

IN THE **INCOME TAX APPELLATE TRIBUNAL "C" BENCH**, KOLKATA

BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI SONJOY SARMA, JM

ITA No. 2284/KOL/2024
(Assessment Year:2015-16)

ACIT, Central Circle-4(3)
Aaykar Bhavan Poorva,
110 Shantipally, Kolkata-700107 Vs.
West Bengal
(Appellant)

Jaideep Halwasiya
3rd Floor, P-34, India
Exchange Place,
Kolkata-700001,
West Bengal
(Respondent)

PAN No. AAWPH1706L

CO No. 50/KOL/2024
(Arising out of ITA No. 2284/KOL/2024 for A.Y. 2015-16)

Jaideep Halwasiya
3rd Floor, P-34, India
Exchange Place,
Kolkata-700001,
West Bengal
(Appellant)

ACIT, Central Circle-4(3)
Aaykar Bhavan Poorva,
110 Shantipally, Kolkata-700107
West Bengal
(Respondent)

Assessee by : Shri S.K. Tulsian, AR
Revenue by : Shri Guru Bhashyam, DR

Date of hearing: 23.01.2025
Date of pronouncement : 13.02.2025

ORDER

Per Rajesh Kumar, AM:

This is an appeal preferred by the Revenue and CO by the assessee against the order of the Commissioner of Income-tax (Appeals), Kolkata-27 (hereinafter referred to as the "Ld. CIT(A)") dated 30.08.2024 for the AY 2015-16.



02. The Revenue has filed an appeal challenging the order of Id. CIT (A) declaring the entire proceeding u/s 153C of the Act as void and also overlooking the fact that 147 was abated after issuance of notice u/s 153A of the Act and finally challenging the appellate order for not adjudicating the addition made by the Id. AO in respect of bogus loss **on trading in F&O of ₹ 10,90,25,940/-**, whereas the assessee by way of cross objection has challenged the impugned assessment year i.e. 2015-16 as falling beyond the period of six assessment years and therefore, claiming the same to be barred by limitation. First of all, we would adjudicate the ground raised by the assessee in the cross objection which is extracted below: -

"1. That, on the facts and circumstances of the case, the Ld. CIT(A) has erred in considering the search date as 06.02.2019 for computing the period of six years as per section 153C(1) of the Act without considering the first proviso to section 153C of the Act which specifies that date of initiation of search /s 153C shall be the date on which the books of account or documents or asset seized is handed over to the AO having jurisdiction over such other person u/s 153C i.e. 26.09.2022 in the case of the assessee."

03. The facts in brief are that the assessee filed the return of income on **29.09.2015 showing total income of ₹3,60,000/-** and current year loss **at ₹19,34,040/-**. The case of the assessee was selected for scrutiny and assessment was framed accordingly, u/s 143(3) of the Act on **05.05.2017, assessing the total income at ₹14,56,810/-**. A search action u/s 132(1) of the Act was conducted on 06.02.2019, in case of Shri Avtar Singh Kochar, wherein certain incriminating materials marked as Annexure A-1 & A-2, Team KG-01, was found and seized. These were the digital evidences in the form of conversation and whatsapp chats between Shri Avtar Singh Kochar and Shri Jaideep Halwasiya (Mobile No.9831005356). The AO received copy of the seized materials in respect of Shri Jaideep halwasiya and accordingly, notice u/s 153C of the Act was issued on 14.10.2022 after recording the detailed satisfaction. The assessee complied with the said notice



by filing the return of income on 20.02.2023, showing total income of **₹14,56,810/-**. Thereafter statutory notices along with questionnaire were duly issued and served upon the assessee and the assessee replied the said notices. Finally, the Id. AO made the addition in **respect of loss from reversal trades (F&O) of ₹10,90,25,940/-** on the ground that the same was bogus and non-genuine arising out for bogus trades in F& O and consequently rejected setting off such loss against any other chargeable income.

04. In the appellate proceedings, the Id. CIT (A) allowed the appeal of the assessee on the legal issue that the additions made by the AO was not made with reference to any incriminating material seized during the course of search and therefore, proceeding along with addition made u/s 153C of the Act was treated as void and not maintainable. The Id. CIT (A) dismissed the additional ground raised by the assessee challenging the proceeding u/s 153C of the Act as to the timeline of 6 assessment years. According to the Id CIT(A) the date of search and not the date of satisfaction note has to be considered for the purpose of reckoning the period of 6 years assessment years. The Id. CIT (A) dismissed the plea of the assessee by relying on the amendment made u/s 153C of the Act by the Finance Act, 2017. The Id. AO held that the amendment made by the Finance Act, 2017 has clarified that treatment in respect of date of initiation of search for the purpose of section 153C and 153A of the Act which is the one and the same. Ld CIT(A). Prior to the amendment date a satisfaction note used to be considered as date of initiation of search for the purpose of section 153C of the Act. However, 01.04.2017, there is no different between the date of search for the purpose of 153C of the Act and 153A of the Act.



05. The Id. AR vehemently submitted before us that for the purpose of deciding the period of six assessment years, the date of initiation of search u/s 132 of the Act or making requisition u/s 132A of the Act shall be date of which the books of accounts or documents or asset are received from the Id. AO of searched person and i.e. in the present case the date of search was 26th September, 2022. Thereafter, the Id. Counsel for the assessee referred to the provisions of section 153C of the Act on or before and after amendment by finance Act 2017 and submitted that vide Finance Act, 2017, it was duly inserted in that section that six assessment years immediately preceding assessment year relevant to preceding year for which search is conducted or requisition was made. The Id. AR also placed before the Bench the memorandum explaining the position of the Finance bill and submitted that therein it is clearly stated that the amended provisions of Section 153A of the Act was applied where search u/s 132 of the Act was initiated or requisition u/s 132A of the Act was made on or after 1st April, 2017, and thereafter it was proposed to consequentially amend section 153C of the Act to provide for reference to the relevant assessment year as referred to Section 153A of the Act and this amendment also takes effect from 01.04.2017. The Id. Counsel for the assessee therefore, submitted that the memorandum explaining the provisions of Finance Bill did not provide any such explanation as assumed by the Id. CIT (A) for the initiation of search for the purpose of search of Section 153C or 153A of the Act which shall be the same. The Id. AR submitted that the amendment was only made to extent the period of extension beyond six assessment years already provided up to the 10th assessment year and corresponding amendment was also made u/s 153C of the Act. The Id. AR also submitted that the appellate authority has not dealt with the first proviso to Section 153C of the Act which provided



for the date of search u/s 132 of the Act for the purpose of persons referred in section 153C of the Act. The Id. AR submitted that first proviso to Section 153C of the Act provides that date of initiation of search u/s 132 of the Act or making a requisition u/s 132 of the Act in the second proviso to Section 153A (1) shall be construed as reference to the date of receiving the books of accounts or documents or seized material or requisition by the Id. AO having jurisdiction over such other persons. Therefore, the Id. Counsel for the assessee submitted that the proviso to Section 153C of the Act provided that date of initiation of search in the case of other persons u/s 153C of the Act shall be the date of which the AO of the other persons received the documents or documents or assets seized during the course of search. The Id. Counsel for the assessee submitted the aforesaid proviso has neither been omitted nor has been modified even after amendment made by Finance Act 2017. The Id. Counsel for the assessee submitted that six assessment years has to be reckoned from the assessment year relevant to financial year in which the search material in the form of documents or assets seized or requisitioned was received by the Id. AO of the non-searched person. In defense of his arguments, the Id. AR relied on the decision of Delhi High Court in case of PCIT vs. Ojjus medicare (P.) Ltd 2024 161 taxmann.com 160 (Delhi), decision of Madras High Court in case of Smt. Pavithra Sugichandran Vs. DCIT [2024] 168 taxmann.com 413 (Madras), Decision of Gujarat High Court in case of Mukesh Manekchand Sheth Vs. ACIT 116 taxmann.com 618 (Gujarat) and decision of Supreme Court in case of ITO Vs. Vikram Sujitkumar Bhatia [2023] 453 ITR 417 (SC). The Id. AR therefore, prayed that since the seized materials having bearing on the determination of the total income of other person i.e. Shri Jaideep Halwasiya for the purpose of invoking provisions u/s 153C of the Act, were received by



the Id. AO of the assessee vide e-mail on 26.09.2022, therefore six assessment years have to be computed from the assessment year 2023-24 relevant to F.Y. 2022-23, during which the email was received by the Id. AO of the assessee. The Id. AR therefore prayed that assessment year 2015-016 falls beyond the said period of six assessment years and the reopening u/s 153C of the Act was without jurisdiction and invalid and therefore, all the proceeding undertaken qua the said assessment year may kindly be quashed.

06. The Id. DR on the other hand relied on the order of the Id. lower authorities by submitting that the six assessment years which can be reopened u/s 153C of the Act were to be reckoned from the assessment year relevant to financial year in which the search was conducted u/s 132(1) of the Act or requisition was made u/s 132A of the Act and therefore, the appeal of the assessee may kindly be dismissed. The Id. AR submitted that the Id. CIT (A) has rightly passed the order by relying on the amendment made by Finance Act, 2017, wherein the distinction between 153A and 153C has been done away with.
07. After hearing the rival contentions and perusing the materials available on record, we find that the search action u/s 132(1) of the Act was conducted on Shri Avtar Singh Kochar on 06.02.2019, during which certain incriminating material was found which was having bearing on the determination of income of the assessee i.e. Shri Jaideep Halwasiya. For the purpose of invoking provisions u/s 153C of the Act, seized materials were received by the Id. AO of the assessee vide e-mail on 26.09.2022. Now the question before us is whether the instant assessment year falls beyond the period of six assessment years which have to be reopened u/s 153C of the Act. After perusing the section 153C of the Act and proviso thereto and also the



amendment made by the Finance Act, 2017, in section 153C of the Act, we observe that the six assessment years have to be reckoned from the end of the assessment year relevant to financial year in which the books of accounts, documents or assets are received by the Id. AO of the other person from the Id. AO of the searched person. In the present case that has happened on 26.09.2022. Therefore, the six assessment years have to be computed from the end of the assessment year i.e. 2023-24 meaning thereby that six assessment year which can be reopened u/s 153C of the Act are A.Y. 2017-18 to 2022-23 as we have to go backward from A.Y. 2023-24 and the last year which could be opened was to 2017-18. The case of the assessee find force from the decision of the Hon'ble Delhi HC in case of PCIT vs. Ojjus medicare (P.) Ltd (supra), wherein the Hon'ble court has in para 87 has held as under: -

"87. Assuming, therefore, that the handover of material gathered in the course of the search and pertaining to the non-searched person occurred between 01 April 2021 to 31 March 2022, the same would essentially constitute FY 2021-22 as being the previous year of search for the purposes of the non-searched entity. As a necessary corollary, the relevant AY would become AY 2022-23. AY 2022-23 would thus constitute the starting point for the purposes of identifying the six years which are spoken of in section 153C. The six AYs' are envisaged to be those which immediately precede the AY so identified with reference to the previous year of search. It would thus lead us to conclude that it would be the six AYs' immediately preceding AY 2022-23 which could have formed the basis for initiation of action under section 153C. Consequently, and reckoned backward, the six relevant AYs' would be: -

<i>Computation of the six-year block period as provided under section 153C of the Act</i>	<i>No. of years</i>
AY 2021-22	1
AY 2020-21	2
AY 2019-20	3
AY 2018-19	4
AY 2017-18	5
AY 2016-17	6

Consequently, AY 2021-22 would become the first of the six preceding AYs' and would as per the table set out hereinabove terminate at AY 2016-17."



08. The Hon'ble Gujarat High Court in case of Mukesh Manekchand Sheth Vs. ACIT (supra) has laid similar ratio, wherein it has been held as under: -

"5. Ultimately, the final order which came to be passed by the Court reads as under:

"In the light of the above discussion, the petitions succeed, and are accordingly, allowed. The impugned notices issued under section 153C of the Income Tax Act, 1961 in each of the petitions are hereby quashed and set aside. In cases where the assessment orders are subject matter of challenge, the impugned assessment orders are hereby quashed and set aside on the ground that the very initiation of proceedings under section 153C of the Income Tax Act, 1961 was without jurisdiction. Rule is made absolutely accordingly in each of the petitions, with no order as to cost."

09. The Hon'ble Supreme Court in the case of ITO Vs. Vikram Sujitkumar Bhatia (supra) has also held that six assessment years has to be computed from the assessment year relevant to the financial year in which the bogus documents or assets are received by the Id. AO of the other persons from the Id. AO of the search person by holding and observing as under: -

"10.2 At this stage, the first proviso to section 153C of the Act, 1961 is required to be referred to. The first proviso to section 153C of the Act, 1961 came to be inserted vide Finance Act, 2005 with retrospective effect from 1-6-2003, which provides that the reference to the date of initiation of the search under section 132 or making of requisition under section 132-A in the second proviso to sub-section (1) of section 153-A shall be construed as a 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. Proviso to section 153C as inserted vide Finance Act, 2005 reads 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 132-A in the second proviso to sub-section (1) of section 153-A 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."

10.3 Thus, as per the proviso to section 153C as inserted vide Finance Act, 2005, and the effect of the said proviso is that it creates a deeming fiction wherein any reference made to the date of initiation of search is deemed to be a reference made to the date when the Assessing Officer of the non-searched person receives the books of account or documents or assets seized etc. Thus, in the present case, even though the search under section 132 was initiated prior to the amendment to section 153C w.e.f. 1-6-2015, the books of account or documents or assets were seized by the Assessing



Officer of the non-searched person only on 25-4-2017, which is subsequent to the amendment, therefore, when the notice under section 153C was issued on 4-5-2018, the provision of the law existing as on that date, i.e., the amended section 153C shall be applicable.”

010. Therefore, considering the facts of the case in the light of the above decisions, we are inclined to hold that the assessment year 2015-16 is beyond the period of six assessment years which could be reopened u/s 153C of the Act. Accordingly, the assessment order framed u/s 153C of the Act is quashed. The CO of the assessee is allowed.

011. Since, we have allowed the legal plea of the assessee in the cross **objection, the revenue’s appeal becomes infructuous and is dismissed.**

012. In the result, the appeal of the Revenue is dismissed and the cross objection by the assessee is allowed.

Order pronounced in the open court on 13.02.2025.

Sd/-
(SONJOY SARMA)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 13.02.2025.

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata