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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 13.02.2025

+ ITA 618/2019

PR. COMMISSIONER OF INCOME TAX
(CENTRAL)- 3

.....Appellant

Through: Mr. Indruj Singh Rai, SSC with
Mr. Sanjeev Menon, Mr. Rahul
Singh, JSCs & Mr. Anmol
Jagga and Mr. Gaurav Kumar,
Advs.

versus

M/S RIDGEVIEW CONSTRUCTION PVT.
LTD

.....Respondent

Through: Mr. Gautam Jain & Mr. Manish
Yadav, Advs.

196

+ ITA 621/2019

PR. COMMISSIONER OF INCOME TAX
(CENTRAL)- 3

.....Appellant

Through: Mr. Indruj Singh Rai, SSC with
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M/S RIDGEVIEW CONSTRUCTION PVT.
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BHATIA
Signing Date: 21.02.2025
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Through: Mr. Gautam Jain & Mr. Manish
Yadav, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

J U D G M E N T

YASHWANT VARMA, J. (Oral)

1. The Principal Commissioner of Income Tax seeks to impugn the order of the **Income Tax Appellate Tribunal**¹ dated 31 October 2018 and which has upheld the stand as taken by the respondent-assessee of the material seized in the course of a search not being incriminating and thus not justifying the initiation of assessment proceedings referable to Section 153C of the **Income Tax Act, 1961**², as it stood at the relevant time.

2. We had by our order dated 21 May 2024 admitted the appeals on the following question of law:-

“A. Whether the ITAT was legally justified in quashing the proceedings initiated under Section 153C of the Income Tax Act, 1961 on the ground that no incriminating material was found during the search pertaining to the AYs in which the additions have been made?”

3. For purposes of sketching a brief backdrop in which the appeal has come to be laid before us, we bear in consideration the following facts. A survey action under Section 133A of the Act is stated to have

¹ Tribunal

² Act



been conducted by the Investigation Wing on 20 November 2007 on the business premises of one Mr. Suresh Kumar Gupta. The appellants would allege that Mr. Gupta, a chartered accountant by profession was controlling various companies without having any sufficient infrastructure or means for running a tangible business. They also appear to have borne in consideration a statement of Mr. Gupta recorded in the course of the survey in which he is stated to have admitted that the various companies controlled by him do not undertake any actual business activities and are only used “to issue accommodation entries”. On the basis of the above, the appellants came to conclude that Mr. Gupta was “an established Entry Operator”.

4. The search is also stated to have led to the unearthing of a provisional Balance Sheet and asserted to be a recordal of affairs pertaining to **M/s Ridgeview Construction Private Limited**³ as on 30 September 2005. That provisional Balance Sheet is also noticed in Para 5.5 of the order of the **Assessing Officer**⁴ and for the sake of completeness is reproduced hereinbelow:-

“5.5 Details of Entries given to Taneja and its associate Group by Shri S.K.Gupta:-

At the time of search, a paper was found and seized by Party-A-2 marked as Annexure-A-2, pages 72 to 77. Pages 75 to 77 are provisional balance sheet of Ridge View Construction Pvt. Ltd. as on 30-09-2005. Copy of this page is reproduced here under:-

³ Ridgeview

⁴ AO



2025:001:0000-05



RIDGEVIEW CONSTRUCTIONS PRIVATE LIMITED		
9, K.G. MARG, CONNAUGHT PLACE, NEW DELHI - 110001		
PROVISIONAL BALANCE SHEET AS AT 30.09.2005		
AMOUNT	ASSETS	AMOUNT
200 SHARE CAPITAL	FIXED ASSETS	
Equity Shares of Rs. 10/- Each	Motor Cars	1625408.00
10000000.00		
200 SUBSCRIBED & PAID UP CAPITAL	CURRENT ASSETS, LOANS & ADVANCES	
200 Equity Shares of Rs. 10/- each fully paid	Property held as Stock in Trade	
7000000.00	(Mat at Saket)	489745288.00
	Work in Progress	175875234.11
CURRENT LIABILITIES & PROVISIONS	J.K. Cement Works (Bil Pend.)	22200.00
Accounts Payable to Directors/Shareholders	Pilgrimage (Bil Pending)	50488.00
UPPER GROUP	Deen Serv (Bil Pending)	40000.00
Shakti Kaur Uppal	Bajaj Cement	600000.00
Uppal Agencies Pvt. Ltd.	Bajaj Cement (Bil Pending)	600000.00
Manish Uppal	Laxmi Cement (Bil pending)	547154.00
24017000.00		648736480.00
TANISHA GROUP		
Amyam Securities (P) Ltd.	Cash & Bank Balances	
Alfance Builders (I) Ltd.	CASH-IN-HAND	240000.00
Cable Commercial Resources Ltd.	HDFC Bank	100000.00
Devi Prop. (P) Ltd.	UCO BANK	22673585.00
Events Estates Limited		22873585.00
Jesse Enterprises (P) Ltd.	MISC. EXPENDITURE	
P.N. Constructions (P) Ltd.	Preliminary Expenses	137600.00
Servanline Constructions Ltd.	Profit & Loss A/c	7676275.00
Tanish Prop. & Land Dev. Pvt. Ltd.	Bank Charges	87277.00
Thamra Constructions Using Ltd.	Commission Paid	290400.00
Vishwakarma Estates & Dev. Ltd.	Conveyance	2331.00
Vishwakarma Estates	Customs Duty Charges	470320.00
Mishra Securities P. Ltd.	Post Charges	18.00
Swami Realtech P. Ltd.	Interest	72.00
Wellworth Const. Udyog Ltd.	Interest on Loan A/c	7308847.00
TDI Ltd.	Photo Copy Charges	600.00
Unique Builders P. Ltd.	Printing & Stationery	402.00
8800000.00	Salary A/c	33000.00
KOCHAR GROUP	Professional Fees (CA)	50000.00
Shupinder Singh	Staff Welfare Exp.	185.00
Diamond L&L Co (P) Ltd.		1854878.00
Changrager Developers (P) Ltd.	ADVANCES	
Hillcrest Projects (P) Ltd.	Banker Overdraft P. Ltd.	800000.00
Jagdish Prom. & Dev. (P) Ltd.	Approva Prom. Pvt. Ltd.	925000.00
Landmark Ind. (P) Limited	Accent Overseas P. Ltd.	10000000.00
K. Gopal	BRS Colonisers P. Ltd.	5000000.00
Nagar Overseas (P) Limited	Brighway House & Land Dev.	2000000.00
Prithvi Chandra (P) Ltd.	Dolphin Prom. P. Ltd.	2800000.00
Prithvi Chandra (P) Ltd.	Sundry Debtors	840000.00
U.K. Bhatia	Examiners/Bulkers Pvt. Ltd.	2000000.00
8000000.00		
138110000.00		

5. Suffice it to note that the years in question before the Tribunal were **Assessment Years⁵** 2004-05 and 2005-06. However, the provisional balance sheet which was recovered in the course of the search was undisputedly referring to a position as it is existed on 30 September 2005. The Tribunal, while holding in favour of the respondent, Ridgeview, has essentially followed a consistent line taken by this Court as well as the Tribunal of a notice under Section 153C of the Act being liable to sustained only if the material gathered be recognisable as incriminating and pertaining to the AY in question.

⁵ AYs



6. Ex facie, therefore, a provisional Balance Sheet which sought to capture affairs as existing on 30 September 2005 could have possibly had no correlation or impact in so far as AYs 2004-05 and 2005-06 were concerned.

7. It was however contended by Mr. Menon, learned counsel for the appellant, that the provisional Balance Sheet was relevant since it enabled the respondents to examine and evaluate various transactions pertaining to AYs 2004-05 and 2005-06. Mr. Menon has further contended that although Section 153C of the Act at the relevant time only employed the phrase “*belongs to*”, as the Supreme Court held in **Income Tax Officer vs. Vikram Sujitkumar Bhatia**,⁶, the amendments which came to be introduced in that section by virtue of Finance Act, 2015 were explanatory and would thus also apply to any search that may have been conducted prior to those amendments coming to exist in the statute. The aforementioned submission was addressed since the sheet could not have perhaps be said to belong to Ridgeview. However, it could have legitimately been viewed as pertaining to that entity.

8. Mr. Menon thus sought to ground his submissions on the addition of the expression “*pertains to*” in Section 153C of the Act by virtue of Finance Act, 2015. He would thus submit that the provisional “Balance Sheet” of Ridgeview would satisfy the requirement of belongs or pertains to as appearing in Section 153C. In view of the above, it was his contention that since the provisional Balance Sheet

⁶ 2023 SCC OnLine SC 370



bore the name of the assessee, Ridgeview, the same was liable to be taken into consideration, since it would qualify the pre-requisite of material belonging or pertaining to a non searched entity being found.

9. Mr. Menon, also submitted that at the time when the search was conducted, it was the unamended regime of Section 153C of the Act which applied and there was, thus, no occasion for the AO of the non-searched entity to record any satisfaction as is contemplated under Section 153C of the Act as it stands today. In view of the statutory construct which existed at the relevant time, according to Mr. Menon, it was the satisfaction of the AO of the searched person alone which would have driven an assessment under Section 153C of the Act. That AO, learned counsel pointed out, would have at best been obliged to come to the conclusion that the material seized in the course of the search “belonged” or “pertained” to a person other than the searched entity and consequently transmit the same to the AO of the non-searched person. According to Mr. Menon, it was the aforesaid statutory scheme which existed at that time which must be borne in consideration and thus there being no occasion or obligation on the AO to record its satisfaction that the material gathered was likely to have a bearing on the assessment for the years which were sought to be reopened under Section 153C.

10. In our considered opinion, the larger questions which were sought to be canvassed by Mr. Menon namely the distinctive requirements and obligations which came to be introduced by virtue of Finance Act, 2015 are of a little relevance when viewed in light of the



material which constituted the foundation for the commencement of action under Section 153C for the two AYs in question. As we view the provisional Balance Sheet, it becomes ex facie apparent that it neither made any reference to transactions which may have been undertaken in AYs 2004-05 and AY 2005-06 nor were the disclosures embodied therein, ex facie, liable to be viewed as pertaining to the years in question. The transactions which stood recorded in the provisional Balance Sheet give no indication of it being germane to AYs 2004-05 and 2005-06.

11. While Mr. Menon did contend that the facts and figures as appearing in that provisional Balance Sheet would be liable to be appreciated and taken into consideration alongside the statements that were recorded, we find ourselves unable to countenance that submission since and in our considered opinion, the document itself must be incriminating so as to warrant the invocation of Section 153C of the Act.

12. The aspect of material being incriminating and the same being a consistent requirement underlying Section 153C of the Act can perhaps no longer be doubted. However and since arguments were addressed at some length on this score, we only deem it apposite to extract the following from the decision of the Supreme Court in **Commissioner of Income Tax-III v. Sinhgad Technical Education Society**⁷:-

“15. In these appeals, qua the aforesaid four assessment years, the assessment is quashed by the ITAT (which order is upheld

⁷ (2018) 11 SCC 490



by the High Court) on the sole ground that notice under Section 153-C of the Act was legally unsustainable. The events recorded above further disclose that the issue pertaining to validity of notice under Section 153-C of the Act was raised for the first time before the Tribunal and the Tribunal permitted the assessee to raise this additional ground and while dealing with the same on merits, accepted the contention of the assessee.

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17. 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 153-C 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 153-C 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 153-C of the Act. Para 9 of the order of the ITAT reveals that 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, the learned Senior Counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time-barred.

18. 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 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.



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20. Likewise, the Delhi High Court also decided the case on altogether different facts which will have no bearing once the matter is examined in the aforesaid hue on the facts of this case. The Bombay High Court has rightly distinguished the said judgment as not applicable giving the following reasons: (Sinhgad case [CIT v. Sinhgad Technical Education Society, 2015 SCC OnLine Bom 3922 : (2015) 378 ITR 84] , SCC OnLine Bom para 8)

“8. Reliance on the judgment of the Division Bench of the High Court of Delhi reported in SSP Aviation Ltd. v. CIT [SSP Aviation Ltd. v. CIT, 2012 SCC OnLine Del 1898 : (2012) 346 ITR 177] is misplaced. There, search was carried out in the case of “P” group of companies. It was found that the assessee before the Hon'ble Delhi High Court had acquired certain development rights from “P” group of companies. Based thereon, the satisfaction was recorded by the assessing officer and he issued notice in terms of Section 153-C. Thereupon the proceedings were initiated under Section 153-A and the assessee was directed to file returns for the six assessment years commencing from 2003-04 onwards. The assessee filed returns for those years but disclosed Nil taxable income. These returns were accepted by the assessing officer, however, in respect of Assessment Year 2007-08 there was a significant difference in the pattern of assessment for this year also, the return was filed for Nil income but there were certain documents and which showed that there were transactions of sale of development rights and from which profits were generated and taxable for Assessment Year 2007-08. Thus, the receipt of Rs 44 crores as deposit in the previous year relevant to Assessment Year 2008-09 and later on became subject-matter of the writ petition before the Delhi High Court. That was challenging the validity of notice under Section 153-C read with Section 153-A. In dealing with such situation and the peculiar facts that the Delhi High Court upheld the satisfaction and the Delhi High Court found that the machinery provided under Section 153-C read with Section 153-A equally facilitates inquiry regarding existence of undisclosed income in the hands of a person other than searched



person. The provisions have been referred to in details in dealing with a challenge to the legality and validity of the seizure and action founded thereon. We do not find anything in this judgment which would enable us to hold that the tribunal's understanding of the said legal provision suffers from any error apparent on the face of the record. The Delhi High Court judgment, therefore, will not carry the case of the revenue any further.”

We, thus, do not find any merit in these appeals.”

13. We also bear in consideration the judgment handed down by Division Bench of the Court in **SSP Aviation Limited vs. Deputy Commissioner of Income Tax**⁸ and where the following was observed:-

“15. It needs to be appreciated that the satisfaction that is required to be reached by the Assessing Officer having jurisdiction over the searched person is that the valuable article or books of account or documents seized during the search belong to a person other than the searched person. There is no requirement in section 153C(1) that the Assessing Officer should also be satisfied that such valuable articles or books of account or documents belonging to the other person must be shown to show to conclusively reflect or disclose any undisclosed income.

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17. The judgment of this court in Saraya Industries Ltd. (2008) 306 ITR 189 (Delhi) was relied upon by Mr. Bajpai, in support of his contention that the seizure of the document must be of such nature that even closed assessments for six years could be reopened and this requirement postulates that the provisions of section 153C can be set in motion only if there is a finding that the seized document or books of account or valuable article represents the undisclosed income of the other person. The said decision does not assist the petitioner. The section merely enables the Revenue authorities to investigate into the contents of the document seized, which belongs to a person other than the person searched so that it can be

⁸ 2012 SCC OnLine Del 1898



ascertained whether the transaction or the income embedded in the document has been accounted for in the case of the appropriate person. It is aimed at ensuring that income does not escape assessment in the hands of any other person merely because he has not been searched under section 132 of the Act. It is only a first step to the enquiry, which is to follow. The Assessing Officer who has reached the satisfaction that the document relates to a person other than the searched person can do nothing except to forward the document to the Assessing Officer having jurisdiction over the other person and thereafter it is for the Assessing Officer having jurisdiction over the other person to follow the procedure prescribed by section 153A in an attempt to ensure that the income reflected by the document has been accounted for by such other person. If he is so satisfied after obtaining the returns from such other person for the six assessment years, the proceedings will have to be closed. If the returns filed by the other person for the period of six years does not show that the income reflected in the document has been accounted for, additions will be accordingly made after following the procedure prescribed by law and after giving adequate opportunity of being heard to such other person. That, in sum and substance, is the position.

18. A reference to section 158BD of the Act, which falls under Chapter XIV-B, may be of some use. This section provided for assessment of the undisclosed income by any person other than the person searched under section 132. It applies to search conducted prior to May 31, 2003. It provided as follows:

“Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that the Assessing Officer shall proceed against such other person and the provisions of this Chapter shall apply accordingly.”
(underlining ours)

It will be seen that whereas section 158BD refers to the satisfaction of the Assessing Officer that any “undisclosed income” belongs to any person other than the searched person, section 153C(1) in contrast refers merely to the satisfaction of the Assessing Officer that the valuable article or books of account or document “belongs” to a person



other than the searched person. The latter provision does not refer to any undisclosed income at all. The machinery provided in section 153C read with section 153A merely facilitates an enquiry regarding the existence or otherwise of undisclosed income in the hands of the person other than the searched person. The starting point of the enquiry is the seizure of the valuable article or books of account or document, which according to the satisfaction reached by the Assessing Officer, belongs to a person other than the searched person. It is necessary to notice the difference between the two provisions in order to deal with the contention put forward by the learned counsel for the petitioner that the seizure itself is invalid or illegal on the ground that there could not have been any satisfaction before issuing the warrant of authorization under section 132 of the Act that the petitioner had earned undisclosed income because the income reflected in the seized documents, namely, the collaboration agreement dated August 24, 2006, and the assignment agreement dated July 21, 2006, had already been taken note of in the account books of the petitioner. This is a debatable issue as is apparent from the submission of the Revenue. They have submitted to the contrary. It cannot be said that the seizure of the documents was unwarranted or contrary to law. As noticed above, the Revenue has highlighted that finalization and audit of accounts was after the date of the search. The accounts for the year ended March 31, 2009, now relied upon by the petitioner, were finalized after the search on January 5, 2009. Seizure has to be judged in the perspective and the facts known and within the knowledge when it was made. On that date, the Revenue was not in a position to know whether any income from the transaction had been disclosed by the petitioner in its books of account for the year ended March 31, 2009. In the very nature of things, the warrant of authorization of the search under section 132 could not have been issued on the footing that there was undisclosed income in the case of the petitioner simply because action under section 132 was taken not against the petitioner, but against the Puri group of companies. Section 153C postulates that while conducting the search on the person in whose name the search warrant is issued under section 132, some valuable article or books of account or document is seized, which does not belong to the searched person but is seen to belong to any other person, the procedure stated therein should be followed. Therefore,



nothing is to be gained from saying that the pre-conditions mentioned in clauses (a), (b) and (c) of sub-section (1) of section 132 have not been satisfied vis-a-vis the petitioner so as to confer legality upon the seizure of the documents in question. In our opinion, it is not necessary for the Revenue authorities to have reasons to believe that the petitioner would not produce any books of account or document or that the petitioner is in possession of any money, bullion, jewellery or other valuable article or thing which it had not or will not disclose for the purpose of the assessment proceedings. The petitioner was not searched. Search was on a third person and the validity of the seizure has to be examined with reference to the said person searched. 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. The fact that the procedure envisaged by section 153C is somewhat cumbersome and that the person other than the searched person is put to some inconvenience cannot be an argument to hold that the entire proceedings are bad in law.”

14. Of equal significance are the following passages appearing in the judgement of this Court in **Commissioner of Income Tax vs. RRJ Securities Ltd.**⁹:-

“33. The record slip belongs to the assessee and, therefore, the action of the Assessing Officer of the searched persons recording that the same belongs to the assessee cannot be faulted. However, the question then arises is whether the Assessing Officer 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 Assessing Officer, 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

⁹ 2015 SCC OnLine Del 13085



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 reopened 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 Assessing Officer 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 Assessing Officer 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 Assessing Officer, at the stage of recording the satisfaction under section 153C to come to a conclusion that the seized assets which belong to another person represent any undisclosed income. If the Assessing Officer 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 Assessing Officer of the person concerned ; apart from doing so, the Assessing Officer can do nothing more.

35. The Assessing Officer 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 Assessing Officer 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 Assessing Officer 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 Assessing Officer 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 account/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 Assessing Officer of the assessee would not necessarily require the Assessing Officer 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 Assessing Officer has the jurisdiction to make a reassessment in every case, where seized assets or documents are handed over to the Assessing Officer. The question whether the documents/assets seized could possibly reflect any undisclosed income has to be considered by the Assessing Officer 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 Assessing Officer 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.”

15. While it is true that under the unamended Section 153C, only the AO of the searched person was to record its satisfaction of a document or material belonging to a third person having been discovered and consequently transmit the same to the AO of the non-searched entity, the initiation of assessment under Section 153C against the non-searched entity was never intended to be automated or an inevitable fallout. As was lucidly explained in *RRJ Securities*, it was still incumbent upon the AO of the third party to examine that material and evaluate whether the same had been duly disclosed and factored in the returns which had been submitted. The AO under the unamended regime was entitled to set Section 153C in motion only if it were prima facie of the opinion that the material represented or was likely to be demonstrative of concealment of income or “undisclosed



income” as the *RRJ Securities* Court explained.

16. In our considered opinion, while and undoubtedly Section 153C as it stood at the relevant time did not contemplate a two tier recordal of satisfaction and the AO of the searched person was merely obliged to transmit the material belonging or pertaining to a third person gathered in the course of a search, proceedings under the said provision could not have been triggered mechanically absent the formation of opinion by the AO of the non-searched person that the material was likely to impact an assessment made.

17. We are of the considered view that the subsequent introduction of the words “*have a bearing on*” in the provision was not an introduction of a new obligation upon the AO. The primordial requirement of the material relating to undisclosed income had existed even prior to the amendments introduced in 2015 and which position has been consistently recognised by our Court including in *RRJ Securities* and the host of precedents which followed. This would also appeal to reason since the family of provisions concerned with search were intended to enable the AO to utilise the material that may have been uncovered in a search to test the validity of assessments completed or the veracity of the disclosures made by assessees.

18. On facts we have already found that the provisional Balance Sheet could not be said to be reflective of affairs pertaining to AYs 2004-05 and 2005-06. It was clearly not a document which displayed carried forward or past entries of income or expenditure. The Tribunal was thus justified in annulling the assessment undertaken.



19. Accordingly, and for the aforesaid reasons, we answer the question as posited in the affirmative and against the appellant. The appeals consequently fail and shall stand dismissed.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.
FEBRUARY 13, 2025/v