

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

Before Sh. N. K. Saini, AM and Ms. Suchitra Kamble, JM

ITA No. 3832/Del/2014 : Asstt. Year : 2005-06

ITA No. 3833/Del/2014 : Asstt. Year : 2006-07

Asstt. Commissioner of Income Tax, Central Circle-19, New Delhi	Vs	M/s M. N. Securities Pvt. Ltd., 8 th Floor, Statesman House, Barakhamba Road, New Delhi-110001
(APPELLANT)		(RESPONDENT)
PAN No. AADCM0102D		

**Assessee by : Sh. Shashi Tulsian, Adv.
Revenue by : Smt. Shefali Swroop, CIT DR**

Date of Hearing : 06.02.2018	Date of Pronouncement : 27.02.2018
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ORDER

Per N. K. Saini, AM:

These two appeals by the department are directed against the separate orders each dated 25.04.2014 of Id. CIT(A)-XII, New Delhi.

2. Since, the common issues are involved and the appeals were heard together so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance, we will deal with the appeal in ITA No. 3832/Del/2014 for the assessment year 2005-06. Following grounds have been raised in this appeal:

“1. On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 6,96,10,000/- made by AO under section 68 of the Income Tax Act, 1961.

2. On the facts and in the circumstances of the case, the CIT(A) has erred in deleting this addition by admitting the additional evidences filed by the assessee during the appellate proceedings in violation of the provisions of Rule 46A of the IT Rules.

3. On the facts and in the circumstances of the case, the CIT(A) erred in holding that no addition can be made in the search assessment under the provisions of Section 153C/153A when no incriminating material relating to the issue is found.

4. The order of the CIT(A) is erroneous and is not tenable on facts and in law.

5. The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”

4. Vide ground no. 3, the department is aggrieved against the action of the Id. CIT(A) in holding that no addition can be made in the search assessment under the provisions of Section 153C/153A of the Income Tax Act, 1961 (hereinafter referred to as the Act), when no incriminating material is found.

5. Facts of the case in brief are that the assessee company was engaged in the business of real estate development and filed its original return of income on 15.10.2005 declaring a loss of Rs.56,538/-. The AO framed the original assessment u/s 143(3) of the Act vide order dated 13.09.2007 accepting the loss declared by the assessee in *toto*. Subsequently, a search and seizure operation was carried out on 26.11.2009 at various premises of M/s Today Homes and Infrastructure Pvt. Ltd., its group concerns and its associated persons in terms of the provisions of Section 132 of the

Act. Pursuant to the aforesaid search and seizure operation, the AO recorded a satisfaction note dated 09.09.2011 to invoke the provisions of Section 153C of the Act and issued a notice u/s 153C r.w.s. 153A of the Act to the assessee on 09.09.2011 to furnish the return of income for the assessment year under consideration within 15 days of the service of the said notice. The AO also issued another notice dated 22.09.2011 u/s 142(1) of the Act to the assessee alongwith the detailed questionnaire. In response, the assessee vide letter dated 23.09.2011, submitted that the original return filed on 15.10.2005 be treated as return of income for the purpose of Section 153C r.w.s. 153A of the Act. The assessee also requested for providing copy of seized material/documents alongwith the copy of satisfaction note recorded for initiation of proceedings u/s 153C/153A of the Act. The AO informed the assessee that the legible copies of all the seized documents/records were already provided on 03.02.2010. The AO observed that during the year under consideration, no business activity was carried out by the assessee. He further observed that the assessee had shown liabilities of Rs.15,52,99,980/- on account of advance against project as on 31.03.2005. He asked the assessee to prove the identity and creditworthiness of the creditor as well as the genuineness of the transaction in respect of various amounts received by the assessee in form of advance booking amount of project/advance against projects by providing the confirmed copy of account, copy of return of income for the assessment year 2005-06 and copy of bank statement of the creditor. In response, the assessee furnished copy of account of all the advances against

booking of project amounting to Rs.15,52,99,980/- alongwith full address and PAN of each party in respect of amount received during the year under consideration. The AO, however, was not satisfied from the reply of the assessee and made the addition of Rs.6,96,10,000/- by stating in para 2.2 of the assessment order that the assessee furnished the list of the various persons/concerns as under:

S.No	Name	Address	PAN	Amount received during FY 2004-05 (in Rs.)
1.	Amarjeet/Gurmeet/Manpreet	-----		2,00,000
2.	Aswani Kumar	110/8, Banarsi Estate Timarpur, Delhi	AAAPD1112E	2,00,000
3.	Maninder Singh/ Paramjeet Karu	90, Togore Park, 2 nd Floor, Model Town - 1, Delhi- 110009	ACFPS2131M/ AHIPK8374L	7,58,880
4.	Akash / Ankur Goel	R-50, Model Town-III. Delhi - 110009	ACTPS0119M	1,50,000
5.	Ms. Shankutala	-----	-----	1,70,000
6.	Parminder Karu	-----	-----	1,25,000
7.	Subir/monika Molhotra	B1/1506, Vasant Kunj, New Delhi-110070	-----	7,00,000
8.	Sunil & Neeraj Jain	GP-72, Pitam Pura. Derlhi -110088	ADGPJ8008E/ AAEPJ3569R	1,00,000
9.	Clarin Properties Ltd	-----	-----	6,85,00,000
Grand Total				6,96,10,000

The AO made the addition of Rs.6,96,10,000/- by observing in paras 2.5 & 2.6 of the assessment order dated 26.12.2011 as under:

“2.5 To summarize, it is a well-established law that the assessee is required to give satisfactory explanation about the nature and source of sum found credited in its books of account i.e. a very strict approach to the burden has to be adopted. In the present case the assessee did not produce the confirmation or any other evidence to establish the identity and creditworthiness of the creditor as well as the genuineness of transaction in respect of credits of Rs.6,96,10,000/- in its books of accounts in the

form of advance against project under the head current liabilities i.e. the assessee has not discharged the onus cast upon it in respect of the credits in its books of account, in the form of advance against project under the head current liabilities.

2.6 In view of the discussion above, the amount of Rs.5,96,10,000/- credited by the assessee in its books of account in the form of advance against project under the head current liabilities, is treated as the deemed/undisclosed income of the assessee u/s 68 of the Income Tax Act, 1961."

(Addition of Rs.6,96,10,000/-)

6. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted that the mere fact that certain documents relating to the assessee maintained in the regular course being found during the course of search in case of a third person did not *ipso facto* grant jurisdiction to the AO to reopen the concluded proceedings u/s 153C of the Act. It was further submitted that the AO in the satisfaction note issued for the initiation of proceedings u/s 153C/153A of the Act concluded as under:

"In view of above, it is established beyond doubt that many books of accounts or documents seized during the course of search and seizure action on Today group of cases belong to M/s M.N. Securities Pvt. Ltd. i.e., the assessee company and hence prerequisite condition to initiate proceedings u/s 153C of the Income Tax Act, 1961, is fulfilled. Therefore, I am satisfied that case of M/s M.N. Securities Pvt. Ltd. is a fit case for initiation of proceedings u/s 153C of the Income Tax Act, 1961. Accordingly, notices u/s 153C of the Income Tax Act, 1961 are issued for AY 2004-05 to 2009-10, in the case of M/s M.N. Securities Pvt. Ltd. i.e., the assessee company."

7. On the basis of the above notings, it was stated that the proceedings u/s 153C of the Act had been initiated solely on the

allegation that certain documents belonging to the assessee had been found during the search and seizure operation carried out in Today Group of cases and that the satisfaction note revealed that documents referred therein were following:

“• A tripartite agreement between the appellant, M/s. Today Hotels and Infrastructure Private Limited and New Kailash Jewellery House, along with a Memorandum of Understanding (MoU) for the purchase of land by the said Jewellery House.

• Details of the directors, shareholders and share capital of M/s. M. N. Securities Pvt. Ltd.

• Copy of trial balance, balance sheet and profit and loss account of M/s. M.N. Securities Pvt. Ltd. for the period 01.04.2008 to 31.03.2009.”

8. It was further stated before the Id. CIT(A) that the aforesaid documents were forming part of the regular books of account of the assessee and none of the above said documents could be regarded any incriminating document/material found during the course of search and could not have been a basis to initiate proceedings u/s 153C of the Act. It was also stated that the satisfaction note nowhere alleged that the documents so found represented wholly or partly any incriminating document/material reflecting any undisclosed income of the assessee and rightly so, because the said documents were part of the regular books of accounts of the assessee and even in the assessment order, it was not the case of the AO that any of the aforesaid documents represented any incriminating document/material found during the course of search. It was submitted that in case of persons in whose case proceedings are initiated u/s 153C of the Act, the seizer must be of such a

character as to persuaded the AO to reopen the concluded assessment but the books of accounts or other documents maintained in the normal course and disclosed before the tax authorities were not the incriminating in nature and could not have been the basis for initiating the proceedings u/s 153C of the Act. It was further submitted that the purpose of making assessment u/s 153A of the Act is not to verify the return, as such, but to make assessment primarily on the basis of the material found during the course of search and that in cases where proceedings for any assessment year had already been completed and/or attained finality, whether it be u/s 143(1) or 143(3) or 143(1) or 147 of the Act and fresh proceedings were initiated u/s 153A of the Act, in such cases additions/disallowances could have only been made on the basis of incriminating document/evidence/books of accounts found during the course of search but the AO does not have the jurisdiction to verify the total income and cannot re-agitate issues which have finality during the original proceedings, since the proceedings u/s 153A of the Act are not intended to give another inning to the Assessing Officer to make assessment u/s 143(3) of the Act. It was further submitted that any addition/disallowance made de-hors any incriminating material found during the course of search is outside the scope of assessment under Sections 153A/153C of the Act and was, therefore, illegal and bad in law. It was submitted that the AO made the addition of Rs.6,96,10,000/- on account of alleged failure on the part of the assessee to discharge the onus u/s 68 of the Act in respect of amount received as advance against the project. However, the assessment order

revealed that the aforesaid addition had been made without reference to any material having been found during the course of search, leave aside any incriminating material. Therefore, the entire addition had been made on account of mere difference of opinion between the assessee and the Assessing Officer with regard to the discharge of onus u/s 68 of the Act. It was stated that the addition had been made on account of the amount found recorded in the regular books of accounts and the original assessment was made u/s 143(3) of the Act on 13.09.2007. Therefore, neither on the date of search in case of third party nor on the date of recording of satisfaction u/s 153C of the Act i.e. on 09.09.2011, any proceedings for the assessment year 2006-07 were pending. As such, the assessment stood finally concluded. It was further stated that the financial statements for the year ending on 31.03.2005 revealed a credit balance of Rs.30,62,29,980/- as "Advance Booking (Orbit Plaza)" under the head "current liabilities and provisions", which represented amount of advances received by the assessee against the project undertaken by the assessee in the regular course of business. It was submitted that during the course of assessment proceedings u/s 153A/153C of the Act, the assessee was required by the AO to establish the genuineness of the following amounts found credited in the books of the assessee:

<i>S. No.</i>	<i>Name</i>	<i>Amount recd. FY 2004-05 (in Rs.)</i>
1.	<i>Amarjeet/Gurmeet/Manpreet</i>	<i>2,00,000</i>
2.	<i>Aswani Kumar</i>	<i>2,00,000</i>
3.	<i>Maninder Singh/Paramjeet Karu</i>	<i>7,58,880</i>
4.	<i>Akash/Ankur Goel</i>	<i>1,50,000</i>
5.	<i>Ms. Shakuntal</i>	<i>1,70,000</i>

6.	<i>Parminder Karu</i>	<i>1,25,000</i>
7.	<i>Subir/Monika Malhotra</i>	<i>7,00,000</i>
8.	<i>Sunil & Neeraj Jain</i>	<i>1,00,000</i>
9.	<i>Clarín Properties Ltd.</i>	<i>6,85,00,000</i>
<i>Grand Total</i>		<i>7,07,68,880</i>

9. It was stated that the assessee furnished details relating to PAN number, names and addresses of the parties, to the extent, the assessee was able to collect prior to passing the assessment order by the AO. However, without giving adequate opportunity to the assessee passed the assessment order, making the impugned additions. Although, the assessee during the assessment proceedings furnished evidence to establish the identity and creditworthiness of the creditor as well as genuineness of transaction in respect of credits in its books of accounts in the form of advance against project under the head current liabilities, did not hold good in law. The reliance was placed on the following case laws:

- *Niranjanlal Ramballabh Vs CIT (1956) 29 ITR 459 (Nag)*
- *Nathu Ram Premchand Vs CIT (1963) 49 ITR 561 (All)*
- *E M C (Works) (P) Ltd. Vs ITO (1963) 49 ITR 650 (All)*
- *Munnalal Murlidhar Vs CIT (1971) 79 ITR 540 (All)*
- *Surmukh Singh Uppal (Dr) Vs CIT (1983) 144 ITR 200 (P&H)*
- *N C K Sons Exports Pvt. Ltd. Vs ITO (2007) 289 ITR (AT) 89 (Mum)*

10. It was further submitted that where the assessee furnished the evidences to prove the identity of the creditors and furnished confirmation letter indicating their PAN/GIR numbers. The onus cast upon the assessee was discharged and no addition could have

been made to the income of the assessee in terms of Section 68 of the Act. The reliance was placed on the following case laws:

- *L. R. Gupta Vs UOI 194 ITR 32 (Del.)*
- *Ramesh Chander Vs CIT, Punjab & Ors 93 ITR 244 (P&H)*
- *Moti Lal and Ors. Vs Preventive Intelligence Officer, Central Excise and Customs Agra 80 ITR 418 (All)*
- *Om Parkash Jindal Vs UOI 104 ITR 381 (P&H)*
- *Auto Finance (P) Ltd. 300 ITR 83 (Del.)*
- *Manish Maheshwari Vs ACIT 289 ITR 341 (SC)*
- *Saraya Industries Ltd. Vs UOI 306 ITR 189 (Del.)*
- *Sinhgad Technical Education Society Vs ACIT 140 TTJ 233 (Pune)*
- *All Cargo Global Logistics Ltd. Vs DCIT 137 ITD 287 (Mum)*
- *CIT Vs Chetan Das Lachman Das 254 CTR 392 (Del)*
- *CIT Vs Anil Bhatia 211 Taxmann 453 (Del.)*
- *CIT Vs Sophia Finance Ltd. 205 ITR 98 (Del.)*
- *Divine Leasing and Finance Ltd. & Ors 299 ITR 268 (Del.)*
- *CIT Vs Lovely Export (P) Ltd. 319 ITR (ST) 5 (SC)*
- *CIT Vs Value Capital Services (P) Ltd. 307 ITR 334 (Del.)*
- *Orissa Corporation (P) Ltd. 159 ITR 78 (SC)*
- *CIT Vs Dwarkadhish Investment ltd. 194 Taxman 43 (Del.)*
- *ACIT Vs Hanuman Agarwal 151 ITR 150 (Patna)*
- *CIT Vs Rohini Builders 256 ITR 360 (SC)*
- *CIT Vs Orissa Corporation (P) Ltd. 159 ITR 78 (SC)*
- *Nem Chand Kothari 264 ITR 254 (Gau)*

11. It was further submitted that the decision of the Honøble Supreme Court in the case of Lovely Exports (supra) have been followed by the Honøble Delhi High Court in the following case laws:

- *CIT Vs Oasis Hospitalities (P.) Ltd. 333 ITR 119*
- *CIT Vs Winstral Petrochemicals (P) Ltd. 330 ITR 603*
- *CIT Vs Kamdhenu Steel and Alloys Ltd. 248 CTR 33*

- *CIT Vs Sikka Overseas (P) Ltd. 328 ITR 641*
- *CIT Vs Jagat Diagnositc (P) Ltd. in ITA 267/2010 (Dated 10.9.2010)*
- *CIT Vs Raghvi Finance in ITA 1264/2010 (Dated 31.8.2010)*
- *Ultratech Finance & Co. Ltd. in ITA 1122/2010 (Dated 12.8.2010)*
- *CIT vs. Suntech Vision Ltd. in ITA No. 436/2010 (Del.)*
- *CIT vs. JVD Leasing and Finance Pvt. Ltd. in ITA No. 567/2010 (Del.)*
- *CIT Vs Intex Technology India Ltd. in ITA No. 1239/2009 (Del.)*
- *CIT Vs Jai Maa Bhawani Overseas Pvt. Ltd. in ITA No. 378/2010 (Del.)*

12. On the basis of ratio laid down in the aforesaid decisions, the assessee summarized the argument in the following manner:

- *The assessee has to prima facie provide documents to prove the identity of the creditor as well as the genuineness of the transaction.*
- *The genuineness of the transaction shall, prima facie, stand established where the amount has been transmitted through banking or other indisputable channels.*
- *The identity stands established if any information regarding PAN or other identity/document is provided.*
- *Once identity and genuineness of transaction is prima facie established as aforesaid, the burden of proof shifts on the Revenue.*
- *The Revenue, then, in order to invoke the provisions of section 68 has to bring on record, evidence to controvert the evidence furnished by the assessee.”*

13. The Id. CIT(A) after considering the submissions of the assessee observed that where the assessment or reassessment proceedings were pending completion when the search was initiated or requisition was made, they would be abated making way for the

Assessing Officer to determine the total income of the assessee in which the undisclosed income would also be included. However, in cases where the assessment or reassessment proceedings had already been completed and assessment orders had been passed determining the assessee's total income and such orders were subsisting at the time when the search or requisition was made, there was no question of any abatement since no proceedings were pending. In such a situation, the AO would reopen assessment or reassessment already made and determine the total income of the assessee. Such determination in the orders passed u/s 153A of the Act would be similar to the orders passed in any reassessment, where the total income determined in the original assessment order and undisclosed income, if any, unearthed during the search were clubbed together and assessed as the total income. He further observed that as far as the completed assessment were concerned, the issues already examined by the AO in such completed assessment would be difficult to re-examine in the assessment u/s 153A of the Act unless some material was found in the course of search action. The Id. CIT(A) pointed out that the assessee company was already assessed for the assessment year under consideration u/s 143(3) of the Act vide order dated 13.09.2007 and that the addition had been made without reference to any material having been found during the course of search. Therefore, it was clearly outside the scope of proceedings u/s 153C of the Act. As regards to the merit of the case, the Id. CIT(A) observed that the assessee furnished details relating to PAN number, names and address of certain parties, prior to passing of assessment order and

that the assessee furnished signed confirmations, PAN details, copies of the agreement executed with the customers for the sale of units, photographs of the customers and bank statements to substantiate that the transactions had been effected with bonafide customers through normal banking channels and that the AO had not produced any adverse material to repudiate the veracity and genuineness of the transaction, therefore, the onus cast on the assessee u/s 68 stood discharged. Accordingly, the addition made by the AO was deleted.

14. Now the department is in appeal. The Id. CIT DR reiterated the observations made by the AO and strongly supported the assessment order. It was further submitted that where the proceedings u/s 153C of the Act were initiated against the assessee on the basis of seized documents. The additions were justified and that for the assessment u/s 153A of the Act, the addition need not be restricted or limited to incriminating material found during the course of search. The reliance was placed on the following case laws:

- *PCIT Vs Instroncis Ltd. (2007) 83 Taxmann.com 357 (Del.)*
- *Ganpati Fincap Services (P) Ltd. Vs CIT (2017) 82 Taxmann.com 408 (Del.)*
- *PCIT Vs Super Malls Pvt. Ltd. (2017) 393 ITR 557 (Del.)*
- *PCIT Vs M/s Nau Nidh Overseas Pvt. Ltd. in ITA No. 58/2017 (Del. HC)*
- *Kamleshbhai Dharamshibhai Patel Vs CIT (2013) 31 Taxmann.com 50 (Guj.)*
- *Rajesh Sunderdas Vaswani Vs ACIT (2016) 76 Taxmann.com 311 (Guj.)*
- *SSP Aviation Ltd. Vs DCIT 20 Taxmann.com 214 (Del.)*

- *CIT Vs Classic Enterprises 358 ITR 465 (All.)*
- *Savesh Kumar Agarwal Vs Union of India 353 ITR 26 (All.)*
- *Filatex India Ltd. Vs CIT 49 Taxmann.com 465 (Del.)*
- *CIT Vs Anil Kumar Bhatia 24 Taxmann.com 98 (Del.)*
- *CIT, Delhi Vs M/s N. R. Portfolio Pvt. Ltd. in ITA No. 134/2012 order dated 21.12.2012 of the Hon'ble Delhi H.C.*

15. In his rival submissions, the ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that as per the provisions of Section 153A, the assessment or reassessment relating to six assessment years pending on the date of initiation of the search u/s 132 of the Act shall abate, but the assessments or reassessments which were not pending on the date of initiation of search should not abate and in this case assessment was completed u/s 143(3) of the Act on 13.09.2007 whereas the search took place on 26.11.2009. Therefore, the assessment attained the finality and should not be abated. It was further submitted that Section 132 of the Act is intended to unearth the hidden or undisclosed income or property and bring it to tax, but it is not meant to disturb completed or regular assessment in respect of which nothing incriminating is discovered and it is not meant to be a device for conducting fishing or roving enquiries in relation to regular assessments. It was further submitted that since assessment u/s 153A as well as u/s 153C of the Act is framed in pursuance of search u/s 132 of the Act or requisition u/s 132A of the Act, the same is necessarily required to be limited to assessment of incomes which are discovery of search particularly in respect of years for which assessments have

already been completed before the date of search, but in this case the assessment u/s 143(3) of the Act completed on 13.09.2007 attained finality before the search took place on 26.11.2009 and that no incriminating material/document was found during the course of search. It was contended that the documents which were found were part of the regular books of accounts and even the satisfaction note of the AO (copy of which is placed at page no. 18 of the assessee's paper book) made it clear that no incriminating document had been found against the assessee during the course of search & seizure proceedings and that all the documents referred by the AO in the satisfaction note were the documents which were maintained during the regular business which were verified and accepted before passing the order u/s 143(3) of the Act. Therefore, the addition made by the AO u/s 68 of the Act while framing the assessment u/s 153C/153A of the Act was rightly deleted by the Id. CIT(A). The reliance was placed on the following case laws:

- *ACIT Vs M/s New India City Developers P. L. in ITA No. 3639/Del/2014 order dated 10.04.2017 (Del. ITAT)*
- *CIT Vs RRJ Securities (2016) 380 ITR 612 (Del.)*
- *CIT Vs Kabul Chawla (2016) 380 ITR 573 (Del.)*
- *DCIT Vs Gunvardhan Vyapaar Pvt. Ltd. (2014) 40 CCH 0164 (Del.)*
- *All Cargo Global Logistics Ltd. Vs DCIT, CC-44, Mumbai 137 ITD 287 (Mumbai S.B.)*
- *CIT Vs Virgin Securities & Credits (P) Ltd. (2011) 332 ITR 0396 (Del.)*
- *Collector of Central Excise Vs ITC Ltd. 2 SCC 38 (SC)*
- *CIT Vs Text Hundred India Pvt. Ltd. 351 ITR 57 (Del.)*
- *Sarupchand Hukamchand 13 ITR 245 (Bom.)*
- *CIT Vs Oasis Hospitalities P. Ltd. (2011) 333 ITR 119 (Del.)*
- *Orient Trading Co. Ltd. Vs CIT (1963) 49 ITR 723 (Bom.)*

- *CIT Vs Divine Leasing and Finance Ltd. (2008) 299 ITR 0268 (Del.)*
- *CIT Vs Mamdhenu Steel & Alloys Ltd. & Ors. (2014) 361 ITR 0220 (Del.)*
- *CIT Vs Dwarkadhish Investment (P) Ltd. (2011) 330 ITR 0298 (Del.)*
- *Nemi Chand Kothari Vs CIT & Anotehr (2003) 264 ITR 0254 (Gau.)*
- *ITO Vs Neelkanth Finbuild Ltd. 40 ITR (Trib.) 0665 (Del.)*

16. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the AO made the addition u/s 68 of the Act while framing the assessment under the provisions of Section 153C/153A of the Act. It is well settled that the additions u/s 68 of the Act can be made only on the basis of the entries recorded in the books of accounts. In the present case, the AO in satisfaction note (copy of which is placed at page nos. 17 & 18 of the assessee's paper book) referred to initiate proceedings u/s 153C of the Act on the basis of the following documents:

“(i) A tripartite agreement between the appellant, M/s Today Homes and Infrastructure Private Limited and New Kailash Jewellery House, along with a Memorandum of Understanding (MOU) for the purchase of land by the said jewellery house.

(ii) Details of the directors, shareholders and share capital of M/s M. N. Securities Pvt. Ltd.

(iii) Copy of Trial Balance, Balance Sheet and Profit and Loss account of M/s M. N. Securities Pvt. Ltd. for the period 01.04.2008 to 31.03.2009.”

17. The aforesaid documents, formed part of the regular books of accounts and cannot be regarded to be in the nature of incriminating document/material found during the course of search. In the instant case, it is not in dispute that the assessee filed the original return of income on 15.10.2005 and the AO framed the assessment u/s 143(3) of the Act after proper verification and scrutinizing the books of accounts maintained by the assessee in the regular course of business. The assessment order was passed on 13.09.2007 thereafter a search took place on 26.11.2009. However, the original assessment attained finality before the search was conducted on the assessee. In the present case, no incriminating material was found during the course of search.

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

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

other words, there will be only one assessment order in respect of each of the six assessment years in which both the disclosed and the undisclosed income would be brought to tax. (iv) Although section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the Assessing Officer which can be related to the evidence found, it does not mean that the assessment can be arbitrary or made without any relevance or nexus with the seized material. Obviously, an assessment has to be made under this section only on the basis of the seized material (v) In the absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word "assess" in section 153A is relatable to abated proceedings (i.e., those pending on the date of search) and the word "reassess" to completed assessment proceedings, (vi) In so far as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under section 153A merges into one. Only one assessment shall be made separately for each assessment year on the basis of the findings of the search and any other material existing or brought on the record of the Assessing Officer, (vii) Completed assessments can be interfered with by the Assessing Officer while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

It has further been held that

"On the date of the search the assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed."

19. Similarly, the Honøble Jurisdictional High Court by following the aforesaid referred to order of CIT Vs Kabul Chawla in another case of CIT Vs RRJ Securities Ltd. (2016) 380 ITR 612 held as under:

“Section 153C of the Income-tax Act, 1961, only enables the Assessing Officer of a person other than the one in respect of whom search conducted, to investigate into the documents and/or assets seized and ascertain that they do not reflect any undisclosed income of the assessee (i.e., a person other than the one in respect of whom search conducted) for the relevant assessment years. If the seized money, bullion, jewellery or other valuable article or thing seized as handed over to the Assessing Officer of the assessee, are duly disclosed and reflected in the returns filed by the assessee, no further interference would be called for. Similarly, if the books of account/documents seized do not reflect any undisclosed income, the assessments already made cannot be interfered with. Merely because valuable articles and/or documents belonging to the assessee have been seized and handed over to the Assessing Officer of the assessee that would not necessarily require the Assessing Officer to reopen the concluded assessments and reassess the income of the assessee.”

20. We, therefore, by keeping in view the ratio laid down by the Honøble Jurisdictional High Court in the aforesaid referred to cases are of the confirmed view that addition cannot be made u/s 153C r.w.s. 153A of the Act, when no incriminating material was found during the course of search and the original assessment framed earlier u/s 143(3) of the Act had attained the finality. Therefore, the Id. CIT(A) was fully justified in deleting the impugned addition made by the AO while framing the assessment u/s 153C r.w.s. 153A

of the Act. We do not see any valid ground to interfere with the findings of the Id. CIT(A).

21. In ITA No. 3833/Del/2014 for the assessment year 2006-07, the facts are identical as were involved in ITA No. 3832/Del/2014 for the assessment year 2005-06. Therefore, our findings given in the former part of this order shall apply *mutatis mutandis* for the assessment year 2006-07.

22. In the result, the appeals of the department are dismissed.

(Order Pronounced in the Court on 27/02/2018)

Sd/-
(Suchitra Kamble)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 27/02/2018

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR