आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos. 285 to 287/PUN/2016
निर्धारण वर्ष / Assessment Years : 2007-08, 2009-10 & 2012-13

Prime Centre and Developers
Private Limited.
504, Corporate Plaza, Senapati
Bapat Road, Pune-411 016.
PAN : AABCP4332Q .....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Central Circle-1(1), Pune .....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak & Shri Suhas Bora
Revenue by : Shri Achal Sharma

सुनवाई की तारीख / Date of Hearing : 22.06.2018
घोषणा की तारीख / Date of Pronouncement : 14.08.2018

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are 3 appeals filed by the assessee under consideration involving A.Yrs. 2007-08, 2009-10 and 2012-13. ITA Nos.285 & 286/PUN/2016 are filed against the consolidated order of CIT(A)-13, Pune, dated 15-12-2015 for the A.Yrs. 2007-08, 2009-10 and ITA No.287/PUN/2016 is filed against the order of CIT(A)-13, dated 15-12-2015. Therefore, these appeals are taken up for adjudication in this composite order.

We shall first take up the appeal of the assessee for the A.Y. 2007-08.

ITA No.285/PUN/2016
A.Y. 2007-08

2. Grounds raised by the assessee are extracted as follows :

"*1. The order of the Commissioner of Income Tax (Appeals)-13 Pune IS opposed to Law and the principles of natural justice.*

2. The Ld.CIT(A) erred both in law as well as in facts by confirming the addition of Rs.1,15,00,000/- under section 68 made by the Ld. Assessing officer by treating the share application money received by the appellant as non genuine.

3. The Ld.CIT(A) erred both in facts as well as in law in failing to appreciate that by non granting of cross examination of the persons who deposed adversely against the appellant caused violation of rudimentary principles of natural justice audi/altrem/partem.

4. The Ld.CIT(A) erred both in facts as well as in law in failing to appreciate that the deponent Sri Jagdish Purohit had later on filed a sworn in statement that the Income tax authorities had put words in his mouth and made him to depose in an adverse manner against the appellant under duress.

5. The Ld.CIT(A) failed to appreciate in his findings that the addition made by the Ld. Assessing officer was based merely on conjectures and surmises and not on any objective basis.

6. The Ld.CIT(A) erred both in facts as well as in law in interpreting and applying the ratio of the decision of Honourable Supreme Court in the case of CIT v Divine Leasing & Finance Limited (SLP no CC 375/2008 arising out of ITA No. 53/2005 of Delhi High Court).

7. The Ld.CIT(A) erred both in facts as well as in law in not appreciating that the appellant company had fully satisfied the criteria set out by the Honourable Apex Court in the afore said case.

8. The Ld.CIT(A) erred both in facts as well as in law to observe that the findings of the department in respect to share applications were confronted with the appellant as the appellant was denied the opportunity to cross examine the deponent on whose statement the entire addition was based on.

9. The Ld.CIT(A) erred both in facts as well as in law and failed to appreciate that for allotment of shares the appellant was primarily concerned with the genuineness of the applicant companies, their registration with The Registrar of Companies, and IT Permanent account numbers etc, which had been properly taken care of by the appellant.

10. The Ld.CIT(A) erred both in facts as well as in law and failed to appreciate that all the monetary transactions were done through banking channels and no adverse findings could be recorded by the Assessing Officer.

11. The Ld. CIT(A) had made a contradictory observation as he observed in Para 2.3.2 that of opportunity to cross examine the witness who has given the statement causing prejudice to the appellant is an integral part of the Natural Justice; while again in Para 2.4.5 made a contradictory observation "Not granting cross examination is not fatal to the addition" misplacing reliance upon the decision in the case of CIT v C P Adam (1976) 105 ITR 465 (Ker) the facts of which are clearly distinguishable from the appellant case.

12. The Ld. CIT(A) erred both in facts as well as in law in concluding that the appellant was not interested to ask for cross examination before the Ld. CIT(A). The issue was vehemently pursued before him and it was incumbent upon him to grant such opportunity to the appellant before drawing the conclusion based on conjectures.

13. The Ld. CIT(A) erred both in facts as well as in law in not appreciating that quite a lot of shares allotted to the applicant companies were bought back by the Directors of the assesses company at a price higher than that at which they were sold.

14. The Learned CIT(A) erred in confirming the addition made by the AO of Rs.86250/- u/sec 69 C as unexplained expenditure on the estimation that appellant company has paid commission to the entry provider. The Ld.CIT(A) further erred in rejecting the contention of the appellant that the addition is made only on the basis of the statement of the third party, without giving an opportunity to cross examine him.

15. The appellant may kindly be permitted to add to or alter any of grounds of appeal during the course of hearing."

3. However, during the proceedings before the Tribunal, assessee filed the following additional ground, which is legal in nature, and requested for admitting the same. The said additional ground is extracted as under :

"The assessee submits that the notice issued u/s.153C for this year is bad in law since no incriminating evidence was found pertaining to the assessee for this year and accordingly, the asst. completed is also null and void.

The addition on account of non-genuine share application money u/s.68 of the Act, another addition on account of unexplained expenditure u/s.69C of the Act are the issues on merits. Further, the legal issue relates to the validity of the notice issued u/s.153C of the Act in the absence of any incriminating documents, is the other issue raised in the additional ground for both the A.Yrs. 2007-08 and 2009-10. We shall take up the legal issue first for adjudication. We shall proceed to narrate the facts of the case and the seizure details of the documents.

4. **FACTS :** Briefly stated relevant facts of the case include that the assessee belongs to Pride Group along with Pride Purple Builders Pvt. Ltd.,

and Pride Housing Construction Pvt. Ltd. Assessee is engaged in the business of Real Estate. There was search and seizure action u/s.132 of the Act on the Pride Group of cases on 07-09-2011. Search action was concluded on 19-12-2011. No cash seizure and other valuables was mentioned in the order of the AO. The search action resulted in seizure of various documents pertaining to/belonging to the assessee. Details of the documents shall be discussed in the later paragraphs of this order. There was no disclosure of unaccounted income in the case of the assessee for the assessment years under consideration. Consequent to the search action, AO issued notice dated 07-03-2013 u/s.153C of the Act. In response, assessee furnished the return of income on 16-04-2013 declaring Nil income which is same as that of the originally return of income furnished on 30-12-2007.

5. During the said search action, there was an issue relating to raising of share application money (SAM) from various investor companies. The statements were recorded from Mr. Jagdish Purohit, entry operator, Mr. Pradeep Gupta, facilitator, Auditors of the various investor companies and Mr. Arvind Jain, CMD of the Pride Group in an attempt to tax the entire share application money raised in this year in the hands of the assessee u/s.69C of the Act. The statements are placed at pages 37 to 45 of the paper book. However, Mr. Jagdish Purohit retracted the said statement on 19-10-2011 issued u/s.131 of the Act. Retraction statement is placed at pages 53 and 54 of the paper book. It is the case of the Revenue that Mr. Jagdish Purohit provided accommodation entries for introducing share application money in the books of the assessee using various investor companies incorporated/ audited by Mr. Pradeep Gupta at the request of Mr. Arvind Jain, CMD of the Pride Group of cases. At the end of the assessment proceedings u/s.153C r.w.s. 143(3) of the Act, AO made addition of Rs.1.15 crores (rounded off) for

the A.Y. 2007-08 and Rs.5 crores was added for the A.Y. 2009-10. In addition, AO also made addition on account of commission paid to Mr. Jagdish Purohit for providing the services of giving the said accommodation entries. While doing so, AO analysed the investor companies and their profit making abilities, their business operations, their common addresses, common Directors, their credit worthiness etc. Assessee requested for the cross examination of Mr. Jagdish Purohit, retraction of his statement as per the provisions of section 68 of the Act and various limbs of it, i.e. identity and credit worthiness of the investor companies etc., before concluding against the assessee. Relevant conclusion of the AO is extracted here as under :

> ***"5.4 Conclusion** :*
>
> *The above facts clearly establish that these companies are shell companies and there is circular transaction of flow of-fund-through share transfer and no actual business have been done by these companies and all created for money laundering only.*
>
> *Further, it has proves beyond doubt that persons who are directors and who have signed the return of these companies such as Shri Ramavtar Prajapat, Eknath Mandavkar, D N Jha, etc are persons of no means. They are just the class-IV employees of Shri Jagdish Purohit who are getting salary of hardly about Rs.3000/- to 5000/- p.m. They are not even aware of the fact that they are directors of some companies. They do not have any idea even of the business of the company where they are director. They just follow the instructions of their master. Shri Jagdish Purohit in his statement dated 19.10.2011 has confirmed the fact that Shri Hitesh Navinchandra Rajgor, Shri Eknath Narayan Mandavkar, Shri Praveen Sawant, Sh'ri Milan Mukherjee, Shri Faterao Gawas, Shri Kailas Prasad Purohit, Shri Ramavtar Prajapati, Shri Shantichandra Bhandari, etc. are either his employees or his relatives or people whom he knows. He has further stated that these people are merely signatories, and are made Directors on his instructions. He' has further added that' generally, these person's donor have knowledge of the affairs of the company and they work on the instructions given by him. All the activities and day to day affairs of these companies are controlled and managed by him. Similarly, in the statements of Shri Hitesh Rajgor, Avinash Dhum etc. this has been ascertained that these persons are the puppets of Shri Pradeep Gupta, their employer.*
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> *All these facts prove beyond doubt that, with the help of professionals such as Shri Pradeep Gupta, the entry providers like Shri Jagdish Prasad Purohit, by forming numerous fictitious companies assists various business houses to introduce their own unaccounted money in their books of accounts by paying certain percentage of commission. Merely because the transaction has routed through banking channel, that do not give it the colour of genuinity. Moreover when Shri Jagdish Prasad Purohit was specifically asked about the modus operandi, he has clearly narrated the procedure by way of which the unaccounted money in the form of cash is being introduced in the books of account of the prospective companies interested in converting their unaccounted money and bring it back to the books.*

As discussed above, from the statement of Shri Jagdish Purohit, it is crystal clear that Shri Arvind Jain, the chairman and the managing director of the Pride group approached Shri Jagdish Prasad Purohit, the entry provider and the controller of 'n' number of Mumbai and Kolkata based fictitious companies and requested for accommodation entries in the form of share capital. Shri Jagdish Purohit has clearly mentioned that "as per requirement of Shri Arvind Jain and his group" it was decided that share capital will be introduced with a premium in a ratio of 10:90. All the book entries were introduced against cash payment made by Pride group.

Further he has also confirmed that the requisite amount of cash was handed over by Pride group at Mumbai and against which he had given the accommodation entries- in the form of share capital. Further, in Q No.14 Shri Jagdish Purohit also admitted the percentage of commission at which these entries are generally provided. Not only this, but he also admitted that he will work out his income in the form of commission on entries provided to Pride group and offer the amount to tax.

Further enquiries caused at Kolkata have also revealed that most of the entry provider companies are bogus and non-existing and the concerned persons from the companies which have been traced out have admitted that these entries were purchased by Pride group by paying cash and also commission amount. Even in Kolkata, Shri Jagdish Prasad Purohit was found to be main person who had arranged and provided entries to Pride group through the companies controlled by him. The result of enquiries along with relevant statements carried out in connection with the issue of share application money was communicated to the assessee group. The results were not only brought to the notice of the assessee group but in the light of various facts the assessee group was asked to show cause as to why the amount (worked out as per different annexures enclosed to the letter dated 27.12.2012) along with commission amount of @ 0.75% should not be treated as unaccounted income of the Pride group and taxed accordingly. However, merely stating that the entries have received through cheques and that all the relevant persons/concerns are alive and assessed to tax, the assessee tried to defend his case.

As mentioned earlier, merely for the reason that entries have been routed through the banking channel does not mean that entries are genuine. The assessee's argument does not hold good in the light of following facts:

1] The existence of various companies who have applied for and in turn received share equity in Pride group companies is in its self is doubtful as

(i) Most of the companies are not traceable

(ii) Their directors are then persons of no means knowing nothing about the company

(iii) The financial results of the companies' shows that they have paltry income still huge amount of share premium has been received by them. It is really unable to understand as on what basis the investor companies who have made investments' in these companies that too by paying huge premium and who in turn have invested the entire amount in some other companies like those of Pride group have made investments.

(iv) In the cases of some companies even in the year of their incorporation, they have received unbelievable amount of share premium.

(v) Almost all the investor companies have received huge share premium and they have invested in equity shares of other companies by paying substantial premium.

(vi) The profit and loss account of these companies show very meager transactions which do not support the fact that they have received any share premium on the basis of any performance.

(vii) In some cases, the investor companies have received huge trade advance which again has been invested for purchase of share equity of different companies wherein substantial premium has been paid.

(viii) The statement of Shri Jagdish Prasad Purohit clarifying that he controls most of the Mumbai and Kolkata based companies who have provided entries to Pride group clearly reveals the nature of the entire transaction.

(ix) Finally the admission of Shri Jagdish Prasad Purohit that he has acted as an entry provider by accepting cash and certain percentage of commission from Pride group' as per their requirement gives full stop to the: entire discussion and the issue.

2] As far as assessee's argument that all the persons I concerns are alive and duly assessed to Tax is concerned, it is requirement of these concerns to get incorporated and subjected to various rules and regulation to achieve their ulterior mala-fide motive of converting-unaccounted money black money of various businessmen and-bring it back' to their business e.g. in order to incorporate a company, may be genuine or fictitious, it needs to comply to the ROC (Registration of Company) norms, it need to have some directors, bogus or genuine, PAN, some kind of business, though bogus or on paper. Now after completing the formalities of ROC or applying for PAN, a fictitious company is registered or PAN has been allotted to it, the same does not prove its genuineness. The fact that the companies which subscribed to the shares were borne on the file of ROC is again a natural fact. Every company incorporated under the Company Act 1956 has to comply to the statutory formalities. That these companies were complying with such formalities does-not add any credibility or evidentiary value. It does not ipso facto prove that the transactions are genuine. Assessee's contention is that these persons I concerns are alive and assessed to Tax, but how this proves that the transaction carried out by these companies are genuine? Moreover the person by name "Jagdish Prasad Purohit", the entry provider himself has admitted that he is controlling most of the companies who have provided share application entries is more than sufficient to disbelieve the assessee's claim.

3] Coming back to the merits of the case in the present case, the statement of Shri Jagdish Prasad Purohit wherein he has admitted certain facts is crucial. The statement of Shri Jagdish Prasad Purohit, the entry provider, explains his modus operandi to help assessee having unaccounted monies to convert the same into accounted monies. The statements (recorded at Mumbai as well as at Kolkata) refer to the practice of taking cash and issuing cheques in the guise of subscription to share capital, for a consideration in the form of commission. As pointed out, names of several companies which figured. In the statements given by the above persons also figures as share applicants subscribing to the share of the group concerns of assessee group. This is more than sufficient to show that the source of the unaccounted' monies was the coffers of the assessee.

4] The material available with the Department in the form of seized documents, the enquiries conducted the evidence gathered the admissions given by different person between self confessed "accommodation entry

providers' whose business is to help assessees bring into their books of account their unaccounted monies through the medium of share subscription and the assessee group. The material gathered by the Department shows that the share subscriptions were collected as part of a pre- meditated plan - a smokescreen- conceived and executed with the connivance or involvement of the assessee group.

5] In order to prove the fact beyond doubt that the -assessee group has received share subscription in a natural course of business the assessee has to prima facie prove

i) The identity of the subscriber

ii) The genuineness of the transaction viz. whether it has been transmitted through indisputable channels

iii) The credit worthiness or financial strength of the subscriber

iv) The onus would not stand discharged if the subscriber denies or repudiates (disagrees) the transaction set by the assessee.

In the present case the assessee group has failed to prove these facts despite of the fact that specific communication vide show cause letter dated 27.12.2012 was made with the assessee group whereby it was communicated that all material facts are going against the assessee. However, the assessee did not discharge the liability of disproving the facts communicated to him. During assessment proceedings again opportunity was given to substantiate its stand in this regard. However, mainly relied on the fact that share has been allotted to parties and modes of transactions are through cheque only. However, creditworthiness and genuineness of such transactions were not established. Accordingly, share application received in the hand of assessee is treated as unexplained cash credit and added back in the income of assessee. The quantum of disallowance is based on quantum of share application money received during the year as per annexure-1. Accordingly, Rs.1,15,00,000/- is added back in the income of assessee."

6. From the above, it is evident that the assessee never raised any issue relating to the validity of the notice issued u/s.153C of the Act. Before the First Appellate authority also, there is no issue relating to the validity of the said notice. However, the CIT(A) confirmed the said addition on merits. Aggrieved with the same, the assessee filed the present appeal before the Tribunal with the grounds/additional grounds extracted above.

BEFORE THE TRIBUNAL

7. On the issue of admission of the additional ground extracted in Para No.3 of this order, Ld. Counsel for the assessee submitted that the same is

undisputedly legal in nature and therefore, the same should be admitted before going into the merits of the addition. AO was merely on the issue of the applicability of the provisions of section 68 of the Act and was on the merits of the addition of SAM. However, there are adequate details on the seizure of documents belonging or pertaining to the infusion of SAM into the assessee company through the investor company relevant to the A.Y. 2009-10. There are no documents seized relevant to the A.Y. 2007-08. In the process, Ld. AR furnished the details of the seized materials pertaining to the assessee on one side and the investor companies, who introduced the SAM on the other.

8. Ld. DR for the Revenue opposed the admission of the additional ground dutifully.

9. **Admission of Additional Ground :** After hearing both the sides on the admission of this additional ground, we are of the opinion that the additional ground, being legal in nature, needs to be admitted in the interest of administration of justice. We find no fresh facts are required to be investigated. All the material necessary for adjudication are already available on record. Therefore, the **additional ground is admitted for adjudication** in the following paragraphs in view of the various binding precedents on this issue. We keep out reliance on the judgment in the case of NTPC Ltd. and others.

10. **Analysis of the seized documents on SAM :** Regarding the adjudication of the legal issue raised in the additional ground, Ld. Counsel for the assessee drew our attention to the outcome of the search action and analysed the documents seized by the Department pertaining to/belonging to the assessee under consideration. In this regard, Ld. Counsel took us

through each document seized by the department relating to SAM and submitted that the generic details of the same documents pertaining to the investor companies, who invested share application money in the assessee company. These documents include Memorandum of Association, Articles of Association, Incorporation Certificate, Share Application, Board Resolutions, PAN card, Income-Tax returns, Acknowledgements, Bank Statements, Financial Statements, Annual Accounts, Annual reports etc. In this regard, Ld. AR brought our attention to the seized papers and submitted that all the above referred documents are basically accounted ones or recorded ones in the Govt. records and does not involve any incrimination of any kind. Elaborating the same, Ld. Counsel submitted that the said documents are in the knowledge of the Government, i.e. Income-tax Department, Ministry of Corporate Affairs, Registrar of Companies etc. and therefore, the documents seized by the Department involving the assessee constitute incriminating documents. Ld. AR also submitted that the said documents are never declared illegal or invalid under any law. Therefore, the issue of notice u/s.153C of the Act to the assessee based on such non-incriminating documents is invalid and unsustainable in law.

11. Further, Ld. Counsel for the assessee filed written submissions explaining the details of the share application money received by the assessee from 6 companies in the A.Y. 2007-08. The names of the said companies are given below :

Sl.No.	*Name of the company*
1	*Crescent Leasing Limited*
2	*Keshav Engineering Co. Private Ltd.*
3	*Maanor Investments Pvt. Ltd.*
4	*Sharbhang Commercial Co Pvt. Ltd.*
5	*Kedia Banijya Udyog Pvt. Ltd.* *(Jayashree Finvest Private Limited)*
6	*Sarvodaya Beopar Ltd.*

12. Another set of 15 companies for the A.Y. 2009-10 from whom the share application money is received are listed below :

Sr.No.	*Name of the company*
1	*Anjani Vinimay Private Limited.*
2	*Megamart Exim Pvt. Ltd.*
3	*Nova Goods Pvt. Ltd.*
4	*Rukmani Tie Up Private Limited (Atindra Infrastructure Private Limited.)*
5	*Fairmont Venture Private Limited.*
6	*Kumaon Engineering Company Private Limited.*
7	*Blazer Venture Private Limited.*
8	*Moto Soft-Tel Private Limited (Dhanlaxmi Software Private Limited)*
9	*Tridev Multi Trade Private Limited.*
10	*Twinstar Multi Trade Private Limited*
11	*Jmd Sounds Ltd.*
12	*Kush Hindustan Entertainment Limited*
13	*Natraj Vinimay Private Limited*
14	*Lexus Infotech Limited (Triangular Infocom Limited)*
15	*Kapindra Multi Trade Private Limited.*

13. **Scope of Section 153C of the Act :** Ld. Counsel took us to the different paragraphs of the written submissions and submitted that in view of the Supreme Court judgment in the case of CIT Vs. Sinhgad Technical Education Society in Civil Appeal No.11080/2017 and others, dated 29-08-2017, the decision of Pune Bench of the Tribunal in the case of Bharati Vidyapeeth Medical Foundation Vs. ACIT and vice versa in ITA Nos.917 to 922/PN/2010 and others, dated 28-04-2011 and also Bharati Vidyapeeth Medical Foundation Vs. ACIT and vice versa in ITA Nos.959/PN/2010 and others, dated 28-04-2011 apart from others. The notice issued by the AO u/s.153C in the absence of any documents with any incrimination is invalid and unsustainable in law. Ld. Counsel for the assessee also discussed the general nature of the seized documents basing on which no valid notice can be issued u/s.153C of the Act. He also submitted that it is not the case of the Revenue that considering the accommodation entry allegation, the cash is ploughed back to the assessee and there is evidence gathered during search

action against the assessee in support of the same. He also analysed the retracted statement of Mr. Jagdish Purohit and statement of Mr. Pradeep Gupta are unsustainable relying on various decisions, such as in the case of Best Infrastructure India Pvt. Ltd. 47 CCH 159 (Del.), CIT Vs. Harjeev Agarwal and Late Raj Pal Bhyatia 237 CTR 1 (Del.)

14. Further, in Para No.12 of the written note, Ld. Counsel relied on various judgments of High Courts/decisions of Tribunal. Referring to the order of Tribunal in the case of Nova Iron and Steel Ltd. Vs. DCIT in ITA No.2159/Del/14, Ld. Counsel submitted that, with similar/comparable facts, the notice issued u/s.153C of the Act was held as invalid by the Tribunal. Ld. Counsel read out relevant facts and submitted that in that case also, the fact of introducing equity involving investor-companies, the allegation of seizure of non-incriminating documents etc., are the common facts. Further, referring to the said decision of the Tribunal, Ld. Counsel submitted that this is a case where there is allegation of accommodation entries and the statements were recorded from the accommodation entry providers, as in case of the present assessee. There is also an allegation of shell companies as they were having common addresses and Directors etc. The Delhi Bench of the Tribunal in the case of Nova Iron and Steel Ltd. Vs. DCIT (supra) decided the issue against the Revenue and in favour of the assessee. Further, on similar propositions, Ld. Counsel for the assessee relied on the following case laws :

i. Pr. CIT Vs. Sunny Infra Projects Ltd. 2017-TIOL-810-Del-HC
ii. Ravnet Solutions Pvt. Ltd. 93 taxmann.com 59
iii. DCIT Vs. Sagar Nahta 82 taxmann.com 344 (Kol.)
iv. Bharati Vidyapeeth – ITA Nos. 917 to 922/PN/2010, dt. 28-04-2011
v. Pr.CIT Vs. Index Securities Pvt. Ltd. 86 taxmann.com 84 (Del.)
vi. Pr.CIT Vs. Smt. Sunita Bai 78 taxmann.com 274 (Kar.)
vii. DCIT Vs. Royal Cartoons Pvt. Ltd. – ITA No. 472/Coch/2013 (TM)

15. Further also, referring to the Ld. DR's argument, Ld. Counsel for the assessee submitted that the Delhi High Court in the case of SSP Aviation Ltd. Vs. DCIT 364 ITR 188 (Del.) and the decision of Pune Bench of the Tribunal in the case of ITO Vs. Phadnis Clinic Pvt. Ltd. 59 taxmann.com 101 (Pune Trib.) belonging to the period prior to the said Supreme Court judgment in the case of Sinhgad Technical Education Society (supra). Otherwise, the facts in those cases are also distinguishable and not comparable to the facts of the present case. Referring to the decision of Tribunal in the case of Phadnis Clinic Pvt. Ltd. (supra), Ld. Counsel submitted that this is a case where company claimed depreciation on an asset which was originally belonged to the Directors who took the loan from the banks for buying the premises on which depreciation claimed by the company. Search action in this case resulted in seizure of various papers showing the ownership of the asset by the Director and claim as made by the company where the owner is a Director. Further, Ld. Counsel submitted that the investor companies are not the shell companies as they are very much active on the website of Registrar of Companies and Ministry of Corporate affairs, Govt. of India. It is also the fact that the AO did not disturb the returns filed by the said investor companies and the same is evident from the fact that no protective additions are made in the hands of those companies. Referring to another decision of Pune Bench of the Tribunal in the case of Eshan Minerals Pvt.Ltd. Vs. DCIT and vice versa in ITA No. 834/PN/2014 and ITA No.1242/PUN/2014, dated 18-10-2017, Ld. Counsel submitted that this is relied upon by the Ld. DR where the basic documents includes pre-signed application forms and blank sale bills, pre-signed bank receipts and blank transfer forms, declaration etc., which no where comparable to the entire bunch of documents which are very much accounted and disclosed to the Government authorities as per the provisions of relevant Acts. Eventually, it is the case of Ld. Counsel for the

assessee that AO never relied on any seized papers which is unaccounted and therefore, there is no incriminating material and notice u/s.153C of the Act is invalid and unsustainable.

16. Referring to the seized material relevant to the A.Y. 2007-08, Ld. Counsel for the assessee submitted that the Revenue did not seize any paper whatsoever pertaining to/belonging to the assessee. It is the case of Ld. Counsel that considering the fact that no seizure of any documents, leave alone the incriminating documents, the notice issued u/s.153C of the Act for the A.Y. 2007-08 is required to be held as invalid and unsustainable in law.

17. Per Contra, Ld. DR for the Revenue relied heavily on the orders of the AO and the CIT(A). Further, Ld. DR for the Revenue brought our attention to the clean language of the provisions of section 153C and submitted that there is no requirement of any incriminating documents for issue of notice u/s.153C of the Act. Mere seizure of documents pertaining to/belonging to the assessee is the adequate requirement as per the said provisions. Ld. DR submitted that mere initiation of search action on the Pride Group as a basis of allegation that the group is engaged in introducing the substantial quantum of unaccounted income in the garb of share application money. Further, relying on the statements of Mr. Jagdish Purohit and Mr. Pradeep Gupta, Ld. DR submitted that the said statement reveals the modus operandi of systematic introduction of their accounted money of the assessee through the shell companies and the same should constitute colourable device. The requirement of lifting of the corporate wheel on the transaction was also mentioned in the arguments. Narrating the commonality of address/directors of the investor companies, Ld. DR submitted that these companies constitute shell companies as they suffer from the said unusual features. Regarding the retraction statements, Ld. DR submitted that the retraction is not accepted by

the AO and therefore the original statements are dependable. Relying on the original statements, Ld. DR submitted that the accommodation entries are given at the request of Mr. Arvind Jain, CMD of the Pride Group by raising the cash payment and by giving commission to the entry providers. Ld. DR also cited that the admittance of Mr. Pradeep Gupta regarding the formation of various companies at the instruction of Mr. Jagdish Purohit. Ld. DR submits that these investor companies are owned by the employees of Mr. Jagdish Purohit, has only meager income. Further, he submitted that the said investor companies hardly has any business operations as well as income which is capable of generating funds for subscribing towards the share application money with premium Ld. DR submitted that the assessee contributed Rs.23 lakhs in the A.Y. 2007-08 towards share capital and paid the premium of Rs.92 lakhs totaling to gross share application money of Rs.1.15 crores. In similar proportion, the share application money was reported in the A.Y. 2009-10. Regarding the seizure of any document leave alone incriminating documents for the A.Y. 2007-08, Ld. DR has nothing to say except relying on the plain language of the provisions of section 153C of the Act. Further, Ld. DR relied on the following decisions and prayed that the notice issued u/s.153C of the Act in both the assessment years, i.e. 2007-08 and 2009-10 should be sustained :

1. *SSP Aviation Ltd. Vs. DCIT 346 ITR 177 (Del.)*
2. *ITO Vs. Phadnis Clinic 59 taxmann.com. 101 (Pune Tribunal)*
3. *Savesh Kumar Agarwal 353 ITR 26 (All.)*
4. *Bharat Ginning & Pressing Factory Vs. ITO 32 taxmann.com 322 (Ahmedabad Tribunal)*

DECISION OF TRIBUNAL – LEGAL ISSUE ON VALIDITY OF NOTICE

18. We heard both the parties on the issue of additional ground relating to validity of notice issued u/s.153C of the Act and perused the orders of the Revenue as well as the paper book filed before us.

A. The case of the assessee on this issue include that the notice under the said section for the A.Y. 2007-08 is required to be quashed for the reason that no document whatsoever was seized in the search action conducted u/s.132 of the Act pertaining to/belonging to the assessee. There is no dispute on this fact.

With reference to the validity of the notice for the A.Y. 2009-10, the assessee contends that the said notice is invalid and unsustainable as the documents seized for this year includes accounted or reported documents in the books of account of the assessee or in the records of various Govt. departments, i.e. Income Tax Department, Ministry of Corporate Affairs, Registrar of Companies etc. Relying on the Apex Court judgment in the case of Sinhgad Technical Education Society (supra) and many others the notice issued u/s.153C of the Act is unsustainable when the documents seized are only non-incriminating ones.

B. On the other hand, in connection with appeal for A.Y. 2009-10, the case of the Revenue is that the very seizure of some documents pertaining to/belonging to the assessee is sufficient for invoking the provisions of section 153C of the Act and therefore, the notice issued for both the assessment years is valid. Further, with reference to appeal for A.Y. 2007-08, where no documents are seized, Ld. DR rely heavily on the orders of the AO/CIT(A).

19. Elaborating the above and pointing to the various arguments raised by both the parties, we find it relevant to analyse the documents-centric arguments thoroughly in the following paragraphs. Relevant details are already briefed in the preceding paragraphs that search action took place on 07-09-2011. The documents seized by the Revenue during search and

seizure action in the Pride Group pertaining to/belonging to the assessee are given below :

A. A.Y. 2007-08

Details of the Seized Papers which relates to share application money received in A.Y.2007-08 from the following companies are NIL. The names of investor companies are tabulated as under :

Sl.No.	*Name of the investor companies – A.Y. 2007-08*	*Seized documents*
1	*Crescent Leasing Limited*	
2	*Keshav Engineering Co. Private Ltd.*	*NIL*
3	*Maanor Investments Pvt. Ltd.*	
4	*Sharbhang Commercial Co Pvt. Ltd.*	
5	*Kedia Banijya Udyog Pvt. Ltd. (Jayashree Finvest Private Limited)*	
6	*Sarvodaya Beopar Ltd.*	

B. A.Y. 2009-10 :

Details of the Seized Papers which relates to share application money received in A.Y.2009-10 by the following investor companies are tabulated investor-wise.

Srl.No.	*Name of the investor company*	*Details of seized documents*
(1)	***(2)***	***(3)***
1	*Anjani Vinimay Private Limited.*	*Memorandum of Association, Articles of Association, incorporation certificate, share Application and Board Resolution, Certificate from Applicant, PAN Copy, Income Tax Ackn. A.Y.2007-08*
2	*Megamart Exim Pvt. Ltd.*	*Memorandum of Association, Articles of Association, incorporation certificate, share Application and Board Resolution, PAN Copy, Income Tax Ackn. A.Y.2007-08*
3	*Nova Goods Pvt. Ltd.*	*Memorandum of Association, Articles of Association, incorporation certificate, share Application, List of Directors, PAN Copy, Income Tax Ackn. A.Y.2007-08, Balance sheet and P & L for F.Y.2006-07, Bank statement.*
4	*Rukmani Tie Up Private Limited (Atindra Infrastructure Private Limited.)*	*Memorandum of Association, Articles of Association, incorporation certificate, share Application and Board Resolution, PAN Copy, Income Tax Ackn. A.Y.2007-08*
5	*Fairmont Venture Private Limited.*	*Memorandum of Association, Articles of Association, incorporation certificate, share Application and Board Resolution, PAN Copy*

6	*Kumaon Engineering Company Private Limited.*	*Memorandum of Association, Articles of Association, incorporation certificate, share Application and Board Resolution, PAN Copy, Income Tax Ackn. A.Y.2007-08*
7	*Blazer Venture Private Limited.*	*Share Application, PAN Copy.*
8	*Moto Soft-Tel Private Limited (Dhanlaxmi Software Private Limited)*	*Memorandum of Association, Articles of Association, incorporation certificate, share Application and Board Resolution, PAN Copy*
9	*Tridev Multi Trade Private Limited.*	*Memorandum of Association, Articles of Association, incorporation certificate, share Application and Board Resolution, PAN Copy, Income Tax Ackn. A.Y.2007-08*
10	*Twinstar Multi Trade Private Limited*	*Memorandum of Association, Articles of Association, incorporation certificate, share Application and Board Resolution, PAN Copy, Income Tax Ackn. A.Y.2007-08*
11	*Jmd Sounds Ltd.*	*Memorandum of Association, Articles of Association, incorporation certificate, share Application and Board Resolution, Annual Report F.Y.2006-07*
12	*Kush Hindustan Entertainment Limited*	*Memorandum of Association, Articles of Association, incorporation certificate, share Application and Board Resolution*
13	*Natraj Vinimay Private Limited*	*Memorandum of Association, Articles of Association, incorporation certificate, share Application and Board Resolution*
14	*Lexus Infotech Limited (Triangular Infocom Limited)*	*Memorandum of Association, Articles of Association, incorporation certificate, share Application and Board Resolution*
15	*Kapindra Multi Trade Private Limited.*	*Memorandum of Association, Articles of Association, incorporation certificate, share Application and Board Resolution, Annual Report F.Y.2006-07*

20. From the above, as stated above, it is evident that there was no documents whatsoever was seized by the Department pertaining to/belonging to the assessee for the A.Y. 2007-08.

Further, the above table for the A.Y. 2009-10, vide Col.3, demonstrate that the documents seized include Memorandum of Association, Articles of Association, Incorporation Certificate, Board Resolution, PAN copy, acknowledgements, Financial Statements, Annual Report etc. Out of the above, it is clear that the copies of Memorandum of Association, Articles of Association and Incorporation Certificate are the regular correspondence with

the Govt. authorities. The Income-tax returns, PAN card details are in the knowledge of Income-Tax Department. The Board Resolutions, Incorporation Certificates are the correspondence with the company itself. The bank statements and the final statements are undisputedly accounted ones and they are not unaccounted documents. Therefore, it is the argument of Ld. Counsel on the fact that accounted documents are seized and the same cannot constitute incriminating documents. Considering the Apex Court judgment in the case of Sinhgad Technical Education Society (supra) and other judgments (supra), we are of the opinion that the arguments of Ld. Counsel for the assessee on this line has to be allowed and the arguments of Ld. DR for the Revenue are required to be dismissed.

21. The underlined philosophy in not validating the issue of such notice u/s.153C of the Act for the years, when the incriminating material or in the presence of merely non-incriminating material are seized in the case of concluded assessments, it is a settled legal proposition that such non-abated assessments need not be disturbed unless there exists any incriminating material which should be the basis for making sustainable additions. Rigours for the assessee in attending to the assessment proceedings are generally numerous and assessee has already undergone the same during the regular assessment proceedings. Reopening the same u/s.153C of the Act merely based on certain non incriminating material is an unnecessary burden or hardship for the assessee. It is in this context the Apex Court in the case of Sinhgad Technical Education Society (supra) apart from many other decisions, did not approve the issue of such notices u/s.153C of the Act in the absence of any incriminating material. In fact, if there are certain issues which are required to be necessarily considered for re-assessment, there are other provisions in the statute such as section 148 of the Act or section 263

of the Act for bringing the concealed income to tax subject to the conditions specified in the said sections. The provisions of section 153C are highly specialized ones and the same are to be cautiously invoked by the Department. It is a settled legal proposition that the existence of "assessment year specific incriminating material" is the requirement for reopening the concluded assessment u/s.153C of the Act.

22. **Investor companies and their bogus nature :** We have examined the Revenue's allegation about the bogus nature of the investor companies enlisted above. The case of the Revenue is that these companies constitute bogus companies floated by Mr.Jagdish Purohit and Mr. Pradeep Gupta at the instance of Mr. Arvind Jain, CMD of the company and worked as conduit for ploughing in accounted cash of the assessee in the form of share application money. The circumstantial evidences, i.e. commonness of the addresses and Directors, Auditors etc. are relied. Further, statements of Mr. Jagdish Purohit and Mr. Pradeep Gupta were also relied on by the Ld. DR for the Revenue.

23. In this regard, the case of the assessee is that the statements of Mr. Jagdish Purohit and Mr. Pradeep Gupta relied upon by the Revenue stands retracted and the retraction is not proved to be incorrect although the same was rejected by the AO in the assessment proceedings. The retraction was given in a reasonable time soon after the search is completed on 19-12-2011. Further, the fact that the investor companies are very much active and not struck of in the records of Registrar of Companies/Ministry of Corporate Affairs was also cited as a reference to state that the companies cannot be considered as bogus or shell companies. The inaction of the AO in disturbing the claims in the assessments of investor companies was also heavily relied upon.

24. On considering the above divergent stands of both the representatives and on perusal of the documents placed before us in this regard, we find the facts relevant to non-striking of the investor companies in the records of Registrar of Companies/Ministry of Corporate Affairs is undisputed. We also find the documents and the financial statements etc., are very much accounted in the records of both Income-Tax Department as well as the Registrar of Companies/Ministry of Corporate Affairs. AOs of the respective companies have not taken adverse decision against the said companies so far as the subscription of the share application money by them are concerned. It is also undisputed fact that search action which is an ultimate event to happen to any person, which invades into the privacy of the person, did not yield any evidence to suggest that the cash was supplied to Mr. Arvind Jain, CMD of the Pride Group or his companies to Mr. Jagdish Purohit or Mr. Pradeep Gupta for subscribing towards the share application money into the assessee company. Not even circumstantial and indirect evidences were found during the search action in respect of the allegation of the Revenue. Considering these undisputed facts, we are of the opinion that the allegations of the Revenue should constitute mere surmises and unsupported ones. Further, no protective additions were also made by the AOs in the hands of the investor companies, i.e. shell companies. In the absence of any adverse inferences on those companies, the investor companies are required to be considered as valid and legal.

25. Regarding the Revenue relying heavily on the statements of Mr. Jagdish Purohit and Mr. Pradeep Gupta, it is undisputed fact that the statements were retracted and the retraction documents are placed in the paper book. The AO merely rejected the said retraction on the ground of no force on the deposers who gave the statements u/s.131 of the Act. In this regard, the

arguments of the assessee is that on similar or comparable facts, the Delhi Bench of the Tribunal in the case of Nova Iron and Steel Ltd. (supra) held that the statements of Mr. Jagdish Purohit and Mr. Pradeep Gupta and the allegations of the Revenue cannot contribute to the incrimination of the documents which are otherwise accounted in the books of account of the assessee. Narrating the facts of the case, Ld. Counsel for the assessee submitted that similar documents were seized in the said case also and statement of entry operations and the accountants were relied upon by the AO for issue of notice u/s.153C of the Act. Further, we have compared the facts of the present case with that of the Nova Iron and Steel Ltd. Vs. DCIT (supra) and find they are broadly comparable. The investor companies who introduced the capital to Nova Iron and Steel Ltd. which were struck down in the records of Registrar of Companies. The Delhi Bench of the Tribunal held that the taintedness of such investor companies does not contribute any incrimination to the non-incrimination material seized by the Department involving the said assessee. There are number of decisions for the proposition that notice issued u/s.153C of the Act based on non-incriminating material such as unaccounted Balance sheet, Annual reports, Memorandum of Association etc. are not valid and unsustainable in law.

For the sake of completeness, the comparison of facts between the case of the Assessee, Nova Iron and Steel Ltd. and Sunny Infraproject cases are tabulated here as under :

Sr. No.	*Assessee's case*	*Nova's case*	*Sunny Infraproject's case*
1	*Assessee is part of Pride Group and there was a search on Pride Group. In course of search, the balance sheets, Memorandum of Association, Income Tax Returns of the companies which had invested share*	*The assessee was part of Today Group of cases and there was a search on the said group. In the course of search, Dept. seized books of accounts of the assessee and accordingly, notice*	*In this case, assessee is part of Minda Group which was searched. In the course of search, copy of balance sheet, Income tax returns, Auditor's*

	capital was found and accordingly, notice u/s.153C was issued.	*u/s.153C was issued to the assessee.*	*Account, Trial Balances were seized and accordingly, notice u/s.153C was issued to the assessee.*
2	*The notice u/s.153C has been challenged on the ground that no incriminating evidence was found during the course of search.*	*The notice u/s.153C was in that case challenged on the ground that no incriminating evidence was found during the course of search.*	*The notice u/s.153C was in that case challenged on the ground that no incriminating evidence was found during the course of search.*
3	*The Dept. has alleged that the assessee has received accommodation entry from Shri Jagdish Purohit*	*The Dept. found that Today Group had received accommodation entries from Shri V.K. Jain and Shri S.K. Jain who are the alleged entry operators*	*Along with Minda Group, search was also conducted on Mr. Santosh Kumar Jain, alleged entry operator who had accepted in his statement that he was providing accommodation entries to companies of Minda Group.*
4	*The share application money received is from companies which are not struck off from the ROC records*	*The AO has noted that most of the companies have been incorporated before the amount is received from the entry operator. Many companies are considered as Shell companies and has been struck off from the ROC record.*	*In Para 7 of the order, Hon'ble High Court has observed that the Ld. AO had issued notice to the investor companies and he was not satisfied with the replied and it was alleged by the Ld. AO that they are paper companies.*
5	*In the assessee's case, the amount received on account of share capital has been duly accounted in the books. Further, the balance sheets, Income tax returns, share application forms of the investor companies are all accounted and therefore, cannot be considered as an incriminating evidence for issue of notice u/s.153C.*	*In Para 12.8 of the order, Hon'ble ITAT has mentioned that the loans and advances received are disclosed in the books and therefore, the same could not be treated as an incriminating material for issue of notice u/s.153C.*	*In Para 11 & 12 of the order, Hon'ble H.C. has stated that the documents in the form of balance sheet, P&L Account, Auditor's Account, Income tax returns and Trial balances cannot be considered as an incriminating evidences to issue notice u/s.153C.*
6	*In the assessee's case also, there is no material found during search that cash was given to the alleged entry operators.*	*On Para 49 of the order, Hon'ble ITAT has held that no material was found that the amount received was bogus by giving cash and taking cheque.*	*There is not reference in the order regarding any material found indicating cash given.*

On considering the above arguments, we are of the opinion that the facts of above cases are comparable to the facts of the present case under consideration.

26. **Legal propositions on the Additional Ground :** The validity of the issuance of notice u/s.153C of the Act in the absence of any incriminating material which is the subject matter of adjudication before us, has been dealt with by various judicial fora.

27. The language of the Act merely provides for issuance of said notice when the AO is satisfied that ;

> *(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*
>
> *(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,*
>
> *a person other than the person referred to in section 153A.....*

This is the position after the amendment by the Finance Act, 2005. However, the said provisions are explained various decisions including that of Apex Court in the case of Sinhgad Technical Education Society 397 ITR 344 and the Coordinate Bench of the Tribunal in the case of Sinhgad Technical Education Society Vs. ACIT 50 SOT 89 which is relevant for the following proposition :

> *"**Conclusion :***
>
> *Where no assessment year specific incriminating material or document is found, assessments of such assessment years cannot be disturbed by invoking the provisions of s.153C; in the absence of any reference to any assessment year specific incriminating information or document relatable to the assessee for the assessment years in question in the reasons recorded by the AO, impugned assessment under s.153C is bad in law."*

28. The said proposition was subsequently approved by the Supreme Court in the case of CIT Vs. Sinhgad Technical Education Society in Civil Appeal No.11080/2017 and others dated 29-08-2017 vide Para No.11 of the judgment. For the sake of completeness, the said observations of the Apex Court are reproduced here as under :

> *18) The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.*
>
> *19) We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. ……"*

29. Further, another decision of this Tribunal in the case of Bharati Vidyapeeth Medical Foundation in ITA No. 959/PN/2010 and others, dated 28-04-2011 is relevant for the similar legal proposition. For the sake of completeness, the operational para on this legal issue is reproduced herein below :

> ***"24. Appeals by the Assessee - AY 2004-05:*** *In connection with the AYs at sl no (ii) above ie AYs 2004-05, admittedly, there is some seizure of the documents as evident from the satisfaction note. We are convinced that the said ledger is an accounted one. Further, the reasoning given by us in the order in the case of Sinhgad Technical Education Society (supra) apply to the issue in these appeals mutatis mutandis. In other words, the views approved by this bench in the case of Sinhgad Technical Education Society (supra) and Kumar Company (supra) are affirmed by the said Judgment of the Gujarat High Court*

in the case of Vijaybhai N Chandani 231CTR 474 (Guj) and ***mere appearance of names does not mean anything as section 153C of the Act*** *is intended for taxing the undisclosed income of the third party based on the material/others seized during the search action. As such, only the unaccounted and incriminating material or others listed in the said section are only seized during the search and the accounted documents should not be seized. Seizure of the documents is aimed at the unearthing of the unaccounted income of the assessee assessable u/s 153A or the other third parties subjected assessment u/s 153C of the Act. When the documents do not indicate any undisclosed income, the ledger in the instant case, what is the relevance of such document? Such ledger constitutes merely an accounted one with no financial implications.* ***Thus, the documents, the ledger in the instant case relevant for the AY 2004-05, with no financial implications can neither be considered incriminating nor be considered capable of springing satisfaction to any AO that there is scope of undisclosed income*** *in respect of the third party assessable u/s 153C of the Act. Accordingly, the legal grounds raised in all these appeals of the assessee relating to the validity of the notice u/s 153C of the Act are allowed in favour of the assessee* ***in respect of all the AYs*** *under consideration. Further, we are of the considered opinion that the adjudication of the other grounds relating to the other legal and merit oriented issues is merely an academic exercise. Therefore, the relevant grounds in all the four appeals are* ***dismissed*** *as academic."*

30. Other relevant decisions as furnished by the assessee in connection with the legal issue are extracted as follows :

"a. Nova Iron and Steel Ltd. v. DCIT [ITA No.2159/Del/14]

In this case, there was search on the premises of M/s. Today Homes and Infrastructure Pvt. Ltd. and its group concerns. The assessee company was part of Today group of cases. In the course of search, books of accounts and documents belonging to the assessee company were found and seized and hence, the learned A.O. issued notice u/s.153C to the assessee company. The learned A.O. noted that the said group was generating unaccounted income and the firms were infused in various companies in the form of share capital I share premium through various paper companies. The A.O. noted that the assessee company had received an amount of Rs.3.18 Crs. routed through various companies and the same was taxed u/s.68. It was further noted by the A.O. that almost all companies through whom the funds were received had been stuck off as per the ROC record and they were defaulters in filing annual returns with ROC. These companies had common addresses and the dept. had also conducted survey on the other companies. During the survey, it was found that no business was carried out by the lender companies. The A.O. also referred to the statement of a few persons who had admitted that they were dummy directors.

The A.O. also referred to the seize paper found which contained the information relating to Director number, digital signature and password. The A.O. alleged that the funds were routed by providing accommodation entries and therefore, he made an addition u/s. 68. The assessee contended that the notice issued u/s.153C was bad in law and secondly, even on merits, no addition was warranted. Hon'ble ITAT has considered the relevant facts of the case. Firstly, it admitted the additional ground raised before it regarding validity of notice u/s.153C on the basis of the decision of Hon'ble Supreme Court in the case of Sinhagad Technical Education Society [397 ITR 344]. Thereafter, Hon'ble ITAT has further held in para 12.8 of the order that the dept. has recover documents from third parties. It has further noted that the loans and advances received by

the assessee are mentioned and disclosed to the revenue prior to search. Therefore, these books of accounts cannot be said to be incriminating evidence. It is also noted that no evidence was found in the course of search that the money belonged to the assessee. No evidence was found that cash was given by the assessee to take any loan. Accordingly, it has been held that in the absence of any material to prove that the loan received was bogus, the requirement for issue of notice u/s.153C was not satisfied and accordingly, in para 12.9, Hon'ble ITAT has held that the notice issued u/s.153C was bad in law.

b. Pr. CIT v. Sunny Infra Projects Ltd. [2017-TIOL-810-Del H.C.]

In this case, search action was conducted in the case of Minda Group and one Shri Santosh Kumar Jain who was considered to be an entry operator. In his statement, Shri Jain admitted that he was providing accommodation entries. The A.O. noted that the assessee had received share capital from Bahuguli Properties Ltd., concerned controlled by Shri Jain. The A.O. issue notice u/s.153C to the assessee company on the basis of the documents seized during the course of search on Minda Group. Hon'ble H.C. held that the documents on the basis of which notice u/s.153C was issued were basically copies of balance sheet abstracts, auditor's account, companies general profile, income tax return, trial balances. After considering the documents found, Hon'ble H.C. has held that the notice issued u/s 153C was invalid in law because the documents seized did not indicate any income which was not disclosed by the assessee in the original return.

c. Ravnet Solutions Pvt. Ltd. [93 Taxmann.com 59] *In this case, search was conducted on Assem Gupta Group of cases who was allegedly engaged in providing accommodation entries to several beneficiaries. Subsequently, search was also conducted on the assessee. The assessee company have received share premium and the same was taxed u/s.68 by the learned A.O. before Hon'ble ITAT, the assessee stated that the addition was not warranted in the absence of any incriminating evidence found as a result of search. On perusal of the facts, it was held that no incriminating evidence was found in the course of search and the addition was deleted.*

d. DCIT v. Sagar Nahta [82 Taxmann.com 344 (Kol)] *The assessee was a practicing C.A. Following the search and seizure action in Bhushan Group of Company, search was conducted on the assessee wherein certain documents belonging to 31 companies were found. The A.O. alleged that the assessee has provided accommodation entries and thereby earn commission. Hon'ble ITAT held that no evidence was brought on record to prove that the assessee had earn commission. Further, no material was brought on record to establish the money trade and accordingly, the addition was deleted.*

e. Bharati Vidyapeeth [ITA No. 917 - 922/PN/10] –

In this case, there was search on Shri R. D. Shinde and on the basis of the material seized from him, notice u/s 153C was issued to Bharati Vidyapeeth. In that case, the allegation of the dept. was that the assessee was charging capitation fee and the dept. the dept. was also recorded the statement of Shri Shinde wherein he had confirmed the said fact. The assessee contended that the documents seized did not indicate any incriminating evidence. Further, the inward register for applications received under management quota was found. It was stated that near register without any details regarding cash received cannot be said to be incriminating and accordingly, Hon'ble ITAT held that the notice issued U/S 153C was bad in law. Similar is the ratio laid down in the case of Bharati Vidyapeeth Medical Foundation [ITA No. 959-967/PN/10].

f. Pr. CIT v. Index Securities Pvt. Ltd. [86 Taxmann.com 84 (Del)] *In this case, a search and seizure action was conducted on Jagat Group and its directors. In the course of search, trial balance and balance sheet of the assessee was found and on that basis, notice u/s.153C was issued to the assessee company. Thereafter, the learned A.O. completed the asst. by making an addition on account of share application money received by the assessee. The validity of notice issued u/s.153C was challenged by the assessee. In that context, Hon'ble court held in para 31 of the order that as per the decision of Hon'ble Supreme Court in the case of Sinhagad Technical Education Society, for issue of notice u/s.153C, the documents seized must be incriminating and must relate to each of the asst. years which are sought to be reopened. Accordingly, the notice issued u/s.153C was held to be invalid in law.*

g. Pr. CIT v. Smt Sunita Bai [78 Taxmann.com 274 (Kar)] *In this case, the issue raised before Hon'ble H.C. was whether notice u/s.153C could be issued when there was no incriminating document or evidence discover during the course of search. On this issue, Hon'ble Court has held that in the absence of any incriminating evidence, no notice u/s.153C can be issued.*

h. DCIT v. Royal Cartons Pvt. Ltd. [ITA No.472/Coch/2013 (TM)]

In this case, it has been held by Hon'ble Third Member that in the absence of incriminating material, notice u/s.153C cannot be issued by the A.O. It is also held that the document found should indicate that for the year under consideration, the assessee had not offered the income to tax."

From the above, it is evident that the expression "documents" refers to in the sub-section (1) of section 153C of the Act, needs to be understood in the context of incriminating documents.

31. Further, we have also examined the decisions relied upon by the Ld. DR for the Revenue. The decision of Delhi High Court in the case of Ganpati Fincap Services Pvt. Ltd. Vs. CIT 82 taxmann.com 408 (Delhi) is found delivered in the context of the expression "documents belonging to assessee" but also in the context of " non-incriminating documents". After analyzing the documents seized, the details of which are analysed in the satisfaction note (Para 6 of the judgment), the Hon'ble High Court held that the documents so discussed in the said satisfaction note cannot be considered non-incriminating and the documents so discussed in the note not only includes accounted profit and loss account, balance sheet etc. but also an unsigned indemnity bond, unsigned Memorandum of understanding between

the outgoing Directors of the company and the Buyers of the Company. Considering the unsigned papers, the Hon'ble High Court has come to the conclusion that the said documents can be considered as incriminating documents. After analyzing the same, we find the decision cannot be applied to the facts of the present case where all the documents seized are the ones which are already either reported to the Govt. authorities are pertaining to the assessee company which are duly recorded in the books of account or others. There are no unsigned Memorandum of understandings or indemnity bonds as in the case of Ganpati Fincap Services Pvt. Ltd. (supra).

32. Further, we have also analysed another judgment of Hon'ble Apex Court relied by the Ld. DR for the Revenue in the case of CIT Vs. RRJ Securities Ltd. 79 taxmann.com 115 (SC). The issue in this case relates to the validity of notice issued u/s.153C of the Act when the seizure includes hard disk working papers belonging to RRJ Securities Ltd., The Hon'ble High Court of Delhi held that such hard disk did not contain any incriminating material. Therefore, the notice issued u/s.153C of the Act is not validly issued on the basis of said hard disk. Of course, the SLP was admitted by the Supreme Court against the said order of Delhi High Court.

Considering the above legal proposition on the issue of validity of notice u/s.153C of the Act as well as the nature of non-incriminating material seized in the case on hand for A.Y. 2009-10, we are of the opinion that notice issued u/s.153C of the Act is not valid. The documents seized pertaining to/belonging to the assessee is only non-incriminating documents. Regarding the validity of similar notice for A.Y. 2007-08, we find no document whatsoever was seized. Therefore, the fate of such notice is placed as much worse position. Therefore, the additional ground raised by the assessee for

both the assessment years are decided in favour of the assessee and against the Revenue.

33. **Grounds on merits in both assessment years :** Regarding the issues raised by the assessee on merits, we find the adjudication of the same becomes an academic exercise. Therefore, the regular grounds raised by the assessee are dismissed as academic.

34. In the result, the appeal of the assessee is partly allowed.

ITA No.286/PUN/2016
A.Y. 2009-10

35. The facts, grounds/additional ground/issues, decision of AO/CIT(A) and the arguments of the representatives are same as that of appeal ITA No.285/PUN/2016 for A.Y. 2007-08. Therefore, the finding given on the additional ground in A.Y. 2007-08 apply to this assessment year too. Accordingly, the additional ground is allowed and the regular grounds raised by the assessee are dismissed.

36. In the result, the appeal of the assessee is partly allowed.

ITA No.287/PUN/2016
A.Y. 2012-13

37. Grounds raised by the assessee read as under :

> *"1. The Ld.CIT(A) erred in not appreciating the contention of the appellant that the re-assessment u/s.143(3) was bad in law and void ab-initio, since it was passed.*
>
> *a) Without following the principles of natural justice.*
> *b) Without verifying the submissions and evidences submitted by appellant.*
>
> *2. The Ld.CIT(A) has erred in confirming the addition of Rs.36,63,681/- u/s.14A of the Act, 1961 made by the AO disregarding the submissions made by the appellant company that the provisions of section 14A are not applicable to the appellant company as no exempt income has been earned or received by the appellant company.*

3. The Ld.CIT(A) has failed to appreciate that provisions of sec.14A are applicable only when the expenditure is incurred in relation to income not includable in the total income and not on the ground the company will earn exempt income in future.

4. The Ld.CIT(A) erred in confirming the action of the AO of making the addition of Rs.36,63,681/- u/s.14A merely on presumptions and surmises without appreciating the facts of the appellant company.

5. The appellant may kindly be permitted to add to or alter any of the grounds of appeal, if deemed necessary."

38. Before us, at the outset, Ld. Counsel for the assessee submitted that he is not pressing Ground No.1. Accordingly, the said ground is dismissed as such. That leaves the only issue to be adjudicated in this appeal is the disallowance made by the AO u/s.14A r.w. Rule 8D of the I.T. Rules, 1962.

39. Briefly stated relevant facts of the case are that there was search action u/s.132 of the Act on the Pride Group of cases on 07-09-2011. Assessee filed return of income on 28-09-2012 declaring income of Rs.24,49,378/-. On verification of the balance sheet of the assessee, AO noticed that assessee made investment of Rs.14.17 crores and assessee has also taken loan for such investment and paid Rs.69,55,060/-. Assessee claimed that assessee did not earn any income on such investment and assessee utilized own funds for making such investment. AO opined that there is always an element of indirect expenditure for earning such as exempt income, which the assessee has neither identified nor offered to tax. Eventually, the AO relying on the judgment of Hon'ble Bombay High Court in the case of Godrej & Boyce Vs. DCIT and the decision of Delhi Bench of the Tribunal in the case of M/s. Cheminvest Ld. Vs. ACIT in ITA No.87/Del./2008 and others quantified the disallowance u/s.14A of the Act at Rs.36,63,681/.

40. Aggrieved with the addition made by the AO, the assessee filed an appeal before the CIT(A). Before the CIT(A), assessee submitted that the

investments is made out of idle funds and not made out of any borrowed funds. The same is evidenced by way of audited financial statements. He further submitted no borrowed funds are utilized for making these investments and no interest cost is incurred. Assessee relied on various decisions including that of the judgment of Hon'ble jurisdictional High Court in the case of CIT Vs. HDFC Bank Ltd. The CIT(A) upheld the addition made by the AO by holding as under :

> *"3.10 It is matter of common sense that the Appellant has to incur some expenditure to keep track of the receipt of tax-free income, for its accounting as well as taking investment decisions. Such expenditure is incurred towards salaries of administrative staff, accounting staff and of treasury personnel, stationery, communication and other miscellaneous expenses. Such expenditure may or may not be substantial. The magnitude of such expenditure would depend on the facts of the case. However, in no circumstances, the expenditure can be stated to be nil. Therefore, the Appellant's claim of nil expenditure is incorrect. Honourable Chennai ITAT in the case of Lakshmi Ring Travellas (TS-210-ITAT-2012-CHEN) held that when assessee claims that no expenditure was incurred, the AO has to presume incurring of such expenditure u/s.14(2). Similar decision was rendered by the Honourable Mumbai ITAT in the case of Auchtel Products Limited Vs. ACIT (2012-ITRV-ITAT-MUM-109).*
>
> *3.11 Having concluded that the Appellant's claim of no expenditure is incorrect, the Rule 8D, does not grant any discretion to any authority; either to AO or to appellate authority to make any ad-hoc disallowance. In fact, the Rule 8D is inserted to avoid ad-hoc disallowances. Some time, the amount of the disallowance arrived at by application of Rule 8D could be excessive, however, in my view, law has to be applied as it is in absence of any discretion granted to the authority. The honourable Delhi ITAT in the case of Joint Investment Private Limited Vs. ACIT (2014) 50 taxmann.com 271 (Delhi) has held that the word 'shall' used in section 14A(2) makes it mandatory for the AO to compute the disallowance under Rule 8D. Accordingly, I dismiss the Appellant's arguments that the learned AO has incorrectly invoked the Rule 8D.*
>
> *3.12 In view of the above, I confirm the disallowance made by the learned AO u/s.14A of Rs.36,63,681/-."*

41. Aggrieved with the order of CIT(A), the assessee is in appeal before the Tribunal with the grounds raised above on this issue.

42. We heard both the parties on this issue and perused the orders of the Revenue authorities. There is no dispute that assessee did not earn any exempt income during the year under consideration which became part of the total income of the assessee. Therefore, the issue has to be decided in the

present appeal is if the disallowance u/s.14A of the Act is called for when exempt income is not earned by the assessee and not included in the total income of the assessee. We find it is a settled issue that when no exempt income is earned by the assessee for making investments and when the investments are made from the own funds of the assessee, no disallowance u/s.14A read with Rule 8D is called for. Various decisions are in existence for the proposition that disallowance if any u/s.14A of the Act should not exceed the exempt income which formed part of the total income of the year under consideration. Considering these facts and relying on the Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd. (supra), judgment in the case of CIT Vs. HDFC Bank Ltd., 366 ITR 505 and the judgment of the Hon'ble Delhi High Court in the said case Cheminvest Limited Vs. CIT 347 ITR 272 (Del.), we find it is obvious inference that assessee has adequate interest free funds and assessee also earned profits in the current year. All these interest free funds are sufficient enough to take care of the exempt income yielding investments considering the principle of presumption laid down by the various courts.

43. Further, we find the Mumbai Bench of the Tribunal in the case of M/s. Pest Control India Pvt. Ltd., Vs. DCIT and vice versa in ITA Nos. 5048 & ITA No.5608/Mum/2016, dated 31-10-2017 has restricted the disallowance to the exempt income earned by the assessee. The said finding of the Tribunal given in Para Nos. 7 to 11 is extracted here as under :

> *"7. We have heard the rival submissions, perused the orders of the authorities below and the case laws relied upon. The Assessing Officer computed the disallowance u/s. 14A r.w. Rule 8D at ₹.38,43,918/- and the Ld.CIT(A) recomputed the disallowance at ₹.5,10,601/- which comprises of ₹.3,42,870/- under Rule 8D(2)(ii) and ₹ 1,67,731/- under Rule 8D(2)(iii). This calculation of the Ld.CIT(A) appears to be proper and justified.*

8. Further, it has been held in various cases that the disallowance u/s. 14A r.w. Rule 8D cannot exceed the exempt income. The Hon'ble Punjab and Haryana High Court in the case of Principal Commissioner of Income Tax-I v. M/s Empire Package Pvt. Ltd in ITA.No. 415 of 2015 dated 12.01.2016, dismissed the appeal of the Revenue holding that there is no substantial question of law arise in the appeal on the following question raised by the Revenue: -

> *"Whether in the facts and circumstances of the case, the Hon'ble ITAT is justified in law to hold that the disallowance made under section 14A read with Rule 8D cannot exceed the exempt income, in the absence of any such restriction being there in the relevant section or rule?"*

The Hon'ble High Court affirmed the order of the ITAT in holding that the disallowance u/s. 14A r.w. Rule 8D as worked out by the Assessing Officer is not in accordance with law for the reason that Assessing Officer has disallowed entire tax exempt income and this is not permissible in view of the judgment of the Hon'ble Delhi High Court.

9. The Hon'ble Delhi High Court in the case of Joint Investment Private Limited in ITA.No. 117/15 dated 25.02.2015 held that by no stretch of imagination can section 14A or Rule 8D be interpreted so as to mean that entire tax exempt income is to be disallowed.

10. Further, we find that considering the above two decisions the Coordinate Bench in the case of Sanghavi Exports International P. Ltd v. ACIT in ITA.No.3405/Mum/2015 dated 10.07.2017 held that disallowance should not be more than the dividend income by observing as under:

> *4. We have perused the Assessment Order and find that the assessee earned exempt income of Rs. 1,70,000/- only during this Assessment Year and the Assessing Officer by invoking the provision of Section 14A made disallowance at Rs.54,66,813/-. The Hon'ble Delhi High Court in the case of Joint Investment Private Limited in ITA.No. 117/15 dated 25.02.2015 held that by no stretch of imagination can section 14A or Rule 8D be interpreted so as to mean that entire tax exempt income is to be disallowed. Similarly, Punjab and Haryana High court in the case of PCIT v. Empire Package Private Limited in ITA.No. 415/2015 held that disallowance should not exceed exempt income. In the case on hand since the assessee received dividend income of Rs.1,70,000/- as recorded in the Assessment Order the disallowance should not be more than Rs.1,70,000/-.* ***Thus we direct the Assessing Officer to restrict the disallowance to the extent of dividend income i.e. Rs.1,70,000/- and delete the balance amount and compute the incomes accordingly."***

11. Thus, respectively following the said decisions, we direct the Assessing Officer to restrict the disallowance u/s. 14A r.w. Rule 8D to the extent of dividend income of ₹.1,83,000/- received for the Assessment Year 2012-13 and compute the income accordingly."

44. In the present case, assessee did not earn any exempt income for making the investments. Therefore, considering the binding precedents on

this issue, the order of the CIT(A) requires reversal on this issue. Accordingly, we reverse the order of CIT(A) and delete the disallowance made by the AO. Thus, the Ground Nos. 2 to 4 raised by the assessee are allowed in favour of the assessee.

45. In the result, the appeal of the assessee is partly allowed.

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

Order pronounced on 14th day of August, 2018.

Sd/- Sd/-

(विकास अवस्थी /VIKAS AWASTHY) **(डी. करुणाकरा राव/D. KARUNAKARA RAO)**
न्यायिक सदस्य/JUDICIAL MEMBER **लेखा सदस्य/ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 14th August, 2018.
Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-13, Pune.
4. The Pr. CIT (Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**ए**" बेंच, पुणे / DR, ITAT, "**A**" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.