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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 4611 OF 2024

Ashok Khandelwal

.. Petitioner

Versus

Union of India & Ors.

.. Respondents

**Adv. Naresh Jain, Adv. Mahaveer Jain, Adv. Shobhit Mishra for the
Petitioner.**

Adv. Akhileshwar Sharma for the Respondents.

**CORAM: B. P. COLABAWALLA &
FIRDOSH P. POONIWALLA, JJ.**

DATE: JULY 14, 2025

P. C.

1. Rule. Respondents waive service. With the consent of the parties,
Rule made returnable forthwith and heard finally.

2. The above Writ Petition is filed seeking to quash the impugned
Notice issued by Respondent No. 2 under Section 153C for the Income Tax
Act, 1961 dated 1st November, 2022. This Notice pertains to Assessment Year,
2016-17. As a consequence, the Petitioners also challenge the Notice dated
25th March, 2023 issued under Section 143(2) by Respondent No. 4 and the

Notice dated 5th December, 2023 issued under Section 142(1) by Respondent No. 3.

3. The short ground on which the Notice under Section 153C is challenged is that during the course of search proceedings conducted on 18th October, 2019 on the Alankit Group, certain materials/ documents relating to the Petitioner herein were found. The transactions entered into by various beneficiaries, against unaccounted cash or otherwise to take accommodation entries, were tabulated in the satisfaction note. This satisfaction note in relation to the Petitioner pertains to Financial Years 2009-10, 2010-11 and 2013-14. This correspondingly relates to Assessment Years 2010-11, 2011-12 and 2014-15.

4. However, the Notice under Section 153C has been issued for the Assessment Year 2016-17 and which Assessment Year does not form part of the satisfaction note. This is wholly impermissible according to the Petitioner and it is on this short ground that the said notice, as well as all consequential Notices are challenged.

5. Mr. Sharma, the learned counsel appearing on behalf of the Revenue sought to justify the issuance of the Notice under Section 153C by

referring to the averments made in the Affidavit-in-Reply filed on behalf of the Revenue.

6. After hearing the learned Advocate appearing on behalf of the Petitioner as well as Mr. Sharma, on behalf of the Revenue, we find that the issue in the present case is squarely covered by a decision of the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax-III, Pune Vs. Sinhgad Technical Education Society [2017 (8) TMI 1298]***. The Assessment Years before the Hon'ble Supreme Court were Assessment Year 2000-01, 2001-02, 2002-03 and 2003-04. In the satisfaction note before the Hon'ble Supreme Court, the material referred to therein was for Assessment Year 2004-05 onwards. It is in this light that the Hon'ble Supreme Court held that the Notice under Section 153C could not be issued for the Assessment Years 2000-01, 2001-02, 2002-03, 2003-04. The relevant portion of the Hon'ble Supreme Court's decision is reproduced hereunder :-

“18) The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, Incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, It becomes a jurisdictional fact. We find this reasoning to be logical

and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.

19) We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, In view of our aforementioned findings, it is not necessary to enter into this controversy.

20) Insofar as the judgment of the Gujarat High Court relied upon by the learned Solicitor General is concerned, we find that the High Court in that case has categorically held that it is an essential condition precedent that any money, bullion or jewellery or other valuable articles or thing or books of accounts of documents seized or requisitioned should belong to a person other than the person referred to in Section 153A of the Act. This proposition of law laid down by the High Court is correct, which is stated by the Bombay High Court in the impugned judgment as well. The judgment of the Gujarat High Court in the said case went in favour of the Revenue when it was found on facts that the documents seized, in fact, pertain to third party, i.e. the assessee, and, therefore, the said condition precedent for taking action under Section 153C of the Act had been satisfied.

22) We now advert to the implication of the fact which has been emphasised in para 15. As pointed out in the said para, the assessment order passed by the AO covers eight Assessment Years. Assessment done In six Assessment Years is under Section 153C of the Act. Assessment order is set aside only in respect of

four such Assessment Years that too on the technical ground, noted above. This objection pertaining to the four Assessment Years in question does not relate to the other two Assessment Years, namely, 2004-05 and 2005-06. Likewise, this decision has no bearing in respect of assessment done qua Assessment Year 1999-2000 as well as Assessment Year 2006-07.

The necessary consequence would be that insofar as the conclusions of the AO in his assessment order regarding the activities of the trust not being genuine and not carried out in accordance with the trust deed or cancellation of registration, denial of benefits of Sections 11 and 12 etc. are concerned, the same would not be affected by this judgment. It is, thus, clarified that this Court has not dealt with the matter on merits insofar as Incriminating material found against the assessee or Mr. Navale is concerned. Pithily put, this Court has not given any clean chit to the assessee insofar as the finding of the AO to the effect that the assessee had been indulging in profiteering and collecting capitation fee is concerned. Whatever other repercussions are there, based on these findings, they can follow. This Court was not informed and therefore, unaware of any challenge to the assessment order in respect of other four Assessment Years and outcome thereof. Wherever any such proceedings are pending, same would be considered without being affected by the outcome of these proceedings.”

(emphasis supplied)

7. This decision of the Hon'ble Supreme Court was thereafter followed by a Division Bench of the Delhi High Court in the case of ***Saksham Commodities Ltd. ([2024 (4) TMI 461- Delhi High Court] : [2024]464 ITR 1)*** The Delhi High Court also, after considering the law on subject, came to the conclusion that the notice under Section 153C could be issued only in respect of the Assessment Years for which the incriminating material had been gathered or obtained. Paragraph 69 of the Delhi High Court decision reads thus :-

“69. When tested in light of the aforesaid principles, we find that except for a few exceptions which were noticed in the introductory parts of this judgment, the writ petitions forming part of this batch, impugn the invocation of Section 153C in respect of AYs' for which no incriminating material had been gathered or obtained. The Satisfaction Notes also fail to record any reasons as to how the material discovered and pertaining to a particular AY is likely to "have a bearing on the determination of the total income" for the year which is sought to be abated or reopened in terms of the impugned notices. The respondents have erroneously proceeded on the assumption that the moment any material is recovered in the course of a search or on the basis of a requisition made, they become empowered in law to assess or reassess all the six AYs' years immediately preceding the assessment correlatable to the search year or the "relevant assessment year as defined in terms of Explanation 1 of Section 153A. The said approach is clearly unsustainable and contrary to the consistent line struck by the precedents noticed above.”

8. We must mention here that the decision of the Hon'ble Delhi High Court was challenged before the Hon'ble Supreme Court and the SLP was also dismissed by the Hon'ble Supreme Court on 16th December, 2024.

9. Finding that the issue raised in the above Writ Petition is squarely covered by the aforesaid decisions, we allow the above Writ Petition in terms of prayer clause (a), (b) and (c) which read thus :-

(a) that this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the impugned notice issued by the Respondent No.2 u/s 153C of the Act dated 01.11.2022 for the AY 2016-17 (being Exhibit 'B'hereto) and after going into the validity and legality thereof to quash and set aside the same.

(b) that this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ

under Article 226 of the Constitution of India, calling for records pertaining to the impugned notice issued by the Respondent No.4 u/s 143(2) of the Act dated 25.03.2023 for the AY 2016-17 (being Exhibit C/ hereto) and after going into the validity and legality thereof to quash and set aside the same.

(c) That this Hon'ble Court be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ under Article 226 of the Constitution of India, calling for records pertaining to the impugned notice issued by the Respondent No.3 u/s 142(1) of the Act dated 05.12.2023 for the AY 2016-17 (being Exhibit 'D' hereto) and after going into the validity and legality thereof to quash and set aside the same.

10. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms thereof. However there shall be no order as to costs.

11. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]