

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHANDIGARH

PHYSICAL HEARING

**BEFORE HON'BLE SHRI RAJPAL YADAV, VICE PRESIDENT
AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकरअपील सं./ ITA No.430/CHANDI/2022
(निर्धारणवर्ष / Assessment Year: 2013-14)**

M/s Amico Textiles Village Bir Plassi, Ropar Road, Nalagarh, Solan Himachal Pradesh 176077	बनाम/ Vs.	DCIT Central Circle-1 Chandigarh
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAQFA-9823-K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Sh. Neeraj Jain (CA) – Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Sh. Manav Bansal (CIT) – Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	23-06-2025
घोषणाकीतारीख / Date of Pronouncement	:	15-07-2025.

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2013-14 arises out of an order of learned Commissioner of Income Tax (Appeals)-3, Gurgaon [CIT(A)] dated 31-03-2022 in the matter of an assessment framed by Ld. AO u/s 147 r.w.s. 153A of the Act on 17-12-2018. The assessee is aggrieved by confirmation of addition of Rs.46.87 Lacs.

2. The Ld. AR advanced arguments on legal grounds and placed reliance on certain decision of this Tribunal to plead that assessment ought to have been framed u/s 153C and not u/s 147. The Ld. AR also assailed additions on merits. The Ld. CIT-DR, on the other hand, controverted the arguments of Ld. AR. Having heard rival submissions and upon perusal of case records, the appeal is disposed off as under.

3. A notice u/s 148 was issued to the assessee on 17-05-2017. The case was reopened pursuant to search and seizure action in the case of *M/s Longowalla* Group of cases on 04-09-2014 which also covered partners of the assessee-firm. During search on partners, certain notebooks were found and seized which appeared to be unaccounted cash book of the assessee-firm. Shri Sumit Mohan, one of the partners, admitted that the transactions pertained to the assessee-firm. Accordingly, the case was reopened wherein the assessee-firm denied having any connection with these notebooks. It was, inter-alia, stated that the document belonged to the partner only and not to the assessee and no cognizance of this document could be taken in the hands of the assessee-firm. However, going by the affidavit of Shri Sumit Mohan, and considering the fact that various entries as mentioned in the notebook was tallying with the regular books of the assessee, Ld. AO added the amount of Rs.46.87 Lacs u/s 68 and framed the assessment.

4. During appellate proceedings, the assessee raised a legal plea that the assessment ought to have been framed u/s 153C as seized document was found from the possession of one of the partners which

was used against the assessee to make the impugned addition. However, Ld. CIT(A) noted that the seized material belonged to the partner of the assessee-firm though it contained transactions related to the assessee. Since the document belonging to assessee was not found, the provisions of Sec.153C were not applicable. The assessment, on merits, was also confirmed. Aggrieved, the assessee is in further appeal before us with similar legal grounds as well as grounds on merits.

5. We find that identical legal issue has been adjudicated by this Tribunal in bunch of appeals titled as **Subhash Chander Gupta (ITA Nos.765/Chd/2024 dated 07-04-2025)** as under: -

9. We have considered the rival contentions and have gone through the record carefully. Section 153(C) of the income after its amendment by Finance Act, 2015 has a direct bearing on the controversy, therefore, we deem it appropriate to take note of this Section, which read as under :

153C. Assessment of income of any other person.—(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(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 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 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 153-A:

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: 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 153-A except in cases where any assessment or reassessment has abated.

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

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

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153-A."

10. A bare perusal of this Section would reveal that it starts with a non obstante clause "notwithstanding anything contained in Section" meaning thereby this Section has an over-riding effect over other Sections namely; 139, 147, 148, 149 etc. This Section contemplates that where AO of the searched person is satisfied that ;

a) Any money, bullion, jewellery, other valuable article or thing seized or requisitioned belong to or

b) Any books of account, document seized or requisitioned pertains or pertains to or any information contained therein relates to a person other than the person referred in Section 153A, then AO of the searched person would record his satisfaction and transmit those materials to the AO of such other person qua whom these materials have been found during the course of search.

Prior to Finance Act, 2015, this Section was not in the present shape. It has been divided in two categories post 2015. The first limb of Section deals with items discovered in physical form i.e. money, bullion, jewellery and the second limb of Section provides if any books of account, documents seized or requisitioned pertains or pertains to or any information contained therein pertains to a person other than the person covered under Section 153A, then procedure contemplated under Section 153C is required to be followed. In the old Section, only sub-clause (1) was available, however in the post amendment, this sub-clause (1) has been divided in (a) and (b). Under sub-clause (b), the scope of the Section has been amplified. It provides that any books of account,

documents seized or requisitioned pertains or pertains to or any information contained therein relates to a person other than the person referred in Section 153A, then also notice under Section 153C is mandatory.

11. Before embarking on an enquiry further, we deem it appropriate to take note of the judgment of Hon'ble Supreme Court in the case of ITO Vs Vikram Sujitkumar Bhatia reported in 149 taxman.com 123. The basic reason for taking cognizance of this judgement at this stage is the assessment year involved herein is assessment year 2011 12 and we are taking cognizance of Section 153C as amended by Finance Act, 2015. In this judgment, Hon'ble Supreme Court had an occasion to consider whether this amended Section will be applicable with retrospective effect or not. The question formulated by the Hon'ble Supreme Court in this judgment read as under :

“Whether amendment brought to Section 153C of the Income Tax Act, 1961 vide Finance Act, 2015 would be applicable to search conducted under Section 132 of the Income Tax Act, 1961 before 01.06.2015 i.e. the date of amendment ?

11.1 This question has been replied against the assessee and in favour of the Revenue by the Hon'ble Supreme Court. After lot of discussion, Hon'ble Supreme Court has propounded as under :

“11. In view of the above and for the reasons stated above, the impugned common judgment and order passed by the High Court is held to be unsustainable and the question, i.e., "Whether the amendment brought to section 153C of the Income-tax Act, 1961 vide Finance Act, 2015 would be applicable to searches conducted under section 132 of the Act, 1961 before 1 6-2015, i.e., the date of amendment?", is answered in favour of the Revenue and against the assessee and is answered accordingly. Therefore, it is observed and held that the amendment brought to section 153C of the Act, 1961 vide Finance Act, 2015 shall be applicable to searches conducted under section 132 of the Act, 1961 before 1-6-2015, i.e., the date of the amendment. The impugned common judgment and order passed by the High Court, therefore, deserves to be quashed and set aside and is accordingly quashed and set aside. However, as before the High Court respective assessment orders were challenged mainly on the aforesaid issue, which is now answered in favour of the Revenue as above, we reserve the liberty in favour of the respective assessee to challenge the assessment orders before CIT (A) on any other grounds which may be available and it is observed that if said appeals are preferred within four weeks from today, the same be considered in accordance with law and on their own merits, on any other grounds.

Present appeals are accordingly allowed in terms of the above. However, in the facts and circumstances of the case, there shall be no order as to costs.”

11.2 Thus, according to this decision of the Hon'ble Supreme Court, this post amended Section of 153C will be applicable in this assessment year also. The assessment order is dated 31.12.2018 i.e. after the amendment carried out in Section 153C by Finance Act, 2015.

12. We have taken cognizance of the alleged seized material (extracted supra) as well as the belief formed by the AO while recording the reasons for re-opening of the assessment. According to the Revenue, this paper pertains to the assessee. The information contained in this paper is regarding payment of Rs.13 Cr to the assessee. Thus, this also pertains to the assessee. In such situation, to our mind, the AO ought to

have initiated the proceedings under Section 153C. In other words, AO of the searched person i.e. AO of Shri Sanjay Bansal or of the Trust should have recorded satisfaction that information contained in this loose paper pertains to the assessee and action against the assessee deserves to be taken under Section 153C because income has escaped assessment in the hands of the assessee. Such satisfaction ought to have been transmitted to the AO of the assessee and only thereafter, assessment could have been made. No action under Section 147/148 could be taken against the assessee because Section 153C starts with a non obstante clause namely, notwithstanding anything contained in Section 139/147. Thus, Section 147/148 has no bearing if proceeding required to be taken against the assessee under Section 153C of the Income Tax Act. The AO has failed to follow the mandatory procedure required to be followed, hence, assessment order is not sustainable and accordingly, is quashed. For our above view, we are fortified by the judgements relied upon by the Id. Counsel for the assessee and taken note by us in paragraph No. 7 of this order. The Act contemplated a procedure which is required to be followed mandatorily and which has not been followed by the AO.

The bench, considering the decision of Hon'ble Apex Court in the case of **Vikram Sujitkumar Bhatia (149 Taxman.com 123)** quashed the assessment on the ground that that the same ought to have been framed u/s 153C for which recording of satisfaction note would be required. We find that the case before us has identical facts. The material as used against the assessee has been found during search on one of the partners. The impugned addition is solely based on the seized material only. In such a case, the assessment ought to have been framed u/s 153C for which recording of satisfaction note would be a mandatory statutory requirement. No such satisfaction note has been shown to us. Even otherwise, the assessment has been framed u/s 147 which has no applicability to the facts of the present case since the special provisions of Sec.153A to 153C overrides applicability of other provisions of the act. Respectfully following the decision of co-ordinate bench, we quash the assessment order. The assessee succeeds on

legal ground alone which render other ground mere academic in nature.

6. The appeal stand allowed in terms of our above order.

Order pronounced on 15-07-2025.

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Dated: 15-07-2025.

आदेश की प्रतिलिपि अग्रेषित /Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT CHANDIGARH