

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 30.10.2015

+ **ITA 164/2015**

COMMISSIONER OF INCOME TAX-7

..... Appellant

versus

RRJ SECURITIES LTD.

..... Respondent

AND

+ **ITA 175/2015**

COMMISSIONER OF INCOME TAX-7

..... Appellant

versus

RRJ SECURITIES LTD.

..... Respondent

AND

+ **ITA 176/2015**

COMMISSIONER OF INCOME TAX-7

..... Appellant

versus

RRJ SECURITIES LTD.

..... Respondent

AND

+ **ITA 177/2015**

COMMISSIONER OF INCOME TAX-7

..... Appellant

versus

RRJ SECURITIES LTD.

..... Respondent

Advocates who appeared in these cases:

For the Appellant : Mr N.P. Sahni, Senior Standing Counsel with
Mr Nitin Gulati, Junior Standing Counsel.

For the Respondent : Mr Kapil Goyal and Mr V.M. Chaurasia.

CORAM:
DR. JUSTICE S. MURALIDHAR
MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The Revenue has preferred these appeals under Section 260A of the Income Tax Act, 1961 (hereafter the 'Act') impugning a common order dated 26th August, 2014 passed by the Income Tax Appellate Tribunal (hereafter the 'Tribunal') in a batch of six appeals and six cross objections relating to six assessment years (AYs), being AYs 2003-04 to 2008-09. The aforesaid appeals before the Tribunal, were filed by the Revenue (being ITA Nos. 4232-4237/Del/2012) impugning a common order of the Commissioner Income Tax (Appeals) dated 17th May, 2012 partly allowing appeals of the Assessee in respect of the assessment orders (all dated 31st December, 2010) passed by the Assessing Officer (hereafter 'AO') under Section 153C read with Section 143(2) of the Act. The Revenue was aggrieved inasmuch as the CIT(A) had set aside the addition to the total income of the Assessee made by the AO under Section 69C of the Act in respect of the purchases as declared by the Assessee as well as the AO's decision to disallow the entire expenses claimed by the Assessee. The Tribunal's order dated 26th August, 2014 also disposed of the cross

objections preferred by the Assessee – 6 in number – as being academic. The Assessee had challenged the CIT(A)'s order to the limited extent that the CIT(A) had not accepted the Assessee's contention that the assessment orders passed were illegal and without jurisdiction.

2. This Court, by an order dated 9th March, 2015, admitted the present appeals and issued notice to the respondents. On the said date, the following questions were framed:-

1. Did the ITAT fall into error in holding that Section 69C was inapplicable in the facts and circumstances of the present cases given that the Revenue's contention was that the material in the form of statement recorded during the search proceedings indicated that no genuine sale and purchase transaction was entered into by the assessee; and
2. Whether in the circumstances, the AO was justified in bringing to tax the amounts disallowed in the course of search assessment under Section 153C.

3. At the outset, Mr Goyal, learned counsel for the Assessee submitted that the AO had no jurisdiction to make an assessment under Section 153C of the Act as no relevant material belonging to the Assessee had been found during the search conducted under Section 132 of the Act on B.K. Dhingra, Poonam Dhingra and Madhusudan Buildcon Pvt. Ltd. He submitted that in absence of any incriminating material, proceedings under Section 153C of

the Act could not be initiated. In addition, he submitted that the proceedings in respect of AY 2003-04 and AY 2004-05 were beyond the period of six years from the end of financial year preceding the year in which satisfaction under Section 153C of the Act was recorded and, thus, outside the scope of Section 153C of the Act. He submitted that the present case also involved the question as to jurisdiction of the AO to make assessments under Section 153C of the Act; but, as the questions of law were framed prior to issuance of notice in these appeals, the Assessee had no opportunity to suggest the same.

4. Mr N.P. Sahni, learned Senior Standing Counsel for the Revenue, did not dispute that the substantial question of law as suggested by Mr. Goyal also arose in these matters. Accordingly, the parties were also heard on the following question of law which arises from the impugned order passed by the Tribunal:-

- (a) Whether the AO had jurisdiction to assess and reassess the income of the Assessee under Section 153C in respect of AYs 2003-04 to 2008-09?

5. Briefly stated, the relevant facts necessary to address the issues involved in the above captioned matters are as under:-

5.1 Search and seizure operations were undertaken under Section 132 of the Act in the case of Sh. B.K. Dhingra, Smt. Poonam Dhingra and M/s Madhusudan Buildcon Pvt. Ltd. (hereafter also referred to as 'searched persons') on 20th October, 2008. Certain documents belonging to the Assessee Company and a computer hard disk containing soft copies of working papers, balance sheets and data for income tax filings, were seized during the search. The AO of the searched persons recorded a 'Satisfaction Note' on 8th September, 2010 to the effect that the documents seized and the data contained in the hard disk belonged to the Assessee and, hence, Section 153C was invokeable. On the aforesaid basis, proceedings were initiated under Section 153C and a notice dated 8th September, 2010 for the AYs 2003-04 to 2008-09 was issued to the Assessee.

5.2 The Assessee, in compliance with the notice issued under Section 153C of the Act, filed its returns of income under protest. Subsequently, notices under Section 142(1)/143(2) of the Act were also issued for the purpose of assessing the income of the Assessee with respect to AYs 2003-04 to 2008-09.

5.3 The Assessee sent a letter dated 29th November, 2010 to the AO requesting the AO to provide copies of the seized material; the Assessee

contested the initiation of proceedings under Section 153C of the Act and also contended that the assessments were time barred.

5.4 The AO subsequently passed assessment orders dated 31st December, 2010, under Section 143(3)/153C of the Act. During the assessment proceedings, it was observed that the Assessee had purchased and sold textile goods and it was called upon to provide evidence of purchases and was further directed to provide the details of payments (by cash or cheque). In its reply, the Assessee claimed that all the purchases were made in cash. The Assessee claimed that it was dealing only in tax free goods and was not required to file sales tax returns.

5.5 The AO observed that the case of the Assessee is connected with ‘Thapar Group’ of cases in which it was declared that at least 15 concerns were operating from the address “113, Vasant Village, New Delhi”. These concerns were alleged to be capital formation concerns with huge reserves and surpluses that were reflected as invested in stock of textiles. The AO also found that no operations were undertaken from the aforementioned premises. In view of the aforesaid, the AO concluded that the Assessee was unable to substantiate any purchase of stocks and, therefore, made addition of the amounts reflected as purchases under Section 69C of the Act. The

AO also disallowed 100% of the expenses claimed by the Assessee in its P&L Account concluding that they were unverifiable.

5.6 In response to a request under the Right to Information Act, 2005, vide a letter dated 14th May, 2015, the Assessee was provided a photocopy of a single sheet of 'Record Slip' of a cheque book pertaining to a Bank Account No.124002000001410 with Centurion Bank of Punjab Limited, Tilak Nagar Branch, New Delhi. The said record slip - which formed a part of the cheque book – contained three entries pertaining to cheques issued on 11th August, 2008, 27th August, 2008 and 10th December, 2008 respectively.

5.7 Also, in a reply to a request under the Right to Information Act, 2005 filed by the searched persons, the Deputy Commissioner of Income Tax, Central Circle-17, vide a letter dated 10th June, 2013 noticed that there was no 'satisfaction note' available/recorded in respect of the other entities whose documents were allegedly seized during the search.

5.8 The Assessee, being aggrieved by the AO's order, filed appeals before the CIT(A). The Assessee raised several grounds in each of its six appeals. The grounds pertaining to the applicability of Section 153C of the

Act are relevant and are reproduced below:-

“Grounds of Appeal No 1, 2, 3 &5

1 That on the facts and circumstances of the case and the provision of law the Assessment Order passed by the learned Assessing Officer (AO) under section 153C/143(3) is illegal, bad in law, without jurisdiction and time barred.”

2. That on the facts and circumstances of the case and the provisions of the law, the proceedings initiated u/s 153C are illegal, bad in law, without jurisdiction and time barred and as such the Assessment Order passed in consequence thereof also become illegal, bad in law, without jurisdiction and barred by limitation.

3. That on the facts and circumstances of the case and the provisions of the law the notice issued u/s 153C is illegal, bad in law, without jurisdiction and time barred and as such the assessment framed in consequence thereof is liable to be quashed.

5. That on the facts and the circumstances of the case and the provisions of the Law the assessment framed is against the statutory provisions of the act and without complying the procedures prescribed under section 153C of the act and as such assessment being bad in law deserves to be quashed.”

5.9 The Assessee also filed detailed submissions with respect to the above grounds. It was claimed by the Assessee that the initiation of proceedings for the AY 2003-04 and 2004-05 were time barred since the documents recovered pursuant to the search were deemed to be handed over to the AO of the Assessee on 8th September, 2010, being the date of

recording of satisfaction and, therefore, six years which could be assessed under Section 153C of the Act were the preceding previous years from 1st April, 2004 to 31st March, 2010 being relevant to AYs 2005-06 to 2010-11. Further, the Assessee contended that the seized hard disk contained working papers, balance sheets and other material for income tax filings and as such was fully disclosed in its returns and, therefore, proceedings under Section 153C of the Act could not be initiated on the basis of the seized material.

5.10 The Assessee submitted that Sh. B.K. Dhingra, a Chartered Accountant, was overlooking the Assessee's work relating to accounting, Income Tax, Company Law etc. The data contained in the hard disk in question included soft copies of the working papers stored for the preparation of the balance sheet and the computation of income which were disclosed to the Income Tax Department. It was also contended that the soft copies and the papers seized were the property of M/s Bhupesh K. Dhingra and Co. and did not belong to the Assessee. The Assessee submitted that Section 153C of the Act can only be invoked where the AO is satisfied that any money/documents etc. seized belonged to a person other than the one searched and such material is of incriminating nature indicating undisclosed

income of such person. The Assessee further emphasized that proceedings under Section 153C could be initiated only in respect of such years in respect of which some incriminating material was seized and since there was no material pertaining to the assessment years in question, there was no justification for the invocation of proceedings under Section 153C of the Act. The Assessee also contended that the Satisfaction recorded under Section 153C was not communicated in the notices itself and, thus, the assessment was bad and illegal.

5.11 In reply to the Assessee's submissions, the AO vide letter dated 25th October, 2011 submitted a remand report, *inter alia*, claiming that the Assessee company had mis-interpreted the first proviso of Section 153C(1) of the Act and that the six previous years were to be calculated with reference to the date of the search and not from the date of recording of the satisfaction note.

5.12 The CIT after considering the submissions of the Assessee and the reply of the AO, *inter alia*, held as under:-

"It is also observed from the plain and literal interpretation of the provision of section 153C - that once a document is found to be belonging to a person other than the person referred to in section 153A the provisions of section 153C are ipso facto

attracted and it is automatic that the assessments covered under all the years falling within the mandate of proviso of section 153C(1) and read with 153A(1) get attracted. Moreover, there is no legal requirement that initiation of proceedings should only be with respect to such years in respect of which there is some material. Now coming to the issue that the satisfaction note should contain some satisfaction on the part of the AO leading to undisclosed income on the basis of the seized material. In this regard also I have considered the facts of the case and in my considered opinion recording of satisfaction so as to show existence of undisclosed income is not a prerequisite under the provision of sec 153C which are distinguishable from the provisions of sec 158 BD of the Act which is also related to block assessments. The literal meaning of sec 153C that once documents are handed over to the AO of the other person, which incidentally is the same AO, the provision of sec 153A are made applicable and therefore even if such documents etc. are recorded or disclosed to the department by such other person, the assessment may have to be framed for all relevant assessment years. The requirement of the sec 153C with reference to satisfaction seems to be only the prima facie satisfaction and not a conclusive satisfaction. Thus the AO must be prima facie satisfied that the documents etc. belong to the other person than the person searched. In the present case such satisfaction has been stated to have been recorded and I have nothing to doubt the action of the AO in this respect as is being made out by the appellant. Now coming back to the issue of limitation raised by the appellant in the above said grounds of Appeal no. 1, 2, 3 & 5 it has been argued that while search has taken place in the group case in October 2008 but the documents are deemed to be handed over to the AO of the appellant on 08th September 2010, the date on which the notice u/s 153C has been issued in the appellant's case. That six years which can be assessed u/s 153C shall have to be construed from the date on which the books of accounts or documents are handed over by the AO of the main party subjected to the search to the AO of the other person (the applicant in this case). That accordingly the six years which

can be assessed u/s 153C in applicant's case are AY. 2005-06 to 2010-11. The above view is clear on reading the proviso to sec 153C(1) r. w. s 153A(1) of the IT Act. In this connection reliance is also placed in the ratio of decision in the case of VJM Vimawal vs ACIT 124 TTJ 508 (UR). Accordingly the initiation of the proceedings for A.Y. 03-04 (and the other respective AY's as the case may be) which has been made on 08.09.2010 is barred by limitation, and therefore the assessment order passed u/s 153C is held as a nullity. This plea however is fundamentally flawed in view of the basis of the fact that in case of this appellant the AO who was to hand over the seized material is also the AO of the appellant who was to take over the seized material. Therefore, the issue of handing over and taking over the seized material is obviated. The plea taken regarding the date of, search and, subsequent date of handing over of seized material is also obviated as both the sides are manned by the same AO. Further The AO has provided the Copy of the 'satisfaction note' when asked by the appellant company. I do not find any merit in the grounds of the appeals nor any infirmity in the notice issued or the order passed u/s 153A/153C in this case on account of grounds no 1, 2, 3 & 5 taken by the appellant. These grounds are therefore dismissed."

5.13 The CIT(A), however, allowed the appeal of the Assessee with regard to the disallowance of purchases under Section 69C of the Act and observed that Section 69C of the Act applies only when there is some expenditure and the Assessee is unable to explain the source from which such expenditure has been incurred. The CIT(A) held that the Assessee had accounted for all the purchases made in cash in its books of accounts and, thus, the source of the expenditure could not be stated to be unexplained.

The CIT(A) also deleted the addition made by the AO on account of 100% disallowance of expenditure.

5.14 Being aggrieved by the common order dated 17th May, 2012 passed by the CIT(A), the Revenue filed six separate appeals in respect of the relevant assessment years. The Assessee, on the other hand, filed cross objections which were numbered as separate appeals. The Tribunal upheld the view of CIT(A) that an addition under Section 69C of the Act was not sustainable and, accordingly, by an order dated 26th August, 2014, rejected the appeals preferred by the Revenue. The Tribunal did not examine the challenge to initiation of proceedings under Section 153C of the Act by terming the same as 'academic'. The aforesaid order is impugned in the present appeals.

6. Mr Goyal, learned counsel appearing for the Assessee handed over a paper book containing certain relevant documents from the record. He submitted that the initiation of proceedings under Section 153C of the Act was without jurisdiction as no relevant material belonging to the Assessee was found during the search conducted in the case of the searched persons. He stated that despite several requests, the AO had failed and neglected to provide the documents/materials on the basis of which proceedings under

Section 153C of the Act were initiated and in the circumstances, the Assessee was constrained to apply for the same under the Right to Information Act, 2005. In response thereto, the Assessee received a letter dated 14/15th May, 2015 enclosing therewith a photocopy of the record slip of a cheque book, which reflected three entries for issue of three cheques on 11th August, 2008, 27th August, 2008 and 10th December, 2008 respectively. The Assessee was further informed that all other pages were blank. He submitted that this record slip of a cheque book could not be considered as the material on the basis of which proceedings under Section 153C of the Act could be initiated in respect of the AY's 2003-04 to 2008-09. He further submitted that the hard disk, which was referred to by the AO did not belong to the Assessee but M/s Bhupesh K. Dhingra & Co - sole proprietorship concern of Mr Bhupesh Kumar Dhingra.

7. Mr Goyal further submitted that the hard disk, *inter alia*, contained soft copies of working papers for preparation of the Assessee's balance sheet, income tax computation and details of income tax filings. He submitted that the balance sheet prepared on the basis of working papers had already been filed with the Income Tax Department and, therefore, none of the information as contained in the working papers could be

considered as undisclosed.

8. In addition to the above, Mr Goyal also contested the Revenue's contention that any addition could be made under Section 69C of the Act on the basis of purchases recorded in the books of accounts or that disallowance of any expenditure incurred by the Assessee was warranted.

9. Mr Sahni, learned Senior Standing Counsel for the Revenue contested the submissions made by Mr Goyal. He submitted that the hard disk seized from the premises of M/s Bhupesh K. Dhingra and Co. belonged to the Assessee since the information contained therein related to the Assessee. He further submitted that the AO had recorded a finding that the seized documents belonged to the Assessee and the same was sufficient to initiate proceedings under Section 153C of the Act. He contended that at the stage of initiation of proceedings under Section 153C of the Act, it is not necessary for the AO to conclude that the documents or the material reflect any undisclosed income. He submitted that once the AO was satisfied that seized assets/ documents belonged to the Assessee, no further enquiry was necessary for commencing proceedings under Section 153C of the Act. With respect to the issue regarding the deletion of addition made under Section 69C of the Act, Mr Sahni did not dispute that such addition

could only be made where the source of expenditure remained unexplained. He however argued that the expenditure on purchases being bogus in nature could be disallowed as a deduction under Section 37(1) of the Act. He further argued that the Assessee was only a paper company and used for capital formation.

10. We heard the learned counsel for the parties at length.

11. The principal issue to be addressed is whether the assessments made under Section 153C of the Act were without jurisdiction. In this regard, it is relevant to note that the search under Section 132 of the Act, which ultimately led to the proceedings under Section 153C of the Act, was conducted on 20th October, 2008. It is the Revenue's claim that during the said operations, certain documents and papers as well as the hard disk containing data relevant to the Assessee were seized. The AO was satisfied that the said assets/documents belonged to the Assessee - as required under Section 153C of the Act - and the satisfaction note was recorded on 8th September, 2010. The notice under Section 153C of the Act was issued to the Assessee immediately thereafter.

12. At this stage it is expedient to refer to Section 153C(1) of the Act,

which reads as under:-

“153C. (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,—

- (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or
- (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates 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 notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A :

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

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated.”

13. The first and foremost step for initiation of proceedings under Section 153C of the Act is for the AO of the searched person to be satisfied that the assets or documents seized belong to the Assessee (being a person other than the searched person). The AO of the Assessee, on receiving the documents and the assets seized, would have jurisdiction to commence proceedings under Section 153C of the Act. The AO of the searched person is not required to examine whether the assets or documents seized reflect undisclosed income. All that is required for him is to satisfy himself that the assets or documents do not belong to the searched person but to another person. Thereafter, the AO has to transfer the seized assets/documents to the AO having jurisdiction of the Assessee to whom such assets/documents belong. Section 153C(1) of the Act clearly postulates that once the AO of a person, other than the one searched, has received the assets or the documents, he is to issue a notice to assess/re-assess the income of such

person - that is, the Assessee other than the person searched - in accordance with provisions of Section 153A of the Act.

14. The proviso to Section 153C(1) of the Act expressly indicates that reference to the date of initiation of search for the purposes of second proviso to Section 153A shall be construed as a reference to the date on which valuable assets or documents are received by the AO of an Assessee (other than a searched person). Thus, by virtue of the second proviso to section 153A of the Act, the assessments/reassessments that were pending on the date of receiving such assets, books of accounts or documents would abate.

15. The controversy in this regard is no longer *res integra*. A Coordinate Bench of this Court in **SSP Aviation Ltd. v. Deputy Commissioner of Income Tax**: (2012) 346 ITR 177 has held that:

“in case of the searched person, the date with reference to which proceedings for assessment or reassessment of any assessment year within a period of six assessment years shall abate, is the date of initiation of search under Section 132 or requisition under Section 132A. However, in case of 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 other person, the question of pendency and abatement of proceedings of assessment or reassessment to the

six assessment years would have to be examined with reference to such date”

16. The CIT(A) sought to distinguish the present case by observing that in the facts of the present case, the AO of the searched person who has to handover the documents and the AO of the Assessee was one and the same person. In our view, this distinction is not relevant in the scheme of Section 153C of the Act and the CIT(A) erred in proceeding on the basis that the period of six years was to be reckoned from the end of the financial year preceding the financial year in which the search was conducted.

17. In **Pepsi Foods Pvt. Ltd. v. Assistant Commissioner of Income Tax: (2014) 367 ITR 112 (Del)**, this Court had explained that on a plain reading of Section 153C of the Act, a notice under that section could be issued only after two preceding conditions had been met. First of all, the AO of the searched person would have to arrive at a satisfaction that document or asset seized does not belong to the person searched but to some other person and secondly, the seized documents/assets are handed over to the AO having jurisdiction over that person, that is, the person other than the one searched and to whom the seized documents/assets are said to belong. The relevant extract of the said decision is quoted below:-

“6. On a plain reading of section 153C, it is evident that the Assessing Officer of the searched person must be 'satisfied' that, inter alia, any document seized or requisitioned 'belongs to' a person other than the searched person. It is only then that the Assessing Officer of the searched person can handover such document to the Assessing Officer having jurisdiction over such other person (other than the searched person). Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or reassess his income in accordance with the provisions of section 153A. Therefore, before a notice under section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is-after such satisfaction is arrived at-that the document is handed over to the Assessing Officer of the person to whom the said document 'belongs'. In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to examine the provisions of presumptions as indicated above. Section 132(4A)(i) clearly stipulates that when, inter alia, any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in section 292C(1)(i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or 'satisfaction' that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of 'satisfaction'.

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'11. It is evident from the above satisfaction note that apart from saying that the documents belonged to the petitioner and that the Assessing Officer is satisfied that it is a fit case for issuance of a notice under section 153C, there is nothing which would indicate as to how the presumptions which are to be normally raised as indicated above, have been rebutted by the Assessing Officer. Mere use or mention of the word "satisfaction" or the words "I am satisfied" in the order or the note would not meet the requirement of the concept of satisfaction as used in section 153C of the said Act. The satisfaction note itself must display the reasons or basis for the conclusion that the Assessing Officer of the searched person is satisfied that the seized documents belong to a person other than the searched person. We are afraid, that going through the contents of the satisfaction note, we are unable to discern any "satisfaction" of the kind required under section 153C of the said Act'."

18. It, plainly, follows that the recording of a satisfaction that the assets/documents seized belong to a person other than the person searched is necessarily the first step towards initiation of proceedings under Section 153C of the Act. In the case where the AO of the searched person as well as the other person is one and the same, the date on which such satisfaction is recorded would be the date on which the AO assumes possession of the seized assets/documents in his capacity as an AO of the person other than the one searched.

19. The Allahabad High Court in the case of **Commissioner of income Tax v. Gopi Apartments**: (2014) 360 ITR 411 has expressed a similar view

in the following words:-

“25. A bare perusal of the provision contained in Section 153C of the I.T. Act leaves no doubt that, as is provided under Section 158BD, where the Assessing Officer, while proceeding under Section 153A against a person who has been subjected to search and seizure under Section 132(1) or has been proceeded under Section 132A, 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.

Thus, there are two stages:

The first stage comprises of a search and seizure operation under Section 132 or proceeding under Section 132A against a person, who may be referred as 'the searched person'. Based on such search and seizure, assessment proceedings are initiated against the 'searched person' under Section 153A. At the time of initiation of such proceedings against the 'searched person' or during the assessment proceedings against him or even after the completion of the assessment proceedings against him, the Assessing Officer of such a 'searched person', may, if he is satisfied, that any money, document etc. belongs to a person other than the searched person, then such money, documents etc. are to be handed over to the Assessing Officer having jurisdiction over 'such other person'.

The second stage commences from the recording of

such satisfaction by the Assessing Officer of the 'searched person' followed by handing over of all the requisite documents etc. to the Assessing Officer of such 'other person', thereafter followed by issuance of the notice of the proceedings under Section 153C read with section 153A against such 'other person'.

The initiation of proceedings against 'such other person' are dependant upon a satisfaction being recorded. Such satisfaction may be during the search or at the time of initiation of assessment proceedings against the 'searched person', or even during the assessment proceedings against him or even after completion of the same, but before issuance of notice to the 'such other person' under Section 153C.

26. Even in a case, where the Assessing Officer of both the persons is the same and assuming that no handing over of documents is required, the recording of 'satisfaction' is a must, as, that is the foundation, upon which the subsequent proceedings against the 'other person' are initiated. The handing over of documents etc. in such a case may or may not be of much relevance but the recording of satisfaction is still required and in fact it is mandatory.”

20. Mention may also be made to the decision of the Madhya Pradesh High Court in **Commissioner of Income Tax v. Mechmen:** (2015) 60 taxmann.com 484 (Madhya Pradesh). In that case, the Court had explained that the fact that incidentally the AO is common at both stages would not extricate him from recording satisfaction at the respective stages. It was explained that since the satisfaction of the AO of a searched person that assets/documents seized belong to some other person is *sine qua non* to

commencing proceedings under Section 153C of the Act in respect of such other person, the AO could not assume jurisdiction and transmit the items to another file concerning the person (other than the one searched) pending before him, before being satisfied that the seized assets/documents belonged to the other person.

21. As discussed hereinbefore, once the AO of the searched person is satisfied that the seized assets/documents belong to another person and the said assets/documents have been transferred to the AO of such other person, the proceedings for assessment/reassessment of income of the other person has to proceed in accordance with provisions of Section 153A of the Act. Section 153A requires that where a search has been initiated under Section 132 of the Act, the AO is required to issue notice requiring the noticee to furnish returns of income in respect of six assessment years relevant to the six previous years preceding the previous year in which the search is conducted. As discussed hereinbefore, by virtue of second proviso to Section 153A, the assessment/reassessment pending on the date of initiation of search abate. In the context of proceedings under Section 153C of the Act, the reference to the date of initiation of the search in the second proviso to Section 153A has to be construed as the date on which the AO

receives the documents or assets from the AO of the searched person. Thus, by virtue of second proviso to Section 153A of the Act as it applies to proceedings under Section 153C of the Act, the assessment/reassessment pending on the date on which the assets/documents are received by the AO would abate. In respect of such assessments which have abated, the AO would have the jurisdiction to proceed and make an assessment. However, in respect of concluded assessments, the AO would assume jurisdiction to reassess provided that the assets/documents received by the AO represent or indicate any undisclosed income or possibility of any income that may have remained undisclosed in the relevant assessment years. This Court in **Commissioner of Income Tax (Central)-III v. Kabul Chawla: ITA 707/2014, decided on 28th August, 2015** has held that completed assessments could only be interfered with by the AO on the basis of any incriminating material unearthed during the course of the search or requisition of the documents. In absence of any incriminating material, the AO does not have any jurisdiction to interfere in concluded assessments. This Court had summarized the legal position in respect of Section 153A of the Act as under:-

“37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the

aforementioned decisions, the legal position that emerges is as under:

- i.* Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.
- ii.* Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.
- iii.* The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".
- iv.* Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."
- v.* In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e.

those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.”

22. The aforesaid principles would be equally applicable to proceedings initiated under Section 153C of the Act as Section 153C(1) of the Act expressly provides that once the AO has received “money, bullion, jewellery or other valuable articles or thing or books of account or documents seized” from the AO of the searched person, he would proceed to assess or reassess the income of the person to whom such assets/books belong in accordance with Section 153A of the Act.

23. In the present case, the Assessee had claimed that the assessments for the concerned assessment years were not pending on the date of recording

of satisfaction by the AO and, therefore, would not abate by virtue of the second proviso to Section 153A of the Act. Further, the period of six years would also have to be reckoned with respect to the date of recording of satisfaction note – that is, 8th September, 2010 – and not the date of search.

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.

25. The next aspect to be considered is whether the concluded assessments could be reassessed on the basis of the seized assets/documents.

26. In the present case, the AO recorded the Satisfaction Note for issuing notice under Section 153C of the Act on 8th September, 2010 which read as under:-

“Satisfaction Note for issuing Notice u/s 153C of the I.T. Act, 1961 in the case of M/s RRJ Securities Ltd., 113, 1st Floor Vasant Village, Vasant Vihar, New Delhi, PAN : AADCR4683C for A.Y. 2003-04 to 2008-09.

08.09.2010. In the case of Sh. B.K. Dhingra, Smt. Poonam Dhingra and M/s Madhusudan Buildcon Pvt.

Ltd. and Mayank Trading Pvt. Ltd., M/s horizon solution Pvt. Ltd., search & seizure took place u/s 132 on 20.10.2008. The undersigned is the jurisdictional AO of these cases. During the course of search & seizure documents/papers Pages 126 to 179 of Annexure A-34 seizure by R-2 and data containing in the hard disc in Annexure A-102 seized by party – 04, are found to belong to M/s RRJ Securities Ltd., 113, 1st Floor Vasant Village, Vasant Vihar, New Delhi. I have examined the above mentioned documents/papers and provision of section 153C is invokeable in this case. As the undersigned is also the jurisdictional AO of M/s RRJ Securities Ltd., 113, 1st Floor Vasant Village, Vasant Vihar, New Delhi, this satisfaction note is placed in the file before issuing notice u/s 153C.”

27. At this stage it is expedient to refer to an affidavit dated 11th October, 2011 filed by Sh. B.K. Dhingra, explaining the contents of the seized material. He affirmed that search was conducted on 20th/21st October, 2008 at F-6/5, Vasant Vihar and 801, Padma Tower-II, Rajinder Place, New Delhi and a cheque book of the Current Account bearing no.124002000001410 with Centurion Bank of Punjab Limited (Now HDFC Bank Ltd.), Tilak Nagar Branch, New Delhi containing details of transactions for the assessment year 2009-10 of RRJ Textiles (A Unit of RRJ Securities Limited), New Delhi, was found and seized. He affirmed

that the transactions as per the cheque book were entered in the regular books of accounts maintained in the normal course of business. Insofar as the hard disc seized from the office at 801, Padma Tower-II, Rajinder Nagar, New Delhi, is concerned, he affirmed that the hard disc contained the soft copies of “*working papers for preparing Balance Sheet and the Income Tax Computation and details of Income Tax Filing*”. He further affirmed that the Balance Sheet which had been prepared on the basis of the working papers etc. had already been filed with the Income Tax Department and, therefore, the same was fully disclosed and the transactions as contained in the soft copies were fully recorded. In addition, he confirmed that the soft copies of papers were the property of M/s Bhupesh K. Dhingra & Co. – a sole proprietorship concern of B.K. Dhingra – and did not belong to RRJ Securities Ltd. as the said documents were part of working papers of Bhupesh K. Dhingra & Co. and were obtained and kept in discharge of his professional duties.

28. According to the AO, the documents/papers – pages 126 to 179 of ‘Annexure A-34’ seized during the search and data contained in the hard disc mentioned in ‘Annexure A-102’ belonged to the Assessee. This is contrary to the above referred affidavit of B.K. Dhingra.

29. It was contended on behalf of the Revenue that the hard disk contained data pertaining to the Assessee and, therefore, it was rightly held that the hard disc belong to the Assessee. Concededly, this contention would not be sustainable in view of the principles laid down by this Court in *Pepsico India Holdings Pvt. Ltd. (supra)* with regard to the interpretation of the words “belongs to” in Section 153C of the Act. The hard disk was recovered from the computer belonging to M/s B.K. Dhingra & Co. which contained soft copies of working papers and balance sheet pertaining to the Assessee for its income tax filing. It has been contended that B.K. Dhingra is a Chartered Accountant and had the data pertaining to the Assessee in his professional capacity. Merely because such data pertained to the Assessee (who claims to be a client of M/s B.K. Dhingra and Co.) the hard disk could not be stated to belong to the Assessee.

30. It is not disputed that the said hard disk also did not contain any incriminating material as the data on the hard disc only supported the return filed by the Assessee. This apart, as the hard disc did not belong to the Assessee, in our view, proceedings under Section 153C of the Act could not be initiated on the basis of the said disk.

31. Insofar as the documents referred to as pages 126 to 179 of Annexure

A-34 is concerned, admittedly, the same only consisted of a single page of the record slip of a cheque book and other pages were blank. The record slip only contained three entries reflecting issue of three cheques on 11th August, 2008, 27th August, 2008 and 10th December, 2008 respectively. Thus, it is apparent that the said document had no relevance for the assessment years in question i.e. AYs 2003-04 to 2008-09. In the circumstances, the issue to be addressed is whether proceedings under Section 153C of the Act could be initiated on the basis of this document.

32. Section 153C of the Act merely requires the AO of a searched person to handover the assets and documents seized, which belong to another person, to the AO of that person. The AO of a searched person is not required to examine whether such documents could provide a clue for discovery of undisclosed income of the person to whom the document so belongs. This Court in **SSP Aviation Ltd.** (*supra*) had observed as under:-

“At the time when the Assessing Officer having jurisdiction over the searched person reaches the satisfaction that the document belongs to a person other than the searched person, it is not necessary for him to also reach a firm conclusion/opinion that the document shows undisclosed income belonging to such other person. That is a matter for enquiry, which is to be conducted in the manner prescribed by section 153C.”

33. The record slip belongs to the Assessee and, therefore, the action of the AO of the searched persons recording that the same belongs to the Assessee cannot be faulted. However, the question then arises is whether the AO of the Assessee was justified in taking further steps for reassessing the income of the Assessee in respect of the assessment years for which the assessments were concluded and in respect of which the seized document had no bearing. In our view, the same would be clearly impermissible as the seized material now available with the AO, admittedly, had no nexus with those assessments and was wholly irrelevant for the purpose of assessing the income of the Assessee for the years in question. Merely because a valuable article or document belonging to an Assessee is seized from the possession of a person searched under Section 132 of the Act, does not mean that the concluded assessments of the Assessee are necessarily to be re-opened under Section 153C of the Act. In our view, the concluded assessments cannot be interfered with mechanically and solely for the reason that a document belonging to the Assessee, which has no bearing on the assessments of the Assessee for the years preceding the search, was seized from the possession of the searched persons.

34. In **SSP Aviation** (*supra*), this Court had noted the difference between the provisions of Section 158BD of the Act and the provisions of Section 153C. Whereas Section 158BD referred to the satisfaction of an AO with regard to any “undisclosed income” belonging to a person other than the searched person, Section 153C(1) of the Act in contrast referred merely to the AO being satisfied that assets/documents seized during a search belonged to a person other than one searched. It is, thus, clear that it was not necessary for the AO, at the stage of recording the satisfaction under Section 153C to come to a conclusion that seized assets which belong to another person represent any undisclosed income. If the AO of a searched person is satisfied that an asset/documents seized belong to another person, he has a duty to forward the documents or the valuable assets seized to the AO of the person concerned; apart from doing so, the AO can do nothing more.

35. The AO of the person other than the one searched also, is not, at the stage of issuing notice under Section 153C/153A of the Act, required to conclude that the assets/documents handed over to him by the AO of the searched person represent or indicate any undisclosed income of the Assessee under his jurisdiction. As explained in **SSP Aviation** (*supra*),

Section 153C only enables the AO of a person other than the one searched, to investigate into the documents seized and/or the assets seized and ascertain that the same do not reflect any undisclosed income of the Assessee (i.e a person other than the one searched) for the relevant assessment years. If the seized money, bullion, jewellery or other valuable article or thing seized as handed over to the AO of the Assessee, are duly disclosed and reflected in the returns filed by the Assessee, no further interference would be called for. Similarly, if the books of accounts/documents seized do not reflect any undisclosed income, the assessments already made cannot be interfered with. Merely because valuable articles and/or documents belonging to the Assessee have been seized and handed over to the AO of the Assessee would not necessarily require the AO to reopen the concluded assessments and reassess the income of the Assessee.

36. The decision in **SSP Aviation** (*supra*) cannot be understood to mean that the AO has the jurisdiction to make a reassessment in every case, where seized assets or documents are handed over to the AO. The question whether the documents/assets seized could possibly reflect any undisclosed income has to be considered by the AO after examining the seized

assets/documents handed over to him. It is only in cases where the seized documents/assets could possibly reflect any undisclosed income of the Assessee for the relevant assessment years, that further enquiry would be warranted in respect of those years. Whilst, it is not necessary for the AO to be satisfied that the assets/documents seized during search of another person reflect undisclosed income of an Assessee before commencing an enquiry under Section 153C of the Act, it would be impermissible for him to commence such enquiry if it is apparent that the documents/assets in question have no bearing on the income of the Assessee for the relevant assessment years.

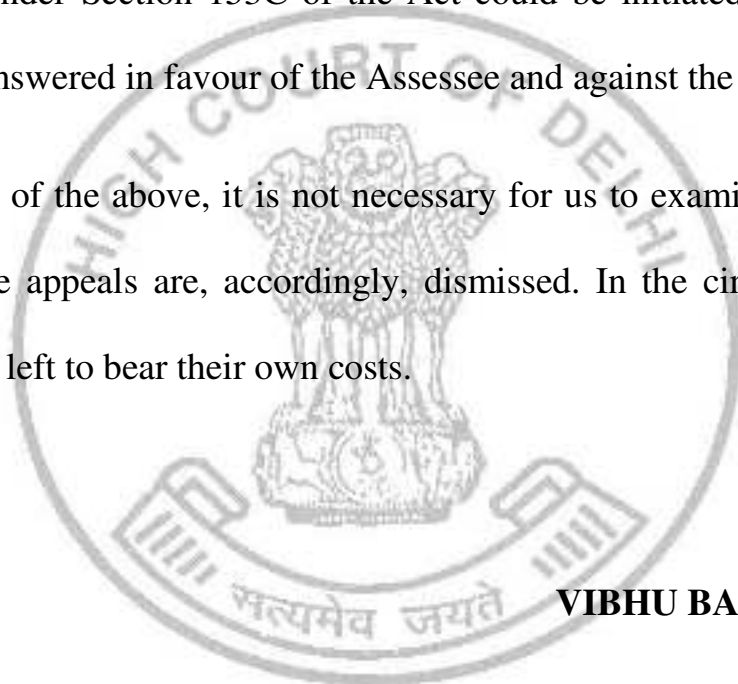
37. As expressly indicated under Section 153C of the Act the assessment or reassessment of income of a person other than a searched person would proceed in accordance with the provisions of Section 153A of the Act. The concluded assessments cannot be interfered with under Section 153A of the Act unless the incriminating material belonging to the Assessee has been seized.

38. As indicated above, in the present case, the documents seized had no relevance or bearing on the income of the Assessee for the relevant assessment years and could not possibly reflect any undisclosed income.

This being the undisputed position, no investigation was necessary. Thus, the provisions of section 153C, which are to enable an investigation in respect of the seized asset, could not be resorted to; the AO had no jurisdiction to make the reassessment under Section 153C of the Act.

39. In view of the above, the third question framed, whether the proceedings under Section 153C of the Act could be initiated against the Assessee, is answered in favour of the Assessee and against the Revenue.

40. In view of the above, it is not necessary for us to examine the other questions. The appeals are, accordingly, dismissed. In the circumstances, the parties are left to bear their own costs.



VIBHU BAKHRU, J

S. MURALIDHAR, J

**OCTOBER 30, 2015
RK**