आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई। **IN THE INCOME TAX APPELLATE TRIBUNAL** **'B' BENCH: CHENNAI** **श्री एबी टी. वर्की, न्यायिक सदस्य एवं** श्री **अमिताभ शुक्ला,** लेखा सदस्य **के समक्ष** **BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND** **SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**		
आयकर अपील सं./**ITA No.797 & 798/Chny/2024** निर्धारण वर्ष**/Assessment Years: 2012-13, 2013-14**		
M/s.KSJ Infrastructure Pvt. Ltd.,7/1A 2nd Floor, Grant Lane, Room No. 218 Dalhousie, Kolkata 700012.	**v.**	The DCIT, Central Circle-1(1), Chennai.
[**PAN: AADCC 5913 E**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
Assessee by	:	Shri B. Ramakrishnan, FCA Shri Shrenik Chordia, CA
Department by	:	Shri V. Nandakumar, CIT
सुनवाईकीतारीख/Date of Hearing	:	08.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	27.09.2024

आदेश **/ O R D E R**

PER ABY T. VARKEY, JM:

These appeals preferred by the assessee are against the common order of the Learned Commissioner of Income Tax (Appeals)-18, Chennai (hereinafter in short 'the Ld. CIT(A)') dated 30.01.2024 passed for Assessment Years (hereinafter in short 'AY') 2012-13 & 2013-14.

2. At the time of hearing, the Ld. AR for the assessee has raised the following additional legal grounds objecting to the validity of the assessment orders for the AYs 2012-13 & 2013-14.

> 9. For that the Learned Commissioner of Income Tax (Appeals) has erred in upholding the Order u/s 143(3) r.w.s 153C of the Act in the absence of any

incriminating material pertaining to the Appellant found from the persons searched.

10. For that the Learned Commissioner of Income Tax (Appeals) ought to have cancelled the assessment u/s 153C of the Act that was made for an Assessment Year beyond the stipulated period of six assessment years as laid down under the applicable provisions of Section 153A/153C of the Act by appreciating that the date of recording satisfaction note in the case of the *'other person'* by the Assessing Officer of the *'searched person'* must be construed as the date of handing over of documents relating to the other person even where the Assessing Officer is one and the same for both the 'searched person' and the 'other person'.

11. For that the assessment made under section 143(3) r.w.s 153C of the Act is bad in law as the Learned Assessing Officer did not comply with the relevant provisions r. the fourth proviso to section 153A(1) of the Act applicable to the appellant for the relevant assessment year and has failed to record his satisfaction to the effect that *the income represented in the form of asset has escaped assessment for the subject AY 2012-13 which is falling beyond the six Assessment Years* and forming part of 'relevant assessment year' as per provisions of Section 153A.'

3. The above grounds are noted to be legal issue which goes to the root of the matter and therefore we are inclined to admit the same and for doing so, we rely on the decision of the Hon'ble Supreme Court in the case of **NTPC Ltd. vs CIT (229 ITR 383)**.

4. Before we advert to the grounds taken in these appeals, it would first be relevant to cull out the basic facts of the case and effect of law in brief in respect of these AYs. Search u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was conducted against Shri Kamlesh Jain & Others, on 25-02-2020 i.e., AY 2020-21. The AO has noted that, the seized material marked as Annexure- ANN/MS/JMG/LS/S-1 which was found in the course of search contained *information* relating to the assessee. It is observed that, the satisfaction note was recorded by the AO on 31-12-2021 i.e., AY 2022-23; and on the same date, notice u/s

153C of the Act was issued upon the assessee for AYs 2012-13 & 2013-14. According to the AO, ordinarily having regard to the date of search i.e. 25-02-2020, he was within his jurisdiction to issue notices u/s 153C of the Act in respect of six assessment years preceding the assessment year of search i.e. in the present case search took place, so, ordinarily the AO was empowered u/s. 153C of the Act to reopen six preceding assessment years preceding the searched assessment year and those AY's were AYs 2014-15 to 2019-20. However, in this case, the AO is noted to have exercised powers conferred under Section 153C of the Act read with fourth proviso to Section 153A of the Act, which was inserted by Finance Act 2017 w.e.f. 01.04.2017, and has reopened AYs 2012- 13 & 2013-14, which were beyond six assessment years but, according to the AO, within ten assessment years. It is not in dispute that, the income-tax assessments of the assessee for AYs 2012-13 & 2013-14 were either completed u/s 143(1)/143(3) of the Act and/or the time limit for issue of notice u/s 143(2) of the Act had expired. Accordingly, the income-tax assessments for AYs 2012-13 & 2013-14 wasn't pending before AO on the date of search, therefore, those years didn't abate consequent to the search. Post the issue of notice u/s 153C of the Act for these unabated AYs 2012-13 & 2013-14, the AO is noted to have completed the income-tax assessments u/s 153C/143(3) of the Act by orders dated 31.03.2022

after making addition/s on account of unexplained investment u/s 69 of the Act.

5. It is noted that the reasoning given by the AO for making the addition/s by way of unexplained investments were similar across both the AYs. Both the parties have also argued these appeals together. Hence, for the sake of convenience, and to avoid repetition of facts; we deem it fit to adjudicate each of the common issues across both AYs before us together.

6. The facts as noted by us are that, certain loose sheets were found and seized from the office premises of Jain Metal Group which was ID marked Annexure *ANN/MS/JMG/LS/S-1*. The AO is noted to have observed that these loose sheets contained the regular books & documents relating to the assessee. On the basis of these documents, the AO is noted to have drawn up Satisfaction Note dated 31-12-2021 wherein he observed that, he was satisfied that, the books and documents in his possession showed that Rs.63,25,34,760/- had escaped assessment in AY 2010-11 and that the same was represented in the form of '*asset*' in AY 2010-11. The AO accordingly, issued notices u/s 153C of the Act for AYs 2010-11 to 2019-20.

7. In the AYs 2012-13 & 2013-14, which are impugned before us, it is noted that, the AO, in the course of assessment, had requisitioned the bank statements of the assessee for both these AYs. According to the AO, there was a credit of Rs.63,50,000/- in the bank account of the assessee for AY 2012-13, which in his opinion, remained unexplained. Further, in AY 2013-14, the AO observed that, the assessee had advanced loan of Rs.63,82,48,400/- to M/s Metal Impex and accordingly show caused the assessee to explain the source of advancement of loans. The assessee is noted to have submitted details along with explanation. The AO thereafter personally examined the Director of the assessee, Shri Kamlesh Jain on oath u/s 131 of the Act, whose statement is extracted in the assessment order. The AO however not being satisfied with the explanation offered by the assessee held that, the bank credits aggregating to Rs.66,45,37,207/- found in the bank statement for AY 2013-14 was not explained. The AO accordingly added these unexplained bank credits by way of unexplained investments u/s 69 of the Act in both AYs 2012-13 & 2013-14. Aggrieved by the orders of the AO, the assessee preferred appeal before the Ld. CIT(A) who by his common order confirmed the same. Being aggrieved by the Ld. CIT(A)'s action, the assessee is now in appeal before us.

8. Assailing the action of the lower authorities, the Ld. AR of the assessee challenged the validity of the notices issued u/s 153C of the Act

as well as the consequent orders u/s 153C/143(3) of the Act for AYs 2012-13 & 2013-14 on several legal fronts. The Ld. AR firstly submitted that, the 10-year block identified by the AO for the purposes of issuance of notice u/s 153C of the Act was incorrect in as much as AY 2012-13 fell beyond the ten (10) year period and therefore the assessment framed u/s 153C/143(3) of the Act for AY 2012-13 was *ab initio* void. Relying upon the decision of the Hon'ble Delhi High Court in the case of **PCIT vs Ojjus Medicare (P) Ltd. (465 ITR 101)**, the Ld. AR contended that, in terms of the first proviso to Section 153C of the Act, the reference point for the purposes of computing the period of six (6) assessment years, stood shifted to the date of handover of books of accounts or the date of Satisfaction Note, which in the present case was 31-12-2021. According to the AO therefore, under the first proviso to Section 153C of the Act, in the present case, the date of satisfaction note i.e. 31-12-2021 was to be deemed to be the date of search for computing both the period of six (6) assessment years and the extended ten (10) year block period. Explaining to us, the manner of identification of '*relevant assessment year'* for computing the ten (10) year block, the Ld. AR took us through Explanation (1) to Section 153A of the Act and the decisions of the Hon'ble Delhi High Court in the case of **PCIT vs Ojjus Medicare (P) Ltd. (supra)** and the Hon'ble Madras High Court in the case of **A.R. Safiullah**

(WP(MD) No. 4327 of 2021) and, urged that, having regard to the deemed year of search [date of satisfaction note i.e. 31-12-2021 i.e. AY 2022-23], the block period of 10 AYs would be AYs 2022-23 to 2013-14. The Ld. AR accordingly contended that AY 2012-13 fell outside the net of '*relevant assessment year'* and thus the notice issued u/s 153C of the Act as well as the consequent order passed for AY 2012-13 deserves to be quashed.

9. The second challenge raised by the Ld. AR was to the usurpation of jurisdiction u/s 153C of the Act by the AO, without first satisfying the essential condition precedent in the fourth proviso to Section 153A read with Explanation (2) of the Act. It was pointed out that, the notices for AYs 2012-13 & 2013-14 was beyond the period of six (6) assessment years preceding the searched year and therefore, the AO could have lawfully issued notice u/s 153C of the Act only when he had in his possession, any incriminating material, which revealed that income represented in the form of '*asset*' valued at Rs.50,00,000/- or more had escaped assessment. The Ld. AR of the assessee took us through the definition of the term '*asset*' as defined in Explanation (2) and argued that there was no such unexplained asset identified by the AO in the satisfaction note for him to have validly assumed jurisdiction u/s 153C of the Act.

10. The Ld. AR referred to the document Annexure ANN/MS/JMG/LS/S-1 found and seized from the premise of Jain Metal Group, which didn't reveal any such '*asset*' which had escaped assessment. He also pointed out that, it was not the AO's case that the bank account held by the assessee, whose credits have been added, was unexplained or undisclosed so as to invoke Section 69 of the Act. The Ld. AR showed us that, the AO has disputed the genuineness of the proceeds received in the disclosed bank account and treated it as unexplained credits, which otherwise could have been legally added only u/s 68 of the Act and therefore cannot be said to have constituted income represented in the form of '*asset'* escaping assessment in terms of fourth proviso to Section 153A of the Act. The Ld. AR thus additionally contended that, the notices issued u/s 153C of the Act, in terms of fourth proviso to Section 153A of the Act and the consequent impugned orders were bad in law for want of jurisdiction.

11. The third legal challenge of the assessee was that, AYs 2012-13 & 2013-14 were unabated assessment years and therefore the impugned additions made in these AYs were unsustainable, since it was not based on any incriminating material found in the course of search. The Ld. AR submitted that the seized material viz., Annexure ANN/MS/JMG/LS/S-1 *inter alia* contained the regular books of accounts of the assessee which in

no manner could one construe to be incriminating in nature. The Ld. AR relying upon the decisions of the Hon'ble Supreme Court in the case of **CIT vs Sinhgad Technical Education Society (397 ITR 344)** and Hon'ble Delhi High Court in the case of **CIT vs Kabul Chawla (380 ITR 573)**, which has since been affirmed by the Hon'ble Supreme Court in the case of **PCIT vs Abhisar Buildwell Pvt. Ltd. (149 taxmann.com 399)**, urged that the additions made u/s 69 of the Act in relation to unexplained bank credits in the unabated AYs 2012-13 & 2013-14, in absence of incriminating material found in the course of search, deserves to be deleted.

12. Per contra, the Ld. CIT, DR, appearing for the Revenue, supported the action of the lower authorities. The Ld. CIT, DR relied upon Paras 7.10 & 7.11 of the order of the Ld. CIT(A) to counter the contention of the appellant that, the notice u/s 153C of the Act for AY 2012-13 was falling within the 10-year block period. He also contended that the AO had validly recorded his satisfaction note stating that income represented in form of asset had escaped assessment and therefore the notices issued u/s 153C of the Act for 'relevant assessment year' was in compliance with the condition precedent set out in fourth proviso to Section 153A of the Act. According to Ld. CIT, DR, the assessee did not dispute the fact that the seized material contained information relating to it and therefore

these facts and circumstances incriminated the assessee. The Ld. CIT, DR thus argued that the impugned additions were based on incriminating material unearthed in course of search. Overall, the Ld. CIT, DR urged that all the legal pleas raised by the assessee deserves to be dismissed.

13. We have heard both the parties and perused the material placed before us. We are inclined to first adjudicate the legal issues raised by the assessee, which if found valid, goes to the root of the matter [*since it challenges the jurisdiction exercised by the AO u/s 153C of the Act*]. In order to adjudicate the same, we first recapitulate the facts as already noted by us earlier.

14. It is not in dispute that, the AYs 2012-13 & 2013-14 before us are unabated assessments. In the present case, search had been conducted upon the Jain Metal Group (searched person) on 25-02-2020 i.e., in AY 2020-21. The satisfaction note was however drawn out by the AO satisfying himself that the assets/documents found in the course of search belongs/pertains to "the other person" (third party i.e. the assessee in this case) only on 31-12-2021 i.e., in AY 2022-23. The relevant satisfaction note recorded by the AO on 31-12-2021 is extracted below:

> "A search operation u/s. 132 of the Income-tax Act, 1961 was conducted in premises on 25.02,2020 in the case of M/s. Jain Metal

Rolling Mills, M/s. Jain FGL Metal Industries, Shri. Kamlesh Jain, Shri Shantilal Jain, Smt. Geetha Jain and Shri. Sanchit Jain.

During the course of Search and Seizure operation U/s. 132 of income tax act in the Registered office address No.20, Waddels road, Kilpauk, Chennal - 600010, on examination of Tally data in the server the following company data where found in the following path: accounts / accounts / export nirmala / kol. Relating to KSJ Infrastructure Pvt Ltd., (Chinpurni TR), Jackpot Commodeal Pvt Ltd, Salputri Dealers.

The M/s KSJ infrastructure (P) Ltd was incorporated as M/s Chinpurni Traders Pvt Ltd on 21.02.2009 with ROC, Kolkata with 10010 equity shares of Rs.10/- in which Shri Raj Kumar Bhotika and Ms.Amita Joshi were the directors. The registered address of M/s Chin Purni Traders Private Limited was at No.49A, Strand Road, Kolkata - 700007.

On verification of the balance sheets of M/s KSJ Infrastructure (P) Ltd., maintained in Tally for F.Y.2010-11 and F.Y.2011-12, the print outs of the same are seized vide Annexure-ANN/RR/JMG/LS/S-4, dated 25/02/2020, wherein an amount of Rs.63,25,34,760/- was found received as Share premium and the same was utilised for the purchase of shares during the F.Y 2009-10 .

On verification of the seized material seized vide Annexure ANN/MS/JMG/LS/S1 from the Corporate Office of Jain Metal Group, it is found that the company has no operation during the FY 2009-10. However, has issued the 648934 shares and raised a share premium of Rs.63,25,34,760 without any substantial activity.

Further on verification of the seized material seized vide Annexure ANN/MS/JMG/LS/S1 from the Corporate Office of Jain Metal Group it is seen that during the FY 2010-11, FY 11-12 ad FY 12-13 the assessee company has sold the unquoted equity shares. However, the assessee has not shown any income from the sale of the unquoted equity shares in the Profit and Loss Account of the respective Assessment Years.

As on 31/03/2012, M/s Chin Purni Traders Private Limited had issued 648724 shares to M/s. Jackpot Commodeal Pvt Ltd and M/s. Salputri Dealers Pvt Ltd and the share holding pattern is as under:

Sl. No.	Entity	No. of shares held as on 31.03.2012	Share Holding %

1	M/s Jackpot Commodeal Pvt. Ltd.	235111	36.25%
2	M/s Salputri Dealers Pvt. Ltd.	413613	63.75%
	Total	648724	100%

During the FY: 2012-13, the 10000 shares of M/s Jackpot Commodeal Private Limited were purchased by Mr. Kamlesh Jain and Mrs. Geetha Jain for a sum of Rs.1,00,000 (10000 shares *10 Rupees) and 10000 shares of M/s Salputri Dealers Private Limited were purchased by Mr Kamlesh Jain and Mrs Geetha Jain for a total sum of Rs. 1,00,000.

During the F.Y 2012-13 the company M/s Chinpurni Traders Pvt Ltd. was acquired by Sri Kamlesh Jain & Smt Geetha Jain and the name of the company was changed to M/s KSJ Infrastructure Pvt Ltd. The balance sheet of the company had security premium account of Rs.63.25 Cr: In the FY 2012-13 the investment is shares were converted into loans and advances of Rs.65,58,86,246. After the change in the ownership the loans and advances were recovered from various parties and the same has been transferred to various entities in the Jain Metal group.

Hence, I am satisfied that the books and documents seized during the course of search proceedings in the case of M/s Jain Metal Rolling Mills, M/s. Jain FGL Metal Industries, Shri. Kamlesh Jain, Shri Shantilal Jain, Smt. Geetha Jain and Shri Sanchit Jain has information relating to M/s KSJ infrastructure Private Limited and has bearing on its total income. Also I am satisfied that the books and documents in my possession shows Rs. 63,25,34,760 has escaped assessment during the AY 2010-11 and the same is represented in the form of asset in the AY 2010-11.

Therefore, I am satisfied that M/s KSJ Infrastructure Pvt Ltd is covered under section 153C of the Income Tax Act. Accordingly, notices u/s 153C of the act are issued for A.Ys 2010-11 to A.Y. 2019-20 and u/s 153C(2) for A.Y. 2020-21."

15. According to the assessee, by virtue of first proviso to section 153C of the Act, the above date i.e. 31-12-2021 had to be reckoned as the date of search for the purpose of assessment u/s 153C of the Act, for determining the six assessment years which could be reopened and also to compute the ten (10) year block period for ascertaining the *'relevant*

assessment year'. The Ld. CIT(A) however has observed that, by virtue of amendment made to Section 153C of the Act by Finance Act, 2017, it is the original date of search i.e. 25-02-2020 which is the relevant date for ascertaining the six assessment years and also the 'relevant assessment year' which could have been reopened by the AO. It is noted that, the coordinate Bench at Chennai in the case of **Shri Bondalapati Shivaji Rao Vs DCIT in ITA No.1044/Chny/2023** has examined this particular issue in detail and, following the decision of Hon'ble Delhi High Court in the case of **Pr.CIT Vs Ojjus Medicare (P) Ltd (supra)**, which was rendered after considering the amendment by Finance Act, 2017, this Tribunal held that, the first proviso to Section 153C of the Act shifts the relevant date from date of initiation of search, to the date of hand-over of books of seized material to the AO of the non-searched person (or in its absence to the date of satisfaction note) and the said date shall be commencement point for reckoning the six AYs'. The relevant findings are noted to be as follows:-

> *12. Reading of the main provision of Section 153C (as it stood during the year) along with the first proviso reveals that, the reference point which is spoken of, in section 153A(1) from which the period of six AYs' is to be calculated, and which stipulates it to be the date of search or requisition, stands shifted to the date of receipt of books of account, documents or assets seized or requisitioned by the AO of the non-searched person. For this, we gainfully refer to the decision of the Hon'ble Delhi High Court in the case of **CIT v. RRJ Securities Ltd. (supra)**, wherein the Hon'ble Delhi High Court held as under:*
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> > *" 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 years 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."

*13. It is noted that the **Hon'ble Supreme Court** in **Jasjit Singh (supra)** has affirmed the above view with the following significant observations:-*

"8. In SSP Aviation (supra) the High Court inter alia reasoned as follows:—

"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 5.1.2009.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."

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 153-C was enacted. The revenue argued that the proviso [to section 153(c)(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 A.O. 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 A.O. 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 dis-proportionate. For instance, if the papers are in fact assigned under section 153-C 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 10 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 153-C supports the interpretation which this Court adopts."*
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> *[emphasis supplied by us]*

14. We further note that, the above proposition that, in the case of assessment under Section 153C, the starting point is ordained to be the handing over of books of account or documents or assets seized and that event constituting the point from which the preceding six AYs' or the "relevant assessment year" is to be computed stands reiterated by the Hon'ble Supreme Court in ***Vikram Sujitkumar Bhatia (supra)*** *whose relevant observations are noted to be as follows:-*

> *"41. Thus, as per the proviso to section 153C as inserted vide 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 153C w.e.f.01.06.2015, the books of account or documents or assets were seized by the Assessing Officer of the non-searched person only on 25.04.2017, which is subsequent to the amendment, therefore, when the notice under section 153C was issued on 04.05.2018, the provision of the law existing as on that date, i.e., the amended section 153C shall be applicable."*
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> *[emphasis supplied by us]*

15. In this context, we may also gainfully refer to the following findings of the Hon'ble Delhi High Court in the case of ***Pr.CIT Vs Ojjus Medicare (P) Ltd (supra)*** *wherein it was held as under:-*

> *"80. The aforesaid discussion thus renders a determinative quietus to the identification of the starting post from which the block of six AYs' or the "relevant assessment year" would have to be calculated. The contention of the respondents that the said block periods would have to be reckoned with reference to the date of search thus can neither be countenanced nor possibly accepted. That submission is clearly addressed contrary to a long and consistent line of precedents which have held to the contrary and which unequivocally accepted the point of commencement for the purposes of identifying the six or the "relevant assessment year" to be etched from the date of handover of documents, assets or things to the AO of the non-searched party.*

16. Before us, the Revenue has urged that, subsequent to the amendment by Finance Act, 2017, the first proviso to Section 153C(1) is only relevant for the purposes of abatement of pending assessment or reassessment proceedings, which is mentioned in Section 153A(1) of the Act and that it cannot be viewed as the reference point from which the block of six AYs is to be computed. According to Ld. CIT DR therefore, the decisions cited by the

assessee were of no relevance, post this amendment. We however are unable to countenance this argument of the Revenue as there is no such indication contained in Section 153C of the Act that, the first proviso is only concerned with abatement or non-abatement of assessments and that it does not regulate the date from which the block of six AYs is to be computed. We find that, this identical line of argument was raised by the Revenue before the Hon'ble Delhi High Court in the case of ***Pr. CIT Vs Karina Airlines International Ltd (165 taxmann.com 421)*** *which was repelled by the Hon'ble High Court, by observing as follows:-*

> *"14. It becomes pertinent to recall that Section 153A, as it stood prior to 01 April 2017, envisaged a search assessment being undertaken "in respect of each assessment year falling within six assessment years" referred to in clause (b) thereof. Clause (b) of Section 153A(1) provided for the identification of the six AYs' with reference to the "previous year in which the search is conducted or requisition is made". The block of six AYs' were to be identified commencing from the AY "immediately preceding the assessment year relevant to the previous year" in which the search may have been conducted. The Finance Act, 2017 stretched the search assessment to an additional four AYs' with the introduction of the concept of "relevant assessment year" and which was defined by Explanation 1 to Section 153A(1) as being the period which would fall beyond "six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year" in which search was conducted. A block period of ten AYs' consequently became liable to assessment in the case of a search post the enactment of Finance Act, 2017.*
>
> *15. The constitution of a block of ten AYs' in Section 153A was contemporaneously added and introduced in Section 153C. Post Finance Act, 2017, an assessment triggered by a search could thus hypothetically extend to a block period of ten years both in the case of a searched as well as a non-searched entity. In our opinion, the amendments introduced in Section 153C, and on which reliance was placed by Mr. Mann, were essentially intended to place both Sections 153A and 153C at par and for both statutory provisions being available to be invoked for the purposes of assessment covering a block of ten AYs'.*
>
> *…….*
>
> *17. The First Proviso to Section 153C (1) has been consistently recognized as not being concerned merely with the aspect of abatement, which is spoken of in the Second Proviso to Section 153A (1) of the Act, but also to regulate the date from which the six-year period or the "relevant assessment year" insofar as the non-searched entity is concerned, is to be reckoned. This position has been consistently followed not just by this Court but also by the Supreme Court in Commissioner of Income Tax 14 v. Jasjit Singh [2023] SCC Online SC 1265. The relevant paragraphs of the said decision are reproduced hereinbelow: -*
>
> *"8. In SSP Aviation (supra) the High Court inter alia reasoned as follows:—*

"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 5.1.2009. 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."

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 153-C was enacted. The revenue argued that the proviso [to Section 153(c)(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 A.O. 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 A.O. 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 dis-proportionate. For instance, if the papers are in fact assigned under Section 153-C 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 10 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 153-C supports the interpretation which this Court adopts."

18. Insofar as the present appeal is concerned, on facts we find that while it is true that AO of the searched person as well as that of the respondent assessee was the same, undisputedly while in the case of the former, satisfaction was recorded on 29 March 2019, the AO in the case of the respondent assessee drew up a Satisfaction Note on 15 May 2019.

19. In order to appreciate the essential legislative objective underlying the handover of material and formation of opinion by the AO of the non-searched entity, we would have to bear the following aspects in mind. We firstly take note of the fact that Section 153C would get triggered firstly upon the Assessing Authority of the searched entity identifying documents or material which are found to relate to a person other than the entity which was subjected to search. In such a contingency, that Assessing Authority is obligated to transmit the relevant material to the AO of the "other person". The AO of the non-searched entity is thereafter required to scrutinize the material so received and evaluate whether the same is likely to have an impact "on the determination of the total income of such other person..". This becomes evident from the plain text of Section 153C requiring the AO of the non-searched party being "satisfied that the books of account or documents or assets seized have a bearing on the determination of total income of such other person..". The material and documents unearthed in the course of the search have to be independently evaluated before a reassessment exercise can be initiated against a non-searched person. Unless the AO of that "other person" is satisfied that the material so gathered is likely to have an impact "on the determination of the total income of such other person", the mere receipt of documents would not suffice.

20. It thus becomes apparent that it is the satisfaction arrived at under Section 153C which constitutes the cornerstone of that provision and the primary ingredient for Section 153C being set into motion. In our considered opinion, the actual or physical act of transmission of documents is merely a step in aid of formation of opinion whether an assessment under Section 153C is liable to be initiated. It is in that sense merely a machinery provision put in place to enable the AO of the non-searched person to examine whether an assessment is liable to be commenced under Section 153C of the Act. Thus, even in a case where the AO of the searched and the non-searched party be one and the same, it would be the formation of an opinion that the material is likely to "have a bearing on the determination of the total income.." which would constitute the core and the heart of Section 153C.

21. A harmonious interpretation of the main part of Section 153C and its Proviso lead us to hold that in cases where the jurisdictional AO is common, the commencement point would have

to be construed as the date when the satisfaction is formed by the said AO with respect to such other person. In our considered view, even though there may not have been an actual exchange of material unearthed in the course of the search between two separate authorities, it would be the date when the AO records its satisfaction with respect to the non-searched entity which would be of seminal importance and constitute the bedrock for commencement of action under Section 153C.

17. As far as the reliance placed by Revenue on the decision rendered by Single Judge Bench of Hon'ble Madras High Court in the case of ***R.K.M.Powergen (P) Ltd (supra)*** *is concerned, it is noted that the Hon'ble Single Judge while disagreeing with the view taken in* ***Sarwar Agency (supra)*** *as well as* ***RRJ Securities (supra)*** *didn't take cognizance of the fact that the aforesaid decisions were rendered following the decision in the case of* ***SSP Aviation (supra)*** *which has since been affirmed by the Hon'ble Supreme Court in* ***Jasjit Singh (supra)*** *by holding as under:-*

"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 153-C was enacted. The revenue argued that the proviso [to Section 153(c)(1)] is confined in its application to the question of abatement."

18. Moreover, according to us, the interpretation being sought to be propounded by the Revenue is incongruous. This incongruity may be explained by way of illustration. Say, a search u/s 132 of the Act was conducted in FY 2017-18. In such a scenario, the assessment of the searched person can be reopened for the preceding six AYs and relevant assessment year i.e. further 4 AYs, aggregating to 10-year block viz., FYs 2008-09 to 2016-17. Further, in terms of Section 153B of the Act, the AO would be required to complete the assessment in a time bound manner i.e. within twenty one months from the end of the year of search i.e. 31st December 2019. The searched person will therefore get a finality in its assessments by 31.12.2019. Now if there is some seized incriminating material pertaining to a non-searched person and the year of handover of books of accounts is FY 2023-24, then according to Revenue, for the purposes of issue of notice u/s 153C of the Act, it shall be saved by the first proviso to Section 153C of the Act. Further, even the time limit for completion of assessment shall be saved by first proviso to Section 153B as the period of twenty-one months shall be computed from the end of the year of search viz., year of handover of books of accounts, which would be 31st December 2025. However only for computing the six year block period and 'relevant assessment year', the original date of search shall be relevant and the Revenue can re-open FYs 2008-09 to 2016-17 in FY 2022-23 as well. Likewise, if the date of handing over of books of accounts is further delayed, the Revenue would still be at liberty to reopen FYs 2008-09 to 2016-17. Going by this logic of the Revenue, the prejudice caused to the non-searched person, who would be drawn into proceedings as it were unwittingly is highly dis-proportionate to the searched person. In such a scenario, there would be a Sword of Damocles hanging over head of any non-searched person (for no fault of his) and unlike the searched person, whose assessment shall be completed in a time bound manner, the non-searched person would be

required to preserve the records virtually for eternity. According to us, such disastrous and harsh consequence cannot be the intent of the Legislature and in that view of the matter the line of argument taken by the Revenue is rejected.

19. Moreover, we note that, the Hon'ble Delhi High Court in the case of ***Pr.CIT Vs Ojjus Medicare (P) Ltd (supra)*** *at* ***Paras 51 to 84*** *has in detail analyzed the entire statutory framework of Section 153C of the Act from its introduction to the amendment by Finance Act, 2017 and its grandfathering by the Finance Act, 2021 and the relevant decisions on this subject including the decisions of* ***Sarwar Agency Pvt. Ltd.*** *(supra) &* ***RKM Powergen*** *(P) Ltd. (supra) relied upon by the Revenue. The Hon'ble High Court is noted to have accordingly concluded that, even post the amendment by Finance Act, 2017, the first proviso to section 153C shifts the relevant date from the date of initiation of search or a requisition made, to the date of hand-over of books of account or documents and assets seized to the AO of the non-searched person (or in its absence to the date of satisfaction note) and the said date shall be commencement point for reckoning the six or the ten AYs'. The relevant findings of the Hon'ble Delhi High Court, in this regard, which is found applicable in the present case, is noted to be as follows:-*

> *"7. …..On 18 October 2019, a search and seizure operation is stated to have been carried out in respect of the Alankit Group of Companies6 . On 22 March 2022, the petitioner was served with a notice purporting to be under Section 153C of the Act requiring it to submit a true and correct return of its total income for AY 2011-12. The aforesaid notice was followed by a communication dated 22 December 2022 under Section 142(1) requiring the petitioner to produce accounts and documents as per the annexure appended thereto. A follow-up notice under Section 142(1) of the Act was thereafter issued on 01 February 2023. It is alleged by the respondents that since the petitioner did not respond to the aforesaid communications, they were constrained to issue notices under Section 144 of the Act and which were dated 22 February 2023 and 03 March 2023. In response to the aforesaid, the petitioner submitted its response on 15 March 2023.*
>
> *8. In order to appreciate the challenge which stands raised, we deem it apposite to extract the Satisfaction Note which came to be recorded by the AO of the writ petitioner. The Satisfaction Note which is dated 17 February 2022 is extracted hereinbelow:*
>
> *……..*
>
> *86. In the present batch, List I pertains to writ petitions which have Satisfaction Notes recorded or section 153C notices issued between the period 01 April 2021 to 31 March 2022. Undisputedly, the First Proviso to section 153C, and which has been consistently recognized to also embody the commencement point for reckoning the six or the ten AYs', shifts the relevant date from the date of initiation of search or a requisition made to the date of receipt of books of account or documents and assets seized by the jurisdictional AO of the non-searched person. Consequently, the block of six or ten AYs' would have to be reckoned bearing the aforesaid date in mind. Although in the present batch of writ petitions, the date of actual handing over has not been explicitly mentioned in a majority of the writ petitions, learned counsels for respective sides had addressed submissions based on the*

assumption that it would be the date of issuance of the Satisfaction Note by the AO of the non-searched person and in the case of nonavailability of such a note, the date of issuance of the section 153C notices which would be pertinent for the purposes of the First Proviso to section 153C.

87. Assuming, therefore, that the handover of material gathered in the course of the search and pertaining to the non-searched person occurred between 01 April 2021 to 31 March 2022, the same would essentially constitute FY 2021-22 as being the previous year of search for the purposes of the non-searched entity. As a necessary corollary, the relevant AY would become AY 2022-23. AY 2022-23 would thus constitute the starting point for the purposes of identifying the six years which are spoken of in section 153C. The six AYs' are envisaged to be those which immediately precede the AY so identified with reference to the previous year of search. It would thus lead us to conclude that it would be the six AYs' immediately preceding AY 2022-23 which could have formed the basis for initiation of action under section 153C. Consequently, and reckoned backward, the six relevant AYs' would be:-

Computation of the six-year block period as provided under section 153C of the Act	*No. of years*
AY 2021-22	*1*
AY 2020-21	*2*
AY 2019-20	*3*
AY 2018-19	*4*
AY 2017-18	*5*
AY 2016-17	*6*

Consequently, AY 2021-22 would become the first of the six preceding AYs' and would as per the table set out hereinabove terminate at AY 2016-17."

20. The Hon'ble Delhi High Court is further noted to have finally concluded with the following observations:-

"D. The First Proviso to section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is governed by the First Proviso to section 153C, which significantly shifts the reference point spoken of in section 153A(1), while defining the point from which the period of the "relevant assessment year" is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the non-searched person. The shift of the relevant date in the case of a non-searched person being regulated by the First Proviso of section 153C(1) is an issue which is no longer res integra and stands authoritatively settled by virtue of the decisions of this Court in SSP Aviation and RRJ Securities as well as the decision of the Supreme Court in Jasjit Singh. The aforesaid legal position also stood reiterated by the Supreme

> *Court in Vikram Sujitkumar Bhatia. The submission of the respondents, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted.*
>
> *E. The reckoning of the six AYs' would require one to firstly identify the FY in which the search was undertaken and which would lead to the ascertainment of the AY relevant to the previous year of search. The block of six AYs' would consequently be those which immediately precede the AY relevant to the year of search. In the case of a search assessment undertaken in terms of section 153C, the solitary distinction would be that the previous year of search would stand substituted by the date or the year in which the books of accounts or documents and assets seized are handed over to the jurisdictional AO as opposed to the year of search which constitutes the basis for an assessment under section 153A."*

21. *Following the decisions (supra), we hold that the date of receiving the books of account/documents/assets from the AO of the assessee was to be construed as the date of search, in terms of the first proviso to Section 153C of the Act…….*

16. Following the above, we therefore hold that, in the given facts before us, the date of hand-over of seized material to the AO of the assessee was to be construed as the deemed date of search for ascertaining the six/ten year period which could be reopened u/s 153C of the Act. In the present case, it has been agreed that, the date of satisfaction note may be regarded as the date of receipt of books of accounts/ documents/ assets which is 31-12-2021 (AY 2022-23). Accordingly, ordinarily six AYs 2016-17 to 2021-22 could have been reopened by the AO u/s 153C of the Act. However, the question before us is to identify the '**relevant assessment year'** for the purposes of computing the ten year block. It is noted that, Explanation 1 to section 153A of the Act specifies the manner in which the entire ten AY period is to be computed, which reads as follows:-

> "*Explanation 1*.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made."

17. Reading of the above shows that, the ten AYs' would have to be computed from the end of the AY relevant to the FY in which the search was conducted or requisition made. The ten AY period consequently is to be reckoned from the end of the AY pertaining to the previous year in which the search was conducted as distinct from the preceding year which is spoken of in the case of the six relevant AYs. In the context of the present case therefore, it would be manifest that AY 2022-23 would form the first year of the block of ten AYs' and with the maximum period of ten AYs' terminating in AY 2013-14. For this, we gainfully rely on the decision of the jurisdictional Hon'ble Madras High Court in the case of **A.R. Safiullah (supra)** wherein it was held as follows:-

> 9. Explanation-I is clear as to the manner of computation of the ten assessment years. It clearly and firmly fixes the starting point. It is the end of the assessment year relevant to the previous year in which search is conducted or requisition is made. There cannot be any doubt that since search was made in this case on 10.04.2018, the assessment year is 2019-20. The end of the assessment year 2019-20 is 31.03.2020. The computation of ten years has to run backwards from the said date i.e., 31.03.2020. The first year will of course be the search assessment year itself. In that event, the ten assessment years will be as follows :
>
> | | |
> |---|---|
> | 1st Year | 2019-20 |
> | 2nd Year | 2018-19 |
> | 3rd Year | 2017-18 |

4th Year	2016-17
5th Year	2015-16
6th Year	2014-15
7th Year	2013-14
8th Year	2012-13
9th Year	2011-12
10th Year	2010-11

The case on hand pertains to AY 2009-10. It is obviously beyond the ten year outer ceiling limit prescribed by the statute. The terminal point is the tenth year calculated from the end of the assessment year relevant to the previous year in which search is conducted. The long arm of the law can go up to this terminal point and not one day beyond. When the statute is clear and admits of no ambiguity, it has to be strictly construed and there is no scope for looking to the explanatory notes appended to statute or circular issued by the department.

10. In the case on hand, the statute has prescribed one mode of computing the six years and another mode for computing the ten years. Section 153A(1)(b) states that the assessing officer shall assess or reassess the total income of six years immediately preceding the assessment year relevant to the previous year in which search is conducted. Applying this yardstick, the six years would go up to 2013-14. The search assessment year, namely, 2019-20 has to be excluded. This is because, the statute talks of the six years preceding the search assessment year. But, while computing the ten assessment years, the starting point has to be the end of the search assessment year. In other words, search assessment year has to be including in the latter case. It is not for me to fathom the wisdom of the parliament. I cannot assume that the amendment introduced by the Finance Act, 2017 intended to bring in four more years over and above the six years already provided within the scope of the provision. When the law has prescribed a particular length, it is not for the court to stretch it. Plasticity is the new mantra in neuroscience, thanks to the teachings of Norman Doidge. It implies that contrary to settled wisdom, even brain structure can be changed. But not so when it comes to a provision in a taxing statute that is free of ambiguity. Such a provision cannot be elastically construed.

11. One other contention urged by the standing counsel has to be dealt with. It is pointed out that the petitioner has invoked the writ jurisdiction at the notice stage. Since the petitioner has demonstrated that the subject assessment year lies beyond the ambit of the provision, the respondent has no jurisdiction to issue the impugned notice. Once

lack of jurisdiction has been established, the maintainability of the writ petition cannot be in doubt."

18. Following the above, we accordingly hold that, the relevant block of ten AYs', in the present case would be as under:-

Computation of the ten-year block period as provided under section 153C read with section 153A of the Act	No. of years
AY 2022-23	1
AY 2021-22	2
AY 2020-21	3
AY 2019-20	4
AY 2018-19	5
AY 2017-18	6
AY 2016-17	7
AY 2015-16	8
AY 2014-15	9
AY 2013-14	10

19. Hence, as the ten AYs', when computed from the end of AY 2022-23 would terminate upon AY 2013-14, according to us, AY 2012-13 would clearly fall outside the block period of ten AYs and therefore the AO could not have legally reopened the same under section 153C read with section 153A of the Act. Accordingly, the notice dated 30-12-2021 issued u/s 153C of the Act for AY 2012-13 is held to be *ab inito* void and consequently the assessment order passed u/s 153C/143(3) dated 31-03-2022 for AY 2012-13 being bad in law is accordingly quashed.

20. We now take up the next legal challenge, i.e. whether the AO had satisfied the essential condition precedent set out in the *fourth proviso* of Section 153A of the Act, prior to reopening the assessments for AYs 2012-13 & 2013-14 u/s 153C of the Act, which fell beyond the period of

six assessment years. In order to adjudicate this legal issue, let us have a look at the law relevant to this issue. It is noted that, the fourth proviso of Section 153A of the Act which was inserted by the Finance Act, 2017 with effect from 01.04.2017, enabled an AO of a searched person to issue notices u/s 153A of the Act for *"relevant assessment year or years"* in terms of Explanation 1 of the fourth proviso to Section 153A of the Act i.e. assessment years beyond the six (6) assessment years till tenth (10) assessment year preceding the searched assessment year (i.e. 7th to 10th AY's preceding the searched AY), provided the AO satisfies the essential conditions specified therein. The relevant portion of Section 153A of the Act i.e., fourth proviso to Section 153A of the Act, which has a bearing on the controversy in hand, is being reproduced below:-

> "Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—
>
> (a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;
>
> (b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and
>
> (c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.
>
> Explanation 2. For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account."

21. From a reading of the aforesaid fourth proviso to Section 153A of the Act, it can be seen that the expression used by the Parliament, while enlarging the power of the AO to extend the jurisdiction u/s 153A of the Act from seventh to tenth AY is, first of all, prohibiting the AO to issue the notice u/s 153A/153C of the Act, unless the condition precedent therein is satisfied. The expression used is *"no notice for assessment or reassessment shall be issued by the AO for the relevant AY/AY's"*; and the relevant AY/AY's has been explained by the aid of Explanation 1, appended to it. Therefore, it is noteworthy that the fourth proviso to section 153A bars the AO to issue notice u/s. 153A/153C of the Act for the assessment or reassessment of the 7th - 10th AY's unless he has in his possession evidence/material which revealed that income represented in the form of asset valued Rs. 50 lakhs or more has escaped assessment. So, the AO, in order to assume jurisdiction for the extended period i.e. 7th to 10th AY preceding the searched year, should have in his possession income represented in the form of *"**asset**"* valued Rs. 50 Lakhs or more which has escaped assessment, which is the *"jurisdictional fact"*, which if present/or in possession of AO will only enable the AO to assume jurisdiction u/s. 153A r.w. 153C of the Act to issue notice for these extended AYs'. According to the Ld. AR, this jurisdictional fact was absent in the facts of the present case and hence, the action of AO reopening the

assessments for AYs 2012-13 & 2013-14 u/s 153C of the Act was bad in law for want of jurisdiction. So, the issue to be examined in the present case is whether the AO was in possession of this essential '*jurisdictional fact'* prior to issuance of notices u/s. 153C for AYs 2012-13 & 2013-14 i.e., existence/possession of undisclosed/unaccounted ***'assets'*** valued at Rs. 50 lakhs or more, as defined in Explanation 2 to fourth proviso of Section 153A qua the assessee qua the 7th to 10th AY un-earthed from search, without which the AO cannot issue notice u/s 153C of the Act for these extended AYs.

22. Before we proceed to examine the existence of the 'jurisdictional fact' in this specific case, we gainfully refer to the decision of this Tribunal at Guwahati in the case of **ACIT Vs Fortune Vanijya Pvt Ltd (ITA No. 21/Gau/2021) dated 10.12.2021** wherein the facts involved are noted to be similar to the present case. In the decided case, [Fortune Vanijya Pvt Ltd supra] the AO had seized regular books and ledgers of the assessee from the premises of third person (searched person) and referring to these ledgers, the AO recorded his satisfaction note that, it had a bearing on the determination of total income of the assessee for the 7th AY (relevant assessment year) and therefore reopened the same u/s 153C read with fourth proviso to Section 153A of the Act. The AO completed the assessment u/s 153C/143(3) wherein the bank credits out

of which loans were advanced in the regular books of accounts was added to the total income. On appeal, Tribunal explained the meaning of the term '***asset***' as defined in Explanation (2) to Section 153A of the Act and the condition precedent set out in fourth proviso to Section 153A, which was required to be met prior to issuance of notice u/s 153C of the Act. The Tribunal held that the contents of seized material viz., regular books of accounts, were neither incriminating in nature nor in any manner revealed income represented in form of **'asset'** which had escaped assessment and therefore in absence of this 'jurisdictional fact' quashed the notice issued u/s 153C and the consequent order passed by the AO. The relevant findings taken note of by Tribunal are as follows:-

> "On a reading of the fourth proviso to Section 153A of the Act along with Explanation 2 to it which defines 'Asset', we find considerable merit in the contention of Shri Dudhwewala that in order to invoke jurisdiction u/s 153A of the Act for the seventh to tenth AY preceding the searched year, the AO should have in his possession the jurisdictional fact i.e. existence/possession of undisclosed/unaccounted assets valued at Rs. 50 lakhs or more as defined in Explanation 2 to fourth proviso of Section 153A qua the assessee qua the 7th to 10th AY un-earthed from search, without which the AO cannot issue notice u/s 153A/153C of the Act for these extended AY's. It is only when there exists this jurisdictional fact the AO can validly reopen those extended AYs; and then only AO can validly assume jurisdiction and then only he is empowered to issue notice. In other words, unaccounted asset valued at Rs. 50 lakhs or more which were discovered during search qua the assessee qua the assessment year (7th 10th years) preceding the searched assessment year is the jurisdictional fact; and if the jurisdictional fact is in the possession of the AO, [and possession means physical possession; or personal knowledge of the existence of the undisclosed asset which need to be spelled out in clear terms (not vaguely) qua assessee qua AY 2011-12 discovered during search.] then he can assume jurisdiction u/s. 153C/153A of the Act and issue notice to assess the assessment of the

escaped income for these assessment year's (7th to 10th year) which is the 'fact in issue' or 'adjudicatory fact'. On the other hand if the AO did not have in his possession the jurisdictional fact, then he is debarred from invoking/issuance of notice u/s 153C/153A of the Act for the 7th-10th AY preceding the search.

19. Having held so, let us examine the next argument of Shri Dudhwewala that, the Parliament by specifying the jurisdictional fact as 'undisclosed asset' valued Rs. 50 Lakhs or more, has impliedly excluded other items of income viz., liabilities/credit, unexplained expenditure etc. A reading of the fourth proviso to section 153A of the Act and Explanation (2) to fourth proviso to section 153A of the Act which defines 'Asset' for the purpose of fourth proviso to section 153A of the Act, clarify the intention of the Parliament to permit the AO to enlarge the assessment u/s. 153A after search u/s. 132 of the Act beyond six assessment years to ten assessment years preceding the searched assessment year, provided the AO has in his possession the essential jurisdictional fact i.e. "undisclosed/unaccounted asset" valued Rs 50 lakhs or more of the assessee discovered during search pertaining to 7th to 10th Assessment Year preceding the searched assessment year. Since the Parliament has used the expression 'income in the form of asset' and the definition of asset has been spelled out in the fourth proviso, this itself necessarily implies the liability/items falling in the left side of the Balance Sheet stands excluded. For this view of ours, we rely on the legal Maxim for interpretation "Expressio Unius Est Exlcusio Alterius" which principle states that, express mention of one is the exclusion of other and this maxim has been accepted by the Hon'ble Supreme Court in GVK Industries Ltd. Vs. ITO [197 Taxman 337] (Constitution bench of 5 Supreme Court Judges). By express mention of 'Assets' and definition given to it specifically, it is implied that the Parliament silently excluded the items of 'revenue', 'expenditure' & 'liabilities' from its jurisdictional fact for invoking/assumption/usurpation of jurisdiction u/s. 153C/153A of the Act for the seventh to tenth assessment year preceding the searched assessment year

20. It is a rudimentary accounting concept, that "debit" denotes "asset" and "credit" denotes "liability". An asset represents an economic resource, either immovable or movable, having value, such as immovable property viz., land or building, investment held in shares and securities, loans & advances given and deposits in bank account. On the other hand, 'Liability' includes items such as share capital, reserves, loans obtained (secured as well as unsecured) etc. which cannot be characterized or classified as 'Asset'. Similarly, items of 'expenses' or revenues in form of 'sales' / 'turnover' does not constitute 'asset'.

('Asset' below falls within the ambit of the fourth proviso to Section 153A of the Act):

Profit and Loss Account	
Particulars (Debit)	Particulars (Credit)
Expenses	Revenue

Balance Sheet	
Liabilities (Credit)	Assets (Debit)
Share Capital/ Reserves/ Loan/ Current Liabilities	Immoveable Property/ Loans & Advances/ Shares/ Bank Balance

21. The above view of ours get bolstered from reading of Explanation 2 appended to the fourth proviso, which defines 'asset', for the purpose of fourth proviso to Section 153A, to include i) immovable property, ii) shares and securities , iii) loans and advances & iv) Deposit in bank. Hence, where search action u/s 132 of the Act reveals that, (i) the assessee owns an undisclosed immovable property, or (ii) information has been gathered which shows that the assessee had given loans or advances outside the regular books or (iii) search has revealed unaccounted investments held by assessee in shares & securities, which do not form part of regular books of accounts or (iv) if undisclosed bank accounts having deposits, have been found in the course of search, pertaining to the 7th-10th AY preceding the search; then having in his possession this jurisdictional fact, the AO may assume jurisdiction under the fourth proviso to Section 153A of the Act for the relevant seventh to tenth assessment year preceding the searched assessment year. Hence, the most important aspect is that, these 'assets' must have been found to be undisclosed or unaccounted, in the regular books of account maintained by the assessee, and discovered during the course of search, which otherwise would not have seen the light of the day but for the search, resulting in escapement of income.

22. It is to be kept in mind that, the term 'investment held in shares & securities' has to be considered with the term 'asset'. The term 'investment held in shares & securities' and 'asset' are to be understood in their cognate sense, as it takes their colour from each other, i.e., the more general is restricted to a sense analogous to the less general. Hence, the term 'investment held in shares & securities' denotes discovery of an 'asset' in the form shares or securities, which is not found disclosed in the books of accounts or whose source of acquisition is unexplained and is thus found to have escaped assessment in the 7th-10th AY preceding the search. It does not suggest or include the

proceeds received by an assessee upon sale of regular/disclosed investments. To say, if any credits in a regular bank account, like sale proceeds/ credit etc. is found to be unexplained, then it may be a case of discovery of undisclosed 'income' / 'cash credit' but it does not suggest discovery of an undisclosed 'asset' by the Revenue so as to bring it within the teeth of the fourth proviso to Section 153A of the Act for invoking jurisdiction u/s 153A for the extended period.

23. Hence, from the above discussion, it is thus clear that Section 153A of the Act can be invoked only if the AO comes to a positive conclusion that he has in his possession documents or information revealing an undisclosed asset of the assessee qua the assessment year (7th to 10th) which is valued Rs. 50 lakhs or more. This, in our judgment is a foundational, fundamental or jurisdictional fact.

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27. In the present case, perusal of the satisfaction note shows that, the AO had referred to Pages 61 to 69 of seized material bearing identification mark SST-01 for assuming jurisdiction u/s 153C read with the fourth proviso to Section 153A of the Act. The satisfaction note however does not reveal the 'asset' which escaped assessment, and which was discovered from the aforementioned seized material. We find that, the AO himself has observed that these pages comprise journal ledger and bank ledger which evidenced that the assessee had liquidated its investments in shares and proceeds were received in bank. The Ld. AR, Shri Dudhwewala, has shown us that these ledgers were print outs from the regular books of accounts of the assessee maintained in computerised system and all the entries mentioned therein formed part of regular books of accounts. We find ourselves in agreement with him, that the contents of these seized material were neither incriminating in nature nor did it in any manner reveal income represented in form of 'asset' which had escaped assessment.

28. It is also not the AO's case that these investments in shares found mentioned in the seized material, were unaccounted or their source of acquisition was unexplained so as to constitute 'asset' escaping assessment. Rather the AO stated that these documents have a bearing on the total 'income' of the assessee for assuming jurisdiction u/s 153C of the Act, which clearly does not meet the essential condition precedent in the fourth proviso to Section 153A of the Act. From this assertion/averment/admission, it is clear that AO did not have in his possession the jurisdictional fact [on or prior 05.12.2019] to invoke and issue notice u/s. 153C of the Act. The extended jurisdiction to invoke/assess 7 th – 10th AY is conferred on the AO by authority of law

and the AO cannot confer to himself the jurisdiction in a casual manner by stating/substituting the specific jurisdictional fact. It is imperative that before issuance of notice u/s 153C [for the extended period], the AO sets out his objective satisfaction from the seized material, the details of the specified/undisclosed assets in his possession qua the assessee for AY 2011-12 valued Rs. 50 lakhs or more. If this essential requirement of law is not satisfied, the AO does not get the authority of law to invoke the jurisdiction u/s 153A of the Act for 7th to 10th AY. For this, we rely upon the dictum of the Privy Council in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253(which has since been accepted and later followed by Hon'ble Supreme Court), that when a statute requires a thing to be done in a particular manner, it must be done in that manner or not at all. As discussed at Para 13 (supra), the language of the fourth proviso to section 153A of the Act show that issuance of notice can be resorted to by the AO only after he is in possession of the jurisdictional fact, which is found to be absent in the present case. Therefore according to us, the AO only after having in his possession the jurisdictional fact could have assumed jurisdiction and issued notice u/s. 153C of the Act or else he could not have issued notice, as done in this case. For the reasons elaborately discussed by us in the foregoing, we thus hold that the notice u/s. 153C dated 05-12-2019 was issued by the AO for AY 2011-12 without authority of law and without satisfying the essential jurisdictional fact, and hence the issuance of notice u/s. 153C of the Act is held to be bad in law."

23. It is noted that the above decision of this Tribunal has since been upheld by the Hon'ble Gauhati High Court which is reported in 459 ITR 72, by observing as follows:-

"16. From the rival contentions, we note that, the assessee had specifically objected to the AO's action of reopening the unabated assessment for AY 2011-12 u/s 153C of the Act and had requested the AO to give details of the purported 'assets' which had escaped assessment. The AO however did not provide the details of the undisclosed/unaccounted assets of the assessee, which he claims were in his possession before the issuance of notice u/s 153C of the Act for AY 2011-12. The AO was however duty bound to decide the said question as to his jurisdiction, and record finding as to whether he had in his possession, details of any undisclosed/unaccounted assets valued as Rs. 50 lacs and more, *qua* the assessee *qua* the assessment year (7th to 10th year) preceding the searched assessment year, and thereby

> state clearly as to how the case of assessee was being brought under the 4th proviso of section 153A read with explanation 2. Only upon valid assumption of jurisdiction, the AO could have proceeded against the assessee for assessment of escaped/undisclosed assets.
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> ….
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> 19. As a consequence, we have no hesitation in holding that the AO did not have in his charge, any "Jurisdictional fact "(on or prior to 5-12-2019) to invoke and issue notice u/s 153C of the Act to the respondent assessee. The extended jurisdiction to invoke/assess 7th to 10th AY is conferred on the AO by authority of law and the AO cannot confer to himself the jurisdiction in a casual manner by stating/substituting the specific jurisdictional fact. It is imperative that before issuance of notice u/s 153C (for the extended period) the AO sets out his objective satisfaction from the seized material, the details of the specified/undisclosed assets in possession *qua* the assessee for AY 2011-12 valued at Rs. 50 lacs or more. If this essential requirement of law is not satisfied, the AO does not get the authority of law to invoke the jurisdiction u/s 153A of the Act for 7th to 10th AY. At the cost of repetition, it is pertinent to mention that the assessee had disclosed the sale transactions and liquidation of shares in his regular books of accounts and the liquidation of shares were received in bank. Thus the aforementioned assets cannot be termed as undisclosed assets. It has been appositely concluded in the concurrent decisions of the CITA and ITAT that it cannot be held that the allegedly undisclosed assets have escaped assessment."

24. In light of the *ratio decidendi* laid down above, we now revert back to the facts involved in the present case. We have carefully gone through the satisfaction note (supra) recorded by the AO and more particularly the seized material viz., ANN/MS/JMG/LS/S-1 relied upon by the AO, prior to issuance of the notice u/s 153C dated 31-12-2021 for the relevant AYs 2012-13 & 2013-14. It is noted that, the satisfaction note does not reveal or point out the 'undisclosed/unaccounted asset' which had escaped assessment in the relevant AYs 2012-13 & 2013-14. As held in the

decision above, the satisfaction note is to be examined on a standalone basis and nothing can be added to the satisfaction note, nor anything be deleted from the satisfaction note. Reading of the note shows that, the AO has simply summarized the data contained in the regular books of accounts of the assessee and has taken note of the movement in investments/loans & advances across AYs 2010-11 to 2013-14. There is no whisper of any unaccounted or undisclosed asset which was unearthed from the aforementioned seized material, in the satisfaction note. The Ld. AR further showed us that, the AO had simply set out, the details of the share capital raised, number of shares issued, investments made and loans advanced, all of which were transacted through the regular bank account and tallied with the regular books of accounts. Having examined the details placed before us, we accordingly note that these facts set out by the AO in the satisfaction note were contemporaneous facts, which were forming part of the regular books of accounts and therefore the same cannot be termed as unexplained or undisclosed asset which had escaped assessment. Even at the time of hearing, the Ld. CIT, DR was unable to point out to us the relevant material or evidence unearthed in the course of search basis which the AO stated that the income represented in the form of asset had escaped assessment.

25. It is also noted that, the AO did not refer to any incriminating seized material found in the course of search, basis which he recorded his concluding satisfaction that income represented in the form of asset escaped assessment. Instead, we find that, the AO had simply made a sweeping remark that, these regular books of accounts in his possession revealed that income represented in the form of asset escaped assessment in AY 2010-11. This remark so recorded is *ex-facie* noted to be arbitrary and without any basis. Also going by AO's own averment, he specifically had recorded his satisfaction that income represented in the form of '*asset*' had escaped assessment only in AY 2010-11. Clearly therefore, the AO has nowhere expressed his satisfaction that any income represented in the form of '*asset*' had escaped assessment qua AYs 2012-13 & 2013-14 as well.

26. Having regard to the foregoing and following the decision (supra), we accordingly hold that, the seized material ANN/MS/JMG/LS/S-1 in question didn't contain any information relating to unexplained/ undisclosed ***asset*** as defined in Explanation 2 to the fourth proviso of Section 153A of the Act. According to us, the AO was not in possession of any evidence / material which suggested that income represented in form of an '*asset*' had escaped tax in these AYs 2012- 13 & 2013-14 and therefore the 'jurisdictional fact' as prescribed under the fourth proviso to

Section 153A of the Act is found to be absent and the AO is noted to have usurped jurisdiction u/s 153C r.w.s 153A of the Act on wrong assumption of jurisdictional fact. As a consequence, we hold that the AO could not have legally proceeded further with the reassessment for AYs 2012-13 & 2013-14. Accordingly, the impugned orders passed u/s 153C/143(3) of the Act for AYs 2012-13 & 2013-14 are held to be *ab initio* void and bad in law for want of jurisdiction and the same is hereby directed to be quashed.

27. The last legal challenge raised by the assessee is that, the addition/s impugned in unabated AYs 2012-13 & 2013-14 were not based on any incriminating material found in the course of search and therefore has urged that the same be deleted. For this, let us first have a look at the now settled position of law in this regard.

28. We note that Section 153A/153C of the Act was introduced by Finance Act, 2003 w.e.f. 1-6-2003. The provisions of Section 153C of the Act clearly provides that, the income of such 'other person' (assessee, in this case) is required to be assessed in accordance with provisions of Section 153A of the Act. It is noted from the scheme of Section 153A of the Act that, the Assessing Officer gets jurisdiction to assess six assessment years prior to the previous year on which the search is conducted. The assessment under section 153A of the Act can be broadly

divided in two categories, one is in respect of "*completed assessment*" on the date of search by the AO already made under section 143(3)/147/153A/153C and will also cover those years whose time limit for issuance of notice u/s. 143(2) of the Act has expired and only processing of return u/s. 143(1) of the Act has been completed. The second category i.e., "*Pending Assessment*" relates to the years for which the assessments are pending before the AO on the date of search, meaning notices have been issued by the AO u/s. 143(2)/148 of the Act but the assessment is pending. For determining the abated/unabated assessment, the date of search, is significant since as per second proviso to Section 153A of the Act, any assessment year falling within the period of six assessment years of an assessee who has been subjected to search are pending before the AO on the date of search, then the assessment for those years need to be treated as *abated* and the AO is at liberty to frame assessment or reassessment. In other words, it is open to the AO to complete the assessment for the abated AYs by verifying the contents of the original return as well as the income unearthed out of the incriminating material/documents seized from search conducted on the assessee. However, on the date of search, assessment years which are not pending before the AO [i.e. in case where the searched assessee's assessments are completed u/s. 143(3) or 148 or 153A/153C of the Act

or if the mandatory scrutiny assessment notices u/s. 143(2) of the Act has become time barred], then those assessment years to be treated as unabated assessments and by virtue of the second proviso to section 153A(1) of the Act, assessment u/s. 153A/153C has to be essentially based on the documents unearthed during the course of search and seizure operations. Accordingly, like Section 153A, the assessment under section 153C of the Act for the unabated AYs can be made only based on the incriminating material found/unearthed during search.

29. For determining the abated/unabated assessment u/s 153C of the Act, the date of search is required to be ascertained in terms of first proviso to Section 153C of the Act. In the present case, irrespective whether the date of search is taken to be 25-02-2020 (date of original search) or 31-12-2021 (date of satisfaction note), the assessment for AYs 2012-13 & 2013-14 are unabated assessments. In the circumstances, the assessment u/s 153C of the Act for the relevant AYs 2012-13 & 2013-14 could have been framed only with reference to any incriminating material found/unearthed during search. In support of this proposition, we rely on the judgment of Hon'ble Apex Court in the case of **CIT Vs Singhad Technical Education Society (supra)**, wherein it was held as follows:-

> "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 corelation, 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."

30. We also gainfully refer to the decision of the Hon'ble Supreme Court in the case of **Pr. CIT v. Abhisar Buildwell (P.) Ltd. (supra)** wherein it was held as under:-

> "In case where no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessment, no addition can be made by the AO in absence of any incriminating material found during the course of search u/s 132 or requisition u/s 132A of the Act, 1961."

31. Following the above judgement (supra), it is noted that the Hon'ble Supreme Court in the case of **DCIT vs U.K. Paints (Overseas) Limited (454 ITR 441)** has held that, in absence of any incriminating material which was found from the premise of the third party (searched person), no addition/s is permissible in an unabated assessment u/s 153C of the Act of the assessee (other person). The relevant findings taken note of by us are as follows:

> "1. In this batch of appeals, the assessments in case of each assessee were under section 153-C of the Income-tax Act, 1961 (for short, `the Act'). As found by the High Court in none of the cases any incriminating material was found during the search either from the Assessee or from third party. In that view of the matter, as such, the assessments under section 153-C of the Act are rightly set aside by the High Court. However, Shri N Venkataraman, learned ASG appearing on behalf of the Revenue, taking the clue from some of the observations made by this Court in the recent decision in the case of Pr. CIT v. Abhisar Buildwell (P.) Ltd.[2023] 149 taxmann.com 399 (SC), more particularly, paragraphs 11 and 13, has prayed to observe that the Revenue may be permitted to initiate re-assessment proceedings under section 147/148 of the Act as in the aforesaid decision, the powers of the re-assessment of the Revenue even in case of the block assessment under section 153-A of the Act have been saved.
>
> 2. As observed hereinabove, as no incriminating material was found in case of any of the Assessees either from the Assessee or from the third party and the assessments were under section 153-C of the Act, the High Court has rightly set aside the Assessment Order(s). Therefore, the impugned judgment and order(s) passed by the High Court do not require any interference by this Court. Hence, all these appeals deserve to the dismissed and are accordingly dismissed."

32. In the light of the above judicial precedents, we hold that in the case of unabated assessments of an assessee, no addition is permissible in the order u/s 153C of the Act unless it is based on any incriminating

material found during the course of search. Having regard to this legal position, we now revert back to the facts of the present case to ascertain whether the income which the AO assessed in the orders impugned in this appeal was based on or made with reference to any incriminating document found in the course of search which would justify the additions made u/s 69 of the Act.

33. On perusal of the assessment orders impugned before us, it is noted that the document marked as ANN/MS/JMG/LS/S-1 were the regular books of accounts of the assessee. This fact has also been acknowledged by the AO in his assessment order. These documents are noted to contain day book/ ledger taken from the books of accounts of the assessee. The Ld. AR showed us that, since the assessee had raised capital in FY 2009-10, appropriate entries in its books were routed through journal day book which was part of the assessee's regular books of account. Likewise, in relation to the investments which were sold at cost, appropriate entries were passed in its books of account maintained in the course of regular business and the bank ledger reflected the payments received through banking channel upon sale of investments, which were subsequently deployed by way of loans & advances. Having examined the same, we find these documents were print-outs of the day books from the regular books maintained electronically by the assessee.

On examination of the entries in the documents, we find that the entries in the ledgers tallied with the bank statement of the assessee. We thus find that these documents formed part of the regular books of the assessee and did not have any incriminating content whatsoever. When confronted with the same, even the Ld. CIT, DR was unable to correlate or link as to how the contents of these documents led to unearthing of unexplained income, that too represented by an '*asset'* by the AO in these AYs 2012-13 & 2013-14. We also note that the investments which were sold during the relevant year and which find mention in these ledgers are reflected in the Investment Schedule appearing in the assessee's balance sheet. Having regard to the foregoing facts, we thus find that the information contained in the referred seized document i.e. ANN/MS/JMG/LS/S-1 was part of the regular books of the assessee and therefore by no stretch of imagination, it can be construed to be 'incriminating' in nature.

34. It is noted that somewhat similar facts and circumstances were involved in the case before this Tribunal at Guwahati in the case of **ACIT vs Fortune Vanijya Pvt Ltd (supra)**. In this decided case also, the AO had referred to the journal day book and bank ledgers which contained the details of investments sold as an incriminating document and accordingly added the banks credits received upon liquidation of

investments by way of unexplained cash credit. This Tribunal after examining the meaning of the term 'incriminating material' concluded that this document was not incriminating as the contents thereof were verifiable with the books of accounts. Hence, in absence of any incriminating material found in the course of search, this Tribunal deleted the addition made u/s 68 of the Act in the unabated AY. The relevant findings of the Tribunal, as taken note by us, are as follows:

> "44. In the light of the above judicial precedents, we hold that in the case of unabated assessments of an assessee, no addition is permissible in the order u/s 153Cof the Act unless it is based on any incriminating material found during the course of search. Having regard to this legal position, let us now proceed to examine whether the AO had legally usurped the jurisdiction u/s. 153C and satisfied the condition-precedent before issuance of notice u/s. 153C read with Section 153A of the Act and that whether the income which the AO assessed in the order impugned in this appeal was based on or made with reference to any incriminating document found in the course of search and therefore would justify the addition made u/s 68 of the Act.
>
> ……..
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> 46. It was pointed out by the Ld. AR, Shri Dudhwewala that the documents referred at Pages 61 to 69 of the SST-01 were the journal ledger and bank ledger of the assessee forming part of the assessee's regular books for the FY 2010-11. This fact has also been acknowledged by the AO in his satisfaction note. The Ld. AR submitted that since the assessee had sold its investments; appropriate entries in its books were routed through journal day book which was part of the assessee's books of account maintained in the course of regular business and the bank ledger reflected the payments received through banking channel upon sale of investments. Having examined the same, we also find it to be print-outs of the day books from the regular books maintained electronically by the assessee. On examination of the entries in the document, it is noted that the journal ledger inter alia contains journal entries passed during FY 2010-11 in relation to investments sold to several parties. And we find that the entries in the bank ledger tallied

with the bank statement of the assessee. We thus find that these ledgers therefore formed part of the regular books of the assessee and did not have any incriminating content whatsoever. When confronted with the same, even the Ld. CIT, DR was unable to correlate or link as to how the contents of this ledgers led to unearthing of unexplained income, that too represented by an "asset" by the AO. We also note that the investments which were sold during the relevant year and which find mention in these ledgers are reflected in the Investment Schedule appearing in the assessee's balance sheet as on 31-03-2010. In this context, it has been brought to our notice that the case of the assessee for AY 2011-12 was earlier reopened u/s 147 of the Act in relation to the same sale proceeds received in the bank account. And pursuant to the re-opening, in the reassessment order passed u/s 147/143(3) dated 24-12-2018, the AO's predecessor had recorded a categorical finding that the receipts pertained to sale of investments which had been verified by him. There was no finding recorded by the AO's predecessor that the investments sold by the assessee during the relevant year were bogus or fictitious. Having regard to the foregoing facts, we thus find that the information contained in the referred document i.e. Pages 61 to 69 of the SST-01 was part of the regular books of the assessee and therefore by no stretch of imagination, it can be construed to be 'incriminating' in nature.

47. Moreover even the AO in his satisfaction note as well as the impugned order was unable to specify as to how this material was considered by him to be 'incriminating' in nature or as to how this document formed the basis for the addition made u/s 68 of the Act. Before we proceed further, it is first relevant to understand the meaning of the expression "incriminating material" or evidence. There can be several forms of incriminating material or evidence. In order to constitute an incriminating material or evidence, it is necessary for the AO to establish that the information, document or material, whether tangible or intangible, is of such nature, which incriminates or militates against the person to whom it pertains to. Some common forms of incriminating material for instance are, where the search action u/s 132 of the Act reveals information that the assets found from the possession of the assessee in the form of land, building, jewellery, deposits or other valuable assets etc. do not corroborate with his returned income and/or there is a material difference in the actual valuation of such assets and the value declared in the books of accounts. Further, incriminating evidence may also constitute of information, tangible or intangible, which suggests or leads to an inference that the assessee is carrying out certain activities outside books of accounts which is not disclosed to the Department. Incriminating material also comprises of document or evidence found in the course of search which demonstrates or proves

that what is apparent is not real or what is real is not apparent. In other words, if an assessee has recorded transactions in his books or other documents maintained in the ordinary course then in order to hold the material or evidence found in the course of search to be incriminating in nature, the seized document should lead to the conclusion that the entries made in the books of the assessee do not represent true and correct state of affairs. The evidence unearthed or found in the course of search should establish that the real transaction of the assessee was something different than what was recorded in the regular books and therefore the entries in the books did not represent true and correct state of affairs i.e. the assessee has undisclosed income/expense outside the books or that the assessee is conducting income earning activity outside the books of accounts or all the revenue earning activities are not disclosed to the tax authorities in the books regular maintained or the returns filed with the authorities from time to time etc. The nature of the evidence or information gathered during the search should be of such nature that it should not merely raise doubt or suspicion, but should be of such nature which would prima facie indicate that real and true nature of transaction between the parties is something different from the one recorded in the books or documents maintained in ordinary course of business. In some instances, the information, document or evidence gathered in the course of search, may raise serious doubts or suspicion in relation to the transactions reflected in regular books or documents maintained in the ordinary course of business, but in such case the AO is not permitted to straightaway treat such material to be 'incriminating' in nature unless the AO thereafter brings on record further corroborative material or evidence to substantiate his suspicion and conclude that the transaction reflected in regular books or documents did not represent the true state of affairs. Until these conditions are satisfied, it cannot be held that every seized material or document is incriminating in nature, justifying the additions in unabated assessments.

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58. For the various reasons as set above, we thus hold that the AO had invalidly usurped jurisdiction u/s 153C of the Act as there was no incriminating material pertaining to the assessee seized in the course of search. Even the addition made in the unabated assessment for AY 2011-12 was unsustainable since it was not based on any incriminating material found in the course of search. In that view of the matter, the order dated 31-12-2019 passed by the AO is held to be a nullity and is accordingly quashed. Hence, Ground No. 1 of the cross objections also stands allowed."

35. We note that the above findings has since been affirmed by the Hon'ble Gauhati High Court (supra), by observing as under:

> "18. In this case at hand, the ITAT has observed that the satisfaction note reveals that, the AO had referred to the pages 61 to 69 of seized material bearing identification mark SST-01 for assuming jurisdiction u/s 153C read with the fourth proviso to section 153A of the Act. The ITAT has also observed that the satisfaction note of the AO does not reveal any 'asset' which had escaped assessment. On the other hand, the AO himself had observed that these pages, 61 to 69, comprise journal ledger and bank ledger, which clearly indicates that the assessee had liquidated his investments in shares and the proceeds thereof were received in bank. These ledgers were in form of printouts from regular books of accounts of the assessee maintained in computerized system and all the entries mentioned therein forms part of regular books of accounts. The AO was not satisfied with the explanation of one of the Directors of Sagar Group whose statement was recorded u/s 132(4) of the Act. As the satisfaction note scrutinized by the CITA as well as the ITAT did not reveal any asset, the addition made by the AO in AY 2011-12 on account of unexplained cash-credit represented by sale proceeds of Rs. 9,63,00,000/- is held to be made without jurisdiction. Thus, it can safely be concluded that the contents of seized material are neither incriminating in nature nor do they in any manner reveal "income represented in form of 'assets' which had escaped assessment." This satisfaction note dated 13-12-2019 has been referred to by the ITAT and it has not been disputed by the appellants.
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> ….
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> 22. It has been observed by the Hon'ble Supreme Court in the case of Pr. CIT v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399/293 Taxman 141/454 ITR 212, dated 24-4-2023, in Civil Appeal No. 6580 of 2021 and other connected appeals filed by the revenue that
>
> ….
>
> 23. After scrutiny of the evidence it was held by the ITAT that the CITA's action of deleting the addition made u/s 68 of the Act was appropriate. The ITAT has spelt out sound reasonings while dismissing the appeal. The appeal preferred by the revenue was partly dismissed by the ITAT. The ITAT and the CITA have recorded concurrent findings after scrutinizing the evidence and the facts placed before them. In this

> Income-tax appeal where concurrent findings of two forums prevail, there is minimal scope of interference.
>
> 24. It has been held by the ITAT that on the date of search *i.e.* on 5-12-2019, the income tax assessment for AY 2011-12 of the assessee stood unabated. The concurrent decisions of both the CITA and the ITAT reflect that no incriminating materials were found during the search conducted by the AO. The pages 61 to 69 cannot be termed as undisclosed or unaccounted assets on the basis of the assessment order (Annexure-A). The addition to the income of the assesse of Rs. 9,63,00,000/- u/s 68 of the IT Act for the relevant AY 2011-12 was found to be untenable in law. The concurrent factual findings, which are not found to be perverse are hereby upheld. As no incriminating materials were found during the course of search, the decision of the ITAT cannot be said to be suffering from any illegality as would fortify the "proposed substantial question of law".

36. Useful reference in this regard may be made to the decision of the Hon'ble Delhi High Court in the case of **PCIT Vs Index Securities Ltd (86 taxmann.com 84)** involving similar facts and circumstances as involved in the present case. In the decided case, search was conducted u/s 132 of the Act upon Jagat Group wherein documents comprising of trial balance and balance sheet of the assessee company was found & seized by the Revenue. According to AO, since these documents pertained to the assessee, he proceeded to reopen the assessments of the assessee u/s 153C of the Act and added the share application monies received by the assessee u/s 68 of the Act. On appeal, the assessee challenged the validity of jurisdiction exercised by the AO u/s 153C of the Act on several grounds *inter alia* including that these seized documents cannot be said to be incriminating to justify additions made u/s 68 of the Act in the

unabated assessments of the assessee. The Hon'ble High Court found merit in this plea of the assessee and accordingly upheld the orders of the lower authorities deleting the impugned additions by observing as under:

> "32. In the present case, the two seized documents referred to in the Satisfaction Note in the case of each Assessee are the trial balance and balance sheet for a period of five months in 2010. In the first place, they do not relate to the AYs for which the assessments were reopened in the case of both assessees. Secondly, they cannot be said to be incriminating. Even for the AY to which they related, i.e. AY 2011-12, the AO finalised the assessment at the returned income qua each Assessee without making any additions on the basis of those documents. Consequently even the second essential requirement for assumption of jurisdiction under Section 153 C of the Act was not met in the case of the two Assessees
>
> 33. This Court does not consider it necessary to examine the merits of the case as far as the deletions by the CIT (A) of the additions made by the AO under Section 153C of the Act are concerned. In any event, a detailed analysis has been undertaken by the CIT (A) of the materials produced by the Assessee which justified the deletion of such additions. Even on this score, no interference is warranted with the impugned order of the CIT (A)."

37. Before us, the Ld. CIT, DR also laid emphasis on the statement of Mr. Kamlesh Jain, which was extensively relied upon by the Ld. CIT(A) to justify the impugned addition. At the onset, it is noted that this statement was recorded on 08-03-2022, i.e. not only subsequent to the date of search (25-02-2020) but also the date of recording of satisfaction note u/s 153C of the Act (31-12-2021). Accordingly, this statement cannot under any circumstances be construed as an incriminating material unearthed in the course of search, so as to justify the impugned additions in these unabated AYs 2012-13 & 2013-14. Moreover, we have also

perused the contents of the statement of Mr. Jain and it is nobody's case that he had admitted to any wrong doing or had averred that the bank credits represented his unaccounted monies. Reading of the statement shows that he had only sought time to verify from his records and submit the details regarding the investments sold, as understandably the data was quite old and Shri Jain could not have been reasonably expected to recollect and provide the exact details. This, according to us, cannot be treated as incriminating statement to draw adverse inference in an unabated assessment. Having regard to the foregoing and more so when the impugned statement itself didn't contain any admission or surrender to any wrong doing, we do not countenance this plea of the Revenue that the said statement constituted incriminating material unearthed in the course of search.

38. For the reasons set out in the preceding paragraphs and the judicial precedents discussed above, we are therefore of the considered view that there was no incriminating material found in the course of search on the basis of which additions u/s 69 of the Act could have been legally made in the unabated AYs 2012-13 and 2013-14. We accordingly direct the AO to delete the impugned addition/s made u/s 69 of the Act in the unabated AYs 2012-13 & 2013-14.

39. As we have already held the usurpation of jurisdiction u/s 153C of the Act to be invalid and also deleted the additions made u/s 69 of the Act for want of incriminating material found & seized in the course of search, the other grounds raised by the assessee on merits of the impugned additions have now become academic in nature and is therefore not being separately adjudicated upon.

40. In the result, both the appeals of the assessee stands **allowed**.

Order pronounced on the 27th day of September, 2024, in Chennai.

Sd/-	**Sd/-**
(अमिताभ शुक्ला)	**(एबी टी. वर्की)**
(AMITABH SHUKLA)	**(ABY T. VARKEY)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 27th September, 2024.
TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF