

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

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI L.P. SAHU, A.M.

ITA.No.3102/Del./2013  
Assessment Year 2009-2010

Magic Auto (P) Ltd., A-25/34, Connaught Place, New Delhi – 110 001. PAN AAACM4873C	vs.	The ACIT, Central Circle-3, Jhandewalan, New Delhi – 110 055
(Appellant)		(Respondent)

For Assessee :	Shri Salil Kapoor, Ms. Soumya Singh, Ms. Ananya Kapoor, Advocates
For Revenue :	Ms. Paramita M. Biswas, CIT-DR

Date of Hearing :	05.11.2018
Date of Pronouncement :	10.12.2018

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-2, New Delhi, Dated 05.03.2013 for the A.Y. 2009-2010.

2. Brief facts of the case are that search and seizure operation was carried out in the Mahesh Mehta group of cases on 30.06.2009. During the course of search at the residential premises of the assessee at BA-17A, DDA Flats, Phase-1, Ashok Vihar, Delhi, certain documents belonging to the assessee i.e. person other than covered under search under section 132 of the I.T. Act were found and seized. On the basis of documents so seized, after recording satisfaction, assessment proceedings were initiated under section 153C of the I. T. Act. Notice under section 153C was issued on 14.06.2011 for furnishing of returns of income. The assessee submitted that he has filed return on 30.9.2009 under section 139(1) of the I.T. Act, 1961, in which income was declared in a sum of Rs.1.78 crores. The A.O. issued statutory notice for completion of the assessment. It is noted that during the course of search on 30.06.2009 and 01.07.2009 at 15 different places connected with Mahesh Mehta and his associates at different places, large number of incriminating documents/hard disk etc., were found and seized. Among these

documents hand written 'BAHI's' were found and seized from a premises at the backside of the residence of Mahesh Mehta at BA-17A, DDA Flats, Ashok Vihar, Phase-1, Delhi. These four BAHIs were for the period from 01.04.2008 to 30.06.2009 i.e., the date of the search, were cash book, ledger, sale book of Mahesh Mehta group for recording few accounted as well as all unaccounted transactions from all business activities of the group regarding Kattha Manufacturing in M/s. Mahesh Wood Products Pvt. Ltd., and in M/s. Raj Kattha Products Pvt. Ltd., or dealing in real estate properties by the group concerns. These Bahis were written by one Sushil Sharma employee of Mahesh Mehta for the last more than 15 years. His statement was recorded under section 132(4) of the I.T. Act in which he has admitted to have written these BAHIs. He has also stated that figures in the BAHIs dealing with ledger account have been written by suppressing two zeros i.e., 1000 is written as 10. He has also admitted that these BAHIs contained actual record of the business activities of Mahesh Mehta group. In the annexure A-4, the transaction relating to sale of property

by Mahesh Mehta group of companies to the assessee was also noticed. The transaction related to the property situated at 56/7, Karol Bagh, New Delhi (basement and ground floor) which was purchased by the assessee company from M/s. Honest Estates Pvt. Ltd., a company belonging to Mahesh Mehta group. As per the documents seized, it was noticed that M/s. Honest Estates Pvt. Ltd., has sold a property to M/s. Magic Leasing & Finance Pvt. Ltd., and received cash of Rs.3,55,91,000/- apart from the sale consideration as per sale deed. The statement of Mahesh Mehta was recorded on oath 11.09.2009 under section 131(1A) of the I.T. Act before Investigation Wing in which he has explained that an aggregate amount of Rs.7.61 crores was received in the books against the sale of such property and cash of Rs.5,55,91,000/- was received from the assessee and others. The above fact was confronted to Mahesh Mehta who has accepted to have received the above cash from the assessee and agreed to pay tax in A.Y. 2009-2010. Accordingly, survey under section 133A was conducted at the business premises of M/s. Magic

Leasing & Finance Pvt. Ltd., on 18.08.2009. During the course of survey in the premises M/s. Magic Leasing & Finance Pvt. Ltd., Shri Kanwaljit Singh, Director of the assessee company admitted of having purchased the said property from the company of Mahesh Mehta. But on the issue of payment of cash for the purchase of above property, he replied that he will be able to answer this question only after finding out the facts from his family members who were also involved in finalizing the transaction. He assured to provide the answer to this query by 19.09.2009 at 3.00 PM but no compliance have been made by the Director of the assessee company. The A.O. called for the explanation of assessee in this regard. Finally on 23.12.2011 Mahesh Mehta appeared before A.O. and was cross-examined by Shri Kanwaljit Singh on the issue of cash transactions involved in purchase of the above property. During cross-examination of Mahesh Mehta, he admitted of receiving cash from the owner of assessee, but the receipts of the cash amount along with cheques were made by the Agent. Mahesh Mehta has given statement on oath that he did not

remember the name and particulars of the Agent who has received cash on his behalf. The assessee later on explained that Mahesh Mehta is neither the Director nor a shareholder in M/s. Honest Estates (P) Ltd., the seller company. None of his family members are shareholders or Directors of the said company. This shows that he has no connection with the seller company. Therefore, no transaction should be linked between them. Mahesh Mehta has denied meeting any of the Directors of the assessee company and even cannot recognize them. He has also stated that at no point of time, he took any cash from the Directors of the assessee company or their representative. Mahesh Mehta has stated that he had received cash for the above property from a local Agent whose name and address he does not remember. Mahesh Mehta also stated that he has retracted from his statement given by him to the Income Tax Department on 11.09.2009.

2.1. The A.O. however noted that Mahesh Mehta is the key person of the family because he is the lone male member

involved in business activities of KATHA as well as Property and he is managing all the affairs. In the BAHIs unaccounted transactions are recorded. He has, therefore, held that assessee made cash payment of Rs.3,55,91,000/- to Mahesh Mehta group of companies i.e., M/s. Honest Estate Pvt. Ltd., The addition was accordingly made to the returned income. The A.O. also made addition of Rs.3,55,910/- on account of 1% amount paid as brokerage charges. The assessment under section 143(3) r.w.s. 153C was completed vide Order dated 29.12.2011.

3. The assessee challenged the initiation of proceedings under section 153C of the I.T. Act as well as the addition on merits before Ld. CIT(A). It was contended that A.O. has erred in assuming jurisdiction under section 153C by serving a vague and non-speaking notice. No incriminating material was seized in relation to the assessee. No satisfaction had been recorded by the A.O. of the person searched. No documents had been handed-over by the A.O. of the person

searched to the A.O. of the assessee-company. It was submitted that assumption of jurisdiction is invalid and addition on merit is also unjustified because no material was found regarding cash payment paid by assessee over and above what is recorded in sale deed.

4. The Ld. CIT(A) considering the details noted that assessment proceedings were initiated under section 153C in the case of assessee after recording satisfaction on the basis of the search in the case of Mahesh Mehta group. During search, "BAHIs KHATAs" was found and seized. In Annexure A-4 transactions recorded between M/s. Honest Estate Pvt. Ltd., and assessee and other were found containing the sale consideration. The statement of Mahesh Mehta was recorded in which he has admitted receipt of the cash from assessee of Rs.3,55,91,000/- Survey was conducted in the case of the assessee thereafter, but the assessee did not explain about the cash payment. Cross-examination of statement of Mahesh Mehta was accorded. The Ld. CIT(A) accordingly found that

initiation of proceedings under section 153C is justified in the matter and that there are sufficient material on record to make the addition on merit against the assessee. The Ld. CIT(A) also rejected the claim of assessee that the material on the basis of which addition was made did not belong to the assessee because the seized paper referred to the property transaction between the assessee and M/s. Honest Estate Pvt. Ltd., and also mentioned the value of transaction in cheque and cash for which the facts of transaction and payment of cheque by the assessee stands corroborated by the assessee's own books of account. The Ld. CIT(A), accordingly, dismissed the appeal of assessee.

5. The assessee in the present appeal has challenged the Orders of the authorities below in upholding the assumption of jurisdiction under section 153C of the I.T. Act because no document belongs to the assessee were found and seized during the course of search and that no valid satisfaction have been recorded under section 153C of the I.T.

Act in the case of the person searched. The additions on merit are also challenged because no evidence was found to make such addition against the assessee. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has referred to satisfaction note under section 153C of the I.T. Act, copy of which is filed at pages 64 to 66 of the paper book which is recorded in the case of the assessee. He has submitted that since no satisfaction note under section 153C have been recorded in the case of the person searched, therefore, condition precedent of Section 153C are not satisfied in this case. Therefore, entire proceedings are illegal and bad in law. He has referred to the copy of the sale deed in question which is filed at page 68 of the paper book which is recorded for a consideration of Rs.5 crores in respect of the property in question executed on 19.05.2008 between M/s. Honest Estate Pvt. Ltd., seller/vendor and M/s. Magic Leasing & Finance Pvt. Ltd., (vendee/purchaser) i.e., assessee. He has submitted that copy of the sale deed was found from the vendor, therefore, the same did

not belong to the assessee as it belongs to the vendor/seller only. A.O. was, therefore, wholly unjustified in holding that the said sale deed belongs to Mahesh Mehta. There is no evidence found if any amount in cash was paid over and above what is recorded in the sale deed. The contents of BAHIs are incorrect as it did not belong to the assessee. Statement of Mahesh Mehta is not an admissible in evidence and has no evidentiary value. Mr. Sushil Sharma, employee of Mahesh Mehta group of companies who has authored BAHIs was never produced before assessee for cross-examination on behalf of assessee. Therefore, the addition on merit is also not justified. Learned Counsel for the Assessee relied upon the following decisions :

- (1) Pepsi Foods Pvt. Ltd., ACIT 376 ITR 87 (Del.)
- (2) Order of ITAT, Delhi Bench in the case of M/s. DSL Properties (P) Ltd., vs. DCIT Dated 22.03.2013.
- (3) Pepsico India Holdings Pvt. Ltd., vs. ACIT 370 ITR 295 (Del.).
- (4) Pr. CIT vs. Vinita Chaurasia Order dated 20.08.2018 passed by Hon'ble Supreme Court of India, confirming the Order of Hon'ble Delhi High Court dated 18.05.2017 (PB-62 to 76).

- (5) Canyon Financial Services Ltd., vs. ITO 399 ITR 202 (Del.), confirmed by Hon'ble Supreme Court in the case of ITO vs. Canyon Financial Services Ltd., (2018) 90 taxmann.com 169 (SC).

6. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that A.O. in the case of the assessee and the person searched is the same, therefore, satisfaction note have been correctly recorded in the case of the assessee. The seized material belongs to the assessee. Therefore, the plea of the assessee that satisfaction was not recorded by the A.O. of the searched person is factually incorrect. The Ld. D.R. relied upon decision of the Hon'ble Delhi High Court in the case of PCIT vs. Super Malls Pvt. Ltd., (2017) 393 ITR 557 (Del.) on the proposition that the Tribunal could not declare the satisfaction note invalid on hyper technical ground of incorrect terminology used in the said note. The Ld. D.R. also relied upon the decision of Hon'ble Delhi High Court in the case of PCIT vs. Sheetal International Pvt. Ltd., 2017-TIOL-1355-HC-DEL in which it was held that the proceedings under section 153C cannot be invalidated

merely because the A.O. of the searched who is also that of the assessee did not record a separate satisfaction note. The Ld. D.R. filed written submissions in which other similar case Laws have also been relied upon.

7. We have considered the rival submissions and perused the material available on record. An identical issue was considered by ITAT, Delhi 'D' Bench in the case of ACIT vs. M/s. Victory Accommodations Pvt. Ltd., in ITA.No.6238/Del./2014, Dated 27.06.2018 which is reproduced as under :

*“IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES “D” : DELHI*

*BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI L.P. SAHU, ACCOUNTANT MEMBER*

*ITA.No.6238/Del./2014  
Assessment Year 2008-2009*

<i>The Asst. Commissioner of Income Tax, Central Circle- 09, Room No.357, ARA Centre, E-2, Jhandewalan Extn., New Delhi.</i>	<i>VS</i>	<i>M/s. Victory Accommodations Pvt. Ltd., 208, Gupta Tower, Azadpur Commercial Complex, Azadpur, Delhi – 110 033 PAN AACCV3923C</i>
<i>(Appellant)</i>		<i>(Respondent)</i>

<i>For Revenue :</i>	<i>Shri Vijay Verma, CIT-D.R.</i>
<i>For Assessee :</i>	<i>Shri Ved Jain, Advocate</i>
<i>Date of Hearing :</i>	<i>04.06.2018</i>
<i>Date of Pronouncement :</i>	<i>27.06.2018</i>

**ORDER**

***PER BHAVNESH SAINI, J.M.***

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

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

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

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

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

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

*and Sh. Ashish Goel at BN-33, East Shalimar Bagh, Delhi, wherefrom the documents belonging to the assessee-company were found and seized which is "Page No. 102 and 103 of Annexure A-1 of Party V-2 is a copy of the Balance Sheet, Profit & Loss account, pertaining to M/s Victory Accommodations Pvt Ltd. for the financial year ending 31.03.2010." On the basis of the above documents found during the course of search, the Assessing Officer recorded a satisfaction note on 27.02.2013 and issued and served upon the assessee a notice under section 153C of the I.T. Act, 1961. In response to the same, the assessee filed a letter stating that the return filed under section 139(1) may be treated as return filed in response to notice under section 153C of the I.T. Act, 1961. It was claimed, it is filed in protest and objected to initiation of proceedings under section 153C of the I.T. Act. However, the contention of the assessee was rejected. The A.O. accordingly completed the assessment under section 143(3) r.w.s.153C of the I.T. Act vide Order dated 28.03.2013 at a total income of Rs.48*

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

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

*I.T. Act, on the basis of copy of the balance sheet seized during the course of search which pertains to A.Y. 2010-2011. No undisclosed income was unearthed on examination of any documents found in search. Several case Laws were relied upon in support of the same.*

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

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

*provisions of Section 153C. The Ld. CIT(A) called for the assessment record of the assessee-company and found that the AO recorded the satisfaction note in the file of the assessee-company which is reproduced as under:*

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

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

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

The case of M/s Victory Accommodations Pvt. Ltd. was centralized with this office vide F.NO;.CIT-Delhi-

VI/Centralization/2011-12/648 dated 22.06.2011 issued by the CIT, Delhi-VI, New Delhi.

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

27.02.2013

(Sumesh Swani)  
Deputy Commissioner of Income Tax  
Central Circle-09, New Delhi

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

(Sumesh Swani)  
Deputy Commissioner of Income Tax  
Central Circle-09, New Delhi"

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

*issued on the same date. The A.O. who recorded satisfaction note in the file of assessee company is also the same A.O. who issued notice under section 153C in the case of the assessee-company. The Ld. CIT(A) also called for the assessment record of Shri Pramod Goel who was searched under section 132 on 14.09.2010. The A.O. of the searched person Shri Pramod Goel and A.O. of the other person i.e., assessee-company may be same, but, the above two entities are two different persons, therefore, A.O. is bound to carry-out such exercise and the A.O. of the person searched should have recorded satisfaction note during the course of assessment proceedings under section 153A in the case of Shri Pramod Goel in his file and after recording such satisfaction note in the file of Shri Pramod Goel that is the person searched, the same should be placed in the file of the assessee-company i.e., other person. The Ld. CIT(A) on perusal of the assessment record of Shri Pramod Goel found that such exercise of recording satisfaction note in the case under section 153A was not*

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

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

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

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

*merit was also deleted. The appeal of assessee-company was accordingly allowed.*

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

*Pvt. Ltd., vs. CIT dated 25.05.2017 was referred in which it was held that –*

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

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

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

*Circle-26, New Delhi in ITA.No.5499/Del./2017 dated 26.02.2018 in which the documents received by the Government of India from a Sovereign Country containing information regarding the undisclosed foreign accounts were received prior to the search and was confronted to the assessee during the course of search. Therefore, it was held that the same constitutes incriminating material. The Ld. D.R, therefore, submitted that satisfaction note was validly recorded under section 153C of the I.T. Act. On merits, the Ld. D.R. submitted that the name of the parties tally with the additions. The entries were arranged by Shri Tarun Goel, Entry Operator, in whose case, addition have been confirmed. In case, A.O. has not conducted proper enquiry, the Ld. CIT(A) having co-terminus powers, should have exercised the same power by conducting further investigation into the matter and relied upon the decision of Hon'ble jurisdictional Delhi High Court in the case of CIT-II vs. M/s. Jansampark Advertising And Marketing (P) Ltd., 375 ITR 373 (Del.) (HC)*

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

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

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

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

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

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

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

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

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

“Law in this regard is clear and explicit. The only question which arises for our consideration is as to whether the notice dated 06.02.1996 satisfies the requirements of [Section 158BD](#) of

the Act. The said notice does not record any satisfaction on the part of the Assessing Officer. Documents and other assets recovered during search had not been handed over to the Assessing Officer having jurisdiction in the matter.”

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

“As the Assessing Officer has not recorded his satisfaction, which is mandatory; nor has he transferred the case to the Assessing Officer having jurisdiction over the matter, we are of the opinion that the impugned judgments of the High Court cannot be sustained, which are set aside accordingly. The appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.”

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

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

The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitwears in its detailed judgment in Civil Appeal No.3958 of 2014 dated 12.3.2014 (available in NJRS at 2014-LL-0312-51) has laid down that for the purpose of Section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person u/s 158BD. The Hon'ble Court held that "the satisfaction note could be prepared at any of the following stages :

(a) at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; or

(b) in the course of the assessment proceedings under section 158BC of the Act; or

(c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person."

3. Several High Courts have held that the provisions of section 153C of the Act are substantially similar/pari- materia to the provisions of section 158BD of the Act and therefore, the

above guidelines of the Hon'ble SC, apply to proceedings u/s 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.

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

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgement. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD/153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court."

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

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

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

Held, dismissing the appeals, that the reasons assigned by the Assessing Officer in the satisfaction note were silent about the assessment year in which specific incriminating information or unaccounted or undisclosed hidden information was discovered or seized by the Revenue from the assessee. In the circumstances, the general satisfaction and as recorded in the note was not enough. There was absolutely nothing to

indicate as to in which educational courses, the education was imparted and institution wise, whether the admissions were granted to the technical courses merit-wise or on the basis of marks obtained in XII standard HSC exam. Whether any fee structure was approved and cash component was, therefore, collected over and above the sanctioned fees were matters which ought to have been gone into and there could, not be a general or vague satisfaction. The Tribunal was justified in setting aside the assessments.”

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

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

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

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

(ii) That the assessment order passed by the Assessing Officer covered eight assessment years. For six assessment years the assessment was under section 153C of the Act. The assessment order was set aside only in respect of four of those assessment years and on a technical ground. The objection pertaining to the four assessment years in question did not relate to the other tax assessment years, namely, 2004-05 and 2005-06. Nor did this decision have a bearing in respect of assessment for assessment year 1999-2000 or assessment year 2006-07. The necessary

consequence would be that the conclusions of the Assessing Officer in his assessment order regarding the activities of the trust not being genuine and not carried out in accordance with the trust deed or cancellation of registration, denial of benefits of sections 11 and 12 would not be affected by this judgment."

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

"On the search conducted in the case of A and group on November 25, 2003, material pertaining to "on-money" payment paid to the assessee in respect of property purchased from the assessee were seized. Based on that, the Assessing Officer issued notice under section 153C of the Income-tax Act, 1961, and reworked the capital gains. The Commissioner (Appeals) and the Tribunal held that the notice under section 153C was not valid. On appeal to the High Court:

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

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

- The assessee had a case for quashing of proceedings under section 153C. No material is produced to prove that the Assessing Officer in the case of person searched was satisfied that any money, bullion, jewellery or other valuable article or things or books of account or documents seized or

requisitioned belongs to or belong to a person other than the person referred to in section 153A.

- No material is produced before to show if any satisfaction was recorded by the Assessing Officer in that case that the material belongs to any person other than the person with respect to whom search was made under section 132. Department did not produce any material to show if any such satisfaction as required under section 153C was recorded by the Assessing Officer in the case of person searched. No material is produced in reference to above requirement.
- No material is also produced before to show that books of account or documents or assets seized had been handed over to the Assessing Officer having jurisdiction over such other person. In the absence of any adequate material produced by the department contention of the assessee was justified that in this case, the Assessing Officer had not recorded any

satisfaction that any seized document or material belongs to any person other person searched.

- Since the revenue is in appeal, therefore, burden was upon them to prove that necessary ingredients of section 153C have been complied with in this case before invoking jurisdiction under section 153C.
- It is added further here that the Assessing Officer has not referred to any seized document or material in the assessment orders on the basis of which, additions on merit have been made. Therefore, the conditions of section 153C as noted above are also not satisfied in this case. Therefore, there is no infirmity in the order of the Commissioner (Appeals) in quashing the proceedings under section 153C."

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

“Assessment framed u/s 153C - absence of satisfaction note  
- Held that:- From the plain reading of the Circular No. 24/2015 dated 31.12.2015 issued by the Central Board of Direct Taxes, it is crystal clear that even if the AO of the searched person and of the other person is one and the same then he is required to record his satisfaction in the case of searched person.

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

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

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

reopened in the case of both assessee's. Secondly, they cannot be said to be incriminating". Consequently, it was found that "even the second essential requirement for assumption of jurisdiction under section 153C of the I.T. Act, was not met in the case of the two assessee's".

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

*assessment order under section 143(3)/ 153C of the I.T. Act. The Ld. CIT(A) also called for the assessment record of the person searched Shri Pramod Goel and it was found that no such satisfaction have been recorded in the case of the person searched relating to the assessee-company. It is, therefore, clear that no satisfaction note as required by Law have been recorded in the case of the person searched i.e., Shri Pramod Goel so as to initiate proceedings against the assessee-company under section 153C of the I.T. Act. It may also be noted here that initially the A.O. proceeded against the assessee-company under section 153A of the I.T. Act, on the premise that search was conducted against the assessee-company under section 132 of the I.T. Act, therefore, he has issued notice under section 153A of the I.T. Act against the assessee-company. When it was found later on, that no search have been conducted in the case of assessee-company, therefore, notice under section 153A was withdrawn. The A.O. of the assessee later on recorded satisfaction note*

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

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

*distinguishable. We, therefore, do not find any infirmity in the order of the Ld. CIT(A) in holding that initiation of proceedings under section 153C of the I.T. Act are improper and bad in law. No interference is called for. Ground Nos. 1 and 2 of the appeal of the Revenue are accordingly dismissed.*

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

*the assessee-company. The A.O. did not make any independent enquiry on the documents furnished by the assessee-company. Therefore, Ld. CIT(A), correctly deleted the addition on merit. Since, we have confirmed the order of the Ld. CIT(A) with regard to Ground Nos. 1 and 2 that initiation of proceedings under section 153C is illegal and bad in law, therefore, no further findings are given on merits. In view of the above discussion, the Departmental Appeal stands dismissed.*

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

8. In the present case, the A.O. of the assessee recorded the satisfaction note under section 153C of the I.T. Act, copy of which is filed at pages 64-66 of the paper book which reads as under :

*“Satisfaction Note for issue of notice u/s 153 C of the I.T. Act  
13.06.2011*

*Name of the Assessee : M/s. Magic Leasing & Finance Pvt. Ltd.,*

*PAN : AAACM4873C*

*Search and seizure action u/s 132 of the I.T. Act was carried out on 30-06- 2009 at the residential as well as business premises of Shri Mahesh Mehta at B-121, Ashok Vihar .Delhi, BA-17A, DDA Flat, Ashok Vihar, Delhi and 2042, Katra Tobacco, . During the course of pendency of assessment proceedings in the case of Shri Mahesh Mehta for AY 2004-05 to 2010-11 ( U/s 153 A/ 143 (3) ), the material seized from the premises of the assessee has been examined. After examining such seized material, I am satisfied that the following seized documents belong to persons other than Shri Mahesh Mehta . The detail of such paper is as under*

<i>Annexure No.</i>	<i>Page No. of Annexure</i>	<i>Brief description of documents</i>	<i>Person to whom the documents belongs.</i>
<i>Ann A-4 Party S-2</i>	<i>93</i>	<i>The document is details of accounted as well as unaccounted receipts of Rs.5.50 crores from M/s. Magic Leasing &amp; Finance Pvt. Ltd, Shri Udai Kumar</i>	<i>M/s. Magic Leasing &amp; Finance Pvt. Ltd.,</i>

		<i>Vaish and Smt Maya Gupta w/o Shri Udai Kumar Vaish. For sale of property no 56/7- Karol Bagh, New Delhi.</i>	
<i>Ann A-5 Party S-2</i>	<i>1 to 179</i>	<i>These pages are in respect of M/s Honest Estate Pvt. Ltd. This company sold property 56/7 Karol Bagh, New Delhi to M/s Magic Leasing &amp; Finance Pvt. Ltd , Shri Udai Kumar Vaish and Smt Maya Gupta w/o Shri Udai KumarVaish.</i>	<i>M/s. Magic Leasing &amp; Finance Pvt. Ltd.,</i>

2. During the year 2008-09, Mahesh Mehta sold a property bearing Number 56/7 Karol Bagh, Delhi through his company M/s Honest Estate Pvt. Ltd. The basement and ground floor was sold to a company M/s Magic Leasing & ; Finance Pvt. Ltd. (Maruti car dealer by the name Magic Auto). The first and second floors were sold to one Udai Kumar Vaish, who run a coaching-class at the premises now. He has admitted having received unaccounted cash of Rs. 5.55 Crore on account of sale

*of this property. Mahesh Mehta, seller of property, has admitted having received cash from both Udai Kumar Vaish and M/s Magic Leasing & Finance Pvt. Ltd. He has admitted to have received cash of Rs. 2 crore from Udai Kumar Vaish and cash of Rs. 3.5 crore from M/'s Magic Leasing & Finance Pvt. Ltd. on the basis of entries mentioned on seized documents. During the course of post search investigation a survey was carried out at the business premises of the assessee company. M/s Magic Leasing & Finance Ltd. is leading car dealer of Maruti by the brand name Magic Auto and has four show rooms at Dwarka, Karol bagh, Connaught place and. Maya puri. During the course of survey, statement of Kanwajit Singh Kochhar, Director of M/s Magic Leasing & Finance PvtLtd, was recorded. He denied having given any cash to Mahesh Mehta for the purpose of purchase of this property<sup>7</sup>. Though Kunwajit Singh Kochhar has denied having given any cash to Mahesh Mehta but he has admitted giving cheques of Rs. 1,10,00,000/- as earnest money to M/s M.A. Projects Pvt. Ltd., a company controlled by Mahesh Mehta. The relevant portion of the statement of Kanwajit Singh*

*Kochhar, dated 19.10.209, recorded during post-search investigation, is as under :-*

*....Please state whether you or any persons connected with you or M/s Magic Leasing and Finance Pvt. Ltd, have done any transaction with M/s M.A Projects Pvt. Ltd. If yes, please give details thereof ?*

*Ans : There was some advance given to M/s M.A.Projects by the directors of M/s Magic Leasing and Finance Pvt Ltd. i.e. myself and Mr. Kanwal Ajit Singh. These advances were given at the time of initial negotiation and structuring of the transactions as earnest money. This amount was refunded back to us once the deal was finalised with M/s Magic Leasing and Finance Pvt. Ltd. to buy the property from M/s Honest Estates Pvt. Ltd. i.e. 7/56, D.B. Gupta Road, Karol Bagh, Delhi. Details of the same would be submitted by me or my authorised representatives tomorrow.*

*” Later, copy of account was submitted by the Authorised Representative of M/s Magic Leasing & Finance Pvt. Ltd. These*

*payments by cheque to M/s M.A. Projects Pvt. Ltd. are appearing on page 93 of Annexure A-4, Party S- 2 (hand written BAH). This page -is the account of property 56/7 D.B. Gupta Road Karol Bagh on which cheque & cash consideration are . mentioned. In view of the fact that cheque admitted to have been paid by the assessee company is found to be entered in the seized documents along with other payment admitted to have been received by the seller, there is no merits in the submission of the assessee company, that no cash was paid for purchase of the said property”.*

*3. In view of the facts stated above it is evident that documents belonging to the assessee have been seized from a person covered under search u/s 132 of the I.T. Act, 1961, Hence proceedings u/s. 153C are being initiated for AY ; 2004-05 to 2009-10.*

*Sd/- xxxx*

*ACIT, Central Circle-3, New Delhi”.*

*16.06.2011 : Issue Notice under section 153C of the I.T.Act.  
Photo copy of the satisfaction note placed in cover for the A.Ys.  
2005-2006 to 2009-2010.*

*Sd/-xxx  
ACIT,”*

8.1. It is well settled law that recording of the satisfaction by the A.O. of the person searched is a condition precedent for initiating action under section 153C of the I.T. Act. However, in the present case, no satisfaction under section 153C of the I.T. Act have been recorded in case of the person searched i.e., Manish Mehta group of cases. The language of the satisfaction note reproduced above clearly show that it is recorded in the case of the assessee on 13.06.2011 and notice under section 153C have been issued on 14.06.2011 by ACIT, CC-3, New Delhi who has framed the assessment under section 153C of the I.T. Act in the case of the assessee. It is, therefore, clear that no satisfaction note as required by Law have been recorded in the case of the person searched i.e., Manish Mehta group of cases in whose case search have been conducted. Learned Counsel for the Assessee relied upon decision of Hon'ble Delhi High Court in the case of Pepsico India Holdings Pvt. Ltd., vs. ACIT (supra) in which the Hon'ble Delhi High Court in para-16 held as under :

“16. Thirdly, we would also like to make it clear that the assessing officers should not confuse the expression “belongs to” with the expressions “relates to” or “refers to”. A registered sale deed, for example, “belongs to” the purchaser of the property although it obviously “relates to” or “refers to” the vendor. In this example if the purchasers premises are searched and the registered sale deed is seized, it cannot be said that it “belongs to” the vendor just because his name is mentioned in the document. In the converse case if the vendor’s premises are searched and a copy of the sale deed is seized, it cannot be said that the said copy “belongs to” the purchaser just because it refers to him and he (the purchaser) holds the original sale deed. In this light, it is obvious that none of the three sets of documents – copies of preference shares, unsigned leaves of cheque books and the copy of the supply and loan agreement – can be said to “belong to” the petitioner.”

8.2. Learned Counsel for the Assessee pointed-out that in the present case BAHIs was found during the course of search from the possession of Manish Mehta group of cases which is not incriminating in nature against the assessee. Copy of the sale deed was also found in which the seller is M/s. Honest Estate Pvt. Ltd., for selling the Karol Bagh property to the assessee company. Therefore, when such copy of the document was found from the possession of the seller, it would not relate to the assessee as is held in the case of Pepsico India Holdings Pvt. Ltd., vs. ACIT (supra). Learned Counsel for the Assessee pointed out that search in the present case is conducted on 30.06.2009 i.e., prior to the amendment in Section 153C of the I.T. Act w.e.f. 01.06.2015, therefore, it is not open to the Revenue to seek to point-out that the documents in question pertain to or relates to the assessee and relied upon decision of Hon'ble Delhi High Court in the case of Mr. Vineet Chourasia (supra) which is confirmed by the Hon'ble Supreme Court. The Hon'ble Supreme Court in

the case of ITO vs. Canyon Financial Services Ltd., (supra) held as under :

*“SLP dismissed against High Court's ruling that where Assessing Officer of assessee had not proved that seized documents belonged to assessee and not to searched person and no reason was recorded how satisfaction notes recorded by Assessing Officer of assessee and Assessing Officer of searched person were identically worded carbon copy, proceedings could not be initiated against assessee under section 153C.”*

8.3. Considering the above discussion in the light of the Order of the tribunal in the case of M/s. Victory Accommodations Pvt. Ltd., (supra), it is proved on record that A.O. of the person searched has not recorded any satisfaction note. Such satisfaction note under section 153C has been recorded by the A.O. of the assessee, therefore, condition of Section 153C are not satisfied in the present case. Further, the A.O. has failed to prove that any documents seized belong

or belongs to the person other than the person searched under section 153A of the I.T. Act. No incriminating material was seized during the assessment year under appeal. Even during the course of survey, no incriminating material was found against the assessee. The statement of Manish Mehta was recorded on 11.09.2009 after the search and was subjected to cross-examination on behalf of the assessee in which the assessee pointed-out several infirmities and inconsistencies because Manish Mehta was not connected with the seller M/s. Honest Estate Pvt. Ltd., and he denied meeting any of the Directors of the assessee-company. He has also stated that at no point of time he takes any cash from the Directors of the assessee-company. He has stated that cash was received from a local Agent whose name and address he does not remember. Further Manish Mehta retracted from his statement, therefore, such statement has no evidentiary value because the Revenue has failed to record statement of any of the Agent who have allegedly received any cash against the sale of the property. No evidence have been found on record to justify payment of cash

against the property on behalf of the assessee-company over and above what is recorded in the sale deed. The person who has recorded BAHIs found during the course of search was not subjected to cross-examination on behalf of the assessee. Therefore, these facts clearly show that initiation of proceedings under section 153C of the I.T. Act is invalid and bad in law and there were no justification to make any addition against the assessee-company. The decisions relied upon by the Ld. D.R. are clearly distinguishable from the facts of the case and would not support the case of the Revenue. Therefore, the decisions cited in the written submissions of the Ld. D.R. are not discussed in the order because it would only enhance the length of this order. Considering the above discussion, we set aside the Orders of the authorities below, quash the proceedings under section 153C of the I.T. Act and delete the entire addition.

9. In the result, appeal of Assessee is allowed.

Order pronounced in the open Court.

Sd/-  
(L.P. SAHU)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 10<sup>th</sup> December, 2018

VBP/-

Copy to

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

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi