

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI  
BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 1206/Del/2024  
(Assessment Year: 2021-24)**

Seema Jain, C-42, Preet Vihar, Nirman Vihar, SO East Delhi, New Delhi (Appellant)	Vs. DCIT, Central Circle-31, Delhi  (Respondent)
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**PAN: AAFPJ6460J**

Assessee by :	Shri Ved Jain, Adv Shri Aman Garg, Adv Shri Aayush Garg, Adv
Revenue by:	Shri Mritunjay Prasad Dwivedi, Sr. DR
Date of Hearing	24/10/2024
Date of pronouncement	04/11/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.1206/Del/2024 for AY 2021-24, arises out of the order of the Commissioner of Income Tax (Appeals)-30, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/APL/M/250/2023-24/1060222206(1) dated 29.01.2024 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.12.2022 by the Assessing Officer, DCIT, Central Circle-31, New Delhi (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following additional grounds of appeal before us vide letter dated 12.7.2024:-

*"12. On the facts and circumstances of the case, the learned AO has erred in considering the assessment year under consideration as the assessment year relevant to the previous year in which search was conducted and consequently passing the assessment order under section 143(3) of the Act instead of section 153C of the Act.*

*13. On the facts and circumstances of the case, assessment order is otherwise liable to be quashed in the absence of notice being issued under section 153C of the Act. 14. On the facts and circumstances of the case, the assessment proceedings initiated without complying with the provision of section 153C of the Act is bad in law and without jurisdiction and the same is liable to be quashed"*

3. We have heard the rival submissions and perused the materials available on record. The assessee is an individual having income from renting of properties, capital gains and interest income from bank. The return of income for the Asst Year 2021-22 was belatedly filed by the assessee on 15.3.22 declaring total income of Rs 89,56,500/-. The return was selected for scrutiny vide issuance of notice u/s 143(2) of the Act on 30.6.2022 which was served electronically on the assessee on the same day. A search and seizure action u/s 132 of the Act was carried out at the premises of Shri Parveen K Jain / M/s Jainco Ltd on 6.1.2021. During the course of search, mobile phone of Shri Parveen Kumar Jain was seized and data of phone was forensically extracted. On perusal of whatsapp chat of Shri Parveen Kumar Jain with Nahan Shop Sikka, an image of hisaab parchi dated 31.1.2020 was found which related to sale of property at C-117, First Floor, Nirman Vihar, Delhi-110092. The image of parchi contains the details of total sale consideration amounting to Rs 2,35,00,000/- and details of cash payments regarding sale consideration of the property at C-117, First Floor, Nirman Vihar, Delhi-110092 on 18.5.2020. However, on perusal of the ITR of the assessee, it was found that the property was sold by the assessee for a consideration of Rs 80,00,000/- through proper banking channel. The Id AO observed that the cash receipt of Rs 1,55,00,000/- was not disclosed in the ITR as sale

consideration of the above mentioned property. Further, on perusal of the registered sale deed dated 23.7.2020, the sale of property under consideration has been registered at Rs 80,00,000/- and assessee had 100% share in the said property. Accordingly, a satisfaction note was recorded in the hands of the assessee to proceed in the hands of the assessee in terms of section 153C of the Act on 26.9.2022 by the Id AO of the searched person. Based on this satisfaction, a separate satisfaction note stood recorded u/s 153C of the Act in the hands of the assessee on 3.10.2022 by the Id AO of the assessee. Hence the date of search in the case of the assessee becomes 3.10.2022 relevant to Asst Year 2023-24. The assessment year under consideration is Asst Year 2021-22. Hence any information pertaining / relating / belonging to Asst Year 2021-22 could be proceeded in the hands of the assessee only u/s 153C of the Act for which notice u/s 153C of the Act need to be issued to the assessee and assessment should be framed u/s 153C of the Act. This is in view of the fact that the Id AO of the assessee is only contemplating to use the search material of Shri Parveen Kumar Jain / Jainco Ltd in the hands of the assessee herein after recording clear satisfaction that the hisaab parchi image pertains to the assessee herein. But we find that the Id AO had framed the assessment of the assessee u/s 143(3) of the Act for Asst Year 2021-22. The assessee challenged the validity of assessment before the Id CIT(A). The Id CIT(A) had not given any finding with regard to this legal issue raised by the assessee. This appeal is against the order of Id CIT(A) dated 29.1.2024 challenging the confirmation of addition of Rs 1,55,00,000/- made by the Id AO u/s 45 of the Act.

4. We find that the assessee had challenged the validity of assessment framed u/s 143(3) of the Act for the Asst Year 2021-22

before us on a general ground. However, in order to provide more clarity, she has raised the aforesaid additional grounds that since the search material of a third party is being used against her, then the right course of action on the assessee would be in terms of section 153C of the Act as the date of search in the hands of the assessee differs from that of Shri Parveen Kumar Jain. This law is already settled by the decision of Hon'ble Supreme Court in the case of CIT vs Jasjit Singh reported in 2023 (10) TMI 572 dated 26.9.2023 in favour of the assessee. The relevant observations of Hon'ble Supreme Court in this regard are as under:-

*"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."*

5. Hence we deem it fit to admit the aforesaid additional grounds and take up the same for adjudication first. In view of the aforesaid decision of Hon'ble Supreme Court, the assessment for the Asst Year 2021-22 should have been framed only u/s 153C of the Act and not u/s 143(3) of the Act as the year of search duly varies for the assessee. We find that the Hon'ble Jurisdictional High Court in the case of PCIT vs Ojjus Medicare Pvt Ltd and others reported in 2024 (4) TMI 268 (Del) dated 3.4.2024 had held as under:-

*"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."*

6. We find that similar issue had cropped up in the case before this Tribunal in the case of Vaibhav Jain vs DCIT in ITA No. 1334/Del/2024 for Asst Year 2021-22 dated 15.10.2024 which was rendered in the context of the search on Hans Group of cases on 6.1.2021 (same date of search as Parveen Kumar Jain). The relevant operative portion of the said tribunal order is reproduced below:-

*"11. Firstly, we take up the additional ground for adjudication which goes to the root of the matter as it challenges the legality of the order u/s.143(3) dated 29-12-2022 of the Act. These additional grounds were not raised before the Ld CIT(A) nor the similar plea was taken before the AO but the additional grounds are purely legal and all the facts of the case are on record, therefore, the same is admitted in view of the decision of the Hon'ble Apex Court in the case of National Thermal Power Corporation {1998} 229 ITR 383 (SC) and is hereby adjudicated.*

*12. On perusal of the satisfaction note it reveals that same was recorded on 10-10-2022 by the AO after giving the findings that the seized assets and documents/digital data and information relates to assessee and it is a fit case for initiating proceedings u/s 153C r.w.s.153A of the Act for the A.Y. 2015-16 to 2020-21. The AO has issued the notice u/s.143(2) of the Act. On the similar facts, the coordinate Bench of the Tribunal in the case of Jasjit Singh (supra), it was held that the date of receiving of the seized documents would become the date of search and six years period would be reckoned from this date. In the case of Jasjit Singh held as under :-*

*"15. We find that an identical issue has been decided by Delhi Bench of the Tribunal in the case of DSL Properties P. Ltd. (supra) in favour of the assessee accepting the similar contention of the assessee. Similar view has been expressed by the Delhi Bench of the Tribunal in the case of V.K. Fiscal (supra) holding that the date of receiving of the seized documents would become the date of search and six years period would be reckoned from this date. For a ready reference para no. 19, 21, 22 & 23 of the decision of Delhi Bench of the Tribunal in the case of DSL Properties (supra) are being reproduced hereunder:*

*"19. "We have carefully considered the submissions. Proviso to section 153C reads as under: rival*

*"Provided that in case of such other person, the reference to the date of initiation of the search u/s 132 or making of requisition u/s 132A in the second proviso to sub-section*

*(1) off 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 AO having jurisdiction over such other person."*

*20. The above proviso refers to second proviso to sub-section (1) of section 153A. That section 153(1) and its first and second provisions read as under: -*

*"153A. ((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 u/s 132 or books of account, section 132A after the 31st day of May, 2003, the AO 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 u/s 139;*

*(b) Assess or reassess the total income or assessment six years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made:*

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

*Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section) pending on the date of initiation of the search u/s 132 or making of requisition u/s 132A, as the case may be, shall abate."*

*21. From the above, it is evident that as per clause (b) of subsection (1) of section 153A and second proviso, the AO can be issue notice for assessment or reassessment of total six assessment years immediately preceding the assessment year relevant to previous year in which search is conducted. As per proviso to section 153C, the date of*

*search is to be substituted by the date of receiving the books of account or documents or assets seized by the AO having jurisdiction over such other person. Ld. DR has stated that since the AO of the person searched and the AO of such other person was the same, no handing over or taking over of the document was required. That section 153C(1) and its proviso have to be read together in a harmonious manner. While interpreting section 153C, we have already held that for initiating valid jurisdiction u/s 153C, even if the AO of the person searched and the AO of such other person is the same, he has to first record the satisfaction in the file of the person searched and thereafter, such note alongwith the seized document/books of account is to be placed in the file of such other person. The date on which this exercise is done would be considered as the date of receiving the books of account or document by the AO having jurisdiction over such other person. Though while examining the facts of the assessee's case we have arrived at the conclusion that no such exercise has been properly carried out and, therefore, initiation of proceedings u/s 153C itself is invalid, however, since both the parties have argued the issue of period of limitation also, we deem it proper to adjudicate the same. Since in this case satisfaction is recorded on 21st June, 2010 and notice u/s 153C is also issued on the same date, then only conclusion that can be drawn is that the AO of such other person has taken over the possession of seized document on 21st June, 2010. Accordingly, as per section 153(1), the AO can issue the notice for the previous year in which search is conducted (for the purpose of Section 1530 the document is handed over) and six assessment years preceding such assessment year. Now, in this case, the previous year in which the document is handed over is 1st April, 2010 to 31st March, 2011. The assessment year would be A.Y 2011-12. Six preceding previous years and relevant assessment year would be as under:-*

<i>Previous Year</i>	<i>Assessment Year</i>
<i>1.4.2009 to 31.03.2010</i>	<i>2010-11</i>
<i>1.4.2008 to 31.03.2009</i>	<i>2009-10</i>
<i>1.4.2007 to 31.03.2008</i>	<i>2008-09</i>
<i>1.4.2006 to 31.03.2007</i>	<i>2007-08</i>
<i>1.4.2005 to 31.03.2006</i>	<i>2006-07</i>
<i>1.4.2004 to 31.03.2005</i>	<i>2005-06</i>



22. *The Assessing Officer has issued notice u/s 153C for A.Y. 2004-05 which is clearly barred by limitation. Therefore, issue of notice u/s 153C issued by the Revenue cannot be sustained on both the above counts, ie., it is legally not valid as conditions laid down u/s 153C has not been fulfilled and it is barred by limitation. In view of the above, we quash the notice issued u/s 153C and consequently, the assessment completed in pursuance to such notice, is also quashed.*

23. *Since we have quashed the assessment order itself, the additions challenged by the assessee by way of other grounds of appeal do not survive, and, therefore, do not require any adjudication.*

16. *We thus, find that the issue raised in the additional ground has been answered in favour of the assessee, by the Coordinate Delhi Bench of the Tribunal in the case of DSL Properties (supra).*

17. *So far as decision of Hon'ble Delhi High Court in the case of SSP Aviation Ltd. vs. DCIT (supra) relied upon by the Id. CIT(DR) is concerned, we find that it is not helpful to the revenue as in that case also in para no. 14 of the judgment it has been held as under:-*

14. *"Now there can be a situation when during the search conducted on one person u/s 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 AO has to first be satisfied u/s 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 AO having jurisdiction over the other person. Thereafter, the AO 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 u/s 132 or the requisition u/s 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 AO 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."*

*18. In view of the above finding, the assessment framed u/s 143(3) of the Act for the A.Y. 2009-10 in the present case is not valid. Respectfully following the above cited decisions on an identical issue, the additional ground no. 4 in the present case is decided in favour of the assessee and in the result the assessment order is quashed as void.*

*19. Since in the above finding on the issue raised in additional ground no. 4 we have quashed the assessment order itself, the additions questioned by the assessee by way of other grounds of the appeal do not survive and, therefore, do not require any adjudication.*

*20. In the result, the appeal of the assessee is allowed."*

*13. From the above discussion the date of recording of the satisfaction will be the deemed date for the possession of the seized documents which is 03-10-2022 and six years would be reckoned from this date. The submission made by Ld AR is tenable that the assessment year relevant for previous year in which search was conducted in the case of the assessee will be AY 2023-24 and six years immediately preceding the assessment year relevant for u/s 153C of the Act will be AY 2018-19 to 2022-23. The assessment for AY 2021-22 should have been carried out by issuing notice u/s 153C of the Act and not u/s 143(2) of the Act. The case is squarely covered by the Hon'ble ITAT judgment passed in the case of Akanksha Gupta vs ACIT, Central circle -04 Delhi ITA No 3074/Del/2023. Therefore the assessment order dated 27-12-22 passed u/s 143(3) of the Act is bad in law and liable to be quashed and quashed accordingly. The additional grounds filed by the assessee are allowed."*

7. Similar view was taken by Delhi Tribunal in the case of Raja Varshney vs DCIT in ITA No. 1459/Del/2024 for Asst Year 2021-22 dated 26.9.2024 which was rendered in the context of same search of Jainco Ltd on 6.1.2021.
8. In view of the aforesaid observations and respectfully following the various judicial precedents relied upon hereinabove, we have no hesitation to quash the assessment framed u/s 143(3) of the Act in the hands of the assessee for the Asst Year 2021-22 , Accordingly, the additional grounds raised by the assessee are allowed.
9. Since the entire assessment is quashed by allowing the additional grounds of appeal raised by the assessee, the adjudication of original grounds raised by the assessee becomes academic in nature and hence no opinion is hereby given on them and they are left open.
10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 04/11/2024.

Sd/-  
**(SAKTIJIT DEY)**  
**VICE PRESIDENT**

Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 04/11/2024  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi