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

% **Judgment reserved on: 03 July 2024**
Judgment pronounced on: 02 August 2024

\+ ITA 690/2023

THE PR. COMMISSIONER OF INCOME TAX
-CENTRAL -1 .....Appellant

Through: Mr. Anant Mann, JSC for Mr. Ruchir Bhatia, SSC.

versus

KARINA AIRLINES INTERNATIONAL LTD. .....Respondent

Through: Mr. Ruchesh Sinha, Mr. Pankaj Aggarwal, Ms. Monalisa Maity & Ms. Shilpa Choudhary, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

YASHWANT VARMA, J.

1. The Principal Commissioner impugns the order of the **Income Tax Appellate Tribunal**[1] dated 09 June 2021 and posits the following questions of law for our consideration:

> "2.1 Whether the ld. ITAT erred in law by quashing the assessment only on the basis that the amendment under section I53C came into effect from 01.04.2017 while the search was conducted in 2016. The Id. ITAT ignored the fact that this amendment was only clarificatory in nature and the intention of the law with regard to the assessment years relevant for action under section 153C was always clear and had to be calculated from the date of the search?

[1] Tribunal

2.2 Whether the Id. ITAT has erred in law by quashing the assessment under section 153C on grounds that the relevant assessment year should be decided based on the date of recording satisfaction and not in accordance with the date of the search. The ld. ITAT ignored the fact that the satisfaction was recorded on 15.05.2019 and by the time of the amendment to the section 153C was already into effect (01.04.2017) which clarified that the relevant assessment years have to be calculated according to the date of search?

2.3 Whether the ld. ITAT erred in law by ignoring that the implementation provisions have to be interpreted in consonance with the charging provision and there cannot be any anomalous situation created by the interpretation of the implementation provision. The provision under section 153A and 153C of the Act have to be constructed in such a harmonious way that there will not be any different sets of 6 years for reopening of the assessments in case of the person searched and the other person?

2.4 Whether the ld. ITAT erred in law by ignoring the fact that the assessment was made as per proviso of section I53C of the act in effect on the date of recording the satisfaction and the subject assessment years was covered in sets of 6 years as
provide in this section?"

2. The appeal arises in the backdrop of a search and seizure action which was initiated on 07 April 2016 in the case of Harvansh Chawla. Pursuant to the search that was so initiated a Satisfaction Note as contemplated under Section 153A of the **Income Tax Act, 1961**[2] came to be recorded by the **Assessing Officer**[3] with respect to the searched individual on 29 March 2019. The respondent-assessee in this appeal is the non-searched entity. A Satisfaction Note in its respect and referable to Section 153C came to be drawn on 15 May 2019. Pursuant to an assessment being undertaken in terms of Section 153C of the Act, the AO on 31 December 2019 made additions of INR 32,91,052/- in

[2] Act
[3] AO

respect of receipts of foreign inward remittances, INR 2,50,000/- on account of non-deduction of TDS and INR 2,58,30,576/- in respect of debts written off.

3. Aggrieved by the aforesaid, the respondent-assessee preferred an appeal before the **Commissioner of Income Tax (Appeals)**[4] which in terms of its order of 09 June 2021 deleted the addition of INR 32,91,052/- and confirmed addition of INR 2,50,000/-. In respect of addition of INR 2,58,30,576/-, the CIT(A) allowed relief to the extent of INR 2,51,30,576/- and pegged the addition to the extent of INR 7,00,000/-. The income of the assessee consequently stood enhanced by INR 2,23,25,000/-.

4. On the aspect of limitation for initiation of proceedings under Section 153C of the Act, the CIT(A) had held against the respondent assessee and observed as follows:

> "4.2.6 As per the above amendment, six years in which proceedings u/s 153C are required to be initiated are 'six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made'. Satisfaction u/s 153C of Income Tax Act in this case was recorded on 29.03.2019. Since satisfaction in this case has been recorded after amendment in the above provision, amended provisions of section 153C are applicable in the case of the appellant. Hon'ble Delhi High Court in the case of Pr. CIT v Sarwar Agency (P.) Ltd. [2017] 85 taxmann.com 269 (Delhi) held that amendment to section 153C is prospective in nature. Since satisfaction has been recorded after amendment in the Act, amended provisions are applicable in the present case. The appellant also relied upon decision of Hon'ble Delhi High Court in the case of Brahm Datt v/s ACIT (2018)(12) TM 832-Delhi High Court stating that the initiation of proceedings for A.Y. 2011-12 had become time barred on 31/03/2017, the amendment in Section 153C w.e.f. 01/04/2017 cannot be

[4] CIT(A)

> interpreted/meant for extending/enhancing/ revival of already time barred proceedings up to 31/03/2017. This decision was in the context of proceedings u/s 147 of Income Tax Act and not applicable to the present case. As per Act, there is no time limit for issue of notice u/s 153C of Income Tax Act. In view of above discussion, it is held that the Assessing Officer has rightly initiated proceedings u/s 153C of Income Tax Act from AY 2011-12 to 2016 17. **Hence, Ground No. 1 is dismissed**. In view of amended provisions to section 153C of Income Tax Act and the fact that satisfaction was recorded after amendment w.e.f 01.04.2017, the Assessing Officer has rightly completed assessment u/s 153C for AY 2012-13. **Hence, Ground No. 2 is dismissed**."

5. This led to the filing of a second appeal before the Tribunal and which has essentially struck down the initiation of reassessment proceedings under Section 153C on the ground of limitation. This become evident from a reading of paragraph 15 of the order impugned before us and which is extracted hereinbelow:

> "15. In the circumstances, we are of the considered opinion that since the date of search is 07.04.2016, the amendment brought by the Finance Act, 2017 would not be applicable and consequently the order of assessment dated 31.12.2019 passed u/s 153C r.w.s. 144 of the Act is bad and is liable to be quashed. We order accordingly. In view of our finding that the very assessment Itself Is bad being barred by limitation, adjudication of other grounds will only be academic and need not be resorted to."

6. The Tribunal appears to have essentially borne in consideration the fact that since the date of search was 07 April 2016, the amendments which came to be introduced in Section 153C by virtue of Finance Act, 2017 would not be applicable.

7. It becomes pertinent to note that as those provisions stood prior to Finance Act, 2017, the relevant assessment years which could be thrown open pursuant to a search stood at six assessment years. By

virtue of Finance Act, 2017 the block period for search assessment stood extended to ten assessments years on account of the introduction of the concept of *"relevant assessment year or years"*. That expression came to be defined by Explanation 1 to Section 153A as extending to the period which falls beyond six assessment years but not later than ten assessment years from the end of the AY relevant to the previous year in which the search was conducted or requisition made.

8. Simultaneous amendments came to be introduced in Section 153C and the concept of relevant assessment years adopted therein. However, it becomes pertinent to note that the Second Proviso to Section 153A (1) of the Act made the reopening of ten assessment years subject to three conditions which stand embodied therein. Section 153A of the Act is reproduced hereunder: -

> "**153-A. Assessment in case of search or requisition**.—
>
> [(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 132-A after the 31st day of May, 2003 [but on or before the 31st day of March, 2021], the Assessing Officer shall—
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> (*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 of 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 132-A, as the case may be, shall abate:

[Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases 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] :]

[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 132-A is made on or after the 1st day of April, 2017.

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. As is manifest from the above, clause (c) of that Proviso clearly stipulates that no notice for assessment or reassessment for the relevant assessment year or years could be issued if a search had been made prior to 01 April 2017. This is evident from the Second Proviso stipulating that the amended block period provision would get attracted only if the search had been initiated or requisition made on or after the first day of April 2017. Undisputedly in the facts of the present case the search was conducted on 07 April 2016.

10. We note that the Tribunal has firstly faulted the appellants on the ground of the search itself having been conducted on 07 April 2016 and thus the extended period of ten years not being applicable at all. The position so taken clearly appears to be unexceptional bearing in mind the plain language in which the Second Proviso to Section 153A (1) stands couched. We also bear in mind the position of an assessment under Section 153C of the Act broadly following the same procedure as envisaged by Section 153A. This is evident from the former Section employing the phrase "*in accordance with the provisions of Section 153A*". The contemporaneous amendments which came to be included in Sections 153A and 153C of the Act would thus have to abide by the conditions which stand embodied in the Second Proviso to Section 153A(1). It is thus manifest that the power to assess the block period of ten years would clearly not be attracted in case of a search which had taken place prior to 01 April 2017. Viewed in the aforesaid light, it becomes apparent that the reassessment for AY 2012-13 and which

would necessarily fall beyond six assessment years when computed from the recordal of satisfaction would not sustain.

11. To recapitulate, Mr. Mann, learned counsel for the appellant had principally sought to lay stress on the amendments which came to be introduced in Section 153C by virtue of Finance Act, 2017 to submit that the block of six assessment years stands indelibly connected to the previous year in which search is conducted or requisition made. According to learned counsel, this becomes apparent from the aforesaid amendment using the expression "….*relevant to the previous year in which search is conducted*" in conjunction with the expression "*six assessment years immediately preceding the assessment year*". It is in the aforesaid backdrop that Mr. Mann submitted that post Finance Act, 2017, even in the case of a non-searched entity, the period of six AYs' is liable to be reckoned with reference to the date of search.

12. Section 153C of the Act and in the context of which the aforesaid contention is addressed is reproduced hereinbelow: -

> "**153-C. Assessment of income of any other person**.— [(1)] [Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, where the Assessing Officer is satisfied that,—
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> (*a*) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or
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> (*b*) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,
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> a person other than the person referred to in Section 153-A, 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 153-A, 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 153-A] :]
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> [**Provided that** in case of such other person, the reference to the date of initiation of the search under Section 132 or making of requisition under Section 132-A in the second proviso to [sub-section (1) of Section 153-A] shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :]"

13. The second submission which was addressed was in the backdrop of the facts of the present case, and where the **Assessing Officer**[5] was common for both the searched as well as the non-searched entity and thus the jurisdictional AO being the same. In such a scenario, Mr. Mann contended that there would be no occasion for an actual handing over of the books of accounts or documents or materials unearthed in the search and consequently the First Proviso to Section 153C(1) of the Act being inapplicable.

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

[5] AO

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'.

16. It however becomes relevant to note that Section 153C applies equally to all non-searched entities and neither carves out an exception nor does it create a separate regime pertaining to a contingency where the AO of the searched and the non-searched entity are one and the same. If the submission of Mr. Mann were to be accepted, it would

amount to the Court carving out an exception in respect of those cases where the jurisdictional AO of the searched and non-searched entity were the same. This would also lead and constrain the Court to restrict the application of the First Proviso to Section 153C (1) of the Act only to those cases where the AO of the non-searched entity be one different from that of the searched person. This would clearly amount to a reconstruction of Section 153C and creating an exception which the Legislature chose not to introduce.

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 vs. Jasjit Singh**[6]. The relevant paragraphs of the said decision are reproduced hereinbelow: -

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

[6] 2023 SCC Online SC 1265

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.

22. We consequently find no merit in the appeal. The questions posited are answered against the appellants. The appeal shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 02 2024/rsk