IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA.No.3161/Del./2016
Assessment Year 2010-2011

The ACIT, Central Circle-7, Room No.330, ARA Centre, Jhandewalan Extesnion, New Delhi.	vs.	M/s. N.S. Software, 12, Ring Road, Lajpat Nagar-IV, New Delhi PIN 110024 PAN AAEFN9135B
(Appellant)		(Respondent)

For Revenue :	Shri Sanjay Goel, CIT-D.R. Shri S.L. Anuragi, Sr. D.R.
For Assessee :	Shri Sudesh Garg, Advocate

Date of Hearing :	04.02.2020
Date of Pronouncement :	05.02.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-23, New Delhi, Dated 28.03.2016, for the A.Y. 2011-2012, on the following grounds :

1. *"The order of Ld. CIT(A) is not correct in law and facts.*

2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in quashing the order u/s 143(3) for the last year in the period to be covered u/s 153C of the Act.

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in holding that the date of recording of satisfaction note instead of date of search is to be taken as the base date for calculating the period to be covered u/s 153C of the Act.

4. On the facts and circumstances of the case, the Ld. CIT(A) has erred in holding that no addition can be done u/s 153C in the case of completed assessment, if no incriminating document has been found during search."

2. Briefly the facts of the case are that return of income was filed originally on 21.09.2010 declaring NIL income. The same was processed under section 143(1) of the I.T. Act, 1961. A.O. issued notices under sections 143(2) as well as 142(1) of the I.T. Act, 1961. The A.O. noted that

search and seizure operation under section 132 of the I.T. Act, 1961 was carried out in Raj Darbar Group of Cases on 31.07.2008. The assessee was incorporated on 15.03.2004. During the year under consideration, assessee has claimed deduction of Rs.2,58,07,534/- under section 80IA of the I.T. Act, 1961 which A.O. has denied and made the addition. The assessment was completed under section 143(3) of the I.T. Act, 1961, Dated 18.03.2013.

2.1. The assessee challenged the addition on merits before the Ld. CIT(A) and also taken additional ground of appeal stating therein that A.O. has erred in assessing the assessee without satisfying the substantive and procedural requirement under section 153C of the I.T. Act, 1961 and that A.O. has erred in making the addition which are not based on any incriminating material found during the course of search. The detailed written submissions of the assessee on merits is reproduced in the impugned order.

2.2. The assessee also submitted before the Ld. CIT(A) that A.O. has provided inspection of the record and also provided copy of the satisfaction note recorded by him before issuing notice under section 153C of the I.T Act. Copy of the satisfaction note was provided by A.O. was filed before the Ld. CIT(A) which is also reproduced in the impugned order. The satisfaction note is Dated 23.07.2010, in which the A.O. has mentioned that search was conducted in the case of Raj Darbar Group of Cases on 31.07.2008. During the course of search operation, various papers were found and seized belonging to the assessee firm which are noted in the satisfaction note. The assessee referred to provisions of Section 153C of the I.T. Act and relied upon Judgment of Hon'ble Delhi High Court in the case of RRJ Securities Ltd., 62 taxmann.com 391 (Del.) on the proposition that assessment under section 153C are the assessment years starting from assessment year corresponding to the year in which assets/documents belonging to other person are handed over to the A.O. of the other person, in which the A.O. of the other person recorded the satisfaction note. In the case of assessee, satisfaction note was recorded on 23.07.2010. So, the relevant assessment years covered under section 153C will be A.Ys.

2010-2011 downwards. The assessee relied upon several decisions of the Tribunal on the same proposition as well as Judgment of Hon'ble Delhi High Court in the case of Pepsico India Holdings Pvt. Ltd., 50 taxmann.com 299 (Del.). The Ld. CIT(A) reproduced the issues that *inter alia*, emanated from the Judgment of Hon'ble Delhi High Court in the case of RRJ Securities Ltd., (supra) in the impugned order as under :

(i) *"that in accordance with the provisions of the 1st Proviso to s. 153C read with 2 Proviso to s. 153A(1) of the Act since the AO of the searched person and the person other than the searched person are the same, the 'date of satisfaction' of the AO for initiating proceedings u/s 153C of the Act in the present case 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 searched person, i.e., 20.07.2010 in this case;*

(ii) accordingly, the AO was required to make assessment u/s 153C, in the manner as mentioned in S.153A of the Act, for the AYs 2005-06 to 2010-11 in terms of the 'date of satisfaction', i.e. 20.07.2010, and not AYs 2003-04 to 2008-09 in accordance with the date of search in the Rajdarbar group of cases as has been done by the AO (in fact assessments were made for AYs. 2005-06 to 2008-09 since the appellant firm was registered on 15.03.2004);

(iii) the assessment/reassessment pending on that date (20.07.2010) would abate, and in respect of such assessments which have abated the AO would have the jurisdiction to proceed and make an assessment;

(iv) 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;

(v) for the purpose of making assessments or reassessments u/s 153C the Act, the AO of the searched person has to necessary record a satisfaction to the effect that the said documents or materials found during the search do not belong to the searched person and that it belong to the person other than the searched person;

(vi) and that 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."

2.3. The Ld. CIT(A) decided the issue in favour of the assessee by holding that assessment in the case for the assessment year under appeal 2010-2011 is covered by the provisions of Section 153C of the I.T. Act, 1961 and since the satisfaction note have not been recorded under section 153C of the I.T. Act, 1961 and no assessment have been framed under section 153C of the I.T. Act, 1961, therefore, passing of the assessment under section 143(3) of the I.T.

Act, 1961, is *void abinitio* and was accordingly quashed. The relevant findings of the Ld. CIT(A) in paras 4.1.5 and 4.1.6 are reproduced as under.

"4.1.5. The facts of the case are that a search and seizure operation was conducted in the Rajdarbar group of cases on 31.07.2008. Therefore, in terms of the provisions of S.153A of the Act the assessment u/s 153A, or 153C, of the Act was to be made for the AYs 2003-04 to 2008-09, and that AY 2009-10 was to be assessed under the normal provisions of s. 143(3) of the Act. The appellant firm was registered, and came into existence, on 15.03.2004, and therefore, the AO recorded satisfaction in the case of the appellant u/s 153C of the Act on 23.07.2010 for the AYs. 2005-06 to 2008-09 and passed assessments orders u/s 153C r.w.s 153A/143(3) of the Act on 28.12.2010 for these assessment years. The present

assessment year being 2010-11, the AO assessed the income u/s 143(3) of the Act. However, in the case of the appellant, in terms of the interpretation of 1st Proviso to S.153C read with 2nd Proviso to S.153A of the Act and the principles laid down by the Hon'ble Delhi High Court in RRJ Securities Ltd. (supra), the assessment of AY 2010-11 as well had abated since the return of income for this year had not become due on 20.07.2010, the date of recording of the satisfaction, and had not been filed. Therefore, the appellant's case for the present assessment year, AY 2010-11, was to be assessed u/s 153C read with S.153A of the Act, but the AO neither recorded any 'satisfaction' for this assessment year in the case of the appellant nor did he make the assessment u/s 153C of the Act, rather the assessment has been made u/s 143(3) of the

Act without recording the mandatory 'satisfaction'. The assessment order is, therefore, not sustainable on this account itself.

4.1.6. I may, however, make mention of the fact that S.153A and 153C of the Act are special provisions for assessment or reassessment emanating from search u/s 132/132A of the Act, and the period after the date of search are to be assessed under the normal provisions of the Act. In terms of the provisions of the 1st Proviso to s. 153C of the Act the date of handing over the seized books/documents/assets, or the date of satisfaction in case the AO is the same as that of the searched personT (hereinafter referred to as the "specified date") shall be construed as the date of search for the purposes of 2nd Proviso to s. 153A(1), meaning thereby that the assessments *pending as on the 'specified date' shall abate, and in terms of the principle laid down in Kabul Chawla (supra) and RRJ Securities Ltd. (supra) the completed assessments as on the specified date' (and not the date of search per se) cannot be reassessed u/s 153C of the Act in the absence of any incriminating material 'belonging to' the person other than the searched person. However, the Hon'ble Delhi High Court, in RRJ Securities Ltd (supra), have also held that assessments of the assessment years relevant to the period after the date of search and upto the 'specified date' shall be made u/s 153C by reckoning the period of 6 years from the 'specified date' and not the date of search. This, however, leads us to an anamolous situation where assessment of the period beyond the date of search would have to be made under the special provisions* *of S.153C/153A of the Act for which period there would obviously be no seized books of account or documents or assets, meaning thereby that assessments for these assessment years beyond the date of search and upto the 'specified date' would be made under the special provisions of S.153C/153A of the Act sans any 'undisclosed income' emanating from seized/incriminating material, which would otherwise be not in accordance with the principle laid down in RRJ Securities (supra) and would, therefore, be a nullity even otherwise. In my considered view the import of the provisions of the 1st Proviso to s. 153C read with the 2nd Proviso to s. 153A(1) of the Act would be that the completed assessments should be reckoned in accordance with the 'specified date' - in this case the 'specified date' is 20.07.2010 as against the date of search 31.07.2008,* *and therefore the assessments of AYs 2003-04 to 2008-09 [for which the returns were filed u/s 139(1) and limitation for issuance of notice u/s 143(2) of the Act was over - in fact assessment for the first time were made in the case of the appellant on 28.12.2010 for AYs 2005-06 to 2008-09 u/s 153C of the Act] stood completed as on the 'specified date' which could be interfered in reassessment u/s 153C only if seized/incriminating material indicating 'undisclosed income' was available with the AO. However, respectfully following the judgment of the Hon.ble High Court of Delhi in RRJ Securities (supra) I hold that the assessment of the appellant for AY. 2010-11 was to be made u/s 153C of the Act, but the AO neither recorded any 'satisfaction' for this assessment year in the case of the appellant nor did he issue any notice u/s 153C of the Act and make* *assessment u/s 153C read with S.153A of the Act, rather the assessment has been made u/s 143(3) after issue of notice u/s 143(2) of the Act without recording the mandatory 'satisfaction'. The assessment order is, therefore, not sustainable on this account itself and held to be ab initio void."*

3. The Ld. D.R. relied upon the Order of the A.O. and submitted that since it was not year of the search, therefore, A.O. correctly framed the assessment under section 143(3) of the I.T. Act, 1961. He has referred to comments of the A.O, in which, A.O. has highlighted that in previous years i.e., A.Ys. 2005-2006 to 2009-2010, the Ld. CIT(A) has decided the appeals in favour of the Revenue and the Ld. CIT(A) while deciding the appeal of the assessee for the A.Y. 2010-2011 under appeal has not considered the decision given by his predecessor in A.Ys. 2005-2006 to 2009-2010. Therefore, the Ld. CIT(A) has given a contrary findings.

4. On the other hand, Learned Counsel for the Assessee, reiterated the submissions made before the authorities below and submitted that though search has taken place under section 132 of the I.T. Act, 1961 on 31.07.2008, the documents were handed over on or the satisfaction by the A.O. of the assessee was recorded on 23.07.2010, then the limitation for counting assessment years to be covered under section 153C would start from A.Y. 2010-2011 as the date of handing over/date of recording satisfaction by the A.O. of the assessee would be deemed to be the date of search. Accordingly, assessment for A.Y. 2010-2011 under appeal would be covered under section 153C and not under normal provisions under section 143(3) of the I.T. Act, 1961. He has relied upon Judgment of Hon'ble Delhi High Court in the case of RRJ Securities Ltd., (supra) and several other decisions of the ITAT. Learned Counsel for the Assessee further submitted that ITAT, Delhi Bench passed order in the case of assessee for A.Ys. 2005-2006 to 2009-2010 on 28.02.2017 in ITA.Nos.3584 to 3588/Del./2014 quashing the assessments

passed by the A.O. The Order of the Tribunal for the A.Ys. 2005-2006 to 2008-2009 were subject matter of appeal before the Hon'ble Delhi High Court wherein the appeals of the Department have been dismissed vide Order Dated 13.09.2017. The Order of the Tribunal for the A.Y. 2009-2010 was subject matter of appeal before the Hon'ble Delhi High Court in ITA.No.791/2017 (Pr. CIT vs., N.S. Software) reported in 93 taxmann.com 21 (Del.) wherein the Hon'ble High Court framed the question of Law as under :

> *"Did the Income Tax Appellate Tribunal [ITAT] fall into error in quashing the assessment on the ground that it was not based upon notice under section 153C of the I.T. Act ?*

4.1. The Hon'ble Delhi High Court dismissed the Departmental Appeal vide Order Dated 18.04.2018. In this Judgment the Hon'ble Delhi High Court reiterated its decision in the case of RRJ Securities and others (supra). Learned Counsel for the Assessee, therefore, submitted that there is no error in the Order of the Ld. CIT(A) in allowing the appeal of the assessee.

5. We have considered the rival submissions and do not find any merit in the Departmental Appeal. It is an admitted fact that search operation was conducted in the case of Rajdarbar Group of cases on 31.07.2018. During the course of search, various papers were found and seized belonging to the assessee. The A.O. recorded satisfaction note in the case of assessee on 23.07.2010. Therefore, the issue would be squarely covered by the Judgment of Hon'ble Delhi High Court in the case of RRJ Securities Ltd., (supra) and the assessment year under appeal 2010-2011 would be governed by the provisions of Section 153C of the I.T. Act, 1961. Since no satisfaction note have been recorded for the assessment year under appeal i.e., 2010-2011, therefore, A.O. was not justified in passing the Order under section 143(3) of the I.T. Act, 1961. In preceding A.Y. 2009-2010 similar view have been taken by Hon'ble Delhi High Court in the case of assessee and a specific question as noted above have been considered by the Hon'ble Delhi High Court and it was held as under :

"Where in course of search carried out at premises of a third person, a hard disk was seized and on basis of same proceedings under section 153C were initiated against assessee, since Assessing Officer of searched person failed to record a specific satisfaction as to how said hard disk belonged to assessee, impugned proceedings under section 153C were unjustified."

6. The ITAT, Delhi A-Bench in the case of M/s. BNB Investment & Properties Ltd., Gurgaon vs., DCIT, Central Circle-1, Faridabad and Shri Ranjan Gupta, New Delhi vs., DCIT, Central Circle-1, Faridabad in ITA.Nos.504 & 503/Del./2015 vide Order Dated 27.06.2018 reported in 68 ITR 567 (Delhi-Tribunal) held as under :

"IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.504/Del./2015
Assessment Year 2012-2013

M/s. BNB Investment & Properties Ltd., Ground Floor, Soltaire Plaza, M.G. Road, Gurgaon, Haryana. PAN AAACB3800A	*vs*	*The DCIT, Central Circle-1 Faridabad.*
(Appellant)		*(Respondent)*

ITA.No.503/Del./2015
Assessment Year 2012-2013

Shri Ranjan Gupta, W-40, G.K.-II, New Delhi. PAN AAGPG8809F	*vs*	*The DCIT, Central Circle-1 Faridabad.*
(Appellant)		*(Respondent)*

For Assessee :	*Shri Raj Kumar Gupta, C.A.*
For Revenue :	*Shri Ravi Kant Gupta, Sr. D.R.*

Date of Hearing :	*25.05.2018*
Date of Pronouncement :	*27.06.2018*

ORDER

PER BHAVNESH SAINI, J.M.

Both the appeals by different assessees are directed against the different orders of the Ld. CIT(A)-3, Gurgaon, dated 09th December, 2014, for the A.Y. 2012-2013.

1.1. Both the parties mainly argued in ITA.No.504/Del./2015 in the case of M/s. BNB Investments & Properties Ltd., and submitted that the issue is same in the remaining appeal.

1.2. We have heard the learned Representatives of both the parties and perused the material on record and gone through the findings of the authorities below. For the purpose of disposal of both the appeals, we decide the appeal in the case of M/s. BNB Investments & Properties Ltd., as under.

ITA.No.504/Del./2015 – M/s. BNB Investments & Properties Ltd.,A.Y. 2012-2013 :

2. Briefly, the facts of the case are that in this case, a search and seizure operation was conducted on M/s Krrish Group of cases on 09.11.2011. A survey u/s 133A of the Act was also carried out on the business premises of the assessee. Assessee earned income from business and other sources. The assessee filed its *original return declaring total income of Rs.2,08,95,242/- on 28.09.2012. In response to notice under section 153A(1) (a] r.w.s 153C, assessee filed revised return declaring total income of Rs. 2,22,43,593/-. Assessment was framed at Rs. 5,22,43,593/- by making addition of Rs.3 crores as surrendered amount not incorporated in the return of income. Assessee challenged the validity of the assessment proceedings as well as addition on merit before the Ld. CIT(A). However, appeal of the assessee has been dismissed.*

3. Assessee in the present appeal, challenged the validity of the proceedings under section 153C of the I.T. Act and addition of Rs.3 crores. The assessee also moved an application for admission of additional grounds in which assessee raised the following additional grounds :

1. Additional Ground No. 1

"That under the facts and circumstances, in the absence of issuance and service of notice U/s. 153 C

r/w. Sec. 153A of the I.T.Act, the jurisdiction for framing the impugned Asstt. has been wrongly assumed, hence, the impugned Asstt. is without jurisdiction, illegal and unsustainable in law."

Additional Ground No. 2

"That without prejudice,

As the seized documents in search of a 3rd party have been received by the AO of the assessee on 29.08.2013, therefore, in view of Sec. 153C(1) (first proviso), the search year is A.Y. 2014-2015 and not impugned A.Y. 2012-2013, hence, in case, if impugned Asstt. has been framed U/s. 153 B (1) (b) treating A.Y. 2012-2013 as the search year, the whole Asstt. Proceedings stands vitiated in law and unsustainable because the A.Y. 2012-2013 falls within period of preceding 6 Asstt. Years as provided in Sec.153A (1)(b), therefore, the Asstt. of A.Y. 2012-2013 was to be framed only U/s. 153C and that too *after issuance and service of notice U/s. 153C r/w. Sec. 153A of the I.T.Act which has never been issued as admitted by AO in RT1 reply. "*

2. *That both the above grounds are pure legal grounds which goes to the root of the matter which can be taken at any stage of proceedings before Hon'ble ITAT.*

3. *That, further, no new facts are required to be investigated or place on records for adjudicating these grounds which are already available on records.*

4. *That under above mentioned facts and circumstances and as per the following authorities, these additional grounds deserves to be admitted:-*

NATIONAL THERMAL POWER COMPANY LTD.

229 ITR 383 (SC)

GEDORE TOOLS PVT. LTD., 238 ITR 268 (DEL.)

5. That without prejudice, the issues covered in these additional grounds are covered in G.N. 1 and G. N. 2, as taken initially in Form - 36 also, however, these have been taken specifically only as a matter of abundant precaution and to meet out the situation in case the Hon'ble Court is of the opinion that the same are not covered in Ground Nos. 1 & 2 as initially taken."

3.1. Learned Counsel for the Assessee submitted that additional grounds are legal in nature and no new facts shall have to be considered. He, therefore, submitted that additional grounds may be admitted. He has relied upon the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., (1998) 229 ITR 383 (SC) and Gedore Tools Pvt. Ltd., 238 ITR 268 (Del.).

4. On the other hand, Ld. D.R. submitted that additional grounds have no merit and the same may be *rejected. The assessment has been rightly framed under section 153A(1)(b) of the I.T. Act, 1961.*

5. After considering the rival submissions, we are of the view that the additional grounds are legal in nature and no new facts shall have to be considered. The additional grounds go to the validity of the assessment proceedings under section 153C of the I.T. Act, therefore, the same should be admitted for deciding the appeal. The Hon'ble Punjab & Haryana High Court in the case of VMT Spinning Co Ltd., vs. CIT (2016) 389 ITR 326 (P & H) considering various decisions including the decision of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd., (1998) 229 ITR 383 (SC) held that "the Tribunal could decide the appeal on a ground neither taken in the Memorandum of Appeal nor by seeking its leave. The only requirement was that the Tribunal could not rest its decisions on any other ground unless the party who might be affected had sufficient opportunity of being heard given on that ground. Therefore, the Tribunal ought *to have exercised its discretion in view of the fact that assessee intended raising only a legal argument without reference to any disputed question of facts."*

5.1. Considering the issue in the light of the factthat additional grounds are legal in nature and shall have bearing on the validity of the assessment proceedings, therefore, the same is admitted for the purpose of disposal of the appeal.

5.2. Learned Counsel for the Assessee submitted that search was conducted in the case of M/s Krrish Group of cases on 09.11.2011. A survey u/s 133A of the Act was also carried out on 22.11.2011 at the business premises of the Assessee-Company and its Director. The seized/impounded documents in the group were received by the A.O. on 29.08.2013. These facts are mentioned in the assessment order. He has referred to PB-161 which is satisfaction note recorded under section 153C of the I.T. Act in the case of assessee dated 03.10.2013. The *satisfaction note was, therefore, recorded in the A.Y. 2014-2015 in the case of the person searched. PB-190 to 195 are the notices issued under section 153A r.w.s.153C of the I.T. Act in the case of the assessee for A.Ys. 2006-2007 to 2011-2012. He has submitted that no notice under section 153C have been issued for assessment year under appeal i.e., 2012-2013. He has referred to PB-160 which is a reply filed under RTI Act dated 01.11.2016 by DCIT, CC-1, Gurgaon, in which, A.O. has reported that no notice under section 153C was issued for A.Y. 2012-2013 as it was a search year. Hence, notice under section 143(2)/142(1) were issued. Learned Counsel for the Assessee submitted that the A.O. accordingly did not pass any assessment order under section 153C of the I.T. Act and passed the assessment order under section 153B(1)(b) of the I.T. Act being a search year. He has submitted that First Proviso to Section 153C is applicable in the case of the assessee because no search was conducted in the case of the assessee. The Amendment in*

Section 153C came w.e.f. 01.04.2017 which is prospective in nature. Assessment in A.Y. 2012-2013 under appeal should have been completed under section 153C being 5th year in the Block of 06th year. The First Proviso to Section 153C(1) provides that in case of Section 153C, the date of receiving of books of account by the jurisdictional A.O. shall have to be construe as date of initiation of search. Since the books of account/impounded documents have been received by the A.O. on 29.08.2013, therefore, A.Y. 2014-2015 will be the year of search and assessments under section 153C of the I.T. Act should have been computed for A.Ys. 2008-2009 to 2013-2014. Since, no notice under section 153C have been issued for assessment year in appeal, therefore, the assessment order is illegal, void and bad in law. He has relied upon the Judgment of Hon'ble Delhi High Court in the case of Pr. CIT vs. Sarwar Agency P. Ltd., (2017) 397 ITR 400 (Del.), Order of ITAT, Delhi, B-Bench in the case of ACIT vs. Empire Casting Pvt. Ltd., New Delhi in

ITA.No.4018/Del./2011 and C.O.No.207/Del./2012 dated 21.11.2017 and Order of ITAT, Delhi, C-Bench in the case of PavitraRealcon Pvt. Ltd., New Delhi vs. ACIT, Central Circle-32, New Delhiin ITA.Nos. 3185, 3186 & 3253/Del./2015 dated 04.10.2017. He has also referred to Memorandum explaining Finance Bill 2017 in which it is provided that "Amendment in Section 153C shall apply in respect of search conducted or requisition made on or after 1st day of April, 2017."

6. On the other hand, Ld. D.R. submitted that Section 153A(1) deals with the years of reopening in the case of search proceeding and as per Section 153C(1) after the satisfaction, the A.O. shall proceed in accordance with provisions of Section 153A(1) of the I.T. Act. Section 153A(1)(b) is very clear that "A.O. shall assess or re-assess the total income of 06 assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted". No where the Section contains the word "Date of initiation of the Search" which are referred *to by the First Proviso to Section 153C of the I.T. Act. Hence, the First Proviso to Section 153C of the I.T. Act is only referring to the abatement of the existing proceedings mentioned in the Second Proviso to Section 153A(1) of the I.T. Act, as clearly mentioned in the First Proviso and further clarified by usage of words "the date of initiation of search" which are no where mentioned in Section 153A(1) of the I.T. Act. Even after the Amendment in Section 153C, the First Proviso stands as it is in the statute which makes it further clear that First Proviso to Section 153C always referred to abatement of proceedings as mentioned in the second proviso Section 153A(1) of the I.T. Act, otherwise, the current 153C shall have major incongruity as to whether six years would be reckoned from the date of search as mentioned in the amended Section 153C(1) or from the date of handing over of the documents as mentioned in the First Proviso of Section 153C which remained unamended. He has,* *therefore, submitted that assessment have been rightly framed under section 153A(1)(b) of the I.T. Act, 1961.*

7. We have considered the rival submissions. Section 153C of the I.T. Act, 1961, as is applicable to assessment year under appeal reads as under :

> *"153C.Assessment of income of any other person.- (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 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 :

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.]

[(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of

section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before 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, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

7.1. The Hon'ble Delhi High Court in the case of Pr. CIT vs. Sarwar Agency P. Ltd., (2017) 397 ITR 400 (Delhi.) (HC) (supra), considering the identical issue held as under:

"Sub-section (1) of section 153C of the Income-tax Act, 1961 provides that the assessment or

reassessment of the income of the "other person" would be in accordance with the provisions of section 153A. The first proviso to subsection (1) of section 153C further states that, in case of such other person, the reference to the date of initiation of search in the second proviso to section 153A(l) "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". In terms of section 153A(1)(b) of the Act. the Assessing Officer shall assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted. The second proviso to sub-section (1) of section 153A of the Act states that assessment or reassessment relating to any assessment year falling within the period of six assessment years *referred to in the said sub-section pending on the date of initiation of the search under section 132, would abate. In CIT v. RRJ Securities Ltd. [2016] 380 ITR 612 (Delhi), the court held that 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 Assessing Officer receives the documents or assets from the Assessing Officer of the searched person, that further proceedings, by virtue of section 153(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 or reassessments could be made under section 153C of the Act would also have to be construed with reference to the date of* *handing aver of assets or documents to the Assessing Officer of the assessee.*

The amendment in section 153C of the Act by the Finance Act, 2017 with effect from April 1, 2017 to the effect that the Block Period for the person in respect of whom the search was conducted as well as the "other person" would be the same six assessment years immediately preceding the year of search is prospective.

*A search under section 132 of the Income-tax Act, 1961 took place on November 11,2010 in the T group of cases. The documents pertaining to the assessee were forwardedalong with a satisfaction note by the Assessing Officer of the party in respect of which the search was conducted to the Assessing Officer of the*assessee on January 3, 2013. The Assessing Officer of the assessee issued notice to the assessee under section 153C of the Act on*

January 4,2013 for the assessment year 2006-07. The Tribunal held that the notice issued to the assessee under section 153C of the Act for the assessment year 2006-07, was without jurisdiction since the assessment year was beyond the purview of issuance of notice in terms of the provision under section 153C of the Act. On appeal:

Held accordingly, dismissing the appeal, that the Tribunal was justified in holding that the notice issued to the assessee under section 153C of the Act for the assessment year 2006-07 was without jurisdiction since the assessment year was beyond the purview of issuance of notice in terms of the provision."

7.2. The ITAT, Delhi, B-Bench in the case of ACIT, C.C.-2, New Delhi vs. Empire Casting Pvt. Ltd., New Delhi (supra), held in paras 5 and 5.1 as under :

“5. We have heard the rival submission on this issue and also perused the judgment dated 30th October, 2015 of the Hon'ble jurisdictional High Court in the case of CIT Vs RRJ Securities in ITA No. 164/2015 and ITA No. 175 to 177/2015. For ready reference, the relevant Para of the judgment is reproduced as under:

"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."*

5.1. The fact that satisfaction u/s 153C of the Act in the case was recorded on 2nd November, 2009, is not disputed by both the parties. In the judgment *cited above, the Hon'ble High Court has held that when the Assessing Officer of searched person and such other person in whose case proceedings under section 153C are initiated, is the same officer, then the date of recording of satisfaction would be construed as the date of handing over of the seized records by the Assessing Officer of searched person to the Assessing Officer of such other person in whose case proceedings under section 153C are initiated. Since the Hon'ble High Court has already construed the relevant provisions, we do not concur with the arguments advanced by the ld. CIT DR on this count. Respectfully following the above judgment of the Hon'ble High Court in RRJ Securities (supra) the date of handing over of seized material/ record by the Assessing Officer of searched party to the Assessing Officer of the assessee would be 2nd November, 2009. Further, following the judgment, the six assessment years for which assessment/re-*

assessment could be made u/s 153C of the Act would also have to be construed as from the reference date of handing over of assets/documents to the Assessing Officer of the assessee. In the case in hand, it would be the date of recording satisfaction under section 153 of the Act i.e. 2nd November, 2009, and therefore, six assessment years which would eligible for assessment/re-assessment would commence from assessment year 2004-05 to assessment year 2009-10. The assessment/re-assessment in respect of assessment year 2003-04 would, thus, be beyond the period of six assessment year as reckoned with reference to the date of satisfaction recorded by the Assessing Officer of the searched person. We, therefore, hold that the learned CIT(A) was quite justified in considering the assessment for assessment year 2003-04 as outside the scope of section 153C of the Act, being barred by *limitation and without jurisdiction. Accordingly, the impugned assessment order is liable to be quashed. We decide accordingly."*

7.3. The ITAT, Delhi, C-Bench, in the case of Pavitra Realcon Pvt. Ltd., New Delhi vs. ACIT, C.C.32, New Delhi (supra) under the same circumstances held that "assessment completed under section 143(3) is invalid".The relevant para-16 of the order is reproduced as under :

16. "We find the year for which the impugned assessment order has been passed u/s 143(3) is for assessment year 2011-12. This year falls within the period of six years when counted from the date of recording of satisfaction note u/s 153/153C of the I.T. Act which is deemed date of search. The Act has been amended recently by the Finance Act, 2017 with prospective effect i.e., from assessment year 2018-19. Thus, the *period is same now only for the searched parties as well as the other person as per the amended provisions of the said section. In view of the above, we hold that the assessment completed u/s 143(3) is invalid."*

8. It is not in dispute that search was conducted on Krrish Group of cases on 09.11.2011. The impounded documents have been received by the A.O. on 29.08.2013. The satisfaction under section 153C have been recorded on 03.10.2013. The A.O. passed the assessment order under section 153B(1)(b) of the I.T. Act, considering the assessment year under appeal i.e., A.Y. 2012-2013 to be the year of search. However, the First Proviso to Section 153C of the I.T. Act provides that the 06 assessment years for which assessments or re-assessments could be made under section 153C of the I.T. Act, would also have to be construed with reference to the date of handing-over of the assets or documents to the A.O. of the assessee.

Therefore, the 06 assessment years under section 153C of I.T. Act in the case of assessee would be A.Y. 2008-2009 to 2013-2014. The A.O, therefore, shall have to pass the assessment order under section 153C of the I.T. Act. However, A.O. has not issued any notice under section 153C of the I.T. Act before initiating the proceedings against the assessee which is also admitted by the A.O. in reply to the assessee under RTI Act. The Amendment in Section 153C of the I.T. Act by the Finance Act, 2017, w.e.f. 01.04.2017 to the effect that block period for the person in respect of whom the search was conducted as well as the "other person" would be the same six assessment year immediately preceding the year of search is prospective in nature. The issue have been dealt in detail by the Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT vs. Sarwar Agency P. Ltd., (supra) and by ITAT, Delhi, B-Bench, in the case of Empire Casting Pvt. Ltd., New Delhi vs. ACIT, C.C.2, New Delhi and Pavitra Realcon Pvt. Ltd., New Delhi vs. ACIT, C.C.32, *New Delhi (supra). The A.O, therefore, should have framed the assessment under section 153C of the I.T. Act in the case of the assessee and at the time of initiating the proceeding against the assessee, should have issued notice under section 153C of the I.T. Act which have not been done in this case. The issue of notice under section 153C is mandatory and a condition precedent for taking action against the assessee under section 153C of the I.T. Act. The assessment order, therefore, vitiate, void, illegal and bad in law and cannot be sustained. The contention of the Ld. D.R. have already taken care in the above judgments.*

9. Considering the totality of the facts and circumstances of the case, we set aside the orders of the authorities below and quash the same and allow the additional grounds of appeals. Resultantly, all additions stands deleted. Since the assessment order is set aside on legal grounds, therefore, there is no need to decide the *addition on merit which has been left with academic discussion only.*

10. In the result, ITA.No.504/Del./2013 of the Assessee is allowed.

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11. In this appeal, the facts and issue is identical. The assessee also moved for admission of the additional grounds as have been considered in the case of M/s. BNB Investment and Properties Ltd. Following the reasons for decision in the case of M/s. BNB Investment and Properties Ltd., (supra), we admit the additional grounds of appeal, set aside the orders of the authorities below and quash the same. Resultantly, delete the entire addition.

12. In the result, appeal of assessee is allowed.

13. To sum-up, both the appeals of the assessees are allowed."

6.1. Considering the issue involved in the present appeal and in the light of above decisions, the A.O. was required to record satisfaction under section 153C of the I.T. Act, 1961 because the A.Y. 2010-2011 is covered by Section 153C of the I.T. Act, 1961 as satisfaction note was recorded on 23.07.2010. Therefore, there was no justification for the A.O. to pass Order under section 143(3) of the I.T. Act, 1961. Since mandatory conditions of Section 153C of the I.T. Act, 1961 are not satisfied in the present case, therefore, the Ld. CIT(A) was justified in quashing the assessment order under section 143(3) of the I.T. Act, 1961. We, therefore, do not find substance in the submissions of the Ld. D.R. Appeal of the Revenue is dismissed.

7. In the result, appeal of Revenue dismissed.

Order pronounced in the open Court.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 05th February, 2020

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.