आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

(Conducted through Virtual Court)

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

IT(SS)A No.145 and 146/Ahd/2018
निर्धारण वर्ष/ Asstt.Year : 2012-13 and 2013-14

AND

ITA No.1206/Ahd/2018
निर्धारण वर्ष/ Asstt.Year : 2014-15

SBG Infrastructure LLP., 4-1, Govardhan Apartment Nr. Bank of Baroda, Karelibaug Vadodara 390 023. PAN : ABDFS 2792 K	Vs.	DCIT, Cent.Cir.2 Baroda.

ITA No.1286/Ahd/2018
निर्धारण वर्ष/ Asstt.Year : 2014-15

JCIT (OSD), Cent.Cir.2 Baroda.	Vs.	SBG Infrastructure LLP., 4-1, Govardhan Apartment Nr. Bank of Baroda, Karelibaug Vadodara 390 023.

(Applicant)		**(Responent)**

Assessee by :	Shri U.S. Bhati, with Shri Abhimanyu Singh Bhati, ARs
Revenue by :	Shri O.P. Sharma, CIT-DR

सुनवाई की तारीख/**Date of Hearing : 19/05/2021**
घोषणा की तारीख /**Date of Pronouncement: 13/07/2021**

आदेश/O R D E R

PER RAJPAL YADAV, VICE-PRESIDENT:

Present four appeals are directed against common order of the ld.CIT(A)-12, Ahmedabad dated 13.3.2018 passed for the Asstt.Year 2012-13 to 2014-15. Out of the above four appeals, ITA

No.1286/Ahd/2018 is a cross appeal at the instance of the Revenue in the Asstt.Year 2014-15; rest three appeals are by the assessee. Since common issues are involved, therefore, we heard all these appeals together and deem it appropriate to adjudicate them by this common order.

2. First we take IT(SS)A.No.145 and 146/Ahd/2018 i.e. appeals of the assessee for the Asstt.Year 2012-13 and 2013-14. In both these years, the assessee has revised its grounds of appeal and the grounds of appeal taken by the assessee read as under:

IT(SS)A.No.145/Ahd/2018 Asstt.Year 2012-13:

"1. The Id. CIT(A) erred in law and on facts in upholding the action of the Id. A.O. to assume jurisdiction u/s 153C of the I.T. Act, 1961 though the seized documents relied upon do not 'belong' to the appellant.

2. The Id. CIT(A) further erred in law and on facts in upholding the action of the Id. A.O. to assume jurisdiction u/s 153C of the I.T. Act, 1961 in absence of any incriminating material pointed out in the satisfaction note.

3. The Id. CIT(A) erred in law and on facts in confirming the addition to the extent of Rs.75,00,000/-as unexplained advances by the appellant despite the fact that business of the appellant firm has not actually commenced.

4. The Id. CIT(A) further erred in law and on facts in holding that the appellant has earned interest amounting to Rs.2,25,000/-on the alleged unexplained advances.

5. Your appellant craves liberty to add, alter, amend, substitute or withdraw any of the grounds of appeal hereinabove."

IT(SS)A.No.146/Ahd/2018 Asstt.Year 2013-14:

> *"1. a) The Ld. CIT(A)-12, Ahmedabad has erred in law and in facts in upholding the action of the Ld. A.O. in holding that the incriminating material / documents found in the course of search at the premises of BRG Infrastructure Ltd. contained the transactions of undisclosed / unaccounted investments / advances in complete disregard of the fact that the appellant had not commenced any business or operations so as to justify the transactions as pertaining to the appellant.*
>
> *b) The Ld. CIT(A)-12, Ahmedabad has further erred in law and in facts in holding that the alleged incriminating documents / material seized ought to be considered as pertaining to the appellant on the basis of the statement of the appellant's partner owning up the transactions noted as representing unaccounted income of the appellant.*
>
> *2. The Ld. CIT(A)-12, Ahmedabad has erred in law and in facts in holding that the appellant has earned an interest income of Rs. 9,00,0007- on the alleged unexplained advances made in the A.Y. 2012-13 of an amount of Rs. 75,00,0007-. The addition of Rs. 9,00,0007- confirmed being erroneous in law and in facts is prayed to be deleted.*
>
> *3. Your appellant craves liberty to add, alter, amend, substitute or withdraw any of the ground of appeal hereinabove contained."*

3. A perusal of the above grounds would indicate that under grounds no.1 and 2 in both these years, the assessee has challenged assumption of jurisdiction under section 153C of the Income Tax Act, 1961 by the AO. This ground has been taken in both these years before the ld.CIT(A) also. Perusal of the original grounds of appeal would indicate that this issue has been agitated under ground no.1 by the assessee in both these years. We take these preliminary grounds first.

4. Brief facts of the case are that the assessee, M/s.SBG Infrastructure LLP (in short "SBG Infra") earlier was a company

under the name and style "M/s.SBG Infrastructure Pvt. Ltd." incorporated on 25.3.2008 and was converted into a limited liability partnership (LLP) vide conversion dated 10.2.2011. The ld.CIT(A) has observed that neither the company nor the LLP had any substantial commercial activity. A survey under section 133A of the Act was carried out at the business premises of M/s.BRG Infrastructure Ltd. on 24.03.2014 which was converted into search action under section 132 of the Act. According to the AO, during the course of search, certain documents were found which were inventorised as Annexure A/1, A/2 and A/3. The AO is common *qua* the search group as well as to the assessee. During the course of assessment proceedings of BRG Group of Baroda, the AO recorded his satisfaction that documents inventorised as Annexure-A/1, page no.5, Annexure-A/2, page no.3 belongs to this assessee, and therefore action under section 153C is required to be taken. He transmitted these documents along with his satisfaction note, and ultimately, a notice under section 153C was issued and served upon the assessee. In the Asstt.year 2012-13, in response to such notice, the assessee has filed return of income on 20.1.2015 declaring total income at (-)Rs.5,551/-. Thereafter, the ld.AO has issued notice under section 143(2) and 142(1) of the Act. The assessee was contemplating to settle this dispute with the Department before the Settlement Commission, and ultimately it did not, and appeared before the AO who has passed the assessment order in all these years under section 144 r.w. section 153C of the Income Tax Act. Dissatisfied with the assessment orders, the assessee carried the matter in appeal before the ld.CIT(A). The assessee has challenged assumption of jurisdiction under section 153C of the Act.

The ld.CIT(A) after taking note of the submissions raised by the assessee, rejected this contention by recording the following finding:

> *"9.2 Now the Ld. AR is relying upon the pre-amended section 153C (valid up to 30/05/2015) supported by various case laws related thereto that the AO could assume jurisdiction u/s 153C over a case only when in the case of a search of a person, the documents belonging to the other person are found and the AO is satisfied that such documents belong to such other person and the same are handed over to the AO having jurisdiction over the other person. It is implied thereby that the AO having jurisdiction u/s 153A over the searched person records his satisfaction that document(s) seized from the searched party belong to other person and the AO of the other person (to whom a seized document from the searched person belongs) also records satisfaction to that effect. Hair splitting done by the Ld AR is that Shri Sargara Gupta has only admitted the transaction being carried out by him and has admitted the source of fund and accordingly making disclosure in the hands of SBG Infra in the capacity of its partner (which is also confirmed by Shri Bakulesh Gupta, father of Shri Sargam Gupta and also a partner of SBG Infra), but it is not admitted that the seized papers belong to SBG Infra. In other words, as per the Ld AR there was no statement by the partner that the seized documents pertained to the appellant SBG Infra and hence there was no case of proceedings u/s 153C against the appellant.*
>
> *9.3 In CIT Vs Gopi Apartment (2014) 46 taxmann.com 280 (All.) it has been held that even where AO of both 'searched person' and 'other person' is same, recording of satisfaction (i.e. that the seized material belongs to other person) is still required and mandatory, so as to initiate proceeding (u/s 153C) against such other person. Along with this, I have also perused the case laws relied upon by the appellant specially Vijaybhai N Chandrani Vs ACTT, Pepsi Food P. Ltd. Vs AOT and Pepsico India Hording Ltd Vs ACTT and find that those judgments were pronounced in relation to the pre-amended 153C(1) where under the AO is required to be satisfied that any money, bullion, jewellery and other valuable article or thing or books or document seized or requisitioned belong to a person other than 'the person referred to in section 153A. Subsequent to the amendment (wef 01/06/2015), section 153C{1) stipulates satisfaction of the AO that (a) any money, bullion, jewellery and other valuable article or thing seized or requisition belongs to: or'(b) any books of*

accounts or documents or requisition pertains or pertained to, any information contained therein, relates to a person other than the person referred to in section 153A.

9.4 From the perusal of the assessment order I note that the AO mentions the satisfaction required for proceeding u/s 153C in the beginning of the assessment order itself and that the partner of the appellant SBG Infra admitted that the unaccounted cash advances and unaccounted expenses in the seized papers came from M/s SBG Infra and that the aggregate amount will be offered to tax in the hands of SBG Infra, If the sources of the fund of those undisclosed and unaccounted loans and expenses are of SBG Infra, I fail to comprehend how the incriminating papers then do not belong/pertain to the appellant. After all, an L.LP, the appellant is not a living entity which can record the transactions and preserve the record by itself. It will always be an individual who will record the transactions and possess the record thereof. The Ld AR is resorting to hair splitting of the phrase(s) 'seized documents belonging to the appellant.

9.5 With due respect to the case laws it appears to me that while recording statements u/s 132(4) and 131(1A) the question is framed by the officer of the Department and the reply is furnished by the searched person and the wordings as recorded in the question and in the answers can seldom be very exact in letter of the statute and that for the purpose of taxation, the transactions and events must be viewed holistically within the practical frame work of intentions and circumstances and only thing that should be seen is that whether the statements recorded stand the tests of human probabilities and of reasonable man. Taxation is a civil matter and playing with words and drawing very fine distinction of responses given in the statement is not required as it is neither a case of proving one's legal dexterity nor a case of life and death as may be in a proceeding for a crime which may lead to death sentence. Once the sources of unaccounted cash advances and cash expenses have been admitted to be of S8G Infra there should remain no dispute that such amount has to be considered in the hands of SBG Infra only. Further I am of the considered opinion that once the partner(s) of a firm have admitted the source of unaccounted cash advances and cash expenses, proceedings u/s 153C can lie against the person who is the source of such money. Thus the action of the AO u/s 153C to the case of appellant Is upheld. It needs no emphasis that the statement u/s 132(4) has evidentiary value and stands on higher footing than any

other and subsequent statement and affidavits. The ground of there being no jurisdiction a/s 153A is dismissed.

5. While impugning the finding of the ld.Revenue authorities, the ld.counsel for the assessee submitted that cognizance under section 153C can be taken up by the AO if the AO of searched person was satisfied that during the course of search any money, bullion, jewellery or other valuable article or things were sized or requisitioned belongs to a person other than the person referred to section 153A, then the books of accounts, documents, assets seized and requisitioned shall be handed over to the AO having territorial jurisdiction of such other person who will issue notice under section 153C of the Act. Thus, the basic foundation for taking cognizance under section 153C is discovery of any money, bullion, jewellery or other article or things or documents belonging to other person. With effect from 1.6.2015 expression “belongs” has been replaced with “pertains to” in the section 153C. The ld.counsel for the assessee thereafter took us through this satisfaction note available on page no.7 to 9 of the paper book, and submitted that as far as this satisfaction note is concerned, the seized documents relied upon by the AO are page no.5 of Annexure A/1 and page no.3 of Annexure-A/2. On the basis of narrations available on these pages, the ld.AO was satisfied that action under section 153C is required to be taken for the Asstt.Yar 2008-09 to 2013-14. According to the ld.counsel for the assessee, this satisfaction note is wholly misplaced and based on misreading and misconstruction of the seized materials as well as statement of BRG directors. He took us through the copy of the seized material as well as relevant question and answers of the statement of Shri Sargam

Gupta. According to the ld.counsel for the assessee, a perusal of the above material would indicate that, nowhere connection of the assessee is demonstrable with this material or with the statements recorded. He emphasised that the ld.AO failed to construe these papers in right perspective. They did not disclose any income escaped assessment from the hands of the assessee. While taking us through the finding of the ld.CIT(A) he contended that the ld.CIT(A) has made a reference to the statement recorded under section 131(1A). But it is not relevant piece of evidence, because it was recorded in the month of May, 2014 much after the conclusion of the search. This statement can be an information for taking action, but it cannot be construed as a discovery of any material belonging to the assessee.

6. On the other hand, the ld.DR relied upon orders of the Revenue authorities. He submitted that the ld.CIT(A) has analysed this aspect in detail more particularly, he made reference to the finding of the ld.CIT(A) in para 9.4 and 9.5 on page no.40 of the impugned order. He submitted that while recording statement under section 132(4) and 131(1A) specific information was disclosed which belongs to the assessee, and therefore, the action under section 153C has rightly been taken.

7. It is pertinent to note that section 153C has been amended with effect from 1-6-2015. The scope of section after amendment and pre-amendment had fallen for consideration before the Hon'ble jurisdictional High Court in the case of Anil Kumar Gopikishan Agrawal Vs. ACIT, reported in (2019) 106 taxmann.com 137. According to the decision of Hon'ble High Court, where search had

taken place before 1-6-2015 old section 153C would apply. Since the search in the present case taken place on 24.3.2015 which is prior to 1.6.2015, therefore, the section as it stood on 24.3.2014 would apply to the facts of the present case. For appreciating and understanding the distinction between the pre and post-amended provisions, and their scope in a more scientific way, we take note of the relevant part of the provisions of both the sections as under:

Pre-amendment:

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 any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong 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 such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A :] xxx xxx xxx

Post-amendment:

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 :

xxx xxx xxx

8. Hon'ble Gujarat High Court while considering the distinction between the position of law in both the provisions propounded that the amendment extended the scope of section 153C of the Act by bringing an assessee, if books of accounts or documents pertains to him or containing information relating to him, have been seized during the course of search, within the fold of that section. According to the Hon'ble High Court, under the old provision, if any money, bullion, jewellery, assets or documents belonging to an assessee was found during the course of search or requisitioned, only then section 153C would trigger against that assessee. However, by enlarging the scope of section 153C, the new amended provision provides that if any incriminating information was found in those documents, relating to the assessee or pertaining to the assessee, then action under section 153C would also be taken up. Hon'ble High Court has explained the situation by recording a hypothetical example in paragraph 19.10. For better appreciation and understanding, we deem it appropriate to take note of the relevant discussion made by the Hon'ble jurisdictional High Court in this regard. It reads as under:

"19.8 While it is true that section 153C of the Act is also a machinery provision for assessment of income of a person other than the person searched, in the opinion of this court, this is not a case where by virtue of the amendment, there is merely a change in the procedural provisions affecting the assessees who were covered by

the unamended provision. By the amendment, a new class of assessees are sought to be brought within the sweep of section 153C of the Act, which affects the substantive rights of the assessees and cannot be said to be a mere change in the procedure. Since the amendment expands the scope of section 153C of the Act by bringing in an assessee if books of account or documents pertaining to him or containing information relating to him have been seized during the course of search, within the fold of that section, this question assumes significance, inasmuch as in the facts of the present case, as on the date of search, it was only if such material belonged to a person other than the searched person, that the Assessing Officer of the searched person could record such satisfaction and forward the material to the Assessing Officer of such other person. However, subsequent to the date of search, the amendment has been brought into force and based on the amendment, the petitioners who were not included within the ambit of section 153C of the Act as on the date of the search, are now sought to be brought within its fold on the ground that the satisfaction note and notice under section 153C of the Act have been issued after the amendment came into force. Therefore, this case does not relate to the interpretation of the provisions of any of the sections, but relates to the stage at which the amended section 153C of the Act can be made applicable, as to whether it relates to the date of search; or the date of recording of satisfaction by the Assessing Officer of the searched person; or the date of recording of satisfaction by the Assessing Officer of the other person; or the date of issuance of notice under section 153C of the Act.

19.9 In the facts of the present case, the search was conducted in all the cases on a date prior to 1st June, 2015. Therefore, on the date of the search, the Assessing Officer of the person searched could only have recorded satisfaction to the effect that the seized material belongs or belong to the other person. In the present case, the hard-disc containing in the information relating to the petitioners admittedly did not belong to them, therefore, as on the date of the search, the essential jurisdictional requirement to justify assumption of jurisdiction under section 153C of the Act in case of the petitioners, did not exist. It was only on 1st June, 2015 when the amended provisions came into force that the Assessing Officer of the searched person could have formed the requisite belief that the books of account or documents seized or requisitioned pertain to or the information contained therein relates to the petitioners.

> *19.10 In this backdrop, to test the stage of applicability of the amended provisions, a hypothetical example may be taken. The search is carried out in the case of HN Safal group on 4.9.2013. If the Assessing Officer of the searched person had recorded satisfaction that some of the seized/requisitioned material belongs to a person other than the searched person and forwarded the material to the Assessing Officer of the other person, had issued notice under section 153C of the Act prior to the coming into force of the amended provision. The notice under section 153C of the Act was challenged before the appropriate forum on the ground that the seized material does not belong to such other person and such issue was decided in favour of such person on a finding that the seized material does not belong to the other person. Thereafter, in view of the amendment in section 153C (1) of the Act, since the books of account or documents did not belong to the other person but did pertain to him or the information contained therein related to him, can the Assessing Officer of the searched person once again record satisfaction as contemplated under the amended provision and forward the material to the Assessing Officer of such other person. The answer would be an emphatic "no" as the Assessing Officer of the searched person after recording the earlier satisfaction would have already forwarded the material to the Assessing Officer having jurisdiction over the other person, therefore, there would be no question of his again forming a satisfaction as required under the amended provisions of section 153C of the Act."*

9. Thus, the Hon'ble Court has held that by virtue of amendment in section 153C, its scope has been enlarged, and therefore, amended section will apply prospectively i.e. on the cases wherein the search has taken place after 1.6.2015. In the case on hand, search has taken place on 24.3.2014. Thus, old provision of section 153C would be applicable. According to this old provision, action under section 153C could be initiated against an assessee if during the course of search any money, bullion, jewellery or documents or other valuable articles or things, books of accounts or documents seized or requisitioned, were belonged to an assessee than the person referred to in section 153A. There is no dispute with regard to the fact that the assessee is

"other person" referred to section 153C. The other requirement is seizure or requisition of documents, money, bullion, jewellery etc. belonging to the assessee. If these twin conditions are satisfied, then the action under section 153C would be justified against the assessee.

10. Core question which boils down for our adjudication is, whether there was a material belonging to the assessee that authorise the AO to record a satisfaction note for taking cognizance of section 153C of the Act. Let us take note of the satisfaction note as well as material found during the course of search. They read as under:

To be filled by the Assessing Officer of the person referred to in section 153A		
1.	Name of the Group Searched	BRG Group of Baroda
2.	Name and PAN No. Of the person referred to in section 153A	1. M/s. BRG Infrastructure Ltd. PAN: AADCB4649N
3.	Date of initiation of search in the case of the person referred to in section 153A	24/03/2014
4.	Name, address and PANo. of the person in whose case action under section 153C is proposed	M/s. SBG Infrastructure LLP 4/1 Goverdhan Appartrnent Karelibaug, Vadodara. PAN: ABXFS 2792 K
5.	Specific details of the seized material on the basis of which action under section 153C is proposed :	
	(a) Nature of the seized material{money/Bullion /jewellery/ other valuable article of thing /books of account /documents)	Books of accounts/documents
	(b) Description of the seized material	Loose paper files containing various documents
	(c) Address of premise/place from where such material was seized	1.M/s-BRG infrastructure Ltd. "Sargam House", 2nd Floor, 'B' wing, Trident Complex, Opp. GERI Compound, Race Course Baroda.
	(d) Date of seizure of such material	24.03.2014
	(e) Particulars Panchnama of the relevant	24.03.2014

	(f) Annexure/ S.Mo./ Page number etc. (Particulars to be specified)	Seized from the premises of M/s.BRG Infrastructure Ltd., "Sargam House", 2nd 'B' wing, Trident Complex, Opp. GERI Compound, Race Course Baroda. <u>Ann.A-1</u> i) Page No. 5 - This page contains the details (written in Gujarati) regarding the account of expenditure incurred in cash for the land at Sun Pharma, Atladra. Ann.A-2 I) Page no.3-This page contains big figures with dates (in gujarati) – regarding advances given in cash to various person on different dates.
6.	Relationship of the person referred in S.No.4 with the person referred to in S.No.2	Business transaction
7.	Satisfaction of the Assessing Officer of the person referred to in section 153A that the seized material referred to in S.No.5 belongs to the person referred in S.No.4	As per Enclosure "A" annexed herewith separately.
8.	Assessment Years involved	A.Ys.2008-09 to 2013-14

Sd/-

Baroda (Mughda K. Sardeshpande)
Date : 31.10.2014 Deputy Commissioner of Income-tax
Central Circle-2, Baroda.

Enclosure "A"

Name & Address of the Assessee	:	M/s. SBG Infrastructure LLP 4/1 Goverdhan Appartment Karelibaug, Vadodara.
PAN	;	ABXFS2792K
Assessment Year/s.	:	2008-09 to 2013-14

<u>Recording of reasons for issuance of notice u/s 153C of the Income-tax Act 1961</u>

A search action u/s 132 of the act was carried out in BRG Group of Baroda on 24.03.2014 which inter alia include case of M/s. BRG Infrastructure Ltd. During the course of search certain documents inventorized in Annexure A-l, details of

which are as per Col. 5 of above table, belonging to the present assessee M/s. SBG Infrastructure LLP were seized from the premises of M/s.BRG Infrastructure Ltd., "Sargam House", 2nd Floor, 'B' wing. Trident Complex, Opp. GERI Compound, Race Course, Baroda in which a search action u/s 132 was initiated, were seized. During the course of search proceedings, in the statement recorded u/s 132{4) as well as 131(1) of the Act, Shri Sargam Gupta, one of the partner of M/s. SBG Infrastructure LLP accepted the fact that in the documents seized are of transaction done by M/s. SBG Infra LLP and based upon which he had made disclosure of Rs. 12.00 crores in the hands of SBG Infrastructure LLP for F.Y. 2013-14. Section 153C of the Act provides that where the Assessing Officer is satisfied that any money, buFlion7 jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong 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 such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

In the instant case, the books of account and documents belonging to the present assessee were found and seized from the possession of the person in whose case a search u/s 132 was initiated i.e. person referred to in section 153A. Therefore, this becomes a justified case for initiation of proceedings u/s 153C as all the conditions are satisfied.

On this backdrop, I am satisfied that this is a fit case for initiation of proceedings u/s 153C of the Act. Accordingly, notice u/s 153C r.w.s. 153A of the I.T.Act are being issued for A. Ys. 2008-09 to 2013jJ,4 i.e. six assessment years immediately preceding the assessment year relevant to previous year in which search has been conducted in the case of the person referred to in section 153A.

Sd/-
Baroda. *(Mugdha K. Sardeshpande)*
Date: 31.10.2014 *Deputy Commissioner of Income-tax,*
Central Circle-2, Baroda.

11. A perusal of the satisfaction note would indicate that the ld.AO while satisfying himself for taking cognizance under section 153C made reference to the statement recorded under section 132(4) as well as section 133(1A) of the Act, apart from the page no.3 of Annexure A/2 and page no.5 of the annexure A/1. Therefore, we would deem it appropriate to take note of the statement recorded under section

132(4) of the Income Tax. Copy of the statement is available on page no.27 to 38 and 39 to 40. The relevant part read as under:

> *In the statement recorded on 26.03,2014, with respect to the noting of page no. 3 of Annexure A/2, Shri Sargam Gupta had in response to question nos. 13 & 14 had clarified as under {page nos. 19 8s 20 of the Paper Book):*
>
> *Q. 13 I am showing you Annexure A/2 which is a Diary (Vision Diary Pad). In this Diary, I am showing page no. 3. Please go through the same and explain the contents thereof.*
>
> *Ans. Page no. 3 of Annexure A/2 contains certain dates and figures. These figures represent the advance given in cash to the relatives and acquaintances on different dates. These advances are not recorded in the . regular books of accounts and no taxis paid on such amount.*
>
> *Q. 14 incase clariiy how much advance is given to your relatives-*
>
> *Ans. I have given an amount of Rs, 6,5Q,S8,500/- (Rs. Six Crore Fifty Lakh Fifty Eight Thousand Five Hundred Only) as advance to acquaintances \ and relatives which is my net undisclosed income, I am disclosing the same and agree to pay the tax thereon.*
>
> *Q.16 I am showing page no. 5 of Annexure 1. Please explain the same,*
>
> *Ans. Annexure A/1, Page 5 contains the details of cash expenses incurred on our land situated on Sun Pharma Road, Tandalja. This land is of 4-5 : lakhs sq. ft which is in dispute and there is encroachment in such land. For the removal of encroachment and dispute, we have incurred cash expenses from our unaccounted income. The total of such unaccounted income is Rs. 549.50 Lakhs which is disclosed as net income. On the amount of the income of Rs.549.50 lakhs, I shall pay the tax as per the income-tax regulations."*

Let us take note of page 3, Annexure A/2 and page 5 of Annexure A/1. They read as under:

ANNEXUREA/2 ***(PAGE 3)***
English Translation

Cash Given

31/12/2011	*75,00,000*
31/12/2012	*9,00,000*
31/12/2013	*75,00,000*
2/6/13	*45,15,000*
3/7/13	*58,60, 000*
9/7/13	*84,00,000*

15/8/13	*69,50,000*
14/9/13	*46,75,000*
26/9/13	*81,62,500*
10/10/13	*31,45,00*
16/10/13	*11,16,000*
15/11/13	*72,00,000*
1/12/13	*20,90,000*
11/12/13	*45,45,000*

ANNEXURE** A/1 **(PAGE 5)

English Translation

Sun Enclave
Nr, Mercedes,
Aloft Hotel, Opp High Court
Sola, Atladra Expenses on Sunpharma Land (Cash)

For Construction of compound wall across all sides of land		*188.00*
Paid for the Vacating the Possession		*47.00*
Akthar-	*12.00*	
Salirn-	*16.50*	
Munaf-	*18.50*	
	47.00	
Court office legal expense For Court ligation And for dealing the matter		*28.50*
Expense for approval of TP Map		*20.00*
Expense for clay stuffing up to leveling		*76.00*
The Amount paid MOU with "Bharvads"		*80.00*
Expense for Security (24 hours) Expenses for Guarding		*15.00*
Expense of Advertisement of Title Clearance and other cash expense		*19.00*
Total Expenses for Plinth level work		*76.10*
Total Expenses		*549.60*

12. A careful perusal of the above document would reveal that nowhere it has been alleged that Annexure A/1, page no.5 or page

no.3 of annexure A/2 belongs to the assessee. We have carefully gone through original page of Annexure A/2 as well as A/1. They do not contain any name of the assessee; they do not contain as to how they be construed as documents belonging to the assessee. A document can be construed as belonging to the assessee, if it has been obtained from the premises of the assessee under authorized signature. For example, an SMS sent by the partner to any other person, a fax message of page of any books of accounts, copy of any agreement signed by the assessee or by the authorized person of the assessee or any other documents, which forming part of the assessee's books of accounts or some unexplained transaction. On both these pages there are certain notings which on a *prima facie* perusal do not goad any adjudicating authority to reach at a firm conclusion unless explained by author. Now according to the Revenue these are being authored by Sargam Gupta and these pages put to him during the course of search, while recording statement under section 132(4) of the Act. Shri Sargam Gupta has explained these pages. We have taken cognizance of question no.13, 14 and 16 as well as their replies. But nowhere in these questions he has named the assessee that these are the papers of the assessee. At the cost of repetition, we would remind ourselves again that here in these years we are not required to look into whether information contained in these pages pertains to or relates to the assessee. Our concern is, whether documents belongs to the assessee or not, because amendment to section 153C is not applicable in these assessment years upon the assessee. Search was carried out in the year 2014 before the amendment in section 153C. It is pertinent to note hear that the ld.AO has made reference to the statement of Shri

Sargam Gupta under section 131(1A) of the Act. His statement was recorded twice. First statement was recorded on 24.3.2014. It could be termed pre-search statement, and second statement was recorded on 13.5.2014. Copies of both these statements are available on page no.23 to 26 and 41 to 46. The ld.CIT(A) while evaluating the evidence for the purpose of arriving at a conclusion, whether a judicial mind can reach on a satisfaction on the basis of the above material for taking action against the assessee under section 153C and make reference to the statement of Shri Sargam Gupta recorded under section 131(1A) on 13.5.2014. It is pertinent to note that this statement cannot be referred for taking cognizance against the assessee. Section 153C contemplates documents seized or requisitioned during the search. It does not talk of information. Otherwise also a statement under section 131 dated 13.5.2014 was not recorded during the course of search; it is after the conclusion of the search. Statement recorded on 24.3.2014 is concerned, it is a pre-search statement i.e. before the commencement of search, and in this statement the investigating officer has no where asked any such question, because upto that stage, documents were not discovered i.e. Annexure A/1 and Annexure-A/2. Therefore, Shri Sargam Gupta could not be asked to explain this. These documents were put to him in the statement under section 132(4). We have taken cognizance of that part of the statement (supra).

13. It is further observed that statement recorded under section 131(1A) of the Act after conclusion of the search i.e. on 13.5.2014 is concerned, this can be an information for evaluating whether any

income has escaped assessment or under section 147 for reopening of the assessment; but for taking action under section 153C this statement cannot be used. A perusal of the satisfaction note extracted(supra) would indicate that the AO has vaguly made reference of statement under section 131(1A) of the Act, but he has not referred which statement i.e. pre-search statement or consequent to the conclusion of the search. It is also pertinent to note that there are three paragraphs in this note; in the first para, he made reference of the facts, and in the second para he wrote that books of the accounts belonging to the assessee ….. can these pages i.e. A1(5) or A2(3) in page no.3 and 3 of the alleged seizure referred by the AO be construed as books of accounts belonging to the assessee. These documents do not contain names; even page no.3 of Annexure A/2 did not reflect to whom cash was given. There is no reference to this page. Therefore, on the basis of these documents, adjudicating authority could not goad to reach any firm conclusion that these documents belonging to the assessee. Thus, on a detailed analysis of the evidence available on record, we are satisfied that there is no material with the Revenue to form a belief that action under section 153C is required to be taken against the assessee in these two assessment years. Thus, preliminary issue is decided in favour of the assessee in both these assessment years, and it is held that the AO has erred in assuming jurisdiction under section 153C against the assessee in the Asstt.Year 2012-13 and 2013-14. The assessment orders on preliminary issue are quashed in these years.

13. Now we take IT(SS)A No.1206 and 1286/Ahd/2018 for the Asstt.Year 2014-15.

14. First we take preliminary issue raised by the assessee in these appeals. The grounds of appeal taken by the assessee as well as by the Revenue in these years read as under:

ITA No.1206/Ahd/2018 (Assessee's Appeal for A.Y.2014-15)
REVISED AND CONSICE GROUNDSOF APPEAL

1. The Id. CIT(A) failed to appreciate the fact that the assessing officer had not fulfilled the mandatorily required twin conditions of section 153C of the I.T. Act, 1961 rendering the impugned assessment order as invalid on this count.

2. The Id. CIT(A) erred in law and on, facts in upholding the action of the Id. A.O. to assume jurisdiction u/s 153C though the seized relied upon documents do not 'belong' to the appellant.

3. The Id, CIT(A) erred in law and on facts in holding that the appellant firm had incurred expenditure amounting to Rs.29.50 lacs in respect of construction of compound wall, plinth, earth filling etc.

4. The Id. CIT(A) erred in law and on facts in confirming Rs.209.40 lacs towards expenses in respect of title clearance, litigation, security, dispute resolution etc.

5. Without prejudice to ground no. 3 and 4, the Id. CIT(A) erred in law and on facts by partly accepting and partly rejecting the contents of the seized document i.e. Page no. 5 of Annexure A-l.

6. The Id. CIT(A) erred in law and on facts in failing to consider the fact that the business of the appellant had not actually commenced and therefore could not have made such huge expenditures.

7. The Id. CIT(A) erred in law and on facts in holding that the appellant had earned interest to the extent of Rs.9,00,000/- on the alleged unexplained advances made during the financial year 2011-12.

8. Your appellant craves liberty to add, alter, amend, substitute or withdraw any of the grounds of appeal hereinabove.

<u>ITA No.1286/Ahd/2018 (Revenue's Appeal for A.Y.2014-15)</u>

GROUNDS OF APPEAL

(1) On the facts and in the circumstances of the case, the Ld. CIT(A)-12, Ahmedabad has erred in deleting addition to the tune of Rs.6,50,58,500/-. The addition was based on the seized material and the statement of the managing partners of the LLP on oath during and after the search proceedings. On the basis of an affidavit filed by the managing partners of LLP, after 650 days of giving the statement, the addition has been deleted. Hence, the addition has erroneously been deleted by the Ld.CIT(A)-12, Ahmedabad.

(2) On the facts and in the circumstances of the case, the Ld. CIT(A)-12, Ahmedabad has erred in deleting the entire addition of Rs.5,49,60,000/-. The addition was based on the seized material and the statement of the managing partners of the LLP on oath during and after the search proceedings. However, the same has been negated on the basis of DVO's report. Hence, the addition has erroneously been deleted by the Ld.CIT(A)-12, Ahmedabad.

(3) It is, therefore, prayed that the order of the Ld.CIT(A)-12, Ahmedabad may be set aside and that of the AO may be restored to the above extent.

(4) The appellant craves leave to add, alter, amend, alter, edit, delete, modify or change all or any of the ground of appeal at the time of or before the hearing of the appeal.

15. In ground no.1 and 2, the assessee has challenged jurisdiction of the AO. The ld.counsel for the assessee while impugning the action of the Revenue authorities contended that search on the BRG Infrastructure Ltd. was carried out on 24.3.2014. The AO of the searched entity as well as the assessee is common. A satisfaction note for taking action against the assessee was recorded by the DCIT, CC-2, Baroda on 30.10.2014, and subsequently notices under section

153C were issued for the Asstt.Years 2008-9 to 2013-14 to the assessee. According to the ld.counsel for the assessee, though seized documents were received by the AO of the assessee on 15.7.2014, but there is no specific clear date. Therefore, at the most it is to be assumed that such documents were received on the date of recording of the satisfaction i.e. on 30.10.2014, and therefore, as per the provisions of section 153C read with first proviso notice section 153C ought to have been issued for the Asstt.Year 2011-12 to 2014-15, because the firm was incorporated on 10.2.2011 only, and not from the Asstt.Year 2008-09 to 2013-14. The ld.AO has passed assessment order under section 144 of the Act after issuing notice under section 142(1) dated 3.11.2014. He was of the view that notice under section 153C ought to have been issued after recording satisfaction for these assessment years, and the assessment order framed under section 144 of the Act is not valid in the case of the assessee. For buttressing his proposition, he relied upon two judgments of the ITAT, Delhi Bench in the case of BNB Investment & Properties Ltd. Vs. ACIT, 68 ITR (Trib) 0567 (Delhi), and Bina Fashion N Foods P.Ltd. Vs. DCIT, 77 ITR (Trib.) 68 (Del). He placed on record copies of both these orders as Exhibit-F and Exhibit-G.

16. The ld.CIT-DR, on the other hand, contended that there is no satisfaction recorded by the AO *qua* this year. He pointed out that though perusal of the opening paragraph of the assessment order would reveal that the AO took cognizance of fact of search, and also made reference that proceedings under section 153C of the Act were to be initiated; but all of a sudden, he became silent and proceeded

under section 142(1) of the Act. He took us through paragraph no.1 and 2 of the assessment order.

17. We have duly considered rival contentions, and gone through the record carefully. We have reproduced satisfaction recorded by the AO in the earlier part of this order. A perusal of this satisfaction would indicate that there is no satisfaction recorded for the Asstt.Year 2014-15 for taking cognizance under section 153C of the Act. At this stage, we would like to make reference to opening paragraph of the assessment order, which reads as under:

<u>"ASSESSMENT ORDER</u>

> *"Consequent to search u/s 132 of the I. T. Act in the case of M/s. BRG Infrastructure Ltd. on 24.03.2014, provisions of section 153C were attracted in the case of the assessee and proceedings u/s 153C of the Act were initiated. Accordingly, the case was selected for scrutiny as per Board's guidelines as well as per provisions of section 153B(2) of the Act. Since the assessee has not filed copy of return of income u/s 139(1) of the Act, notice u/s 142(1) of the Act was issued to the assessee on 03.11.2014 requiring it to furnish the copy of return of income/computation of income/tax audit report/ITR V in physical form by 11.11.2014, The said notice was served upon the assessee on 05.1112014."*

18. A perusal of the above paragraph would indicate that the ld.AO has commenced proceedings, as if he was going to take action under section 153C. However, actually he has not passed assessment order under section 153C of the Act, rather scrutinized return under the regular provisions of the Income Tax Act, 1961; in other words, he framed a regular *ex parte* assessment under section 144 of the Act instead of 153C which is meant for those documents belonging to assessee were found during the course of search carried out at some

other persons, and the assessment proceedings were initiated against such person under section 153A of the Act. Position of law on the strength of judgment of Hon'ble Delhi High Court has been lucidly explained by the ITAT, Delhi Bench in the case of BNB Investment & Properties Ltd. (supra). The ITAT has relied upon the judgment of Hon'ble Delhi High Court in the case of CIT Vs. Sarwar Agency P.Ltd., 397 ITR 400 (Delhi).

19. Brief facts before the Hon'ble Delhi High Court was that search under section 132 of the Act was carried on M/s.Krish Group of cases on 9.11.2011. A survey under section 133A was carried out at the premises of the assessee. The AO of Krish Group of cases has transmitted certain documents belonging to BNB Investment & Properties Ltd. on 29.8.2013. The AO has passed assessment order under section 153B(1)(b) of the Act considering the assessment year 2012-13 upto the year of search. The Tribunal took into consideration this fact and observed that first provisio to section 153C of the Act provides that these assessment years for which the assessment or re-assessment could be made under section 153C of the Act would also to be considered with reference to the date of handing over of the assets or documents to the AO of the assessee. Therefore, according to the Tribunal, sixth assessment year under section 153C of the Act in the case of BNB Investment & Properties Ltd. would be Asstt.Year 2008-09 to 2013-14. Thus, according to the Tribunal, in the Asstt.Year 2012-13, the AO should have passed an assessment order under section 153C of the Act. Since the AO failed to pass such assessment order, therefore, the Tribunal has quashed the assessment

order framed under section 143(3) under the premise that the Asstt.Year 2012-13 is to be treated as search year under section 153B(i)(b) of the Act.

20. With these factual backgrounds, let us take note of the discussion made by the Tribunal after taking note of section 153C. The Tribunal has made reference to the decision of Hon'ble Delhi High Court and the order of the Tribunal, Delhi Bench read as under:

> *"7.1. The Hon'ble Delhi High Court in the case of Pr. CIT vs. Sarwar Agency P. Ltd., (2017) 397 ITR 400 (Delhi.) (HC) (supra), considering the identical issue held as under :*
>
> > *"Sub-section (1) of section 153C of the Income-tax Act, 1961 provides that the assessment or reassessment of the income of the "other person" would be in accordance with the provisions of section 153A. The first proviso to sub- section (1) of section 153C further states that, in case of such other person, the reference to the date of initiation of search in the second proviso to section 153A(l) "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". In terms of section 153A(1)(b) of the Act. the Assessing Officer shall assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted. The second proviso to sub-section (1) of section 153A of the Act states that assessment or reassessment relating to any assessment year falling within the period of six assessment years referred to in the said sub-section pending on the date of initiation of the search under section 132, would abate. In CIT v. RRJ Secu- rities Ltd. [2016] 380 ITR 612 (Delhi), the court held that in the context of proceedings under section 153C of the Act, the reference to the date of initiation of the search in the second proviso to section 153A has to be construed as the date on which the Assessing Officer receives the documents or assets from the Assessing Officer of the searched person, that further proceedings, by virtue of section 153(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 or reassessments could be made under section 153C of the Act would also have to be construed with reference to the date of handing aver of assets or documents to the Assessing Officer of the assessee.

The amendment in section 153C of the Act by the Finance Act, 2017 with effect from April 1, 2017 to the effect that the Block Period for the person in respect of whom the search was conducted as well as the "other person" would be the same six assessment years immediately preceding the year of search is prospective.

*A search under section 132 of the Income-tax Act, 1961 took place on November 11,2010 in the T group of cases. The documents pertaining to the assessee were forwarded along with a satisfaction note by the Assessing Officer of the party in respect of which the search was conducted to the Assessing Officer of the*assessee on January 3, 2013.*

The Assessing Officer of the assessee issued notice to the assessee under section 153C of the Act on January 4,2013 for the assessment year 2006-07. The Tribunal held that the notice issued to the assessee under section 153C of the Act for the assessment year 2006-07, was without jurisdiction since the assessment year was beyond the purview of issuance of notice in terms of the provision under section 153C of the Act. On appeal:

Held accordingly, dismissing the appeal, that the Tribunal was justified in holding that the notice issued to the assessee under section 153C of the Act for the assessment year 2006-07 was without jurisdiction since the assess- ment year was beyond the purview of issuance of notice in terms of the provision."

7.2. The ITAT, Delhi, B-Bench in the case of ACIT, C.C.-2, New Delhi vs. Empire Casting Pvt. Ltd., New Delhi (supra), held in paras 5 and 5.1 as under:

"5. We have heard the rival submission on this issue and also perused the judgment dated 30th October, 2015 of the Hon'ble jurisdictional High Court in the case of CIT Vs RRJ Securities in ITA No. 164/2015 and ITA No. 175 to ITA.No.1772015. For ready reference, the relevant Para of the judgment is reproduced 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 year 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."

5.1. The fact that satisfaction u/s 153C of the Act in the case was recorded on 2nd November, 2009, is not disputed by both the parties. In the judgment cited above, the Hon'ble High Court has held that when the Assessing Officer of searched person and such other person in whose case proceedings under section 153C are initiated, is the same officer, then the date of recording of satisfaction would be construed as the date of handing over of the seized records by the Assessing Officer of searched person to the Assessing Officer of such other person in whose case proceedings under section 153C are initiated. Since the Hon'ble High Court has already construed the relevant provisions, we do not concur with the arguments advanced by the ld. CIT DR on this count. Respectfully following the above judgment of the Hon'ble High Court in RRJ Securities (supra) the date of handing over of seized material/ record by the Assessing Officer of searched party to the Assessing Officer of the assessee would be 2nd November, 2009. Further, following the judgment, the six assessment years for which assessment/re-assessment could be

> *made u/s 153C of the Act would also have to be construed as from the reference date of handing over of assets/documents to the Assessing Officer of the assessee. In the case in hand, it would be the date of recording satisfaction under section 153 of the Act i.e. 2nd November, 2009, and therefore, six assessment years which would eligible for assessment/re-assessment would commence from assessment year 2004- 05 to assessment year 2009-10. The assessment/re- assessment in respect of assessment year 2003-04 would, thus, be beyond the period of six assessment year as reckoned with reference to the date of satisfaction recorded by the Assessing Officer of the searched person. We, therefore, hold that the learned CIT(A) was quite justified in considering the assessment for assessment year 2003-04 as outside the scope of section 153C of the Act, being barred by limitation and without jurisdiction. Accordingly, the impugned assessment order is liable to be quashed. We decide accordingly."*

7.3. The ITAT, Delhi, C-Bench, in the case of Pavitra Realcon Pvt. Ltd., New Delhi vs. ACIT, C.C.32, New Delhi (supra) under the same circumstances held that "assessment completed under section 143(3) is invalid". The relevant para-16 of the order is reproduced as under :

> *16. "We find the year for which the impugned assessment order has been passed u/s 143(3) is for assessment year 2011-12. This year falls within the period of six years when counted from the date of recording of satisfaction note u/s 153/153C of the I.T. Act which is deemed date of search. The Act h as been amended recently by the Finance Act, 2017 with prospective effect i.e., from assessment year 2018-19. Thus, the period is same now only for the searched parties as well as the other person as per the amended provisions of the said section. In view of the above, we hold that the assessment completed u/s 143(3) is invalid."*

8. It is not in dispute that search was conducted on Krrish Group of cases on 09.11.2011. The impounded documents have been received by the A.O. on 29.08.2013. The satisfaction under section 153C have been recorded on 03.10.2013. The A.O. passed the assessment order under section 153B(1)(b) of the I.T. Act, considering the assessment year under appeal i.e., A.Y. 2012-2013 to be the year of search. However, the First Proviso to Section 153C of the I.T. Act provides that the 06 assessment years for which assessments or re-

assessments could be made under section 153C of the I.T. Act, would also have to be construed with reference to the date of handing-over of the assets or documents to the A.O. of the assessee. Therefore, the 06 assessment years under section 153C of I.T. Act in the case of assessee would be A.Y. 2008-2009 to 2013-2014. The A.O, therefore, shall have to pass the assessment order under section 153C of the I.T. Act. However, A.O. has not issued any notice under section 153C of the I.T. Act before initiating the proceedings against the assessee which is also admitted by the A.O. in reply to the assessee under RTI Act. The Amendment in Section 153C of the I.T. Act by the Finance Act, 2017, w.e.f. 01.04.2017 to the effect that block period for the person in respect of whom the search was conducted as well as the "other person" would be the same six assessment year immediately preceding the year of search is prospective in nature. The issue have been dealt in detail by the Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT vs. Sarwar Agency P. Ltd., (supra) and by ITAT, Delhi, B-Bench, in the case of Empire Casting Pvt. Ltd., New Delhi vs. ACIT, C.C.2, New Delhi and Pavitra Realcon Pvt. Ltd., New Delhi vs. ACIT, C.C.32, New Delhi (supra). The A.O, therefore, should have framed the assessment under section 153C of the I.T. Act in the case of assessee and at the time of initiating the proceeding against the assessee, should have issued notice under section 153C of the I.T. Act which have not been done in this case. The issue of notice under section 153C is mandatory and a condition precedent for taking action against the assessee under section 153C of the I.T. Act. The assessment order, therefore, vitiate, void, illegal and bad in law and cannot be sustained. The contention of the Ld. D.R. have already taken care in the above judgments.

9. Considering the totality of the facts and circumstances of the case, we set aside the orders of the authorities below and quash the same and allow the additional grounds of appeals. Resultantly, all additions stands deleted. Since the assessment order is set aside on legal grounds, therefore, there is no need to decide the addition on merit which has been left with academic discussion only."

21. Other decision in the case of Bina Fashion N Foods P.Ltd. (supra) relied upon by the ld.counsel for the assessee is on the similar terms.

22. A perusal of the first paragraph of the assessment order would indicate that the AO assumed the Asstt.Year 2014-15 as search year with help of section 153B(1)(b) of the Act. This aspect has elaborately been discussed by the Hon'ble Delhi High Court in the case of Sarwar Agency P.Ltd. reproduced by the Tribunal in BNB Investment & Properties Ltd. (supra). On similar analogy, once the material was transmitted to the AO on 30.10.2014, then the AO ought to have issued notice under section 153C for the Asstt.Year 2011-12 to 2014-15. The ITAT, Delhi has taken into consideration amendment made in the first proviso to section 153C w.e.f. 1.4.2017 and held that it is prospective in nature. In the present case also, the ld.AO failed to assess the income under section 153C, and therefore, the assessment order is not sustainable, and accordingly quashed.

23. During the course of hearing, one more alternative contention was raised with regard to jurisdiction of the AO. It was submitted that even for the purpose of a regular assessment proceeding under section 144, the ld.AO has not followed the correct procedure. The scheme of the Income Tax Act contemplates that an assessee would be required to file return of taxable income by his own within the time limit provided under section 139(1) of the Act. If an assessee failed to file the return, and an information came in the possession the Revenue about the taxable income, then before the end of assessment year i.e. time limit to file return under section 139(1) ends, the assessee could be asked to file a return under section 142(1). After the end of relevant assessment year, but within the time limit provided in section 149, a notice under section 148 could be issued after recording

reasons. The ld.counsel for the assessee at the time of hearing pointed out that in the present case the assessee has not filed return under section 139(1) of the Act. But return was filed on 28.9.2015 u/s.139(4) of the Act. According to him, either the AO should have given an opportunity to file a return under section 142(1) or should have issued a notice under section 143(2) on return filed under section 139(4) of the Act by the assessee. He did not follow both the procedure. He neither issued notice under section 143(2) nor has given option to the assessee to file a return under section 142(1) of the Act. Copy of the notice issued by the AO has been placed on the record.

24. The ld.CIT-DR contended that the AO has issued notice under section 142(1) of the Act, but the assessee did not appear before him. Therefore, he set the assessment proceedings in motion, and once no return was filed by the assessee under section 139(1) and the assessment machinery has been set in motion, then the AO was not obliged to issue notice under section 143(2). According to the ld.CIT-DR, section 143(2) provides an opportunity to an assessee; what he wants to say in support of his return. Once the assessee has not filed return under section 139(1) of the Act, then opportunity is not available to the assessee. He drew our attention towards assessment order, and submitted that 142(1) notice was issued on 3.11.2014 whereas the assessee has filed a belated return under section 139(4) of the Act on 28.9.2015. The AO has already set the assessment machinery in motion, and no jurisdictional error has been committed by the AO.

25. We have considered rival contentions and gone through the record carefully. Section 142 has a direct bearing on the issue on hand, and therefore, we deem it necessary to take note of the relevant part of the section. It reads as under:

142. (1) For the purpose of making an assessment under this Act, the Assessing Officer may serve on any person who has made a return under section 115WD or section 139 or in whose case the time allowed under sub-section (1) of section 139 for furnishing the return has expired a notice requiring him, on a date to be therein specified,—

(i) where such person has not made a return within the time allowed under sub-section (1) of section 139 or before the end of the relevant assessment year, to furnish a return of his income or the income of any other person in respect of which he is assessable under this Act, in the prescribed form and verified in the prescribed manner75 and setting forth such other particulars as may be prescribed, or :

Provided that where any notice has been served under this sub-section for the purposes of this clause after the end of the relevant assessment year commencing on or after the 1st day of April, 1990 to a person who has not made a return within the time allowed under sub-section (1) of section 139 or before the end of the relevant assessment year, any such notice issued to him shall be deemed to have been served in accordance with the provisions of this sub-section:

*** **** ***

26. The assessment has been framed under section 144 of the Income Tax Act. This section would also have bearing on the issue. Therefore, we take note of relevant part of this section also. It reads as under:

144. (1) If any person—

(a) fails to make the return required under sub-section (1) of section 139 and has not made a return or a revised return under sub-section (4) or sub-section (5) of that section, or

(b) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 or fails to comply with a direction issued under sub-section (2A) of that section, or

(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143,

the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment :

27. We deem it necessary to make a reference of this notice, which reads as under:

OFFICE OF THE
Deputy Commissioner of Income-Tax, Central Circle-2, Baroda
6TM Floor, Aayakar Bhavan, Race Course, Baroda-390007

NO.BRD/DCIT/CC-2/153A-C/2014-15 *Date : 03.11.2014*

NOTICE V/S 142(1) OF THE INCOME TAX ACT
PAN : ABXFS2792K

To
The Managing Partner
M/s. SBG Infrastructure LLP
4/1 Goverdhan Appartment
Karelibaug
Vadodara.

Sir/Madam,

Sub : Furnishing of return of income for A.Y. 2014-15 - reg.-

You are well aware that a search u/s 132 of the Act was initiated/conducted in your case/in your group of cases on 24.03.2014. Therefore, the Assessment Year 2014-15 fails under the purview of provisions of Section 153B(2) of the Income Tax Act, 1961. It may be mentioned here that the due date of filing the return of Income as per provisions of Section 139(1) is already over.

In connection with the assessment for the A.Y. 2014-15 you are required to state whether you have filed your return of income in physical form or by way e- filing. If you have filed it electronically, you have to submit the physical copy of ITR V for centralized processing at Bangalore.

Therefore, you are requested to submit the details/date of filing of the return for A.Y. 2014-15/the copy of return of income/computation of Income/tax audit report/ITR V in physical form and etc. as the case may be, to enable the undersigned to carry our necessary proceeding as per the provisions of the Act.

In the matter, you are requested to. submit the aforesaid information at my office on or before, 11.11.2014 either in person or through your authorized representative.

Yours faithfully,
Sd/-
(Mugdha Kiran Sardeshpande)
Dy. Commissioner of Income-tax,
Central Circle-2, Baroda.

28. Broadly scheme of the Income Tax Act permits assessment in three formats; (i) acceptance of returned income, (ii) acceptance of returned income subject to permissible adjustments under section 143(1) of the Act, and (iii) a scrutiny assessment under section 143(3) of the Act. It is pertinent to note that where an assessee has taxable income, he is supposed to file his returned income under section 139(1) of the Act within the due date provided under this clause. If an assessee does not file his return, and an information came to the possession of the Revenue about the assessable income in the hands of such person, then before the end of the relevant assessment year i.e. assessment year in which due date for filing of the return came to an end, the AO can issue a notice under section 142(1) of the Act directing such person to file return of income in the time given in the notices. If the relevant assessment year came to an end and no such notice was issued upon an assessee, but Revenue has been possessing information about the taxable income of an assessee, then during time limit provided under section 149 of the Act, the AO can record reasons under section 147 of the Act, about his satisfaction for such escaped income, and thereafter, issue notice under section 148 after

taking procedural approval from the competent authorities. The last resort with the Revenue is that search conducted upon the premises of the assessee, and thereafter notice under section 153A is being issued inviting an assessee to file return of the undisclosed income unearthed during the course of search. The next category of the assessees are those with regard to whom documents pertaining to/ belonging to were found during the course of search at the premises of other persons, then the AO of the searched person would record his satisfaction that income assessable in the hands of a person upon whom no search was carried out, and transmit those papers to the AO having jurisdiction over third person i.e. person upon whom no search was carried out. Notice under section 153C would be issued upon such person, and he be directed to file return within given period in the notice.

29. In all these proceedings before scrutinizing the return, a notice under section 143(2) is mandatory. In other words, either for the purpose of scrutinizing the return filed under section 139(1) in response to a notice under section 148 or in response to the notice under section 153A or 153C; a notice under section 143(2) is mandatory if an assessee has filed return in the time frame given under section 139(1) of the Act or within the time limit given in the notices. Thus, there is no dispute with regard to the proposition that notice under section 143(2) is mandatory. A reference for buttressing this conclusion can be made to the decision of Hon'ble jurisdictional High Court in the case of CIT Vs. Sukhini P. Modi, 367 ITR 682 (Guj) and DCIT Vs. Mahi Valley Hotels & Resorts 287 ITR 360 (Guj) as well as

the decision of Hon'ble Supreme Court in the case of CIT Vs. Hotel Blue, 321 ITR 362. A perusal of section 142(1) would indicate that it authorizes the AO to issue a notice upon the assessee who has not filed return under section 139(1) and due date for filing such return has been expired. In such cases, as per sub-clause (i), the ld.AO would require such assessee to file return of his income or the income of any other person in respect of which he is assessable under this Act. In other words, before commencing an inquiry for collecting information for the purpose of scrutinizing the return, he is required to first provide an opportunity to the assessee to file his return under section 142(1) of the Act. After filing of such return, a notice under section 143(2) would be given. In a given case, in spite of opportunity given by the AO an assessee may fail to comply with the notice issued under section 142(1) and did not file the return. In such cases no notice under section 143(2) would be required for scrutinising the return. The dispute in the present case is that according to the assessee it has filed return under section 139(4); i.e. it did not file return under section 139(1) within the time frame, but filed such return on 28.9.2015 i.e. before the end of the relevant assessment year 2014-15. According to the assessee, it is a valid return for all purpose, and for making scrutiny assessment, the ld.AO should have issued a notice under section 143(2) of the Act. The AO did not issue any notice under section 143(2), and passed *ex parte* assessment order under section 144 of the Act.

30. On the other hand, stand of the Revenue is that since the due date for filing of the return under section 139(1) was expired and

before the filing of the return under section 139(4), the AO has set assessment machinery in motion by issuing of a notice under section 142(1). This notice was issued on 3.11.2014. Therefore, according to the Revenue, there was no necessity to issue notice under section 143(2) of the Act, on the belated return filed by the assessee.

31. We have given a careful thought and perused notice issued under section 142(1) of the Act dated 3.11.2014 which has been extracted (supra). A perusal of this notice would indicate that the AO has nowhere directed the assessee to file return within a time frame. This notice can be construed in the shape of collecting information. The procedure required that the AO would first provide an opportunity to the assessee to file return in a given period of time or in case it has already been filed, then copy of such return/computation of income could be submitted to the AO. Therefore, this notice is strictly not in terms of section 142(1) of the Act. The first return filed by the assessee is under section 139(4) and section 143(2) nowhere created distinction between a return filed under section 139(1) or 139(4) of the Act. It talks of a return filed under section 139. For the purpose of appreciating this aspect, we have taken cognizance of section 144 of the Act, and extracted the relevant part. A perusal of that section would also indicate that the best judgment could be passed in case if any person fails to make a return required under sub-section (1) of section 139 of the Act, and has not made a return or revised return under sub-section (4) or 5 of section 139. Similarly, he fails to comply with all the terms of the notice issued under section 142(1) of the Act. In the present case, the Act talk of return filed under section

139(1) and 139(4) or revised return under subsection (5). Similarly, it talks of conditions contemplated in sub-section (1) of section 142 of the Act. In the present case, the AO failed to issue notice under section 143(2) of the Income Tax Act in the Asstt.Year 2014-15, and therefore, respectfully following the decision of the Hon'ble Supreme Court in the case of Hotel Blue Moon (supra) and the decision of Hon'ble jurisdictional High Court in the case of CIT Vs. Sukhini P. Modi (supra), we are of the view that the assessment order is not sustainable, accordingly it is quashed.

32. As far as grounds taken on merit in all three years are concerned, we have adjudicated jurisdictional issue, and find that assessment orders are not sustainable because the AO has erroneously assumed jurisdiction in the assessment years 2012-13 and 2013-14, and has not followed the procedure for assuming jurisdiction in the Asstt.Year 2014-15, therefore we have quashed all three assessment orders. We deem it not necessary to go into the issues on merit.

33. With the above observations, all the appeals of the assessee are allowed, and that of the Revenue is dismissed.

Order pronounced in the Court on 13th July, 2021 at Ahmedabad.

Sd/-	**Sd/-**
(AMARJIT SINGH)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**VICE-PRESIDENT**

Ahmedabad; Dated 13/07/2021