

2. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Assessing Officer issuing the notice dated 22/10/2010 u/s 153A r.w.s 153C without appreciating the fact that no incriminating material or document was found during the course of search therefore, the notice issued by A.O. u/s 153A r.w.s. 153C of the Income Tax Act is illegal, void, bad in law and /or without jurisdiction and therefore the impugned order is liable to be quashed.*
 3. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Assessing Officer in issuing notice dated 22/10/2010 u/s. 153C despite the fact that AO of M/s. Bhatia International Ltd. Group of Indore has not recorded his satisfaction.*
 4. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Assessing Officer in making an addition of Rs. 4,00,000/- on account of alleged unexplained investment made in Bhatia International Ltd. on protective basis on the ground or grounds as stated in the appellate order or otherwise.*
 5. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Ld. Assessing Officer erred in making an addition of Rs. 3,33,495/- on account of unexplained cash credit on the ground or grounds as stated in the appellate order or otherwise.*
 6. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Ld. Assessing Officer erred in making an addition of Rs. 2,71,200/- u/s 2(22)(e) of the Income Tax Act 1961 on the ground or grounds as stated in the appellate order or otherwise.*
 7. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Assessing Officer erred in estimating Income from Business and Profession at Rs. 20,34,597/- being @15% of the turnover of Rs. 1,35,63,980/- on the ground or grounds as stated in the appellate order or otherwise.*
 8. *On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the action of the Ld. Assessing Officer erred in disallowing an interest of Rs. 1,64,140/- u/s 36(1)(iii) of the Income Tax Act 1961 on the ground or grounds as stated in the appellate order or Otherwise.”*
3. We shall first adjudicate the legal issue raised by the assessee in ground No 3. The issue raised in ground No. 3 is against confirmation of

action of the AO under Section 153C of the Act was not valid as the AO of the searched person, i.e. AO of M/s. Bhatia International Ltd. has not recorded his satisfaction at the time of forwarding the seized papers.

4. The brief facts of the case are that a search action was conducted under Section 132 of the Act in the case of M/s. Bhatia International Group on 25.09.2007. During the course of search, certain documents showing assessee's investments in M/s. Bhatia International Group was found and seized, which were forwarded to the AO of the assessee in May, 2010. The assessee is engaged in the business of hospitality, real estate, trading & investment. The said seized papers pertaining to the assessee comprised of regular bank statements of the assessee for March 2003, form of application of shares of Bhatia International Ltd dated 22.02.2003, copy of return of income filed on 31.10.2002 by the assessee for A.Y. 2002-03, details of payment made through cheque amounting to ₹4,00,000/- dated 23.03.2003, application to Board of Directors of Bhatia International Ltd and copy of the resolution certifying the limit of making investments as per companies Act. All these papers were already part of audited books of account of the assessee and were available on record and would in no way affect the income of the assessee in those years to which these papers pertain to. The AO of the Bhatia International Ltd forwarded the said loose papers to the AO of the assessee in the month of May, 2010, almost 32 months from the date of search. Thereafter the AO of the assessee issued notice dated 15.10.2010 under Section 153C of the Act for assessment years 2002-03 to 2007-08. The assessee filed return of income on 01.11.2010 for A.Y. 2003-04 declaring total loss of ₹2,34,700/-. Thereafter statutory notices were issued and served upon the assessee. The assessee was provided copies of seized documents vide letter dated 02.09.2011 and asked to furnish various details in that respect. Different queries were raised on the assessee by the AO and information/details were extracted from the assessee and finally the assessment was framed under Section 143(3) r.w.s. 153C of the Act dated 30.12.2011 assessing the total income at ₹45,72,809/-.

5. The first legal issue raised in ground no 3 before the Bench was with respect to non recording of satisfaction by the AO of the searched person at the time of forwarding the seized materials to the AO of the Assessing Officer and whether in view of the non recording of satisfaction by the AO of the searched person would render the proceedings under Section 153C of the Act as invalid and void abinitio and the status of consequential assessment order passed under Section 143(3) r.w.s. 153 of the Act. A perusal of the order of the CIT(A) reveals that the learned CIT(A) called for the assessment record for verification whether any satisfaction was recorded. The learned Id CIT(A) by referring to the letter addressed by the AO of the searched party has stated that on forwarding of the records by the AO of the searched party satisfaction is presumed and it is automatic by observing as under: -

*“8.9 The appellant has raised a further contention that the A.O erred in issuing notice under s. 153A r.w.s. 153C without appreciating the fact that the no incriminating material or document was found. I have very carefully considered the additional ground as raised by the appellant. On an examination of the additional ground it can be seen that the challenge against the notice under s. 153C is on the ground that no incriminating material or document was found during the course of search and therefore the notice issued under s. 153A r.w.s. 153C is illegal/without jurisdiction. I am unable to accede to the said view/ground as raised by the appellant. On a plain reading of the provisions of section 153A/153C, it can be seen that the condition precedent for assumption of jurisdiction under s. 153C is the satisfaction reached that any money, bullion, jewellery or valuable article or thing or books of accounts or document seized or requisitioned belongs to a person other than a person searched. In the course of search in the premises of M/s Bhatia International group, certain documents belonging to the assessee were found and seized. According to the appellant, the documents seized are Balance Sheet and Profit & Loss Account and Bank statement, which are part of the regular returns filed and therefore cannot be treated as any incriminating material. The said contention of the appellant is not supported by the provisions of law. The relevant provision of the Act only speaks of 'documents'; there is no mandate in the Act that the documents ought to be incriminating documents so as to enable the Assessing Officer to assume valid jurisdiction. If such an interpretation is accepted, it would result in the said provision being rendered otiose. As observed by the **Hon'ble Delhi High Court** in the case of S.S.P. **Aviation Ltd.**, section 153C merely enables the revenue to investigate into the contents of the documents seized*

which belongs to a person other than the person searched so that it can be ascertained whether the transaction or the income embedded in the document has been accounted for in the case of the appropriate person. It is aimed at ensuring that income does not escape assessment in the hands of any other person merely because he has not been searched under s. 132. It is only a first step to the enquiry which is to follow. In this view of the matter, the contention as raised by the appellant has to fail. A further contention raised by the appellant is that the said Profit & Loss Account and Balance Sheet cannot be held as belonging to the appellant, but belongs to the person from whose premises it has been seized. Such an interpretation, to say the least, is too farfetched and fanciful. The appellant has himself accepted that the Profit & Loss Account and Balance Sheet are documents which are part of his regular return. By no stretch of imagination can it be stated that the said documents do not belong to the appellant. The rightful ownership over a document or asset is not obliterated merely because it is found and seized from the premises of some other party. For the above stated reasons, it is held that the conditions precedent for issuing notice under s. 153C for assessing or reassessing such other person, has been satisfied in the case of the appellant. The assessment is held to be validly initiated and completed.”

6. The learned A.R. vehemently submitted before us that neither the AO of the searched party at the time of forwarding the seized material to the AO of the assessee recorded satisfaction nor the AO of the assessee at the time of issuing notice under Section 153C of the Act recorded any satisfaction and therefore assumption of jurisdiction under Section 153C of the Act suffered from incurable defects and therefore the consequential assessment frame were also invalid and deserved to be quashed. The learned A.R. also referred to Circular No. 24/2015 dated 31.09.2015 wherein the CBDT by referring to the decision of the Hon'ble Supreme Court in the case of M/s. Calcutta Knitwears 43 taxmann.com 446 stated that the provisions of Section 153C of the Act are pari-materia to the provisions of Section 158BD of the Act. In view of the same strict compliance as to the provisions of the sub-section is to be followed. The learned A.R. relied on a series of decisions in defence of his argument: -

- i. CIT vs. MN Rajaraman 5 ITR 62 ITAT Chennai
- ii. Avinesh Estate and Resorts vs. DCIT 151 ITD 399 (Vizag)
- iii. CIT vs. Veerprabhu Marketing Ltd. 388 ITR 574 (Cal)

- iv. DSL Properties Pvt. Ltd. vs. DCIT ITA No. 1334/Del/2012
- v. Beejay Security & Finance Ltd. ITA No. 4859/Mum/2009

The learned A.R. prayed before the Bench that the issue of non-recording of satisfaction is covered in favour of the assessee by the ratio laid down in the Hon'ble High Court and the Coordinate Benches. Therefore the proceedings under Section 153C of the Act and the consequent assessment framed deserved to be knocked down and quashed. The learned A.R. also brought to the notice of the Bench the distinction between the provisions of Section 153A and 153C of the Act and submitted that they are totally on different footings. He submitted that in respect of section 153A of the Act no sooner the search action is carried out, applicability of the provisions of Section 153A of the Act are automatic and no satisfaction is required to be drawn for reassessment and notice under Section 153A is automatic whereas as far as issue of notice under Section 153C of the Act is concerned, the Act categorically provides that satisfaction has to be drawn by the AO of the searched person to the fact of the seized record/assets found of other person were having a bearing on the determination of total income of that other person. The ld AR finally prayed before the bench the in view of the non recording of satisfaction by the AO of the Searched person as to the seized materials relating to other person of having any impact on the determination of income of the other person, the proceedings u/s 153C of the Act and consequent assessment are bad in law and has to be quashed.

7. The learned D.R., on the other hand strongly defended the order of the First Appellate Authority on upholding the issue of assumption of jurisdiction under Section 153C of the Act. The learned D.R. submitted that the satisfaction has been recorded by the AO of the searched party at the time of forwarding the seized materials to the AO of the assessee. Thus the learned CIT(A) has rightly noted in the order that such satisfaction is presumed and automatic. The ld DR also filed before the bench the copy of letter dated 22.01.2018 addressed to ld CIT(DR) giving comments on the various grounds raised by the assessee. While referring to the said letter

the Id DR specifically pointed out the satisfaction was recorded by the AO of the searched person while forwarding seized papers to the AO of the other person. In view of that the said findings of the CIT(A) on the legal issue raised by the assessee qua the proceedings under Section 153C of the Act and the consequential assessment framed being invalid and void abinito in absence of any satisfaction by the AO of the searched party does not have any weight and should be dismissed.

8. We have heard the rival submissions and perused the relevant materials on record placed before us including the impugned order. We have carefully gone through various citations and decisions referred to by the learned A.R. The legal issue raised before us is with respect to the fact that the AO has wrongly assumed jurisdiction under Section 153C of the Act and consequently both the proceedings under Section 153C and the order passed under Section 143(3) r.w.s. 153C of the Act are invalid and are liable to be quashed on account of non recording of satisfaction by the AO of the searched person at the time of forwarding seized materials to the AO of the other person. A perusal of the order of the CIT(A) reveals that the CIT(A), after calling for the assessment records, observed that there is no express satisfaction recorded by the AO of the searched party as is clear from page 8 of the order of the CIT(A) which is extracted below: -

“Besides, it can be seen that in the order of assessment, the Assessing Officer has stated that the seized documents belonging to the appellant herein were received in his office in May 2010. From the said statement it is implicitly clear that there was a satisfaction indicating that documents pertaining to the appellant herein were found at the time of search and that the act of forwarding of the material itself denotes satisfaction on the part of the Assessing Officer of the person searched.”

Thus, it is clear from the above that the CIT(A) on examination of the assessment records did not find any satisfaction recorded by the AO of the searched person and came to the conclusion that satisfaction was presumed and implied. We also noticed that the papers found pertaining the assessee comprised of copy of Balance Sheet as on 31.03.2002, return of income for A.Y. 2002-03, regular bank statement of disclosed bank

account in March, 2003 and thus no incriminating evidence have been found remotely which have a bearing on determination of total income of the assessee. We also found from the combined reading of provisions of Sections 153A and 153C that they are totally on different para meters. Provisions of Section 153A clearly mention that when search is carried out and no satisfaction is required to be drawn for reassessment proceedings under Section 153A of the Act and thus the same is automatic. On the other hand, so far as the issue of notice under Section 153C of the Act is concerned the Act clearly provides for satisfaction of the AO of the searched person as to the seized record/assets found of other persons which have a bearing on determining the total income of that other person. Thus it is clear from the above that satisfaction has to be recorded at the time of forwarding seized material by the AO of the searched person to the AO of the other person. Similarly satisfaction has to be recorded by the AO of the other person before issuing notice under Section 153C of the Act that the seized material/assets found during the search have a bearing on determination of total income of the assessee. Even in circular No. 15/2015 dated 21.12.2015 the CBDT has clearly directed its officers that drawing of satisfaction has to be followed strictly by the AO in view of the order of the Hon'ble Supreme Court in the case of Calcutta Knitweaves (supra) as provisions of Section 153C of the Act are substantially parimateria to provisions of Section 153BD of the Act. Besides, the case of the assessee is also supported by a serious of decisions relied upon by the learned A.R. as stated herein above. In the case of Veerprabhu Marketing Ltd. (supra) the Hon'ble High Court has held that where the books of account, document or valuables found during the course of search belong to a third party it would lead to an inference of an undisclosed income of third party such information should be recorded by the AO having jurisdiction for the searched person and communicate to the AO having jurisdiction for such third party along with seized material and incriminating material on the basis of which the AO having jurisdiction of third party would issue notice under Section 153C. In the case of Beejay Security & Finance Ltd. (supra) the Coordinate Bench held as under: -

“11. We have carefully considered the rival contentions. We will first consider the plea of the Assessee regarding the existence of satisfaction on the part of the Assessing Officer of the person who was searched u/s.132 of the Act, to proceed against the Assessee (who was a person who was not searched u/.132 of the Act) u/s.153-C of the Act. In doing so we are presume that there was a satisfaction note recorded by the ACIT CC-10 on 23/3/2007 and we also presume that the notice under section 153A dated 26/3/2007 was in fact a notice under section 153C and there was a typographical error in such notice. We also presume that in the course of assessment proceedings section 153A was corrected as 153C after due consent by the accountant of the assessee (in the notices as well as return filed by the assessee). We however hasten to add that we are not giving any finding on the claim of the Revenue or the Assessee regarding existence of satisfaction note or typographical error in the notice u/s.153-A of the Act.

12. The first aspect that has to be considered is as to whether any satisfaction at all is required to be arrived at by the AO of the person who was searched u/s.132 of the Act, regarding any undisclosed income of the person who was not subjected to a search to hand over the seized material to the AO of the person to whom the seized document belongs or is alleged to belong.

13. The ITAT Delhi in the case of M/S.Jindal Stainless Steel Vs. ACIT ITA No.3480 and 3481/Del/2006 in its order dated 25/4/2008 had dealt with this issue and have held that provisions of Sec.153-C of the Act are akin to Sec.158BD of the Act. (vide para 46 of the order). The Hon'ble Tribunal further held that the AO has to follow the condition precedent for proceeding u/s.153-C of the Act in the same manner as the AO would do for proceeding u/s.158BD of the Act. The Hon'ble Tribunal in this regard referred to the decision of the Hon'ble Supreme Court in the case of Manish Maheshwari Vs. ACIT 289 ITR 341(SC) and have held that satisfaction that undisclosed income belongs to the person other than the one who is searched u/s.132 of the Act, has to be arrived at by the AO before proceeding to hand over seized document to the AO of the person who was not searched. We therefore hold, following the decision of the ITAT Delhi Bench referred to above, that the AO has to record satisfaction regarding existence of undisclosed income before proceeding u/s.153-C of the Act.

14. The next aspect to be examined is as to whether such satisfaction that there was undisclosed income of the Assessee can be said to have been arrived at by the AO in the present case. We have already referred to the section 153C of the Act. It was the contention of the ld. D.R that section 153C of the Act, would be applicable whenever documents seized in the course of a search belong to a person other than a person in whose case a search is being conducted. In this regard we find that the provisions of section 153C have to be read in

the context of section 132 of the Act. The exercise of the power under s. 132 to initiate a search of a place and effect seizure is subject to fulfillment of two conditions (a) existence of information in possession of the authority specified in s. 132, and (b) their belief on the basis of such information that a person to whom summons is issued to produce books of accounts and, omits to produce such books of account or will not produce them or that the person is in possession of money, bullion or jewellery or other valuable articles or things which he has not disclosed or would not disclose for the purpose of the IT Act, 1961. Further a seizure of only documents which would not be produced by a person searched can be made. As far as the present case is concerned, we find that the assessee has entered into an agreement for lease of the property under lease agreement dated 6/8/2000. The assessee has been declaring income from letting out of the aforesaid property regularly in its books of account till the date of search and thereafter. Thus the factum of the assessee receiving income in the form of rent is very much in the knowledge of the department. In fact this fact has been duly informed by the assessee in its letter dated 22/1/2007 to the DDIT (Inv.), Unit 7(2). The satisfaction note under section 153C of the Act merely says that the documents were being sent to verify the transaction of lease. On the facts of the case it cannot be said that the AO was satisfied regarding existence of any undisclosed income which would warrant initiation of proceedings under section 153C of the Act. In our view the satisfaction required for proceedings under section 153C cannot be reduced to a mere formality of forwarding the documents found in the course of search which did not belong to the person searched and which belonged to the person against whom proceedings under section 153C are sought to be initiated. In the case of Anil P.Khimani vs. DCIT ITA No.2855 to 2860/M/08 (Order dated 23.2.2010) this Tribunal had an occasion to deal with similar issue. The Tribunal held as follows:

“13. A perusal of the assessment orders in all these cases, clearly demonstrate that the sole addition in question is on account of low withdrawals . This had not been made, based on any material found either during the course of search or during the course of assessment proceedings. Under the circumstances, we examine the legal position. The Delhi bench of the Tribunal in the case of Anil Kumar Bhatia vs. ACIT held as follows:

“S.153 provides that where a search is initiated u/s. 132 the AO shall “assess or reassess the total income of six assessment years immediately preceding the assessment year” relevant to the previous year in which the search is conducted or requisition is made. The first proviso states that the AO shall “assess or reassess the total income in respect of each assessment year falling within such six assessment years” while the second proviso state that the assessment or reassessment relating to the

said six assessment years “pending” on the date of initiation of the search under section 132 shall “abate” . In the assessee’s case, search action was initiated and assessment under s. 153A were frame for six assessment years making various additions. The assessee claimed that the additions were not tenable as regular returns had been filed where the particulars relating to the additions had been disclosed and the same had been accepted u/s. 143(1) and also that no material had been found during the search to justify the additions. The revenue claimed that the effect of the provisos to s. 153A was that all assessments abate and there had to be a de novo assessment in which the AO was not confined to the material found during the search. HELD rejecting the claim of the Revenue.

- (i) S. 153A does not authorize the making of a de novo assessment. While under the 1st Proviso, the AO is empowered to frame assessment for six years, under the 2nd Proviso, only the assessments which are pending on the date of initiation of search abate. The effect is that complete assessments do not abate. There can be two assessments for the same assessment year. Assessments which are not pending before the AO on the date of search but are pending before an appellate authority will survive.
- (ii) An assessment can be said to be “pending” only if the AO is statutorily required to do something further. If a s. 143(2) notice has been issued, the assessment is pending. However, the assessment in respect of a return processed u/s. 143(1) is not “pending” because the AO is not required to do anything further about such a return.
- (iii) The power given by the Proviso to ‘assess’ income for six assessment years has to be confined to the undisclosed income unearthed during the search and cannot include items which are disclosed in the original assessment proceedings.
- (iv) On facts, the returns had been processed u/s. 143(1), the assessment were not “pending” and as no material was found during the search, the additions could not be sustained

Respectfully following the same, we delete all the additions made and allow the appeals of the assessee.”

15. In the present case we are of the view that that there was no satisfaction regarding existence of any undisclosed income which warrants proceedings under section 153 of the Act. We, therefore, hold that the necessary satisfaction does not exist for the proceedings

under section 153C of the Act. On this ground the assessment is annulled.”

9. After considering the facts of the case of the assessee in the light of the CBDT Circular and ratio laid down by the Hon'ble Calcutta High Court and various Coordinate Benches, we are of the considered view that the of the assessee is squarely covered in favour. In the present case also no satisfaction has been recorded by the AO of the searched party, which is apparent from the finding given by the CIT(A) in his order that satisfaction is presumed and automatic when the seized papers are forwarded to the AO of the third party. In view of this we are quashing the proceedings under Section 153C of the Act and consequent assessment framed.

10. Since we have quashed the assessment framed, therefore the other legal issues and issues raised on merits by the assessee are not adjudicated.

11. In the result, appeal of the assessee is allowed.

ITA Nos. 4575 to 4577/Mum/2014 - AYs 2004-05 to 2006-07

12. Assessee has also raised identical legal issue in all these appeals besides other grounds on legal issue and on merits. Therefore, our findings given in ITA No. 4574/Mum/20014 for A.Y. 2003-04 are, mutatis mutandis, applicable to the facts of the case in all these appeals as well. Therefore, following the above decision we allow the appeal of the assessee.

13. To sum up, all the appeals filed by the assessee are allowed.

Order pronounced in the open court on 13th February, 2018.

Sd/-
(D.T. Garasia)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Mumbai, Dated: 13th February, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -39, Mumbai*
4. *The CIT, Central-III, Mumbai*
5. *The DR, "A" Bench, ITAT, Mumbai*

By Order

//True Copy//

*Assistant Registrar
ITAT, Mumbai Benches, Mumbai*

n.p.