

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'D', NEW DELHI**

**BEFORE SH. SIDHU, JUDICIAL MEMBER  
AND  
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos. 1074 to 1079/Del/2012  
Assessment Years: 2003-04 to 2008-09

ACIT, Central Circle-21, Room No. 344, ARA Centre, E-2, Jhandewalan Extn., New Delhi	<b>Vs.</b>	M/s. JMSW Infracon Pvt. Ltd., (Formerly Known as M/s. ANG Corporate Consultants Pvt. Ltd.), E-59, Masjid Moth, Greater Kailash, Part-III, New Delhi
<b>PAN : AAECA0411A</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

**And**

C.O. Nos. 133 to 138/Del/2012  
{ In ITA Nos. 1074 to 1079/Del/2012 }  
Assessment Years: 2003-04 to 2008-09

M/s. JMSW Infracon Pvt. Ltd., (Formerly Known as M/s. ANG Corporate Consultants Pvt. Ltd.), E-59, Masjid Moth, Greater Kailash, Part-III, New Delhi	<b>Vs.</b>	ACIT, Central Circle-21, Room No. 344, ARA Centre, E-2, Jhandewalan Extn., New Delhi
<b>PAN : AAECA0411A</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by	Sh. Naveen Chandra, CIT(DR)
Assessee by	Ms. Ananya Kapoor & Sh. Sumit Lalchandani, Advocates

Date of hearing	16.05.2017
Date of pronouncement	31.05.2017

**ORDER**

**PER O.P. KANT, A.M.:**

These six appeals of Revenue and six cross objections of the assessee are directed against common order dated 05/12/2011 of

learned Commissioner of Income-tax (Appeals)-II, Delhi, [In short %the CIT(A)+] for assessment year 2003-04 to 2008-09 respectively. The issues involved in the appeals and cross objections in different years are identical and connected, and therefore these were heard together and adjudicated by this consolidated order for sake of convenience and brevity.

2. At the outset, we would like to mention that when cases were called for hearing, Advocate Mr. Sumit Lalchandani, appeared and filed an adjournment application signed by Advocate Ms. Ananya Kapoor, Ld. counsel of the assessee, on the ground that arguing counsel, Advocate Mr Salil Kapoor was travelling out of country, due to some personal reasons. Earlier, the cases were fixed for hearing on 07/11/2016 and on the request of the Revenue these were adjourned to 25/01/ 2017 as last opportunity . On 25/01/2017, the Ld. counsel of the assessee requested that he would be busy before the Hon~~ble~~ High Court of Delhi for arguing other matters and therefore the cases were adjourned to 16/05/2017 again as a last opportunity to both parties. These cases were fixed for hearing for the first time on 10/09/2012 and thereafter, adjourned several times on the request of the Ld. counsel as well as request of the learned CIT(DR). On 21/10/2014, the Ld. CIT(DR) submitted that the Revenue had requested to Hon~~ble~~ Vice President, ITAT, New Delhi for constitution of special bench in the case of %Konnar Enterprises Private Limited+having ITA No. 4141 - 4146/Del/2012 and Cross Objection No. 345-350/Del/2012 for assessment year 2003-04 to 2008-09 and the issue involved in the present appeals and cross objections being identical to the issue involved in the cases of %Konnar Enterprises Private Limited+, the present appeals and cross objections might be kept in abeyance till the decision of constitution of special bench in the case of %Konnar Enterprises+. Thereafter, the present appeals and cross

objections were adjourned again and again on the same ground that matter of constitution of the special bench in the case of %Konnar Enterprise+was pending. We have noticed from order sheet entry dated 23/11/2015 in appeal records of the ITAT in the case of %Konnar Enterprises+that the matter of constitution of special bench in the case of %Konnar Enterprises+was not accepted by the Hon'ble President, ITAT and it was directed to list those cases before the regular bench.

3. On 07/11/2016, the bench in the present cases directed the parties as under:

*“7.11.16 Merely filing the application for constitution of Spl. Bench before the Hon'ble President does not mean that the matter can be adjourned again and again indefinitely. The learned CIT(DR) is directed to pursue the matter for constitution of Special Bench before the Hon'ble President within one month from today or argue matter after that period. No further adjournment shall be granted on this ground. Matter is adjourned to 25.01.17 as last opportunity to revenue. Both sides informed.”*

4. On 25/01/2017 again the case was adjourned and the parties were informed as under:

*“25.01.17 Hearing adjourned to 16.05.17 at the request of the A's counsel. Last opportunity to both sides. Both sides informed.”*

5. In the above background of last opportunity provided twice, in the hearing dated 16/05/2017, the parties were directed to argue their cases. The Ld. counsel reiterated to adjourn the cases and expressed inability in arguing cases. The Ld. CIT(DR) was also not prepared to argue the

appeals. In the circumstances, all the appeals and cross objections were treated as heard and the parties were directed to file written submission, if they desired so, within three days.

6. Both parties filed their written submissions and accordingly, the cases are adjudicated on the basis of the written submissions and material available on record.

7. In the written submissions filed by the Revenue, the Ld. CIT(DR) objected that cross objections filed by the assessee are time bared on the ground that same have been filed after due date of filing and no application for condonation of the delay has been filed on behalf of the assessee, thus, these cross objections deserve to be dismissed in limine. A chart of the calculation of delay in filing submitted by the Ld. CIT(DR) is reproduced as under:

A.Y.	CO No. and ITA No.	Date of Filing of Appeal by the Department	Date of issue of First Notice of the registry of ITAT	Date of receipt of notice of appeal claimed by the assessee in Form No. 36A	Date of CO filed by the Assessee
2003-04	133/Del/2012 in ITA No. 1074/Del/2012	01.03.2012	02.03.2012	29.03.2012	20.04.2012
2004-05	134/Del/2012 in ITA No. 1075/Del/2012	01.03.2012	02.03.2012	30.03.2014	20.04.2012
2005-06	135/Del/20 2 in ITA No. 1076/Del/2012	01.03.2012	02.03.2012	30.03.2014	20.04.2012
2006-07	136/Del/2012 in ITA No. 1077/Del/2012	01.03.2012	02.03.2012	29.03.2012	20.04.2012
2007-08	137/Del/2012 in ITA No. 1078/Del/2012	01.03.2012	02.03.2012	30.03.2014	20.04.2012

2008-09	138/Del/20 2 in ITA No. 1079/Del/2012	01.03.2012	02.03.2012	30.03.2014	20.04.2012
---------	--	------------	------------	------------	------------

8. On the issue of delay in filing cross objection, the Ld. CIT(DR) further submitted as under:

*“In this connection, against the order of the CIT (A), Revenue filed appeal on 01.03.2012 and on 02.03.2012 itself notice of hearing was generated and issued to both the parties. If, notice dated 02.03.2012 takes a reasonable time of 7 days it would have been received by the assessee on 09.03.2012. But COs were filed on 20.04.2012. Though the Assessee claims to have received notice of Revenue’s appeal only on 30.03.2012 but this is not based on any documentary evidence and the Hon’ble Bench needs to investigate its records (especially the Dispatch Register) and to direct the assessee to place necessary evidence on records in support of its claim that it received notice only on 30.03.2012. Reference is invited to Para 18(4)-page 21 of the Office Manual of the ITAT which provide that filing of the CO within the period of limitation is to be ascertained after verifying the acknowledgement due card as token of receipt of the copy of Memorandum of Appeal issued to the Respondent. In short, considering that since the notice of appeal dispatched on 02.03.2012 did not return unserved presumption of service of notice gets attracted.*

*This shows that the COs have been filed by the assessee after expiry more than one and a half month of Revenue’s having filed the appeals and are barred by limitation and need to be dismissed. The assessee has suppressed this vital fact before Hon’ble ITAT and there is no prayer before the Hon’ble Tribunal for condonation of this delay.”*

9. On perusal of the case records, we find that appeals of the Revenue were received on 02/03/2012 and thereafter, a copy of memorandum of the appeal filed by the Revenue i.e. appellant, was dispatched to the respondents i.e. the assessee on 21/03/2012, which the assessee has claimed to have received on 29/03/2012. The assessee has filed cross objections on 23/04/2012. In our opinion, the cross objection filed with assessee are within the limitation period of 30 days from the receipt of notice of appeal filed by the appellant. Though there is no evidence on record that said notice was served on the assessee on 29/03/2012, still if we take a period of 4 to 5 days for service of notice through registered post, then date of service of notice

would be around 25/03/2012 and the assessee has filed the cross objection on 23/04/2012, it is well within the period of 30 days prescribed in section 253(4) of the Act. In the circumstances, we do not find any merit in the objections of the Revenue on the issue of no letter of condonation of the delay by the assessee and accordingly request for dismissal of cross objections is rejected.

**ITA No. 1074/Del/2012 for AY: 2003-04**

10. Now we take up the appeal of the Revenue in ITA No. 1074/Del/2012 and cross objection of the assessee in CO No. 133/Del/2012 for assessment year 2003-04. The grounds raised in the appeal of the Revenue and the cross objection of the assessee are as under:

- “1. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs.35,21,200/- made by the Assessing Officer u/s 69C of the Income Tax Officer, 1961 on account of unexplained purchases.*
- 2. That the Commissioner of Income Tax (Appeals) erred in law and on facts in accepting the transactions of sale and purchase made in cash as genuine.*
- 3. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs.1,40,829/- made by the Assessing Officer by way of 50% disallowance of expenditure and depreciation claimed by the assessee.*
- 4. (a) The order of the CIT(A) is erroneous and not tenable in law and on facts.*  
  
*(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

**Cross objections:**

- “1. That in view of the facts & circumstances of the case and in law the CIT (A) has erred in not holding that the notice issued U/s 153C and the assessment order passed U/s 153C/143(3) are illegal, bad in law, without jurisdiction and barred by time limitation.
2. That the documents found during search proceedings, as referred to in the satisfaction note, do not belong to assessee as the same were part of working papers of the C.A Sh. B.K. Dhingra in whose office the search was conducted. Hence, the notice issued U/s 153C, based on said documents, is illegal, bad in law and without jurisdiction.
3. That admittedly, as recorded in the satisfaction note, no seized document related to the relevant assessment year was found and the seized paper referred in the said satisfaction note were duly reflected in the regular books of A/c and no incriminating material was found. Hence the notice issued U/s 153C is illegal, bad in law & without jurisdiction.
4. That in view of the facts & circumstances of the case the CIT (A) has erred on facts and in law in holding that the assessment has been framed in conformity with statutory provision of Section 153C r/w Section 153 A of the Act.
5. That in view of the facts and circumstances of the case the CIT(A) has erred in facts and on law in upholding the validity of assessment particularly when the seized document were never handed over to the A.O. who framed the assessment and the additions made are illegal, bad in law & without jurisdiction.
6. That on the facts and circumstances of the case and the provisions of the law, the CIT (A) has erred in not holding that the assumption of jurisdiction, initiation of proceedings U/s 153C including issue of notice and also completion of assessment on the Non Existent old name of the company is illegal and bad in law and as such the assessment being bad in law deserves to be quashed.
7. That on the facts and circumstances of the case and the provisions of the law, the Ld CIT (A) has erred in not considering the fact that the assessment proceeding for the year under appeal was not pending on the date of the recording of satisfaction u/s 153C of the

*Act and accordingly the same did not abate for the purpose of initiation of proceedings u/s 153C and as such the assessment being bad in law deserves to be quashed.*

8. *That the respondent reserves the right to add/amend/alter the grounds of cross objection.”*

11. Facts in brief of the case are that a search and seizure action under section 132 of the Act was carried out on 20/10/2008 at the premises of Sh. B.K Dhingra, Smt. Poonam Dhingra and M/s. Madhusudhan Buildcon Private Limited and during the course of search certain documents belonging to the assessee were seized. Accordingly, proceedings under section 153C r.w.s. 153A of the Act were initiated in the case of the assessee for six assessment years i.e. assessment year 2003-04 to assessment year 2008-09. The DCIT, Central Circle 17, New Delhi, issued notices under section 153C r.w.s. 153A on 08/07/2010 requiring the assessee to file the returns of income. In response to notice for the year under consideration, the assessee filed return on 18/09/2010 declaring nil income.

11.1 The case was subsequently transferred to another officer i.e. DCIT, Central Circle 21 on 10/11/2010 due to transfer of jurisdiction consequent to the order of the Commissioner of income tax(Central)-II, New Delhi vide order under section 127 dated 19/10/2010.

11.2 Subsequently, notice under section 143(2) and 142(1) of the Act. alongwith detailed questionnaire were issued and complied with. In the assessment order, the Assessing Officer has given a brief background about the case as under:

*“4. The assessee company belongs to the Thapar Group of cases. One of the main allegations against the group is that several concerns have been floated by the group with dummy Directors and shareholders. Their concerns are basically capital formation concerns which have build up huge reserves & surpluses over the years. These reserve & surpluses are declared*

*invested in stocks of textiles. As and when cash is required the stocks are sold and the money is utilized for other purposes as per requirement.”*

11.3 The Assessing Officer noted that the assessee company was incorporated on 10/01/2000 and filed its returns with income tax regularly. The assessee declared a closing stock of Rs.4,99,86,780/- as on 31/03/2002, which forms opening stock for the previous year under consideration. During the year, the assessee shown purchase of textile goods of Rs.35,21,200/- and shown sales of Rs.37,95,678/-. The assessee did not file any sales tax returns claiming the goods as tax exempt. The entire purchases were shown in cash and no bank account was maintained. The investigation wing of the income tax Department reported that no evidence of stock was found from any premises of THAPAR Homes Group. The assessee company is also one of the entities of the group. As against this fact, during assessment proceeding, the assessee claimed that it had a godown at Khasra No. 34/7, village DeraMandi, tehsil Mehrauli, New Delhi. No such claim was made during search proceeding.

11.4 In view of above observations, the Assessing Officer held the purchases of Rs.35,21,200/- as unverifiable and made addition under section 69C of the Act with following observations:

*“8. In the case of present assessee all the purchases & sales are in cash. The items purchased & sold are textile & fabrics. The name and style of the textiles & fabrics are "Denim, Fabrics K-III Super Fine (N), Fabric (PS), Fabric (PS) Embroidery, Fabric (PS) Excel, Fabrics, Kashmiri Fabrics-I, Kashmiri Fabrics-I(D)" etc. From these items it can be seen that the assessee is not dealing in branded items. There is no name of any company in these products. Shawls are purchased and sold in pieces and rest other items are sold in meters. It is further seen that the purchases & sales are within M/s Thapar Homes Group of cases. In inventories of Fabric & Textile Goods shown in the balance sheet the closing stock of last year stands at Rs. 4,99,86,780/-. This year the figure is Rs. 5.00.08.350/- which is almost the same. Therefore, purchases & sales are only out of current year "transactions" which are held unverifiable and bogus. It is highly improbable that with a huge stock inventory of goods which change in*

*fashion and taste the assessee has to make sales from fresh purchases only. The preponderance of probability suggests that the stocks are not genuine but since these are declared prior to 1.4.02, no action is being taken for now.”*

11.5 No separate addition was made for the sales which were otherwise held as bogus by the Assessing Officer.

11.6 The Assessing Officer also disallowed 50% of the expenses claimed in the profit and loss account, which was worked out to Rs.1,40,829/-.

11.7 Aggrieved with the assessment made, the assessee filed appeal before the Ld. Commissioner of Income-tax (Appeals) and challenged the validity of the proceedings under section 153C of the Act as well as the additions made by the Assessing Officer. The Ld. CIT-A dismissed the grounds of the assessee related to validity of proceeding under section 153C, other grounds challenging the jurisdiction of the Assessing Officer, grounds of denial of natural Justice etc. however as far as merit of additions was concerned, the Ld. CIT-A allowed the grounds of the assessee.

11.8 Aggrieved with the order of the Ld. CIT-A, both the Revenue and the assessee are before the Tribunal raising grounds in appeal and cross objections respectively.

12. In the cross objections, the assessee have challenged jurisdiction assumed under section 153C of the Act by the Assessing Officer. As the issue of jurisdiction goes to the root of matters, we first take up the cross objections raised by the assessee for adjudication.

13. In the ground No. 1, the assessee has challenged the notice issued under section 153C of the Act and assessment completed under section 153C/143(3) on the ground that same are illegal, bad in law, .without jurisdiction and barred by time limitation. In ground No. 2, the assessee has raised the issue that the documents found during search proceedings and referred in satisfaction note did not belong to the

assessee and therefore notice under section 153C based on said documents is illegal, bad in law and without jurisdiction. In ground No. 3, the assessee has raised the issue that seized documents were not related to the relevant assessment year. In ground No. 4, the assessee has challenged the finding of the Ld. CIT-A that assessment framed were in conformity with the statutory provisions of section 153C read with section 153A of the Act. In ground No. 5, the assessee has raised the issue that seized documents were never handed over to the Assessing Officer who framed the assessment. In ground numbers - 6, the assessee has raised the issue that the assessment was completed on non-existence old name of the company. In ground No. 7, the assessee has raised the issue that the assessment proceeding for the year under consideration was not pending on the date of recording satisfaction under section 153C of the Act and the same did not abate for the purpose of initiation of proceeding under section 153C of the Act.

14. In the written submissions filed the assessee has challenged the validity of the jurisdiction assumed under section 153C of the Act on the grounds that satisfaction was recorded by the incorrect AO, there is no application of mind while recording the satisfaction note, there was no incriminating material, no finding that documents do not belong to the search party and proceedings for assessment year 2003-04 and assessment year 2004-05 are barred by limitation.

15. As regard the claim that satisfaction was recorded by the incorrect AO, in the written submission, it is submitted as under:

*“It is respectfully submitted that for the purpose of assumption of jurisdiction u/s 153C, it is trite law, that Assessing Officer of the searched person has to record a finding that the seized documents belong to another person. In the instant case, the language of satisfaction note makes it clear that Assessing Officer of the other person (assessee) has recorded the satisfaction and not the*

*Assessing Officer of the searched person (as mentioned in Section 153C). The satisfaction note states “notices u/s 153C are hereby issued” The heading also stated that “satisfaction note for issuing notice u/s 153C, in the case of M/s. ANG Corporate consultants P. Ltd.”*

*The satisfaction is recorded on 05.07.2010 and 153C notice is issued on very next day 06.07.2010. Hence, the conclusion which can be dawn is that the Assessing Officer of the assessee only recorded the satisfaction.*

*Further, no satisfaction is recorded by the Assessing Officer of the searched party gets supported by the reply received in pursuance to RTI filed wherein it has been clearly stated that “no satisfaction note is available/recorded in respect of other entities.” RTI was filed asking whether any satisfaction has been recorded in the files of the searched parties.”*

15.1 Reliance has been placed on the following decisions of the Income Tax Appellate Tribunal (in short %be Tribunal+):

1. *Natural Products Biotech Ltd. Vs. DCIT, (2015) 153 ITD 58 (Delhi)*
2. *DSL Properties Private Limited Vs. DCIT, (2013) 60 SOT 88 (Delhi)*
3. *Tanvir collections (p) Ltd Vs. ACIT, (2015) 153 ITD 486 (Delhi)*
4. *Satkar Fincap Limited Vs. ACIT, (2016) 66 taxmann.com 107 (Delhi-Trib)*
5. *ACIT Vs. Command Detective and Securities Private Limited (ITA No. 4129-4134/Del/2012)*

15.2 Reliance has been placed on the following decisions of the Honϙle Delhi High Court:

1. *Pepsi Foods Private Limited Vs. ACIT (2014) 367 ITR 112(Del)*
2. *CIT Vs. RRJ Securities Ltd. (2016) 380 ITR 612 (Delhi)*

3. *Pr.CIT Vs. Aakash Arogya Mandir Private Limited in ITA No. 509/2015, Delhi High Court*

15.3 Reliance has been also placed on the ratio of the following decisions of the Hon<sup>ble</sup> Supreme Court:

1. *Manish Maheshwari Vs. ACIT (2007) 289 ITR 341 (SC)*
2. *CIT Vs. Calcutta Knitwears (2014) 362 ITR 673 (SC)*

16. As regard to the issue that the Assessing Officer has not applied mind while recording the satisfaction, in the written submission, it is submitted as under:

*“It is humbly submitted that Assessing Officer has to apply his mind as to whether the assets and documents received from the Assessing Officer of the searched party have a bearing on the determination of the total income of the Assessee and if he is so satisfied that the same have a bearing on the determination of the income of the assessee, he can issue notice u/s 153C. It is our contention that there is no application of mind by the AO. Reference is made to affidavit of Shri B.K. Dhingra (searched party) which has specifically stated that the documents found are not incriminating qua the assessee. Transactions referable to the seized material stood entered in the regular books of accounts maintained in the normal course of business and this has also been accepted by the Assessing Officer in the assessment order.*

*It is trite law that addition under Section 153C can be made only if the documents received have a bearing on the determination of the total income of the assessee. In the instant case, these transactions already stand recorded in the books of accounts of the assessee.”*

17. In support of the above contention, reliance is placed on the decision of the Hon<sup>ble</sup> Delhi High Court in the case of *PCIT Vs. Nikki Drugs and Chemicals Private Limited (2016) 386 ITR 680 (Delhi)*.

18. In the written submission, the assessee submitted list of documents relying on which 153C proceedings have been initiated as under and claimed that those documents were not incriminating:

- “(i) *Copy of account and confirmation of ‘Miracle Fashion’ in the books of A (not an incriminating document – it is already part of books also)*
- (ii) *Resolution letter authorizing staff of CA to file petitions in Court (not an incriminating document – it is already part of books also)*
- (iii) *Copy of legal notices (not an incriminating document – it is already part of books also)*
- (iv) *Application for early hearing filed in Court (not an incriminating document – it is already part of books also).”*

19. In support of the contention, that there was no incriminating material and hence proceeding under 153C of the Act cannot be initiated, the reliance is placed on the decision of the Hon<sup>ble</sup> Delhi High Court in the case of CIT Vs. RRJ Securities Ltd., (2016) 380 ITR 612 (Delhi).

20. It was further submitted that in the satisfaction note there is no finding that documents do not belong to the search party. In this regard, reliance has been also placed on the circular issued by the CBDT on 31/12/2015.

21. In the written submission, it is also submitted that initiation of proceeding for assessment year 2003-04 and 2004-05 was barred by limitation in view of the decision of the Hon<sup>ble</sup> Delhi High Court in the case of CIT Vs. RRJ Securities Ltd., wherein it is held that for counting of the six years to be reopened under section 153C of the Act, the relevant date shall be ~~the~~ date of receiving of books of accounts or documents or asset seized or requisitioned by the AO having jurisdiction over such other person+. Since in this case, documents are deemed to be handed over to the Assessing Officer of the assessee on 05/07/2010 (date of satisfaction note), the six years which could be assessed under section

153C of the Act should be previous years starting from 01/04/2004 to 31/03/2010 (A.Y. 2005-06 to 2010-11) and not from 01/04/2002 to 31/03/2008.

22. On the contrary, written submission filed by the Ld. CIT(DR) is summarized as under:

1. *The statutory provision nowhere lays down the manner of reaching satisfaction. The Hon'ble Delhi High Court in the case of SSP Aviation (supra) has used the word "satisfaction that is required to be reached" and nowhere Hon'ble High Court has said in what manner satisfaction to be reached.*
2. *Proper satisfaction was reached by the ACIT, Central Circle-17, who was the AO of the searched person as well as the assessee. This is evident from letter No. 785 placed at Annexure to evidencing transfer of records, post centralization.*
3. *Subsequently, when the record was transferred by the ACIT, Central Circle-17, to ACIT, Central - 21, the satisfaction notes were placed on the file is transferred, including the file of the assessee (at serial No. 59), which is evident from order of transfer of records, reproduced as under:*

*"Please refer to CIT(A)-II/Central/2010-11/1029 dated 19/12/10/2010 on the above said subject.*

*In pursuance of the order u/s 127 of the I.T. Act, 1961 dated 19/21/10/2010, I am transferring herewith 61 (sixty one) cases of block assessments for the AYs 2003-04 to 2009-10 of M/s. Thapar Homes Ltd. group of cases. The Satisfaction notes have been placed on each file and notices u/s 153-C/142(1) have also been issued in all 61 cases. The Annexure-I showing details of 61 cases is attached herewith. All the 61 (sixty one) cases are getting barred by limitation on 31.12.2010."*

*Please acknowledge the receipt*

*Yours faithfully,  
ACIT, Central Circle-17"*

4. *The language of the satisfaction note is explicit and shows that the satisfaction is in fact of the AO of the searched person i.e ACIT, Central circle - 17.*
5. *The information furnished under RTI pertains to satisfaction note available on the file of the searched person and letter No. 785 dated 26/10/2010 explains why this was not available on the file of the searched person.*
6. *Perusal of the satisfaction note, letter of transfer of record an extract from appraisal report, which is available at Annexure A3 shows that satisfaction is in recorded by the AO having jurisdiction over the searched person.*
7. *WITHOUT PREJUDICE, Judicial decisions have held that when the Assessing Officer of the persons searched and the Assessing Officer of the person other than the persons searched are the same, then there is no need of recording satisfaction in the records of persons searched for initiation of proceedings under Section 153C of the Act. The requirement as per law is that the AO "is satisfied that any money..... documents seized or requisitioned belongs..... to a person other than the person referred to in s. 153A", then the books of account etc shall be handed over to the assessing officer having jurisdiction.*

*What is required is that satisfaction be reached. In Appellants case, however, all the requirements laid down in S 153 C/ Pepsi/Pepsico- have been met. Assessing Officer of searched person recorded satisfaction regarding documents not belonging to searched person and then issued notices whereafter satisfaction note was placed on the folder of each person in respect of whom notices under 153C had been issued. And were handed over to ACIT Central Circle 21 to whom jurisdiction was*

*assigned pursuant to centralization order dated 19/21-10-2010 ie ACIT Central Circle- 21.*

*This view is also supported by the decision of Hon'ble ITAT in the case of M/s. Piyush Infrastructure India Pvt. Ltd. ITA No. 1072/Del/2011 vide order dated 25.10.2012 in Para No. 2 and by 133 TTJ 53 Bilaspur ACIT v Panchuram Deshmukh. The ITAT held that a "Hypertechnical approach cannot be allowed to suffer the revenue which is collected for the welfare of the State and spent for the same" and since the AO was the same in these cases, so there was no need of communication of satisfaction.*

*"7. As per amended provisions of s. 153C, satisfaction has to be arrived at with regard to belongingness of a document found during the search and not regarding the undisclosed income. The AO has issued notice, after considering all the related particulars. The seized material was received on 21st Oct., 2005. Prior to this, the AO was having enough evidence to record satisfaction and the same is contained in the order sheet. The satisfaction gives specific particulars of Annexures to the seized material and the contents of the seized material, which shows that the AO applied his mind before issuing the notice. In this background, it is not correct to suggest that the notice was issued without proper satisfaction. Regarding issue of subsequent notice, AO has stated that it was issued as a matter of abundant precaution and all earlier proceedings were superseded by the fresh notice which takes care of all background, which is justified.*

*8.....Hypertechnical approach cannot be allowed to suffer the revenue which is collected for the welfare of the State and spent for the same. Under these circumstances all the preliminary issues raised by the assessee were rightly rejected by the AO and by the CIT(A), which needs no interference from our side. It is pertinent to mention that the AO is same in these cases, so there is no need of communication of satisfaction. We are aware of the ratio of the Hon'ble Supreme Court in the case of Manish Maheshwari v. Asstt. CIT [2007]1208 CTR (SC) 97:120071289 ITR 341 (SC) wherein it has been held that the AO has to record his satisfaction that any undisclosed income belongs to third party and handover the books of accounts and other documents and assets seized to AO having jurisdiction against the said third person. This ratio is not applicable when jurisdiction of both assessee vests in same AO. In case of ShriTrilok Singh Dhillon group, the AO is same. Without prejudice to the above, language of provisions of ss. 158BD and 153C is not similar. The provision of s. 153C mentions any money, bullion, jewellery or other valuable articles or thing or things or books of accounts or documents to a person other than person referred to in s.*

153A. The issue of handing over comes when AO in ss. 153A and 153C is same, and then there is no question of handing over of documents etc. Impliedly, no occasion for recording satisfaction with a person subjected to s. 153C action. Alternative stand of the assessee was that the seized materials were received by the AO only on 21st Oct., 2005 i.e., much after the issue of the notice under s. 153C i.e., 16th Feb., 2005. Therefore, there was no material available with the AO for taking such action. This issue has been taken care by us in preceding para of this order. "Emphasis supplied.

This decision of co-ordinate Bench of Hon'ble ITAT has been followed by another co-ordinate bench decision of Hon'ble ITAT in the case of Varsha Buildwell India Pvt. Ltd. & Piyush Buildwell in ITA No. 5526/D/2013 & 5527/D/2013 order dated 28.11.2014.

7. This is exactly the view taken by Kerala High Court in *Dr KM Mehboob Vs. DCIT (2012) TIOL-642-HC-Kerala-IT (Hon'ble Kerala High Court)* wherein they have said in the context of different AOs that, "this is purely an internal arrangement between two Departmental Officers" and in this case since the same officer held jurisdiction in dual capacity, his satisfaction is clearly made out.

" *CIT v Panchjanyam Management 333 ITR 281 (Kerala Hon'ble Kerala High Court)* and

" *Subham Javedvs ACIT (2010) 122 ITD 307 (Bangalore) ITAT Bangalore Bench 'B'* reiterate this position.

8. The case of Supreme Court decision of *Calcutta Knitweaves Ludhiana* dated 12th March 2014, 362 ITR 673(SC) the court has held that for the purpose of section 158 BD of the Act a satisfaction note must be prepared by the AO before he transmits the records to the other assessing officer who has jurisdiction over such other person. The view was followed by the Hon'ble Delhi High Court in the case of *Manju Finance Corporation 231 Taxman 44(Del)*. In the above cases the AOs of the searched person and

*the other person were different and involved transfer of records from one AO to another AO. In the instant case the AO holding jurisdiction over both searched person and over person to whom notice under section 153C was issued is the same person. This is evident from satisfaction note which the AO has recorded. This is a distinction recognized by the Kerala High Court in the case of CIT v Panchjanyam Management (supra).*

9. *Further as explained in CIT (A) order relying upon jurisdictional High Court in Anil Kumar Bhatia 24 Taxman 98 (Delhi)- there is no condition of satisfaction on the existence of incriminating documents for assumption of jurisdiction u/s 153 C- The AO is obliged to initiate u/s 153 C where valuable article, books of account, document etc relating to a person other than the searched person is seized. Similar view is taken in CIT v. Chetan Dass 25 Taxman.com 227 (Delhi). The decisions of Honb'le ITAT in various cases relied upon on the issue of "seized material of incriminating material" have not considered the Apex court decision in the case of Mukundray K Shah reported in 290 ITR 433 (SC) where the Apex court upheld the additions u/s 158BC(c) r.w.s. 143(3) made u/s 2(22)(e) on the basis of seized material which the assessee had claimed was print out of the ledger account that was part of the audited books of account of the assessee reflecting investment made in RBI Relief Bonds. The law laid down , therefore, is that assessment made on the basis of seized paper, even though duly reflected in the regular books of account, will be a valid assessment u/s 158BC. The decision of Hon'ble Delhi High Court in the case of Filatex India Ltd and Hon'ble Karnataka High Court in the case of Canara Housing Development Company reiterate the law that once search has*

*taken place and proceedings are initiated, the 'total income' as against 'undisclosed income' is to determined.*

10. *In the case of Honble Delhi High Court case of Pepsico and Pepsi Foods and ITAT order in DSL Properties Pvt. Ltd. In ITA No. 11349/Del/2012 dated 22.03.2013 under which the decisions of Inlay and Aakash Arogya were decided and under which the appellants case is sought to be treated as covered, are decided on the basis of Pepsico and Pepsi foods which were delivered on a peculiar conspectus of facts missing in this case ie Photocopies found with searched person were used to initiate proceedings under 153C. In this context the Court held that unless it was established that the documents in question did not belong to searched person, the question of invoking 153 C did not arise. In the appellants case there is no such doubt and the ownership of the documents mentioned in the satisfaction note has never been questioned by the appellant. This itself distinguishes the appellants case. The ITAT in Akash Arogya and Inlay has ignored Kerala High Court (Dr KM Mehboob V DCIT (2012) TIOL-642-HC-Kerala-IT) wherein the exact issue has been decided by the Court.*
  - *The ownership of documents recovered from the searched premises has never been questioned by the appellant before any authority including the ITAT.*
  - *The nature of documents recovered is such that there is no doubt that they belong to the appellant. (Refer Apoorva Extrusions ITA No. 3308/Del/2010 vide order dated 09.10.2014 )*
  - *The Apellant prayed for "telescoping" in its appeal before CIT(A) effectively the additions made.*
11. *The recent judicial thinking has also been ignored which is apparent from the Apex Court decision in the case of MAK Data P Ltd 358 ITR 593(SC) which has held in the context of 271 (1 )(c) at para 10 that "the AO has to satisfy whether penalty proceedings*

*be initiated or not during the course of the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing". The word of "satisfied" used in 271 (1 )(c) is similarly placed as the word 'satisfied' occurring in section 153A/C. Similarly the Hon'ble Delhi High Court in the context of section 271(1)(c) has held in the case of ECS Ltd 336 ITR 162(Del) that if satisfaction is discernible from the assessment order then penalty is justified. In a recent decision, the Hon'ble Delhi High Court has held in the context of section 14A, in the case of Indiabull Financial Services Ltd 76 taxmann.com 268(Del), that AO need not expressly record his dissatisfaction about assessee's calculation in cases where he has carried out elaborate analysis for determining expenditure incurred for earning exempt income.*

23. In his submission, the learned CIT(DR) has distinguished the cases relied upon by the assessee in the written submission made earlier. It is further submitted by the Ld. CIT(DR) in his written submission that existence of undisclosed income is not a prerequisite under the provision of section 153C of the Act, and which is distinguishable from the provisions of section 158BD. Hon'ble Delhi High Court in the case of SSP Aviation(supra) as well as by the Hon'ble ITAT in the case of Apporva Extrusion Pvt. Ltd. ITA No. 3308/Del/2010 vide order dated 09.10.2014 and ITAT in the case of M/s. Piyush Infrastructure India Pvt. Ltd. ITA No. 1072/Del/2011 vide order dated 25.10.2012 endorse this view as does ITAT's own order in Inlay at para 17. It is a different matter that a contrary finding is given in para 11 of order in Tanvir. The learned CIT(DR) in written submission further submitted as under:

- i. Decisions relied upon by the learned Counsel are distinguishable on both fact and law and in clear violation of the principle of Cassus omissus that a matter which should have been, but has not been provided for in a Statute cannot be supplied by Courts, as to do so will be legislation and not construction.*
- ii. What emerges from an analyses of the various decisions including the jurisdictional High Court in the case of SSP Aviation & Pepsico India Holding Pvt. Ltd. is that the assessing officer of the searched person must be satisfied that the seized material does not belong to the person referred to in section 153A. Pepsico and Pepsi foods are thus distinguishable from the case on hand since what was found from the premises of the searched person Jaipuria was photocopies of documents which did not belong to "other person".*
- iii. It is settled law that technicalities and irregularities which do not occasion failure of justice should not be allowed to defeat the ends of justice, therefore, on the basis of small and curable technicalities and irregularities, entire proceedings conducted by the revenue cannot be held illegal or without jurisdiction. The search and subsequent proceedings have borne out the evasion of taxes and to set aside the whole investigation and subsequent assessments on the basis of technicalities is unfounded without appellant showing what prejudice was caused to it. Appellant had cooperated in assessment even seeking telescoping of additions made before CIT(A) and has now been allowed relief on technicalities.*
- iv. Consider the law laid down by the apex Court with various other High Courts on the issue of prejudice caused to the affected parties. As delineated by the hon'ble Bombay High Court in the case of Shirish Madhukar Dalvi reported in 287 ITR 242(Bom):*

- a) *In the case of State of Kerala v. Muniyappa*, 1985 SC 470, it is held that merely because an order is purported to be made under a wrong provision of law, it does not become invalid so long as there is some other provision of law.
- b) *In the case of Hukumchand Mills Ltd. v. State of Madhya Pradesh*, 1964 SC 1329 the apex Court has ruled that mere mistake in the opening part of the notification in reciting the wrong source of power does not affect the validity of the amendments made.
- c) *In the case of State Bank of Patiala v. S.K. Sharma*, 3 SCC 364 the apex Court ruled that in case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. The order passed in violation of such provision can be set aside only where such violation has occasioned prejudice to the subject. It further went on to observe that even mandatory requirement can be waived by the person concerned, if such mandatory provision of law is conceived in his interest and not in the public interest. The conduct of the subject must be borne in mind while examining a complaint of non-observance of procedural rules governing such enquiries. As a rule, all such procedural rules are designed to afford a full and proper opportunity to the subject to defend himself.
- d) *In the case of Dove Investments (P) Ltd. v. Gujarat Industrial Investment Corporation* 2 SCC 619 the apex Court has observed that regard must be had to the context, subject-matter and object of the statutory provision in question in determining whether the same is mandatory or directory. No universal principle of law could be laid in that behalf as to whether a particular provision or enactment shall be considered mandatory or directory. It is the duty of the Court to try to get the real intention of the legislature by carefully analysing the whole scope of the statute or section or a phrase under consideration.
- e) *In the case of P.T. Rajan v. T.P.M. Sahuji*, 8 SCC 498 the apex Court has said that whether a statute would be directory or mandatory will depend upon the scheme thereof. Ordinarily, a procedural provision would not be mandatory even if the word "shall" is employed therein unless a prejudice is caused.

In Section 153 C the words used are "...the assessing officer is satisfied...+

(v) *It is important to note that in the case of Crawford on Statutory Construction, it was held as under:*

- *Miscellaneous implied exceptions from the requirements of mandatory statutes, in general even where statute is clearly mandatory or prohibitory, yet, in many instances, the Courts will regard certain conduct beyond the prohibition of the statute through the use of various devices or principles. Most, if not all of these devices find their jurisdiction in consideration of justice. It is a well-known fact that often to enforce the law to its letter produces manifest injustice, for frequently equitable and humane considerations, and other considerations of a closely-related nature, would seem to be of a sufficient calibre to execute or justify a technical violation of the law.*
- *In the case of Dove Investments (P) Ltd. (supra), the apex Court has held that it is necessary for the person to show how he was prejudiced. It is, therefore, necessary for the person objecting to the validity of notice, to demonstrate prejudice suffered by it. The same principle is reiterated in the case of State Bank of Patiala (supra). Precisely the issue in Pepsi foods and Pepsico ie initiation of proceeding on the basis of photocopies without reaching a finding that these belonged to other than the searched person.*

(vi) *The ITAT orders relied upon not only violate cassus ommissus but are in contravention of trite law as they fail to bring out how the appellant was prejudiced particularly as reiterated supra when the ownership of documents found during the search have never been challenged by the appellant and the issue of satisfaction was never taken up before lower authorities and appellant acquiesced in proceedings and sought telescoping before CIT(A). Letter no 785 dt 26-10-2014 read with satisfaction note clearly lays down the that AO of searched person ACIT, CC - 17 had recorded his satisfaction before transferring the files to ACIT, CC- 21 after change of jurisdiction.*

*(vii) It is thus humbly prayed that the cross objections be dismissed and the case heard on merits.*

24. We have perused the written submissions of the parties and the relevant material available on record. The first issue challenging the jurisdiction under section 153C of the Act raised is whether the satisfaction note required in terms of section 153C of the Act has been recorded by the AO of the searched person or of the other person (i.e. the assessee). It is apparent from the assessment order of the assessee that a search was carried out under section 132 of the Act on Sh. BK Dhingra, Smt. Poonam Dhingra, and M/s. Madhusudhan Buildcon Private Limited and in such search proceedings material belonging to the assessee was found and seized, which led to making of the assessment under section 153C read with section 153A of the Act in the instant case. In view of the issue of satisfaction recorded by incorrect AO raised in the submission of the Ld. counsel, it is relevant to refer the section 153C(1) of the Act at the material time as under:

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

25. It is evident from the above provision, that where the Assessing Officer of the searched person is satisfied that any money, bullion, jewellery, books of accounts or other documents etc. belong to a person other than the person searched, then such assets or documents etc. shall be handed over to the AO of the other person and the AO should proceed against such other person to assess or reassess the income of the other person. Thus, according to the provision, before handing over of such assets/ documents to the Assessing Officer of the other person, the satisfaction has to be recorded by the Assessing Officer of the person searched that money bullion, jewellery or document etc. found from the person searched belong to other person. Thus, the AO acquires jurisdiction under section 153C of the Act only when the AO of the searched person record the satisfaction and handover the assets or documents belonging to the other person, to the Assessing Officer of the other person. It transpires from the provision that recording of satisfaction by the Assessing Officer of the person searched is a condition precedent for the Assessing Officer of the other person to acquire jurisdiction and unless jurisdictional condition is satisfied, there can be no question of making assessment or reassessment in the case of such other person.

26. Prior to the introduction of section 153C, under the scheme of block assessment for such cases, there is a corresponding section 158BD of the Act which reads as under:

***“Undisclosed income of any other person.***

***158BD.*** *Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other 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 under section 158BC against such other person and the provisions of this Chapter shall apply accordingly.”*

27. From perusal of the above provision, it is clear that when the Assessing Officer of the person searched is satisfied that undisclosed income belongs to any person other than the person searched, then the books of accounts and other documents etc. are to be handed over to the Assessing Officer having jurisdiction over such other person and after recording of the proper satisfaction by the Assessing Officer of the searched person, the Assessing Officer of the other person can proceed for determining undisclosed income of such other person.

28. Thus, we find that as far as recording of satisfaction by the Assessing Officer of the searched person is concerned, the requirement of the section 158BD and section 153C of the Act are identical. The difference is in respect of what belongs to the other person. In section 158BD, it is the undisclosed income which should belongs to the other person, whereas in section 153C, it is the material which should belongs to other person.

29. The issue of recording satisfaction and framing assessment under section 158BD of the Act came up for consideration before the Hon<sup>ble</sup> Supreme Court in the case of CIT Vs. Calcutta Knitwear (supra) wherein the Hon<sup>ble</sup> Supreme Court held that for the purpose of section 158BD of the Act the satisfaction note is sine qua non and must be prepared by the Assessing Officer before transfer of the records to the other AO who has jurisdiction over such other person.

30. On comparison of the section 158BD and 153C of the Act, it is clear that so far as the question of acquiring jurisdiction by the Assessing Officer of the person other than the person searched, is concerned, the provisions of section 153C are *pari material* with section 158BD and the ratio of the judgement of the Hon<sup>ble</sup> Supreme Court will apply to the provision of section 153C as well.

31. We further note that the CBDT has issued circular number 24/2015, dated 31<sup>st</sup> December, 2015, in view of the judgment of the Hon'ble Supreme Court in the case of Calcutta Knitwears (supra), which reads as under:

*"The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.*

*2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitwears in its detailed judgment in Civil Appeal No.3958 of 2014 dated 12.3.2014(available in NJRS at 2014-LL-0312-51) has laid down that for the purpose of Section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person u/s 158BD. The Hon'ble Court held that "the satisfaction note could be prepared at any of the following stages: (a) at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; or (b) in the course of the assessment proceedings under section 158BC of the Act; or (c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person."*

*3. Several High Courts have held that the provisions of section 153C of the Act are substantial similar/pari-materia to the provisions of section 158BD of the Act and therefore, the above guidelines of the Hon'ble SC, apply to proceedings u/s 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.*

*4. The guidelines of the Hon'ble Supreme Court as referred to in para 2 above, with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.*

*5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgment. Accordingly, the Board hereby directs that pending litigation with regard to recording of*

*satisfaction note under section 158BD /153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court.”*

32. In the other decisions of the Hon<sup>ble</sup> High Court and tribunal, cited in the written submission of the assessee as well as by the learned CIT(DR), as far as the issue of recording satisfaction by the Assessing Officer of the searched person, prior to handing over of such material to the AO of the other person, similar findings are given and now by the judgement of the Hon<sup>ble</sup> Supreme Court in the case of Calcutta Knitwears (supra) the issue is settled.

33. When the Assessing Officer of the searched person and Assessing Officer of the other person are different, then it can easily be discern, that satisfaction has been recorded by which Assessing Officer. But the difficulty arises when the Assessing Officer of the searched person and Assessing Officer of other person is same and he has not recorded under which capacity, the satisfaction note was recorded by him. In such circumstances, it is required to go through the circumstantial evidence to decide whether the satisfaction note was recorded by the Assessing Officer in the capacity of the Assessing Officer of searched person.

34. Before us, the Ld. counsel of the assessee in the written submission has submitted that under the RTI application, it is gathered that such satisfaction note was not available on the record of the searched person. Out of the three person searched, the Ld. counsel has submitted reply of the RTI query obtained from the DCIT, Central circle 17, New Delhi in the case of Sh. BK Dhingra and Smt. Poonam Dhingra, which are available on page 21 and 22 enclosed with the written submission. Such reply in the case of Sh. BK Dhingra reads as under:

*“2. From the assessment records of Sh. Bhupesh Kumar Dhingra, which is covered under Section 153A, for the Assessment years*

*from 2003-04 to 2008-09 (Block period) it is notices that there is not 'satisfaction note' available/recorded in respect of other entities."*

35. According to this RTI reply, no satisfaction note is available on the assessment record either of Sri BK Dhingra or Smt. Poonam Dhingra. However, we find that RTI reply has been submitted by the assessee from the Assessing Officer of M/s Madhusudhan Buildcon Private Limited.

36. On the contrary, the Ld. CIT(DR) in his written submission has submitted that the Assessing Officer of the searched person recorded the satisfaction note and copy of the same was placed on the record of such other person and on transfer of the jurisdiction of those other person to the DCIT, Central circle 21, copy of all the satisfaction note were also transferred with the record, and which are available on such records. The Ld. CIT(DR) claimed to filed such transfer note, and part of the appraisal report, however, same were not found to be enclosed with his written submission.

37. We also note that the Ld. counsel of the assessee has not certified the paper book pages filed along with the written submission, whether same were available before the lower authorities or those are additional evidences. Irrespective of the fact whether the RTI replies are additional evidence or not, even we accept those replies stating that satisfaction note were not available on the assessment records of those searched person, still that cannot conclusively prove that the satisfaction note was not recorded by the Assessing Officer in the capacity of searched person. It is also possible that sometimes, the satisfaction note is placed in the confidential folders of the Assessing Officer and may not be available on assessment records. It is also a matter of fact that copy of satisfaction note is normally sent to the Assessing Officer of other person and which is evident that a copy has been found on the records of the

assessee. Thus, physical non availability of satisfaction note on the assessment record of searched person alone is not sufficient to conclude that it was not recorded in the capacity of searched person.

38. In such circumstances, we must look at the language of the satisfaction note and see what we can infer from that. In this regard, It is important to reproduce the satisfaction note recorded by the Assessing Officer, which is available on Annexure P1 appended with the written submission of the assessee, as under:

*“Satisfaction Note for Issuing Notice u/s 153C of the I.T.ACT, 1961 In the case of M/S AN6 Corporate Consultants P Ltd, RZ-L26, West Sagarpur, Shankar Park, New Delhi, AAECA0411A for A.Y. 2003-04 to 2008-09*

*05/07/2010 Documents at pages 30 - 31 of Annexure of A-1, pages 45, 58-63, and 91 of Annexure of A-8 seized by the Party R-2 from the premises at F 6/5, Vasant Vihar, New Delhi during the course of search conducted u/s 132 of the I.T. Act, 1961 on 20/10/2008 In the case of Sh; B.K.Dhingra , Smt. Poonam Dhingra, M/s Madhusudan Bulidcon Pvt. Ltd. have been found to belong to M/s ANG Corporate Consultants P Ltd, RZ-126, West Sagarpur, Shankar Park, New Delhi which has not been covered u/s 132 of the I.T.Act,1961. Accordingly, in terms of provisions of section 153C of the Act, notices u/s 153C are hereby issued for the A.Y. 2003-04 to 2008-09 in the case of M/s ANG Corporate Consultants P Ltd The case was centralized In the Central Circle - 17, New.Delhi vide orders dated 05/Jan/10 of CIT-I, New Delhi.”*

39. On perusal of the above satisfaction note we find that the Assessing Officer has recorded that in terms of provision of section 153C of the Act, notices are hereby issued u/s 153C for AY 2003-04 to 2008-09 in the case of M/s. ANG Corporate Consultant Private Limited (old name of the assessee). Since notice under section 153C of the Act is always issued by the Assessing Officer of the other person and not by the Assessing Officer of the searched person, the sentence that %notices are hereby issued+ indicate that the above satisfaction note has been recorded by the DCIT Central circle 17, New Delhi in the capacity of the

Assessing Officer of other person. The heading of this satisfaction note also supports this view.

40. The above fact coupled with the fact of non-availability of satisfaction note on the record of the searched persons, Sh. BK Dhingra and Smt. Poonam Dhingra led us towards the conclusion that the satisfaction note was not recorded by the DCIT, Central circle 17, New Delhi, in the capacity of a Assessing Officer of searched person, which is one of the essential requirement for invoking jurisdiction under section 153C of the Act and in absence of which proceedings initiated under section 153C of the Act are not validly initiated. Accordingly, we quash those proceedings.

41. The Ld. CIT(DR) in written submission has submitted that technicalities and irregularities, which do not occasion in failure of Justice should not be allowed to defeat the end of Justice and the entire proceeding conducted by the Revenue cannot be held illegal, without jurisdiction.

42. Though, we agree in principle that technicalities should not come in the way of dispensation of Justice but the issue of lack of jurisdiction cannot be ignored under the guise of a technical defect. We are not convinced with the above contention advanced on behalf of the Revenue. We fail to understand as how the requirement of recording satisfaction by the Assessing Officer of the searched person provided in the statute could be treated as a small irregularity. In our opinion it is the prime requirement for initiating proceedings under section 153C of the Act. The Assessing Officer in the capacity of the searched person only examines the records seized and come to the conclusion as to which of the such money, bullion jewellery or documents belongs to the searched person and to the others. The legislature has provided for recording of such satisfaction by the Assessing Officer of the person searched and

thus the Assessing Officer cannot be allowed to record satisfaction in the capacity of Assessing Officer of other person. In our opinion no assessment or other proceeding can be lawfully taken up and completed unless the concerned authority has jurisdiction to do so and the lack of jurisdiction goes to the foundation of the matter and if the foundation is missing, the entire building collapse. Thus, the contentions advanced by the Revenue are rejected. Further, we find that the Central Board of Direct Taxes (CBDT), who is the apex body controlling the Administration of the Income Tax Department, in the circular (supra) has clearly directed the officers of the Department either not to file appeals or to withdraw the appeals where satisfaction note is not recorded by the Assessing Officer in the capacity of searched person. In such circumstances, advancing of above arguments are futile and wastage of resources of the Income Tax Department.

43. Since we have quashed the proceeding initiated under section 153C of the Act on the ground that satisfaction note was not recorded by the Assessing Officer in the capacity of Assessing Officer of searched person, the other submissions and legal issues challenging the jurisdiction under section 153C of the Act are not required to adjudicate. Thus, ground No. 1 of the cross objection of the assessee is allowed. In view of our decision on ground No. 1, the proceeding are quashed and therefore, we need not adjudicate other grounds of the cross objection of the assessee as well as grounds raised in the appeal of the Revenue on merits.

44. In the result, the cross objection of the assessee is allowed and the appeal of the Revenue is dismissed.

45. As regards C.O. No. 134 to 138/Del/2012 (AY: 2004-05 to 2008-09) are concerned, we find that issues involved in these cross objections are identical and similar to the issues raised in the C.O. No.

133/Del/2012 (AY 2003-04) as decided by us aforesaid, wherein we have allowed the cross objection of the assessee. Keeping in view of the above, we allow the cross objections filed by the assessee.

46. As cross objections in AY 2003-04 to 2008-09 of the assessee challenging the jurisdiction have been allowed and the assessment have been quashed, the grounds raised by the Revenue in ITA No. 1075/Del/2012 to 1079/Del/2012 cannot survive and accordingly, the appeals of the Revenue in ITA No. 1075/Del/2012 to 1079/Del/2012 stands dismissed.

47. In the result, all the cross objections of the assessee are allowed and all the appeals of the Revenue are dismissed.

The decision is pronounced in the open court on 31<sup>st</sup> May, 2017.

Sd/-  
**(H.S. SIDHU)**  
**JUDICIAL MEMBER**

Dated: 31<sup>st</sup> May, 2017.  
RK/(D.T.D)

Sd/-  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi