

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'B', New Delhi**

**Before : Shri Bhavnes Saini, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 4018/Del./2011  
Assessment Year: 2003-04**

A.C.I.T., Central Circle – 2, New Delhi.  <b>(Appellant)</b>	vs.	Empire Casting Pvt. Ltd., H-17, Udyog Nagar, Peera Garhi Chowk, New Delhi. PAN – AABCE 0380K <b>(Respondent)</b>
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**C.O. No. 207/Del./2012  
(in ITA No. 4018/Del./2011)  
Assessment Year: 2003-04**

Empire Casting Pvt. Ltd., H-17, Udyog Nagar, Peera Garhi Chowk, New Delhi. <b>(Appellant)</b>	vs.	A.C.I.T., Central Circle – 2, New Delhi.  <b>(Respondent)</b>
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<b>Revenue by</b>	Ms. Rachna Singh, CIT/DR
<b>Assessee by</b>	Sh. Anil Jain, C.A.

<b>Date of Hearing</b>	14.11.2017
<b>Date of Pronouncement</b>	21.11.2017

**ORDER**

**Per L.P. Sahu, A.M.:**

The appeal at the instance of Revenue and Cross-objection at the instance of the assessee arise out of the order of the Ld. CIT(A)-III, New Delhi dated 7.6.2011 pertaining to assessment year 2003-04 on the following grounds :

Grounds in Revenue's appeal:

- "1. On the facts and in the circumstances of the case, the CIT (A) has erred in law and on facts in holding that proceedings initiated u/s 153C of the Income tax Act, 1961 are barred by limitation.*
- 2. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in not appreciating that there was no physical handover of seized material in this case as the Assessing Officer of the main party and the Assessing Officer of the other person in this case are the same.*
- 3. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in holding that in the absence of any material found during search, no addition/ disallowance can be made in the assessment u/s 153 A or 153C of the Act in a case where the assessment is not pending.*
- 4. On the facts and in the circumstances of the case, the CIT (A) has not correctly interpreted the provisions of section 153C r.w.s. 153A of the Income tax Act, 1961.*
- 5. The order of the Ld. CIT (A) is erroneous and is not tenable on facts and in law.*
- 6. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."*

Grounds of Cross-objection:

- "1. That in view of the facts & circumstances of the case and in law the CIT (A) has erred in not holding that the notice issued U/s 153C and the assessment order passed U/s 153C/143(3) are illegal, bad in law and without jurisdiction.*
- 2. That the documents found during search proceedings, as referred to in the satisfaction note, do not belong to assessee. Hence, the notice issued U/s 153C, based on said documents, is illegal, bad in law and without jurisdiction.*
- 3. That admittedly, as recorded in the satisfaction note, no seized*

*document related to the relevant assessment year was found and no addition has been made on the basis of the seized paper referred in the said satisfaction note and no incriminating material was found which contain satisfaction towards any undisclosed income Hence the notice issued U/s 153C and addition/disallowances made are illegal, bad in law and without jurisdiction.*

*4. That the additions on account of unsecured loan & increase in share capital, disallowance of exp. and disallowance of deduction u/s 80IB are illegal, unjust, bad in law and are highly excessive and the same can not be justified.*

*5. That the respondent reserves the right to add/amend/alter the grounds of cross objection.”*

2. Brief facts of the case are that a search and seizure action u/s 132 of the Act was carried out on M/s Wings Pharmaceutical Pvt. Ltd. and its group cases on 14.2.2008. The assessee was part of M/s Wings Pharmaceutical Pvt. Ltd. group and notice u/s 153A was issued on 13.1.2009. The assessment order dated 23.12.2009 passed u/s 143(3)/153C of the Income Tax Act mentions that notice u/s 153A was issued on 13.01.2009 inadvertently in the case of the assessee which was dropped later with prior approval. The AO further observed that during verification of the seized material, documents of M/s Wings Pharmaceutical Pvt. Ltd. as well as documents belonging to the assessee were found and accordingly, proceedings u/s 153C of the Act were initiated in the case of the assessee company. In response to the notice u/s 153C, the assessee filed its return of income on 11.11.2009 declaring income

of Rs. 60,268/- as was declared in the original return of income filed on 24.11.2003. Assessment years 2002-03 to 2007-08 were covered u/s 153C of the Income Tax Act and the assessment for assessment year 2003-04 i.e. the year under consideration was completed at Rs. 28,35,120/- u/s 143(3) r/w section 153C of the Act.

2.1 In appeal before the Id. CIT(A), the assessee challenged the validity of the proceedings initiated u/s 153C as well as the assessment on merits. The assessee also took an additional ground before the Ld. CIT (A) that the initiation of proceedings for the year under consideration was time-barred. The Ld. CIT (A) allowed the additional ground of the assessee and held that the initiation of proceedings for assessment year 2003-04 were barred by limitation and, therefore, the assessment order passed u/s 153C was a nullity and the Assessing Officer was directed to delete the additions. Now aggrieved, the department has approached the ITAT by way of this appeal and the assessee has also filed the C.O. supporting the order of the Ld. CIT (A).

3. Ld. CIT DR, at the outset, placed reliance on the order of the Assessing Officer and submitted that the date of search was 14.2.2008 and since the Assessing Officer of the searched party as well as the assessee was the same, there was no physical handing over of the seized documents and, therefore, although the recording of satisfaction was done on 2.11.2009, the assessment

years falling within the purview of section 153C would be six assessment years preceding the date of search i.e. 14.2.2008 and not 2<sup>nd</sup> November, 2009 as had been held by the Ld. CIT(A). It was submitted that provisions of section 153C and section 153A(1)(b) have to be read together and, therefore, assessment year 2003-04 would also be covered u/s 153C.

3.1 The Ld. CIT DR submitted that there was no ambiguity in the said provision and the issue had been confused by relating it to the date of handing over of the documents rather than by relating it to the date of search. It was also submitted that the dominant purpose of interpretation of any statutory provision was to ascertain the intention of the legislature but the need for interpretation would arise only when the words used in the Statute were ambivalent and did not manifest the intention of the legislature. It was also submitted that the rule of interpretation would come into play only if there was any doubt with regard to the express language used. The Ld. CIT DR referred to Circular No. 3/2006 dated 27.2.2006 which contains explanatory notes to Finance Act 2005 and submitted that after the amendment brought in sections 153B and 153C retrospectively from 1<sup>st</sup> June 2003, the position which emerges is:-

- i) Period of Assessment Year from the end of the Financial Year in which books of accounts or documents or assets seized or requisitioned are handed over, the AO having jurisdiction over

such other person shall be available for the purposes of making assessment or reassessment u/s 153A;

- ii) Any assessment or reassessment in any Assessment Year falling within a period of six Assessment Years immediately preceding the Assessment Year relevant to the previous year in which search is conducted or requisition is made pending on the date on which books of account or assets seized or requisitioned are received by the Assessing Officer having jurisdiction over such other person shall abate.

3.2 It was further submitted that as per explanatory notes, the date has to be reckoned from the date on which the Assessing Officer having jurisdiction over such other person receives the books of accounts or documents and since in the present case, the Assessing Officer of the searched person as well as the assessee was the same, the date of search will be the date on which the documents/books of accounts were seized. The Ld. CIT DR also submitted that the Circulars issued by the CBDT as well as the Finance Minister's speech before the Parliament while introducing a bill can be relied upon to throw light on the object and purpose of a particular provision. It was submitted that in the light of the explanatory notes as referred to by her, jurisdiction u/s 153C was not time barred for the year under consideration, as was held erroneously by the Ld. CIT (A). Ld. CIT D.R. also placed reliance on the following judicial precedents in support of her submissions:-

- i) Apoorva Extrusion Pvt. Ltd. in I.T.A. 3308/D/2010 (ITAT Delhi)

- ii) Anil Kumar Bhatia 24 Taxmann.com 98 (Delhi High Court)
- iii) Filatex India Ltd. in I.T.A. No. 269/2014 (Delhi High Court)
- iv) Raj Kumar Arora in I.T.A. No. 56/2011 (Allahabad High Court)

3.3 Ld. CIT DR also placed reliance on the order of the Hon'ble Delhi High Court in the case of SSP Aviation and also in the case Sarvesh Kumar Agarwal. She also referred at length to the satisfaction note of the Assessing Officer dated 2.11.2009 and submitted that in the present appeal, incriminating material had been found during the course of search and, therefore, the facts of the case were distinguishable from the facts of the case in Kabul Chawla (Delhi High Court). It was also submitted that the case laws relied upon by the Ld. CIT (A) were distinguishable on facts. She also sought to place on record written submissions, which read as under:-

**“ Submissions of Revenue**

*The Revenue reiterates that the provisions of section 153C unambiguously state that*

**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 other 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 such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A

*153(1) (b) clearly states that in such a case 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*

*(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 made:*

*Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years.*

*From a bare reading of the provisions of 153 A & 153 C it is clear that the basic pre-requisite to issue notice under section 153C is that the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisition: to a person other than the person referred to in section 153A. If the A.O is so satisfied he shall assess and reassess such income. In such a case the A.O shall assess or reassess r assessment years immediately preceding the assessment year in which such search is conducted or requisition made:*

*So the A.O is empowered by the Income Tax Act and its provisions under Section: - 153A to assess the 'total income' of the assessee which includes undisclosed income.*

*The Revenue's claim that assessment u/s 153A/153C need not necessarily be based on incriminating material finds support from various decisions of Hon'ble Jurisdictional High Court of Delhi/ other High Courts and Hon'ble ITAT Delhi.*

*Highlights of the case of Anil Kumar Bhatia 24 Taxmann.com 98 dated 07.08.2012 of Hon'ble Delhi High Court*

- *Jurisdiction of Assessing Officer u/s 153A and procedure thereon*

*"A perusal of Section 153A shows that it starts with a non obstante clause relating to normal assessment procedure which is covered by Sections 139, 147, 148, 149, 151 and 153 in respect of searches made after 31.5.200' 3. These Sections, the applicability of which has been*



*excluded, relate to returns, assessment and reassessment provisions. Prior to, the introduction of these three Sections, there was Chapter XIV-B of the Act which took care of the assessment to be made in cases of search and seizure. Such an assessment was popularly known as 'block assessment' because the Chapter provided for a single assessment to be made in respect of a period of a block of ten assessment years prior to the assessment year in which the search was made. In addition to these ten assessment years, the broken period up to the date on which the search was conducted was also included in what was known as 'block period'. Though a single assessment order was to be passed, the undisclosed income was to be assessed in the different assessment years to which it related. But all this had to be made in a single assessment order. The block assessment so made was independent of and in addition to the normal assessment proceedings as clarified by the Explanation below Section 158BA (2). After the introduction of the group of Sections namely, 153A to 153C, the single block assessment concept was given a go-by. Under the new Section 153A, in a case where a search is initiated under Section 132 or requisition of books of account, documents or assets is made under Section 132A after 31.5.2003, the Assessing Officer is obliged to issue notices calling upon the searched person to furnish returns for the six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted or requisition was made. The other difference is that there is no broken period from the first day of April of the financial year in which the search took place or the requisition was made and ending with the date of search/requisition. Under Section 153A and the new scheme provided for, the AO is required to exercise the normal assessment powers in respect of the previous year in which the search took place." (Para 18)*

*Assessing Officer is bound to issue notices to the Assessee to furnish returns for 6 Assessment years. Assessing Officer is empowered to assess or re-assess the total income including undisclosed income of the Assessee*

*"Under the provisions of Section 153A, as we have already noticed, the Assessing Officer is bound to issue notice to the Assessee to furnish returns for each assessment year falling within the six assessment*

*years immediately preceding the assessment year relevant to the previous year in which the search or requisition was made. Another significant feature of this Section is that the Assessing Officer is empowered to assess or reassess the "total income" of the aforesaid years. This is a significant departure from the earlier block assessment scheme in which the block assessment roped in only the undisclosed income and the regular assessment proceedings were preserved, resulting in multiple assessments. Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the 'total income' of the six assessment years in question in separate assessment orders. This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax."*(Para 19)

***Assessing Officer is empowered to reopen the proceedings u/s 143(1)(a) or u/s 143(3) to re-assess the total income, taking note of the undisclosed income, if any.*** The assessing officer is entrusted with the duty of bringing to tax the total income of an Assessee whose case is covered by Section 153A, by even making re-assessments

*"A question may arise as to how this is sought to be achieved where an assessment order had already been passed in respect of all or any of those six assessment years, either under Section 143(1), or Section 143(3) of the Act. If such an order is already in existence, having obviously been passed prior to the initiation of the search/requisition Officer is empowered to reopen those proceedings and reassess total income, taking note of the undisclosed income, if any, unearthed the search. For this purpose, the fetters imposed upon the Assessing Officer by the strict procedure to assume jurisdiction to reopen the assessment under Sections 147 and 148, have been removed by the non obstante clause with which sub section (1) of Section 153A opens. The time-limit within which the notice under Section 148 can be issued, as provided in Section 149 has also been made inapplicable by the non obstante clause. Section 151 which requires sanction to be obtained by the Assessing Officer by issue of notice to reopen the assessment under Section 148 has also been excluded in a case covered by Section 153A. The time-limit prescribed for completion of an assessment or reassessment by Section 153 has also been done away with in a case covered by Section 153A. With all the stops having been pulled out, the Assessing Officer under Section 153A has*

*been entrusted with the duty of bringing to tax the total income of an Assessee whose case is covered by Section 153A, by even making reassessments without any fetters, if need be."(Para 20)*

*The Assessing Officer has to determine not merely the undisclosed income of the Assessee, but also the 'Total Income' of the Assessee in whose case a search or requisition has been initiated*

*"Now there can be cases where at the time when the search is initiated or requisition is made, the assessment or reassessment proceedings relating to any assessment year falling within the period of the six assessment years mentioned above, may be pending. In such a case, the second proviso to sub section (1) of Section 153A says that such proceedings "shall abate". The reason is not far to seek. Under Section 153A, there is no room for multiple assessment orders in respect of any of the six assessment years under consideration. That is because the Assessing Officer has to determine not merely the undisclosed income of the Assessee, but also the 'total income' of the Assessee in whose case a search or requisition has been initiated. Obviously there cannot be several orders for the same assessment year determining the total income of the Assessee. In order to ensure this state of affairs namely, that in respect of the six assessment years preceding the assessment year relevant to the year in which the search took place there is only one determination of the total income, it has been provided in the second proviso of sub Section (1) of Section 153A that any proceedings for assessment or reassessment of the Assessee which are pending on the date of initiation of the search or making requisition "shall abate". Once those proceedings abate, the decks are cleared, for the Assessing Officer to pass assessment orders for each of those six years determining the total income of the Assessee which would include both the income declared in the returns, if any, furnished by the Assessee as well as the undisclosed income, if any, unearthed during the search or requisition. The position thus emerging is that where assessment or reassessment proceedings are pending completion when the search is initiated or requisition is made, they will abate making way for the Assessing Officer to determine the total income of the Assessee in which the undisclosed income would also be included, but in cases where the assessment or reassessment proceedings have already been completed and assessment orders have been passed determining the assessee's total*

*income and such orders are subsisting at the time when the search or the requisition is made, there is no question of any abatement since no proceedings are pending. In this latter situation, the Assessing Officer will reopen the assessments or reassessments already made (without having the need to follow the strict provisions or complying with the strict conditions of Sections 147, 148 and 151) and determine the total income of the Assessee. Such determination in the orders passed under Section 153A would be similar to the orders passed in any reassessment, where the total income determined in the original assessment order and the income that escaped assessment are clubbed together and assessed as the total income. In such a case, to reiterate, there is no question of any abatement of the earlier proceedings for the simple reason that no proceedings for assessment or reassessment were pending since they had already culminated in assessment or reassessment orders when the search was initiated or the requisition was made."(Para 21)*

*"In the light of our discussion, we find it difficult to uphold the view of the Tribunal expressed in Para 9.6 of its order that since the returns of income filed by the Assessee for all the six years under consideration before the search took place were processed under Section 143(1)(a) of the Act, the provisions of Section 153A cannot be invoked. The Assessing Officer has the power under Section 153A to make assessment for all the six years and compute the total income of the Assessee, including the undisclosed income, notwithstanding that the Assessee filed returns before the date of search which stood processed under Section 143(1) (a)."(Para 22)*

*Highlights of the case of Filatex India Ltd., ITA No. 269/2014 and CM No. 10077/2014 dated 14.07.2014 of Hon'ble Delhi High Court*

*The decision of Hon'ble Delhi High Court in the case of Anil Kumar Bhatia has been followed recently in another case of Filatex India Ltd. (269/2014 and CM No. 10077/2014) by Hon'ble Delhi High Court vide order dated 14-07-2014.*

*The Question of law referred before Hon'ble Delhi High Court in this case is as under:-*

*"Whether the Tribunal erred on facts and in law in not holding that re-*

*computation of book profit, de-hors any material found during the course of search, in the order passed under section 153A of the Act was without jurisdiction, being outside the scope of proceedings under that Section"*

The Hon'ble Delhi High Court has decided in Para 2 that *"The contention raised by the appellant-Assessee is that the addition, which is the subject matter of questions No.(ii) and (Hi), was/is not justified in the assessment order under Section 153A, as no incriminating material was found concerning the addition under Section 115 JB of the Act. The said argument has no substance and has to be rejected. Under Section 153A of the Act, the additions need not be restricted or limited to the incriminating material, which was found during the course of search. There cannot be multiple assessments, once Section 153A of the Act is applicable. Section 153A (1) postulates one assessment, computing the total income of six assessment year. Immediately preceding the assessment year relevant to the previous year in which search was conducted or requisition was made. Total income is assessed or reassessed in the order under Section 153A of the Act and the Section applies notwithstanding Sections 139, 147, 148, 149, 151 and 153 of the Act."*

*Further Hon'ble Delhi High Court has clarified the decision of Chetan Dass, Laxman Dass decided earlier by observing in Para 3 that "Learned counsel for the appellant assessee has relied on the decision of this Court in CIT Vs. Chetan Dass laxman class, (2012) 254 CTR (Del) 392. The said decision notices insertion of Section 153A by Finance Act, 2003, its purpose and object, had the earlier proceedings for block assessment under Chapter XIVB, the difficulties and the legal issues which had arisen on the difference between regular assessment and block assessment. It is in this context that in the case of Chetan Dass Laxman Dass (supra), the Division Bench, [to which one of us (Sanjiv Khanna, J) was a party], has observed that Section 153A (1) (b) provides for assessment or re-assessment of the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which the search took place. It was emphasized that there is no condition in this Section that the additions should be strictly made on the basis of evidence found during the course of the search or other post search material or information available with the Assessing Officer, related to the evidence found. Subsequent observation to the effect that the assessment under Section 153A should not be arbitrary or made without any relevance or nexus with the seized material, is basically*



*clarificatory that the assessment under section 153A emanates and starts on the foundation of the search, which is the jurisdictional precondition."*

*After that Hon'ble Delhi High Court has discussed the case of Anil Kumar Bhatia decided by Hon'ble Delhi High Court earlier and quoted from Para 18 & 22 of this order (mentioned supra) and finely decided in Para 4 of this order that after examination of section 153A the submission/contention of the appellant has no merit.*

*Highlights of the case of Raj Kumar Arora, ITA No. 56/2011 dated of Hon'ble Allahabad High Court*

*The decision of Hon'ble Delhi High Court in the case of Anil Kumar Bhatia has been followed recently in another case of Raj Kumar Arora, ITA No. 56/2011 by Hon'ble Allahabad High Court vide order dated 11-07-2014.*

*The Question of law referred before Hon'ble Allahabad High Court in this case is as under:-*

*"Whether ITAT has erred in law in dismissing the appeal of the department and holding that no addition can be made for gift in assessment completed under section 153A unless some incriminating material was found during the course of search, thus ignoring the provisions of law as contained in section 153A which required the Assessing Officer to Assessee or reassess the total income as defined in section 2(45) of the income Tax Act; 1961.*

*Whether the order of the ITAT is perverse in as much as it has ignored the provisions of law as contained in proviso (c) of sub-sec(l) 153A which required the Assessing Officer to Assessee or reassess the total income."*

*Hon'ble Allahabad High Court has decided at the end in favour of revenue which is reproduced as under:-*

*"Consequently we are of the opinion that in cases where the assessment or reassessment proceedings have already been completed and assessment orders have been passed, which were subsisting when the search was made, the Assessing Officer would be competent to reopen the assessment proceeding already made and determine the total income of the Assessee.*

*The assessing officer, while exercising the power under section 153A of the Act, would make assessment and compute the total income of the Assessee including the undisclosed income, notwithstanding the Assessee had filed the return before the date of search which stood processed under section 143(l)(a) of the Act. In the light of the aforesaid, the reasons given by the Tribunal that no material was found during the search cannot be sustained since we have held that the Assessing Officer has the power to reassess the returns of the Assessee not only for the undisclosed income, which was found during the search operation but also with regard to the material that was available at the time of the original assessment. We find that the Tribunal dismissed the appeal while relying upon the decision of a Coordinate Bench of the Tribunal in the case of Anil Kumar Bhatia Vs. ACIT (2010) 1 ITR (Trib.) 484 (Delhi). We find that the said decision of the Coordinate Bench of the Tribunal was set aside by the Delhi High Court in Commissioner of Income Tax vs. Anil Kumar Bhatia (2012) 24 taxmann.com 98(Delhi). We find that the Tribunal only dismissed the appeal on this legal issue and had not considered the matter on merits. For the reasons stated aforesaid, the Tribunal has committed an error in dismissing the appeal of the Revenue. We, accordingly, set aside the order of the Tribunal and remit the matter back to the Tribunal to reconsider the appeal of the Department afresh on merit. The question of law is answered accordingly."*

*Highlights of the case of Canara Housing Development Company, ITA No. 38/2014 dated 25.07.2014 of Hon'ble Karnataka High Court -*

*The decision of Hon'ble Delhi High Court in the case of Anil Kumar Bhatia has been followed recently in another case of Canara Housing Development Company, ITA No. 38/2014 by Hon'ble Karnataka High Court vide order dated 25-07-2014. In this case the Hon'ble Court has also observed that the decision of Hon'ble special bench in the case of All Cargo Global Logistic Ltd. dated 06/07/2012 is not correct.*

*The Question of law referred before Hon'ble Karnataka High Court in this case is as under:-*

*"When once the proceedings under Section 153A of the Act is initiated, whether the Commissioner of Income Tax can invoke the power under Section 263 of the Act to review the order of assessment passed by the Assessing Authority?"*

At the end the Hon'ble Court has decided in Para 11 that *"the Tribunal has proceeded on the assumption by virtue of the judgment of the special bench of the Mumbai, the scope of enquiry under Section 153A is to be confirmed only to the undisclosed income unearthed during search and if there is any other income which is not the subject matter of search, the same cannot be taken into consideration. Therefore, the revisional authority can exercise the power under Section 263. In the entire scheme of 153A of the Act, there is no prohibition for the assessing authority to take note of such income. On the contrary, it is expressly provided under section 153A of the Act the Assessing Officer shall assessee or reassess the "total Income" of six assessment years which means they said total income includes income which was returned in the earlier return, the income which was unearthed during search and income which is not the subject matter of aforesaid two income. If the commissioner has come across any income that the assessing authority has not taken note of while passing the earlier order, the said material can be furnished to the assessing authority and that assessing authority shall take note of the said income also in determining the total income of the Assessee when the earlier proceedings are reopened and that income also shall become the subject matter of said proceedings."*

***Recently same view is also expressed by Hon'ble Delhi Bench in the case of Apoorva Extrusion Pvt. Ltd., ITA No. 3308/Del/2010 for the A.Y. 2002-03, vide order dated 09.10.2014. The relevant portion is mentioned as below:-***

*"5. In order to answer whether the quashing of the initiation of assessment for the year under consideration on the given count is valid or not, we need to consider the mandate of the relevant part of sub-section (1) of section 153C, which reads as under:-*

*" 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 such other person in accordance with the provisions of section 153A"*



6. A bare perusal of the above provision indicates that where the AO is satisfied that any "books of account or document" apart from money, bullion or jewellery etc., seized from the person searched belong to a person other than the person searched u/s 153A, then such books of account or documents etc. shall be handed over to the AO having jurisdiction over such other person and the AO of such other person shall proceed to "assess or reassess income of such other person in accordance with the provisions of section 153A. Thus, the effect of sub-section (1) of section 153C is that where all the necessary ingredients of this sub-section are satisfied, the matter of making assessment or re-assessment goes back to section 153A. Since the assessment or reassessment of such other person has to be done in accordance with the provisions of section 153A, let us examine the prescription of the relevant parts of section 153A(1), which is as under "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 132A after the 31st day of May, 2003, 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 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:"

7. On circumspection of the clause (a) of the above provision, it is amply clear that the AO shall issue notice to such person requiring him to furnish the return of income in respect of each assessment year falling within six assessment years as referred to in clause (b) and, the latter clause, provides that the Assessing Officer shall 'assess or reassess the total income of six assessment year immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made.' When we read section 153C in conjunction with section 153A of the Act, the position which follows is that if the books of account or document etc. belonging to assessment or re-assessment of such

*other person is required to be made of 'six assessment years immediately preceding assessment years relevant to previous year' in which such search is conducted or requisition is made. Section 153C is a jurisdictional provision, which on the fulfilment of the stipulated conditions, enables the making of assessment or reassessment of such other person in accordance with the provisions of section 153A. There is naturally no separate provision under the Act nor there do any for making the assessment of such other person for the reason of the bodily lifting of the provisions of section 153A in section 153C of the Act for this purpose. Since section 153A specially provides for assessment or re-assessment of six- assessment years preceding the year of search, and in view of section 153C adopting the provisions of section 153A, there can be no question of restricting the jurisdiction of the AO to any lesser number of years for which the incriminating material is found. When we read section 153C in a holistic manner, it becomes evident that the triggering point for assuming jurisdiction on the person other than the person searched u/s 153C is the finding of any money, bullion, jewellery or books of account or document from the person searched. Once any money, bullion, jewellery or books of account or document seized or requisitioned from the person searched are found to be belonging to the other person, then, the assessment or reassessment of such other person is to be necessarily completed in terms of section 153A. which in no uncertain terms refers to six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Further, the use of the word 'shall' in section 153A immediately before clause (a) has left nothing to doubt that the assessment is required to be made for all the six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. As the legislature has not made the making of such assessment or reassessment for all the six assessment years subject to any condition of finding of any incriminating material or otherwise, we are unable to accept such contention of the Ld. AR which, if accepted, would lead to legislating a proposition which is obviously not tenable.*

8. *We can reject the contention of the Assessee from another angle as well. It is relevant to note that the expression "books of account or documents" employed in section 153C (1) is accompanied by the words "money, bullion, jewellery or other valuable articles or things". It is axiomatic that 'money or jewellery' etc. belonging to the other person found from the premises of the person searched cannot per se be related to*

*a particular assessment year. If we test the contention of the Ld. AR on the touchstone of 'money or jewellery' etc., belonging to the Assessee found from the person searched, then it will be very difficult at the stage of initiation of assessment or reassessment of the other person to relate it to a particular year, there by jeopardizing the whole scheme of assessment pursuant to search or requisition. To a specific query it was candidly accepted by the Ld. AR that in items of section 153A. the initiation of assessment or reassessment for all the six assessment years in the case of person searched is not dependent on the findings of any incriminating material. It is beyond our comprehension that when such a course of action is permissible u/s 153A in the case of person searched, then how can there be any bar on the initiating or making of assessment or reassessment for some of the years of other person, more so. when section 153C(l) has been expressly made to accord with the provisions of section 153A. We, therefore, jettison the contention urged on behalf of the Assessee as sans merit.*

*Recently same view is also expressed by Hon'ble ITAT Bangalore Bench in the case of **Nandini Delux vs ACIT, 54 Taxmann.com 162 vide order dated 05.12.2014. The relevant portion of Para 6.3.9 of the order is mentioned as below:-***

*"Respectfully following the decision of the Hon'ble High Court of Karnataka in the case of Canara Housing Development Co. (supra), we hold that once the assessment is reopened, the Assessing Officer can take note of the income disclosed in the earlier return, any undisclosed income found during the course of search and also any other income which is not disclosed in the earlier return of income OR which is not unearthed in the course of search under section 132 of the Act, in order to find out and determine what is the 'total income' of each year and then pass the order of assessment. The grounds of appeal raised by the Assessee at S. Nos. 2 to 5 are accordingly dismissed for all four assessment years 2005-06 to 2008-09."*

*Same view is also expressed by Hon'ble High Court of Andhra Pradesh in the case of Gopal Lai Bhadraka vs. DCIT 346 ITR 106 dated 15.12.2011, where Hon'ble High court has held as under (page no.17 to 21 of Paper Book no. 3):*

*"The question of law agitated before the Tribunal was whether, for the purpose of computing income under section 153A/153C, the Assessing Officer was required to confine himself only to the material found during*

*the course of search operations. The Tribunal held against the Assessee.*

*Held that by virtue of section 158B-I the various provisions of Chapter XIV-B are made inapplicable to proceedings under section 153A/153C. The effect of this is that while the provisions of Chapter XIV-B limit the inquiry by the Assessing Officer to those materials found during the search and seizure operation, no such limitation is found insofar as section 153A/153C is concerned. Therefore, it follows that for the purposes of section 153A/153C the Assessing Officer can taken into consideration material other than what was available during the search and seizure operation for making an assessment of the undisclosed income of the Assessee."*

*Recently Hon'ble ITAT Hyderabad Bench in the case of Smt. M. Vijaya & Ors. Vs. DCIT dated 06.06.2014 has followed this order and held that even if there is no incriminating material to indicate any undisclosed income or income escaped assessment during the original assessment completed u/s 143(3), the AO is bound to make assessment u/s 153A for all these assessment years.*

*On the basis of the above judgments/decisions by Hon'ble Courts/Tribunal the plea of the appellant that u/s 153A addition only on account of seized material has to be made deserves to be dismissed.*

### **Decisions in favour of Revenue of ITAT**

*Apoorva Extrusion Pvt. Ltd. - ITA No. 3308/Del/2010(Delhi A-Bench) dated 09.10.2014 (Para 8)*

1. *Nandini Delux (Banglore C-Bench) [2015] 54 Taxmann.com 162 (Para 6.3.9)*
2. *Heavy Hearts Hospitals Ltd. vs. Asstt. CIT [2010] 130 TTJ 700 (Chennai Bench) (Para 2.12).*

### **Reliance is also placed on the following recent order that strengthen the case of Revenue:**

1. *Smt Dayawanti v CIT [2016] 75 taxmann.com 308 (Delhi) Reference to Head notes & Para 23. Case of CIT v Kabul Chawla [380 ITR 573] has also been discussed.*
2. *E.N Gopakumar v CIT(Central) [2016] 75 taxmann.com 215 (Kerela) Reference to Head notes.*

3. *CIT V ST Francis Clay Decor Tiles [2016] 70 taxmann.com 234 (Kerela)*”

4. Repudiating the arguments of the Id. CIT DR, the Ld. AR submitted that the assessee's case was covered by the judgment of the Hon'ble Delhi High Court in the case of CIT-VII vs RRJ Securities Ltd. vide order dated 30.10.2015 in I.T.A. No. 164/2015 and 175/2015. It was submitted that the Hon'ble Delhi High Court has held that reference to the date of search under the second proviso u/s 153A of the Act has to be construed as the date of handing over the assets/documents belonging to the assessee (being the person other than the one searched) to the Assessing Officer having jurisdiction to assess the said assessee. It was submitted that the Hon'ble Delhi High Court has held that further proceedings by virtue of section 153C(1) of the Act would have been in accordance with section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction which would mean that six assessment years for which assessments/reassessments could be made u/s 153C would have to be construed with reference to the date of handing over of the assets/documents to the Assessing Officer of the assessee. Ld. AR also submitted that as in the present appeal, in the case of RRJ Securities also, the Assessing Officer of the searched person as well as the other person were the same and, therefore, the

assessee's case is identical to the facts of the case in RRJ Securities. It was also submitted that the case of SSP Aviation Limited, relied upon by the department, has also been considered by Hon'ble Delhi High Court in the case of RRJ Securities wherein the Hon'ble Delhi High Court has held that the decision in SSP Aviation cannot be understood to mean that the Assessing Officer has jurisdiction to make a reassessment in every case where seized assets or documents are handed over to the Assessing Officer. The Ld. AR also referred to the satisfaction note and submitted that as per the satisfaction note, there is no clear finding that the documents seized belonged to the assessee and, as such, even on this count, the jurisdiction u/s 153C could not be assumed.

4.1 The Ld. AR also placed reliance on the order of the ITAT Delhi Bench in the case of Goverdhan Financial Services Ltd. in I.T.A. No. 1720 & 943/D/2013 which is also a group company of M/s Wings Pharmaceutical Pvt. Ltd. i.e. the searched party. A notice u/s 153C of the Act was served upon this company for assessment years 2002-03 to 2007-08 and the ITAT on identical facts held that assessment/reassessment in respect of assessment years 2002-03 and 2003-04 was beyond the period of six assessment years as computed with reference to the date of satisfaction recorded by the Assessing Officer of the searched person. Reliance was also placed on another judgment of Hon'ble



High Court in the case of Pr. CIT vs Lata Jain in I.T.A. 214/2016 and 276/2016 wherein the Hon'ble Delhi High Court vide order dated 29.4.2016 held that where no incriminating material for the assessee is found, the assessment framed u/s 153C was not legally tenable.

5. We have heard the rival submission on this issue and also perused the judgment dated 30<sup>th</sup> October, 2015 of the Hon'ble jurisdictional High Court in the case of CIT Vs RRJ Securities in ITA No. 164/2015 and ITA No. 175 to 177/2015. For ready reference, the relevant Para of the judgment is reproduced as under:

*"24. As discussed hereinbefore, in terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment year 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years prior to the assessment year relevant to the previous year in which the search was conducted. If this*

*interpretation as canvassed by the Revenue is accepted, it would mean that whereas in case of a person searched, assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be reopened would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to the AO would be subsequent to the date of the search. This, in our view, would be contrary to the scheme of Section 153C(1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one searched) as the date of the search on the Assessee. The rationale appears to be that whereas in the case of a searched person the AO of the searched person assumes possession of seized assets/documents on search of the Assessee; the seized assets/documents belonging to a person other than a searched person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee's income for that year."*

5.1 The fact that satisfaction u/s 153C of the Act in the case was recorded on 2<sup>nd</sup> November, 2009, is not disputed by both the parties. In the judgment cited above, the Hon'ble High Court has held that when the Assessing Officer of searched person and such other person in whose case proceedings under section 153C are initiated, is the same officer, then the date of recording of satisfaction would be construed as the date of handing over of the seized records by the Assessing Officer of searched person to the Assessing Officer of



such other person in whose case proceedings under section 153C are initiated. Since the Hon'ble High Court has already construed the relevant provisions, we do not concur with the arguments advanced by the Id. CIT DR on this count. Respectfully following the above judgment of the Hon'ble High Court in RRJ Securities (supra) the date of handing over of seized material/record by the Assessing Officer of searched party to the Assessing Officer of the assessee would be 2<sup>nd</sup> November, 2009. Further, following the judgment, the six assessment years for which assessment/re-assessment could be made u/s 153C of the Act would also have to be construed as from the reference date of handing over of assets/documents to the Assessing Officer of the assessee. In the case in hand, it would be the date of recording satisfaction under section 153 of the Act i.e. 2<sup>nd</sup> November, 2009, and therefore, six assessment years which would be eligible for assessment/re-assessment would commence from assessment year 2004-05 to assessment year 2009-10. The assessment/re-assessment in respect of assessment year 2003-04 would, thus, be beyond the period of six assessment year as reckoned with reference to the date of satisfaction recorded by the Assessing Officer of the searched person. We, therefore, hold that the learned CIT(A) was quite justified in considering the assessment for assessment year 2003-04 as outside the scope of section 153C of the Act, being barred by limitation and without jurisdiction.

Accordingly, the impugned assessment order is liable to be quashed. We decide accordingly.

5.2 As we have already quashed the assessment, the other grounds raised by Revenue are rendered merely academic and, therefore, we are not required to adjudicate on those grounds at this point of time. Accordingly, the appeal of the Revenue deserves to be dismissed.

6. As already discussed, since the impugned assessment stands quashed, being without jurisdiction and the order of the Id. CIT(A) stands upheld, the Cross-objection filed by the assessee in support of the impugned order, is rendered as infructuous and deserves to be dismissed.

7. In the result, the appeal of the revenue and C.O. filed by the assessee are dismissed.

Order pronounced in the open court on 21.11.2017.

**Sd/-**  
**(Bhavnesht Saini)**  
**Judicial member**

**Sd/-**  
**(L.P. Sahu)**  
**Accountant Member**

Dated: 21.11.2017

*\*aks\**

*Copy of order forwarded to:*

(1) The appellant	(2) The respondent
(3) Commissioner	(4) CIT(A)
(5) Departmental Representative	(6) Guard File

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Delhi Benches, New Delhi*