recorded on 15.05.2019 and by the time of the amendment to the section 153C was already into effect (01.04.2017) which clarified that the relevant assessment years have to be calculated according to the date of search?

2.3 Whether the Id. ITAT erred in law by ignoring that the implementation provisions have to be interpreted in consonance with the charging provision and there cannot be any anomalous situation created by the interpretation of the implementation provision. The provision under section 153A and 153C of the Act have to be constructed in such a harmonious way that there will not be any different sets of 6 years for reopening of the assessments in case of the person searched and the other person?

2.4 Whether the Id. ITAT erred in law by ignoring the fact that the assessment was made as per proviso of section 153C of the act in effect on the date of recording the satisfaction and the subject assessment years was covered in sets of 6 years as provide in this section?"



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4. On the aspect of limitation for initiation of proceedings under Section 153C of the Act, the CIT(A) had held against the respondent assessee and observed as follows:

"4.2.6 As per the above amendment, six years in which proceedings u/s 153C are required to be initiated are 'six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made'. Satisfaction u/s 153C of Income Tax Act in this case was recorded on 29.03.2019. Since satisfaction in this case has been recorded after amendment in the above provision, amended provisions of section 153C are applicable in the case of the appellant.

5. This led to the filing of a second appeal before the Tribunal and which has essentially struck down the initiation of reassessment proceedings under Section 153C on the ground of limitation. This become evident from a reading of paragraph 15 of the order impugned before us and which is extracted hereinbelow:

"15. In the circumstances, we are of the considered opinion that since the date of search is 07.04.2016, the amendment brought by the Finance Act, 2017 would not be applicable and consequently the order of assessment dated 31.12.2019 passed u/s 153C r.w.s. 144 of the Act is bad and is liable to be quashed. We order accordingly. In view of our finding that the very assessment itself is bad being barred by limitation, adjudication of other grounds will only be academic and need not be resorted to."

6. The Tribunal appears to have essentially borne in consideration the fact that since the date of search was 07 April 2016, the amendments which came to be introduced in Section 153C by virtue of Finance Act, 2017 would not be applicable.

7. It becomes pertinent to note that as those provisions stood prior to Finance Act, 2017, the relevant assessment years which could be thrown open pursuant to a search stood at six assessment years. By virtue of Finance Act, 2017 the block period for search assessment stood extended to ten assessments years on account of the introduction of the concept of "relevant assessment year or years". That expression came to be defined by Explanation 1 to Section 153A as extending to the period which falls beyond six assessment years but not later than ten assessment years from the end of the AY relevant to the previous year in which the search was conducted or requisition made.

8. Simultaneous amendments came to be introduced in Section 153C and the concept of relevant assessment years adopted therein. However, it becomes pertinent to note that the Second Proviso to Section 153A (1) of the Act made the reopening of ten assessment years subject to three conditions which stand embodied therein. Section 153A of the Act is reproduced hereunder: -

"153-A. Assessment in case of search or requisition.-- [(1)] Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, in the case of a person where a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132-A after the 31st day of May, 2003 [but on or before the 31st day of March, 2021], the Assessing Officer shall--



(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years [and for the relevant assessment year or years] referred to in clause

(b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under [Section 139](#);

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made [and of the relevant assessment year or years]:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years [and for the relevant assessment year or years]:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years [and for the relevant assessment year or years] [referred to in this sub-section] pending on the date of initiation of the search under [Section 132](#) or making of requisition under [Section 132-A](#), as the case may be, shall abate:

[Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made [and for the relevant assessment year or years] :]
[Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless--

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under [Section 132](#) is initiated or requisition under [Section 132-A](#) is made on or after the 1st day of April, 2017.

Explanation 1.-- For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.



Explanation 2.-- For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.]"

9. As is manifest from the above, clause (c) of that Proviso clearly stipulates that no notice for assessment or reassessment for the relevant assessment year or years could be issued if a search had been made prior to 01 April 2017. This is evident from the Second Proviso stipulating that the amended block period provision would get attracted only if the search had been initiated or requisition made on or after the first day of April 2017. Undisputedly in the facts of the present case the search was conducted on 07 April 2016.

10. We note that the Tribunal has firstly faulted the appellants on the ground of the search itself having been conducted on 07 April 2016 and thus the extended period of ten years not being applicable at all. The position so taken clearly appears to be unexceptional bearing in mind the plain language in which the Second Proviso to [Section 153A\(1\)](#) stands couched. We also bear in mind the position of an assessment under [Section 153C](#) of the Act broadly following the same procedure as envisaged by [Section 153A](#). This is evident from the former Section employing the phrase "in accordance with the provisions of [Section 153A](#)". The contemporaneous amendments which came to be included in [Sections 153A](#) and [153C](#) of the Act would thus have to abide by the conditions which stand embodied in the Second Proviso to [Section 153A\(1\)](#). It is thus manifest that the power to assess the block period of ten years would clearly not be attracted in case of a search which had taken place prior to 01 April 2017. Viewed in the aforesaid light, it becomes apparent that the reassessment for AY 2012-13 and which would necessarily fall beyond six assessment years when computed from the recordal of satisfaction would not sustain.

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14. It becomes pertinent to recall that Section 153A, as it stood prior to 01 April 2017, envisaged a search assessment being undertaken "in respect of each assessment year falling within six assessment years" referred to in clause (b) thereof. Clause (b) of Section 153A(1) provided for the identification of the six AYs' with reference to the "previous year in which the search is conducted or requisition is made". The block of six AYs' were to be identified commencing from AO the AY "immediately preceding the assessment year relevant to the previous year" in which the search may have been conducted. [The Finance Act, 2017](#) stretched the search assessment to an additional four AYs' with the introduction of the concept of "relevant assessment year" and which was defined by Explanation 1 to Section 153A(1) as being the period which would fall beyond "six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year" in which search was conducted. A block period of ten AYs' consequently became liable to assessment in the case of a search post the enactment of [Finance Act, 2017](#).

15. The constitution of a block of ten AYs' in Section 153A was contemporaneously added and introduced in Section 153C. [Post Finance Act, 2017](#), an assessment triggered by a search could thus hypothetically extend to a block period of ten years both in the case of a searched



as well as a non-searched entity. In our opinion, the amendments introduced in Section 153C, and on which reliance was placed by Mr. Mann, were essentially intended to place both Sections 153A and 153C at par and for both statutory provisions being available to be invoked for the purposes of assessment covering a block of ten AYs'.

16. It however becomes relevant to note that Section 153C applies equally to all non-searched entities and neither carves out an exception nor does it create a separate regime pertaining to a contingency where the AO of the searched and the non-searched entity are one and the same. If the submission of Mr. Mann were to be accepted, it would amount to the Court carving out an exception in respect of those cases where the jurisdictional AO of the searched and non-searched entity were the same. This would also lead and constrain the Court to restrict the application of the First Proviso to [Section 153C \(1\)](#) of the Act only to those cases where the AO of the non-searched entity be one different from that of the searched person. This would clearly amount to a reconstruction of Section 153C and creating an exception which the Legislature chose not to introduce.

17. The First Proviso to Section 153C (1) has been consistently recognized as not being concerned merely with the aspect of abatement, which is spoken of in the Second Proviso to [Section 153A \(1\)](#) of the Act, but also to regulate the date from which the six-year period or the "relevant assessment year" insofar as the non-searched entity is concerned, is to be reckoned. This position has been consistently followed not just by this Court but also by the Supreme Court in *Commissioner of Income Tax 14 vs. Jasjit Singh*.

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19. In order to appreciate the essential legislative objective underlying the handover of material and formation of opinion by the AO of the non-searched entity, we would have to bear the following aspects in mind. We firstly take note of the fact that Section 153C would get triggered firstly upon the Assessing Authority of the searched entity identifying documents or material which are found to relate to a person other than the entity which was subjected to search. In such a contingency, that Assessing Authority is obligated to transmit the relevant material to the AO of the "other person". The AO of the non-searched entity is thereafter required to scrutinize the material so received and evaluate whether the same is likely to have an impact "on the determination of the total income of such other person..". This becomes evident from the plain text of Section 153C requiring the AO of the non-searched party being "satisfied that the books of account or documents or assets seized have a bearing on the determination of total income of such other person..". The material and documents unearthed in the course of the search have to be independently evaluated before a reassessment exercise can be initiated against a non-searched person. Unless the AO of that "other person" is satisfied that the material so gathered is likely to have an impact "on the determination of the total income of such other person", the mere receipt of documents would not suffice.

20. It thus becomes apparent that it is the satisfaction arrived at under Section 153C which constitutes the cornerstone of that provision and the primary ingredient for Section 153C being set into motion. In our considered opinion, the actual or physical act of transmission of documents is merely a step in aid of formation of opinion whether an assessment under Section 153C is liable to be initiated. It is in that sense merely a machinery provision put in place to enable the AO of the non-searched person to examine whether an assessment is liable to be commenced under [Section 153C](#) of the Act. Thus, even in a case where the AO of the searched and the non-searched party be one and the same, it would be the formation of an



opinion that the material is likely to "have a bearing on the determination of the total income.." which would constitute the core and the heart of Section 153C.

7.3 The Id.Counsel, in the light of decision in the case of Hon'ble Delhi High Court in the case of **PCIT V. Karina Airlines International Ltd.(supra)** has submitted a tabular chart demonstrating the identical facts of the case as below:

Similarities between the Assessee's case and Katrina Airlines (Supra)

Particulars	Assessee's case	Katrina Airlines (Supra)
Assessment Year	2011-12	2012-13
Status	Non-searched party	Non-searched party
Proceedings initiated	Section 153C of the Act	Section 153C of the Act
Date of search	December 04, 2014 i.e. AY 2015-16 i.e. Before April 01, 2017	April 07, 2016 i.e. AY 2017-18 i.e. Before April 01, 2017
Date of satisfaction note for non-searched party	March 16, 2018 i.e. AY 2018-19 i.e. After April 01, 2017	May 15, 2019 i.e. AY 2019-20 i.e. After April 01, 2017
Is the assessment year beyond six years	Yes	Yes

7.4 In view of the above facts, we are of the considered opinion, that the AO had no jurisdiction to initiate proceeding under Section 153C of the Act for the A.Y. 2011-12. Search was conducted before the amendment and also the satisfaction note for the assessee, being a non-searched party in AY 2018-19. Accordingly, the order of the AO passed under section 153C r.w.s. 143(3) of the Act was beyond the permissible period of six years. **Therefore, the assessment order passed u/s 153C/143(3) of the Act for the AY 2011-12 is quashed.**

7.5. Since, the assessment order for AY 2011-12 is quashed on account of lack of jurisdiction to initiate proceeding u/s 153C of the Act,



we do not deem it necessary to adjudicate on other grounds taken by the assessee.

8. In the result, the appeal of the assessee is allowed.

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9. In various grounds of appeal, the Revenue has contested the appellate order whereby the Id.CIT(A) has deleted additions made on merits. However, none of the grounds need adjudication as the very basis of such additions i.e. relevant assessment order passed u/s 153C/143(3) of the Act has already been quashed in foregoing paras w.r.t. assessee's appeal.

10. Accordingly, appeal of the Revenue stands dismissed.

Order pronounced in the open court on 20/12/2024.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकारसदस्य / ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 20.12.2024

Lubhna Shaikh / Steno

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT



4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

