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

+ **ITA 772/2019**

R.L.ALLIED INDUSTRIESAppellant

Through: **Mr. K.R Manjani & Mr. Tarun
Aswani, Advs.**

versus

INCOME TAX OFFICER WARD 20(1) NEW DELHI

.....Respondent

Through: **Mr Sanjay Kumar, SSC with
Ms. Monica Benjamin and Ms.
Easha Kadian, JSCs.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN

SHANKAR

ORDER

10.02.2025

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1. The appellant assessee seeks to question the order of the **Income Tax Appellate Tribunal**¹ dated 31 July 2017 in terms of which while ITA No. 2953/Del/2013 pertaining to **Assessment Year**² 2000-01 was allowed while those concerning AYs 2003-04 and 2004-05 and which were numbered as ITA Nos. 569-570/Del/2011 have come to be dismissed. It is its findings and conclusions rendered on the appeals pertaining to AYs 2003-04 and 2004-05 which have come to be assailed before us.

2. We had, in terms of our order dated 13 December 2022, admitted this appeal on the following questions of law:-

“(a) Whether on the facts and in the circumstances arising in the case, the orders of the Income Tax Appellate Tribunal [in short

¹ Tribunal

² AY



“Tribunal”] are perverse on account of the Tribunal failing to deal with the grounds and the judgments cited before it?

(b) Whether on the facts and in the circumstances of the case, the assessments are void having been passed after 31.12.2018 when they had become time barred?

(c) Whether on the facts and in the circumstances of the case, orders of the Tribunal are illegal, the additions, having been made without following the principles of natural justice?”

3. From the facts which have come to be recorded by the Tribunal and on which there does not appear to be any contestation, we note that a search and seizure operation is stated to have been carried out under Section 132 of the **Income Tax Act, 1961**³ on the RL Group on 13 December 2005. On documents found and seized in the course thereof being scrutinized, the same appear to have been forwarded to the **Assessing Officer**⁴ of the appellant upon the AO of the searched person being satisfied that they belonged to the appellant-assessee. It is this which led to the issuance of notice under Section 153C of the Act on 12 March 2009.

4. We note that before the Tribunal, the appellant had categorically argued that in terms of the provisions comprised in Section 153C, it would be the date of receiving the books of account by the jurisdictional AO of the non-searched entity, which would be deemed to be the date of search. This proposition as canvassed is clearly indisputable and was also accepted by the Tribunal as would be evident from the following conclusions which it came to record: -

“8. From the above it is evident that seized material was received by jurisdictional Ld. AO in case of assessee on 12.03.2009 and notice under section 153C was issued and served upon assessee on 24.03.2009.

³ Act

⁴ AO



9. As per the provisions of section 153A(1)(b), Ld. AO is empowered to assess or reassess total income in respect of 6 assessment years, immediately preceding assessment year relevant to previous year in which search is conducted or requisition is made.

10. This Tribunal in assessee's own case for preceding assessment years has come to conclusion on that preceding 6 assessment years would be assessment year 2008-09, 2007-08, 2006-07, 2005-06, 2004-05 and 2003-04. We refer to the relevant extract of findings have been reproduced hereinabove."

5. Since AY 2000-01 clearly fell outside the block period of six years as contemplated, the appeal pertaining to that year came to be allowed and the assessment order was quashed. This is clearly reflected in paragraphs 11 and 12 of the order passed by the Tribunal and which reads as under: -

"11. Respectfully following same, we are of considered opinion that issuance of notice under section 153C for assessment year 2000-01 is barred by limitation. Accordingly, we quash same and assessment order passed in pursuance to notice issued under section 153C is also quashed.

12. Accordingly appeal filed by assessee for assessment year 2000-01 stands allowed on legal issue raised in grounds of appeal"

6. Proceeding further to deal with the appeals pertaining to AYs 2003-04 and 2004-05, the Tribunal has essentially borne in mind the computation of the six year period and the AYs which it would cover and which stands encapsulated in paragraph 10 of its order. Since both AYs 2003-04 and 2004-05 fell within the block of six years, the Tribunal has proceeded to dismiss the appeals of the assessee for the aforementioned two years.

7. We note that in terms of the First Proviso to Section 153C(1) of the Act, the deeming provision clearly bids us to transpose the date of transfer of material as being the date of actual search in case of the non-searched entity. This position of law is clearly well settled as



would be evident from the following passages of the judgment of the Supreme Court in **Commissioner of Income Tax v. Vikram Sujitkumar Bhatia**⁵:-

“51. At this stage, the first proviso to Section 153-C of the 1961 Act is required to be referred to. The first proviso to Section 153-C of the 1961 Act came to be inserted vide the Finance Act, 2005 with retrospective effect from 1-6-2003, which provides that the reference to the date of initiation of the search under Section 132 or making of requisition under Section 132-A in the second proviso to sub-section (1) of Section 153-A shall be construed as a reference to the date of receiving the books of account or documents or assets seized or requisitioned by the assessing officer having jurisdiction over such other person.

52. The proviso to Section 153-C as inserted vide the Finance Act, 2005 reads as under:

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

53. Thus, as per the proviso to Section 153-C as inserted vide the Finance Act, 2005, and the effect of the said proviso is that it creates a deeming fiction wherein any reference made to the date of initiation of search is deemed to be a reference made to the date when the assessing officer of the non-searched person receives the books of account or documents or assets seized, etc. Thus, in the present case, even though the search under Section 132 was initiated prior to the amendment to Section 153-C w.e.f. 1-6-2015, the books of account or documents or assets were seized by the assessing officer of the non-searched person only on 25-4-2017, which is subsequent to the amendment, therefore, when the notice under Section 153-C was issued on 4-5-2018, the provision of the law existing as on that date i.e. the amended Section 153-C shall be applicable.”

8. The aforesaid position was reiterated by the Supreme Court in

⁵ (2024) 7 SCC 741



Commissioner of Income Tax vs. Jasjit Singh⁶, where the following pertinent observations were rendered:-

“8. In SSP Aviation (supra) the High Court, inter alia, reasoned as follows* :

* Page 187 of 346 ITR.

"14. Now, there can be a situation when during the search conducted on one person under section 132, some documents or valuable assets or books of account belonging to some other person, in whose case the search is not conducted, may be found. In such case, the Assessing Officer has to first be satisfied under section 153C, which provides for the assessment of income of any other person, i. e., any other person who is not covered by the search, that the books of account or other valuable article or document belongs to the other person (person other than the one searched). He shall hand over the valuable article or books of account or document to the Assessing Officer having jurisdiction over the other person. Thereafter, the Assessing Officer having jurisdiction over the other person has to proceed against him and issue notice to that person in order to assess or reassess the income of such other person in the manner contemplated by the provisions of section 153A. Now a question may arise as to the applicability of the second proviso to section 153A in the case of the other person, in order to examine the question of pending proceedings which have to abate. In the case of the searched person, the date with reference to which the proceedings for assessment or reassessment of any assessment year within the period of the six assessment years shall abate, is the date of initiation of the search under section 132 or the requisition under section 132A. For instance, in the present case, with reference to the Puri Group of Companies, such date will be January 5, 2009. However, in the case of the other person, which in the present case is the petitioner herein, such date will be the date of receiving the books of account or documents or assets seized or requisition by the Assessing Officer having jurisdiction over such other person. In the case of the other person, the question of pendency and abatement of the proceedings of assessment or reassessment to the six assessment years will be examined with reference to such date."

⁶ 2023 SCC OnLine SC 1265



9. It is evident on a plain interpretation of section 153C(1) that the Parliamentary intent to enact the proviso was to cater not merely to the question of abatement but also with regard to the date from which the six year period was to be reckoned, in respect of which the returns were to be filed by the third party (whose premises are not searched and in respect of whom the specific provision under section 153C was enacted). The Revenue argued that the proviso (to section 153C(1)) is confined in its application to the question of abatement.

10. This court is of the opinion that the Revenue's argument is insubstantial and without merit. It is quite plausible that without the kind of interpretation which SSP Aviation adopted, the Assessing Officer seized of the materials - of the search party, under section 132 - would take his own time to forward the papers and materials belonging to the third party, to the concerned Assessing Officer. In that event if the date would virtually "relate back" as is sought to be contended by the Revenue, (to the date of the seizure), the prejudice caused to the third party, who would be drawn into proceedings as it were unwittingly (and in many cases have no concern with it at all), is disproportionate. For instance, if the papers are in fact assigned under section 153C after a period of four years, the third party assessee's prejudice is writ large as it would have to virtually preserve the records for at latest ten years which is not the requirement in law. Such disastrous and harsh consequences cannot be attributed to Parliament. On the other hand, a plain reading of section 153C supports the interpretation which this court adopts. “

9. Consequently, we find no merit in the challenge which stands raised. The questions as posited are answered in the negative and against the appellant-assessee. The appeal shall consequently stand dismissed.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.
FEBRUARY 10, 2025/akc