

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE
SHRI G.D.AGRawal, HON'BLE VICE PRESIDENT
&
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.-3595/Del/2015
(Assessment Year: 2004-05)**

DCIT Central Circle-18, Room No. 327, ARA Centre, E-2, Jhandewalan Extn. New Delhi	vs	Ridgeview Construction Pvt. Ltd. H-69, UGF, Connaught Place New Delhi PAN : AABCR7683Q
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**C.O. No.-71/Del/2016
(ITA No. 3595/Del/2015)
(Assessment Year: 2004-05)**

Ridgeview Construction Pvt. Ltd. H-69, UGF, Connaught Place New Delhi PAN : AABCR7683Q	vs	DCIT Central Circle-18, Room No. 327, ARA Centre, E-2, Jhandewalan Extn. New Delhi
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**ITA No. 3596/Del/2015
(Assessment Year : 2005-06)**

DCIT Central Circle-18, Room No. 327, ARA Centre, E-2, Jhandewalan Extn. New Delhi	vs	Ridgeview Construction Pvt. Ltd. H-69, UGF, Connaught Place New Delhi PAN : AABCR7683Q
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**C.O. No. 72/Del/2016
(ITA No. 3596/Del/2015)
(Assessment Year : 2005-06)**

Ridgeview Construction Pvt. Ltd. H-69, UGF, Connaught Place New Delhi PAN : AABCR7683Q	vs	DCIT Central Circle-18, Room No. 327, ARA Centre, E-2, Jhandewalan Extn. New Delhi
Appellant		Respondent

**Assessee by : Sh. Gautam Jain, Adv.
& Sh. Piyush Kumar Kamal, Adv.
Revenue by : Smt. Aparna Karan, CIT(DR)**

Date of Hearing	08.10.2018
Date of Pronouncement	31.10.2018

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

ITA No. 3595/Del/2015 has been preferred by the department against the order dated 27.3.2015 passed by the Ld. CIT (Appeals) - 29, New Delhi for AY 2004-05. ITA No. 3596/Del/2015 has also been preferred by the department against the order dated 30.3.2015 passed by the Ld. CIT (Appeals)- 29, New Delhi for AY 2005-06. CO Nos. 71/Del/2016 and 72/Del/2016 are the cross objections preferred by the assessee for AY 2004-05 and 2005-06 respectively. Both the appeals and the cross objections were heard together and they are being disposed of through this common order for the sake of convenience.

2.0 The brief facts for AY 04-05 are that a search and seizure operation u/s 132 of the Income Tax Act, 1961 (in short 'The Act') was

carried out on 5.1.2009 in M/s Taneja-Puri Group of cases in various premises. During the course of search, some documents bearing the name of the assessee were found from the premises covered u/s 132(1) of the Act. Subsequently, the case was centralized in Central Circle-18, Delhi along with some other group cases. Notice u/s 153C was issued to the assessee on 26.10.2010. In response to this notice, return declaring total income at Rs Nil was filed on 19.11.2010. Original return in this case was filed on 4.2.2005 declaring total income at Rs. Nil. As per information furnished, the assessee company was incorporated on 3.4.1998 and it was promoted to carry on the business of development of real estate. The assessee company had declared to have received an amount of Rs. 3,81,50,000/- from M/s Cubic Commercial Resources Ltd. and Rs. 2,30,00,000/- from M/s Optimum Credits (P) Ltd. during the year. These amounts were shown as outstanding liability in the form of advances received. Thus, total amount received from these two companies during the year was Rs. 6,11,50,000/-. The assessment was completed vide order dated 31.12.2010 u/s 153C/143(3) of the Act at a total income of Rs. 6,11,50,000/- after making an addition of Rs. 6,11,50,000/- u/s 68 of the Act.

2.1 The assessee-company challenged the aforesaid addition before Ld. CIT (A) as well as challenged the assumption of jurisdiction under section 153C of the I.T. Act. Before the Ld. CIT (A), the assessee-company submitted that no valid satisfaction has been recorded prior to the initiation of proceedings u/s 153C of the Act. The assessee- company relied upon several decisions of the Tribunal/ High Court in support of its contention. The Ld. CIT (A) after considering the satisfaction note, material on record as well as the submissions of the assessee-company and the various judgments of the Hon'ble Delhi High Court held that the issue of notice under section 153C of the Act was not valid and accordingly, quashed the same. The resultant additions were accordingly, deleted.

2.2 Aggrieved, the Department is in appeal before us in ITA No. 3595/Del/2015 and the grounds raised by the revenue raised are as under:

“1 On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts in holding the proceedings u/s 153C of the I.T. Act, 1961 as invalid.

2. On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law and on facts by holding proceedings initiated u/s 153C of the I.T. Act, 1961 as invalid on the ground that no incriminating material was found during the search pertaining the years in which the addition has been made.

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

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

2.3 In AY 2005-06, the assessee had filed return declaring income at Rs. Nil and the assessment u/s 143(3) of the Act was completed at an income of Rs. 65,19,000/- after making certain additions. Thereafter, subsequent to the search the assessment was completed u/s 153C of the Act at an income of Rs. 6,29,65,510/- after making additions u/s 68. The assessee's appeal against this assessment was also allowed by the Ld. CIT (A) on identical finding that in absence of a valid satisfaction, the 153C proceedings were to be quashed. ITA No. 3596/Del/2015 is the department's appeal for assessment year 2005-06 and the grounds raised by the Revenue are identical to grounds raised in the appeal for assessment year 2004-05 as the issue is also identical.

2.4 The cross-objections filed by the assessee for both the years support the order of the Ld. CIT (A).

3.0 The Ld. CIT DR relied upon the order of the A.O. and submitted that proceedings under section 153C cannot be invalidated

merely because the A.O. of the searched person who was also the AO of the assessee, did not record a separate satisfaction. It was submitted that the Ld. CIT (A) cannot declare the satisfaction as invalid on hyper technical ground of incorrect terminology used in the note. The Ld. CIT DR also relied upon the following decisions:

1. 346 ITR 177 (Del) in SSP Aviation Ltd. vs. DCIT
2. 76 taxmann.com 311 (Guj) in Rajesh Sunderdas Vaswani v. ACIT
3. 393 ITR 597 (Del) in PCIT v. Sumer Malls (P) Ltd.

4.0 The learned AR relied on the judgment of the Hon'ble Apex Court in the case of CIT vs. Singhad Technical Education Society reported in 397 ITR 344 and the judgment of the Hon'ble Delhi High Court in the case of Pr. CIT v. Index Securities (P) Ltd. in ITA Nos. 566/2017, 567/2017, 568/2017, 569/2017, 270/2017 and 571/2017 reported in 157 DTR 20 and, while supporting the orders of the Ld. CIT (A), vehemently argued that the Ld. CIT (A) had rightly quashed the proceedings initiated u/s 153C of the Act.

5.0 We have heard the arguments of both the sides and perused relevant material placed before us. In the instant case, the proceedings were initiated under section 153C of the Act by recording a satisfaction note which reads as under:

*“SATISFACTION NOTE U/S 153C OF THE I.T. ACT, 1961 IN THE
CASE OF M/S RIDGEVIEW CONSTRUCTION (P) LTD*

PAN NO. AAABCR7683Q

A.Y. 2003-04 TO 2008-09

“26.10.2010 A search & seizure operation u/s 132(1) of the Income Tax Act was carried out on 5.1.2009 at various business and residential premises of M/s Taneja-Puri Group of cases. During the course of search at 9, K. G. Marg, New Delhi the residence of Shri Ravinder Kumar Taneja and various offices premises of TDI group of companies, certain incriminating documents were found and seized. These documents also included a copy of provisional balance sheet as on 30.9.2005 of M/s Ridgeview Developers Pvt. Ltd. marked as pages 75 to 77, Annexure A-2 of Party A-2. The company M/s Ridgeview Construction Pvt. Ltd. is closely associated with the Taneja-Puri group of cases as the directors/share holders of this company are closely related to the directors/shareholders of the seized documents marked as pages 75 to 77, Annexure A-2 of Party A-2 belong to M/s Ridgeview Constructions Pvt. Ltd.

In view of the above facts, I am satisfied that the books of accounts and documents belonging to the assessee company have been found and seized during the course of search u/s 132(1) of the Income Tax Act, 1961 carried out at 9, K. G. Marg, New Delhi, the residence of Shri Ravinder Kumar Taneja and office premises of various TDI group of companies

In the light of the above, I am satisfied that the above case is a fit case for issuing notice u/s 153C of the Income Tax Act, 1961 as the seized documents mentioned above belong to M/s Ridgeview

Constructions Pvt. Ltd. being a person other than a person in whose case the search has been initiated.”

(GAGAN SOOD)

DCIT, CC-18, NEW DLEHI”

5.1 A perusal of the impugned order for AY 04-05 shows that the written submissions of the assessee-company challenging the above issue is reproduced in the appellate order in which the assessee-company has submitted that no valid satisfaction has been recorded prior to the initiation of proceedings u/s 153C of the Act. The assessee-company, before the Ld. CIT (A), had relied upon several decisions of the Tribunal/ Hon'ble High Court in support of its contention. It was submitted before the Ld. CIT (A) that the A.O. had not referred to any material, much less cogent material, to assume and conclude, with the documents seized from the premises of the searched person, that such documents belonged to the assessee company and did not belong to the searched person. It was submitted before the Ld. CIT (A) that in the absence of such a burden having been discharged by the searched person, invocation of the provisions of section 153C of the Act was not in accordance with Law. The assessee-company relied upon the decisions of Hon'ble Delhi High Court in the case of Pepsi Foods (P) Ltd. vs. ACIT reported in 367 ITR

112 and Pepsi Co. India Holding Pvt. Ltd., 370 ITR 295. It was submitted before the Ld. CIT (A) that since the foundational pre-condition has not been satisfied, therefore, the A.O. had erred in Law and on facts in assuming jurisdiction under section 153C of the Act. It was further submitted that it was an admitted position that all the documents admittedly were not belonging to the assessee-company. There was no material much less any tangible and relevant material to show that the A.O. of the searched person was satisfied that the seized documents did not belong to the searched person, so as to rebut the presumption under section 292C of the Act. It was also contended before the Ld. CIT (A) that there was no disclaimer on the part of the searched person in so far as the seized documents were concerned and further the photo copy of the documents would not necessarily mean and imply that they belonged to the person who held them originally and further that unless it is established that the documents in question did not belong to the searched person, invocation of section 153C of the Act was not valid.

5.2 The Ld. CIT (A) after duly considering the satisfaction note (reproduced above), material on record and the submissions of the assessee-company held that the issue of notice under section 153C of the Act was not valid and, accordingly, quashed the same. The

findings of the Ld. CIT (A) in Para 6 to 7 of the order are reproduced as under:

“6.5 Applying the above judgments to the facts of the appellant, it is evident here that the Assessing Officer has not observed that Taneja-Puri Group of case or its directors have disclosed the ownership of the said papers found from their premises so as to rebut the applicability of presumption under section 292C made applicable by the Hon’ble High Court. Furthermore the document referred in the satisfaction note is marked as page 75 to 77 of Annexure A-2 which is a copy of unsigned provisional balance sheet of appellant company as on 30.9.2005. Thus apparently the said paper belongs to financial year 2005-06 relevant to assessment year 2006-07. In the instant case no addition has been made in the order of assessment under section 153C of the Act for assessment year 2006-07. Further even original assessment year for Assessment Year 2006-07 had been framed under section 153(3) of the Act wherein too returned income had been accepted. Thus, in the absence of incriminating material found as a result of search on the searched person notice under section 153C is bad in law and without jurisdiction.

6.6 In the case of ACIT v. Therapeutic India Pvt. Ltd. the CIT (A) has held that page-wise analysis of the documents found would show that these are part of the returns of income filed by the appellant as well as required books of accounts and copy of acknowledgement of returns and hence, these documents cannot be treated as incriminating documents to suggest any undisclosed income of the appellant. It was held that all these documents even

while belonging to the appellant reflected itself audited accounts based on which, returns have been filed by the appellant on earlier occasions.

It was thus observed that there is nothing incriminating in this documents which can lead to the framing of strict action of the part of the Assessing Officer to initiate proceedings under section 153C of the Act. It was held that there is implicit inherent requirement that there must be existence of prima facie unrecorded transactions belonging to the assessee before provision under section 153C of the Act, can be invoked and thus, on such ground, initiation of proceedings was held to be bad in law.

In the said decision the ITAT has held as under:

“8. We have heard the rival submissions of both the parties and have gone through the material available on record. We find that Ld. CIT (A) after going through the submissions of assessee has held that the documents seized from the premises of another person were copies of acknowledgement of return and copies of final accounts of the assessee company. The Ld. DR has not brought anything contrary to the findings of Ld. CIT (A) and has not brought any fact which could substantiate that there were other incriminating documents upon which the Assessing Officer had relied to estimate the turnover of the company. In our considered view, if the seized documents contain only such documents which Ld CIT(A) has narrated then these cannot be said to be incriminating unless some difference are pointed out by the Assessing Officer in the documents seized and those in the Department’s possession in the form of part of IT returns. In the above circumstances, we do not see any infirmity in the order of Ld. CIT (A).”

6.7 *It was held that since no incriminating documents were found the searched person to make the impugned additions, the initiation of proceedings were not in accordance with law. In the said case, there was a search conducted on the Gopal Group of company and certain documents belonging to the assessee company were found and seized and as such, action under section 153C of the Act was initiated. Pursuant to the proceedings, the Assessing Officer enhanced the turnover and made additions to the declared income.*

6.8 *Further Delhi Bench of Tribunal in the case of DSL Properties Ltd. v. DCIT ITA No. 1344/D/2012 assessment year 2004-05 has also held as under:*

“17. At the time of hearing before us, the learned counsel for the assessee has vehemently contended that the photocopy of the audited profit & loss account and balance sheet was belonging to the shareholder/director from whom the same was found and not to the assessee. We agree with this contention of the learned counsel. When a company supplies photocopy of its profit & loss account and balance sheet to its shareholders/directors, such photocopy of the profit & loss account and balance sheet belongs to such shareholder/director and not to the assessee company. If the argument of the Revenue is accepted, then, if, during the course of search of any person the photocopy of the profit & loss account/balance sheet of any listed company, say, Reliance Industries, Tata Motors or Bajaj Auto is found, then, as per the interpretation of Section 153C by the Department, the Assessing Officer would be entitled to take action under Section 153C in the case of such listed company. That interpretation would lead to absurd results. Therefore, we hold that the underlying condition for invoking the jurisdiction under Section 153C is not satisfied in the case of the assessee.”

6.9 *Recently Delhi Bench of Tribunal in the case of DCIT v. Qualitron Commodities (P) Ltd. ITA No. 4666/D/2012 ASSESSMENT YEAR 2004-05 it was held as under:*

15. *Similar are the facts of the present case before us. The documents seized during the course of search and seizure proceedings from the Rajdarbar Group have been referred as "relating to" the assessee, in the satisfaction note recorded by the AO while initiating the proceedings u/s 153C of the Act against the assessee. Finding a reference in the satisfaction note recorded by the AO for initiation of proceedings u/s 153C of the Act against the assessee are certificate of incorporation, e-filing receipt, Form No.-18, Form No.-35. In view of the ratio laid down in the above discussed decisions of Hon'ble High Court in the cases of Pepsico India Holdings Pvt. Ltd. (cited supra) and Pepsi Foods Pvt. Ltd. (cited supra) the satisfaction of the AO that the said documents "belong to" the assessee is condition precedent to initiate proceedings u/s 153C of the Act. In absence of such finding by the AO, the notice issued u/s 153C in the present case is held invalid. Besides there was no incriminating material found during the course of search and the assessment was not pending or abated to justify the assessment framed u/s 193A r.w.s 153C as well as section 143(3) of the Act against the assessee. This view is supported with the decisions cited in para No.-11 hereinabove. The assessment in the question framed in furtherance to the said invalid notice and in absence of incriminating material is thus held as void and the same is quashed as such. The issue raised in objections Nos. 1 & 1.1 of the 10 I.T.A .No. 4666/Del/2012 & C.O. No.-447/Del/2012 Cross-objection is thus decided in favour of the assessee. These objections are thus allowed."*

6.10 *Having regard to the above, it was not a coincidence that the Tanja Group who had made disclosed investment in the appellant company were in possession of the unsigned provisional balance*

of the appellant company. In view of the aforesaid reasons and also considering the fact that the document mentioned in the satisfaction note are provisional balance sheet for the Assessment Year 2006-07 and in this assessment year no addition is being made by the AO, even otherwise under section 153C/143(3), therefore in my humble view, in the facts of the present case “ no incriminating material” was available “belonging to” the appellant on the strength of which proceeding under section 153C could be initiated. Hence, the assessment framed in furtherance to the said invalid notice is also not valid.

As held above, that assessment is not valid therefore, thus there is no need to decide this issues of addition of Rs. 6,11,50,000 on merit. Accordingly, the other ground relating to the issue of additions made become redundant and in fructuous.”

5.3 Having regard to the aforesaid satisfaction note, the learned CIT (A) has held that the satisfaction note refers to an Annexure A-2 (page 75-77) which is a copy of unsigned provisional balance sheet of the assessee company. The said paper, as seized, pertains to assessment year 2006-07 and not to assessment years 2004-05 and 2005-06. Also, it is undisputed that no addition has been made in the case of the assessee in the assessment framed under section 143(3) of the Act or assessment framed under section 153C of the Act for assessment year 2006-07.

5.4 The Hon'ble Apex Court in the case of CIT vs. Singhad Technical Education Society reported in 397 ITR 344 (SC) has held that if the documents seized does not establish any co-relation with the assessment years under consideration, then there was no valid assumption of jurisdiction under section 153C of the Act. It has been held in Para 18 of the judgment 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 there from 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.”

5.5 Following the aforesaid judgment, the Jurisdictional High Court in the case of Pr. CIT vs. Index Securities (P) Ltd. in ITA Nos. 566/2017, 567/2017, 568/2017, 569/2017, 270/2017 and 571/2017 reported in 157 DTR 20 held in Para 28.3 to 30 as under:

“28.3 From a reading of the above two paragraphs, it is plain that the Supreme Court (i) agreed with the ITAT that the documents seized had to relate to the AYs whose assessments were reopened and that this was an essential jurisdictional fact and (ii) upheld the decision of the ITAT to permit the additional ground to be raised before it for the first time.

28.4 The Supreme Court also agreed with the decision of the Gujarat High Court in Kamleshbhai Dharamshibhai Patel (supra) to the extent it held that "it is an essential condition precedent that any money, bullion or jewellery or other valuable articles or thing or books of accounts or documents seized or requisitioned should belong to a person other than the person referred to in Section 153A of the Act." The Supreme Court observed: "This proposition of law laid down by the High Court is correct, which is stated by the Bombay High Court in the impugned judgment as well."

28.5 The above categorical pronouncement of the Supreme Court cannot, by any stretch of imagination, be termed as obiter as has been suggested by Mr. Manchanda. Even the obiter dicta of the Supreme Court is binding on this Court.

29. The search in the case before the Supreme Court was prior to 1st June 2015. Apart from the fact the Supreme Court approved the above decision of the Gujarat High Court holding that the seized documents should 'belong' to the other person, the legal position in this regard where the search has taken place prior to 1st June 2015 has been settled by the decision of this Court in Pepsico India Holdings (P.) Ltd. (supra). In Vinita Chaurasia (supra), this Court reiterated the above legal position after discussing the decisions in Super Malls (P.) Ltd. (supra) and Nau Nidh Overseas (P.) Ltd. (supra). The essential jurisdictional requirement for assumption of jurisdiction under Section 153 C of the Act (as it stood prior to its amendment with effect from 1st June 2015) qua the 'other person' (in this case the assesseees) is that the seized documents forming the basis of the satisfaction note must not merely 'pertain' to the other person but must belong to the 'other person'.

30. In the present case, the documents seized were the trial balance and balance sheets of the two Assesseees for the period 1st April to 13th September 2010 (for ISRPL) and 1st April to 4th September 2010 (for VSIPL). Both sets of documents were seized not from the respective Assesseees but from the searched person i.e. Jagat Agro Commodities (P) Ltd. In other words, although the said documents might 'pertain' to the Assesseees, they did not belong to them. Therefore, one essential jurisdictional requirement

to justify the assumption of jurisdiction under Section 153 C of the Act was not met in the case of the two Assesseees.”

5.6 Thus, respectfully following the aforesaid binding precedent/s and having regard to the undisputed fact that the seized documents, admittedly, do not pertain to the year under consideration, the findings of the Ld. CIT (A) to quash the notice issued under section 153C of the Act is upheld and, therefore, the grounds raised by the Revenue are therefore dismissed and appeal filed by the revenue is rejected. Thus, ITA No. 3595/Del/2015 is dismissed.

5.7 We have already upheld the findings of the Ld. CIT (A) in AY 2004-05 quashing the notice issued under section 153C of the Act and, on identical facts and reasoning, the grounds raised by the Revenue in Assessment year 2005-06 are also dismissed and appeal filed by the revenue is rejected. Thus, ITA No. 3596/Del/2015 is also dismissed.

5.8 Since the appeals filed by the Revenue are dismissed, the Cross Objections filed by the assessee become *in fructuous*. Therefore, the same are also dismissed.

6.0 In the final result, the appeals filed by the Revenue as well as the Cross Objections filed by the assessee are dismissed.

Order pronounced in the open court on 31.10.2018

**Sd/-
(G.D.AGRAWAL)
VICE PRESIDENT**

**Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 31.10.2018

Copy forwarded to:

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

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	30.10.2018
Date on which the typed draft is placed before the dictating Member	30.10.2018
Date on which the typed draft is placed before the Other Member	30.10.2018
Date on which the approved draft comes to the Sr. PS/PS	30.10.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	31.10.2018
Date on which the fair order comes back to the Sr. PS/PS	31.10.2018
Date on which the final order is uploaded on the website of ITAT	31.10.2018
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant	

Registrar for signature on the order	
Date of dispatch of the Order	