

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री मंजुनाथा. जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER
AND SHRI MANOMOHAN DAS, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./ITA No.: **1110/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2010-11

M/s. KSJ Infrastructure
Pvt. Ltd.,
2nd Floor, Grant Lane, Room
No. 218, Kolkata – 700 012.
[PAN:AADCC-5913-E]

The Deputy Commissioner of
v. Income Tax,
Central Circle -1(1),
Chennai – 600 0034.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. B. Rama Krishnan, FCA and
Shri. Shrenik Chordia, CA

प्रत्यर्थी की ओर से/Respondent by : Shri. R. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing : 10.01.2024

घोषणा की तारीख/Date of Pronouncement : 06.03.2024

आदेश /ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 26.09.2023 and pertains to assessment year 2010-11.

2. The assessee has raised the following grounds of appeal:

"1. For that the Order of the Learned Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case and is in violation of principles of natural justice.

2. For that the Learned Commissioner of Income Tax (Appeals) had erred in upholding the reopening of assessment u/s 153C of the Act which is void-ab-initio since barred by limitation as per the applicable provisions of third proviso to Section 153B(1) of the Income Tax Act.

3. 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 ten 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'.

4. For that the Learned Commissioner of Income Tax (Appeals) had erred in upholding the Assessment Order now passed u/s 153C of the Act in the absence of any incriminating material in the appellant's case where the assessment was already subjected to scrutiny assessment u/s 143(3) of the Act vide order passed on 29.03.2012, in violation of the CBDT Circular in F.No.279/Misc./M-54/2023-1TJ dated 23.08.2023.

5. For that the Learned Commissioner of Income Tax (Appeals) had erred in confirming the additions made u/s 68 of the Act amounting to Rs.63,89,24,000/- in toto, pertaining to share capital issued of Rs.63,89,240/- 63,25,34,760/- pertaining to share premium received.

6. For that the Learned Commissioner of Income Tax (Appeals) erred in not considering the Balance Sheets as at 31.03.2010 of the investor Companies stated in the 'Return of Allotments' that was filed through an Additional Evidence Petition under Rule 46A of the Income Tax Rules, 1962 by the appellant company.

7. For that the Learned Commissioner (Appeals) had erred in confirming the levy of interest u/s. 234B of the Act.

For these grounds and such other grounds that may be adduced before or during the hearing of the appeal. It is prayed that the Hon'ble Tribunal may be pleased to quash the Assessment Order as as Void-ab-initio/delete the additions made and/or provide such other relief as this Hon'ble Tribunal deems fit."

3. The brief facts of the case are that, a search operation u/s. 132 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was conducted 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 the Act, loose sheets was seized vide Annexure ANN/MS/JMG/LS/S-1 and seized loose sheets has information relating to the assessee M/s. KSJ Infrastructure Pvt Ltd. The Assessing Officer of searched person, the DCIT, Central Circle -1(1), Chennai has recorded satisfaction note for proceedings u/s. 153C of the Act, dated 31.12.2021 and observed that, the seized material found during the course of search in the case of M/s. Jain Metal Rolling Mills and others has information relating to the appellant and has bearing on its total income. Further, the Assessing Officer of any other person as per 153C of the Act, i.e., the DCIT, Central Circle - 1(1), Chennai has recorded satisfaction note for proceedings

u/s. 153C of the Act on 31.12.2021 and satisfied that the books of accounts and documents seized during the course of search proceedings in the case of M/s. Jain Metal Rolling Mills and others, has information relating to assessee and has bearing on its total income. Therefore, notice u/s. 153C of the Act dated 31.12.2021, was issued and served on the assessee. The assessee has not filed its return of income, in response to notice u/s. 153C of the Act.

4. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the appellant company, M/s. KSJ Infrastructure Pvt Ltd was incorporated on 21.02.2019 with ROC, Kolkata. During the financial year relevant to assessment year 2010-11, the appellant has issued 6,48,934 equity shares of face value of Rs. 10/- each with a premium of Rs. 975/- per share and received share premium of Rs. 63,25,34,760/-. The Assessing Officer, further noted that share premium received by the appellant has been invested in unquoted equity shares and loans and advances as shown in the balance sheet. Therefore, the Assessing Officer called upon the assessee to file necessary details including, the name and address of

shareholders from whom the share premium was received and share holding pattern etc. The appellant company could not furnish necessary details, including name and address of the persons from whom share premium was collected, creditworthiness of the persons and genuineness of the transactions. Therefore, the Assessing Officer has made additions of Rs. 63,90,24,100/- towards share premium u/s. 68 of the Act, as unexplained cash credit. The relevant findings of the Assessing Officer are as under:

5.9. The following inference is drawn from the above discussions:

a). The share premium is generally paid by the shareholders in addition to face value of share. The share premium of share is decided based on the performance of the company and its potential prospects of the business. As it can be seen, the assessee company does not have any business activity leaving the question of having received huge share premium per share unanswered.

b). From the profit and loss account reproduced above, it can be seen that The company is making barely any profit in the FY 2010-11 as well.

c). The details of the shares issued during 2009-10 was also not known. The assessee has not furnished the details of the shareholders, whether Memorandum of Association and Articles of Association, had the authorised capital limits to issue of shares, if any modifications were made board's resolution or any other detail to substantiate the receipt of Share Capital by way of issue of shares and receipt of share Premium.

d) During the assessment proceeding, the assessee was required to provide the detail of the investments made. The assessee was unable to even give the details of investment in unquoted shares which clearly indicates the whole transaction is bogus.

It is very clear the share premium is the colourable device used to credit the unexplained income into the books of the

accounts of the Company and the assessee Company could not explain the source for the Share Capital of Rs.64,89,340 and share premium of Rs.63,25,34,760/- credited to their books of account.

As per Section 68 of the Income Tax Act, 1961:

"Any sum found credited in the books of the taxpayer, for which he offers no explanation about the nature and source thereof or the tax authorities are not satisfied by the explanation offered by the taxpayer, is termed as cash credit. In this part you can gain knowledge about various provisions relating to tax treatment of cash credit.

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such company shall be deemed to be not satisfactory, unless:

(a) the person, being a resident in whose name such credit is recorded in the books of such company, also offers an explanation about the nature and source of such sum so credited; and (b) such explanation in the opinion of the Assessing Officer has been found to be satisfactory 5.10. In this case, the assessee has failed to even produce the details of the identity of persons, creditworthiness of the persons from whom the amount was received and could not explain the source of amount credited as share capital of the Rs.63,90,24,100/- credited to the books of accounts leaving the genuineness of the transaction a big question mark As the source for Rs. 64,89,340/- and amount credited as share premium of Rs.63,25,34,760/- - total of Rs.63,90,24,100/- to the books of accounts of the assessee company is unexplained, it is liable to added to the total Income of the assessee u/s 68 of the Act.

5.11. Further, the whole transaction from incorporation of the assessee company, sworn statement of Rajkumar Bhotika, IT reports, lack of details of unquoted shares everything goes to prove that the transaction is not at all genuine, identity of persons is not furnished to ascertain the creditworthiness of the source of payment. Hence, the credit available in the books in the name of share premium is nothing but the unexplained credits & the same is brought to tax u/s 68 of the Income Tax Act, 1961."

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee challenged issuance of notice u/s. 153C of the Act and consequent assessment order passed by the Assessing Officer u/s. 143(3) r.w.s. 153C of the Act dated 31.03.2022, on the ground that said assessment year falls beyond stipulated six assessment years and four relevant assessment years, considering the satisfaction note recorded by the Assessing Officer of the searched person u/s. 132 of the Act and Assessing Officer of the other persons as required u/s. 153C of the Act and thus, the notice issued by the Assessing Officer and consequent assessment order passed by the Assessing Officer is invalid, void ab initio and liable to be quashed. The appellant had also challenged additions made by the Assessing Officer towards share premium u/s. 68 of the Act, in absence of any incriminating material found as a result of search, on the ground that said assessment year is abated assessment/completed assessment and in absence of any incriminating material, additions cannot be made in assessment framed u/s. 153C of the Act. The appellant had also relied upon various judicial precedents in support of its arguments.

6. The Id. CIT(A), after considering relevant submissions of the assessee and taken note of provisions of section 153A r.w.s. 153C of the Act, opined that since the Assessing Officer of searched person u/s. 132 of the Act and the Assessing Officer of other persons as per section 153C of the Act is one and the same, date of search is to be reckoned with for arriving at the assessment years that can be dealt u/s. 153C of the Act, as there is no handing over involved, and not the satisfaction note date as taken by the assessee. The Id. CIT(A), had also distinguished case laws relied upon by the assessee including the decision of Delhi High Court in the case of RRJ Securities Ltd vs CIT [2016] 380 ITR 612 (Delhi). The relevant findings of the Id. CIT(A) are as under:

"9.1 Ground 2 is raised agitating the reopening of assessment u/s 153C arguing that the same is bad in law. Section 153A lays down the provisions for the assessment of 'searched person' whereas Section 153C deals with the assessments of 'other person'. The assessments under this new scheme are to be done for six assessment years prior to the assessment year relevant to search year in relation to the total income of the assessee. Assessment of the other person has to be carried out by the AO of such other person, if AO of the searched and other person is not the same, consequent to handing over of the relevant material by the AO of the searched person to the AO of the other person. Since the Act does not provide any time limit for handing over of the material belonging/ pertaining to/ information relating to such other person by the AO of the searched person, hence the Act envisaged the limitations with regard to completion of assessments u/ s 153C with reference to the date of handing over of material.

9.2 Since the new provisions of search assessments came into operation, a dispute arose with regard to the assessment years to be considered while issuing notice and completing assessments u/s 153C in respect of 'other person'. The Hon'ble Delhi High Court in the case of RRJ Securities Ltd. [2016] 380 ITR 612 (Delhi) dated 30.10.2015, held that the date of handing over of material, will be construed as the reference date for initiation of action u/s 153C, as against date of initiation of search construed as the reference date for initiation of action u/s 153A. According to the decision, the assessment years to be considered for assessment u/s 153C will be taken with reference to the date of handing over of the material rather than the date of search as done for assessment u/s 153A. One important aspect to be noted in the instant case is that the AO for searched person u/s 153A and the AO for the 'other person' being the assessee are one and the same and so, search date is to be reckoned with for arriving at the AYs that can be dealt u/s 153C, as there is no handing over involved, and not the satisfaction note date as taken by the assessee. The decisions cited by the assessee for taking satisfaction date as material handing over date do not apply to the facts of the instant assessee, as the AO for the searched person and the other person is same no handing over required and so, search date only has to be reckoned with for arriving at the AYs to be dealt u/s 153C.

9.3 Further, it is also to be noted that the interpretation rendered in the judgment of RRJ Securities (supra) has been overcome by introducing amendment in Section 153C by the Finance Act 2017 with effect from 01.04.2017 by inserting the following: 'for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made'. This amendment is a procedural amendment and is effective from 1.4.2017. With this amendment, the six assessment years which are considered both under section 153A and 153C in respect of the searched person and the other person are the same. In this case, the search took place 25.02.2020, which falls on the previous year relevant to the Assessment Year 2020-21. The amendment is also effective from 01.04.2017. Therefore, the six assessment years referred to in Section 153C and also in 153A will relate to A.Ys. 2014-15 to 2019-20

9.4 However, in order to protect the interest of the revenue in cases where tangible evidence(s) are found

during a search or seizure operation and the same is represented in the form of any asset, section 153A of the Income-tax Act relating to search assessments has been amended to provide that notice under the said section can be issued for an assessment year or years beyond the sixth assessment year already provided up to the tenth assessment year *if*-

(i) the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant four assessment years(falling beyond the sixth year);

(ii) such income escaping assessment is represented in the form of asset;

(iii) the income escaping assessment or part thereof relates to such year or years.

9.5 The amended provisions of section 153A of the Income-tax Act shall apply where search under section 132 of the Income-tax Act is initiated or requisition under section 132A of the Income-tax Act is made on or after the 1st day of April, 2017. In this connection, it is pertinent to reproduce Explanation 1 and Explanation 2 to the fourth proviso of section 153A(1) which read as below:

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.

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.

9.6 Section 153C of the Income-tax Act has also been amended to provide a reference to the relevant assessment year or years as referred to in section 153A

of the Income-tax Act. These amendments take effect from 1st April, 2017.

9.7 In the instant case, the search was conducted on 25.02.2020 where the relevant previous year is 2019-20. The relevant assessment year is 2020-21. The date of search is after 01.04.2017 i.e. after the amendment of sec.153A and 153C of the Act. Further, the income that has escaped assessment in the year beyond six assessment years but within ten assessment years is more than Rs.50 lakh, as stipulated in the proviso to the section 153A(1), in the form of assets, as stipulated in Explanation 2. Therefore, the ten assessment years referred to in Section 153C and also in 153A will relate to A.Ys. 2010-11 to 2019-20. The above clearly demonstrates that the AO has correctly taken the AY 2010-11 also for the proceeding u/s 153C.

9.8 The assessee has taken date of handing over as 31.12.2021, i.e. the date of satisfaction note recorded by the AO; accordingly, the relevant AY is taken as AY 2022-23 and the ten AYs preceding such AY is arrived at AY 2012-13 to 2021-22. But, this is not the way in which counting of preceding AYs is to be carried out. The search date only can be taken for such counting as the AO for both the searched person and other person is one and the same. The above calculation has been demonstrated as wrong for the reasons enumerated in paras 9.4 to 9.7 above and hence cannot be acceded to.

9.9 In this case, the AO was satisfied that the material seized have bearing on the determination of total income of assessee and accordingly, invoked the provisions of Section 153C of the Act. The assessee did not dispute the seizure of the material or that the seized material belongs to the assessee. The AO duly recorded satisfaction note as per law on 31.12.2021 for invoking section 153C. It is not the case of the assessee also that the AO has not recorded satisfaction note duly.

9.10 Thus, I find no infirmity in the action of the AO in initiating the proceedings u/ s 153C of the Act for the impugned AY. Thus, the grounds in this regard are **dismissed."**

7. The Id. CIT(A), had also discussed the additions made by the Assessing Officer towards share premium u/s. 68 of the

Act, in light of grounds of appeal taken by the assessee and also certain judicial precedents including the decision of Hon'ble Apex Court in the case of PCIT vs Abhisar Buildwell (P) Ltd [2023] 454 ITR 212 and held that, seized material found during the course of search in the case of M/s. Jain Metal Rolling Mills and others, has information relating to the assessee and has also bearing on total income of the assessee for the assessment year 2010-11 and thus, the Assessing Officer has rightly made addition towards share premium received by the assessee for allotment of equity shares u/s. 68 of the Act, because the appellant could not satisfactorily explain the identity of the shareholders, genuineness of the transactions and their creditworthiness. The relevant findings of the Id. CIT(A) are as under:

"10.2.12 The loose sheets seized vide Annexure ANN/R.R./JMG/LS/S-4 on 25.02.2020 serially numbered from 1 to 42 contained the Printout of Tally extracts and bank statements of Shri Kamlesh Jain and Smt. Geetha Jain reflecting the purchase of shares of Salputri Dealer P Ltd and Jackpot Commodore P Ltd from Shri R.ajkurnar Bhotika, Shri Bidyut Chakraborty, Smt. Amu Sharma and Shri Ajay Sarkar for a consideration of Rs.1 lakh each, from the office premises of Jain Metal Rolling Mills, Kilpauk, Chennai. Similarly, another set of loose sheets titled "Copy of Market Loan" in which details of loans given and interest received downloaded from secret cloud servers, were seized vide Annexure - ANN/R.R./JMG/LS/S-5 on 25.02.2020, which were maintained by Jain Metal Group. These are all the incriminating material in this case. When questioned about the business activity of the assessee company, the CFO of Jain Meta] Rolling Mills, Shri Hemant Jain has deposed as follows:

"Sir, there are no employees employed in M/s. Ksj Infrastructure (P) Ltd., PAN of M/s. Ksj Infrastructure () Ltd., is AADCC5913E. There are no business activity in the company. The Income Tax returns were filed by Shri. Sunil having mobile number 9381001110. The books of accounts are maintained in Tally by one Shri Rahul and Ms.Nirmala, in this office, who are reporting to me. Sir I submit that all these companies M/ s.Ksj Infrastructure (P) Ltd., M/s.JackpotCommodeal Put Ltd and M/s.Salputri Dealer Pvt.Ltd were struck down by ROG and were subsequently revived during the year 2019."

10.2.13 The original assessment was passed based on the financials submitted by the assessee which portray Shri Raj Kumar Bhotika and Smt. Amita Joshi as the directors. It was only during the search, it was unearthed that Shri Raj Kumar Bhotika and Smt. Amita Joshi were only name lenders and the company is only a paper company, having no business activities but used as a medium to bring in unaccounted income. But for the search action, the connection between these parties would not have been detected. Any AO inspecting the financials of the assessee company alone would easily go astray by the list of allottees of shares. It is only the holistic approach on the details of all the allottee companies and the details of all the directors of the allottee companies and the subsequent events would reveal the real picture. As the assessee argues, the incriminating material in the present case is not the financials of the assessee company alone for the impugned AY, but the link to various affairs of the assessee company with several parties acted in tandem to whitewash the black money in the form of bringing it in the assessee company as share capital/ share premium via various paper companies. Thus, there is an effectual presence of incriminating material along with the statements recorded, which unearthed the whole gamut and modus operandi followed. Therefore, the Hon'ble Supreme Court decision in the case of Abhisar Buildwell P.Ltd. [2023] 149 taxmann.com 399 (SC) and the other decisions quoted by the assessee do not come to the rescue of the assessee. Hence, I find no infirmity in the action of the A.O in invoking the provisions of sec.153C of the Act. In view of the above, the ground is dismissed."

8. The Id. CIT(A), had also discussed the issue on merits in light of financials of the appellant company and business

carried on for the relevant assessment years and observed that although, the assessee has received share premium of Rs. 975/- per share, but the financials of the assessee does not support the premium charged on issue of shares. Further, the appellant could not satisfactorily explain the identity, creditworthiness and genuineness of the impugned transaction. Therefore, rejected arguments of the assessee and sustained additions made by the Assessing Officer towards share premium u/s. 68 of the Act. The relevant facts of the Id. CIT(A) are as under:

"11.18 It is evident from the investigation carried out by the Investigation Wing that the company was not at all making any worthwhile profit during the period before the transaction, during the period of transaction and after the transaction, There was not any extraordinary progress, growth, innovation, future plans, future projects that would go to enhance an increase, the intrinsic worth of the company. The company clearly has not made any kind of profit. The net worth of the company is also only the share capital/premium that is shown in its balance sheet: and hence with all the cumulative of surrounding circumstantial evidences and preponderance of probabilities, the transaction is considered to be sham transaction that has aimed only to bring unaccounted money under the guise of investment and huge paper work has been set up and carried out only with a view to giving a colour of authenticity and genuineness by creating facade of legitimate transactions.

11.19 The Hon'ble High Court of Delhi in the case of Pr. Commissioner of Income-tax-6, New Delhi Vs NDR Promoters Pvt. Ltd in ITA 49/2018 in its order dated 17th January 2019 has observed as under:

"10. Issue of bogus share capital in the form of accommodation entries has been subject matter

of several decisions of this Court and we would like to refer to decision in Commissioner of Income Tax Vs. Navodaya Castles Pvt. Ltd. (2014] 367 ITR 306, wherein the earlier judgments were classified into two separate categories observing as under:

"11, We have heard the Senior Standing counsel for the Revenue, who has relied upon decisions of the Delhi High Court in Commissioner of income Tax Vs. Nova Promoters and Finlease (P) Ltd. 2012) 342 ITR 169 (Delhi), Commissioner of Income Tax Vs. N.R. Portfolio Put. Ltd., 206 (2014) DLT 97 (DB) (Del) and Commissioner of Income Tax-I Vs. MAF Academy P. Ltd., 206 (2014) DLT 277 (DB) (Del), The aforesaid decisions mentioned above refer to the earlier decisions of Delhi High Court in Commissioner of Income Tax Vs. Sophia Finance Ltd., (1994] 205 ITR 98 (FB)(Delhi), CIT Vs. Divine Leasing and Finance Limited[2008] 299 ITR 268 (Delhi) and observations of the Supreme Court in CIT Vs. Lovely Exports P. Ltd. (2 008] 319 ITR (St.) 5 (SC).

12. The main submission of the learned counsel for the assessee is that once the assessee had been able to show that the shareholder companies were duly incorporated by the Registrar of Companies, their identity stood established, genuineness of the transactions stood established as payments were made through accounts payee cheques/ bank account; and mere deposit of cash in the bank accounts prior to issue of cheque/pay orders etc. would only raise suspicion and, it was for the Assessing Officer to conduct further investigation, but it did not follow that the money belonged to the assessee and was their unaccounted money, which had been channelized.

13. As we perceive, there are two sets of judgments and cases, but these judgments and cases proceed on their own facts. In one set of cases, the assessee produced necessary documents/evidence to show and establish identity of the shareholders, bank account from which payment was made, the fact that payments were received through banking channels, filed necessary affidavits of the shareholders or confirmations of the directors of

the shareholder companies, but thereafter no further inquiries were conducted. The second set of cases are those where there was evidence and material to show that the shareholder company was only a paper company having no source of income, but had made substantial and huge investments in the form of share application money. The assessing officer has referred to the bank statement, financial position of the recipient and beneficiary assessee and surrounding circumstances. The primary requirements, which identification of the should be satisfied in such Cases is, creditworthiness of creditors/shareholder creditors/ shareholder, creditworthiness of and genuineness of the transaction. These three requirements have to be tested not superficially but in depth having regard to the human probabilities and normal course of human conduct.

14. Certificate of incorporation, PAN number etc, are relevant for purpose of identification, but have their limitation when there is evidence and material to show that the subscriber was a paper company and not a genuine investor.

The Hon'ble HC thus held that "the transactions in question were clearly sham and make-believe with excellent paper work to camouflage their bogus The reasoning given is contrary to human probabilities, for in the nature..... normal course of conduct, no one will make investment of such huge amounts without being concerned about the return and safety of such investment".

11.20 The Supreme Court dismissed SLP filed against the Delhi High Court ruling in the case of CIT Vs Navodaya Castles P Ltd 367 ITR 306 and held that certificate of incorporation, PAN, etc., are not sufficient for the purpose of identification of subscriber company when there is material to show that the subscriber was a paper company and was not a genuine investor.

11.21 It is all the more relevant to refer to one more latest judgement of the Hon'ble Supreme Court in the case of M/s Principal Commissioner of Income-tax Vs NRA Iron & Steel (P.) Ltd. [2019] 103 taxmann.com 48 (C) which has held that where there was failure of assessee to establish creditworthiness of investor companies, Assessing Officer was justified in passing assessment order making additions under section 68

for share capital/ premium received by assessee company, Merely because assessee company had filed all primary assessee to establish evidence, it could not be said that onus on creditworthiness of investor companies stood discharged. It is apposite to refer to the observations of the Hon'ble Supreme Court in its order as under:

"13. The lower appellate authorities appear to have ignored the detailed findings of the AO from the field enquiry and investigations carried out by his office. The authorities below have erroneously held that merely because the Respondent Company - Assessee had filed all the primary evidence, the onus on the Assessee stood discharged.

The lower appellate authorities failed to appreciate that the investor companies which had filed income tax returns with a meagre or nil income had to explain how they had invested such huge sums of money in the Assessee Company -Respondent. Clearly the onus to establish the credit worthiness of the investor companies was not discharged. The entire transaction seemed bogus, and lacked credibility."

The Apex Court further held:

"14. The practice of conversion of un-accounted money through the cloak of Share Capital/ Premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the Assessee since the information is within the personal knowledge of the Assessee. The Assessee is under a legal obligation to prove the receipt of share capital/ premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the Assessee.

15. On the facts of the present case, clearly the Assessee Company - Respondent failed to discharge the onus required under Section 68 of the Act, the Assessing Officer was justified in adding back the amounts to the Assessee's income."

11.22 As discussed earlier, mere filing of 'return of allottees' with incomplete balance sheets would not suffice to prove the identity, creditworthiness and genuineness of the transactions, The assessee has not discharged its onus. It is found that the assessee company has received the share premium from 45 investor companies, the details of which are given in para 11.3. It could be seen that Shri Raj Kumar Bhotika, one of the directors of the assessee company is the director in some of the investor companies. Same is the case with another Director, Smt. Amita Joshi. The assessee company could have easily produced all the necessary ingredients such as copy of the ledger account of the parties concerned, copy of their share applications, confirmation from the parties concerned, copy of the bank accounts concerned, valuation of shares, in respect of the investor companies including production of the principal officers, at least, where the directors are common in both the assessee company and the investor company. The assessee's contention that the above details could not be furnished due to change in management of the companies is not acceptable. All the above clearly prove that they are all just paper companies used to wash the black money in the form of share capital/premium. Having clearly depicted the modus operandi involved in bringing the unaccounted income into the assessee company, I find no infirmity in the action of the AO in adding the share capital and share premium.

11.23 For this proposition, reliance is also placed following case-laws:

11.23.1 Amount received by assessee from accommodation entry providers in garb of share application money, was to be added to its taxable income under section 68.

CIT Vs Nova Promoters & Finlease (P) Ltd [Delhi High Court) [2012] 18 taxmann.com 217 (Delhi)/[2012] 206 Taxman 207 (Delhi)/[2012] 342 ITR 169 (Delhi)/[2012] 252 CTR 187 (Delhi)

11.23.2 Neither before AO nor before CIT(A), assessee could make share applicants available. Identity not established. Appeal dismissed.

Amtrac Automobiles India Pvt Ltd Vs ACIT [ITAT Delhi] ITA No.2920/Del/09

11.23.3 Under section 68 it is not sufficient for assessee to merely disclose address and identities of shareholders; it has to show genuineness of such individuals or entities.

CIT Vs Empire Builtech (P.) Ltd [Delhi High Court] (2014] 43 taxmann.com 269 (Delhi)(2015] 228 Taxman 346 (Delhi) (MAG.)[2014] 366 ITR 110 (Delhi)

11.23.4 Where assessee, a private limited company, sold its shares to unrelated parties at a huge premium and thereupon within short span of time those shares were purchased back even at a loss, share transactions in question were to be regarded as bogus and, thus, amount received from said transactions was to be added to assessee's taxable income under section 68.

CIT VS MAF Academy (P.) Ltd [Delhi High Court] 42 taxmann.com 377 (Delhi)/(2014] 224 Taxman 212 (Delhi) (MAG.)(2014] 361 ITR 258 (Delhi)/[2014] 265 CTR 6

11.23.5 Where assessee received share capital from various contributors, in view of fact that those contributors were persons of insignificant means and their creditworthiness to have made contributions had not been established, impugned addition made by authorities below in respect of amount in question under section 68 was to be confirmed.

B.R. Petrochem (P.) Ltd. Vs ITO [Madras High Court] [2017] 81 taxmann.com 424 (Madras)/[2018] 407 ITR 87 (Madras)

11.23.6 SLP dismissed upholding that it is open to the Revenue Department to make addition on account of alleged share capital u/s 68, where the assessee company has failed to show genuineness of its shareholders.

Rick Lunsford Trade & Investment Ltd Vs CIT [Supreme Court] 2016-TIOL-207-SC-IT

11.23.7 It was accepted that the assessee was unable to produce the directors and the principal officers of the six shareholder companies and also that as per the information and details collected by the Assessing Officer from the concerned bank, the Assessing Officer had observed that there were genuine concerns about

identity, creditworthiness of shareholders of shareholders as well as genuineness of the transactions, Addition u/s 68 upheld.

CIT Vs Navodaya Castle Pvt Ltd [Delhi High Court] [2014] 50 taxmann.com 110 (Delhi)/[2014] 226 Taxman 190 (Delhi) (MAG.)/[2014] 367 ITR 306 (Delhi)

SLP dismissed against High Court ruling that certificate of incorporation, PAN etc., are not sufficient for purpose of identification of subscriber company when there is material to show that subscriber was a paper company and not a genuine investor.

Navodaya Castle Pvt Ltd Vs CIT [Supreme Court] (2015) 56 taxmann.com 18 (SC)/[2015] 230 Taxman 268 (SC)

11.23.8 Merely furnishing PAN Numbers in routine way, does not explain the source or the creditworthiness of the party. The basis on which premium has been charged for the shares has not been explained. A perusal of the financial statements do not justify the quantum of share premium charged.

Advance PowerInfra Tech Ltd Vs DCIT [ITAT Kolkata] 2017-TIOL-1223-1TAT-KOL

11.23.9 Failure of the assessee to prove business model of the company and also to produce the directors of the share-subscribing companies, to establish genuineness of huge amount of premium on issue of shares is justified reason to treat the same as bogus for purpose of making addition u/s 68.

ITO Vs Sohail Financials Ltd. [ITAT Delhi] ITA No.4867/Del/2011, 2018-TIOL-1874-ITAT-DEL

11.23.10 Where Assessing Officer made additions to assessee's income under section 68 in respect of amount received as share capital from several companies, in view of fact that all of these companies were maintained by one person who was engaged in providing accommodation entries through paper companies and all such companies were located at same address, impugned addition was justified.

PCIT Vs NDR Promoters Pvt Ltd [Delhi High Court][2019] 102 taxmann.com 182

(Delhi)[2019] 261 Taxman 270 (Delhi)/(2019) 410 ITR 379 (Delhi), 2019-TIOL-172-HC-DEL-IT

SLP dismissed against High Court ruling that where Assessing Officer made additions to assessee's income under section 68 in respect of amount received as share capital from several companies, in view of fact that all of these companies were maintained by one person who was engaged in providing accommodation entries through paper companies and all such companies were located at same address, impugned addition was justified.

NDR Promoters Pvt Ltd. Vs PCIT [Supreme Court] [2019] 109 taxmann.com 53 (SC)/[2019] 266 Taxman 93 (SC)

11.23.11 Where assessee received share capital/premium, however there was failure of assessee to establish creditworthiness of investor companies, Assessing Officer was justified in passing assessment order making additions under section 68 for share capital / premium received by assessee company.

PCIT Vs NRA Iron & Steel (P.) Ltd. [Supreme Court] [2019] 103 taxmann.com 48 (SC)/[2019] 262 Taxman 74 (SC)/[2019] 412 ITR 161 (SC)

11.23. 12 Where revenue authorities made addition to assessee's income under section 58 in respect of share application money received from various investors, since assessee failed to produce them despite various opportunity granted to it and, moreover there was no evidence on record establishing genuine investments on their part in shares of assessee-company, impugned addition was to be confirmed.

Royal Rich Developers (P.) Ltd. Vs PCIT (Bombay High Court) [2019] 108 taxmann. com 382 (Bombay)

11.23.13 Turnover of assessee was quite low as compared to funds of said Company and that said company invested in share capital of assessee at a huge premium of Rs.90 per share. Funds of investee company were in form of reserves and surplus and share application money and application of funds was in loans and advances. Moreover, financials of investee company did not

warrant that it deserved share premium of Rs.90 per share.

M.A. Projects (P) Ltd. Vs DCIT TAT Delhi] [2019] 109 taxmann. com 173 (Delhi - Trib.)

11.24 Going by the above, it is clear that the assessing officer is thus left with no other choice than to treat these amounts as credits of share capital/premium as unexplained and add to the income of the assessee. In view of the Overwhelming reasons and case-laws laid down by various courts as above there is a clear case to assess these credits as unexplained u/s 68 and thus, the additions u/s 68 are upheld and the grounds of the assessee in this regard are dismissed.

11.25 However, while making the above addition, the AO has added the entire paid-up capital of Rs.64,89,340 whereas the paid-up capital as at 31.03.2009 itself stood at Rs.1,00,100 which cannot be added for the impugned AY. The AO, is therefore directed to restrict the addition on this account to Rs.63,89,240. In view of the above, the related ground is partly allowed. In the result, the addition of share capital to the extent of Rs.63,89,240 and addition of share premium of Rs.63,25,34,760/- both under u/s 68 are upheld."

9. The Ld. Counsel for the assessee, Shri. B. Ramakrishna, FCA, submitted that the Id. CIT(A) erred in upholding initiation of proceedings u/s. 153C of the Act, on the basis of satisfaction note recorded by the Assessing Officer of the searched person and Assessing Officer of any other person on 31.12.2021, without appreciating fact that if you consider said date, as per proviso to section 153C(1) of the Act, then impugned assessment year falls beyond the stipulated six assessment years and four relevant assessment years and

thus, notice issued by the Assessing Officer u/s. 153C of the Act and consequent assessment order passed u/s. 143(3) r.w.s. 153C of the Act is bad in law, void ab initio and liable to be quashed.

10. The Ld. Counsel for the assessee, referring to dates and events submitted that the assessment for the impugned assessment year is 2010-11 and as per proviso to section 153C(1) of the Act, in case of such other person, the reference to the date of initiation of search u/s. 132 or requisition made u/s. 132A of the Act, in the second proviso to section 153A(1) of the Act, shall be construed as reference to the date of receiving the books of accounts or documents or the assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person. If you consider the date of satisfaction note recorded by the Assessing Officer dated 31.12.2021, it falls under assessment year 2022-23 and ten years immediately preceding the assessment year shall be up to assessment year 2012-13 and not beyond that. Since, the Assessing Officer has issued notice u/s. 153C of the Act, for the assessment year 2010-11, which is beyond the stipulated six assessment years and four relevant assessment years, the

notice issued by the Assessing Officer u/s. 153C of the Act, is outside the scope of section 153C of the Act and thus, consequent assessment order passed by the Assessing Officer u/s. 143(3) r.w.s. 153C of the Act, dated 31.03.2022 is beyond limitation and liable to be quashed. In this regard, he relied upon the decision of Hon'ble Supreme Court in the case of CIT vs Jasjit Singh 458 ITR 437 (SC).

11. The Id. DR, Shri. R. Clement Ramesh Kumar, CIT, supporting the order of the Id. CIT(A) submitted that, in the instant case, the Assessing Officer of searched person and the Assessing Officer of any other person is one and the same and thus, the question of handing over books of accounts and relevant documents found during the course of search to the Assessing Officer of any other person does not arise and consequently, for the purpose of second proviso to section 153C(1) of the Act, date should be construed as date of search, but not date of satisfaction note recorded by the Assessing Officer. The Id. CIT(A), after considering relevant facts has rightly rejected grounds taken by the assessee and also distinguished the case laws relied upon by the assessee in the case of Hon'ble Delhi High Court in the case of RRJ

Securities Ltd vs CIT (Supra). Therefore, there is no merit in legal grounds taken by the assessee and same should be rejected.

12. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The appellant has raised a preliminary objection of jurisdiction of the Assessing Officer in initiating proceeding u/s. 153C of the Act, for the assessment year 2010-11, in light of second proviso to section 153A(1) of the Act, and proviso to section 153C(1) of the Act. As per second proviso to section 153A(1) of the Act, assessment or re-assessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years pending on the date of initiation of the search u/s. 132 of the Act or making of requisition u/s. 132A of the Act, as the case may be shall abate. In other words, stipulated six assessment years and four relevant assessment years from the date of search, if pending as on the date of search conducted u/s. 132 of the Act shall abate, and the Assessing Officer shall have the power to assess or reassess the total income.

13. The provisions of section 153C of the Act deals with, assessment of any other person on the basis of search conducted u/s. 132 of the Act. In the present case, during the course of search, books of accounts and other documents relates to any other person was found which has information relating to any other person and has bearing on their total income. The Assessing Officer of the searched person after recording satisfaction as required u/s. 153C of the Act, shall hand over books of accounts or other documents seized during the course of search to the Assessing Officer of any other person. The proviso provided to section 153C(1) of the Act deals with, date of reference of search u/s. 132 of the Act, or requisition u/s. 132A of the Act and as per said proviso, in case of such other person, reference to the date of initiation of search for the purpose of second proviso to section 153A(1) of the Act, shall be construed as reference to the date of receiving the books of accounts or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person. From a combined reading of section 153A of the Act and second proviso coupled with provisions of section 153C(1) and proviso provided therein, it is undoubtedly clear that, in a case where search is conducted

u/s. 132 of the Act, any incriminating material found relates to any other person and has a bearing on total income of such other person, then the Assessing Officer of the searched person should record satisfaction as required u/s. 153C of the Act and hand over books of accounts and other documents to the Assessing Officer having jurisdiction over any other person. In other words, the Assessing Officer of the searched person should satisfy that documents found during the course of search u/s. 132 of the Act, is having information and has bearing on total income of any other person, and hand over books of accounts and documents to the Assessing Officer of any other person. Unless, he records satisfaction having regard to material found during the course of search, he cannot hand over books of accounts or other documents to the Assessing Officer of any other person. Thereafter, Assessing Officer of searched person should record satisfaction u/s. 153C of the Act for initiation of proceedings u/s. 153C of the Act, having regard to books of accounts and other documents received from the Assessing Officer of the searched person before issuing notice u/s. 153C of the Act. In the present case, the Assessing Officer of the searched person has recorded satisfaction note for proceeding u/s. 153C of the Act

on 31.12.2021 with reference to books of accounts seized during the course of search proceedings, in the case of M/s. Jain Metal Rolling Mills and others. The Assessing Officer of any other person has also recorded satisfaction note for initiation of proceedings u/s. 153C of the Act, on 31.12.2021 and satisfied that the documents and books of accounts seized during the course of search proceedings in the case of M/s. Jain Metal Rolling Mills and others has information relating to the assessee and has bearing on its total income. From the satisfaction note recorded by the Assessing Officer of the searched person and any other person, it is undoubtedly clear that he has handed over books of accounts and other documents found during the course of search in the case of M/s. Jain Metal Rolling Mills to the Assessing Officer having jurisdiction over the appellant on 31.12.2021, which is evident from satisfaction note recorded by the Assessing Officer of the appellant u/s. 153C of the Act on 31.12.2021. If you consider the date of receiving books of accounts or documents as the date of satisfaction note recorded by the Assessing Officer of the searched person and the Assessing Officer of the appellant i.e., on 31.12.2021, then the subject assessment year falls beyond the stipulated six assessment years and four relevant

assessment years, because the date of satisfaction note recorded by the Assessing Officer falls for assessment year 2022-23 and ten preceding assessment year immediately preceding the assessment year in which the search is conducted is up to assessment year 2012-13. Since, the notice issued by the Assessing Officer for the impugned assessment year falls beyond the stipulated six assessment years and four relevant assessment years, considering the satisfaction note recorded on 31.12.2021, in our considered view the notice issued by the Assessing Officer u/s. 153C of the Act, for initiation of proceeding against the assessee and consequent assessment order passed u/s. 143(3) r.w.s. 153C, dated 31.03.2022 is barred by limitation, void ab initio and liable to be quashed.

14. The arguments for the Id. DR for the revenue that, since the Assessing Officer of the searched person and the Assessing Officer of any other person is one and the same, and thus, question of handing over books of accounts and other documents to the Assessing Officer of any other person does not arise and thus, for the purpose of provisions of section 153C(1) of the Act, date of search should be considered, but

not the date of receiving the books of accounts or other documents. In our considered view, the law does not make any distinction, in case the Assessing Officer of searched person and the Assessing Officer of any other person is one and the same. The law is clear in as much as the proviso to section 153C(1) of the Act, is very clear to the effect that in case of such other person, the reference to the date of initiation of search u/s. 132 of the Act, in the second proviso to section 153A(1) shall be construed as reference to the date of receiving the books of accounts or documents or assets by the Assessing Officer having jurisdiction over any such other person. Since, the Assessing Officer of the searched person cannot hand over the books of accounts and other documents to the Assessing Officer having jurisdiction over any other person, unless he records the satisfaction for proceedings u/s. 153C of the Act, in our considered view, for the purpose of second proviso to section 153A(1) of the Act, the date of receiving the books of accounts or other documents by the Assessing Officer having jurisdiction over such other person should be considered. In the present case, if you consider the date of satisfaction note recorded by the Assessing Officer dated 31.12.2021, the subject assessment year falls beyond

the stipulated six assessment years and relevant four assessment years and thus, notice issued by the Assessing Officer u/s. 153C of the Act, dated 31.12.2021 and consequent assessment order passed u/s. 143(3) r.w.s. 153 of the Act, dated 31.03.2022 is barred by limitation and liable to be quashed.

15. The Ld. Counsel for the assessee, has relied upon the decision of Hon'ble Supreme Court in the case of CIT vs Jasjit Singh [2023] 155 Taxmann.com 155, where the Hon'ble Supreme Court while upholding the decision of Hon'ble Delhi High Court in the case of CIT vs Jasjit Singh [2023] 155 Taxmann.com 154, held that in case of any other person, for the purpose of second proviso to section 153A(1) of the Act, shall be construed as reference to the date of receiving the books of accounts or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person. The relevant findings of the Hon'ble Supreme Court are as under:

"7. Sections 153A and Section 153C of the Income Tax Act, 1961 to the extent they are relevant are extracted below:-

"153A. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of

account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003 61[but on or before the 31st day of March, 2021], the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:....”

“153C.(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or

requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A:

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

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated."

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."

16. The assessee had also relied upon the order of the co-ordinate bench of ITAT in the case of NSR Corp vs DCIT in ITA No. 144/Chny/2018, where the Tribunal under identical set of facts by following the decision of Hon'ble Delhi High Court in the case of CIT vs RRJ Securities Ltd (Supra) held that, issuance of notice u/s. 153C of the Act, for the assessment year beyond the stipulated six assessment years and four relevant assessment years could not be sustained. Since, the jurisdictional conditions to issue the same was not fulfilled and it was barred by limitation. The relevant findings of the Tribunal are as under:

5. *Since the assessee has raised a pertinent legal issue contesting the jurisdiction of Ld. AO, we take up the same first. It could be seen that pursuant to search action u/s 132 on 10.01.2013 in the case of M/s Rasi Seeds Private Ltd. group of cases, certain documents were found from the resident of Shri M. Ramasami, Chairman-cum-Managing Director of that entity. The documents, inter-alia, contained Joint Development Agreement (JDA) dated 30.03.2007 between the assessee (land-owner) and another entity namely SMS Gardens (P) Ltd. (SGPL) (developer) for the construction of a residential complex on certain land owned by the assessee at Coimbatore.*

6. *Since the seized document belonged to the assessee, proceedings u/s 153C r.w.s. 153A was initiated against the assessee after recording of reasons and after obtaining due*

approval of prescribed authority. The case of the assessee was centralized vide Notification No.07/2013-14 dated 20.08.2013 and notice u/s 153C r.w.s. 153A was issued on 24.09.2013. In response, the assessee filed return of income on 01.04.2014.

7. It could be seen that jurisdiction over the case of Shri M. Ramasami as well as the assessee vested with same AO and a satisfaction note initiating proceedings u/s 153C in the case of assessee was recorded on 24.09.2013, a copy of which has been placed on record by the revenue. Therefore, to count the jurisdiction of AO, this date i.e., 24.09.2013 assumes importance. The provisions of Sec.153C(1) provide as under: -

153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub section (1) of section 153A :

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

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the

total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated."

These provisions provide that in case of search on a person, if AO is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of any other person then the books of account or documents or assets so seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub section (1) of section 153A. It has further been provided that in case of such other person, the reference to the date of initiation of the search u/s 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person.

8. The provision of Sec.153A (1)(a) postulates issuance of notice in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to previous year in which search is conducted. In the present case, the satisfaction note (as placed by revenue on record) has been recorded by Ld. AO on 24.09.2013 which falls in previous year 2013-14, the relevant assessment year for which is AY 2014-15. Therefore, considering the statutory mandate, the notice that could be issued to the assessee would be as under: -

Year No.	Previous Year	Assessment Year
1.	2012-13	2013-14
2.	2011-12	2012-13
3.	2010-11	2011-12
3.	2009-10	2010-11
5.	2008-09	2009-10

6.	2007-08	2008-09
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The year before us is AY 2007-08. Clearly, this year would be out of the purview of proceedings u/s 153C as per statutory mandate. This being so, the Ld. AO, in our considered opinion, had no jurisdiction to proceed u/s 153C and therefore, the consequential assessment as framed by Ld. AO could not be sustained in the eyes of law.

9. Our aforesaid conclusion is duly supported by the case law of Hon'ble High Court of Delhi in **CIT V/s RRJ Securities Ltd. (380 ITR 612)** wherein it was held as under: -

23. In the present case, the Assessee had claimed that the assessments for the concerned assessment years were not pending on the date of recording of satisfaction by the AO and, therefore, would not abate by virtue of the second proviso to Section 153A of the Act. Further, the period of six years would also have to be reckoned with respect to the date of recording of satisfaction note – that is, 8th September, 2010 – and not the date of search.

24. As discussed hereinbefore, in terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment 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.

*This decision follows earlier decision rendered in **SSP Aviation Ltd. V/s DCIT (2012; 20 Taxmann.com 214)**. No contrary decision is on record.*

10. Therefore, considering the entirety of facts and circumstances, we would hold that issuance of notice u/s 153C could not be sustained in the eyes of law for the year under consideration since the jurisdictional conditions to issue the same was not fulfilled and it was barred by limitation. Resultantly, the consequential assessment framed by Ld. AO would have no legs to stand. The delving into merits of the case has, therefore, been rendered merely academic in nature."

17. In this view of the matter and by considering facts and circumstances of this case, and also by following the decision

of Hon'ble Supreme Court in the case of CIT vs Jasjit Singh (Supra), we are of the considered view that for the purpose of proviso to section 153C(1) of the Act, in case of such other person, the reference to the date of initiation of search u/s. 132 of the Act in the second proviso to section 153A(1) of the Act, shall be construed as reference to the date of receiving the books of accounts or other documents by the Assessing Officer having jurisdiction over such other person and said date is considered in the present case i.e. on 31.12.2021. The assessment year before us is beyond stipulated six assessment years and four relevant assessment years and thus, notice issued by the Assessing Officer u/s. 153C of the Act, dated 31.12.2021 and consequent assessment order passed u/s. 143(3) r.w.s. 153 of the Act, dated 31.03.2022 is barred by limitation and liable to be quashed. Thus, we quash assessment order passed by the Assessing Officer u/s. 143(3) r.w.s. 153C of the Act, dated 31.03.2022.

18. The assessee has raised various other grounds challenging additions made by the Assessing Officer towards share premium in light of the decision of Hon'ble Supreme Court in the case of PCIT vs Abhisar Buildwell (P) Ltd (Supra)

and also on merits of additions towards share premium u/s. 68 of the Act. Since, we have quashed the assessment order passed by the Assessing Officer u/s. 143(3) r.w.s. 153C of the Act, dated 31.03.2022 on preliminary issue of jurisdiction of the Assessing Officer for issuance of notice u/s. 153C of the Act, in our considered view, other grounds taken by the assessee on the issue of merit and also requisite additions made in the assessment framed u/s. 153C of the Act becomes academic in nature and thus, same are dismissed as infructuous.

19. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 06th March, 2024 at Chennai.

Sd/-

(मनोमोहन दास)

(MANOMOHAN DAS)

न्यायिक सदस्य/Judicial Member

Sd/-

(मंजुनाथा. जी)

(MANJUNATHA. G)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 06th March, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF