IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH: 'D' NEW DELHI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

&

SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.203/Del/2021

(Assessment Year: 2012-13)

Karina Airlines Intenational Limited, No. 11, Gali No. 5, Block-A, West Karawal Nagar, New Delhi.	**Vs.**	ACIT, Circle- 5DCIT New Delhi.
PAN No. AADCK1912D		
Appellant		**Respondent**

Assessee by Sh. Amit Goel, CA

Revenue by Ms. Aashna Paul, CIT/DR

Date of hearing: 09.06.2021
Pronouncement on 09 .06.2021

ORDER

PER K. NARASIMHA CHARY, JM

Aggrieved the order dated 10.03.2021 passed by the learned Commissioner of Income Tax (Appeals)-24, New Delhi ("Ld. CIT(A)") for the assessment year 2012-13, Karina Airlines International Limited ("the assessee") filed this appeal.

2. Brief facts of the case are that the assessee is a limited company

and is engaged in the business of running of helicopters services. They have filed their return of income under section 139(1) of Income Tax Act 1961 (the Act) on 29 September 2012, declaring an income of INR 2,12,19,096/-. It was processed under section 143(1) of the Act. A search & seizure action under section 132 of the Act was initiated on 7 April 2016 in the case of Sh. Harvansh Chawla**.** Satisfaction under section 153A of the Act, by the learned Assessing Officer of the searched person (Sh. Harvansh Chawla) was recorded on 29/3/2019. Learned Assessing Officer for the both, searched person and the assessee was same. Learned Assessing Officer recorded his satisfaction in case of assessee on 15/5/2019 and issued notice under section 153C of the Act. In response to the same, the assessee furnished return of income vide letter dated 15/12/2019. Learned Assessing Officer made an addition of Rs. 32,91,052 on account of Receipt of foreign inward remittance, Rs. 2,50,000 on account of non-deduction of TDs and Rs. 2,58,30,576/-on account of debtors written off.

3. Assessee filed appeal before Ld. CIT(A), who out of above additions, deleted addition of Rs 32,91,052/- and confirmed addition of Rs 2,50,000/- and in respect of addition of Rs 2,58,30,576/-, the Ld. CIT(A) allowed relief to the extent of Rs 2,51,30,576/- and confirmed addition to the extent of Rs 7,00,000/-. Apart from this, Ld. CIT(A) made enhancement to income by Rs 2,23,25,000/-.

4. Aggrieved by the said action of the Ld. CIT(A), assessee preferred this appeal on the following grounds:-

1. On the facts and circumstances of the case and in law, the assessment proceedings initiated u/ 153C in this case is bad-in-law, without jurisdiction and barred by limitation and accordingly the assessment proceedings initiated and

assessment order passed are liable to be quashed and the CIT(A) erred in not holding so.

2. On the facts and circumstances of the case and in law, the issue of notice u/s 153C and recording of satisfaction are contrary to provision of law and accordingly, the assessment proceedings initiated, and assessment order passed on the foundation of such notice are liable to be quashed.

3. On the facts and circumstances of the case and in law, the CIT(A) erred in enhancing income by Rs. 2,23,25,000/- on account of alleged income u/s 69 of the Act,

3.1 On the facts and circumstances of the case and in law, the addition/ enhancement of income of Rs. 2,23,25,000/- by CIT(A) is beyond the scope of provisions of Section 153 A r.w.s 153C of the Act

3.2 On the facts and circumstances of the case and in law, the CIT(A) erred in enhancing/making addition of Rs. 2,23,25,000/- without appreciating that his action has resulted into double addition/taxation to the extent of Rs. 2,23,25,000/-

3.3 On the facts and circumstances of the case and in law, the CIT(A) erred in not reducing the amount of Rs. 2,23,25,000/- from the amount of Rs. 2,49,94,500/- shown as income by the appellant, not appreciating that if the amount of Rs. 2,23,25,000/- was added as income by way of enhancement, then the amount of Rs. 2,23,25,000/- would be consequently required to be reduced from the amount of Rs. 2,49,94,500/- already shown as income by the appellant.

4. On the facts and circumstances of the case and in law, the addition of Rs. 2,50,000/- made by the assessing officer and confirmed by CIT(A) is beyond the scope of provision of Section 153 A r.w.s 153C of the Act,

4.1 On the facts and circumstances of the case and in law, the CIT(A) erred in confirming addition of Rs. 2,50,000/- made by the assessing officer on account of disallowance u/s 40(a)(ia) of the Act,

5. On the facts and circumstances of the case and in law, the addition of Rs. 7,00,000/- confirmed by CIT(A) on account of amount written off is beyond the scope of provision of Section 153 A r.w.s 153C of the Act

5.1 On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the addition to the extent of Rs. 7,00,000/- on account of amount written off.

6. On the facts and circumstances of the case and in law, the

assessment order passed by the assessing officer is liable to be quashed as approval u/s 153D of the Act by the JCIT/Addl CIT is not in accordance with the provisions of Act and CIT(A) erred in not holding so.

7. On the facts and circumstances of the case and in law, the assessment order passed by the assessing officer is liable to be quashed as no document identification number (DIN) was generated and CIT(A) erred in not holding so.

5. Insofar as the issue of limitation covered by ground No. 1 is concerned, it is argued by the Ld. AR that in case of a "searched person", provisions of section 153A are applicable, in accordance with which, the assessing officer is to assess or reassess total income of "searched person" for six assessment years immediately preceding the assessment year relevant to the assessment year in which search is conducted or requisition is made; whereas **t**he second proviso to sub-section (i) of section 153A also provides that assessment or reassessment of these six assessment years, if pending on the date of initiation of search u/s 132 or making of requisition u/s 132A, as the case may be, shall abate. On this basis he submits that, inasmuch as the search u/s 132 was conducted in the case of Sh Harvansh Chawla on 07.04.2016, the date of search falls in A.Y. 2017-18 in the case of Sh Harvansh Chawla, and consequently, the assessing officer in the case of Sh Harvansh Chawla was empowered to initiate the proceedings u/s 153A for immediately preceding six years from A.Y. 2011-12 to A.Y. 2016-17. He, however, submits that in case of the assessee who happens to be the "person other than the searched person", provisions of section 153C are applicable and in such case**,** the "date of search or date of requisition" as referred to in section 153A issubstituted by the "date of handing over of documents by the assessing officer of searched person to the assessing officer of other person".

6. On this premise, he continues to submit that, the assessing officer

in his capacity as A.O. of the searched person has recorded satisfaction on 29.03.2019, which establishes that, at the earliest, it is the date of 29.03.2019, when the assessing officer can be presumed to have got the documents in his capacity as assessing officer of the appellant, on the basis of which proceedings u/s 153C have been initiated. Since the date of such recording of satisfaction on 29.03.2019 falls in previous year 2018-19 relevant to A.Y. 2019-20,_ the immediately preceding six years are A.Y. 2013-14 to A.Y. 2018-19, and, therefore, the notice u/s 153C for A.Y. 2012-13 could not have been issued by the learned Assessing Officer, as the same are barred by limitation.

7. Per contra, Ld. DR submits 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; that the provisions under sections 153A of the Act and 153C of the Act have to be construed 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. She also referred to the amendment brought by the Finance Act, 2017 w.e.f. 1/4/2017 to the effect that the 6 assessment years to be reckoned shall be the 6 previous years immediately preceding the assessment year relevant to the previous year in which the search was conducted. The sum and substance of the argument of Ld. DR is that there cannot be two sets of 6 years for the purposes of section 153A of the Act and 153C of the Act respectively.

8. In reply, Ld. AR submitted that in Pr. CIT v Sarwar Agency P. Ltd. [2017)185 taxmann.com 269 (Delhi) the Hon'ble jurisdictional High Court held that the amendment is only prospective in nature and has no retrospective application, and since the search in this case happened to

be on 7/4/2016 it is earlier to the amendment and the amendment has, therefore, no application to the facts of the case. He further placed reliance on the decisions of the Hon'ble jurisdictional High Court in the cases of CIT v RRJ Securities Ltd. 120151 62 taxmann.com 391 (Delhi) and ARN Infrastructure India Ltd v ACIT [20171 81taxmann.com 260 (Delhi) and the view taken by a coordinate Bench of this Tribunal in the case of MIKADOREALTORS P. LTD. VERSUS PR. CIT (CENTRAL) GURUGRAM. 2021 (5)TMI 722 - ITAT DELHI I.T.A. NO. 50/DEL/2021 in support of his argument that the assessment is time-barred.

9. We have gone through the record in the light of the submissions made on either side. Insofar as the facts are concerned there is no dispute. Search in the case of Harvesh Chawla took place on 7/4/2016, the satisfaction by the learned Assessing Officer of the searched person was recorded on 29/3/2019 and the seized material was handed over to the learned Assessing Officer of the assessee who had recorded his satisfaction on 15/9/2019. It is clear that the date of search had fallen in the A.Y. 2017-18 which is relevant for the case of the person searched; whereas the satisfaction recorded by the learned Assessing Officer of the searched person on 29/3/2019 had fallen in the assessment year 2019-20 in which case the immediately preceding 6 assessment years would be assessment years 2013-14 to 2018-19; and the date of satisfaction recorded by the learned Assessing Officer of the assessee on 15/5/2019 falls in the assessment year 2020-21 in which case the immediately preceding 6 assessment years would be the assessment years from 2014-15 to 2019-20.

10. It is, therefore, clear that when we reckon the 6 assessment years with reference to the recording of satisfaction by the learned Assessing Officer of the searched person or with reference to the recording of

satisfaction by the learned Assessing Officer of the other person, in either case the assessment year 2012-13 is well beyond such period. So far as this factual position is concerned, it remains unassailable.

11. In respect of the starting point for computation of the block period, the Hon'ble Delhi High Court in the case of Pr. CIT v Sarwar Agency (P.)Ltd. [2017)185 taxmann.com 269 (Delhi) clearly held that in case of other person u/s 153C of the Act, the starting point for computation of the block period would be the date from on which based on the seized documents, notice is issued to the other person.It was further held by the Hon'ble court that the amendment made in section 153C by Finance Act 2017 w.e.f. 1st April 2017 which states that block period for the "searched person" as well as the "other person" would be same six AYs immediately preceding the year of search is only prospective. It makes the things clear that the search that took place on 7/4/2016 in this case is prior to amendment unaffected by the amendment made by way of Finance Act 2017.

12. In CIT v RRJ Securities Ltd. (supra)the Hon'ble High Court held as under :

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

assets/documents to the AO of the Assessee. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e.. 8th September, 2010. In this view, the assessments made in respect of assessment 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, accent the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee's income for that year.

13. Further, in the case of ARN Infrastructure India Ltd v ACIT (supra) the Hon'ble High Court held that,-

> ***12.*** *The decision in RRJ Securities Ltd. {supra) is categorical that under Section 153C of the Act, the period of six years as regards the person other than the searched person would commence only from the year in which the satisfaction not is prepared by the AO of the searched person and a notice is issued pursuant thereto.* ***The*** *date of the Satisfaction Note is 21st July. 2014 and the notice under Section 153C of the Act was issued on 23rdJuly 2014. The previous six AYs would therefore be from AY 2009-10 to AY 2014-15.This would therefore not include AYs 2007-08 and 2008-09****.****The decision in RRJ Securities Ltd. (supra) is also an authority for the proposition that for the proceedings under Section 153C to be valid, there had to be a satisfaction note recorded by the AO of the searched person.*

14. Lastly, in MIKADOREALTORS P. LTD. VERSUS PR. CIT (CENTRAL) GURUGRAM. 2021 (5)TMI 722 - ITAT DELHI I.T.A. No.50/DEL/2021 a coordinate Bench of this Tribunal held that,-

7. *We will first take up the issue, whether in cases of Section 153C, the period of six years has to be reckoned from the date of recording of satisfaction note or from the date of search carried out in a case of a person provided in Section 153A. This precise issue has been dealt by the Hon'ble Delhi High Court in the case of CIT vs. RRJ Securities Ltd. as reported in 380 ITR 612 in the context of Section 153C of the Act, wherein it was laid down as under:*

> *"Further, the period of six years would also have to be reckoned with respectto 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 153 A 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 153 A 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 recordings 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 recordings 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 153 A 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 principle was further reiterated in the case of ARN Infrastructure India Ltd. v. ACIT as reported in 394 ITR 569, wherein it has been held as under:

"12. The decision in RRJ Securities Ltd. (supra) is categorical that under / Section 153C of the Act, the period of six years as regards the person other than the searched person would commence only from the year in which the satisfaction not is prepared by the AO of the searched person and a notice is issued pursuant thereto. The date of the Satisfaction Note is 21st My, 2014 and the notice under Section I53C of the Act was issued on 23rd July, 2014, The previous six AYs would therefore be from AY 2009-10 to AY 2014-15. This would therefore not include AYs 2007- 08 and 2008-09.

8. *If we apply the ratio laid down by the Hon'ble Jurisdictional High Court, in the present case, then the date of satisfaction, i.e., 25.09.2018 has to be reckoned as the date of reference from where six assessment years immediately preceding assessment years has to be construed and therefore, six preceding assessment years in this case shall be from Assessment Year 2012-13 to Assessment Year 2018-19. The instant Assessment Year, i.e., Assessment Year 2017-18 ergo would be covered in the earlier six assessment years where the assessments have to be framed u/s.l53C only, whereby the Assessing Officer was required to issue a notice u/s.153C, and frame the assessment u/s.l53C/143(3). Contra to the law as interpreted by the Hon'ble Jurisdictional High Court, the Id. Assessing Officer had issued notice u/s. 142(1) and resultantly has framed the assessment u/s. 143(3), treating it to be regular assessment for the year of search. The amendment to clarify this position u/s. 153C (1) was brought in the statute by the Finance Act, 2017 w.e.f. 01.04.2017, wherein it has been provided that the six preceding assessment years for the person covered u/s 153C would be same as that of the searched person covered u/s 153A. In other words, in case of 'the other person' (i.e. person covered u/s 153C), six preceding assessment years has to be reckoned from the year of search. This amendment has been held to be prospective by the Hon'ble Jurisdictional High Court in the case of CIT vs. Sarwar Agency P Ltd. as reported in 397 ITR 400, wherein the Hon'ble Court observed and held as under:*

"10. Mr. Salil Aggarwal, learned counsel for the Assessee, has drawn the attention of the Court to the recent amendment made in Section 153 C of the Act by the Finance Act, 2017 with effect from 1st April 2017. This amendment in effect states that the block period for the searched person as well as the 'other person' would be the same six AYs immediately preceding the year of search. This amendment is prospective.

11. *Mr. Ashok Manchanda, learned Senior Standing counsel for the Appellant, sought to pursue this Court to reconsider its view in RRJ Securities (supra). The Court declines to do so for more than one reason. First, for reasons best known to it, the Revenue has not challenged the decision of this Court in RRJ Securities (supra) in the Supreme Court. The said decision has been consistently followed by the authorities under this Court as well as by this court. Thirdly, the recent amendment to Section 153C (1) of the Act states for the first time that for both the searched person and the other person the period of reassessment would be six AYs preceding the year of search. The said amendment is prospective.*

12. *Consequently, no substantial question of law arises from the impugned order of the ITAT. The appeal is, accordingly, dismissed."*

9. *Further, Hon'ble Gujarat High Court in the case of Anil Kumar Gopikishan Arawal v. CIT as reported in 418 ITR 25 has also clarified that such an amendment is prospective after observing as under:-*

"19.19 It may be pertinent to note that vide CBDT Circular No. 2/2018 / dated 15.2.2018, it has been clarified that the amended provisions of section 153A of the Act shall apply where search under section 132 of the Act is initiated or requisition under section 132A of the Act is made on or after 1st day of April, 2017. It is further stated therein that section 153C of the 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. It is also stated therein that the amendment will take effect from 1st April, 2017. Therefore, even the CBDT, in the context of the amended provisions of section 153A of the Act, has clarified that it would apply when search or requisition is made after the date of the

amendment. Evidently, therefore, even the amended provisions of section 153C of the Act would apply when search or requisition is made after the amendment."

10. *Similar amendments have been made from time to time in Section 153C and one of such amendment was in the Finance Act, 2015 brought in the statute from 01.06.2015, whereby the statute extended the scope of Section 153C by holding that not only the specified items 'belonging to other person' would trigger the provision of Section 153C but also any books of account or documents, seized or requisitioned which pertain to, or any information contained therein, which relates to other person would also trigger the provisions of section 153C of the Act. This amendment too has been held to be prospective and applicable only to searches conducted after 01.06.2015. This has been held so as Hon'ble Jurisdictional High Court in various judgments, some of which are as under:*

i. *399 ITR 202 (Del) Canyon Financial Services Ltd. vs. ITO 5. The search in the Dalmia Group of Companies took place on 20th January, 2012 and the satisfaction note by the AO of the searched person was dated 13th March, 2014. Therefore, Section 153C as it stood prior to the amendment with effect from 1st June, 2015 applied to the case on hand. In terms of the said provision ie., 153C(1), the AO of the searched person had to be satisfied that the documents seized 'belongs or belong to a person other than the person referred to in Section 153 A' in order that the AO of the searched person could to hand over such documents to the AO "having jurisdiction over such other person". The change brought about by the prospective amendment, with effect from 1st June 2015, is that for initiating proceedings under Section 153 C arising from searches after that date it is enough for the Department to show that a particular seized document 'pertains to' the other person. However, in the present case, since the proceedings under Section 153 C (1) of the Act against the Assessee commenced prior to 1st June 2015, the Department is not relieved of the burden of showing that the seized documents in fact belong to (and not merely pertain to) the Assessee.*

ii) *417 ITR 617 (Del) PCIT vs. Dreameity Buildwell (P) Ltd. "17. In*

the present case the search took place on 5th January 2009. Notice to the Assessee was issued under Section 153 C on 19th November 2010. This was long prior to 1st June, 2015 and, therefore, Section 153C of the Act as it stood at the relevant time applied. In other words, the change brought about prospectively with effect from 1st June. 2015 by the amended Section 153C (11 of the Act did not apply to the search in the instant case. Therefore, the onus was on the Revenue to show that the incriminating material/documents recovered at the time of search 'belongs' to the Assessee, In other words, it is not enough for the Revenue to show that the documents either 'pertain' to the Assessee or contains information that 'relates to' the Assessee."

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.

16. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 09/06/2021.

Sd/-	Sd/-
(PRASHANT MAHARISHI)	**(K. NARSIMHA CHARY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 09/06/2021

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI