

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "F" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.Nos.1614, 1615, 1616, 1617, 1618 & 1619/Del./2011

**Assessment Years 2001-02, 2002-03, 2003-04, 2004-05, 2005-06 & 2006-07**

AND

ITA.Nos.484/Del./2014, 760/Del./2016 & 485/Del./2014

**Assessment Years 2003-04, 2005-06 & 2006-2007**

M/s. Reliance Estate Agency, Faridabad. PAN AABFR2855B C/o. M/s. RRA Taxindia, D-28, South Extension, Part-1, New Delhi – 049.	VS	The ACIT,  Central Circle,  Faridabad.
(Applicants)		(Respondent)

For Assessee :	Dr. Rakesh Gupta, Shri Somil Agarwal And Shri Deepesh Garg, Advocates.
For Revenue :	Ms. Parmita Tripathi, CIT-(DR)

Date of Hearing :	04.07.2018
Date of Pronouncement :	30.07.2018

## **ORDER**

### **PER BENCH :**

This Order shall dispose of all the appeals filed by the same assessee for different assessment years on identical questions and consequently, penalty under section 271(1)(c) of the I.T. Act, 1961.

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

3. Learned Representatives of both the parties submitted that the issue involved in ITA.No.1614/Del./2011 to 1619/Del./2011 is identical as regards the assumption of jurisdiction under section 153C of the I.T. Act, 1961. Learned Representatives of both the parties mainly argued in ITA.No.1614/Del./2011 for A.Y. 2001-2002 and have submitted that the Order in this case may be followed in remaining ITA.Nos.1615 to 1618/Del./2011 for A.Ys. 2002-2003 to 2005-2006. We, therefore, proceed to decide ITA.No.1614/Del./2011 as under :

ITA.No.1614/Del./2011 – A.Y. 2001-2002 :

4. This appeal by assessee has been directed against the Order of the Ld. CIT(A)-1, Ludhiana, Dated 28.01.2011, for the A.Y. 2001-2002.

5. Briefly, the facts of the case are that a search and seizure operation was conducted at the residential premises of Shri Navneet Jhamb and Shri Shri S.D.Kathuria partners of assessee-firm on 04.08.2005. A survey under section 133A of the I.T. Act, 1961 was also carried out at the business premises of the assessee-firm. During the course of search operation at the residential premises of Shri Navneet Jhamb documents/ loose papers detailed as A-1 to A-2 were seized as per Panchanama dated 04.08.2005. Documents detailed as A-1 to A-3 were also seized from residential premises of Shri S.D.Kathuria as per Panchnama dated 04.08.2005. Further, documents detailed as Annexures A-1 to A-9 and D-1 to D-26 were impounded from business premises of assessee-firm. On examination of Annexure A-1 seized from the residential

premises of Shri Navneet Jhamb during the course of search on 04.08.05 shows details of transactions made by the assessee firm, in which, Shri Navneet Jhamb is a partner. Annexures A1 to A3 seized from the residential premises of Shri S.D Kathuria contains documents pertaining to the assessee-firm. Therefore, a satisfaction as required under the provisions of section 153C was recorded. Subsequently, on 08.05.06 a notice under section 153C was issued and duly served upon the assessee-firm on 09.05.2006 asking the assessee-firm to file its return of income within 30 days from the date of receipt of the said notice. In response to the notice under section 153C, the assessee-firm, filed its return of income on 16.06.2006 declaring a total income of Rs.4,26,750/- from house property and business. The A.O. issued statutory notices time to time. The A.O. on the basis of the seized paper noted that assessee-firm has earned commission and profit from sale of the plots. It was noted that assessee-firm entered into an agreement with M/s. Indo American Electricals Ltd., for sale of the land at village-Jharsentli at a commission of Rs.2% of the sale consideration.

This commission has been received partly by cheque and partly through cash. The assessee-firm explained before A.O. that entries in the seized paper are tentative projection which were not accepted by the A.O. The A.O. noted that commission received through cheque is recorded by the assessee-firm in its books of account, but cash payment of Rs.1,23,136/- have not been disclosed in the books of account, therefore, it remain undisclosed commission. Similarly, it was found that documents disclosed that an amount of Rs.22,60,800/- was earned as profit on sale of the plot, which have not been reflected in the books of account. The amount of Rs.6,52,250/- pertains to assessment year under appeal for which A.O. made the addition. The A.O. accordingly, made addition of Rs.7,75,386/- and assessed the total income at Rs.8,22,096/- in the assessment order dated 24.12.2007 under section 153A/153C r.w.s. 143(3) of the I.T. Act, 1961.

6. The assessee-firm challenged the addition as well as assumption of jurisdiction under section 153C before the Ld.

CIT(A). It was contended that A.O. could not have assumed jurisdiction under section 153C of the I.T. Act because the mandatory statutory conditions under section 153C of the Act were not complied with. Further, the A.O. was not satisfied that any books of account or documents seized in any search belong to the assessee-firm. No copies of the satisfaction note have been given to the assessee-firm and statutory conditions are not satisfied. The remand report from the A.O. was called for, in which, the A.O, reiterated the same facts as noted in the assessment order that assessee-firm earned undisclosed commission and profit and that satisfaction as required under section 153C have been recorded. The assessee-firm also filed rejoinder in which same facts have been explained and it was submitted that satisfaction as required under section 153C have not been recorded, therefore, assumption of jurisdiction is illegal and *void abinitio*. The assessee-firm relied upon the Judgment of the Hon'ble Supreme Court in the case of Manish Maheshwari 289 ITR 341 and Order of ITAT, Lucknow Bench in the case of ACIT vs. Smt. Surinder Kaur 120 TTJ 618. The A.O.

did not bring any evidence on record that the documents found during the course of search belong to the assessee-firm. Several decisions in support of the above contention were also relied upon. The Ld. CIT(A), however, rejected the contention of the assessee-firm and noted that A.O. has filed copy of the satisfaction note dated 22.02.2007 which is reproduced in the appellate order. Therefore, legal ground was rejected. As regards the addition on merit, the assessee-firm submitted that the documents do not belong to the assessee-firm and that these were merely projection of estimation which lead to nowhere. It is not in the handwriting of the assessee-firm and have not been authenticated by anybody. It was also contended that since assessee-firm is not owner of the said property, therefore, there is no question of earning any profit. The assessee-firm relied upon several decisions in support of this contention. The Ld. CIT(A), however, confirmed the additions and dismissed the appeal of assessee-firm.

7. The assessee in the present appeal has similarly challenged the assumption of jurisdiction by A.O. under section 153C of the I.T. Act and additions on merit. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that A.O. has wrongly recorded in the assessment order that notice under section 153C was issued on 08.05.2006 because the satisfaction note was recorded in the case of the assessee on 22.02.2007. He has submitted that since no satisfaction note have been recorded by the A.O. of the person searched, therefore, assumption of jurisdiction under section 153C is illegal and *void abinitio*. He has filed copy of the satisfaction note dated 22.02.2007 which reads as under :

“Name and address of the Assessee :	M/s. Reliance Estate Agency, Neelam Chowk, NIT, Faridabad.
Assessment years	2000-01 to 2005-06
Status	Firm

Reasons for issue of notice under section, 153C for the asstt.year  
2000-01 to 2005-06

The firm M/s. Reliance Estate Agency has two partners namely Sh. Navneet Jambh and Sh. S.D.Kathria. On 4.8.2005 residences of both the partners S/Sh. Navneet Jambh and Sh. S.D.Kathuria were searched by the Department under the provisions of section 132 of the Income Tax Act. During the course of search a number of increment documents were seized from the residence of Sh. Navneet Jambh partner and also from the residence of Sh. S.D.Kathuria. Besides document, cash was also found and seized. A large number of document pertaining to M/s. Reliance Estate Agency were seized from the residence of both the partners. Papers pertaining to purchase, and sale of land measuring 89 Kanal 13 Merla at Jharsetli were seized from the residence of Sh. Navneet Jambh. There are calculations of these papers regarding receipt of cheque amount and cash amount in respect of sale of above said land. Reference is invited to page 56-62. Document A-1 and also pages 13-17 of Document A-1 and further pages 53-57 of Document A-2. Page 53 of annexure A-2 contains details, of commission and profit earned by M/s. Reliance Estate Agency. Pages 45 to 48 of annexure A-1 also contain details of commission account earned, by the Reliance Estate Agency.

2. Document A-1 seized from the residence of Sh S.D.Kathuria partner is a pocket diary and contains entries pertaining to M/s. Reliance Estate Agency. Some of entries are reflected, in the books of account of M/s. Reliance Estate Agency and some of the entries are not reflected. Similarly seized annexure A-3 contains 25 pages most of the pages pertain to M/S Reliance Estate Agency. There are details of commission earned by the M/S Reliance Estate Agency. A. part of the cash seized from the residences of the partners, stated to pertain, to M/S Reliance Estate Agency.

3. Keeping in view the above facts and Circumstances, I am satisfied that it is a fit case for issue of notices u/s 153C of the Income Tax Act, being a connected case.

4. Issue notice u/s 153C of the income Tax Act, 1961 for the assessment years 2000-01 to 2005-06.

Sd/-

(R.A.MTTTAL)

**Deputy Commissioner of Income tax Central Circle,  
Faridabad.**

Dated: 22.2.2007"

7.1. He has filed copy of the RTI reply dated 10.04.2017 by DCIT, CC-1, Faridabad, in which, it was intimated that no satisfaction under section 153C have been recorded in the case

of the person searched Shri S.D.Kathuria. He has relied upon Circular No.24/2015 dated 31.12.2015, in which, the Board has accepted the view of several High Courts, in which, it was held that provisions of Section 153C of the I.T. Act are substantially similar/paramateria to the provisions of Section 158BD of the I.T. Act. Therefore, the above guidelines of the Hon'ble Supreme Court applied to proceedings under section 153C of the I.T. Act for the purpose of assessment of income of other than searched person. It was clarified that even if the A.O. 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. Learned Counsel for the Assessee relied upon the decision of the Hon'ble Delhi High Court in the case of Pr. CIT vs. N.S. Software (Firm) 403 ITR 259 in which in para-23 it was held as under :

*“23. This court concurs with the impugned order. In the present case, the Ld. AO has not explained steps taken by him to determine that the seized material belonged to the*

*Assessee Firm. The satisfaction note has been prepared in a standard mechanical format and it does not provide any details about the books of accounts which allegedly belong to the Assessee Firm. Most importantly, a satisfaction note was not recorded by the AO of Sh. Narendra Kumar from whose premises the documents were seized. In light of the decision in Nikki Drugs and Chemicals Pvt. Ltd. it is now a settled proposition of law that even if the Assessing Officer for the person from whose premises the documents are seized is the same as the Assessing Officer for the person to whom the document belongs, separate satisfaction notes must be recorded. Here the AO's note nowhere reflects whether any document seized, on application of his mind, disclosed that it belonged to the assessee, and if so, its prima facie nature. Whilst an AO of the searched party and that of the individual under [Section 153C](#) may be the same, nevertheless at the stage of sending notice under [Section 153C](#), the AO has to record a specific reason or reasons, why the material seized from the other person has a nexus*

*to the assessee, to whom the notice under that provision is addressed. In this case, this never happened. Thus, for the previous years, the rule in Commissioner of Income Tax v Kabul Chawla 380 ITR 573 (Del), i.e., that in the absence of any incriminating materials, the previous years' assessments cannot be disturbed, applies."*

7.2. In the same decision, the conclusion is as under :

*"Where in course of search carried out at premises of a third person, a hard disk was seized and on basis of same proceedings under section 153C were initiated against assessee, since Assessing Officer of searched person failed to record a specific satisfaction as to how said hard disk belonged to assessee, impugned proceedings under section 153C were unjustified."*

7.3. Learned Counsel for the Assessee also relied upon the Order of the ITAT, Delhi Bench in the case of ACIT & Another vs. JMSW Infracon Pvt. Ltd., & Another (2017) 50-CCH 176 (Del.) (Tribu.) (in which one of us A.M. is party) held as under :

*“If satisfaction note is not recorded by A.O. in capacity of A.O. of searched person then proceeding initiated under section 153C of the Act should be quashed.”*

7.4. He has submitted that since no satisfaction note have been recorded under section 153C by the A.O. of the searched persons i.e., Shri Navneet Jhamb and Shri Shri S.D.Kathuria, therefore, assumption of jurisdiction under section 153C is illegal and bad in law. Learned Counsel for the Assessee also relied upon the following decisions.

7.5. Order of Delhi ITAT in the case of DSL Properties Pvt. Ltd., vs. DCIT (2013) 60 SOT 88 Delhi) (URO), in which it was held as under :

*“Recording of satisfaction by A.O. of person searched that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized belong to person other than person searched is a prerequisite for initiating action under section 153C.”*

7.6. Judgment of Hon'ble A.P. High Court in the case of CIT-III, Hyderabad vs. Settys Pharmaceuticals & Biologicals Ltd., (2015) 57 taxmann.com 282 (A.P.) in which it was held as under :

*“Recording of satisfaction of A.O. is a pre-condition for invoking jurisdiction under section 153C.”*

7.7. Judgment of Hon'ble Allahabad High Court in the case of CIT (Central) vs. Gopi Apartment (2014) 365 ITR 411 (All.) in which it was held as under :

*“Recording of satisfaction by AO of person searched is mandatory u/s 153C and it has to precede initiation of proceedings against the other person (not searched), even in a case, where AO of both persons is the same and assuming that no handing over of documents was required, satisfaction' was a must.”*

7.8. Judgment of Hon'ble Madhya Pradesh High Court in the case of CIT vs. Mechmen 11-C (2016) 380 ITR 591 (M.P.) in which it was held as under :

*“Where pursuant to search proceedings carried out at premises of partners, assessment proceedings were completed in case of assessee-firm under section 153C, read with section 143(3), since no satisfaction had been recorded prior to issuance of notice under section 153C, impugned assessment proceedings deserved to be quashed.”*

7.9. Learned Counsel for the Assessee further submitted that satisfaction note though recorded in the case of assessee-firm does not say which documents belongs to the assessee-firm or to a particular assessment year. Therefore, proceedings under section 153C are invalid and bad in law. In support of his contention, he has relied upon the decision of Hon'ble Supreme Court in the case of CIT vs. Sinhgad Technical Education

Society 397 ITR 344 (SC). He has submitted that the assessee-firm is situated in Faridabad and the decision of the Tribunal in the case of JMSW Infra.com Pvt. Ltd., (supra) is a later decision, therefore, it should be given preference. In support of his contention, he has relied upon the following decisions :

- Govindanaik G. Kalaghatigi vs. West Patent Press Co. Ltd.  
And Anr. - AIR 1980 (Karnataka) 92.
- Shri Vasant Tatoba Hargude and others vs. Dikkaya  
Muttaya Pujari - AIR 1980 Bombay 341.
- Karnataka State Road Transport Corporation, Bangalore  
vs. R. Maheshwari and others - AIR 2003 Karnataka 456.

7.10. He has also relied upon the decisions of the Hon'ble Supreme Court in the case of Manish Maheshwari vs. ACIT (2007) 289 ITR 341 (SC) and CIT vs. Calcutta Knitwears (2014) 362 ITR 673 (SC) which specify at which stage satisfaction note could have been recorded by the A.O. of the person searched.

8. On the other hand, Ld. CIT-D.R. relied upon the orders of the authorities below. The Ld. CIT-D.R. produced the assessment records in the cases of person searched as well as the assessee-firm. The Ld. CIT-D.R. submitted that the copy of the satisfaction note dated 22.02.2007 provided by the Counsel for the Assessee is only satisfaction available on record in the case of the assessee-firm. The Ld. CIT-D.R. submitted that no other satisfaction under section 153C have been recorded or placed in the assessment records of the persons searched i.e., Shri Navneet Jhamb and Shri Shri S.D.Kathuria. The Ld. CIT-D.R. filed copies of the order sheet of the A.O. from the assessment records produced in the Court from the record of both the persons searched and the assessee-firm which are taken on record. The Ld. CIT-D.R. submitted that A.O. of the assessee-firm and the persons searched are the same. He, as a A.O. of the searched persons, recorded satisfaction qua the other person (assessee) for issuing notice under section 153C of the I.T. Act to the assessee-firm on 22.02.2007 for A.Ys. 2001-2002 to 2005-2006 and issued notices under section 153C of

the I.T. Act to the assessee-firm on 22.02.2007. The A.O. also mentioned in the order sheet that reasons to issue notice under section 153C was placed on record. The action of the A.O. as above, is correct as per Section 153C of the I.T. Act and the CBDT Circular No.24/2015 which stipulates the basic requirements for initiating proceedings under section 153C of the I.T. Act and as per decisions of Hon'ble Delhi High Court in the case of Ganpati Fincap Services Pvt. Ltd., Instronics Ltd., Sheetal International Pvt. Ltd., Nau Nidh Overseas Pvt. Ltd., Super Malls Pvt. Ltd., The Ld. CIT-D.R. submitted that requirement of recording of satisfaction by the A.O. of the searched person qua the other person has been done by the A.O. which is sufficient. The satisfaction note clearly pointed out seized material belong to the assessee-firm. The requirement of Section 153C are therefore, satisfied in this case. The Ld. CIT-D.R. filed chart for all the years under consideration to show that how the undisclosed commission and profit have been computed by the A.O. on the basis of the seized papers for

all the assessment years under appeals. The Ld. CIT-D.R. relied upon the following decisions.

8.1. Judgment of Hon'ble Delhi High Court in the case of PCIT vs. Sheetal International Pvt. Ltd., 2017-TIOL-1355-HC-DEL, in which it was held as under :

*“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.”*

8.2. Judgment of Hon'ble Delhi High Court in the case of PCIT vs. Instronics Ltd., (2017) 82 taxmann.com 357 (Del.) (HC), in which it was held as under :

*“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.”*

8.3. Judgment of Hon’ble Delhi High Court in the case of Ganpati Fincap Services (P.) Ltd., vs. CIT (2017) 82 taxmann.com 408 (Del.), in which it was held as under :

*“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.”*

8.4. Judgment of Hon’ble Delhi High Court in the case of PCIT vs. Super Malls Pvt. Ltd., (2017) 393 ITR 557 (Del.), in which it was held as under :

*“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*

8.5. Judgment of Hon’ble Delhi High Court in the case of PCIT vs. M/s. Nau Nidh Overseas Pvt. Ltd., in ITA.No.58 of 2017 Dated 03.02.2017, in which it was held as under :

*“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.”*

8.6. Judgment of Hon’ble Delhi High Court in the case of SSP Aviation Ltd., vs. DCIT (2012) 346 ITR 177 (Delhi), in which it was held as under :

*“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.”*

8.7. Judgment of Hon’ble Gujarat High Court in the case of Rajesh Sunderdas Vaswani vs. ACIT (2016) 76 taxmann.com 311 (Gujarat), in which it was held as under :

*“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.”*

8.8. Judgment of Hon’ble Gujarat High Court in the case of Kamleshbhai Dharamshibhai Patel vs. CIT-3 (2013) 263 CTR 362 (Gujarat), in which it was held as under :

*“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.”*

8.9. The Ld. CIT-D.R. accordingly submitted that since satisfaction note have been recorded as per Law and the seized material belongs to the assessee-firm, therefore, A.O. has correctly assumed jurisdiction under section 153C of the I.T. Act, 1961.

9. We have considered the rival submissions. According to Section 153C of the I.T. Act, 1961, action under section 153C can be taken in respect of any other person than the person searched, if the A.O. of the searched person is satisfied that any money, bullion, jewellery, or other valuable article or thing or books of account seized or requisitioned belongs or belong to a person other than the person searched under section 153A. In such circumstances, the Assessing Officer shall hand-over to the Assessing Officer of such other person money, jewellery, bullion or other valuable article or thing or books of account or document, and thereafter, the Assessing Officer of such other person shall proceed against the said person to assess or re-assess his income in accordance with the provisions of section

153A of the I.T. Act, 1961. Therefore, recording of satisfaction by the Assessing Officer of the person searched is a condition precedent for initiating action under section 153C of the I.T. Act. The Ld. CIT-D.R. during the course of arguments heavily relied upon the decisions of Hon'ble jurisdictional Delhi High Court in the case of Ganpati Fincap Services Pvt. Ltd., Sheetal International Pvt. Ltd., (supra) and CBDT Circular No.24/2015. Learned Counsel for the Assessee also relied upon the same Circular of the Board and decisions of Hon'ble Supreme Court in the case of Manish Maheshwari vs. ACIT (supra) and CIT vs. Calcutta Knitwears (supra) and decision of Hon'ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society (supra). We may note that on the identical issue involved in the present appeal and the decisions relied upon by both the parties have been considered by ITAT, Delhi-D Bench in the case of ACIT, Central Circle-9, New Delhi vs. M/s. Victory Accommodation Pvt. Ltd., Delhi in ITA.No.6238/Del./2014 Dated 27.06.2018 and the Departmental Appeal have been dismissed. In this case, the Ld. CIT(A) on identical issue held

that initiation of proceedings under section 153C is illegal and bad in law. The findings of the Ld. CIT(A) have been confirmed by the Tribunal in the aforesaid decisions. The Order of the Tribunal is reproduced as under :

*“This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-XXXII, New Delhi, dated 20.08.2014, for the A.Y. 2008-2009, on the following grounds:*

1. “The Commissioner of Income Tax (Appeals) erred in law and on facts in upholding the ground of the assessee that provisions of section 153C of the Act could not be applied in the case and initiation of proceedings u/s 153C was not proper and bad in law.
2. The Commissioner of Income Tax (Appeals) erred in law and on facts in holding that for initiating valid jurisdiction u/s 153C, even if the AO of the searched person and the AO of such other person is same, it is mandatory that he has to first record satisfaction note in the file of the person searched and thereafter such

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

3. The Commissioner of Income Tax (Appeals) erred in law and on facts in holding that no fair opportunity of hearing u/s 143(2) of the Act was given to the assessee before completing the assessment u/s 153C of the IT Act.
4. The Commissioner of Income Tax (Appeals) erred in law and on facts in deleting the addition of Rs.48,00,000/- on account of deemed income under section 68 of the Income Tax Act, 1961."

2. *Brief facts of the case as mentioned in the impugned orders are that assessee-company is engaged in the business of a Builder and a Developer of Real Estate. A search and seizure operation u/s 132 of the I.T. Act, 1961, was conducted by the Investigation Wing of the Department in Victory group of cases (Main Jagat Group) including its Directors, Other Individuals and Connected*

*Associates on 14.09.2010. Since one of the Directors of the assessee-company was associated with one of the cases of Jagat Group, his residential premises was also searched simultaneously. As a result of this search operation, a survey operation u/s 133A of the I.T. Act, 1961 was also conducted by the Department on the assessee's business premises on 14.09.2010. The case of the assessee-company was centralized and notice under section 153A of the I.T. Act was issued which was objected on the ground that no action under section 132 was initiated against the assessee. The Assessing Officer on finding this contention as correct, withdrew the notice dated 04.11.2011 issued u/s 153A of the I.T. Act, 1961. The Assessing Officer observed that during the course of the assessment proceedings u/s 153A in the case Shri Pramod Goel, it was noticed that a search and seizure operation under section 132 was conducted on 14.09.2010 at the residential premises of Shri Pramod Goel, Smt. Savita Goel and Sh. Ashish Goel at BN-33, East Shalimar Bagh, Delhi,*

*wherefrom the documents belonging to the assessee-company were found and seized which is "Page No. 102 and 103 of Annexure A-1 of Party V-2 is a copy of the Balance Sheet, Profit & Loss account, pertaining to M/s Victory Accommodations Pvt Ltd. for the financial year ending 31.03.2010." On the basis of the above documents found during the course of search, the Assessing Officer recorded a satisfaction note on 27.02.2013 and issued and served upon the assessee a notice under section 153C of the I.T. Act, 1961. In response to the same, the assessee filed a letter stating that the return filed under section 139(1) may be treated as return filed in response to notice under section 153C of the I.T. Act, 1961. It was claimed, it is filed in protest and objected to initiation of proceedings under section 153C of the I.T. Act. However, the contention of the assessee was rejected. The A.O. accordingly completed the assessment under section 143(3) r.w.s.153C of the I.T. Act vide Order dated 28.03.2013 at a total income of Rs.48 lakhs as against NIL income declared by the assessee-*

*company. The addition was made at Rs.48 lakhs under section 68 of the I.T. Act on account of unaccounted income which represented the amounts credited in the books of account of assessee as 'share application money' received during the assessment year under consideration.*

3. *The assessee-company challenged the validity of the proceedings initiated under section 153C of the I.T. Act as well as the addition on merit before Ld. CIT(A). The assessee-company contended that the assessment order under section 153C of the I.T. Act is bad in law and contrary to principles of natural justice. No incriminating material belonging to assessee-company was found during the course of search. No search was conducted in the case of the assessee-company. The A.O. did not raise any query on documents filed by the assessee-company in respect of evidence of share application money received. The A.O. merely initiated the proceedings under section 153C of the I.T. Act, on the basis of copy of the balance sheet seized*

*during the course of search which pertains to A.Y. 2010-2011. No undisclosed income was unearthed on examination of any documents found in search. Several case Laws were relied upon in support of the same.*

3.1. *The Ld. CIT(A) reproduced Section 153C of the I.T. Act in the order and on going through the interpretation of the said provision, he noted that action under section 153C can be taken in respect of any other person other than the person searched, if the Assessing Officer of the searched person is satisfied that any money, bullion, jewellery, or other valuable article or thing or books of account seized or requisitioned belongs or belong to a person other than the person searched under section 153A. In such circumstances, the Assessing Officer shall hand-over to the Assessing Officer of such other person money, jewellery, bullion or other valuable article or thing or books of account or document, and thereafter, the Assessing Officer of such other person shall proceed against the said*

*person to assess or re-assess his income in accordance with the provisions of section 153A of the I.T. Act, 1961. Therefore, recording of satisfaction by the Assessing Officer of the person searched that any money bullion, jewellery or other valuable article or thing or books of account or documents seized belonged to the person other than the person searched is a sine-qua-non for initiating action under section 153C of the I.T. Act, 1961. The Ld. CIT(A) in support of this interpretation of section 153C, relied upon the decision of Hon'ble Apex Court in the case of Manish Maheswari vs. ACIT & another (2007) 289 ITR 341 (SC). He has also noted that the language of section 158BD and section 153C has similarity. Therefore, it is evident that the condition for recording satisfaction by the Assessing Officer of the person searched is present in both the Sections. To this extent, decision of Hon'ble Supreme Court in the case of Manish Maheshwari vs. ACIT and another (supra), is applicable while interpreting the provisions of Section 153C. The Ld. CIT(A) called for the assessment record of the*

*assessee-company and found that the AO recorded the satisfaction note in the file of the assessee-company which is reproduced as under:*

"Satisfaction u/s 153C of the Income Tax Act. 1961 in the case M/s Victory Accommodations Pvt. Ltd. PAN-AACCV3923C 208. Gupta Tower. Azadpur Commercial Complex. Azadpur. Delhi- 11 0033.

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

Page no. 102 and 103 of Annexure A-1 of Party V-2 is a copy of the Balance Sheet, Profit loss account, pertaining to M/s Victory Accommodations Pvt. Ltd. for the fin. year ending 31.03.2010.

The case of M/s Victory Accommodations Pvt. Ltd. was centralized with this office vide F.NO;. CIT-Delhi-VI/Centralization/2011-12/648 dated 22.06.2011 issued by the CIT, Delhi-VI, New Delhi.

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

27.02.2013

(Sumesh Swani)

Deputy Commissioner of Income Tax  
Central Circle-09, New Delhi

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

(Sumesh Swani)

Deputy Commissioner of Income Tax  
Central Circle-09, New Delhi"

3.2. *The Ld. CIT(A) on reading the above satisfaction note found that the Assessing Officer of the assessee-company recorded the satisfaction note under section 153C of the I.T. Act who has initiated action under section 153C of the I.T. Act, which is also supported by the fact that the said satisfaction note was recorded on 27.02.2013 and*

*notice under section 153C have been issued on the same date. The A.O. who recorded satisfaction note in the file of assessee company is also the same A.O. who issued notice under section 153C in the case of the assessee-company. The Ld. CIT(A) also called for the assessment record of Shri Pramod Goel who was searched under section 132 on 14.09.2010. The A.O. of the searched person Shri Pramod Goel and A.O. of the other person i.e., assessee-company may be same, but, the above two entities are two different persons, therefore, A.O. is bound to carry-out such exercise and the A.O. of the person searched should have recorded satisfaction note during the course of assessment proceedings under section 153A in the case of Shri Pramod Goel in his file and after recording such satisfaction note in the file of Shri Pramod Goel that is the person searched, the same should be placed in the file of the assessee-company i.e., other person. The Ld. CIT(A) on perusal of the assessment record of Shri Pramod Goel found that such exercise of recording satisfaction note in the case under*

*section 153A was not carried-out and no such satisfaction note was found recorded in the case of the person searched. It is, therefore, clear that no satisfaction note was found recorded in the file of Shri Pramod Goel, the person searched under section 132 and assessed under section 153A of the I.T. Act. Therefore, satisfaction note recorded in the case of the assessee i.e., other person is not valid under section 153C of the I.T. Act. Ld. CIT(A) also noted that the balance-sheet dated 31.03.2010 is not incriminating in nature. Ld. CIT(A) relied upon the order of ITAT in the case of CIT vs. Sinhgad Technical Education Society in ITA.No.114 to 117/PN/2010 in support of his findings that since no satisfaction note have been recorded in the case of the person searched as required under section 153C of the I.T. Act, therefore, proceedings under section 153C are not proper and bad in law. This issue was decided in favour of assessee.*

3.3. *The Ld. CIT(A) as regards giving opportunity to the assessee-company held that no sufficient time was given to the assessee-company to represent before A.O. Therefore, he found merit in the grievance of the assessee-company that no proper opportunity was provided to the assessee-company.*

3.4. *As regards the addition on merit of Rs.48 lakhs on account of unexplained share application money, Ld. CIT(A) noted that survey was conducted under section 133A at the business premises of assessee-company at Azadpur, in which, some documents have been impounded which were Annexurised as A-5, pages 51 to 55, which contain the transactions of the Company of Victory Group with different companies in tabular form. The same were scanned in the assessment order, upon perusal, the A.O. noted that various companies purchased the shares of the company of the Victory Group at a premium of Rs.90/- to Rs.190/- per share on a face value of Rs.10/- per share.*

*According to A.O. the transactions for M/s. Victory Apartments P. Ltd., were arranged by Shri Tarun Goel, Entry Operator, who are running several companies. The assessee-company filed several documents before A.O. in support of genuineness of the share application money received such as share application form, copy of the ITR, PAN, Board Resolution, Bank Statements, Copy of Certificate of Incorporation, Ledger Account, Challan for filing return with Registrar of Companies etc. The assessee-company, therefore, submitted that it has received genuine share application money, on which, A.O. has not conducted any enquiry. Ld. CIT(A), accepted the contention of assessee-company that on filing documents on record, A.O. did not make any enquiry. The A.O. has gone through and relied upon report of DDIT, Kolkata, which was in respect of some other cases and not connected with the assessee-company. The Ld. CIT(A) noted that A.O. did not issue notice under section 133(6) and no further enquiry was*

*made. Therefore, addition on merit was also deleted. The appeal of assessee-company was accordingly allowed.*

4. *The Ld. D.R. relied upon the order of the A.O. He has submitted that Ld. CIT(A) has reproduced satisfaction note at page No.11 of the order. The balance-sheet and profit and loss account was seized during the course of search, which led to survey under section 133A in the case of the assessee-company. If the A.O. has used the material/evidence collected under section 133A and during the course of search in the case of Shri Tarun Goel, there is no restriction to use it under sections 153A and 153C regarding the same. Ld. D.R. relied upon decision of Hon'ble Supreme Court in the case of CIT vs. Mukundray K. Shah 290 ITR 433. The Ld. D.R. relied upon Judgment of the Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT vs. Sheetal International Pvt. Ltd., dated 10.07.2017 in which decision of Hon'ble jurisdictional Delhi High Court in*

*the case of Ganapati Fincap Services Pvt. Ltd., vs. CIT dated 25.05.2017 was referred in which it was held that –*

“(iv) where the A.O. of the searched person and the other person is the same, such a satisfaction note qua the other person has to be recorded by the A.O. of the searched person prior to the initiation of the proceedings against the other person. This is a sine qua non for triggering the proceedings against the other person under section 153C of the Act.

(v) There do not have to be two separate satisfaction notes prepared by the A.O. of the searched person even where he is also the A.O. of the other person. In such event, the A.O. need make only one satisfaction note. That satisfaction note is qua the other person. Further, it is sufficient that such satisfaction note is placed in the file of the other person by the A.O. in his capacity as the A.O. of such other person.”

4.1. *The Ld. D.R. also relied upon the decision of Hon'ble Supreme Court in the case of CIT vs. S. Ajit Kumar in Civil Appeal No.10164 of 2010 dated 02.05.2018 in which search was conducted by the Officer of the Income Tax Department in the premises of the assessee and on the same date, there were survey in the premises of Elegant Constructions and Interiors Ltd., who constructed and decorated the house of the assessee. Pursuant to the same, the fact that the assessee having engaged the above work of Contractor for construction of houses came out, in these premise, it was held that "the power of survey has been provided under Section 133A of the I.T. Act. Therefore, any material or evidence found/collected in a Survey which has been simultaneously made at the premises of a connected person can be utilized while making the Block Assessment in respect of an assessee under Section 158BB read with Section 158 BH of the IT Act." The Ld. D.R. relied upon order of ITAT, Delhi Bench in the case of Shri Parag Dalmia, New*

*Delhi vs. DCIT, Central Circle-26, New Delhi in ITA.No.5499/Del./2017 dated 26.02.2018 in which the documents received by the Government of India from a Sovereign Country containing information regarding the undisclosed foreign accounts were received prior to the search and was confronted to the assessee during the course of search. Therefore, it was held that the same constitutes incriminating material. The Ld. D.R, therefore, submitted that satisfaction note was validly recorded under section 153C of the I.T. Act. On merits, the Ld. D.R. submitted that the name of the parties tally with the additions. The entries were arranged by Shri Tarun Goel, Entry Operator, in whose case, addition have been confirmed. In case, A.O. has not conducted proper enquiry, the Ld. CIT(A) having co-terminus powers, should have exercised the same power by conducting further investigation into the matter and relied upon the decision of Hon'ble jurisdictional Delhi High Court in the case of CIT-II*

*vs. M/s. Jansampark Advertising And Marketing (P) Ltd.,  
375 ITR 373 (Del.) (HC).*

5. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has submitted that initially the A.O. initiated the proceedings against the assessee under section 153A of the I.T. Act and when it was found that no search have been conducted in the case of assessee, therefore, action under section 153A was dropped. The A.O, in the case of assessee-company recorded satisfaction under section 153C of the I.T. Act, which is illegal and bad in law and is not in conformity with Section 153C of the I.T. Act because no satisfaction note have been recorded in the case of the person searched i.e., Shri Pramod Goel. Further, the balance sheet found during the course of search ending 31.03.2010 did not relate to assessment year under appeal i.e., 2008-2009. Further, the balance-sheet is in public domain and contains list of shareholders which could not

*be considered as incriminating material. He has submitted that identical issue have been decided by ITAT, Delhi Bench in case of assessee in favour of assessee-company [Victory Accommodation Pvt. Ltd., New Delhi vs. ACIT, Central Circle-09, New Delhi] reported in 2017-(5)-TMI-1050-ITAT-Delhi for A.Ys. 2009-2010 and 2010-2011. He has relied upon decision of Hon'ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC) and decision of Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT vs. Index Securities Private Limited, Vidya Shankar Investment Private Limited 2017-(9)-TMI-585 (Del.). Learned Counsel for the Assessee submitted that since no satisfaction note has been recorded in the case of the person searched and no incriminating material was found during the course of search against the assessee-company, therefore, the issue is covered in favour of the assessee-company by the Judgment of Hon'ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society (supra). He has submitted that assessee-*

*company filed all the documents before A.O. on merits but the A.O. without making any enquiry or without verifying any fact, made the addition which was correctly deleted by the Ld. CIT(A). A.O. relied upon the report of the Investigation Wing, Kolkata, which was not connected with the assessee-company. He has also relied upon the decision of Hon'ble jurisdictional Delhi High Court in support of his contention in cases of CIT vs. Fair Finvest Ltd., 357 ITR 146 and ACIT vs. Best Infrastructure (India) Pvt. Ltd., 2017-(8)-TMI-250.*

6. *We have considered the rival submissions. According to Section 153C of the I.T. Act, action under section 153C can be taken in respect of any other person than the person searched, if the A.O. of the searched person is satisfied that any money, bullion, jewellery, or other valuable article or thing or books of account seized or requisitioned belongs or belonged to a person other than the person searched under section 153A. In such*

*circumstances, the Assessing Officer shall hand over to the Assessing Officer of such other person money, jewellery, bullion or other valuable article or thing or books of account or document, and thereafter, the Assessing Officer of such other person shall proceed against the said person to assess or re-assess his income in accordance with the provisions of Section 153A of the I.T. Act, 1961. Therefore, recording of satisfaction by the Assessing Officer of the person searched is a condition precedent for initiating action under section 153C of the I.T. Act. The Hon'ble Supreme Court in the case of Manish Maheshwari vs. ACIT (2007) 289 ITR 341 (SC) in para-11 held as under :*

“Condition precedent for invoking a block assessment is that a search has been conducted under [Section 132](#), or documents or assets have been requisitioned under [Section 132A](#). The said provision would apply in the case of any person in respect of whom search has been carried out under [Section 132A](#) or documents or assets have been requisitioned under [Section 132A](#). [Section 158BD](#), however,

provides for taking recourse to a block assessment in terms of [Section 158BC](#) in respect of any other person, the conditions precedents wherefor are : (i) Satisfaction must be recorded by the Assessing Officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under [Section 132](#) of the Act; (ii) The books of account or other documents or assets seized or requisitioned had been handed over to the Assessing Officer having jurisdiction over such other person; and (iii) The Assessing Officer has proceeded under [Section 158BC](#) against such other person.

The conditions precedent for invoking the provisions of [Section 158BD](#), thus, are required to be satisfied before the provisions of the said chapter are applied in relation to any person other than the person whose premises had been searched or whose documents and other assets had been requisitioned under [Section 132A](#) of the Act.”

6.1. *It was further held by the Hon’ble Supreme Court in para-16 in the case of Manish Maheshwari (supra) as under :*

“Law in this regard is clear and explicit. The only question which arises for our consideration is as to whether the notice dated 06.02.1996 satisfies the requirements of [Section 158BD](#) of the Act. The said notice does not record any satisfaction on the part of the Assessing Officer. Documents and other assets recovered during search had not been handed over to the Assessing Officer having jurisdiction in the matter.”

6.2. *It was further held in para-22 by the Apex Court in the case of Manish Maheshwari (supra) as under :*

“As the Assessing Officer has not recorded his satisfaction, which is mandatory; nor has he transferred the case to the Assessing Officer having jurisdiction over the matter, we are of the opinion that the impugned judgments of the High Court cannot be sustained, which are set aside accordingly. The appeals are allowed. However, in the facts and

circumstances of the case, there shall be no order as to costs.”

6.3. *The CBDT vide Circular No.24/2015 dated 31<sup>st</sup> December, 2015 issued the following directions :*

"Subject : Recording of satisfaction note under section 158BD/153C of the Act - Reg.

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

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

then also he is required to record his satisfaction as has been held by the Courts.

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgement. 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."

6.4. *The Hon'ble Bombay High Court in the case of CIT vs. Singhad Technical Education Society (2015) 378 ITR 84 (Bom.) held as under :*

"In terms of section 153C of the Income-tax Act, 1961, the Assessing Officer should be satisfied that any money, bullion, jewellery or other valuable articles or thing or books of account or documents seized or requisitioned belong or belongs to a person other than the person referred to in section 153A of the Act and he can hand over the seized documents to the Assessing Officer having jurisdiction over that person.

The assessee was an educational institution since the assessment year 1994-95. A search and seizure operation was carried out and certain loose papers were seized from the president of the assessee. Simultaneously a survey action was conducted on the assessee. On the basis of loose papers found with and seized from the president the Assessing Officer issued a notice under section 153C on the assessee and assessed the income. The Tribunal set aside the assessments. On appeals to the High Court:

**Held,** dismissing the appeals, that the reasons assigned by the Assessing Officer in the satisfaction note were silent about the assessment year in which specific incriminating information or unaccounted or undisclosed hidden information was discovered or seized by the Revenue from the assessee. In the circumstances, the general satisfaction and as recorded in the note was not enough. There was absolutely nothing to indicate as to in which educational courses, the education was imparted and institution wise, whether the admissions were granted to the technical courses merit-wise or on the basis of marks obtained in XII standard HSC exam. Whether any fee

structure was approved and cash component was, therefore, collected over and above the sanctioned fees were matters which ought to have been gone into and there could, not be a general or vague satisfaction. The Tribunal was justified in setting aside the assessments.”

6.5. *The Hon’ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC) held as under :*

“Held, dismissing the appeals, (i) that the Tribunal permitted the assessee to raise the additional ground on the ground that it was a jurisdictional issue taken up on the basis of facts already on record, that under section 153C of the Act, incriminating material which was seized had to pertain to the assessment years in question, and that the documents which were seized did not establish any co-relation, document-wise, with these four assessment years. The Tribunal found that the material disclosed in the satisfaction

note belonged to assessment year 2004-05 or thereafter. The Tribunal rightly permitted this additional ground to be raised and correctly dealt with the ground on the merits as well. The High Court was right in affirming this view of the Tribunal.

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

(ii) That the assessment order passed by the Assessing Officer covered eight assessment years. For six assessment years the assessment was under section 153C of the Act. The assessment order was set aside only in respect of four of those assessment years and on a technical ground. The objection pertaining to the four assessment years in question did not relate to the other tax assessment years, namely, 2004-05 and 2005-06. Nor did this decision have a bearing in

respect of assessment for assessment year 1999-2000 or assessment year 2006-07. The necessary consequence would be that the conclusions of the Assessing Officer in his assessment order regarding the activities of the trust not being genuine and not carried out in accordance with the trust deed or cancellation of registration, denial of benefits of sections 11 and 12 would not be affected by this judgment.”

6.6. *The Hon’ble Madras High Court in the case of CIT vs. Late J. Chandrasekhar (HUF) (2011) 338 ITR 61 (Mad.) held as under :*

“On the search conducted in the case of A and group on November 25, 2003, material pertaining to "on-money" payment paid to the assessee in respect of property purchased from the assessee were seized. Based on that, the Assessing Officer issued notice under section 153C of the

Income-tax Act, 1961, and reworked the capital gains. The Commissioner (Appeals) and the Tribunal held that the notice under section 153C was not valid. On appeal to the High Court :

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

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

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

searched. No material is produced in reference to above requirement.

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

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

6.8. *The ITAT, Delhi Bench, in the case of assessee for A.Ys. 2009-2010 and 2010-2011 in the matter of Victory Accommodation Pvt. Ltd., vs. ACIT, Central Circle-09, New Delhi 2017 (5) TMI 1050-ITAT-Delhi (supra), on identical facts held as under :*

“Assessment framed u/s 153C - absence of satisfaction note - Held that:- From the plain reading of the Circular No. 24/2015 dated 31.12.2015 issued by the Central Board of Direct Taxes, it is crystal clear that even if the AO of

the searched person and of the other person is one and the same then he is required to record his satisfaction in the case of searched person.

In the present case, it is an admitted fact that the AO of the searched person has not recorded any satisfaction rather the satisfaction is recorded by the AO of the other person i.e. the assessee which is evident from the satisfaction note, copy of which is placed at page no. 21 of the assessee's paper book. Therefore, the assessment framed in the hands of the assessee was not valid. Moreover, from the observation of the AO in the satisfaction note also it is crystal clear that no incriminating material was found, the addition was made only on the basis of the copy of balance sheet, profit and loss account and schedule of advances against supplies pertaining to the assessee, those documents were already

in the knowledge of the department as the same were furnished along with the regular return of income. Therefore, those documents by no stretch of imagination can be said to be incriminating as those were made out of the regular books of accounts of the assessee and the return of income was filed on the basis of those documents only. - Decided in favour of assessee."

6.9. *The Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT vs. Index Securities Private Limited, Vidya Shankar Investment Private Limited 2017 (9) TMI 585 (Del.) (HC) (supra) observed that "the two seized documents referred to in the satisfaction note in the case of each assessee are the trial balance and balance-sheet for a period of 05 months in 2010. In the first place, they do not relate to the assessment years for which the assessments were reopened in the case of both assessee's. Secondly, they cannot be said to be incriminating". Consequently, it was*

*found that "even the second essential requirement for assumption of jurisdiction under section 153C of the I.T. Act, was not met in the case of the two assessee's".*

7. *Considering the facts of the case in the light of submissions made by both the parties and finding of fact arrived by the Ld. CIT(A), we do not find any merit in the Departmental Appeal. The Ld. CIT(A) called for the assessment record of the assessee-company and found that A.O. has recorded the satisfaction note in the file of the assessee- company which is reproduced above in which the A.O. has referred to the seized paper i.e., balance sheet and P & L A/c of the assessee-company ending 31.03.2010. The notice was issued on the same day when satisfaction note was recorded by the A.O. of the assessee i.e., other person. The same A.O. who recorded satisfaction in the case of assessee passed assessment order under section 143(3)/153C of the I.T. Act. The Ld. CIT(A) also called for the assessment record of the person searched Shri Pramod*

*Goel and it was found that no such satisfaction have been recorded in the case of the person searched relating to the assessee-company. It is, therefore, clear that no satisfaction note as required by Law have been recorded in the case of the person searched i.e., Shri Pramod Goel so as to initiate proceedings against the assessee-company under section 153C of the I.T. Act. It may also be noted here that initially the A.O. proceeded against the assessee-company under section 153A of the I.T. Act, on the premise that search was conducted against the assessee-company under section 132 of the I.T. Act, therefore, he has issued notice under section 153A of the I.T. Act against the assessee-company. When it was found later on, that no search have been conducted in the case of assessee-company, therefore, notice under section 153A was withdrawn. The A.O. of the assessee later on recorded satisfaction note under section 153C of the I.T. Act, which is not valid in Law. The A.O. of the assessee referred to balance sheet of the assessee-company for other year,*

*therefore, the same cannot be considered to be incriminating in nature against the assessee-company as it is part of Department record and in public domain. Therefore, it is clear from the above facts that the condition precedent for issuing notice under section 153C are not satisfied in this case because no satisfaction have been recorded under section 153C in the case of the person searched and no incriminating material was seized pertaining to assessment year under appeal. Even during the course of survey, no incriminating material was found against the assessee-company because the same were regarding purchase of shares of the group companies and ultimately, A.O. made the addition based on books of account that the share application money have not been explained by assessee-company. Such material found in survey is not relatable to the material found during the course of search in the case of the person searched because the balance-sheet does not belong to assessment year under appeal. Therefore, there is no incriminating material*

*found during the course of search against the assessee-company so as to record any satisfaction note against the assessee-company. Thus, there is no reason to believe that A.O. of the searched person would have recorded any satisfaction note that any money, bullion, jewellery, or other valuable article or thing or books of account seized or requisitioned belongs or belonged to a person other than the person searched under section 153A. Therefore, conditions of Section 153C of the I.T. Act are not satisfied in this case. The issue is covered against the Revenue by Judgment of the Hon'ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society (supra) and Order of the Tribunal in the case of assessee-company for A.Ys. 2009-2010 and 2010-2011 (supra). The decisions relied upon by the Ld. D.R. are, therefore, not applicable to the facts and circumstances of the case as the same are clearly distinguishable. We, therefore, do not find any infirmity in the order of the Ld. CIT(A) in holding that initiation of proceedings under section 153C of the I.T. Act are improper*

*and bad in law. No interference is called for. Ground Nos. 1 and 2 of the appeal of the Revenue are accordingly dismissed.*

8. *As regards giving of no opportunity to the assessee-company, would not be significant at this stage in view of the findings given above. The addition, on merit, deleted by Ld. CIT(A) is, left with academic discussion only because the proceeding under section 153C have not been validly initiated against the assessee-company. However, we may note in brief that assessee-company filed all the relevant documents before A.O. to prove the existence of the investor companies, their creditworthiness and genuineness of the transaction, on which, A.O. has not made any enquiry. The A.O. simply relied upon report of the Investigation Wing, Kolkata, which is not relevant to the assessee-company. The A.O. did not make any independent enquiry on the documents furnished by the assessee-company. Therefore, Ld. CIT(A), correctly deleted*

*the addition on merit. Since, we have confirmed the order of the Ld. CIT(A) with regard to Ground Nos. 1 and 2 that initiation of proceedings under section 153C is illegal and bad in law, therefore, no further findings are given on merits. In view of the above discussion, the Departmental Appeal stands dismissed.*

9. *In the result, appeal of the Department is dismissed”.*

9.1. It is an undisputed fact that no satisfaction note under section 153C have been recorded by the A.O. of the person searched. The Ld. CIT-D.R. has produced the assessment records on both the person searched and the assessee-firm. The satisfaction note under section 153C dated 22.02.2007 (supra) found placed in the assessment record of the assessee-firm and the same is also noted in the satisfaction note itself and the notice under section 153C have been issued on the same day by the A.O. of the assessee-firm. Since satisfaction under section 153C have been recorded in the case

of the assessee-firm, therefore, A.O. of the assessee-firm could only issue notice under section 153C on the same day on 22.02.2007. The satisfaction note have been recorded without sanction of law. The Ld. CIT-D.R. also submitted during the course of arguments that no other satisfaction note have been recorded in the assessment records of the persons searched i.e., Shri Navneet Jhamb and Shri Shri S.D.Kathuria. The assessee-firm also filed reply to the RTI application in the case of Shri S.D.Kathuria in which the DCIT, Central Circle-I, Faridabad intimated that no satisfaction have been recorded under section 153C in the case of the person searched i.e., Shri S.D.Kathuria. The order sheets in the case of person searched i.e., Shri Navneet Jhamb and Shri Shri S.D.Kathuria are also placed on record by the CIT-D.R. in which the A.O. has nowhere recorded any fact of recording any satisfaction under section 153C on 22.02.2007. The order sheet in the case of the assessee-firm is also filed on record which, however, contains the entry on 22.02.2007 by the A.O. of the assessee-firm that notice under section 153C have been issued and reasons to issue notice

under section 153C is placed on record. These facts clearly support our findings that no satisfaction note have been recorded under section 153C by the A.O. of the searched person. The identical issue have been considered by the Tribunal in the case of M/s. Victory Accommodations Pvt. Ltd., Delhi (supra), which squarely apply to the facts and circumstances of the case and the issue is covered in favour of the assessee-firm and against the Revenue by the aforesaid decision. It may also be noted here that in the satisfaction note it is nowhere recorded as to how the documents found during the course of search were incriminating in nature and to which assessment year the same pertains. The Ld. CIT-D.R. filed a chart to indicate as to how the additions have been made in assessment year under appeal and others based on the seized documents. It appears to be the calculation of the A.O. for making the addition against the assessee-firm. However, in the reasons for recording satisfaction, it is nowhere recorded as to which documents belong to the assessee-firm or refers to which particular assessment year and whether same were

incriminating in nature or not. It is a joint satisfaction recorded for several A.Ys. i.e., 2000-2001 to 2005-2006. The decisions relied upon by the Ld. CIT-D.R. would not support the case of the Revenue. It is clear from the above discussion and material on record that satisfaction note is not recorded by the A.O. in capacity of A.O. of the searched person. Therefore, the proceedings initiated under section 153C of the Act against the assessee-firm are clearly illegal, bad in law and *void abinitio*. The decisions relied upon by the Learned Counsel for the Assessee clearly apply to the facts and circumstances of the case. Considering the facts of the case in the light of submissions of both the parties and material on record, we are of the view that A.O. of the searched person has not recorded satisfaction note as per law. The notice under section 153C was issued on the same day when satisfaction note was recorded by the A.O. of the assessee-firm i.e., other person. The same A.O. who recorded satisfaction in the case of the assessee-firm passed the assessment order under section 143(3)/153C of the I.T. Act. Therefore, the condition precedent for issuing notice

under section 153C are not satisfied in this case because no satisfaction note have been recorded under section 153C in the case of the person searched and no specific incriminating material was seized pertaining to assessment year under appeal. Therefore, assumption of jurisdiction under section 153C of the I.T. Act is illegal and bad in law. The reasoning given in the case of M/s. Victory Accommodations Pvt. Ltd., Delhi (supra), squarely apply to the facts and circumstances of the case. Following the same reasonings, we set aside the orders of the authorities below and quash the proceedings under section 153C of the I.T. Act. In this view of the matter, there is no need to decide the addition on merit which is left with academic discussion only.

10. In the result, ITA.No.1614/Del./2011 of Assessee is allowed.

ITA.No.1615/Del./2011 to ITA.No.1618/Del./2011

A.Ys. 2002-2003 to 2005-2006.

11. These appeals of the assessee-firm are directed against the different Orders of the Ld. CIT(A)-1, Ludhiana, Dated 28.01.2011 for above assessment years. In these appeals also the assessee-firm similarly challenged the assumption of jurisdiction under section 153C of the I.T. Act. The Learned Representatives of both the parties submitted that the issue is same as have been considered and decided in A.Y. 2001-2002. The reasoning given in A.Y. 2001-2002 squarely apply to these assessment years as well. Following the same, we set aside the orders of the authorities below and quash the proceedings under section 153C of the I.T. Act. There is no need to decide the addition on merit.

12. In the result, ITA.No.1615/Del./2011 to ITA.No.1618/Del./2011 of the Assessee are allowed.

ITA.No.1619/Del./2011 – A.Y. 2006-2007

13. This appeal of Assessee has been directed against the Order of the Ld. CIT(A)-1, Ludhiana, Dated 28.01.2011, for the A.Y. 2006-2007.

14. The assessee-firm made a prayer for admission of the following additional grounds of appeal :

- “1. *That having regard to the facts and circumstances of the case, action of Ld. AO in assuming the jurisdiction and passing the impugned order u/s 143(3) is incorrect, illegal and void-ab-intio and in violation of principles of natural justice, in as much as no satisfaction u/s 153C was recorded.*
2. *That in any case and in any view of the matter, action of Ld. AO in assuming the jurisdiction and passing the impugned assessment order is bad in law and against the facts and circumstances of the case, more so when assessment order was not passed u/s 153C*

*in view of judgement of Hon'ble High Court of Delhi in the case of CIT vs. RRJ Securities L.td., (2016) 380 ITR 0612.*

3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law. end on facts in ignoring that impugned assessment year is out of block period of search years, more so in view of judgement of Hon'ble High Court of Delhi in the case of CIT vs. RRJ Securities Ltd., (2016) 380 ITR 0612.”*

14.1. Learned Counsel for the Assessee submitted that the above grounds are purely legal and did not require fresh facts to be investigated and go to the root of the matter. He has, therefore, prayed that the same may be admitted for disposal of the appeal. In support of his contention, he has relied upon the following decisions :

- (i) CIT vs. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC)

- (ii) NTPC Ltd., vs. CIT (1998) 229 ITR 383 (SC)
- (iii) CIT vs. Sam Global Securities (2014) 360 ITR 682 (Del.) (HC)
- (iv) VMT Spinning Co. Ltd., vs. CIT & Another (2016) 389 ITR 326 (P & H) (HC)
- (v) Inventors Industrial Corporation Ltd., vs. CIT (1992) 194 ITR 548 (Bom.) (HC).

14.2. Learned Counsel for the Assessee submitted that search was conducted on 04.08.2005 and satisfaction note under section 153C was recorded on 22.02.2007 for A.Ys. 2000-2001 to 2005-2006. No satisfaction note have been recorded for assessment year under appeal i.e., A.Y. 2006-2007. The A.O. had taken it a year of the search, therefore, assessment have been framed under section 143(3) of the I.T. Act vide order dated 24.12.2007. The A.O, thus, has not issued notice under section 153C of the I.T. Act. The conditions of Section 153C are not satisfied in A.Y. 2006-2007. He has submitted that First Proviso to Section 153C of the I.T. Act provides that six assessment

years for which assessments/reassessments could be made under Section 153C of the Act shall have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. Therefore, the six assessment years under section 153C of the Act in the case of the assessee-firm would be A.Ys. 2001-2002 to 2006-2007. He has submitted that the issue is covered in favour of the assessee-firm by the Judgments of Hon'ble Delhi High Court in the case of CIT vs. RRJ Securities Ltd., (2016) 380 ITR 612 (Del.) (HC) and Pr. CIT vs. Sarwar Agency P. ltd., (2017) 397 ITR 400 (Del.) (HC). He has, therefore, submitted that assessment order is illegal and bad in law and liable to be quashed.

15. On the other hand, Ld. D.R. relied upon the orders of the authorities below and submitted that A.Y. 2006-2007 is an year of search, therefore, assessment order under section 143(3) have been correctly passed in this case.

16. We have considered the rival submissions. An identical issue was considered by ITAT, Delhi-A Bench in the

case of M/s. BNB Investment & Properties Ltd., Gurgaon vs. DCIT, Central Circle-1, Faridabad in ITA.No.504/Del./2015 & Shri Ranjan Gupta in ITA.No.503/Del./2015, Dated 27.06.2018, for the A.Y. 2012-2013, in which, similarly following the same decisions, additional grounds were admitted and assessment orders were set aside and quashed. The order is reproduced as under :

*“7. We have considered the rival submissions. Section 153C of the I.T. Act, 1961, as is applicable to assessment year under appeal reads as under :*

*“153C. Assessment of income of any other person.- (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person*

and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A :

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

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

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

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

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

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

total income of such other person of such assessment year in the manner provided in section 153A.

7.1. *The Hon'ble Delhi High Court in the case of Pr. CIT vs. Sarwar Agency P. Ltd., (2017) 397 ITR 400 (Delhi.) (HC) (supra), considering the identical issue held as under :*

“Sub-section (1) of section 153C of the Income-tax Act, 1961 provides that the assessment or reassessment of the income of the "other person" would be in accordance with the provisions of section 153A. The first proviso to sub-section (1) of section 153C further states that, in case of such other person, the reference to the date of initiation of search in the second proviso to section 153A(1) "shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person". In terms of section 153A(1)(b) of the Act. the Assessing Officer 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 was conducted. The second proviso to sub-section (1) of section

153A of the Act states that assessment or reassessment relating to any assessment year falling within the period of six assessment years referred to in the said sub-section pending on the date of initiation of the search under section 132, would abate. In *CIT v. RRJ Securities Ltd.* [2016] 380 ITR 612 (Delhi), the court held that in the context of proceedings under section 153C of the Act, the reference to the date of initiation of the search in the second proviso to section 153A has to be construed as the date on which the Assessing Officer receives the documents or assets from the Assessing Officer of the searched person, that further proceedings, by virtue of section 153(1) of the Act, would have to be in accordance with section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow' that the six assessment years for 'which assessments or reassessments could be made under section 153C of the Act would also have to be construed with reference to the date of handing over of assets or documents to the Assessing Officer of the assessee.

The amendment in section 153C of the Act by the Finance Act, 2017 with effect from April 1, 2017 to the effect that the Block Period for the person in respect of whom the search was conducted as well as the "other person" would be the same six assessment years immediately preceding the year of search is prospective.

A search under section 132 of the Income-tax Act, 1961 took place on November 11, 2010 in the T group of cases. The documents pertaining to the assessee were forwarded along with a satisfaction note by the Assessing Officer of the party in respect of which the search was conducted to the Assessing Officer of the\*assessee on January 3, 2013. The Assessing Officer of the assessee issued notice to the assessee under section 153C of the Act on January 4, 2013 for the assessment year 2006-07. The Tribunal held that the notice issued to the assessee under section 153C of the Act for the assessment year 2006-07, was without jurisdiction since the assessment year was beyond the purview of issuance of notice in terms of the provision under section 153C of the Act. On appeal:

Held accordingly, dismissing the appeal, that the Tribunal was justified in holding that the notice issued to the assessee under section 153C of the Act for the assessment year 2006-07 was without jurisdiction since the assessment year was beyond the purview of issuance of notice in terms of the provision."

7.2. *The ITAT, Delhi, B-Bench in the case of ACIT, C.C.-2, New Delhi vs. Empire Casting Pvt. Ltd., New Delhi (supra), held in paras 5 and 5.1 as under :*

"5. We have heard the rival submission on this issue and also perused the judgment dated 30th October, 2015 of the Hon'ble jurisdictional High Court in the case of CIT Vs RRJ Securities in ITA No. 164/2015 and ITA No. 175 to 177/2015. For ready reference, the relevant Para of the judgment is reproduced as under:

*"24. As discussed hereinbefore, in terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents*

*belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/ reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment year 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years prior to the assessment year relevant to the previous year in*

*which the search was conducted. If this interpretation as canvassed by the Revenue is accepted, it would mean that whereas in case of a person searched, assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be reopened would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to the AO would be subsequent to the date of the search. This, in our view, would be contrary to the scheme of Section 153C(1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one searched) as the date of the search on the Assessee. The rationale appears to be that whereas in the case of a searched person the AO of the searched person assumes possession of seized assets/documents on search of the Assessee; the seized assets/documents belonging to a person other than a searched*

*person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee's income for that year."*

5.1. The fact that satisfaction u/s 153C of the Act in the case was recorded on 2nd November, 2009, is not disputed by both the parties. In the judgment cited above, the Hon'ble High Court has held that when the Assessing Officer of searched person and such other person in whose case proceedings under [section 153C](#) are initiated, is the same officer, then the date of recording of satisfaction would be construed as the date of handing over of the seized

records by the Assessing Officer of searched person to the Assessing Officer of such other person in whose case proceedings under [section 153C](#) are initiated. Since the Hon'ble High Court has already construed the relevant provisions, we do not concur with the arguments advanced by the Id. CIT DR on this count. Respectfully following the above judgment of the Hon'ble High Court in RRJ Securities (supra) the date of handing over of seized material/ record by the Assessing Officer of searched party to the Assessing Officer of the assessee would be 2nd November, 2009. Further, following the judgment, the six assessment years for which assessment/re-assessment could be made u/s 153C of the Act would also have to be construed as from the reference date of handing over of assets/documents to the Assessing Officer of the assessee. In the case in hand, it would be the date of recording satisfaction under [section 153](#) of the Act i.e. 2nd November, 2009, and therefore, six assessment years which would eligible for assessment/re-assessment would commence from assessment year 2004-05 to assessment year 2009-10. The assessment/re-assessment in respect of assessment year 2003-04 would, thus, be beyond the period of six assessment year as reckoned with

reference to the date of satisfaction recorded by the Assessing Officer of the searched person. We, therefore, hold that the learned CIT(A) was quite justified in considering the assessment for assessment year 2003-04 as outside the scope of [section 153C](#) of the Act, being barred by limitation and without jurisdiction. Accordingly, the impugned assessment order is liable to be quashed. We decide accordingly.”

7.3. *The ITAT, Delhi, C-Bench, in the case of Pavitra Realcon Pvt. Ltd., New Delhi vs. ACIT, C.C.32, New Delhi (supra) under the same circumstances held that “assessment completed under section 143(3) is invalid”. The relevant para-16 of the order is reproduced as under :*

16.“We find the year for which the impugned assessment order has been passed u/s 143(3) is for assessment year 2011-12. This year falls within the period of six years when counted from the date of recording of satisfaction note u/s 153/153C of the I.T. Act which is deemed date of search. The Act has been amended recently by the Finance Act, 2017 with prospective effect i.e., from

assessment year 2018-19. Thus, the period is same now only for the searched parties as well as the other person as per the amended provisions of the said section. In view of the above, we hold that the assessment completed u/s 143(3) is invalid.”

8. *It is not in dispute that search was conducted on Krrish Group of cases on 09.11.2011. The impounded documents have been received by the A.O. on 29.08.2013. The satisfaction under section 153C have been recorded on 03.10.2013. The A.O. passed the assessment order under section 153B(1)(b) of the I.T. Act, considering the assessment year under appeal i.e., A.Y. 2012-2013 to be the year of search. However, the First Proviso to Section 153C of the I.T. Act provides that the 06 assessment years for which assessments or re-assessments could be made under section 153C of the I.T. Act, would also have to be construed with reference to the date of handing-over of the assets or documents to the A.O. of the assessee. Therefore, the 06 assessment years under section 153C of I.T. Act in the case*

*of assessee would be A.Y. 2008-2009 to 2013-2014. The A.O, therefore, shall have to pass the assessment order under section 153C of the I.T. Act. However, A.O. has not issued any notice under section 153C of the I.T. Act before initiating the proceedings against the assessee which is also admitted by the A.O. in reply to the assessee under RTI Act. The Amendment in Section 153C of the I.T. Act by the Finance Act, 2017, w.e.f. 01.04.2017 to the effect that block period for the person in respect of whom the search was conducted as well as the "other person" would be the same six assessment year immediately preceding the year of search is prospective in nature. The issue have been dealt in detail by the Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT vs. Sarwar Agency P. Ltd., (supra) and by ITAT, Delhi, B-Bench, in the case of Empire Casting Pvt. Ltd., New Delhi vs. ACIT, C.C.2, New Delhi and Pavitra Realcon Pvt. Ltd., New Delhi vs. ACIT, C.C.32, New Delhi (supra). The A.O, therefore, should have framed the assessment under section 153C of the I.T. Act in the case of the assessee and*

*at the time of initiating the proceeding against the assessee, should have issued notice under section 153C of the I.T. Act which have not been done in this case. The issue of notice under section 153C is mandatory and a condition precedent for taking action against the assessee under section 153C of the I.T. Act. The assessment order, therefore, vitiate, void, illegal and bad in law and cannot be sustained. The contention of the Ld. D.R. have already taken care in the above judgments.*

9. *Considering the totality of the facts and circumstances of the case, we set aside the orders of the authorities below and quash the same and allow the additional grounds of appeals. Resultantly, all additions stands deleted. Since the assessment order is set aside on legal grounds, therefore, there is no need to decide the addition on merit which has been left with academic discussion only.*

10. *In the result, ITA.No.504/Del./2013 of the Assessee is allowed.”*

17. Considering the facts of the case in the light of decision of the Tribunal in the case of M/s. BNB Investment & Properties Ltd., Gurgaon, Haryana vs. DCIT, Central Circle-1, Faridabad (supra), in which the Judgments of the Hon'ble Delhi High Court relied upon by Learned Counsel for the Assessee have been considered and issue have been decided in favour of the assessee, therefore, following the same decision, we admit the additional grounds of appeal which are purely legal in nature, which do not require fresh facts to be investigated and go to the root of the matter. It is also an admitted fact that no satisfaction note have been recorded under section 153C of the I.T. Act and no notice under section 153C have been issued against the assessee-firm. The A.O. misunderstood it to be a year of search. However, the Proviso to Section 153C of the I.T. Act provides that six assessment years for which assessments/ reassessments could be made under Section 153C of the Act

would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. Therefore, the six assessment years under section 153C of the Act in the case of the assessee-firm would be A.Ys. 2001-2002 to 2006-2007. The A.O, therefore, shall have to pass the assessment order under section 153C of the I.T. Act. However, A.O. has not done so and passed the order under section 143(3) of the I.T. Act. Therefore, the issue of notice under section 153C and recording of satisfaction being mandatory have not been complied by the A.O. Therefore, conditions of Section 153C are not satisfied in the present case. The issue is covered in favour of the assessee-firm by the Order of ITAT, Delhi Bench in the case of M/s. BNB Investment & Properties Ltd., Gurgaon, Haryana vs. DCIT, Central Circle-1, Faridabad (supra). Considering the totality of the facts and circumstances of the case, we set aside the orders of the authorities below and quash the same. Resultantly, the additional grounds of appeals are allowed and all additions stands deleted.

18. In the result, ITA.No.1619/Del./2011 of the Assessee is allowed.

ITA.No.484/Del./2014, ITA.No.760/Del./2016 &  
ITA.No.485/Del./2014 –  
A.Ys. 2003-04, 2005-06 & 2006-2007

19. All the Appeals by the Assessee-Firm are directed against the different Orders of the Ld. CIT(A), Central, Gurgaon, Dated 05.12.2013, for the A.Y. 2003-2004, Ld. CIT(A)-3, Gurgaon, Dated 31.12.2015, for the A.Y. 2005-2006 and Ld. CIT(A), Central Gurgaon, Dated 05.12.2013, for the A.Y. 2006-2007, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

20. Since in all these assessment years, the assessment orders have been quashed, therefore, there is no basis for levy of penalty under section 271(1)(c) of the I.T. Act, 1961 against the Assessee-Firm. We, accordingly, set aside the orders of the authorities below and cancel the penalty under section 271(1)(c) of the I.T. Act, 1961. All appeals are allowed.

21. In the result, all the appeals of the Assessee are allowed.

Order pronounced in the open Court.

Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 30<sup>th</sup> July, 2018

VBP/-

Copy to

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

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.