

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

	ITA Nos. 5095, 5096 & 5097/DEL/2015	
	A.Yrs. : 2009-10, 2010-11 & 2011-12	
ADARSH KUMAR, 23, SUDHARSHAN APARTMENT, I.P. EXTENSION, NEW DELHI (PAN: AAAPK6345G)	VS	DCIT, CENTRAL CIRCLE-19, NEW DELHI
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Amit Goel, & Nippun Mital, CAs
Department by : Sh. Ms. Rachna Singh, CIT(DR)

ORDER

PER H.S. SIDHU, JM

These are the 03 appeals of assessee are directed against the separate orders of CIT(A)-XXVII, New Delhi all dated 09.6.2015 relating to A.Yrs. 2009-10, 2010-11 & 2011-12 respectively. The issues involved in these appeals are common and identical and therefore, these were heard together and adjudicated by this consolidated order for the sake of convenience and brevity, by dealing with assessment year 2009-10 on the following common grounds, except the difference in the figures.

- "1. *On the facts and circumstances of the case and in law, the notice under section 153C issued in this case is illegal*

and without jurisdiction and Commissioner of Income Tax (Appeal) erred in not holding so.

2. *On the facts and circumstances of case and in law, the addition of Rs. 26,91,041/- on account of unexplained cash salary is beyond the jurisdiction of provisions of section 153C of Income Tax Act, 1961 and Commissioner of Income Tax (Appeal) erred in not holding so.*

3. *On the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeal) erred in confirming the addition of Rs. 26,91,041/- on account of unexplained cash salary.*

The appellant craves leave to add one or more ground of appeal or to alter / modify the existing ground before or at the time of hearing of appeal.

The aforesaid grounds are without prejudice to each other."

2. The brief facts of the case are that the assessee is an individual who during the year under consideration derived income from "salary", "house property" and "other sources". A search and seizure operation u/s. 132 of the Income Tax Act, 1961 was conducted by the Investigation Wing of the Department on 22.3.2012 in M/s Focus Group of cases. On the basis of this

search, proceedings u/s 153C of the Income Tax Act, 1961 were initiated against the assessee by issuing notice dated 26.11.2013 on the basis of "satisfaction note" dated 26.11.2013. The AO thereafter completed the assessment u/s. 153C/143(3) of the I.T. Act, 1961 vide his order dated 25.03.2014 at a total income of Rs. 76,16,960/- wherein an addition of Rs. 26,91,041/- was made on account of unexplained cash. Aggrieved with the assessment order, the assessee filed appeal before Ld. Commissioner of Income Tax(A) and challenged the validity of the proceedings u/s 153C of the Act as well as the additions made by the AO. The Ld. CIT(A) vide his order dated 09.06.2015 has dismissed the ground of the assessee related to the validity of proceedings u/s. 153C of the Act. Aggrieved with the order of Ld. CIT(A), the assessee is in appeal before the Tribunal.

3. In the ground No.1, the assessee has challenged the notice issued under section 153C of the Act. According to the assessee the notice issued u/s 153C of the Act in this case is bad in law. The submission of the assessee on this ground has twofold, first that the "satisfaction note" has not been recorded by the AO in his capacity as AO of the "searched person" and second that there is no satisfaction that documents "belonging to" the assessee were found. In support of his above contentions, the assessee has filed the written submissions, the contents thereof are reproduced as under :-

"Search and seizure operation u/s 132(1) of Income Tax Act, 1961 was carried out in the cases of iEnergizer IT Services Pvt. Ltd., iServices Pvt. Ltd., Granada Services Pvt. Ltd and ienergizer India Pvt. Ltd. on 22.03.2012. On the basis of this search, proceedings u/s 153C of Income Tax Act, 1961, were initiated against the appellant by issue of **notice dated 26.11.2013** u/s 153C on the basis of a satisfaction note dated 26.11.2013 itself. The notice issued u/s 153C in this case is illegal and without jurisdiction. The brief synopsis are given as under the following broad heads (without prejudice to each other) :-

1. That the notice issued u/s 153C is bad-in-law and without jurisdiction as no satisfaction as required u/s 153C of the Act has been recorded by the assessing officer of the searched person.
2. That the notice issued u/s 153C is bad-in-law and without jurisdiction as the assessing officer of the searched person has not recorded any satisfaction that document (s) belonging to the assessee was found and seized during the course of search.
3. That there has been no "handing over" of the seized documents as required u/s 153C before initiation of proceedings under that section.

The brief arguments in respect of each of the above broad heads is being given hereunder :-

1. **That the notice issued u/s 153C is bad-in-law and without jurisdiction as no satisfaction as required u/s 153C of the Act has been recorded by the assessing officer of the searched person.**

In terms of provisions of section 153C of the Act, the satisfaction u/s 153C has to be recorded by the A.O. of the searched person. Even when the assessing officer of "searched person" and the "person other than the searched person" (against whom proceedings u/s 153C are supposed to be initiated) are the same, the requirement of recording satisfaction by the assessing officer of the searched person cannot be avoided and such satisfaction has to be recorded by the 'assessing officer' in his capacity as assessing officer of 'searched person'.

In the absence of such satisfaction, the proceedings initiated u/s 153C are without jurisdiction. In the appellant's case, the so called satisfaction note has been recorded by the assessing officer in his capacity as assessing officer of the assessee (i.e. a person other than a searched person) and not in his capacity as

assessing officer of a searched person. This is evident from the following :-

I. In the satisfaction note, it has nowhere been stated by A.O. that he is recording satisfaction in his capacity as A.O. of any searched person.

*II. The "Satisfaction Note" in this case is a satisfaction note for taking up action u/s 153C and for initiating proceedings u/s 153C. Under the provision of search 153C, the A.O. of searched person is required to record satisfaction that documents belonging to other person have been found during the course of search and thereafter he has to handover those documents to assessing officer of person other than the searched person. **The A.O. of the searched person is not empowered to issue notice u/s 153C or to give direction for issue of notice u/s 153C. This authority of issue / giving direction for issue of notice u/s 153C lies solely with the assessing officer of the "other person".***

*As can be seen from the last line of the so called satisfaction note the A.O. has mentioned that _ Quote _ _ _ **Therefore, to assess undisclosed income of Sh.Adarsh Aggarwal***

proceedings u/s 153C of the Income Tax Act needs to be initiated. _ _ _” Unquote.

Further, the head note of so-called satisfaction read _ _ _quote
“Satisfaction note for taking action u/s 153C in case of Shri Adarsh Aggarwal. _ _ _” unquote.

The aforesaid remarks proves beyond doubt that the satisfaction note has been recorded by the assessing officer in his capacity as the A.O. of the assessee (the other person) and not as the A.O. of searched person because it is only the A.O. of “other person” who has the authority of making assessment and who can issue / give direction for issue of notice u/s 153C as has been given in the satisfaction note.

1.1 This issue is no more res-integra. There are now plethora of judgments where it has been held that satisfaction note u/s 153C has to be mandatorily recorded by the assessing officer of the “searched person” (even when the A.O. of the searched person and the A.O. of the other person happens to be the same).

Some of the judgments are as under :-

- Pr. CIT v Aakash Arogya Mandir Pvt. Ltd. (Delhi High Court order dated 28.07.2015)

- *Pepsi Foods (P.) Ltd.v ACIT [2014] 52 taxmann.com 220 (Delhi)*
- *Pepsico India Holdings (P.) Ltd. v ACIT [2014] 50 taxmann.com 299 (Delhi)*
- *CIT v Mechmen (2015 (7) TMI 538 Madhya Pradesh High Court order dated 10.07.2015).*

1.2 It will be worthwhile to point out that in **DCIT v Aakash Arogya Mandir (P) Ltd. (2015) 58 taxmann.com 293 (Delhi-Trib).** also the notice issued u/s 153C was held to be illegal and assessment proceedings were quashed as no satisfaction was recorded by the assessing officer of the searched person. Thereafter, the revenue went in appeal before the Hon'ble High Court of Delhi (**P. R. Commissioner of Income Tax, Central-II) vs. Aakash Arogya Mandir Pvt. Ltd.**) wherein the Hon'ble High Court, while dismissing the appeal of the Revenue, held as under :-

"8. 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 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.

9. No substantial question of law arises for determination. The appeal are dismissed.”

1.3 The Delhi Bench of ITAT in the case of **ACIT v JNSW Infracon Pvt. Ltd. 2017(6) TMI 174- ITAT Delhi** vide its decision dated 31.05.2017 has held that even if, the assessing officer of the "searched person" and "other person" are same, the satisfaction u/s 153C has to be recorded by the assessing officer in his capacity as assessing officer of "Other Person."

1.4 Similar decision has been by Delhi Bench of ITAT in the case of **Victory Accommodation Pvt. Ltd. v ACIT (2017)(5) TMI 1050 ITAT Delhi**

1.5 The CBDT vide its **Circular No. 24/2015 dated 31st December 2015** has accepted the position laid down by Hon'ble Supreme Court in the case of Calcutta Knitwears (Civil Appeal No. 3958 of 2014 dated 12.03.2014) that even if the assessing officer of "searched person" and "other person" are same the

satisfaction u/s 153C has to be recorded by the assessing officer of the "searched person". In this circular the CBDT has directed that pending litigation by the department with regard to recording of satisfaction note u/s 158BD / 153C should be withdrawn / not pressed if it does not meet the guidelines laid down by the Apex Court.

In view of the above it is submitted that the notice u/s 153C issued by the A.O. is without jurisdiction and is bad-in-law. The said notice is liable to be quashed and accordingly the assessment order passed on the foundation of the such notice is also liable to be quashed.

2. That the notice issued u/s 153C is bad-in-law and without jurisdiction as the assessing officer of the searched person has not recorded any satisfaction that document (s) belonging to the assessee was found and seized during the course of search.

As per section 153C, the pre-condition before issue of notice u/s 153C is that the assessing officer of the "searched person" should be 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. The first pre-requisite of invocation of provisions of section 153C is that there must be satisfaction by the assessing officer of searched person that documents found and seized during the course of search 'belongs to' 'other person' against whom notice u/s 153C is proposed to be issued. **As per provisions of section 132(4A)(i), presumption is that document belongs to such person from whose possession, the document is seized. Therefore the A.O. of the searched person is first required to record satisfaction that documents do not belong to searched person.** Infact, the first requirement under law is that A.O. of the searched person is required to rebut the presumption u/s 132(4A)(i) and u/s 292C(1)(i) that seized documents do(es) not belong to the searched person.

Provisions of section 132(4A)(i)

132. (1)**

**

**

(4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed—

(i) That such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

**

**

**

Provision of section 292C(1)(i)

292C. (1) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed—

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

*2.1 In the case of **Pepsi Foods (P.) Ltd.v ACIT [2014] 52 taxmann.com 220 (Delhi)** the Hon'ble High Court held as under :-*

6. On a plain reading of Section 153C, it is evident that the Assessing Officer of the searched person must be "satisfied" that inter alia any document seized or requisitioned "belongs to" a person other than the searched person. It is only then that the Assessing Officer of the searched person can handover such document to the Assessing Officer having jurisdiction over such

other person (other than the searched person). Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or re-assess his income in accordance with the provisions of Section 153A. **Therefore, before a notice under Section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is - after such satisfaction is arrived at - that the document is handed over to the Assessing Officer of the person to whom the said document "belongs". In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to examine the provisions of presumptions as indicated above. Section 132(4A)(i) clearly stipulates that when inter alia any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in Section 292C(1)(i). In other words, whenever a document is found from a person who is being searched**

the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or "satisfaction" that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of "satisfaction".

11. It is evident from the above satisfaction note that apart from saying that the documents belonged to the petitioner and that the Assessing Officer is satisfied that it is a fit case for issuance of a notice under Section 153C, there is nothing which would indicate as to how the presumptions which are to be normally raised as indicated above, have been rebutted by the Assessing Officer. Mere use or mention of the word "satisfaction" or the words "I am satisfied" in the order or the note would not meet the requirement of the concept of satisfaction as used in Section 153C of the said Act. The satisfaction note itself must display the reasons or basis for the conclusion that the Assessing Officer of the searched person is satisfied that the seized documents belong to a person other than the searched person. We are

afraid, that going through the contents of the satisfaction note, we are unable to discern any "satisfaction" of the kind required under Section 153C of the said Act.

12. This being the position the very first step prior to the issuance of a notice under Section 153C of the said Act has not been fulfilled. Inasmuch as this condition precedent has not been met, the notices under Section 153C are liable to be quashed. It is ordered accordingly. The writ petitions are allowed as above. There shall be no order as to costs.

2.2 The head note of judgement in the case of **Pepsico India Holdings (P.) Ltd. v ACIT [2014] 50 taxmann.com 299 (Delhi)** is as under :-

Section 153C of the Income-tax Act, 1961 - Search and seizure, assessment in case of - Assessment of income in case of any other person - Assessment years 2006-07 to 2011-12 - Whether before provisions of section 153C can be invoked, Assessing Officer of searched person must be satisfied that seized material (which includes documents) does not belong to person referred to in section 153A - Held, yes - Whether finding of photocopies in possession

of a searched person does not necessarily mean and imply that they 'belong' to person who holds originals; unless it is established that documents in question, whether they be photocopies or originals, do not belong to searched person, question of invoking section 153C does not arise - Held, yes [Paras 14 and 15] [In favour of assessee]

In the present case of the appellant, in the "satisfaction note" recorded u/s 153C there is no rebuttal that seized documents do not belong to the searched person. As a matter of fact the A.O. has not even mentioned that any document seized during search belong or belongs to the appellant.

2.3 The Hon'ble Bombay High Court in the case of **CIT v Arpit Land (P) Ltd. [2017] 78 taxmann.com (Bom)** has held as under:-

*7. The grievance of the Revenue as submitted by Mr.Kotangale is a submission made on the basis of suspicion and not on the basis of any evidence on record which would indicate that the respondent - assessee and persons searched were all part of the same group. Be that as it may, the requirement of Section 153C of the Act cannot be ignored at the alter of suspicion. The Revenue has to strictly comply with Section 153C of the Act. **We are of the view that non satisfaction of the condition***

precedent viz. the seized document must belong to the respondent - assessee is a jurisdictional issue and non satisfaction thereof would make the entire proceedings taken thereunder null and void. *The issue of Section 69C of the Act can only arise for consideration if the proceedings under Section 153C of the Act are upheld. Therefore, in the present facts, the issue of Section 69C of the Act is academic.*

2.4 *The jurisdictional Delhi High Court in the case of **Canyon Financial Services Ltd. v ITO (2017) 84 taxmann.com 74** has held that in the first place, the satisfaction note of the A.O. of the searched person has to record that the document seized belongs or belong to the person other than the person referred to in section 153A.*

2.5 *The Hon'ble Delhi High Court in the case of **CIT v Renu Constructions Pvt. Ltd. (2017) (a) TMI 670 – Delhi** has held that seized documents had to be shown to belong to the "other person" and not merely pertaining to such other person. The Hon'ble court held that amendment to section 153C by including the documents pertaining to has been given prospective effect from 1st June 2015.*

In view of the above, it is submitted that in the so-called satisfaction note since the assessing officer has no where

recorded any satisfaction about any seized document being belonging to the appellant, the proceedings initiated are bad-in-law and therefore liable to be quashed.

3. That there has been no "handing over" of the seized documents as required u/s 153C before initiation of proceedings under that section.

*Under section 153C of the Income Tax Act, before initiation of proceedings u/s 153C against the "Other person" (i.e. a person other than a searched person) by the A.O. of that "other person", there has to be not only a "satisfaction note" recorded by the A.O. of the "searched person" (with regard to seized documents being belonging to that "other person") but also **handover** of the seized documents from the "A.O. of the other person". This requirement cannot be dispensed with even when the assessing officer of the "searched person" and of the "other person" is same. In the present case of the appellant, there has been no such handing over of the alleged seized documents. Therefore, the proceedings initiated u/s 153C are without jurisdiction and bad-in-law."*

3.1 On the other hand, the Ld. CIT(DR) has stated that notice issued u/s 153C of the Act and consequent assessment was within the ambit of law. In her written submission, it has been submitted that Ld. CIT(A) has rightly

upheld the order of the AO on this issue. In support of her contention, the Ld. CIT(DR) has also filed the written submissions, by relied upon the following case laws. The contents of the written submissions are reproduced as under:-

- "- *Pr. CIT v. Sheetal International Pvt. Ltd*
- *Pr. CIT v Instronics Ltd.*
- *Ganpati Fincap Services (P) Ltd. v CIT,*
- *CIT v Super Malls (P) Ltd.*
 - *PCIT v Nau Nidhi Overseas Pvt. Ltd.*
- *Kamleshbhai Dharamshibhai Patel v CIT*
- *Rajesh Sunderdas Vaswani v ACIT*
- *SSP Aviation Ltd v DCIT*
 - *CIT v Classic Enterprises*
- *Savesh Kumar Agarwal v Union of India*

The assessee in Ground of Appeal 1 has alleged that the notice under section 153 C issued in this case is illegal, without jurisdiction and CIT(A) erred in not holding so.

The Revenue submits that the notice under section 153 C and the consequent assessment was well within the ambit of law and as per provisions of section 153 C. The CIT(A), therefore rightly upheld the order of the AO in this regard.

A search & seizure operation under section 132 of the Income Tax act, 1961 was conducted on 22.03.2012 in M/s Focus Energy Group of cases, M/s Granada Services (P) Ltd, Ms iEn.ergizer IT Services (P) Ltd & iServices India (P) Ltd.

Incriminating Documents found During Search

A perusal of Page 2 & 3 of the Assessment Order details the nature of incriminating documents. Seized material catalogued as FO-101 A-16 & FO- 10/AA-2 seized from premises of Mis Granada Services (P) Ltd, Ms iEnergizer IT Services (P) Ltd & iServices India (P) Ltd reflected as payments of salary to the assessee during the said years. The assessee was required to explain the said receipts. No response filed by assessee. Hence, treated as unexplained cash income by AO.

AO Observation

The AO in Para 1/assessment Order has recorded that in the course of search operation certain incriminating documents pertaining to the assessee were found and seized. Also, the AO is stated that satisfaction note for invoking section 153 C was recorded on 26.11.2013 which is placed in the assessment folder of the aforesaid companies. Thus, it is clear that the AO of the searched person recorded satisfaction as required under the provisions of the Income Tax Act.

The Revenue reiterates that the provisions of section 153C unambiguously state that 153C. Assessment of income of any other person.- (1) Notwithstanding anything contained in section

139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A

153(1) (b) clearly states that in such a case the Assessing Officer shall

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition made:

Provided that the Assessing Officer shall assess or reassess the total income

in respect of each assessment year falling within such six assessment years.

The Revenue reiterates that the provisions of section 153A unambiguously state that

153(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May 2003, the Assessing Officer shall

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income

(b) assess or reassess the total income of six assessment years immediately

preceding the assessment year relevant to the previous year in which such

search is conducted or requisition made:

Provided that the Assessing Officer shall assess or reassess the total income

in respect of each assessment year falling within such six assessment years.

From a bare reading of the provisions of 153 A & 153C it is clear that the basic pre-requisite to issue notice under section 153C is that 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. If the A.O is so satisfied he shall assess and reassess such income according to the provisions of section 153A. In such a case the A.O. shall assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition made.

Finding of CIT(A) pertinent

This ground was taken before CIT(A) as well. The CIT(A) in this regard recorded a pertinent finding that reads as under:

It is seen that the AO initiated the proceedings u/s 153C after duly recording

the satisfaction note. The AO of the searched person and the other person (appellant) is the same. Therefore, there is no substance in the contention of the appellant that the AD recorded satisfaction in the capacity of the AO of the searched

person. Further, the satisfaction note clearly referred to the documents pertaining to the appellant, which were incriminating in nature and on the basis of which the AO had also made an addition in this case. Thus, the AO initiated the proceedings u/s 153 C after complying with the provisions of the said section. Therefore, I. find no merit in the appellant's submission challenging the validity of proceedings u/s 153C. Accordingly, these grounds of appeal are dismissed. (Ref Para 7/Page4/CIT(A) order)

So the A.O is empowered by the Income Tax Act and its provisions under section 153A/ 153C to assess the 'total income' of the assessee which includes undisclosed income.

Reliance placed on following judgements:

1. PCIT Vs Sheetal International Pvt Ltd (2017-TIOL-1355-HC-DEL- IT) (Copy Enclosed)

where Hon'ble Delhi High Court held that proceedings u/s 153C cannot be invalidated, merely because the AO of the searched who was also that of the Assessee, did not record a separate satisfaction note.

2. PC IT Vs Instronics Ltd [2017182taxmann.com357(Delhi (Copy / Enclosed)

where Hon'ble Delhi High Court held that where satisfaction note was recorded by Assessing Officer of searched person who also happened to be Assessing Officer of assessee (other person) to effect that seized documents belonged to assessee, issuance of notice under section 153C against assessee on basis of said note was justified.

3. Ganpati Fincap Services (P.) Ltd. Vs CIT 2017] 82taxman.com408 (Delhi (Copy Enclosed)

where Hon'ble Delhi High Court held that where Assessing Officer of searched person recorded that documents seized during search belonged to assessee, merely because he had not categorically stated that documents mentioned therein did not belong to searched person would not invalidate assumption of jurisdiction under section 153C in respect of assessee.

Where proceeding under section 153C was initiated against assessee on basis of seized documents which could not be said to be non- incriminating on bare perusal and despite of being given several opportunities no submission on merits of case was made by assessee, assessment order passed under said section to make additions was justified.

4. *PCIT Vs Super Malls Pvt Ltd [2016] 76 taxmann.com 267 / {Delhi/[2017] 393 ITR 557 {Delhi/[2017] 291 CTR 142 (Delhi) (Copy Enclosed)*

where Hon'ble Delhi High Court held that where Assessing Officer had issued satisfaction note under section 153C after satisfying himself with contents of documents seized, Tribunal could not declare it as invalid on hyper technical ground of incorrect terminology used in said note. Satisfaction note recorded u/s 153C in respect of the assessee, being the third party, could not be said to be invalid on a hyper technical ground by interpreting the expression "belonging to" too literally.

5. *PCIT Vs MIs Nau Nidh Overseas Pvt Ltd. (ITA No.58/2017) (Copy Enclosed)*

where Hon'ble Delhi High Court held that satisfaction recorded by the Officer issuing notice u/s 153C is sufficient if the AO of the searched person and third party are the same.

6. *Kamleshbhai Dharamshibhai Patel Vs CIT {[2013] 31 taxmann.com 50 {Gujarat)/2013] 214 Taxman 558 {Gujarat)/[2013] 263 CTR 362 (Gujarat)} (Copy Enclosed)*

where Hon'ble Gujarat High Court held that where assessee sold certain land to purchaser, documents, viz., sale deeds of said land and agreements executed between assessee and erstwhile tenants regarding their eviction, found during search upon purchaser, would be said to be belonging to assessee for purpose of section 153C

7. Rajesh Sunderdas Vaswani Vs ACIT {[2016] 76 taxmann.com 311 (Gujarat)} (Copy Enclosed

where Hon'ble Gujarat High Court held that where Assessing Officer of search person recorded that document found during search was copy of a ledger of books of account of assessee company which evidenced certain cheque payments as well as cash payments to a company by assessee, there was prima facie material to suggest that satisfaction as per section 153C was duly recorded and thus, notice issued to file return to assessee was justified.

8. SSP Aviation Ltd Vs DCIT (20 taxmann.com 214) (Copy Enclosed)

where Hon'ble Delhi High Court held that In view of provisions of section 153C, satisfaction that is required to be reached by Assessing Officer having jurisdiction over searched person is that valuable article or books of account or documents seized during

search belong to a person other than searched person and, it is not necessary that documents so seized must reflect any undisclosed income.

9. *CIT Vs Classic Enterprises (35 taxmann.com 244, 219 Taxman 237, 358 ITR 465, 268 CTR 364) (Copy Enclosed)*

where Hon'ble Allahabad High Court held that where after search at business premises of assessee-firm and its partner, books of account were handed over to concerned Assessing Officer, who after recording satisfaction issued notice under section 153C and completed assessment under section 153C/143(3), assessment was in accordance with law

10. *Savesh Kumar Agarwal Vs Union of India (35 taxmann.com 85, 216 Taxman 109, 353 ITR 26) (Copy Enclosed)*

where Hon'ble Allahabad High Court held that even if assessing authority receiving satisfaction note had not found any thing adverse against assessee on examination of account books, and further seized goods had already been released, notice under section 153C could still be issued to assessee to file return of income. Where bullion seized was released to assessee for having been validly entered in stock books, Assessing Officer on

receiving satisfaction note could still proceed under section 153A against assessee to find out source of income.

No Evidence filed to rebut the truth of receipt of salary in cash

Despite repeated opportunities given by the AD and also the CIT(A), the assessee did not produce any evidence to disprove the case of the AO. The Supreme Court has held that the parties must lead evidence during the course of assessment proceedings (Keshav Mills & Co Ltd 56 ITR 365 (SC). In the instant case no evidence produced before AO or CIT (A) to disprove:

- *incriminating evidence against the assessee in the form of seized documents*

Although, the rigors of Indian Evidence Act do not apply to Income Tax proceedings, section 114(g) of Indian Evidence Act clearly says that if evidence is not produced, it is presumed to go against the party not producing it.

Interpretation of Statute

With regard to interpretation of Section 153A/153C, the Revenue also submits that a taxing statute is to be strictly construed and there is no equity in a taxing statute.

The Income Tax Act is a self-contained code, and provides machinery for imposing and collecting tax, obtaining reliefs and

appeals against improper orders etc. While tax law is a part of the general law, it has got its own distinct features. There are some special provisions which are attracted while interpreting tax laws.

The need of interpretation arises only when the words used in the statute are on their own term, ambivalent and do not manifest the intention of legislature.

[Keshavji Ravji & Co. v/s. CIT - [(1990) 183 ITR 1 (SC)].

Similarly rule of interpretation would come into play only if there is doubt with regard to the express language used. [Pandian Chemicals Ltd. vis. CIT- [(2003) 262 ITR 278 (SC)].

Literal rule: Language of Statute should be read as it is :

*The first and the most elementary rule of construction is that it is to be assumed that the words and phrases of legislation are used in their technical meaning if they have acquired one, or otherwise in their ordinary meaning, and the second is that the phrases and sentences are to be construed according to the rules of grammar. *Krishi Utpadan Mandi Samiti vs. UOI (2004) 267 ITR 460 (All.)**

Pure, simple and grammatical sense of language used by Legislature is best way of understanding as to what Legislature intended. Coal Mines Officers' Association of India v. UOI (2004) 266 ITR 429 (Cal.)

If the language of the statute is clear and unambiguous, words must be understood in their plain meaning. The wordings of the Act must be construed according to Its literal and grammatical meaning, whatever the result may be.

While interpreting tax statute, the function of the court of law is not to give

words in the statute a strained and unnatural meaning to cover and extent its applicability to the areas not intended to be covered 'under the said statute. Vidarbha Irrigation Dev. Corpn. v/s ACIT [(2005) 278 ITR 521 (Born)].

It is not permissible to construe any provision of a statute, much less a taxing provision, by reading into it more words than its contains. CIT vs: Vadilal Lallubhai [(1972) 86 ITR 2 (SC)]

Literal construction means that there is no room for any intendment. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.

ICAI vs. Price Waterhouse, (1997) 90 Compo Case 113, 140, 141 (SC)

State of West Bengal vs. Scene Seven P. Ltd. AIR 2000 SC 3089, 3094

Harbajan Singh vs. Press Council of India (2002) 3 SCC 722, 727.

District Registrar and Collector V. Canara Bank, (2005) 1 SCC 496.

Strict construction:

A tax is imposed for public purpose for raising general revenue of the state. A taxing statute is to be strictly construed. Lord Hasbury and Lord Simonds stated: "The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words."

It is settled law that a taxation statute in particular has to be strictly construed and there is no equity in a taxing provision. H.H. Lakshmi Bai v/s. CIT [(1994) 206 ITR 688, 691 (SC)].

"The subject is not to be taxed without clear words for that purpose "

CIT vs. Provident Inv. Co. Ltd. (1954) 32 ITR 190 (SC)

J.K. Steel Ltd. vs, UOI AIR 1970 SC 1173

CIT vs. Indo Oceanic Shipping Co. Ltd. (2001) 247 ITR 247 (Bom)

Hansraj & Sons vs. State of J & K (2002) 6 SCC 227, 237-39

In A.V. Fernandez vIs. State if Kerala,[AIR 1957 SC 657] His Lordship Bhagwati J. has stated the principle of taxing laws as follows:

"In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of law. If the revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter."

In the light of the written and oral submissions made during course of hearing, the appeals of the assessee may be dismissed and the issue decided in favour of Revenue."

4. We have heard both the parties and perused the relevant records, written submissions of both parties and also the impugned order passed by the Ld. CIT(A). We find that the first issue challenging the jurisdiction u/s. 153C of the Act raised is whether the satisfaction note required in terms of section 153C of the Act has been recorded by the AO of the searched person

or of the other person (i.e. the assessee). It is apparent from the assessment order that a search was conducted under section 132 of the Act on Focus Group of cases and in such search proceedings certain material was found and seized, which led to making of the assessment u/s. 153C of the Act in the instant case. In view of the issue of satisfaction recorded by incorrect AO raised in the submission of the Ld. counsel, it is worthwhile to refer the section 153C(1) of the Act at the material time as under:

"153C. Assessment of income of any other person.-

(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A :"

4.1 After careful perusal of the above provisions, it is evident that where the Assessing Officer of the searched person is satisfied that any money, bullion, jewellery, books of accounts or other documents etc. belong to a person other than the person searched, then such assets or documents etc. shall be handed over to the AO of the 'other person' and the AO should proceed against such other person to assess or reassess the income of the 'other person'. Thus, according to the provision, before handing over of such assets/ documents to the Assessing Officer of the "other person", the

satisfaction has to be recorded by the Assessing Officer of the person searched that money bullion, jewellery or document etc. found from the person searched belong to other person. Thus, the AO acquires jurisdiction under section 153C of the Act only when the AO of the searched person record the satisfaction and handover the assets or documents belonging to the other person, to the Assessing Officer of the other person. It transpires from the provision that recording of satisfaction by the Assessing Officer of the "person searched" is a condition precedent for the Assessing Officer of the "other person" to acquire jurisdiction and unless jurisdictional condition is satisfied, there can be no question of making assessment or reassessment in the case of such other person.

4.2 We further note that prior to the introduction of section 153C of the Act, under the scheme of block assessment for such cases, there is a corresponding section 158BD of the Act, which reads as under:

"Undisclosed income of any other person.

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

4.3 On reading of the aforesaid provisions, it is clear that when the AO of the person searched is satisfied that undisclosed income belongs to any person other than the person searched, then the books of accounts and other documents etc. are to be handed over to the Assessing Officer having jurisdiction over such other person and after recording of the proper satisfaction by the Assessing Officer of the searched person, the Assessing Officer of the other person can proceed for determining undisclosed income of such other person.

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

4.5 We further find that the issue of recording satisfaction and framing assessment under section 158BD of the Act came up for consideration before the Hon'ble Supreme Court of India in the case of CIT Vs. Calcutta Knitwear (Supra) wherein, the Hon'ble Supreme Court has held that for the purpose of section 158BD of the Act the satisfaction note is sine qua non and must be prepared by the Assessing Officer before transfer of the records to the other AO who has jurisdiction over such other person.

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

4.7 We further find that the CBDT has also issued its Circular No. 24/2015, dated 31st December, 2015, in view of the aforesaid judgment of the Hon'ble Supreme Court in the case of Calcutta Knitwears (supra), which reads as under:

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

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

against the searched person under section 158BC of the Act; or (b) in the course of the assessment proceedings under section 158BC of the Act; or (c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person."

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

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

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgment. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD

/153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court.”

4.8 We note that in the other decisions of the Hon’ble High Court and Tribunal, cited in the written submission of the assessee as well as by the learned CIT(DR), as far as the issue of recording satisfaction by the Assessing Officer of the searched person, prior to handing over of such material to the AO of the other person, similar findings are given and now by the judgement of the Hon’ble Supreme Court in the case of Calcutta Knitwears (supra) the issue is settled. Even when the Assessing Officer of the searched person and Assessing Officer of the other person is same, even then the satisfaction has to be recorded by the AO in his capacity as AO of searched person.

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

4.10 We further note that Ld. counsel of the assessee in the written submission has submitted that head note for the satisfaction itself states that "Satisfaction note for taking action u/s 153C in case of Adarsh Aggarwal" at the end of the satisfaction note it has been mentioned that ***"Therefore, to assessee undisclosed income of Shri Adarsh Agarwal, proceedings u/s 153C of the Act needs to be initiated."***

4.11 However, the settled position of law is that so far as the assessing officer of the "searched person" is concerned, he has to only record a satisfaction that documents seized "belong" or "belongs to" other person. The assessing officer in his capacity as assessing officer of searched person is not concerned with initiation of proceedings u/s 153C of the Act or for making assessment against the "other person" because that can be done by assessing officer in his capacity as assessing officer of "other person". In the present as is evident from the language of "Satisfaction Note" it has been recorded by A.O. in his capacity as assessing officer of the assessee i.e. the other person and not as the assessing officer of the searched person. Thus the pre-requisite of recording satisfaction by the assessing officer in his capacity as assessing officer of "searched person" has not been fulfilled.

4.12 We further find that Ld. CIT(DR) has submitted that technicalities and irregularities, which do not occasion in failure of justice should not be

allowed to defeat the end of justice and the entire proceeding conducted by the Revenue cannot be held illegal, without jurisdiction.

4.13 Though, we agree in principle that technicalities should not come in the way of dispensation of justice but the issue of lack of jurisdiction cannot be ignored under the guise of a technical defect. We are not convinced with the above contention advanced on behalf of the Revenue. We fail to understand as how the requirement of recording satisfaction by the Assessing Officer of the searched person provided in the statute could be treated as a small irregularity. In our opinion it is the prime requirement for initiating proceedings under section 153C of the Act. The Assessing Officer in the capacity of the searched person only examines the records seized and come to the conclusion as to which of the such money, bullion jewellery or documents belongs to the searched person and to the others. The legislature has provided for recording of such satisfaction by the Assessing Officer of the person searched and thus the Assessing Officer cannot be allowed to record satisfaction in the capacity of Assessing Officer of other person. In our opinion no assessment or other proceeding can be lawfully taken up and completed unless the concerned authority has jurisdiction to do so and the lack of jurisdiction goes to the foundation of the matter and if the foundation is missing, the entire building collapse. Thus, the contentions advanced by the Revenue are rejected. We further find that the Central Board of Direct Taxes (CBDT), who is the Apex Body controlling the Administration of the

Income Tax Department, in the aforesaid Circular has clearly directed the officers of the Department either not to file appeals or to withdraw the appeals where satisfaction note is not recorded by the Assessing Officer in the capacity of searched person. In such circumstances, advancing of above arguments are futile and wastage of resources of the Income Tax Department.

4.14 With regard to second alternate contention of the assessee that no documents belong to the assessee was found and there is no satisfaction recorded that any document belonging to the assessee was found during the search, it is seen that in the satisfaction note, the assessing officer has not recorded any satisfaction that documents "belonging to" the assessee was found during search. There is amendment in the Income Tax Act with effect from 1st June 2015 whereby the seized documents even if they pertain to or relates to "other person" and does not "belong to" "other person" can be the basis for initiation of proceedings u/s 153C of the Act. However, as held by Hon'ble Delhi High Court in the recent case of CIT v Renu Construction Pvt. Ltd. (Supra), the said amendment has been given prospective effect from 1st June 2015. Thus prior to June 2015, the seized documents had to be mandatorily shown to be "belonging to" the other person and not merely pertaining to or relating to such "other person". The documents referred to in the "satisfaction note", even if they pertain / relates to the assessee have not been shown to be "belonging to" the appellant and there is no such

satisfaction recorded. Accordingly the requirement of recording satisfaction that seized documents belong to other person has not been fulfilled in the present case.

4.15 We also note that the case laws relied upon by the Ld. CIT(DR) are distinguished on facts. In the cases Pr. CIT v. Sheetal International Pvt. Ltd., Pr. CIT v Instronics Ltd., GanpatiFincap Services (P) Ltd. v CIT, the Hon'ble Delhi High Court has held that where the A.O. of the "Searched Person" and "Other Person" is same, there was no requirement of recording two satisfaction notes, one by A.O. of "searched person" and another by A.O. of "other person". The Hon'ble Court held that satisfaction note has to be recorded by as A.O. of searched person and this is a sine die non-for triggering the proceedings against the other person u/s 153C of the Act. Thus, these case law are in fact, in favour of the assessee since the satisfaction note in the case of assessee has been recorded by A.O. as assessing officer of assessee and not as assessing officer of "searched person".

4.16 Further, in the case of CIT v Super Malls (P) Ltd.(Supra)the Hon'ble High Court held that where the satisfaction note of the A.O. had used the words that documents seized "belonged to" assessee instead of words "pertains or pertained to" assessee, the notice u/s 153C could not be declared invalid. In the present case before us, there are no such facts.

The assessing officer has nowhere used the "belonged to" in the satisfaction.

4.17 And in all other case laws it has been held that where the A.O. has recorded satisfaction that documents belonging to "other person" were found, it was not mandatory for the A.O. to reach at the satisfaction at that stage that seized documents reflected undisclosed income. However, in note of these decision, it was held that there was no requirement of recording of satisfaction by the assessing officer of the searched person or that there was no requirement of recording satisfaction that seized document "belongs to" the "other person".

4.18 In the background of the aforesaid discussions and respectfully following the precedents, as aforesaid, we quash the proceeding initiated under section 153C of the Act on the ground that satisfaction note was not recorded by the Assessing Officer in the capacity of Assessing Officer of searched person and in any case since there is no satisfaction recorded of any seized documents being "belonging to" the assessee, hence, the other grounds on merits challenging the additions have become academic, which do not require adjudication. As a result, the appeal of the assessee stands allowed.

5. Following the consistent view taken in assessment year 2009-10, as aforesaid, the other two Appeals relating to assessment years 2010-11 & 2011-12 also stand allowed.

6. In the result, all the 03 Appeals filed by the Assessee are allowed.

Order pronounced on 15/11/2017.

Sd/-

**[L.P. SAHU]
ACCOUNTANT MEMBER**

Date 15/11/2017

"SRBHATNAGAR"

Copy forwarded to: -

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

TRUE COPY

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

By Order,

Assistant Registrar, ITAT, Delhi Benches