

आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकर अपील सं. ITA No.1233/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2009-10)

&

2. आयकर अपील सं. ITA No.1234/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2011-12)

Shri Sarangabani Kirubakaran 17/6, First Pillayar Koil Street, Ekkatuthangal, Chennai-600 032.	बनाम/ Vs.	DCIT Circle-1(2) Chennai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. BUMPK-0892-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Ms.T.V.Muthu Abirami,(Advocate)-Ld.AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Nilay Baran Som (CIT) -Ld. Sr.DR

सुनवाईकीतारीख/ Date of Hearing	:	25-07-2024
घोषणाकीतारीख / Date of Pronouncement	:	04-09-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2009-10 & 2011-12 arises out of the common order of learned Commissioner of Income Tax (Appeals)-18, Chennai, [CIT(A)] dated 13-09-2023 in the matter of separate assessments framed by the Ld. AO u/s.153C r.w.s. 153A r.w.s. 143(3) of the Act. During hearing, Ld. AR raised a pertinent additional ground of appeal to submit that considering the date of

satisfaction note, these assessments are liable to be quashed being barred by limitation. Reliance has been placed on the decision of Hon'ble Supreme Court in the case of **CIT vs. Jasjit Singh (155 Taxmann.com 155)**. The copy of the same has been placed on record. The additional ground of appeal read as under: -

ADDITIONAL GROUNDS OF APPEAL

Ground No.9

For that the Commissioner of Income Tax (Appeals) failed to appreciate that the assessment order for the impugned assessment year 2009-10 is time barred. The satisfaction note was made by the Assessing Officer on 21.09.2021, which falls in Assessment Year 2022-23 and therefore the block period for issuing notice u/s 153C read with section 153A would be from AY 2012-13 to AY 2021-22 (10 AYs immediately preceding year 2022-23). Consequently, the notice u/s.153C for the impugned Assessment Year 2009-10 is beyond mandate of the Jaw and the assessment order is liable to be quashed.

However, Ld. CIT-DR has drawn attention to the amendment brought in by Finance Act, 2017 and also relied on the impugned order, on this issue. Upon perusal of case records, our adjudication would be as under.

2. From assessment order for AY 2009-10, it could be noted that pursuant to search action on M/s Lotus-G Square group on 29-01-2019, the proceedings u/s 153C were initiated against the assessee. The assessee's case was notified to Central Circle 1(2) and was centralized vide PCIT's notification no. No. ITBA/COM/F/17/2021-22/1035646573(1) in C.No./272A/Cent./PCIT-1 dated 13-09-2021. Subsequently, a notice u/s 153C was issued to the assessee on 22-09-2021. After considering assessee's reply, Ld. AO made addition of unexplained investment u/s 69 for Rs.9.50 Lacs. The Ld. CIT(A), in para 8.3.1 of the impugned order has noted that the satisfaction note was recorded by Ld. AO on 21-09-2021. This is an undisputed fact.

3. It emerges that the case was centralized on 13-09-2021 and notice u/s 153C was issued on 22-09-2021. The satisfaction note was recorded by Ld. AO on 21-09-2021. All these dates fall in previous year 2021-22 relevant to Assessment Year 2022-23. The preceding ten Assessment Years would be 2012-13 to 2021-22. Accordingly, the assessment earlier to AY 2012-13 would be barred by limitation. The Ld. CIT(A) has counted the limitation period from the date of search. The same is contrary to the decision of Hon'ble Supreme Court in the case of **CIT vs. Jasjit Singh (155 Taxmann.com 155)** wherein it has been held by Hon'ble Court as under: -

8. In SSP Aviation (supra) the High Court inter alia reasoned as follows:-

"14. Now there can be a situation when during the search conducted on one person under Section 132, some documents or valuable assets or books of account belonging to some other person, in whose case the search is not conducted, may be found. In such case, the Assessing Officer has to first be satisfied under Section 153C, which provides for the assessment of income of any other person, i.e., any other person who is not covered by the search, that the books of account or other valuable article or document belongs to the other person (person other than the one searched). He shall hand over the valuable article or books of account or document to the Assessing Officer having jurisdiction over the other person. Thereafter, the Assessing Officer having jurisdiction over the other person has to proceed against him and issue notice to that person in order to assess or reassess the income of such other person in the, manner contemplated by the provisions of Section 153A. Now a question may arise as to the applicability of the second proviso to Section 153A in the case of the other person, in order to examine the question of pending proceedings which have to abate. In the case of the searched person, the date with reference to which the proceedings for assessment or reassessment of any assessment year within the period of the six assessment years shall abate, is the date of initiation of the search under Section 132 or the requisition under Section 132A. For instance, in the present case, with reference to the Puri Group of Companies, such date will be 5.1.2009. However, in the case of the other person, which in the present case is the petitioner herein, such date will be the date of receiving the books of account or documents or assets seized or requisition by the Assessing Officer having jurisdiction over such other person. In the case of the other person, the question of pendency and abatement of the proceedings of assessment or reassessment to the six assessment years will be examined with reference to such date."

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

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

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

It was thus confirmed that while in the case of the searched person, the date with reference to which the proceedings for assessment or reassessment of any assessment year within the period of the six assessment years shall abate, shall be the date of initiation of the search u/s 132 or the requisition u/s 132A, in the case of the other person, such date will be the date of receiving the books of account or documents or assets seized or requisition by the Assessing Officer having jurisdiction over such other person. In the case of the other person, the question of pendency and abatement of the proceedings of assessment or reassessment to the six assessment years will be examined with reference to such date. Therefore, the period has to be reckoned with reference to the date on which satisfaction note u/s 153C was drawn by AO of the present assessee.

4. The effect of amendment made by Finance Act 2017, as referred to by Ld. CIT-DR, has already been considered by Hon'ble Delhi High Court in bunch of appeals titled as **Ojus Medicare Pvt. Ltd. (161 Taxmann.com 160)**. The summary of conclusions of Hon'ble Court was as under: -

K. SUMMARY OF CONCLUSIONS

119. We thus record our conclusions as follows:

A. Prior to the insertion of sections 153A, 153B and 153C, an assessment in respect of search cases was regulated by Chapter XIVB of the Act, comprising of sections 158B to 158BI and which embodied the concept of a block assessment. A block assessment in search cases undertaken in terms of the provisions placed in Chapter XIVB was ordained to be undertaken simultaneously and parallelly to a regular assessment. Contrary to the scheme underlying Chapter XIVB, sections 153A, 153B and 153C contemplate a merger of regular assessments with those that may be triggered by a search. On a search being undertaken in terms of section 153A, the jurisdictional AO is enabled to initiate an assessment or reassessment, as the case may be, in respect of the six AYs' immediately preceding the AY relevant to the year of search as also in respect of the "relevant assessment year", an expression which stands defined by Explanation 1 to section 153A. Of equal significance is the introduction of the concept of abatement of all pending assessments as a consequence of which curtains come down on regular assessments.

B. Both sections 153A and 153C embody non-obstante clauses and are in express terms ordained to override sections 139, 147 to 149, 151 and 153 of the Act. By virtue of the 2017 Amending Act, significant amendments came to be introduced in section 153A. These included, inter alia, the search assessment block being enlarged to ten AYs' consequent to the addition of the stipulation of "relevant assessment year" and which was defined to mean those years which would fall beyond the six year block period but not later than ten AYs'. The block period for search assessment thus came to be enlarged to stretch up to ten AYs'. The 2017 Amending Act also put in place certain prerequisite conditions which would have to inevitably be shown to be satisfied before the search assessment could stretch to the "relevant assessment year". The preconditions include the prescription of income having escaped assessment and represented in the form of an asset amounting to or "likely to amount to" INR 50 lakhs or more in the "relevant assessment year" or in aggregate in the "relevant assessment years".

C. Section 153C, on the other hand, pertains to the non-searched entity and in respect of whom any material, books of account or documents may have been seized and were found to belong to or pertain to a person other than the searched person. As in the case of section 153A, section 153C was also to apply to all searches that may have been undertaken between the period 01 June 2003 to 31 March 2021. In terms of that provision, the AO stands similarly empowered to undertake and initiate an assessment in respect of a non-searched entity for the six AYs' as well as for "the relevant assessment year". The AYs', which would consequently be thrown open for assessment or reassessment under section 153C follows lines *pari materia* with section 153A.

D. The First Proviso to section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is governed by the First Proviso to section 153C, which significantly shifts the reference point spoken of in section 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. The shift of the relevant date in the case of a non-searched person being regulated by the First Proviso of section 153C(1) is an issue which is no longer *res integra* and stands authoritatively settled by virtue of the decisions of this Court in *SSP Aviation* and *RRJ Securities* as well as the decision of the Supreme Court in *Jasjit Singh*. The aforesaid legal position also stood reiterated by the Supreme Court in *Vikram Sujitkumar Bhatia*. The

submission of the respondents, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted.

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

F. While the identification and computation of the six AYs' hinges upon the phrase "immediately preceding the assessment year relevant to the previous year" of search, the ten year period would have to be reckoned from the 31st day of March of the AY relevant to the year of search. This, since undisputedly, Explanation 1 of section 153A requires us to reckon it "from the end of the assessment year". This distinction would have to necessarily be acknowledged in light of the statute having consciously adopted the phraseology "immediately preceding" when it be in relation to the six year period and employing the expression "from the end of the assessment year" while speaking of the ten year block.

G. Insofar as the thresholds put in place by virtue of the Fourth Proviso to section 153A are concerned and the argument of the writ petitioners of the condition of INR 50 lakhs being an unwavering precondition, we find ourselves unable to sustain that submission bearing in mind the indubitable fact that proceedings for search assessment commence upon the issuance of a notice and the AO at that stage having really not had the occasion to undertake a detailed or in depth examination of the evidence collected or come to a definitive opinion with respect to the total income which may have escaped assessment. Since the computation and assessment of income that is likely to have escaped assessment would at this stage be provisional, it would be incorrect to strike down initiation of action on a mere ex facie examination of the Satisfaction Note. We also in this regard bear in mind the Fourth Proviso using the expression "amounts to or is likely to amount". The usage of the phrase "likely to" is indicative of the Legislature being conscious of the provisional character of the opinion that the AO may have formed at that stage.

H. However, and at the same time, even if the identified asset at that stage be quantified as less than INR 50 lakhs, the AO must for reasons to be duly recorded, be of the opinion that the ultimate computation of escaped income is likely to exceed INR 50 lakhs. The aforesaid satisfaction would have to be based on an assessment of the material gathered and the potentiality of the same being indicative of the escaped assessment exceeding INR 50 lakhs. The formation of opinion in this respect would have to be based not on mere ipse dixit but reflective of a fair assessment of the quantum of income likely to have escaped assessment as distinct from mere speculation and conjecture.

I. We further hold that since the precondition of INR 50 lakhs or more constitutes a sine qua non for initiating action for the extended ten year block, the aforesaid satisfaction and the reasons in support thereof would have to borne out from the Satisfaction Note itself. We are also of the opinion that the precondition of INR 50 lakhs is not liable to be viewed as being the qualifying criteria for each "relevant assessment year" that may be thrown open and that the said condition would stand satisfied if the escaped income cumulatively or in the aggregate meets the minimum benchmark of INR 50 lakhs.

J. The contention of finality and closure addressed with respect to AYs' 2010-11 and 2011-12 on the basis of the statutory timeframes prescribed for assessment or reassessment

and as those provisions stood prior to 01 April 2017 is misconceived, since it proceeds on the assumption that once the period of assessment or reassessment were to come to an end, it would inevitably lead to the creation of a vested right in favour of the assessee. The aforesaid argument proceeds on the incorrect premise of the reassessment provisions controlling or cabining the power conferred by sections 153A and 153C. Acceptance of the aforesaid contention would amount to ignoring the plain and evident intent of the Legislature for sections 153A and 153C operating above and beyond the reassessment powers.

K. The submission of closure and finality also fails to bear in consideration the indubitable fact that a search is an eventuality which is inherently unpredictable, a circumstance which would defy prophecy and it consequently being wholly irrational to read the time frames pertaining to reassessment as regulating or controlling the period within which an assessment predicated on that event may be initiated. It would be wholly illogical to conceive of a connection between the statutory time frames which are otherwise embodied in the Act and search assessments. In fact the acceptance of this submission would amount to virtually erasing the non obstante clause contained in sections 153A and 153C.

L. The legislative intent of those provisions having retroactive application is clearly evidenced from the statute declaring that they would apply to all searches conducted between 31 May 2003 to 31 March 2021, and the Fourth Proviso in unambiguous terms extending the applicability of those provisions to all searches conducted post 01 April 2017 and sections 153A and 153C superseding the provisions for reassessment, otherwise appearing in the Act.

M. The argument of closure also fails to take note of the accepted distinction between the liability to tax under the Act and the right to assess and enforce a liability created pursuant thereto. While a statute may denude an authority of the power to enforce a liability and in that limited sense conferring finality upon an assessment, the said position would prevail only till such time as that halo of impregnability is not statutorily removed. As was eloquently observed by the Supreme Court, the deprivation of a power to enforce would not lead to the creation of a vested right. As was pertinently observed, the liability to the State exists and operates de hors a consideration of time and in the absence of the statute itself imposing a time limit. The only limitations which are introduced while enacting sections 153A and 153C was of the period within which the search had been conducted

The Hon'ble Court applied the ratio of cited decision of Hon'ble Supreme Court and held that in case of other person, the period has to be reckoned from the date of receipt of the books of accounts, documents or seized assets by the jurisdictional AO of the non-searched person.

5. Respectfully following the same, we would hold that the assessment for AYs 2009-10 and 2011-12 being beyond the period of 10 years from the date of recording of satisfaction note, would be barred by limitation. We order so. Going into other legal grounds as well as into the

merits of the case has been rendered academic in nature. Both the appeal succeeds on legal ground.

6. Both the appeals stand allowed accordingly.

Order pronounced on 4th September, 2024

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :04-09-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF