

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

Before Shri H.S. Sidhu, JM & Shri O.P. Kant, AM

ITA Nos. 6216 & 6217/Del/2014 : Asstt. Years : 2009-10 & 2010-11

Victory Accommodation Pvt. Ltd., 208, Gupta Tower, Azadpur Commercial Complex, Azadpur, New Delhi-110033 (PAN: AACCV3923C)	Vs	ACIT, Central Circle-09, New Delhi
(APPELLANT)		(RESPONDENT)

ITA Nos. 6239 & 6240/Del/2014 : Asstt. Years : 2009-10 & 2010-11

ACIT, Central Circle-09, New Delhi	Vs	Victory Accommodation Pvt. Ltd., 208, Gupta Tower, Azadpur Commercial Complex, Azadpur, New Delhi-110033
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Rano Jain, Adv., & Sh. Ashish Goyal, CA

Revenue by : Sh. Naveen Chandra, CIT (DR)

ORDER

PER H.S. SIDHU, JM:

The cross appeals by the assessee and the department and are directed against the separate orders of the of Ld. CIT(A)-XXXII, New Delhi, relating to assessment years 2009-10 & 2010-11 respectively.

2. At the first instance we will deal with the cross appeals in the case of M/s Victory Accommodation Pvt. Ltd. for the

assessment year 2009-10. The grounds raised in ITA No. 6216/Del/2014 by the assessee read as under:

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition of Rs. 2,74,00,000/- made by the AO on account of share application money under section 68 of the Act.

3(i) On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the above addition rejecting the explanation and evidences brought on record by the assessee to prove the identity, creditworthiness of the shareholder and genuineness of the transaction.

(ii) That the addition had been made without pointing out any defect or irregularity in the evidences filed by the assessee.

4. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the said addition despite the fact that the same has been made on the basis of material and evidences collected at the back of the assessee without giving it an opportunity

to rebut the same in clear violation of the principle of natural justice.

5. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition despite the same being made on the basis of statements of some person without giving assessee an opportunity to cross examine in clear violation of principle of natural justice.

6. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in adjudicating the issue on merits, having once held the assessment order to be illegal and bad in law for lack of jurisdiction.

7. The Appellant craves leave to add, amend or alter any of the grounds of appeal."

3. The grounds raised by the department in its appeal in ITA No. 6239/Del/2014 read as under:

"(1) The commissioner of Income Tax (Appeals) erred in law and on facts in upholding the ground of the assessee that provisions of section 153C of the Act could not be applied in this case and initiation of proceedings u/s 153C was not proper and bad in law.

(2) The commissioner of Income Tax (Appeals) erred in law and on facts in holding that for initiating valid jurisdiction u/s 153C, even if the AO of the searched person and the AO of such other person is same, it is mandatory that he has to first record satisfaction note in the file of the person searched and thereafter

such satisfaction note along with the seized documents or books of account to be placed in the file of such other person.

(3) The commissioner of Income Tax (Appeals) erred in law and on facts in holding that no fair opportunity of hearing u/s 143(2) of the Act was given to the assessee before completing the assessment u/s 153C of the IT Act.

(4) (a) The order of the CIT(Appeals) 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."

4. From the above grounds of the assessee's appeal, it would be clear that the main grievance of the assessee relates to the validity of the notice dated 27.02.2012 issued to the assessee and the assessment framed thereafter u/s 143(3) r.w.s. 153C of the Income Tax Act, 1961 (hereinafter referred to as the Act).

5. Facts of the case as appearing in the orders of the authorities below in brief are that the assessee was engaged in the business of a Builder and Developer of Real Estate. A search and seizure operation u/s 132 of the Act was conducted by the Investigation Wing of the department in Victory Group of cases (Main Jagat Group) its directors, other individuals and connected associates at business & residential premises on 14.09.2010. A survey

operation u/s 133A of the Act was also conducted on the business premises of the assessee on 14.09.2010. The AO issued the notice u/s 153A of the Act on 04.11.2011 for the assessment year under consideration. The assessee informed the AO that no action u/s 132 of the Act was initiated against the assessee. The AO verified the same and found the said version of the assessee as correct. Accordingly, the aforesaid notices issued u/s 153A of the Act were withdrawn and the assessee was informed accordingly. Thereafter, a satisfaction note u/s 153C of the Act was drawn on 27.02.2013 and the notices u/s 153C of the Act were issued for the assessment year. In response, the assessee vide letter dated 05.03.2013 stated that return of income already filed u/s 139(1) of the Act on 25.09.2009 may be treated in response to the notice u/s 153C of the Act. The AO in the body of the assessment order dated 28.03.2013 observed that during the course of assessment proceedings u/s 153C of the Act in the case of Sh. Pramod Goel, it was noticed that the search and seizure operation u/s 132 of the Act was undertaken on 14.09.2010 in the cases of Sh. Pramod Goel, Smt. Savita Goel and Sh. Ashish Goel at BN-33, East Shalimar Bagh, Delhi and the documents belonging to the assessee were found and seized from the above premises. The AO thereafter framed the assessment u/s 143(3) r.w.s. 153C of the Act on 28.03.2013, assessing the income of the assessee at Rs.2.74 crores for the assessment year 2009-10 by making the additions u/s 68 of the Act on account of share capital/premium received by the assessee during the year relevant to the assessment year under consideration.

6. Being aggrieved the assessee carried the matter to the Id. CIT(A) and challenged the jurisdiction of the AO assumed u/s 153C of the Act, who vide his impugned order dated 20.8.2014 has dismissed the appeal of the assessee.

7. Against the order of the Ld. CIT(A), assessee is in appeal before the Tribunal.

8. At the time of hearing, Ld. Counsel of the assessee has stated that the issue in dispute is squarely covered by the ITAT, Delhi decision in group concern of the assessee company vide order dated 24.3.2017 passed in ITA No. 6225 to 6237/Del/2014 and filed the copy of the said decision before the Bench. She further filed the copy of the decision of the Hon'ble Delhi High Court in the case of Pr. CIT vs. Aakash Arogya Mandir Pvt. Ltd. vide order dated 28.7.2015 reported in 2015 (7) TMI 1047 in which the Hon'ble High Court has dealt the similar issue and decided the appeal in favour of the Assessee, as a result the issue in dispute is squarely covered. In support of his contention, the filed the copy of the Synopsis. For the sake of convenience, the contents thereof are reproduced hereunder:-

"1. The cross appeals filed by the assessee as well as revenue are against the order of the Ld. CIT (A) dated 20.08.2014, whereby she has partly allowed the appeal in favor of the assessee.

2. A search and seizure operation was conducted on Victory Group on 14.09.2010 and notice u/s 153A of the Act was issued to the assessee on 04.11.2011. However, when it was submitted to the

department that no search and seizure operation was conducted in assessee's case, the said notice u/s 153A was withdrawn.

3. Subsequently, a notice u/s 153C of the Act dated 27.02.2013 was issued to the assessee. The AO in his order observed that in consequence of a search and seizure operation in the case of Pramod Goel, Savita Goel and Ashish Goel on 14.09.2010, since certain document belonging to assessee was found, therefore this notice u/s 153C of the Act was issued.

4. The assessment, thereafter, was completed on 28.03.2013, assessing the income of the assessee at Rs.2.74 crores for AY. 2009-10 and at Rs.75 lacs for A.Y. 2010-11, making addition u/s 68 of the Act on account of share capital /premium received by the assessee during the year under consideration.

5. The assessee went into appeal before the Ld. CIT(A), challenging the legality of the notice u/s 153C of the Act, as well as the order passed in consequence thereto. Addition made by the AO on account of share capital/premium was challenged by the assessee on merits as well. The Ld. CIT(A) allowed all the grounds relating to legal issues in favor of the assessee, while on merits, she preferred to confirm the addition. Therefore, in these cross appeals, the assessee is against the confirmation of addition on merits, and the department is against the action of the Ld. CIT(A) in allowing the legal grounds in favor of the assessee.

6. The main issue dealt with the Ld. CIT(A) was the validity of satisfaction note on the basis of which proceedings have been initiated. This has been dealt with by her in her order at Page 11 from Para 8.1.4 onwards. The copy of the satisfaction note is placed at PB 17. From the perusal of the same, it is quite evident that the AO recording the satisfaction is the AO of the assessee, while the requirement as per the Act is the recording of satisfaction by the AO of the searched

person, as well as the AO of the assessee. This finding of the Ld. CIT(A) is based on the fact that the note is dated 27.02.2013 and on the same day the notice u/s 153C of the Act was also issued, and the last sentence of the note reads as under:

"Notice u/s 153C of the Income-tax Act, 1961 are hereby issued for the assessment years 2005-06 to 2010-11."

7. Further finding on this fact has been recorded by Ld. CIT(A) by calling of assessment records of the assessee as well as that of the searched person, and thereafter holding that the satisfaction note was found in the file of the assessee and not in the file of the searched person.

8. Also, this Hon'ble Tribunal while deciding the appeal of the group concerns of the assessee company and while dealing with a similar issue have held that in the absence of the satisfaction being recorded by the AO of the searched person, the assumption of jurisdiction u/s 153C of the Act in case of person other than searched person was not valid. The Hon'ble Tribunal vide its order dated 24.03.2017 in ITA Nos. 6225 to 6237/De1/2014, have decided this issue and stated as under:

"15. On perusal of the aforesaid provisions, it would be clear that those provisions start with the non-obstante clause, so these provisions over ride the provisions contained in Sections 139, 147, 148, 149, 151 and 153 of the Act. It is also clear from the said provisions that the satisfaction of the AO of the searched person is must for assuming the jurisdiction u/s 153C of the Act in case of a person other than the searched person. In the present case, the Id. CIT(A) categorically stated in the impugned order (a relevant portion of the said order has been reproduced in the former part of this order) that the AO did not record any satisfaction during the assessment proceedings u/s 153A of the Act in the case of the searched person i.e. Sh. Pramod Goel. On

the contrary, the AO recorded the satisfaction note in the file of the other person i.e. the assessee company. We have also perused the copy of satisfaction note recorded by the AO which is placed at page no. 21 of the assessee's paper book and read as under:

"During the course of assessment proceedings u/s 153A in the case of Sh. Pramod Goel, it is noticed that search and seizure operation u/s 132 was undertaken on 14.09.2010 in the case of Sh. Pramod Goel, Smt. Savita Goel, and Sh. Ashish Goel at BN-33, East Shalimar Bagh, Delhi. Under mentioned documents belonging to M/s Victory Dwellings Pvt. Ltd. were found and seized from the above premises. Page No. 96 to 98 of Annexure A-1 of Party V-2 is a copy of the Balance sheet, Profile loss account, Schedule-A (Advance against suppliers) pertaining to M/s Victory Dwellings Pvt. Ltd, for the financial year ending 31.3.2010. The case of M/s Victory Dwellings Pvt. Ltd. was centralized with this office vide F. No. CIT-Delhi- VII Centralization 2011-12/648 dated 22.6.2011 issued by the CIT, Delhi-VI, New Delhi.

I am therefore satisfied that the documents seized" as referred to above, belong to M/s Victory Dwellings Pvt. Ltd. warranting action u/s 153C in this case. "

On perusal of the aforesaid satisfaction note, it is crystal clear that the said satisfaction was recorded by the AO in the proceedings relating to the assessee i.e. M/s Victory Dwellings Pvt. Ltd. and not in the case of Sh. Pramod Goel in whose case search and seizure operation u/s 132 of the Act was undertaken on 14.09.2010. Therefore, the jurisdiction assumed by the AO

without recording the satisfaction in the case of the searched person was not valid.

17. From the plain reading of the aforesaid Circular No. 24/2015 dated 31.12.2015 issued by the Central Board of Direct Taxes, it is crystal clear that even if the AO of the searched person and of the other person is one and the same then he is required to record his satisfaction in the case of searched person. In the present case, it is an admitted fact that the AO of the searched person has not recorded any satisfaction rather the satisfaction is recorded by the AO of the other person i.e. the assessee which is evident from the satisfaction note, copy of which is placed at page no. 21 of the assessee's paper book. Therefore, the assessment framed in the hands of the assessee was not valid."

9. *It is a settled law that the recording of satisfaction by the AO of the searched person that the documents seized belongs to a person, other than the person searched, is sine qua non for initiation of proceedings u/s 153C of the Act. The above ratio has been recently followed by Hon'ble Jurisdictional High Court in the case of ARN Infrastructure India Ltd. v. ACIT in Writ Petition No. 2768/2017 dated 25.04.2017.*
10. *Further reliance in this regard is placed on the following judgments:*
 - *Delhi High Court in the case of CIT v. Aakash Arogya Mandir Pvt. Ltd. in ITA No. 509/2015 dated 28.07.2015*
"Assessment u/s 153C - whether the Assessing Officer (AO) is required, for the purposes of Section 153- C of the Act, to record satisfaction even when the AO of the person searched and the AO who exercises jurisdiction qua the Assessee is the same? - ITAT held that the AO has not recorded his satisfaction qua the searched person - Held that:- The Revenue has not placed any

material to dispute the factual finding of the ITAT that the requirement of the law explained by this Court in Pepsi Foods [2014 (8) TMI 425 - DELHI HIGH COURT 1 regarding the recording of satisfaction by the AO even in respect of the searched person was not fulfilled. Consequently, the fact that it was the same AO both for the searched person and the Assessee makes no difference to the consequence of non-compliance with the legal requirement regarding the recording of satisfaction. The Court also agrees with the ITAT that even if the AO were the same, satisfaction would have to be recorded separately qua the searched person and the Assessee. - Decided against revenue"

- *ITAT Delhi in the case of Moon Buildtech Pvt. Ltd.v. DCIT in ITA No. 202/Del/2014 dated 31.03.2016*

"Validity of assessment u/s 153C - Held that:- Assessing Officer of the searched person has failed to record his satisfaction that the seized documents belonged to the assessee i.e. other than the searched person. The recording of such a satisfaction is sine qua non for commencing any proceedings u/s 153C of the Act. Hence, no action could have been initiated against the assessee in absence of recording of satisfaction by the Assessing Officer of the searched person. Sans such satisfaction, the Assessing Officer has invalidly taken recourse to the initiation of proceedings u/s 153C of the Act. Hence, the action u/s 153C is not justified. The lack of jurisdiction by the Assessing Officer cannot be brushed aside under the guise of a technical defect. No assessment can be lawfully taken up and completed unless the concerned authority has the jurisdiction to do so. Lack of jurisdiction cannot be cured. Since the very first step prior to the issuance of notice u/s 153C of the Act has not been fulfilled and inasmuch as the condition precedent has not been met, the

proceedings u/s 153C are liable to be quashed - Decided in favour of assessee"

- *ITAT Delhi in the case of Global Realty Creations Ltd. v. DCIT in ITA No. 1245/Dell2014 dated 07.04.2017*

11. *This issue has further been clarified by the CBDT vide its Circular No. 24/2015 issued on 31st December, 2015, whereby it has been clarified that even if the AO of the searched person and the 'other person' is one and the same, then also the AO is required to record his satisfaction.*
12. *Therefore, since no satisfaction has been recorded by the AO of the searched person in any of these cases, the assumption of jurisdiction in assessee's case is bad in law, and thus, the consequent assessment framed by the AO has been rightly quashed by the Ld. CIT(A)."*

In view of the above, he requested that the appeal of the assessee may be allowed.

9. In his rival submissions the Ld. DR strongly supported the assessment order passed by the AO and further submitted that even if the AO/Assessing Authority receiving satisfaction note had not found anything adverse against assessee on examination of accounts books, the notice u/s. 153 of the Act still could have been issued to the assessee to file the return of income. In support of his contention, Ld. DR filed the Written Submission, which read as under:-

"It is respectfully submitted that a written submission on the issue of initiation and recording of satisfaction u/s 153C, a legal issue, is being submitted herewith. It is humbly submitted that

1. *The language of section 153 C may kindly be examined by the Honourable Bench. The statutory provision nowhere lays down the manner of reaching satisfaction. Delhi High Court in the case of SSP Aviation Ltd 346 ITR 177(Del) where Hon'ble High Court has used the word 'satisfaction that is required to be reached and nowhere Hon'ble Court has said in what manner satisfaction has to be recorded. This view is in conformity with the provisions of section 153A and 153C of the I.T. Act where the manner of reaching satisfaction has not been laid down.*

2. *What is required is that proper satisfaction was reached by the AO of the searched person that the documents belonged to a person other than the person referred to in section 153A. This satisfaction was explicitly reached by the AO of searched person DCIT Central Circle 09 since he was the Assessing officer of both the searched person and the appellant under Centralization order 127 dated 22.06.2011.*

The language of the satisfaction note (placed at Annexure-1) was not properly examined by the Ld CIT(A) who misinterpreted the note as coming from AO of the 'other person'. The language is explicit and shows that satisfaction is in fact of the AO of the searched person ie DCIT Central Circle 09, holding jurisdiction over both searched person and other persons including appellant

(jurisdiction conferred vide centralization order dt 22.06.2011).

This makes it amply clear that this is the satisfaction of the AO of the searched person before transferring the file of the appellant to himself for passing the assessment order in the capacity of AO of the 'other person'. This satisfaction note is the satisfaction of the AO of the searched person ie DCIT Central Circle 09, post centralization of cases vide order dt 22.06.2011 (clearly mentioned in assessment order at Para 1 page 1).

The AO of the searched person has thus clearly recorded his satisfaction regarding documents found to belong to appellant thus:

"I am therefore satisfied that the documents seized as referred to above belong to M/s Victory Accommodation Pvt Ltd warranting action u/s 153C in this case"

DCIT Central Circle 09

New Delhi

Learned and Honourable Bench may KINDLY NOTE THUS THAT

- The AO of the searched person and of the appellant is same.*
- The Satisfaction note dated 27.03.2013 clearly shows that satisfaction was recorded by the AO who was AO of the searched person as well as the other person i.e. DCIT Central Circle 09. post centralization under order dt 26.06.2011, and*

thereafter satisfaction note was placed on the file of the appellant.

- *Perusal of the assessment order would show that initially the AO was under the impression that the appellant was the searched person and therefore he issued notices u/s 153A dated 04.11.2011 which were subsequently withdrawn on 26.02.2013 as having erroneously issued.*

Thereupon the AO, as assessing officer of the searched person, drew the satisfaction note on 27.03.2011 to render jurisdiction upon himself as assessing officer of the appellant. The sequence of events and the satisfaction note will clearly show that satisfaction has been recorded as required under 153C by the AO holding jurisdiction over the searched person.

3. 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.

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 hon'ble ITAT in the case of Panchuram Oeshmukh(supra) 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] 208 CTR (SC) 27: [2007] 289 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 a liable when 'jurisdiction of both assessee vests in same AO. In case of Shri Trilok 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 Buildwel India Pvt. Ltd. & Piyush Buildwell in ITA No. 5526/0/2013 & 5527/0/2013 order dated 28.11.2014.

4. This is exactly the view taken by Kerala High Court in Dr KM Mehboob V 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 and "Therefore there is, no merit in the contention of the assessee's counsel that satisfaction is required to be recorded by the AO, who

conducted the search before transferring materials or articles or things found belonging; to another assessee". The Kerala High Court in the case of CIT v Panchjanyam Management 333 ITR 281 (Kerala) Hon'ble Kerala High Court), while distinguishing the facts of the case decided by the Apex Court in the case of Manish Maheshwari reported at 289 ITR 341 (SC) held at para 7 "In our view, in the first place, there is no mention in section 15880 that the Assessing Officer before transferring the file to another officer having jurisdiction to assess the person other than the assessee proceeded under section 132 or 132A has to record his satisfaction in writing. It is pertinent to note that wherever Assessing Officers are required to record their satisfaction before issuance of notice, the statute prescribes the same. A situation of that nature is covered by section 148(2) which requires the officer to record reasons for reopening an assessment before issuing notice. Not only is there no such requirement in section 158BD but what we notice is that the satisfaction referred to therein is only about undisclosed income of a person other than the assessee searched under section 132 or investigated under section 132A and the satisfaction is only for the purpose of transferring the file to the officer having jurisdiction to assess such other person. In fact, after receipt of the documents and materials from the Assessing Officer transferring it the officer to whom materials are transferred should follow the

procedure under section 158BC that is to issue notice to the assessee requiring him to file return in Form 28 and to make regular assessment after following the procedure contained in section 142, and if required to follow the procedure in sections 143(2) and (3), 144 and 145 of the Act. So much so, in our view, non-recording of reason and non-communication of the same by the Assessing Officer while issuing notice under section 158BC will not invalidate assessment completed under section 158BD read with section 1588C. In fact when records are received by the Assessing Officer from another officer under section 158BD he has to only issue notice to file return in Form 2B. The reasons and materials based on which undisclosed income is proposed to be assessed should be communicated to the assessee when assessment is made based on the return filed which is a step after issuing notice and after receipt of return. By virtue of operation of section 142 every assessee assessed under sections 158BC and 158BD gets an opportunity to file objections. In other words, the validity of the assessment is not affected by reason of the Assessing Officer's failure to record his satisfaction under section 158BD which is only for the purpose of transferring the file and once the file is transferred, the transferring officer becomes functus officio and the jurisdiction for all purposes is transferred to the officer to whom the file is transferred and who has jurisdiction to assess the assessee

about whom details are obtained in the course of search of another assessee. The peculiar features of this case are such that there was no necessity or transferring the file from one officer to another, because the person searched is the managing partner and based on the materials gathered search assessment is made of the on the partnership firm wherein the searched assessee is the managing partner. So much so, issuance of notice under section 158BD read with section 158BC is sufficient for initiation at assessment which in this case is admitted done and the assessee has filed return in Form 2B in terms a notice issued.

Therefore what remains is only the assessee's contest against the assessment on the merits which the Tribunal has not done Subham Javedvs ACIT (2010) 122 ITO 307 (Bangalore) ITAT Bangalore Bench 'B' reiterate this position.

5. *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 BO 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 Panchjanya Management (supra).

6. Further CIT (A) failed to realize that jurisdictional High Court in SSP Aviation Ltd 346 ITR 177(Del) and Anil Kumar Bhatia 352 ITR 493 (Delhi) had stipulated that 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).

7. In the case of Honble Delhi High Court case of Kabul Chawla 380 ITR 573(Del) on the basis of which the related cases of the appellant were decided by the Hon'ble ITAT and under which the appellants case is sought to be treated as covered, was delivered on a peculiar conspectus of facts missing in this case i.e. in that case the assessee was also a searched person u/s 153A and addition was made u/s 2(22)(e) on account of payments received from companies in which the assessee was a owner of more than 10% share. The Court held that the same was not an incriminating

material on which additions u/s 153A can be made. In the appellants case there is no doubt about the ownership of the documents in the form of balance sheet and profit & Loss account mentioned in the satisfaction note and the same has never been questioned by the appellant. The Balance Sheet shows the investments made in its share capital which correlated and has nexus with various other documents impounded as page 51 to 55 of A-5 in the course of survey from the appellant premises on the same date of search i.e 14.09.2010 which depicted transactions of accommodation entries in the nature of share capital, the basis on which the AO made the additions. This itself distinguishes the appellants case where there exists impounded materials which had nexus with and relevance with the seized materials as mandated by the Hon'ble Delhi High Court in the Kabul Chawla case. The ITAT in related cases of the appellant companies has not only ignored this fact but has glossed over this crucial nexus between the seized material and additions made on the one hand and the materials impounded in survey from the appellant's premises. The ITAT has also ignored the Kerala High Court decision in the case of Panchjanyam Management (supra) wherein the issue of same AO for the searched person and other person has been decided by the Court.

8. The Hon'ble ITAT has also 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. 143(3) made u/s 2(22)(e) on the basis of seized material which 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 hon'ble Delhi High Court in the case of Kabul Chawla(supra) has also not considered the case of Mukundray K Shah (supra) on the issue of 'incriminating' material while deciding.

9. 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 discernable 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.

10. *The order of Hon'ble jurisdictional Delhi High Court in the case of SSP Aviation Ltd. vs. DCIT in W.P.C. 309/2011 dated 29.03.2012 has not been followed or distinguished which is an order of prior date and binding being the order of jurisdictional High Court. It is settled judicial discipline that the decision of a High Court is binding on the Tribunals in its jurisdiction.*

Besides this, the Hon'ble IT AT does not seem to be aware of coordinate bench decision in the case of M/s Piyush Infrastructure India Pvt Ltd ITA No.1072/Dell2011 vide order dated 25.10.2012 which held that

"admittedly same A.O. was holding jurisdiction over all the cases of Piyush Group including the assessee company and therefore, we are of the view that there was no requirement for sending the material to any other AO. Besides, as per provisions u/s 153A/153C of the Act assessment in the search cases is required to be made." Further, Hon'ble ITAT has observed in this Para that "so far as contention of the Ld. AR that satisfaction was not recorded before issuing notice for the assessment year 2008-09 to the assessee is concerned

we find that the AO has recorded his satisfaction for proceedings u/s 153C read with section 153A of the Act, on 28.08.2009 before issuing notice u/s 142(1) for the assessment year 2008-09 and notices issued u/s 153A read with section 153 C of the Act in the remaining earlier assessment years. Thus there is no substance in the contention of the Ld. AR that satisfaction of the AO was not recorded before initiating proceedings u/s 153C read with Section 153A of the Act against the assessee."

As discussed satisfaction has been duly recorded by the AO, existence of undisclosed income is not a pre-requisite under the provision of section 153C which is distinguishable from the provisions of section 158BD. Hon'ble Delhi High Court in the case of SSP Aviation (mentioned 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.1 072/Del/2011 vide order dated 25.10.2012 endorse this.

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.

11. *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 is now seeking relief on technicalities.*

12. *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):*

In the case of State of Kerala v. Muniyalla , 1985 se 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.

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.

In the case of State Bank of Patiala v. S.K. Shaima , 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.

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.

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 ... "

It is important to note that in Crawford on Statutory Construction at p. 539, it is stated:

- *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 caliber 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).

The Hon'ble ITAT order relied upon in the case of appellant related concerns, not only violate cassus omissus 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. The satisfaction note clearly lays down that AO of searched person DCIT CC 09 had recorded his satisfaction before making assessment of the appellant. The ITAT have allowed relief in a case of blatant ant-national activity on a technicality. This is a case where the appellant is clearly involved in generating as well as laundering black money and claiming the same as share capital. The AO has well established, from various evidences collected in the course of survey and post search investigations, that the appellant has accepted accommodation entries from established entry operators in the form of share capital and has laundered its black money as legitimate money. All the efforts of government in curbing the menace of black money and money laundering is being brought to naught on mere technicalities and taking a hyper technical view.

To summarise:

- *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. The satisfaction note recorded by the AO records clear satisfaction.*
- *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.*
- *Perusal of the satisfaction note will clearly show that satisfaction has been recorded as required under 153C by the AO holding jurisdiction over the searched person.*
- *The appellant has failed to bring out that he was prejudiced particularly as reiterated supra the ownership of documents found during the search have never been challenged by the appellant in violation of apex court decisions.*
- *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.*

- *It is trite law that even orders passed in violation of such provisions can be set aside only where such violation has occasioned prejudice to the subject.*

The conduct of the subject must be borne in mind while examining a complaint of non-observance of procedural rules governing such enquiries since all such procedural rules are designed to afford a full and proper opportunity to the subject to defend himself. This is scarcely the argument in this case.

It is thus humbly prayed that the Departmental appeals 6239 and 6240/Del/2014 be upheld and the case be heard on merits.

Without Prejudice

13. Definition of Assessing Officer includes ADIT satisfaction

In this connection attention of the Hon'ble court is invited to the definition of section 2 (7 A) that the definition of Assessing Officer means the Assistant Commissioner (or Deputy Commissioner) (or Assistant Director) (or Deputy Director) vested with the relevant jurisdiction. The separate extract from Appraisal report may be called which would indicate the satisfaction of the ADIT/ DDIT in recommending action under S 153A/C in cases listed specifying that the seized documents do not belong to searched person."

10. We have heard both the parties and perused the records especially the Synopsis/ Written Submission filed by both the parties. The sole issue dealt with the Ld. CIT(A) was the validity of satisfaction note on the basis if which

proceedings have been initiated. This has been dealt with by her in her order at Page 11 from Para 8.1.4 onwards. The copy of the satisfaction note is placed at PB 17. From the perusal of the same, it is quite evident that the AO recording the satisfaction is the AO of the assessee, while the requirement as per the Act is the recording of satisfaction by the AO of the searched person, as well as the AO of the assessee. This finding of the Ld. CIT(A) is based on the fact that the note is dated 27.02.2013 and on the same day the notice u/s 153C of the Act was also issued, and the last sentence of the note reads as under:

"Notice u/s 153C of the Income-tax Act, 1961 are hereby issued for the assessment years 2005-06 to 2010-11."

10.1 Further finding on this fact has been recorded by Ld. CIT(A) by calling of assessment records of the assessee as well as that of the searched person, and thereafter holding that the satisfaction note was found in the file of the assessee and not in the file of the searched person.

10.2 We further note that also, this Hon'ble Tribunal while deciding the appeal of the group concerns of the assessee company and while dealing with a similar issue have held that in the absence of the satisfaction being recorded by the AO of the searched person, the assumption of jurisdiction u/s 153C of the Act in case of person other than searched person was not valid. The Tribunal vide its order dated 24.03.2017 in ITA Nos. 6225 to 6237/De1/2014, have decided this issue by which the issue in dispute is

squarely covered. The Tribunal vide its order dated 24.3.2017 has held as under:-

"14. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the search did not take place at the business premises of the assessee rather it took place at the premises of Sh. Pramod Goel, Smt. Savit Goel and Sh. Ashish Goel u/s 132 of the Act on 14.09.2010 and the notices were issued to those parties u/s 153A of the Act. The AO also issued notice u/s 153A of the Act to the assessee but later on being satisfied that no search and seizure operation u/s 132 of the Act was initiated against the assessee, he withdrew the notice issued u/s 153A of the Act. Thereafter, the AO issued the notice u/s 153C of the Act on the basis that the documents pertaining to the assessee were fund from the premises of the searched person. The said documents were the copies of balance sheet, profit and loss account and schedule A (advances against supplier). In the present case, the AO assumed the jurisdiction u/s 153C(1) of the Act, the provisions contained in the said Section read as under:

"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.

[Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to ⁹¹[sub-section (1) of] section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :]

[Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated.]”

15. On perusal of the aforesaid provisions, it would be clear that those provisions start with the non-obstante clause, so these provisions over ride the provisions contained in Sections 139, 147, 148, 149, 151 and 153 of the Act. It is also clear from the said provisions that the satisfaction of the AO of the searched person is must for assuming the jurisdiction u/s 153C of the Act in case of a person other than the searched person. In the present

case, the Id. CIT(A) categorically stated in the impugned order (a relevant portion of the said order has been reproduced in the former part of this order) that the AO did not record any satisfaction during the assessment proceedings u/s 153A of the Act in the case of the searched person i.e. Sh. Pramod Goel. On the contrary, the AO recorded the satisfaction note in the file of the other person i.e. the assessee company. We have also perused the copy of satisfaction note recorded by the AO which is placed at page no. 21 of the assessee's paper book and read as under:

"During the course of assessment proceedings u/s 153A in the case of Sh. Pramod Goel, it is noticed that search and seizure operation u/s 132 was undertaken on 14.09.2010 in the case of Sh. Pramod Goel, Smt. Savita Goel, and Sh. Ashish Goel at BN-33, East Shalimar Bagh, Delhi. Under mentioned documents belonging to M/s Victory Dwellings Pvt. Ltd. were found and seized from the above premises.

Page No. 96 to 98 of Annexure A-1 of Party V-2 is a copy of the Balance sheet, Profile loss account, Schedule-A (Advance against suppliers) pertaining to M/s Victory Dwellings Pvt. Ltd, for the financial year ending 31.3.2010.

The case of M/s Victory Dwellings Pvt. Ltd. was centralized with this office vide F. No. CIT-Delhi-VI/Centralization/2011-12/648 dated 22.6.2011 issued by the CIT, Delhi-VI, New Delhi.

I am therefore satisfied that the documents seized,, as referred to above, belong to M/s Victory Dwellings Pvt. Ltd. warranting action u/s 153C in this case.”

On perusal of the aforesaid satisfaction note, it is crystal clear that the said satisfaction was recorded by the AO in the proceedings relating to the assessee i.e. M/s Victory Dwellings Pvt. Ltd. and not in the case of Sh. Pramod Goel in whose case search and seizure operation u/s 132 of the Act was undertaken on 14.09.2010. Therefore, the jurisdiction assumed by the AO without recording the satisfaction in the case of the searched person was not valid.

16. Now the CBDT vide Circular No. 24/2015 dated 31.12.2015 clarify this position, the said Circular read 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 [2014] 43 taxmann.com 446 (SC) (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 substantially 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."*

17. *From the plain reading of the aforesaid Circular No. 24/2015 dated 31.12.2015 issued by the Central Board of Direct Taxes, it is crystal clear that even if the AO of the searched person and of the other person is one and the same then he is required to record his satisfaction in the case of searched person. In the present case, it is an admitted fact that the AO of the searched person has not recorded any satisfaction rather the satisfaction is recorded by the AO of the other person i.e. the assessee which is evident from the satisfaction note, copy of which is placed at page no. 21 of the assessee's paper book. Therefore, the assessment framed in the hands of the assessee was not valid. Moreover, from the observation of the AO in the satisfaction note also it is crystal clear that no incriminating material was found, the addition was*

made only on the basis of the copy of balance sheet, profit and loss account and schedule of advances against supplies pertaining to the assessee, those documents were already in the knowledge of the department as the same were furnished alongwith the regular return of income. Therefore, those documents by no stretch of imagination can be said to be incriminating as those were made out of the regular books of accounts of the assessee and the return of income was filed on the basis of those documents only.

18. *On a similar issue the Hon'ble Jurisdictional High Court in the case of CIT Vs Kabul Chawla reported at (2016) 380 ITR 573 held as under:*

"The legal position that emerges on a perusal of section 153A and section 132 of the Income-tax Act, 1961, is as under : (i) Once a search takes place under section 132 of the Act, notice under section 153A(1) will have to be mandatorily issued to the person in respect of whom search was conducted requiring him to file returns for six assessment years immediately preceding the previous year relevant to the assessment year in which the search takes place, (ii) Assessments and reassessments pending on the date of the search shall abate. The total income for such assessment years will have to be computed by the Assessing Officers as

afresh exercise. (Hi) The Assessing Officer will exercise normal assessment powers in respect of the six years previous to the relevant assessment year in which the search takes place. The Assessing Officer has the power to assess and reassess the "total income" of the six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six assessment years in which both the disclosed and the undisclosed income would be brought to tax. (iv) Although section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the Assessing Officer which can be related to the evidence found, it does not mean that the assessment can be arbitrary or made without any relevance or nexus with the seized material. Obviously, an assessment has to be made under this section only on the basis of the seized material (v) In the absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can

be made. The word "assess" in section 153A is relatable to abated proceedings (i.e., those pending on the date of search) and the word "reassess " to completed assessment proceedings, (vi) In so far as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under section 153A merges into one. Only one assessment shall be made separately for each assessment year on the basis of the findings of the search and any other material existing or brought on the record of the Assessing Officer, (vii) Completed assessments can be interfered with by the Assessing Officer while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

It has further been held that:

"On the date of the search the assessments already stood completed. Since no incriminating material was

unearthed during the search, no additions could have been made to the income already assessed."

19. *In view of the aforesaid discussion, we are of the confirmed view that the additions made by the AO in the absence of incriminating material while framing the assessment u/s 153A of the Act was not valid and also in the absence of the satisfaction recorded by the AO of the searched person, the assumption of jurisdiction u/s 153C of the Act in the case of persons other than searched person was also not valid. In that view of the matter, we do not see merit in the appeals filed by the department and the assessee succeeds in its appeal. Identical facts are involved in the assessee's appeal for the A.Y. 2010-11 and the departmental appeals for the assessment years 2007-08 and 2010-11, therefore, findings given for the assessment year 2009-10 in the former part of this order shall apply with the same force.*

20. *The facts related to the cases of the other assessees in the assessee's appeal as well as the departmental appeal are identical, therefore, our findings given in the former part of this order shall apply mutatis mutandis.*

21. *In the result, the appeals of the assessees are allowed and that of the department are dismissed."*

10.3 Keeping in view of the facts and circumstances of the case and respectfully following the precedents as aforesaid and also keeping in view the CBDT instructions dated 31.12.2015 on

the subject, as cited above, we allow both the appeals of the assessee and dismiss both the Department appeals.

Order pronounced on 19/05/2017.

Sd/-

**(O.P. KANT)
ACCOUNTANT MEMBER**

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

Dated: 19/05/2017

SR Bhatnagar

Copy forwarded to:

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

ASSISTANT REGISTRAR