

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES : "E" NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.2159/Del./2014  
Assessment Year 2007-2008

M/s. Nova Iron & Steel Ltd., F-Block, 1 <sup>st</sup> Floor, International Trade Tower, Nehru Place, New Delhi. 110001 PAN AAACN0407F	vs.	The DCIT, LTU, Central Circle- 19, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Ashwanikumar, C.A. & Shri Adityakumar, C.A.
For Revenue :	Smt.Shafali Swaroop, CIT-DR & Ms. Renu Amitabh, CIT-DR

Date of Hearing :	24.10.2017
Date of Pronouncement :	31.10.2017

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by assessee-company has been directed against the order of the Ld. CIT(A)-XII, New Delhi, dated 20<sup>th</sup> January, 2014 for the A.Y. 2007-2008. Earlier, this appeal was dismissed for default. However, the miscellaneous application

filed by assessee-company was allowed. Accordingly, the earlier order was recalled and appeal was re-fixed for hearing on merits.

2. We have heard the Learned Representatives of both the parties and perused the material on record.

3. The assessee-company in the present appeal has challenged the addition of Rs.3.18 crores on account of unexplained cash credit under section 68 of the I.T. Act, disallowing the loss of Rs.24,16,422 of current year and brought forward losses of the earlier year to be carried forward and charging of interest under section 234A/234B of the I.T. Act.

4. The brief facts of the case are that the assessee is a company maintaining books of account on mercantile basis. The nature of business of assessee-company is manufacturing. A search and seizure operation was carried out at the various premises of M/s. Today Homes and Infrastructure Pvt. Ltd., and its group concerns and Associated Persons (hereinafter called as "Today Group of Cases") on 26<sup>th</sup> November, 2009 and finally

concluded on 25<sup>th</sup> January, 2010. The assessee-company is one of the Associated/ Group concerns of Today Group of Cases. During the course of search and seizure operation at various premises of Today Group of Cases, many books of account or documents belonging to the assessee-company were found and seized and hence, the A.O. observed that pre-requisite condition to initiate proceedings under section 153C of the I.T. Act was fulfilled. The A.O. recorded necessary satisfaction for initiating the proceedings under section 153C of the I.T. Act. Notice under section 153C/1543A was issued to the assessee-company to file return of income within 15 days. The assessee-company submitted before A.O. that the original return filed on 30<sup>th</sup> October, 2007 declaring total loss at NIL may be treated as its return of income in response to the notice under section 153C of the I.T. Act.

4.1. The A.O. noted brief background of Today Group of Cases in the assessment order that it is engaged in real estate and hospitality business activities in NCR and other parts of the

country since 2004. In real estate segment, the group has constructed and is constructing residential units and commercial projects. The group is making huge investments in hotel projects also. Recently, it has entered into power sector also. The key persons behind Today Group of Cases are Gulshan Kumar Gambhir and R.K. Gambhir. The basic information leading into the search was that Today Group was generating and investing lot of unaccounted income in the business of real estate, hotels and power sector through its various flag ship/key Companies. The names are noted in the assessment order which includes the assessee-company as well.

4.2. The A.O. observed that the funds have been infused in these key companies in the form of share capital/share premium/ share application money/loans and advances against the properties or projects etc., from various paper companies which are controlled by Gambhir brothers through their trusted peoples/employees. These companies floated by

Today Group of Cases or Gambhir brothers inturn received accommodation entries from various entry operations in lieu of cash given to them through the mediators and this is nothing but unaccounted income of the Today Group. The A.O. noted how the Today group was operating for providing the cash/unaccounted money. As per the evidence gathered during the course of investigation, the amount have been found to be transferred from various concerns of V.K. Jain and S.K. Jain (Jain Brothers) who are entry operators. The details of the amount received by the paper companies of Today group are noted in the assessment order. The A.O. on perusal of the record found that assessee-company is group concern of M/s. Today Homes and Infrastructure Pvt. Ltd., and during assessment year under appeal, the assessee-company has received Rs.3.18 crores from M/s. Double Star Builders Pvt. Ltd., which belong to Today group of cases. It was noted that these companies did not have any business or books of account. Various companies floated by Gambhir brothers who have transferred money are noted in the assessment order. The A.O. noted various facts

which are apparent from the details mentioned in the assessment order that almost all these companies have been incorporated in the year 2005 to 2007 just before date/period entry taken by them from the entry operator. Many companies have been strike-off as per ROC record as they were defaulter in filing the annual returns with ROC. These are also defaulters in filing income tax returns as well. These companies have a common address. In order to find out the existence as well as details of business activity of these companies of Today group, a survey under section 133A of the Act was also conducted on 26.11.2009 at the Registered Office of these Companies. The persons available at these three Registered Offices have stated that neither books of account are maintained nor any business activities are carried out by these Companies from these premises. During survey, no Company was found to be running from these premises and no books of account and other record were found. The A.O. referred to statement of Shri Jagdish Prasad, Shri Harsh Talwar, Shri Rajesh Gupta, in the assessment order. The A.O. also noted that search was also

conducted at the residential premises of some of the Directors of the entry level companies of Today group viz., Shri Vinay Subhikhi, Shri Ashok Chopra and Shri Gurmit Singh in which they have admitted that these Companies have been controlled by Gambhir brothers and they are dummy Directors. The A.O. also referred to seized paper found from M/s. Today Homes and Infrastructure Pvt. Ltd., which are in respect of DIN No. and the digital signatures and pass word of various persons and noted that one person can file I.T. return and papers with ROC etc., by using the digital signature. All these Companies have been controlled by Gambhir brothers. It was noted that these companies are not doing any business activities. It was also found that Jain brothers were engaged in the business of providing accommodation entries in the form of share application money/share capital/share premium/unsecured loans etc., in lieu of the commission etc., which are controlled by dummy persons and operated from the same address. The Jain brothers have provided accommodation entries to various persons of Today group. The summary of *modus operandi* of

Jain brothers to provide entry to Today group is also mentioned in the assessment order. The A.O. therefore, observed that Today group received accommodation entries from Jain brothers in lieu of the consideration through mediator Mr. Chawla and ultimately, it was found that assessee-company has received Rs.3.18 crores from M/s. Double Star Builders Pvt. Ltd., which is the group concern of M/s. Today group. The details of various documents/books of account seized during the course of search and seizure action at the residential and business premises of the Jain brothers showed the receipt of cash and providing accommodation entries to M/s. Double Star Builders Pvt. Ltd., which is an entry level company of Today Group and M/s. Double Star Builders Pvt. Ltd., later on gave loans/advances to the assessee-company through banking channel.

4.3. The A.O. in view of the above facts, issued show cause notices to the assessee-company as to why addition of Rs.3.18 crores be not made considering the unexplained credit

under section 68 of the I.T. Act. The assessee-company was provided copies of all the documents, books of account found and seized during the course of search action.

4.4. The assessee-company filed written reply before A.O. which is reproduced in the assessment order in which the assessee-company briefly explained that assessee-company is not at all aware of any person by name Mr. Chawla, the alleged mediator, or the Jain brothers mentioned in the show cause notice. It was submitted that no adverse/serious allegation can be levelled against the assessee-company on the basis of inference drawn from the documents seized from the control and possession of third party. It was explained that documents were purportedly found from Jain brothers etc. Assessee-company has nothing to do with these documents. They can explain seized papers. Even the full particulars of mediator Mr. Chawla has not been provided and brought on record. The assessee-company has already discharged the onus of establishing genuineness of the amount received from M/s.

Double Star Builders Pvt. Ltd., It was also submitted that there is no evidence, whatsoever, has been brought on record and made available to assessee-company that any cash have been given by assessee-company in lieu of taking any accommodation entry. It was submitted that assessee-company has returned the amount in question of Rs.3.18 crores to the aforesaid party in A.Y. 2009-2010 and there is NIL balance on account of this party. The assessee-company produced sufficient evidence before A.O. to prove the genuineness of the transaction in the matter. The department has failed to prove through any evidence that the cash actually moved out of/emanated from the coffers of the assessee-company which subsequently found its way back to the assessee-company in the form of accommodation entry. The proposed addition is unsustainable. The assessee-company received the amount in question through banking channel which are reflected in the books of account of the assessee-company. The assessee-company proved the identity of the lender, its creditworthiness

and genuineness of the transaction. Therefore, no addition should be made against the assessee-company.

4.5. The A.O. after considering the submissions of the assessee-company noted that assessee-company has already submitted copy of PAN, confirmations, bank statement of the creditor etc. in respect of the credit entries received in the books of account and claimed to have discharged its onus as per the provisions of Section 68 of the I.T. Act. The A.O. however, noted that the other evidences available on record do not support the explanation of the assessee-company. The A.O. noted that merely because amount in question have been returned is immaterial because it would not absolve the assessee-company of its responsibility of discharging its onus within the meaning of Section 68 of the I.T. Act. The A.O. also noted that the department is entitled to lift the corporate veil to bring out the real nature of series of transactions routed through different entities controlled by same set of people. The A.O. by referring to judicial pronouncements held that the transactions should

stand the trust of human probability. The A.O. ultimately held that a sum of Rs.3.18 crores has been found credited in the books of account of the assessee-company. The immediate source of this amount has been found to be from M/s. Double Star Builders Pvt. Ltd., Thereafter, the sum have been shown to be sourced from different entities of Jain brothers. The A.O. in view of these discussions held that assessee-company was failed to pass the test of genuineness of the transaction within the meaning of Section 68 of the I.T. Act and accordingly, made the addition under section 68 of the I.T. Act, 1961 of Rs.3.18 crores. The A.O. also noted that assessee-company did not file returns under section 153C within time, therefore, business loss claimed by the assessee-company to be carried forward under section 72(1) of Act were not allowed to be carried forward.

5. The assessee-company challenged the assessment order passed under section 153C of the I.T. Act as illegal and bad in law before the Ld. CIT(A). The assessee-company also

challenged the addition of Rs.3.18 crores against the loss of Rs.24,64,664 declared by assessee-company. The assessee-company also challenged the disallowance of loss of Rs.24,16,422 of current year and brought forward losses of earlier years to be carried forward before Ld. CIT(A). The assessee-company reiterated the same submissions as made before A.O. and written submissions of assessee-company are reproduced in the impugned order in which the assessee-company briefly explained that assessee-company proved identity of the investor, his creditworthiness and genuineness of the transaction. Therefore, no addition can be made. The department cannot ask assessee to prove source of the source. The assessee-company relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs. Orissa Corporation (P) Ltd., (1986) 159 ITR 78 (SC), decision of Gujarat High Court in the case of DCIT vs. Rohini Builders (2002) 256 ITR 360 (Guj.), decision of Guwahati High Court in the case of CIT vs. Nemi Chand Kothari (2003) 264 ITR 254 (Gau.) and decision of Hon'ble Delhi High Court in the case of Mod Creations Pvt. Ltd.,

(2013) 354 ITR 282 (Del.). The Ld. CIT(A), however, dismissed the appeal of assessee-company. His findings in paras 2 to 4 of the order are reproduced as under :

“Ground No.2:

- 2.1. *I have considered the grounds raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant.*
- 2.2. *The appellant has raised ground against issue of proceedings u/s 153C of the Act without recording of the valid satisfaction by the Assessing Officer.*
- 2.3. *The Assessing Officer has, in the order of assessment, stated that the notice u/s 153C/153A was issued after recording the necessary satisfaction for initiation of the proceedings u/s 153C of the Act. In view of this, the ground raised against recording of satisfaction does not stand. Ground raised in appeal is dismissed.*

**3. Ground No.5 :**

- 3.1 *I have considered the grounds raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant.*

- 3.2 *The appellant has raised ground against treating the amount of Rs.3,18,00,000/- as accommodation entry. The appellant has vehemently contended against treating the amount as appellant's own money, earned through unaccounted transactions routed through a series of transactions. The appellant has raised ground stating that there is no evidence to support such appellant allegation.*
- 3.3 *The Assessing Officer has held that the amount of Rs.3,18,00,000/- credited in the books of accounts of the assessee fails to pass the test of genuineness within the meaning of section 68 of the Act, hence the same is income of the assessee u/s 68 of the Act.*
- 3.4 *The amount is found credited in the books of account of assessee. The Assessing Officer has held that the immediate source has been found to be from M/s Double Star Builders Pvt. Ltd. Thereafter, the sum has been shown to be sourced from different entities of the Jain Brothers. The Assessing Officer has disclosed these facts in detail in section "H" of the order of assessment.*
- 3.5 *In the instant case, cash has been routed through a series of entities beginning from Jain Brothers and ending in the group company of Today group in the form of series of cheques. There is clear evidence that cash*

*was paid to Jain Brothers and in turn cheques were received from the Jain Brothers through a series of entities controlled by them. It is the assessee's own money earned through unaccounted transactions/ means that has been routed through a series of transactions in the light of the evidence on record, circumstances and totality of the context. A live connection of the records has been established between cheques/pay orders/bankers cheques issued by the Jain Brothers to the various companies of the Today group. A direct connection is seen between the transactions through banking channels on the one side and cash received from intermediaries on the other side. There are series of transactions spanning over a period of three years which are corroborated by the evidence found in the records seized in the case of Jain Brothers with the assessee group.*

- 3.6 *The Assessing Officer has brought on record substantial corroborative evidence which has been discussed in detail in the order of assessment wherein it is seen that the assessee cannot be allowed the benefit of doubt on account of jottings made by a third party on its accounts.*

- 3.7 *It is a fact that the sum of Rs.3,18,00,000/- was credited in the books of accounts of the assessee. The immediate source of the amount is from M/s Double Star Builders Pvt. Ltd. Thereafter, the sum is shown to be sourced from different entities of the Jain Group. The transactions have not taken place in a month or two but are spread over a period of 43 months for different entities of the Today Group running into approximately more than thousand individual transactions.*
- 3.8 *In view of the facts stated in the order of assessment, the case laws mentioned by the Assessing Officer, the Assessing Officer has correctly added the amount of Rs.3,18,00,000/- as assessee's income from undisclosed sources u/s 68 of the I.T. Act. The case laws relied upon by the appellant are distinguishable on facts. The same is upheld in appeal. Ground raised in appeal is dismissed.*

#### **4. Ground No. 6 :**

- 4.1. *I have considered the grounds raised in appeal and the facts of the case. I have also considered the submission filed by the AR of the appellant.*
- 4.2. *The appellant has raised ground against set off and*

*carry forward of brought forward business loss and unabsorbed depreciation against the income of the current year.*

- 4.3. *Assessing Officer has stated in the order of assessment that the return of income filed in response to the notice u/s 153C/153A, was filed well after the time allowed u/s 153A/153C r.w.s. 139(1) of the Act.*
- 4.4. *Section 139(3) requires the filing of return within the time stipulated as per section 139(1) of the Act if any loss is sustained and is intended to be carried forward under sub section (1) of section 72. In the instant case, as per the provisions of section 153A/153B r.w.s. 139(1) of the Act, the appellant was required to file its return of income within 15 days of the service of notice u/s 153C/153A of the Act which was issued him in its case on 25.05.2011 whereas the return of income was filed on 11.07.2007 much after the time allowed as per the provisions of section 153A/153C r.w.s 139(1) of the Act. Accordingly the business losses stated to be claimed as eligible to carried forward u/s 72(1) of the Act, do not qualify for the claim.*
- 4.5. *The stand taken by the Assessing Officer is as per the provisions of the Act whereas the appellant has raised grounds against the same. The Assessing Officer has*

*correctly not allowed the carry forward of loss claimed under section/72(1) of the Act. The case laws relied upon by the appellant are distinguishable on facts. The ground raised in appeal is dismissed.”*

6. The assessee moved an application for admission of additional ground of appeal which reads as under :

*“That the order dated 20-01-2014 passed u/s 250 (6) of the Income-tax Act, 1961 by the Ld Commissioner of Income-Tax (Appeals) XI, New Delhi is against law and facts on the file in as much as he was not justified to uphold the validity of issue of notice and consequent proceedings u/s 153C of the Income-tax Act, 196, notwithstanding the fact that the conditions precedent for initiating proceedings under the said Section were not satisfied, particularly considering the fact that no incriminating material/documents were found during the course of search”*

7. On 28<sup>th</sup> September, 2017, we have heard Learned Counsel for the Assessee Shri Ashwanikumar, C.A. and Ld. CIT-D.R. Ms. Renu Amitabh, on additional ground as well as on merits. The Ld. D.R. seeks time to produce some material recovered during the course of search to prove the same belong

to the assessee-company on which addition is made. However, till date no incriminating material, if found in search qua additions have been filed. We decide the appeal on the basis of submissions of both parties and material on record.

8. The Learned Counsel for the Assessee submitted that search was conducted in Today group of cases and assessee-company was not subjected to search. The A.O. made addition on account of unexplained credit under section 68 of the I.T. Act and disallowed loss of the current year brought forward losses which are part of the record and mentioned in the books of account of the assessee-company. He has submitted that since no incriminating material/documents were found during the course of search against the assessee-company and it is not proved that any incriminating material belong to the assessee-company, therefore, conditions of Section 153C of the I.T. Act are not satisfied in this case. He has submitted that additional ground is legal in nature and can be decided on the basis of the

material already brought on record and therefore, the same may be admitted for hearing and disposal of the appeal.

9. On the other hand, Ld. D.R. relied upon the orders of the authorities below and objected to the admission of the additional ground at this stage. The Ld. D.R. contended that A.O. has already mentioned seized material found during the course of search which is sufficient to initiate the proceedings under section 153C of the I.T. Act against the assessee-company. The A.O. has also mentioned specifically that during the course of search of Today group of cases, many books of account or documents belonging to the assessee-company were found. Therefore, the A.O. was satisfied to initiate the proceedings under section 153C of the I.T. Act against the assessee-company. The Ld. D.R. therefore, submitted that additional ground may not be admitted.

10. Learned Counsel for the Assessee on merits also submitted that assessee-company received genuine credits in assessment year under appeal. The assessee-company filed

confirmation of the creditor, its bank account, copy of the income tax return and balance sheet, copies of the same are also filed in the paper book. The A.O. did not doubted the documents filed by the assessee-company. The amount of the loan have been returned in subsequent assessment years 2008-09 and 2009-10 through banking channel, copies of the confirmation of accounts are filed at pages 113 and 114 of the paper book. The assessee-company thus, proved the identity of the creditor, its creditworthiness and genuineness of the transaction in the matter. The Learned Counsel for the Assessee also relied upon the following decisions.

10.1. Decision of the Hon'ble Delhi High Court in the case of CIT vs. Dwarkadhish Investment Pvt. Ltd., (2011) 330 ITR 298 (Del.) in which it was held that assessee need not to prove "*source of the source*".

10.2. Judgment of the Hon'ble Supreme Court in the case of CIT vs. Orissa Corporation (P.) Ltd., (1986) 159 ITR 78 (SC) in which it was held as under :

*“In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him, then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion was based on some evidence on which*

*a conclusion could be arrived at, no question of law as such could arise.*

*The High Court was, therefore, right in refusing to refer the questions sought for.”*

10.3. Decision of Hon’ble Gauhati High Court in the case of CIT vs. Nemi Chand Kothari reported at (2003) 264 ITR 254 (Gauhati.) in which it has been held as under :

*“Under section 68 of Income Tax Act creditor’s creditworthiness has to be judged vis-à-vis transactions, which have taken place between assessee and creditor, and it is not business of assessee to find out source of money of his creditor or genuineness of transactions, which took place between creditor and sub-creditor and/or creditworthiness of sub-creditors for these aspects may not be within special knowledge of assessee.”*

10.4. Decision of Hon'ble Gujrat High Court in the case of DCIT vs. Rohini Builders (2002) 256 ITR 360 (Gujrat) in which it was held as under :

*“Assessee had discharged initial onus by providing identity of the creditors by giving their complete address, GIR numbers/permanent account numbers and copies of assessment orders wherever readily available. Assessee had also proved capacity of creditors by showing that amounts were received by account payee cheques drawn from bank accounts of creditors. Repayment of loans and interest thereon was also made by account payee cheques by assessee and tax also had been deducted at source on interest payments and remitted.”*

10.5. Decision of Hon'ble Delhi High Court in the case of CIT vs. Mod Creations Pvt. Ltd., (2013) 354 ITR 282 (Del.) in which it was held as under :

*“The Tribunal has adopted an erroneous approach on the aspects of genuineness of the transactions in issue and the creditworthiness of the persons/creditors who lent money to the assessee. The first aspect, i.e., identity of the creditors was established before any of the authorities below. It will have to be kept in mind that section 68 only sets up a presumption against the assessee whenever unexplained credits are found in the books of account of the assessee. It cannot but be again said that the presumption is rebuttable. In refuting the presumption raised, the initial burden is on the assessee. This burden, which is placed on the assessee, shifts as soon as the assessee establishes the authenticity of transactions as executed between the assessee and its creditors. It is no part of the assessee’s burden to prove either the genuineness of the transactions executed between the creditors and the sub-creditors nor is it the burden of the assessee to prove the creditworthiness of the sub-creditor.”*

10.6. As regards the brought forward losses of earlier years, details are filed at page-58 of the paper book. The assessee filed original return of income on 30<sup>th</sup> October, 2007. Notice under section 153C was issued on 25<sup>th</sup> May, 2011 and the assessee filed return of income under such section on 11<sup>th</sup> July, 2011. Therefore, A.O. should not have denied brought forward losses to the assessee.

11. The Ld. D.R. relied upon the orders of the authorities below and submitted that assessee failed to prove genuineness of the transaction in the matter because of the material collected by the department during the course of search in Today Group of cases. Ld. D.R. submitted that since assessee failed to prove identity and capacity of the creditor and has received accommodation entry, therefore, addition was rightly made by the authorities below. The Ld. D.R. relied upon the following decisions :

(1) CIT vs. Nipun Builders & Developers (P.) Ltd., 350 ITR 407.

(2) CIT vs. Nova Promoters & Finlease (P) Ltd., 342 ITR 169

- (3) CIT vs. Ultra Modern Exports (P.) Ltd., 220 Taxman 165.
- (4) CIT vs. Frostair (P.) Ltd., 210 Taxman 221
- (5) CIT vs. N.R. Portfolio Pvt. Ltd., (2013) 214 Taxman 408.
- (6) CIT vs. Empire Builtech (P.) Ltd., 366 ITR 110
- (7) CIT vs. MAF Academy (P) Ltd., 361 ITR 258
- (8) CIT vs. Focus Exports (P.) Ltd., 228 Taxman 88
- (9) N.K. Proteins Ltd., vs. CIT 2017-TIOL-23-SC-IT
- (10) N.K. Proteins Ltd., vs. CIT 2016-TIOL-3165-HC-AHM-IT.

12. We have considered the rival contentions. The department has set-up a case against the assessee-company on the basis of search conducted in the case of Today group of cases on 26.11.2009 which was finally concluded on 25<sup>th</sup> January, 2010. It is mentioned by the A.O. that this Group is controlled by Gambhir brothers. The assessee-company is stated to be the Group concern of Today Group of cases. It is also mentioned in the assessment order that Today group is in real estate and hospitality business activities in NCR and other

parts of the Country and made huge investments in hotel projects etc. These funds are invested in the Group Companies controlled by Gambhir Brothers. The Jain Brothers invested in Today Group of cases who have also made other investments in other concerns including the creditor M/s. Double Star Builder Pvt. Ltd. In this connection, it is relevant to reproduce the provisions of Section 153C of the I.T. Act relevant to assessment year in appeal which reads 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 the 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 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.]*

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

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

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

*(c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other*

*person of such assessment year in  
the manner provided in section  
153A.]*

12.1. It is clear from the language of Section 153C of the I.T. Act that before issuing notice under section 153C of the I.T. Act, the primary condition that has to be fulfilled is that the money, bullion, documents etc., seized should belong to such other person. If this condition is not satisfied, no proceedings could be taken under section 153C of the I.T. Act.

12.2. In the present case, it is an admitted fact that since no search was conducted in the case of the assessee-company and the A.O. proceeded to make assessment under section 153C of the I.T. Act against the assessee-company and made the addition on the basis of the entries contained in the books of account of the assessee-company found during the course of search, it would have to be seen whether Revenue has brought on record any material to prove that any incriminating material found during the course of search belongs to the assessee-company or that whether A.O. is able to satisfy the conditions

of Section 153C of the I.T. Act, in the present case. The additional ground is legal in nature and all the relevant facts and material are available in the orders of the authorities below and on record. The additional ground being legal in nature and goes to the route of the matter, therefore, it should be admitted for the purpose of disposal of the appeal. In support of our view, we rely upon the decision of the Hon'ble Supreme Court in the case of National Thermal Power Company reported in 229 ITR 383 and also another decision of the Hon'ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC) in which the Hon'ble Supreme Court held as under :

*“Held, dismissing the appeals, (i) that the Tribunal permitted the assessee to raise the additional ground on the ground that it was a jurisdictional issue taken up on the basis of facts already on record, that under section 153C of the Act, incriminating material which was seized had to pertain to the assessment years in*

*question, and that the documents which were seized did not establish any co-relation, document-wise, with these four assessment years. The Tribunal found that the material disclosed in the satisfaction note belonged to assessment year 2004-05 or thereafter. The Tribunal rightly permitted this additional ground to be raised and correctly dealt with the ground on the merits as well. The High Court was right in affirming this view of the Tribunal.*

*Decision of the Bombay High Court in CIT v. Sinhgad Technical Education Society [2015] 378 ITR 84 (Bom) affirmed.*

*(ii) That the assessment order passed by the Assessing Officer covered eight assessment years. For six assessment years the assessment was under section 153C of the Act. The assessment order was set aside only in respect of four of those assessment years and on a technical ground. The objection pertaining to*

*the four assessment years in question did not relate to the other tax assessment years, namely, 2004-05 and 2005-06. Nor did this decision have a bearing in respect of assessment for assessment year 1999-2000 or assessment year 2006-07. The necessary consequence would be that the conclusions of the Assessing Officer in his assessment order regarding the activities of the trust not being genuine and not carried out in accordance with the trust deed or cancellation of registration, denial of benefits of sections 11 and 12 would not be affected by this judgment.”*

12.3. Considering the facts of the case in the light of above decisions, it is clear that additional ground being legal in nature and all material facts are available on record and it being the jurisdictional issue, we admit the additional ground for the purpose of hearing and disposal of appeal.

12.4. The Hon'ble Gujrat High Court in the case of Vijaybhai N. Chandrani vs. ACIT (2011) 333 ITR 436 (Guj.) held as under :

*“Sections 153A, 153B and 153C of the Income-tax Act, 1961, lay down a scheme for assessment in case of search and requisition. Section 153C which is similarly worded to section 158BD of the Act, provides that 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 he shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person. However, there is a distinction between the two provisions inasmuch as under section 153C notice can be issued only where the money, bullion, jewellery or other valuable article or thing or books of*

*account or documents seized or requisitioned belong to such other person, whereas under section 158BD if the Assessing Officer was 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 assets were requisitioned under section 132A, he could proceed against such other person under section 158BC. Thus a condition precedent for issuing notice under section 153C and assessing or reassessing income of such other person, is that the money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned should belong to such person. If the requirement is not satisfied, recourse cannot be had to the provisions of section 153C.*

*Held, allowing the petition, that admittedly, the three loose papers recovered during the search proceedings*

*did not belong to the petitioner. It was not the case of the Revenue that the three documents were in the handwriting of the petitioner. In the circumstances, when the condition precedent for issuance of notice was not fulfilled action taken under section 153C of the Act stood vitiated.”*

12.5. The Hon’ble Bombay High Court in the case of CIT vs. Lavanya Land Pvt. Ltd., (2017) 397 ITR 246 (Bom.) held as under :

*“It is clear that before issuing notice under section 153C of the Income-tax Act, 1961, the primary condition that has to be fulfilled is that the money, bullion, documents, etc., seized should belong to such other person. If this condition is not satisfied, no proceedings could be taken under section 153C.*

*The JC group was a partner in the Mumbai Special Economic Zone and Navi Mumbai Special*

*Economic Zone projects of India. This group had floated various companies to purchase large chunks of land in the vicinity of the special economic zones. The group's real estate operations were being handled by V, G and D. D was also the managing land transactions outside the Mumbai Special Economic Zone. The assessee was one of the companies floated by this group to purchase land outside the Mumbai Special Economic Zone. During search of D's residence, certain incriminating documents were seized and his statement was recorded. A show cause notice was issued to the assessee informing it that Rs. 38.45 crores, which was a sum reflected from the documents seized from D's residence and Rs. 4 crores in addition, which was evidenced by loose documents in the form of cash receipts, were found during search and seizure proceedings. The assessee was called upon to explain and show cause why these amounts should not be treated as unexplained expenditure*

*under section 69C of the Act, since the assessee did not provide any explanation with regard to the documents seized under section 132 of the Act for the assessment years from 2003 to 2009 and 2009-10. The assessment order was passed and the additions were made. The unexplained expenditure was apportioned to all the land companies floated by the JC- group. The Tribunal held that an entry in the books of account maintained in the regular course of business is relevant for the purpose of considering the nature and impact of a transaction, but notings on slips of paper or loose sheets of paper were required to be supported or corroborated by other evidence. There was a distinction between loose papers found from the possession of the assessee and similar documents found from a third person. The documents were not found from the possession of the assessee but from the possession of a third person i.e., D. Mere mention of the names of the villages where the*

*companies might have purchased lands would not give any basis to assume, presume or surmise that the names of the companies were mentioned in the documents. The Tribunal set aside the order of the Commissioner (Appeals) pertaining to the assessment year 2008-09 holding that the action under section 153C of the Act was bad in law. On appeal :*

*Held, dismissing the appeal, that the finding that section 153C was not attracted and its invocation was bad in law was not based just on interpretation of section 153C but after holding that the ingredients thereof were not satisfied in the present case. That was an exercise carried out by the Tribunal as the last fact finding authority. Therefore, the finding was a mixed one. There was no substantial question of law arising from such an order which alternatively considered the merits of the case as well. The deletion of the addition was justified.”*

12.6. The Hon'ble Madras High Court in the case of CIT vs. Late J. Chandrasekar (HUF) (2011) 338 ITR 61 (Mad.) held as under :

*“On the search conducted in the case of A and group on November 25, 2003, material pertaining to "on-money" payment paid to the assessee in respect of property purchased from the assessee were seized. Based on that, the Assessing Officer issued notice under section 153C of the Income-tax Act, 1961, and reworked the capital gains. The Commissioner (Appeals) and the Tribunal held that the notice under section 153C was not valid. On appeal to the High Court :*

*Held, dismissing the appeals, that the Assessing Officer did not have the benefit of the seized material while issuing the notice under section 153C. In the light of the fact that the Revenue did not produce any material to show that the materials were available at the hands of the Assessing Officer at the time of issuing notice, the Tribunal rightly*

*came to the conclusion that he assumption of jurisdiction under section 153C was not valid.”*

12.7. The ITAT, Agra Bench in the case of ACIT, Circle-I, Gwalior vs. Global Estate (2013) 142 ITD 740 (Agra) held as under :

- *The assessee had a case for quashing of proceedings under section 153C. No material is produced to prove that the Assessing Officer in the case of person searched was satisfied that any money, bullion, jewellery or other valuable article or things or books of account or documents seized or requisitioned belongs to or belong to a person other than the person referred to in section 153A.*
- *No material is produced before to show if any satisfaction was recorded by the Assessing Officer in that case that the material belongs to any person other than the person with respect to whom search was made under section 132. Department did not produce*

*any material to show if any such satisfaction as required under section 153C was recorded by the Assessing Officer in the case of person searched. No material is produced in reference to above requirement.*

- *No material is also produced before to show that books of account or documents or assets seized had been handed over to the Assessing Officer having jurisdiction over such other person. In the absence of any adequate material produced by the department contention of the assessee was justified that in this case, the Assessing Officer had not recorded any satisfaction that any seized document or material belongs to any person other person searched.*
- *Since the revenue is in appeal, therefore, burden was upon them to prove that necessary ingredients of section 153C have been complied with in this case before invoking jurisdiction under section 153C.*

- *It is added further here that the Assessing Officer has not referred to any seized document or material in the assessment orders on the basis of which, additions on merit have been made. Therefore, the conditions of section 153C as noted above are also not satisfied in this case. Therefore, there is no infirmity in the order of the Commissioner (Appeals) in quashing the proceedings under section 153C.”*

12.8. In the present case, it is an admitted fact that no recovery has been made from the possession of the assessee-company. The department believed the third party documents recovered from Today Group of cases which are not supported by Gambhir Brothers, Jain Brothers or the alleged broker Mr. Chawla. The books of account of assessee-company were found during the course of search in which loans and advances received by the assessee-company are mentioned and disclosed to the Revenue prior to search. These books of account, therefore, could not be treated as incriminating material against

the assessee-company. No evidence was found during the course of search that any money (cash credit) belongs to the assessee-company. No evidence was found during the course of search to the effect that Gambhir Brothers and Jain Brothers have made investments directly in the assessee-company. At the time of search, it was found that cash credits already appearing in the books of account and assessee-company returned the amount of the cash credits in subsequent years up-to A.Y. 2009-2010 through banking channel prior to the search. The material collected in the search at the most prove the *modus operandi* of Gambhir Brothers, Jain Brothers and Mr. Chawla-Mediator to make available funds to them. No evidence against the assessee-company was found in the search or otherwise to prove that assessee-company has received any accommodation entry. The lender company M/s. Double Star Builder Pvt. Ltd., did not make any statement against the assessee-company. The assessee-company denied any investment by Mediator-Mr. Chawla. Thus, the A.O. drawn an inference against the assessee-company on the basis of seized

documents but none of the documents seized speaks against the interests of the assessee-company. No material or evidence was found during the course of search that cash was given by assessee-company to take any loan or credits or it actually emanated from the coffers of the assessee-company. In support of this proposition, we rely upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. Value Capital Shares Pvt. Ltd., 307 ITR 334.

12.9. In this case, the A.O. made addition for failure to explain source of the source i.e., the source of creditor M/s. Double Star Builders Pvt. Ltd., who allegedly took entry from Jain Brothers through Today Group of cases which is not permissible in Law. The Hon'ble Delhi High Court in the case of CIT vs. Dwaradhish Investment (P.) Ltd., (2011) 330 ITR 298 (Del.) and Hon'ble Allahabad High Court in the case of Zafa Ahmed & Co. vs. CIT 30 Taxmann.com 269 held that *assessee need not to prove the source of the source*. Thus, the condition precedent for issuing notice under section 153C and assessing

or re-assessing the income of such other person, is that the money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned should belong to such other person has not been satisfied. If the requirement is not satisfied, recourse cannot be had to the provisions of Section 153C of the I.T. Act. In the present case, the department did not produce any evidence to prove that assessee-company received any accommodation entry or any material was found during the course of search to prove that cash credit already received by assessee-company was bogus or that it was taken through some other person on giving cash to them. Therefore, no material was found during the course of search to prove that any money (cash credit) belonging to the assessee-company. The conditions of Section 153C of the I.T. Act, are therefore, not satisfied. In view of the above discussion, we are of the view that initiation of proceeding under section 153C of the I.T. Act against the assessee-company is bad in law and is liable to be quashed. We, accordingly, set aside the orders of the authorities below and quash the initiation of proceedings

under section 153C of the I.T. Act. Resultantly, both the additions made in the assessment order on which separate grounds of appeal have been raised by the assessee-company are deleted. Additional ground of appeal is allowed. Since, we have quashed the proceedings under section 153C of the I.T. Act, therefore, there is no need to decide the remaining grounds of appeal on merits. However, we may briefly note that assessee-company filed confirmations from the creditor, copy of its bank account, income tax return, PAN, balance sheet of the lender company, the loan/advance have been given through banking channel and creditor has sufficient funds with them, the amount of the credit have also been re-paid in subsequent year through banking channel, therefore, the assessee-company proved that creditor exists and proved its identity. The assessee-company also proved creditworthiness of the creditor and genuineness of the transaction in the matter. No efforts have been made for production of the lender in this case. Therefore, the issue on merit is also covered in favour of the assessee-company by judgment of the Hon'ble Delhi High Court in the

case of CIT vs. Winstral Petro Chemical Pvt. Ltd., 330 ITR 603. The decisions relied upon by the Ld. D.R. are therefore, clearly distinguishable on facts. In view of the above discussion, we set aside the orders of the authorities below and quash the proceedings under section 153C of the I.T. Act and delete both the additions on merits on which grounds of appeal have been raised by the assessee-company. All grounds allowed.

13. In the result, appeal of the assessee-company is allowed.

Order pronounced in the open Court.

Sd/-  
**(L.P. SAHU)**

**ACCOUNTANT MEMBER**

Delhi, Dated 31<sup>st</sup> October, 2017

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'E' Bench, Delhi
6.	Guard File.

Sd/-  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

//By Order//

Asst. Registrar : ITAT Delhi Benches :Delhi.