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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 2576/Del/2010
Assessment year: 2003-04

ITA No. 2577/Del/2010
Assessment year: 2004-05

ITA No. 2578/Del/2010
Assessment year: 2005-06

Lords Distillery Limited, 18, Community Centre, New Friends Colony, New Delhi. (PAN: AAACL5636A)	Vs	DCIT, Central Circle 19 New Delhi.
Appellant		Respondent

Assessee by: Shri C.S. Agarwal, Senior Advocate

Department by: Shri S.S. Rana, CIT DR

ITA No. 454/Del/2010
Assessment year: 2000-01

ITA No. 455/Del/2010
Assessment year: 2001-02

ITA No. 456/Del/2010
Assessment year: 2002-03

DCIT, Central Circle 19, Room No. 319, ARA Centre, E-2, Jhandewalan Extn., New Delhi.	Vs	Sir Shadi Lal Enterprises Ltd., 4-A, Hansalaya, 15, Barakhamba Road, New Delhi-110001 (PAN: AAECS3636D)
Appellant		Respondent

ITA No. 1864/Del/2010
Assessment year: 2003-04

ITA No. 2678/Del/2011
Assessment year: 2004-05

ITA No. 2679/Del/2011
Assessment year: 2005-06

C.O. 67/Del/ 2010
(IN ITA No. 454/Del/2010)
Assessment year: 2001-02

C.O. 68/Del/ 2010
(IN ITA No. 455/Del/2010)
Assessment year: 2001-02

C.O. 69/Del/ 2010
(IN ITA No. 456/Del/2010)
Assessment year: 2002-03

Sir Shadi Lal Enterprises Ltd., 4-A, Hansalaya, 15, Barakhamba Road, New Delhi-110001 (PAN: AAECS3636D	Vs	DCIT, Central Circle 19, Room No. 319, ARA Centre, E-2, Jhandewalan Extn., New Delhi.
Appellant		Respondent

Assessee by: Shri G.N. Gupta, AR
Department by: Shri S.S. Rana, CIT DR

ITA No. 1310/Del/2012
Assessment year : 2000-01

ITA No. 1311/Del/2012
Assessment year : 2001-02

ITA No. 1312/Del/2012
Assessment year : 2002-03

ITA No. 1537/Del/2012
Assessment year : 2003-04

ITA No. 1538/Del/2012
Assessment year : 2004-05
ITA No. 1539/Del/2012
Assessment year : 2005-06

ITA No. 4692/Del/2012
Assessment year : 2006-07

Saraya Industries Ltd., 309, D-2, Southern Park, Saket Place, New Delhi-110017 (PAN: AAACS0205Q)	Vs	DCIT, Central Circle-19, ARA Centre, Jhandewalan Extn., New Delhi.
Appellant		Respondent

ITA No. 1563/Del/2012
Assessment year : 2004-05

ITA No. 1564/Del/2012
Assessment year : 2005-06

ACIT, Central Circle-19, ARA Centre, Jhandewalan Extn., New Delhi.	Vs	Saraya Industries Ltd., 308, D-2, DDA Distt. Centre, Saket, New Delhi-110017 (PAN: AAACS0205Q)
Appellant		Respondent

Assessee by: Shri Satyajeet Goel, CA
Department by: Shri S.S. Rana, CIT DR

ITA No. 1654/Del/2013
Assessment year : 2003-04

ITA No. 1655/Del/2013
Assessment year : 2004-05

ITA No. 1656/Del/2013
Assessment year : 2005-06

ITA No. 1657/Del/2013
Assessment year : 2006-07

ITA No. 2013/Del/2012
Assessment year : 2006-07

SVP Industries Ltd., Village & PO Mansoorpur, District Muzafarnagar, Uttar Pradesh. (PAN: AAECS3637C)	Vs	DCIT, Central Circle-19, ARA Centre, Jhandewalan Extn., New Delhi.
Appellant		Respondent

Assessee by: Shri M.P. Rastogi, Adv.
Department by: Shri S.S. Rana, CIT DR

ITA No. 457/Del/2010
Assessment year : 2002-03

DCIT, Central Circle-19, ARA Centre, Jhandewalan Extn., New Delhi.	Vs	Kesar Enterprises Ltd., Oriental House-7, Jamshedji Tata Road, Churchgate, Mumbai. (PAN: AABCK7328R)
Appellant		Respondent

C.O. No.84/Del/2010
(In ITA No. 457/Del/2010)
Assessment year : 2002-03

ITA No. 2226/Del/2010
Assessment year : 2003-04

ITA No. 2227/Del/2010
Assessment year : 2004-05

ITA No. 3328/Del/2011
Assessment year : 2005-06

Kesar Enterprises Ltd., Oriental House-7, Jamshedji Tata Road, Churchgate, Mumbai. (PAN: AABCK7328R)	Vs	DCIT, Central Circle-19, ARA Centre, E-2 Jhandewalan Extn., New Delhi.
Appellant		Respondent

Assessee by: Shri G.N. Gupta, AR
Department by: Shri S.S. Rana, CIT DR

ITA No. 2071/Del/2010
Assessment year : 2003-04

ITA No. 2072/Del/2010
Assessment year : 2004-05

ITA No. 2073/Del/2010
Assessment year : 2005-06

ITA No. 5056/Del/2011
Assessment year : 2006-07

M/s Narang Distillery Ltd., C/o M/s RRA Textiles, D-28, South Extn. Part-1, New Delhi-110049 (PAN: AABCN4909R)	Vs	DCIT, Central Circle-19, ARA Centre, Jhandewalan Extn., New Delhi.
Appellant		Respondent

ITA No. 2827/Del/2010
Assessment year : 2004-05

DCIT, Central Circle-19, ARA Centre, Jhandewalan Extn., New Delhi.	Vs	M/s Narang Distillery Ltd., 8A/15 WEA, Karol Bagh, New Delhi. (PAN: AABCN4909R)
Appellant		Respondent

Assessee by: Shri Abhishek Arora, Adv.
Department by: Shri S.S. Rana, CIT DR

ITA No. 1658/Del/2010
Assessment year : 2003-04

ITA No. 1871/Del/2010
Assessment year : 2004-05

C.O. No. 127/Del/2010
(IN ITA No. 1042/Del/2010)
Assessment year : 2000-01

C.O. No. 128/Del/2010
(IN ITA No. 1043/Del/2010)
Assessment year : 2001-02

C.O. No. 129/Del/2010
(IN ITA No. 1044/Del/2010)
Assessment year : 2002-03

M/s National Industrial Corporation Ltd., 801-803, Ashok Bhawan, 93, Nehru Place, New Delhi-110019 (PAN: AAACN0628E)	Vs	DCIT, Central Circle-19, New Delhi.
Appellant		Respondent

ITA No. 1042/Del/2010
Assessment year : 2000-01

ITA No. 1043/Del/2010
Assessment year : 2001-02

ITA No. 1044/Del/2010
Assessment year : 2002-03

ITA No. 2806/Del/2010
Assessment year : 2003-04

ITA No. 2807/Del/2010
Assessment year : 2004-05

DCIT, Central Circle-19, New Delhi.	Vs	M/s National Industrial Corporation Ltd., 801-803, Ashok Bhawan, 93, Nehru Place, New Delhi-110019 (PAN: AAACN0628E)
Appellant		Respondent

Assessee by: Shri Salil Kapoor, Adv.
Department by: Shri S.S. Rana, CIT DR

ITA No. 2053/Del/2010
Assessment year : 2000-01

ITA No. 2054/Del/2010
Assessment year : 2002-03

ITA No. 2772/Del/2012
Assessment year : 2004-05

ITA No. 2773/Del/2012
Assessment year : 2005-06

ITA No. 2774/Del/2012
Assessment year : 2006-07

DCIT, Central Circle-19, Room No. 319, ARA Centre, E-2, Jhandewalan Extn., New Delhi.	Vs	Modi Industries Ltd., Modi Nagar, Ghaziabad. (PAN: AAACM2063Q)
Appellant		Respondent

ITA No. 2177/Del/2012
Assessment year : 2004-05

ITA No. 2178/Del/2012
Assessment year : 2005-06

ITA No. 2496/Del/2010
Assessment year : 2003-04

ITA No. 2151/Del/2012
Assessment year : 2006-07

Modi Industries Ltd., Modi Nagar, Ghaziabad. (PAN: AAACM2063Q)	Vs	DCIT, Central Circle-19, New Delhi.
Appellant		Respondent

Assessee by: Ms Deepashree Rao, Advocate
Department by: Shri S.S. Rana, CIT DR

ITA No. 5572/Del/2014
Assessment year : 2006-07

ITA No. 4215/Del/2010
Assessment year : 2003-04

ITA No. 4216/Del/2010
Assessment year : 2004-05

ITA No. 4217/Del/2010
Assessment year : 2005-06

Simbholi Sugars Ltd., C-11, Connaught Place, New Delhi. (PAN: AABCS9972P)	Vs	DCIT, Central Circle-19, New Delhi.
Appellant		Respondent

ITA No. 3001/Del/2014
Assessment year : 2006-07

ACIT, Central Circle-19, New Delhi.	Vs	M/s Simbholi Sugars, (Formerly M/s Simbholi Sugar Mills Ltd.), C-11, Connaught Place, New Delhi. (PAN: AABCS9972P)
Appellant		Respondent

Assessee by: Shri Abhishek Arora, Advocate
Department by: Shri S.S. Rana, CIT DR

ITA No. 458/Del/2010
Assessment year : 2000-01

DCIT, Central Circle-19, Room No. 319, ARA Centre, E-2, Jhandewalan Extn., New Delhi.	Vs	M/s Superior Industries Ltd., 6, KM Stone, Rampur Road, Clutter Buck Ganj, Bareilly. (PAN: AACCS2277G)
Appellant		Respondent

ITA No. 720/Del/2012
Assessment year : 2001-02

ITA No. 721/Del/2012
Assessment year : 2002-03

ITA No. 722/Del/2012
Assessment year : 2003-04

ITA No. 1022/Del/2012
Assessment year : 2004-05

ITA No. 1023/Del/2012
Assessment year : 2005-06

ITA No. 1024/Del/2012
Assessment year : 2006-07

M/s Superior Industries Ltd., 6, KM Stone, Rampur Road, Clutter Buck Ganj, Bareilly. (PAN: AACCS2277G)	Vs	DCIT, Central Circle-19, New Delhi.
Appellant		Respondent

Assessee by: Shri Abhishek Arora, Advocate
Department by: Shri S.S. Rana, CIT DR

ITA No. 9/Del/2012
Assessment year : 2001-02

ITA No. 10/Del/2012
Assessment year : 2002-03

ITA No. 11/Del/2012
Assessment year : 2007-08

ITA No. 3208/Del/2013
Assessment year : 2005-06

ITA No. 3209/Del/2013
Assessment year : 2004-05

ITA No. 3210/Del/2013
Assessment year : 2003-04

ITA No. 3211/Del/2013
Assessment year : 2006-07

U.P. Distillers Association, PHD House, 4th Floor, 4/2, Siri Institutional Area, August Kranti Marg, New Delhi-110016 (PAN: AAATU0170H)	Vs	DCIT, Central Circle-19, New Delhi.
Appellant		Respondent

Assessee by: K. Sampat, Advocate
Department by: Shri S.S. Rana, CIT DR

ITA No. 1648/Del/2013
Assessment year : 2000-01

ITA No. 1649/Del/2013
Assessment year : 2001-02

ITA No. 1650/Del/2013
Assessment year : 2002-03
ITA No. 1651/Del/2013
Assessment year : 2003-04

ITA No. 1652/Del/2013
Assessment year : 2004-05

ITA No. 1653/Del/2013
Assessment year : 2005-06

DCIT, Central Circle-19, Room No. 319, E-2, ARA Centre, Jhandewalan Extension, New Delhi.	Vs	DCM Shriram Industries Ltd., 6th Floor, Kanchenjunga Building, 18, Barakhamba Road, New Delhi. (PAN: AAACD0204C)
Appellant		Respondent

C.O. No. 126/Del/2013
(IN ITA No. 1648/Del/2013)
Assessment year : 2000-01

C.O. No. 127/Del/2013
(IN ITA No. 1649/Del/2013)
Assessment year : 2001-02

C.O. No. 128/Del/2013
(IN ITA No. 1650/Del/2013)
Assessment year : 2002-03

C.O. No. 129/Del/2013
(IN ITA No. 1651/Del/2013)
Assessment year : 2003-04

C.O. No. 130/Del/2013
(IN ITA No. 1652/Del/2013)
Assessment year : 2004-05

C.O. No. 131/Del/2013
(IN ITA No. 1653/Del/2013)
Assessment year : 2005-06

DCM Shriram Industries Ltd., 6th Floor, Kanchenjunga Building, 18, Barakhamba Road, New Delhi.	Vs	DCIT, Central Circle-19, Room No. 319, E-2, ARA Centre, Jhandewalan Extension, New Delhi.
Appellant		Respondent

Assessee by: Shri R.K. Kapoor, CA
Department by: Shri S.S. Rana, CIT DR

O R D E R

PER BENCH:-

The Jurisdictional High Court of Delhi, vide order dated 22.01.2015, has considered a batch of appeals preferred by the Revenue, challenging the common order of the Tribunal dated 23.11.2012.

2. The question of law, sought to be urged by the Revenue is as to whether section 153C of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short], to the extent it, inter alia, enables the Assessing Officer to issue notice to third parties, on the basis of satisfaction that "any money, bullion, any jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person" referred to in section 153A i.e. the person searched, is wide enough to lead to a notice only on the basis of entries in some documents.

3. The relevant findings of the Hon'ble High Court read as under:

> *"The revenue urges that the Assessing Officer and the CIT(Appeals) took note of not merely the document which listed out the payments made in a tabular form for different purposes, but also other documents and materials in the form of production figures, the statement of Mr. R K Miglani, and the circumstance that the production figures coincide with the figures available with the revenue in the pending proceedings. It appears that the ITAT has not rendered any specific findings on the status of such documents. For instance, if the production figures were in fact forwarded by the concerned unit under a letter or some other form*

connecting it with the material form seized, inference would be of particular kind.

6. Having regard to these factors, this Court is of the opinion that the ITAT should render specific findings as to the status of the documents and in that sense, connect with the concerned assessee's third parties who were issued notice under Section 153C, and not merely the general nature of the documents in the form of production figures or amounts tabulated in a chart. This would give a clearer picture as to whether any document or material seized during the course of the proceedings belonged to any of the assessees.

7. We refrain from expressing any final opinion in the matter even on the contentions urged. Instead, we remit the matter for reconsideration on the lines indicated above. The ITAT shall refer to the material in entirety in respect of each assessee and render specific findings on this aspect. All ITA Nos.429-433/2013, 522/2013, 530/2013, 534-537/2013, 252-256/2014, 418-423/2014, 447/2014, 759-761/2014 & 782-784/2014 Page | 7 rights and contentions of the parties, including that of the revenue, if they feel aggrieved against the orders of the ITAT, are kept open. It is also clarified that the findings of the ITAT, if adverse to the revenue, are open to challenge.

8. The above appeals are remitted to the ITAT for fresh consideration. ITAT shall consider and render findings on the grounds raised by or in the appeals before it by the concerned assessees. It is clarified that this is not a limited remand and the ITAT shall proceed to hear the merits of the appeals pending before it on other grounds as well."

4. Accordingly, the matters relating to Mohan Meakins Limited, National Industries Corporation Ltd, Superior Industries Ltd, DCM Shriram Industries Ltd, Saraya Industries, M/s Lords Distillery Limited and National Industrial Corporation Ltd were remitted to the Tribunal for reconsideration on the lines indicated in the said order of the Hon'ble High Court.

5. The representatives of the captioned assessees were heard at length. In addition to their respective oral submissions, each of them also preferred written synopsis.

6. The ld. CIT-DR was also heard at length, who also preferred to file written synopsis alongwith certain documents, which formed the basis of satisfaction note and ultimately the assessment orders framed u/s 153C of the Act.

7. Arguing his case for UPDA, the ld. AR Shri Sampat vehemently stated that the revenue has misguided the Hon'ble High Court in as much as all the documents were very much there in the paper book filed before the Tribunal in the first round of litigation though they were not annexed with the assessment order.

8. It is true that the Assessing Officer has annexed certain impounded documents/loose sheets as part of the assessment order which were not filed by the appellant alongwith appeal memo. It is equally true that each and every document was filed in the paper book and each and every document was considered by the Tribunal while deciding the issues in the first round of litigation.

9. Presenting his case for Lords Distillery Limited, Shri C.S. Agarwal, the ld. Sr. Adv for the assessee pointed out that without framing any substantial question of law, the Hon'ble High Court has remitted the matter to the Tribunal.

10. Be that as it may, we have carefully considered the orders of the authorities below. We have also given thoughtful consideration to the written synopsis filed by each representative of the captioned appeals

and have also considered the judicial decisions relied upon. The contentions of the ld. CIT-DR were also considered carefully alongwith his written synopsis.

11. We will first address the common grievance of the captioned assessees and thereafter, we will address the grievances of each assessee separately.

COMMON GRIEVANCE NO. 1

WHETHER THE NOTE OF SATISFACTION RECORDED BY THE ASSESSING OFFICER SATISFIES THE LEGAL REQUIREMENT OF VALID INITIATION OF PROCEEDINGS U/S 153C OF THE I.T. ACT, 1961?

12. The satisfaction recorded by the Assessing Officer is reproduced as under:

"*Sir,*

SUB: - SATISFACTION NOTE FOR ACTION U/S 153C OF INCOME TAX ACT, 1961 IN' THE CASE OF M/S. SIR SHAD! LAL ENTERPRISES LIMITED, 4A, HANSALAYA, 15, BARAKHAMBA ROAD, NEW DELHI APPEARING IN THE DOCOMENTS SEIZED IN M/S RADICO KHAITAN GROUP OF CASES – REGARDING

It has come to my knowledge that you exercise jurisdiction over the case of M/s. Sir Shadi Lai Enterprises Limited..

Search and seizure actions under section 132 of I.T. Act 1961 were taken on M/s Radico Khaitan Limited group of cases and also at the residence of Shri R.K. Miglani, Secretary General of UPDA on 14.2.2006. Simultaneously a survey u/s 133 A of the I.T. Act, 1961 was carried out at the office of the L'PDA (Uttar Pradesh Distillery Association). Various incriminating documents were found and seized therefrom. Action u/s 153A has been initiated against, various persons including M/s Radico Khaitan Ltd, and Shri R.K. Miglani. During the course of search various documents were seized / impounded and statements u/s 132(4) / 133 A were recorded including those of Shri R.K. Miglani.

The scrutiny of incriminating documents found at the residence of Shri Miglani and also from the office of UPDA reveals that illegal payments were made by various Distilleries to various public servants. The UPDA acted as the nodal agency for making these illegal payments. The total of such illegal payments which are inadmissible expenditures works out to Rs.246 crore as per details given hereunder {as understood from annexure A-l & A-2 seized from the residential premises of Shri R K Miglani}:-'

S.No.	Name of the Distillery	2002-03	2003-04	2004-05 (Till Jan)	2005-06	Total (in Lakhs
1.	Saraya	945	1045	527.5	690 (Saraya+ Balrampur	3207.5
		804	1.13	636.9	889.6	3464.5
2	Rampur	752	945	599.4	705.6-	3002
3	SSL (Mansurpur)	463	607	374.8	591	2035.8
4	Lords (D.K. Modi)	582	616	404.9	486.9	2089.8
5	Daurala (DCM)	374	453	310.2	448.6	1585.8
6	Kesar (Baheri)	419	317	176.3 '	245	1157.3
8	NIC (National)	327	359	242.4	348.6	1277
9	Simbholi	298	472	278.5	583.1	1631.6
10	Balrampur	298	328	244.5		870.5
11	Narang	61	153	105.1	235.7	554.8
12	**Pilkhani	162	339	185.3	213.6	899.9
13	**Shamli	93				93
14	Cooperative	150	182	99.8	194.8	626.6
15	***M. Meakins	202	334	204.2	275.6	1015.8
16	Central	22	44	32.4		98.4
17	Modi	21	125	149.7	308.8	604.5
18	Superior/ITRC	6	46	34.7	233.6	320.3
19					72.5	72.5
	TOTAL	59.80Cr.	75Cr.	46.10Cr.	65.23C	246.076Cr

The distilleries appearing at S.No.12 & 13 belong to M/s Sir Shadi Lal Enterprises Ltd.

So, from the above chart, the total of such illegal payments in respect of M/S. Sir Shadi Lai Enterprises Limited, 4A, Kansalaya, 15, Barakhamba Road, New Delhi, which are inadmissible expenditure works out to Rs. 992.9 lakh, as per details given hereunder:-

S. No.	Name of the Distillery	2002-03	2003-04	2004-05	2005-06 (tillJan.)	Total (in lakhs
1.	Pilkhani	162	339	185.3	213.6	899.9
2.	Shamli	93				93

M/s Saraya Industries Ltd. has taken over these country liquor division of M/s Balrampur Chini Mills Ltd. in the Financial Year 2005-06, so there are illegal payments by M/s Balrampur Chini Mills Ltd. in this year.

Pilkhani and Shamli Distilleries are owned by the same Sir Shadi Lal Group, so till a part of Financial Year 2003-04, the illegal payment amount has been calculated separately, but thereafter it has been clubbed.

For M/s Mohan Meakins Group also the Lucknow and Ghaziabad Distilleries are clubbed, through the major production/illegal payments come from Lucknow Distillery operations.

M/S Majhola Distillery started making illegal payments in the Financial Year 2005-06.

These illegal payments to public servants are fixed on the basis of monthly production / different distilleries. The total illegal payment amount is settled with the public servants and then this amount is divided proportionately on the basis of production / sales of different Distilleries. These figures of production / sales reflected in the papers impounded / seized from LPDA headquarters and the residence of its Secretary General Shri R. K. Miglani, in fact, tallies with the actual production / sales shown by different distilleries in their books of a/c, which, in a way indicate that these papers depict the illegal payments made and are not imaginary papers.

These distilleries have adopted different methods for siphoning off / generation of this illegal payment amounts. Some of the instances noticed are as under:-

(a) M/S National Industrial Corporation Ltd. (NICL) has paid more than Rs. 10 Crores in F.Y. 2002-2003 and 2003-2004 to M/S Aneja & Co. as commission / supervision charges. M/S Aneja & Co. even after including these amounts did not have to pay any tax.

(b) M/S Unnao Distillery has paid more than Rs. 30 Crores as depot charges / expenses to two Delhi based parties, who .have paid negligible taxes on this amount. Such charges were not paid till Financial Year 2001-02.

(c) Many distilleries started paying commission on sales, expenses on sales, sales incentives etc. from F.Y. 2002-2003 onwards, when these types of payments do not result into corresponding incidence of tax in the hands of the recipients. Sometimes these payments are made to business concerns in non-related business. Shamii and Pilkhani Distilleries. Daurala, Distillery.. M/S Lords Distillery have made such types of payments.

(d) In most cases, expenses on empty bottles have increased disproportionately since F.Y. 2002- 2003.

(e) Some of the distilleries like Saraya are paying inflated transportation charges if compared with other distilleries.

In view of the above facts based on seized documents and coupled with the statements of Shri R.K. Miglani. Secretary General of UPDA, I am satisfied that the documents seized. Hence. Action u/s 153C is called for in the ease of above noted person who has incurred illegal expenditure as mentioned above.

Photocopies of Annexures A-l to A-10 seized from the residence of Sh. R. K. Miglani and Annexures A-1 to A-8 impounded from the office of UPDA are being enclosed. Annexure A-9, impounded from the office of UPDA is a hard disc. Assessing Officers requiring copies thereof may obtain from the undersigned. Also find enclosed statement of Sh. R. K. Miglani, Secretary General UPDA recorded u/s 132 (4) and u/s 133 A on 14.02.2006.

[C.P. Singh]
Asstt. Commissioner of Income-tax
Central Circle-4, New Delhi"

13. Similar Satisfaction Note was recorded in respect of each of the captioned assessees.

14. The bone of contention of the captioned assessees is that the documents seized from the residence of Shri R.K. Miglani and found from the office of UPDA do not belong to them.

15. All that has to be considered before proceeding any further is as to whether the documents referred to in the satisfaction note belong to the captioned assessees or not. We have carefully perused the copies of such documents as had been alleged to be belonging to the assessees.

16. Section 153C(1) reads as under:

"153C (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the assessing officer is satisfied that

(a) any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs, or

(b) any books of account or documents or assets seized or requisitioned pertains or pertain to or any information contained therein relates to

A person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to Assessing Officer having jurisdiction over such other person] and that Assessing Officer shall proceed against each such other person and issue notice assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person [for six assessment iimmediately preceding the assessment year relevant to the previous year] such search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A]"

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to [45][sub-section (1) of] section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person."

17. A plain reading of the afore-stated relevant provision shows that the Assessing Officer has to firstly rule out that the books of account or documents seized do not belong to the person searched. The satisfaction note exhibited elsewhere clearly shows that nowhere it has been ruled out that the documents seized do not belong to the searched person. In our understanding of the law, once this possibility is ruled out that the seized documents do not belong to the person searched, then the officer should proceed in identifying the persons to whom such documents belong to. After identifying "such other persons", books of account or documents shall be handed over to the Assessing Officer having jurisdiction over "such other persons".

18. This means that after recording satisfaction, the Assessing Officer of the 'searched person' shall hand over the documents on "as is" basis. We find that in all the cases of the captioned assessees, the Assessing Officer has only supplied the photocopies of the seized documents and not the documents, per se. In our understanding of the facts, one document can belong to one person. But, in the cases in hand, we find that whatever was seized from the premises of Shri R.K. Miglani/UPDA, all the seized documents were alleged to be belonging to the captioned assessees.

19. A perusal of the satisfaction note shows that it is highly vague and too general and is prepared in a mechanical manner and without application of mind.

20. Before proceeding further, it would be pertinent to consider the decision of the Hon'ble jurisdictional High Court of Delhi in the case of Pepsico India Holding Pvt Ltd 370 ITR 295. The relevant observations of the Hon'ble High Court read as under:

> *"4. Before we examine these writ petitions in detail it would be pertinent to point out that recently in the case of Pepsi Foods Pvt. Ltd. Vs. Assistant Commissioner of Income Tax,*

WP (C) No.415/2014 and other connected matters, this court had occasion to examine the very provisions which are under consideration in the matters before us. In the judgement delivered on 07.08.2014 in the case of Pepsi Foods Pvt. Ltd. (supra), after examining the provisions of Sections 153C, 132(4A)(i) & 292C(1)(i) of the said Act, this Court had observed as under:

"6. On a plain reading of Section 153C, it is evident that the Assessing Officer of the searched person must be "satisfied" that inter alia any document seized or requisitioned "belongs to" a person other than the searched person. It is only then that the http://www.itatonline.org WP (C) Nos.414, 566, 567, 572, 573 & 574 of 2014 Page 5 of 17 Assessing Officer of the searched person can handover such document to the Assessing Officer having jurisdiction over such other person (other than the searched person). Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or reassess his income in accordance with the provisions of Section 153A. Therefore, before a notice under Section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person.

The second step is – after such satisfaction is arrived at – that the document is handed over to the Assessing Officer of the person to whom the said document "belongs". In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to examine the provisions of presumptions as indicated above. Section 132(4A)(i) clearly stipulates that when inter alia any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in Section 292C(1)(i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or "satisfaction" that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of "satisfaction"."

21. The satisfaction note, referred to elsewhere, simply says that the documents seized from the residence of Shri R.K. Miglani and found from the office of UPDA belong to above concern(s) and it is a fit case

to issue notices u/s 153A/153C of the Act. There is nothing which would indicate as to how the presumptions, which are to be normally raised, have been rebutted by the Assessing Officer. Mere use or mention of the word “satisfaction” or words “I am satisfied” in the order or note, would not meet the requirement of the concept of satisfaction as used in section 153C of the Act.

22. As mentioned elsewhere, in order that the Assessing Officer of the searched person comes to the satisfaction that the documents or material found during the search belong to a person other than the searched person, it is necessary that he arrives at the satisfaction that the said documents or materials do not belong to the searched person. At this stage, we may point out that nowhere the Assessing Officer has mentioned that neither Shri R.K. Miglani nor the UPDA have disclaimed the seized documents.

23. The Hon'ble High Court of Delhi in the case of ARN Infrastructure India Limited 394 ITR 569 had the occasion to consider the following facts:

"A search was conducted in the case of a company E and when the *panchnama for* the search was prepared, the name of the company R *was also added* to it. During the course of search, a letter written by the assessee to the company R was found, which contained the details of commission payments by the assessee to R in that year with a request to issue bills to the assessee• A copy of the ledger account of R maintained by the assessee as proof of payments made through official channel was also seized. The seized documents were handed over to the Assessing Officer, but, only one document *namely* the letter written by the assessee to R was handed over to the Officer of the assessee. A notice under section 153C of the Act *was issued* directing the assessee to file its return of income for the assessments 2007-08 to 2012-13, enclosing a satisfaction note dated July 21, 2014 stating that the seized documents belonged to the assessee and it was a fit case *for ini*tiating proceedings under section 153C read with section 153A of the Act."

24. And held as under:

"Allowing the petitions, that the seized documents mentioned in the satisfaction note were the ledger account maintained by the assessee showing the commission payments made by the assessee to R and the letter written by the assessee to R. Since the letter was written by assessee to R to be treated as a document belonging to R and not to the assessee. Whether it might or might not be related to the assessee was not relevant since the amendment to

section 153C of the Act in that regard was prospective with effect from June 1,2015 i.e. subsequent to the date of preparation of the satisfaction note. With regard to the extract of the ledger account maintained by the assessee concerning the payments of commission made by it to R, even if it was held to "belong" to the assessee, it could not be an “incriminating" document. This was a document relevant only for the assessment year 2010- 11. It could not have been used for reopening the assessments of the earlier assessment years 2007-08 to 2009-10, 2011-12 and 2012-13. While the ledger account extract might be relevant for the assessment year 2010-11, it could not be an incriminating material warranting reopening of the assessment. The return originally filed by the assessee for the assessment year 2010- 11 was picked up for scrutiny and finalised by an assessment order under section 143(3) of the Act. The payments of commission to R as reflected in the ledger account were already disclosed in the assessee's accounts which were examined while finalising the regular assessment. Therefore, the ledger account could not have led the Assessing Officer to be satisfied that any income had escaped assessment for the assessment year 2010-11. Thus, neither of the documents mentioned in the satisfaction note could have formed a valid basis for the Assessing Officer to initiate proceedings against the assessee under section 153C of the Act for the assessment year 2010-11 or any of the other years as proposed. Therefore, the notice dated July 23, 2014 issued by the Assessing Officer to the

assessee under section 153A read with section 153C of the Act and all proceedings consequent thereto were to be quashed."

25. Satisfaction note in the case of ARN Infrastructure India Limited [supra] reads as under:

"Satisfaction note for initiating proceedings under Section 153C read with 153A of the Income Tax Act, 19611n the case of M/s ARN Infrastructures India Limited, 9, Birla House, Arya Samaj Road, Karol Bagh, Karol Bagh, Delhi- 110005 (PAN AAFCA6403M) A search action u/s 132 of the I T Act,. 1,961 was initiated in the case of M/s Earth Infrastructures Ltd, at B-100, Indl Area Naraina, Phase-I, New Delhi on 16/01/2013. It has been brought to the notice by the AO of M/s Earth Infrastructures Ltd,(in this case the AO is same as undersigned) in whose cases-action under section 132 of the Income Tax Act was taken place that various documents/books of accounts etc were found, and seized during the course of search and statement of various persons were recorded; The AO of the searched persons has recorded his satisfaction that the following seized papers / documents belonged to the assessee i.e. M/s ARN Infrastructure India Limited.

Party No	Name and, address of the person searched	Details of Annexure seized	Details of papers/documents
1.	M/s Earth Infrastructures Ltd, at B-100, Indl Area, Naraina, Phase -1 New Delhi	Annexure A/27 panchnama dated 18.01.2013	Pages 120-122 are a of extract from the books (Ledger) of M/s ARN Infrastructures India Limited relating to M/s Real Gains Estate Pvt Ltd. Page no. 123 is a fetter written by ARN Infrastructures India Limited dated 27/1/2010.

The said satisfaction note prepared by the AO of the person searched has been kept on record.

I have also examined the above documents and the contents noted/written therein. After examination of these documents, I am also satisfied, that these documents belong to M/s ARN Infrastructures India Limited. .In view of the same, I am; further satisfied that it is a fit case for initiating proceedings u/s 153C rws-153A of the Income Tax Act, 1961 for AYs 2007-08 to A.Y 2012-13.

Accordingly, notices u/s 153A rws 153C are issued as per provisions of the IT Act, 1961.

New Delhi
21/7/2014

Asst. Commissioner of Income Tax
Central Circle-14, New Delhi."

26. As mentioned elsewhere, the documents were seized from Shri R.K. Miglani or UPDA and, therefore, the presumption is that the same belonged to Shri R.K. Miglani/UPDA. The decision of the Hon'ble Delhi High Court in the case of ARN Infrastructure India Ltd [supra] clearly endorses this view. Documents not annexed with appeal were not considered by the Tribunal in first round, but the same were filed in the paper book were very much considered by the Tribunal. The Hon'ble High Court, without framing any question of law remitted the matter.

27. Let us now consider some of the documents referred to by the CIT-DR during the course of his arguments. The documents referred to by the ld. CIT-DR are separately annexed as Annexure, which shall form part of the order.

28. As mentioned elsewhere, the aforementioned exhibits were seized from the residence of Shri R.K. Miglani. The allegation of the Revenue is that these documents seized from the residence of Shri R.K. Miglani and from the office of UPDA were regular books of account of

money received date-wise from member distilleries from F.Ys 2002-03 till date of search i.e. 14.02.2006. The basis of determination of this contribution by each distillery and manner of spending this money as per these documents and statements of Shri R.K. Miglani of each member was fixed on the basis of country liquor produced by each distillery. These collections made by the UPDA from its members were on regular basis given to various officials and politicians which basically represented illegal payments.

29. This whole activity was coordinated through select committee known as 'Core Committee' and Shri R.K. Miglani as General Secretary, maintained regular books of account of this collection and payments. The ld. CIT-DR vehemently stated that the department has produced a number of evidences in support of the fact that the distilleries had made unaccounted payments to UPDA and in such of his contentions, reliance was placed on the decision of the Hon'ble Supreme Court in the case of Smt. Sumati Dayal 214 ITR 801 where it was held that "Matters have to be considered in the light of human probabilities". It is the say of the ld. DR that by preponderance of probability, the distilleries had made unaccounted payments to UPDA.

30. In our considered opinion, the Revenue's argument mainly hinges upon the clandestine payments made to UPDA and statements of its Secretary General. These included various tables and charts mentioning the names of distilleries [Member of Association] and the expected payments from such distilleries. These documents were signed by Shri R.K. Miglani and on behalf of different distilleries. The Revenue had prepared a chart for each assessment year and the payments made by the captioned assessees to the fund. This was allegedly used to bribe the public officials and politicians. The main thrust of the Revenue's grievance is with respect to amount stated to have been clandestinely given to UPDA as the captioned assessees contribution towards 'Slush Funds' to be used as 'pay offs' to politicians and public officers in return for favorable treatment. However, the Revenue has grossly failed in demonstrating the end use of such alleged 'slush funds'. Moreover, the Assessing Officer during the course of assessment proceedings never examined the captioned assessees representatives/employees nor any cross verification was done from any of the beneficiary of this 'slush fund'.

31. A perusal of the assessment order shows that the entire findings of the Assessing Officer are solely based upon the seized documents supplied by the searched party and the impugned satisfaction note. The entire assessment order is devoid of any independent verification.

32. Coming back to the facts relating to the seized documents, the ld. DR vehemently stated that the Assessing Officer has specifically relied upon the incriminating seized documents Annexure A- 1 Pages 1 to 175 and Annexure B pages 1 to 75. It is the say of the ld. DR that these incriminating documents clearly prove that the production figures mentioned in them pertain to distilleries. The ld. DR continued by emphasizing that since these documents were not considered by the Tribunal in the first round, the Hon'ble Delhi High Court has set aside the order of the Tribunal stating that the Tribunal has not rendered any specific findings on the status of such documents. The Hon'ble High Court of Delhi observed that if the production figures were in fact forwarded by the concerned unit under a letter or some other form connecting it with material form seized, inference would be of a particular kind.

33. However, the Revenue failed to demonstrate that the production figures were in fact, forwarded by the concerned distilleries under its letter head or some other form. It is not known why Shri R.K. Miglani or for that matter UPDA was maintaining production details of various distilleries. No doubt, production figures gathered from respective distilleries do match with the production figures mentioned in the seized documents but then it does not prove that any of the distilleries has authored the seized document.

34. In his statement recorded u/s 132(4) of the Act, Shri R.K. Miglani, in reply to Question No. 10, which was –

> *"I am showing you pages 150 to 155 of Annexure A-1. Have these papers been written by you and if yes, please explain the transactions on these papers."*
>
> *Answered - "Pages 152 and 155 only have been written by me. However, all the above mentioned papers contained record of payment/contribution by various members of UPDA which add upto 508.05 lakhs. The next figure is 670.00 which is contribution to be paid (due) from these members on account of*

above mentioned payment. Page 154 again contains details of balances attributed to various members of UPDA in respect of amount to be paid (due) on account of the above."

35. It can be seem from the aforementioned answer that nowhere Shri R.K. Miglani accepted that the seized documents were authored by any distillery or any particular member of UPDA. In fact, he has admitted that pages 152 and 155 were authored by him.

36. In reply to question No. 9, wherein Shri R.K. Miglani was asked to tell in brief about the expenses incurred by the members of UPDA during the course of normal business expenses, Shri R.K. Miglani replied that his office keeps record of contribution/payments by various members of UPDA directly to politicians and other persons/agencies. He showed his inability to furnish details of actual names and amount paid to various members.

37. This reply of Shri R.K. Miglani is also vague and is of general in nature, since he has categorically admitted that he has neither received any money nor he has disbursed any money. In fact,

according to him, the various members of UPDA directly made payments to politicians and other persons/agencies.

38. There is nothing on record brought by the Revenue to demonstrate the details of payments and the names of the payees.

39. With respect to answer to Question No. 17, which is

> "*I am showing you page 77 to 79 of Annexure A-2. Please explain the amount written by hand on various dates and who has written these amounts*",

the answer was *:*

> *"The hand written entries are written by me and these are in respect of amount received by the Core Distilleries from other members towards contribution of amount to be paid to various Government Agencies/persons."*

40. Once again, Shri R.K. Miglani accepted that entries on the aforesaid seized documents were written by him and, therefore, only he can be considered as author of the document and the same, therefore, cannot belong to any of the distilleries.

41. Question No. 18:

"I am showing you page 94 of Annexure A-3 which is marked "Confidential". Please explain the transaction recorded on this paper."

Answer:

"This is details of expenses to be incurred by each member of UPDA @ Rs. 20/- per case and the amount to be paid by each party has been calculated on this basis and mentioned against each of them."

42. Once again, it cannot be said that the said Exhibit 94 of Annexure A-3 was authored by any of the distilleries.

43. Considering the nature of each document relied upon by the Assessing Officer in the assessment order and supported by the ld. CIT-DR before us, it cannot be said that these documents were ever authored by any of the distilleries and, therefore, cannot be said to be

belonging to them or any of them. The documents were seized from Shri R.K. Miglani or UPDA and, therefore, any presumption under the Act is against these persons and not against any of the distilleries.

44. In continuation of his arguments, the ld. DR heavily relied upon the proceedings u/s 12AA of the Act in the case of UPDA and stated that the Tribunal has upheld the cancellation of registration u/s 12AA of the Act and endorsed the findings of the Assessing Officer upholding the validity of statement on oath of Shri R.K. Miglani recorded u/s 132(4) of the Act. The ld. DR further pointed out that the said order of the Tribunal was confirmed by the Hon'ble High Court of Delhi vide order dated 23.10.2017 and the SLP filed against the same was dismissed by the Hon'ble Supreme Court on 13.4.2018. It is the say of the ld. DR that since the decision of the Tribunal has been affirmed by the Hon'ble High Court of Delhi as well as the Hon'ble Supreme Court, these issues cannot now be revisited in these proceedings.

45. We do not find any force in the contentions of the ld. DR. Firstly, the cancellation of registration u/s 12AA of the Act in the case of UPDA is altogether a different issue. The Assessing Officer cancelled the registration on the strength of the statement of Shri R.K.

Miglani and search which took place at his residence. The Tribunal upheld the order of the Assessing Officer which was affirmed by the Hon'ble High Court of Delhi. But this was in the context of provisions of section 12AA of the Act, and, therefore, cannot be stretched to the proceedings u/s 153C of the Act in respect of 11 distilleries. A judgment has to be considered in the context in which it was delivered.

46. The Assessing Officer, during the course of assessment proceedings, has heavily relied upon the entries found in the impounded documents. But, there is not even a single finding by the Assessing Officer which could suggest that the corresponding entries were found in the regular books of account of any of the distillery. This shows that no independent verification/examination was done by the Assessing Officer who simply relied upon the seized material supplied to him by the Investigation Wing.

47. The Revenue has strongly contended that the seized documents are such documents which belong to the captioned assessees. In our understanding of the facts and on perusal of the seized documents, this assertion of the Revenue is completely and wholly misplaced in

law. The concept of the term “belong to” has judicially been examined as discussed elsewhere, where it has been held that before a document can be held to be belonging to other persons, it must be established that he has the right of ownership on such document. Courts have held that there is a distinction between the expression “belong to” of a document and “pertaining to” or “relating to” a document. In our understanding, the term “belongs to” is not synonymous to the expression “pertaining to” or “relating to”.

48. This has prompted the Legislature to bring amendment to section 153C of the Act vide Finance Bill, 2015 wherein in clause (b) to section 153C, “belong to” has been replaced by “relates to”. But the Legislature, in its wisdom, has given effect to this amendment w.e.f 01.06.2015. Therefore, the same cannot be applied to the assessment years under consideration.

49. Moreover, the Hon'ble Supreme Court in the case of Chuharmal Vs. CIT 172 ITR 250 has held that possession is proof of ownership and the seized documents were found from the possession of Shri R.K. Miglani.

50. As mentioned elsewhere, none of the documents referred to by the Assessing Officer belong to the captioned assessees nor it has been identified that which documents belong to which captioned assessees. In our considered opinion, the Assessing Officer has exceeded in his jurisdiction to initiate the proceedings u/s 153C of the Act.

51. The ld. DR has heavily relied upon the judgment of the Hon'ble Delhi High Court in the case of Super Malls Pvt Ltd 393 ITR 557. In our considered view, this judgment has no application at all on the facts of the cases in hand. In this judgment, the Hon'ble High Court has only examined whether a satisfaction note prepared in the case of the person other than the person searched by the same Assessing Officer in the file of the person searched could be held as valid. If the judgment is read as a whole, the Hon'ble High Court has not held that the term “belong to” is inter-changeable with “relating to” or “pertaining to”.

52. As mentioned elsewhere, the Revenue has not brought anything on record to establish that the production figures reflected in the tables were forwarded by the appellants through a fax message or on its letter head. This was clear mandate of the Hon'ble High Court when it remitted the matter to the file of the Tribunal.

53. The ld. DR emphasized that the document 114 of Annexure A-1 bears the signature of two employees but we have to say that during the course of assessment proceedings, these employees were never questioned by the Assessing Officer to verify whether they actually put the signatures on those documents. In our considered opinion, such documents are only hearsay evidence.

54. Another theory propounded by the Revenue is that every distillery had to contribute Rs. 20/- per case and had thus contributed such a sum is entirely unsupported by any material. It is not known who had collected the alleged sum to have been contributed and what is the destination of such sum. In none of the documents, name of the payee, any public servant or politician appears. This itself establishes that the documents are dumb.

55. Before us, the ld. DR has supplied the copies of the documents which form Annexure of the seized documents, but has failed to demonstrate the basis on which such documents belonged to the distilleries or any of the distilleries. The emphasis was on the names appearing in such loose sheets without there being any corroborative material. Therefore, these documents do not stand the test of judicial

scrutiny to conclude that such documents belong to distilleries or any of the distilleries.

56. Ironically, none of the persons whose names have been referred to in the various impounded sheets as members of the core committee or any other person have been examined by the Assessing Officer during the course of assessment proceedings. There is no independent evidence that the captioned assessees have contributed any sum except notings in the seized documents, which have been conclusively held hereinabove do not belong to the captioned assessees.

57. The Hon'ble High Court of Delhi in the case of Radico Khaitan Ltd 396 ITR 544 was seized with the appeal of the Revenue wherein the Revenue had challenged the order of the Settlement Commission in a Writ Petition filed by it.

58. The Hon'ble High Court, while dismissing the writ petition of the Revenue, inter alia, held that in the absence of any linkage between the material seized from the assessee's premises and those from the UPDA's premises as well as statement of Shri R.K. Miglani through any objective material, does not establish the allegation.

59. It would be pertinent to mention here that the documents are very same documents which have been considered by the Assessing Officer of the captioned assessees. In our considered opinion, there remains no valid basis to allege that the documents belong to the captioned assessees or the captioned assessees have made any investment/incurred alleged expenditure.

60. We are of the considered opinion that the allegation of the Revenue is entirely unjustified, unsupported by any document found from the possession or control of the appellants. It is well settled rule of law that burden of proof is on the alleger and not on the person against whom the allegation is made. In the present appeals, the burden is thus on the Revenue to establish that the documents found from the third persons are reliable and authentic and also such documents belong to the distilleries which is uncorroborated by any evidence and even the author of the documents have not been identified. Therefore, it can safely been concluded that the Revenue has not discharged its burden. The mere fact that some of the distilleries are members of the association [UPDA] does not by itself lead to a conclusion that adverse inference can be drawn against members of the association since documents were found from the

premises of the association and not from the distilleries. The contents of the impugned documents have to be established as genuine by leading cogent positive evidence or material and have to be supported by corroborative material. In the present appeals, no such material has been brought on record. Therefore, we have no hesitation to hold that the proceedings u/s 153C of the Act have not been validly initiated and, therefore, deserve to be quashed.

COMMON GRIEVANCE NO. 2

NO CROSS EXAMIANTION OF SHRI R.K. MIGLANI WAS ALLOWED BY THE REVENUE

61. All the appellant distilleries have raised another common issue claiming that the assessment orders have been framed in gross violation of principles of natural justice. It is strongly contended that the additions have been made on the basis of statement of Shri R.K. Miglani which was recorded during the course of search proceedings and in spite of repeated requests to the Assessing Officer to produce Shri R.K. Miglani for his cross examination opportunity was not provided to the assessed distilleries, therefore, the Assessing Officer

has proceeded to make the additions in gross violation of principles of natural justice.

62. The Hon'ble High Court of Delhi in the case of Ashwini Gupta in TA No. 1264/2008 has held that:

> *"Once there is a violation of principles of natural justice, in as much as seized material is not provided to an assessee nor is cross examination of the person whose statement the Assessing Officer relies upon, granted, then, such deficiencies would amount to denial of opportunity and consequently would be fatal to the proceedings."*

63. Strongly opposing the contentions of the assessed distilleries, the ld. DR vehemently stated that every possible effort was made to allow cross examination, but Shri R.K. Miglani was working for UPDA of which the distilleries were members and, therefore, it was for the distilleries to produce Shri R.K. Miglani. It is the say of the ld. DR that not providing cross examination of Shri R.K. Miglani is irrelevant, in as much as, Shri R.K. Miglani is Secretary General of UPDA in which the distilleries are members. Therefore, if the statement of Shri R.K. Miglani which was adverse to the members was untrue, then immediately Shri R.K. Miglani could have been removed from the post

of Secretary General of UPDA or he could have been brought before the I.T. authorities. It is the say of the ld. DR that the statement of Shri R.K. Miglani is not on stray/dumb documents but contains figures of dispatch and amount of illegal payments made by members which is clear from the notings of the seized documents. Therefore, Shri R.K. Miglani has only confirmed the specific details contained in the seized material. The ld. DR concluded by stating that ,in effect, Shri R.K. Miglani was an employee of the member of the UPDA and, therefore, there was no necessity for his cross examination.

64. The contention of the ld. DR that since Shri R.K. Miglani was related to the member distilleries of UPDA, therefore it was not necessary to allow cross examination is not acceptable. The Hon'ble High Court of Delhi in the case of Shri S.N. Aggarwal 293 ITR 43 has held as under:

> "11. In the present case the Assessing Officer has placed reliance on the statement of Smt.Sarla Aggarwal, daughter of the assessed while arriving at the conclusion, that the entries belong to the transactions of the assessed. This statement made by Smt.Sarla Gupta, cannot be said to be relevant or admissible evidence against the assessed, since the assessed was not given any opportunity to

cross-examine her and even from the statement, no conclusion can be drawn that the entries made on the relevant page belongs to the assessed and represents his undisclosed income. It is also an admitted fact that the statement of the assessed was not recorded at any stage during the assessment proceedings. The only conclusion which can be drawn about the nature and contents of the document is that it is a dumb document and on the basis of the entry of nothings or figure etc. in this document, it cannot be concluded that this represents the undisclosed income of the assessee."

65. The Hon'ble Supreme Court in the case of Andaman Timber Vs. CIT in Civil Appeal No. 4228 OF 2006 has held as under:

"According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity in as much as it amounted to violation of principles of natural justice because of which the assessee was adversely affected."

66. The ld. DR has strongly emphasized on the evidentiary value of the statement recorded u/s 132(4) of the Act and has relied upon several judicial decisions to support his contentions. The ld. DR

further relied upon the provisions of section 132(4A) of the Act and 292C of the Act. These sections read as under:

"Section 132(4) in The Income- Tax Act, 1995

(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is fond to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income- tax Act, 1922 (11 of 1922), or under this Act.[1] Explanation.- For the removal of doubts, it is hereby declared that the examination of any person under this sub- section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income- tax Act, 1922 (11 of 1922), or under this Act.]

Section 132(4A) in The Income- Tax Act, 1995

(4A)[2] Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed-

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person' s handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.]

Section 292C

|l)] Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession ol of any person in the course of a search under section 132 [20][or survey section 133A], it may, in any proceeding under this Act, be presumed—

1 i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

ii) that the contents of such books of account and other documents are true; and

iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

Where any books of account, other documents or assets have been d to the requisitioning officer in accordance with the provisions of 132A, then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from on referred to in clause *(a)* or clause *(b)* or clause (c), as the case may be, of sub-section (1) of section 132A had been found in the possession or control of that person in the course of a search u/s 132."

67. A plain reading of the aforementioned sections would show that the presumption is available in the case of a person who was found in the possession or control i.e. the 'searched person'. Therefore, the presumption may be good against Shri R.K. Miglani or UPDA. But not in the cases of "the other person" which are the distilleries in the present appeals. Therefore, the judicial decisions relied upon by the ld. DR are misplaced and, therefore, needs no specific mention.

68. At this stage, it would not be out of place to point out that the premises of Shri R.K. Miglani were searched, which means that Shri R.K. Miglani was the 'searched person' and all the presumptions were available against him in respect of the seized documents/notings in the seized documents and other things.

69. Surprisingly, the assessments of Shri R.K. Miglani have been made on the returned income which will be clear from the following table:

Assessment Year	Returned income Rs.	Assessed income Rs	u/s
2000-01	177080	177080	153A
2001-02	194615	194615	-do-
2002-03	191652	191652	-do-
2003-04	343219	343219	-do-
2004-05	225541	225541	-do-
2005-06	231867	231867	-do-

70. It can be seen from the above chart that the case in which the presumption was available, the Revenue accepted what was returned by Shri R.K. Miglani and on the strength of his statement that the documents seized from his premises belong to distilleries, the additions have been made as unexplained expenditure/contribution to UPDA.

71. It is well settled that only the person competent to give evidence on the truthfulness of the contents of the document is writer thereof. So, unless and until the contents of the documents are proved against a person, the possession of the document or hand writing of that person on such document by itself cannot prove the contents of the document.

72. Considering the facts of the dispute in totality, we are of the opinion that the assessment framed u/s 153C of the Act is in gross violation of the principles of natural justice and deserve to be tagged as nullity.

73. We will now address to the specific issues raised in the captioned appeals.

74. The assessee urged permission to raise the following additional ground of appeal in support of Ground No. 2 of the grounds of appeal. The specific ground of appeal reads as under:

> *"The assessment framed by the Assessing Officer on 30.12.2008 is barred by limitation and thus it be held to be without jurisdiction."*

75. The ld. DR strongly objected to this plea of the ld. counsel for the assessee stating that this ground was not before the ld. CIT(A) and, therefore, cannot be taken up at this stage. The ld. DR further contended that in the first round of litigation, the matter travelled up to the Hon'ble High Court and the Hon'ble High Court, vide order dated 22.01.2015, set aside the order of the Tribunal with specific directions. A new ground cannot now be taken up after the orders of the Hon'ble High Court. In support of his contention, strong reliance was placed on the judgment of the Hon'ble High Court of Bombay in the case of Ultratech Cement Limited 2017-TIOL-785.

76. In our considered opinion and understanding of law, jurisdiction of the Assessing Officer can be challenged at any stage because it goes to the root of the matter. If the assessment is framed without jurisdiction, then subsequent happenings get vitiated.

77. The answer to this question has been given by the Hon'ble Gujarat High Court in the case of P.V. Doshi 113 ITR 22 wherein the Hon'ble High Court was seized with the following three questions :

> *"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that once the Tribunal passed an order the matter became final with regard to the point which was settled by the Appellate Assistant Commissioner and was not agitated before the Tribunal unless it was taken up to the High Court ?*
>
> *2. Whether the Tribunal was right in holding that the previous order of the Tribunal dated June 21, 1969, restoring the case to the file of the Income-tax Officer meant that the only point that was open was in respect of the addition of Rs. 19,421 and not the legal or jurisdictional aspect whether the reassessment proceedings were correctly initiated under section 147/148 ?*

3. Whether, on the facts, the assessee was justified at this late stage in re-agitating the matter whether the case was rightly reopened (which is purely a legal matter going to the very root of the jurisdiction), after having raised and not pressed the point before the Appellate Assistant Commissioner when the matter was taken up before the Appellate Assistant Commissioner for the first time ?"

78. The Hon'ble High Court, inter alia, held as under:

The legal position about waiver of such a mandatory provision created in the wider public interest to operate as fetter on the jurisdiction of the authority is well settled that there could never be waiver, for the simple reason that in such cases jurisdiction could not be conferred on the authority by mere consent, but only on conditions precedent for the exercise of jurisdiction being fulfilled. If the jurisdiction cannot be conferred by consent, there would be no question of waiver, acquiescence or estoppel or the bar of res judicata being attracted because the order in such cases would lack inherent jurisdiction unless the conditions precedent are fulfilled and it would be a void order or a nullity. The settled distinction between invalidity and nullity is now well brought out in the decision in Dhirendra Nath Gurai v. Sudhir Chandra Ghosh, AIR 1964

SC 1300, 1304, where their Lordships had gone into this material question as to whether the act in breach of the mandatory provision is per force a nullity. The passage in Macnamara on Nullities and Irregularities, referred to in Ashutosh Sikdar v. Bihari Lai Kirtania [1907] ILR 35 Cal 61 [FB], at page 72, was in terms relied upon as under:

> *"...no hard and fast line can be drawn between a nullity and an irregularity; but this much is clear, that an irregularity is a deviation from a rule of law which does not take away the foundation or authority for the proceeding, or apply to its whole operation, whereas a nullity is proceeding that is taken without any foundation for it, or is so essentially defective as to be of no avail or effect whatever, or is void and incapable of being-validated."Thereafter, their Lordships pointed out that whether a provision fell under one category or the other was not easy of discernment as in the ultimate analysis, it depended upon the nature, scope and object of the particular provision. Their Lordships in terms approved a workable test laid down by Justice Coleridge in Holmes v. Russel [1841] 9 Dowl 487 as under:*
>
> *"It is difficult sometimes to distinguish between an irregularity and a nullity; but the safest rule to determine what is an irregularity and what is a nullity is to see whether the party can waive the objection; if he*

can waive it, it amounts to an irregularity; if he cannot, it is a nullity." Thereafter it was pointed out that a waiver is an intentional relinquishment of a known right, but obviously an objection to jurisdiction could not be waived, for consent could not give a court jurisdiction where there was none. Even if there was inherent jurisdiction, certain provisions could not be waived. What can be waived would be only those provisions which are for the private benefit and protection of an individual in private capacity, which might be dispensed with without infringing any public right or public policy."

This settled legal position was again reiterated in Superintendent of Taxes v. Onkarmal Nathmal Trust, AIR 1975 SC 2065, where the question had arisen in the context of the Assam Taxation (on Goods Carried by Road and on Inland Waterways) Act, 1961. The assessee had obtained an injunction order against the State in a writ petition challenging the validity of the Act. The assessee had not submitted the return under section 7(1) and under section 7(2) a notice had to be issued only within two years from the end of the return period. The procedure of best judgment assessment was laid down in section 9(4) and the question arose whether, in view of the injunction order obtained by the assessee, ignoring the two years' limit laid down as a fetter for issuance of the notice under section

7(2), the best judgment assessment procedure was permissible. At page 2070, the learned Chief Justice first held that if a return under section 7(1) was not made, the service of a notice under section 7(2) of the Act was the only method for initiation of a valid assessment proceeding under the Act. The period of two years under section 7(2) was a fetter on the power of the authority and was not just a bar of time. It was the scheme of the Act that the service of notice within two years from the end of the return period was an imperative requirement for initiation of assessment proceeding as also reassessment proceeding under the Act. Further proceeding, at page 2071, their Lordships pointed out the settled legal distinction between the provisions which conferred jurisdiction and provisions which regulated procedure, because jurisdiction could neither be waived nor created by consent, while a procedural provision could be waived by conduct or agreement. Their Lordships pointed out that in that case the assessee could not be said to have waived the provisions of the statute because there could not be any waiver of a statutory requirement or provision which went to the jurisdiction of assessment. The origin of assessment was either an assessee filing a return as contemplated in the Act or an assessee being called upon to file a return as contemplated in the Act. The respondents challenged the Act. The order of injunction did not amount to a waiver of

the statutory provisions. The issue of a notice under the provisions of the Act related to the exercise of jurisdiction under the Act in all cases. The learned Chief Justice in terms pointed out that the revenue statutes are based on public policy. The revenue statutes protect the public on the one hand and confer power on the State on the other. Therefore, even in the context of such a revenue statute like a taxation measure such fetter on the jurisdiction being a fetter laid to protect public, on wider ground of public policy, it was held that such provisions which confer jurisdiction on assessment and reassessment could never be waived for the simple reason that jurisdiction could neither be waived nor created by consent. In the concurring judgment his Lordship, Beg. J., at page 2077, also pointed out that if the notice under section 7(2) was a condition precedent to the exercise of jurisdiction to make the best judgment assessment, the doctrine of waiver could never confer jurisdiction so as to enable the parties to avoid the effect of violating a mandatory provision on a jurisdictional matter even by agreement. This decision completely settles the legal position. It makes a distinction between the provisions which confer jurisdiction and provisions which merely regulate the procedure by holding that such provisions which confer jurisdiction or such mandatory provisions which are enacted in public interest on ground of public

policy even in such revenue statutes could not be waived, because of the underlying principle that jurisdiction could neither be waived nor created by consent.

The decision in Director of Inspection of Income-tax v. Poor an Mall & Sons [1974] 96 ITR 390 (SC), which is so vehemently relied upon by the learned standing counsel, does not detract from the aforesaid ratio, and in fact, reiterates the same. In that case, the question had arisen regarding the waiver of a provision in section 132(5) of the Income-tax Act which permitted the Income-tax Officer to pass an order of seizure within 90 days. The provision was held to be not a mandatory provision and at page 400 it was also pointed out that there was no question of the period of limitation under section 132(5) involving public interest. It was intended for the benefit of the parties. The settled principle which had been stated on Crates on Statute Law, 6th edition, at page 259, was as under:

> *"As a general rule, the conditions imposed by statutes which authorize legal proceedings are treated as being" indispensable to giving the court jurisdiction. But if it appears that the statutory conditions were inserted by the legislature simply for the security or benefit of the parties to the action themselves, and that no public interests are involved, such conditions will not be*

considered as indispensable, and either party may waive them without affecting the jurisdiction of the court."

Therefore, the period of limitation prescribed under section 132(5) being intended for the benefit of the person concerned, it was held that the assessee could waive that provision. That decision could not, therefore, be invoked in the present context of such a jurisdictional provision which is also a mandatory provision enacted in public interest in this revenue statute as earlier pointed out and which could never be waived.

Besides, the question of waiver could never be raised if the person had no knowledge of his legal rights so that he could make any such conscious waiver. In the present case, the Appellate Assistant Commissioner in his order had pointed out that it was when he perused the order sheet that he found that there were no reasons recorded by the Income-tax Officer for issuing notice under section 148. The entry on the order sheet dated September 3, 1963, simply contained the direction: "Issue notice under section 148", and no reasons were recorded by the Income-tax Officer before reopening the assessment. Even the relevant sub-section of section 147 under which the assessment was sought to be reopened was not mentioned. These facts, prima facie, disclosed that the reasons came to the notice of the assessee for the first time when the Appellate

Assistant Commissioner perused this order sheet and brought this fact to the notice of the assessee. Even on that ground, therefore, there can be no question of any waiver on the facts of the present case.

Even the alternative ground of finality of this order of the Tribunal suffers from the same infirmity, as the Tribunal has failed to notice this material distinction between a mere procedural provision which could be waived and such jurisdictional provision or a mandatory provision enacted in public interest which could not be waived, because by consent no jurisdiction could be conferred on the authority unless the conditions precedent were first fulfilled. In Dasa Muni Reddy v. Appa Rao, AIR 1974 SC 2089, 2092, such a question of waiver was examined also in the context of the bar of estoppel or of res judicata. At page 2091, it was pointed out that want of jurisdiction must be distinguished from irregular or erroneous exercise of jurisdiction. If there is want of jurisdiction the whole proceeding is coram non judice. The absence of a condition necessary to found the jurisdiction to make an order or give a decision deprives the order or decision of any conclusive effect. (See Halsbury's Laws of England, 3rd edition, volume 15, paragraph 384). Further proceeding at page 2092, it was pointed out that just as the courts normally did not permit contracting out of the Acts so there could be no

contracting in. A status of control of premises under the Rent Control Acts could not be acquired either by estoppel or by res judicata. Their Lordships in terms held that the principle was that neither estoppel nor res judicata could give the court jurisdiction under the Acts which those Acts said it was not to have. Therefore, bar of res judicata or estoppel or waiver were negatived in such a case where the plea was outside the ambit of the Rent Control Act, for the simple reason that as one could not confer jurisdiction by consent, similarly one could not by agreement waive exclusive jurisdiction of the rent courts over the buildings in question. It is true that section 254(4) in terms provides that save as provided in section 256 (which provides for the reference to the High Court), orders passed by the Appellate Tribunal on appeal shall be final. That finality or conclusiveness could only arise in respect of orders which are competent orders with jurisdiction and if the proceedings of reassessment are not validly initiated at all, the order would be a void order as per the settled legal position which could never have any finality or conclusiveness. If the original order is without jurisdiction it would be only a nullity confirmed in further appeals. If the essential distinction is borne in mind in such cases when there is such defect of jurisdiction because the conditions to found jurisdiction are absent, the Tribunal also would be suffering from the same defect and it could not confer any

jurisdiction on the Income-tax Officer by making the remand order, because of the settled legal principle that consent could not confer jurisdiction when jurisdiction could be created only by fulfilment of the condition precedent as in the present case. Therefore, no question of finality of the remand order could ever arise in the present context, if the mandatory conditions for founding jurisdiction for initiating reassessment proceeding were absent. This is the view in Commissioner of Income-tax v. Nanalal Tribhovandas [1975] 100 ITR 734 (Guj), agreeing with the Madras view that there would be no such finality by remand because consent could not confer jurisdiction, and so, such objection in regard to the validity of the notice under section 34 could be raised before the Appellate Assistant Commissioner.

The learned standing counsel in this connection marshalled in aid the decision in Northern Railway Co-operative Credit Society Ltd. v. Industrial Tribunal, Rajasthan, AIR 1967 SC 1182; 31 FJR 511, which could hardly be invoked in the present case. There the High Court in writ jurisdiction had held at the earlier stage that the dispute in question was an industrial dispute and, therefore, the reference being a competent reference, the writ petition was dismissed. The order of the High Court was a final judgment which terminated the independent writ proceeding. It was held at

page 1186 that that order having not been appealed before the Supreme Court, it had become final and it was no longer open to the parties to raise a plea of jurisdiction in appeal against the subsequent award given by the Industrial Tribunal after exercising jurisdiction which the Tribunal was permitted to exercise by the order of the High Court. These were competent proceedings and the independent writ proceeding was also finally terminated and, therefore, this final order precluded the parties from reagitating the same question before the Industrial Tribunal. Their Lordships distinguished the earlier decision in Satyadhyan Ghosal v. Smt. Deora-jin Debi, AIR 1960 SC 941, where the question had arisen about the applicability of section 28 of the Calcutta Thika Tenancy Act, 1949, and the plea having been rejected by the munsif trying a suit, revision, the High Court had held that operation of section 28 of the Act was not affected by the subsequent amendment Act and the case was remanded to the munsif for disposal according to law. After the final decree was passed by the munsif and the appeal finally came to the Supreme Court, it was held by the Supreme Court that the order of the High Court holding section 28 to be applicable could not operate as res judicata in appeal before the Supreme Court, because the High Court's order of remand was merely an interlocutory order, which did not terminate the proceeding pending before the munsif and which had not been appealed

from at that stage. Consequently, in the appeal from the final decree or order it was open to the party concerned to challenge the correctness of the High Court's decision. The two special features which distinguished that case were: one, that the order of the High Court which was relied upon to invoke the principle of res judicata was an interlocutory order, and the other, that it was made in a pending suit which as a result of that order did not finally terminate. In the present case also the remand order did not terminate the proceedings at the earlier stage. In fact, no question of any bar of res judicata even at the subsequent stage of the same proceeding could arise in the present case for the simple reason that the original order is said to be without jurisdiction. The first condition in invoking any bar of res judicata is the condition about the competence of the court. Similarly, the provision of finality in this relevant provision in section 254(4) could also not be attracted in such a case, where the question admittedly, went to the root of the jurisdiction and if that contention was upheld, it would have made all the proceedings of reassessment totally void and without jurisdiction. As per the aforesaid settled legal position such a point could not be waived and there can be no question of the earlier remand order operating as a final order, because if such a jurisdictional point could not be waived, even the fact of passing of the remand order by the Tribunal could not confer jurisdiction

on the Income-tax Officer, if the conditions to found his jurisdiction were absent.

Therefore, if this settled position was borne in mind, the Tribunal's view was clearly erroneous that the matter became final when the Tribunal passed the earlier remand order so that this point of jurisdiction got finally settled, which could not be agitated unless the assessee had come in the reference to this court at that stage. The Tribunal's view was also incorrect that in restoring the case to the file of the Income-tax Officer by the earlier order, the only point left open was in respect of addition of Rs. 19,421 on merits and that the legal or jurisdictional aspect whether the reassessment proceedings were legally initiated was not kept open. Even on the third question the Tribunal's view was erroneous that even though this point went to the root of the jurisdiction and was a. pure question of law, merely because the point was initially raised and not pressed when the matter was taken up before the Appellate Assistant Commissioner, it could be waived and it could not be reagitated. Therefore, in view of the settled legal position our answers on questions Nos. 1 and 2 are in the negative, while our answer on question No. 3 is in the affirmative, that is to say, all the questions are answered against the revenue and in favour of the

assessee. The reference is accordingly disposed of and the Commissioner shall pay the costs of the assessee."

79. The judgment on which the ld. DR has heavily relied upon relates to the claim of deduction u/s 80IA of the Act. In our considered opinion, a claim of deduction u/s 80IA of the Act requires many verification of facts as per the exception clause provided in the provisions of section 80IA of the Act whereas the question of jurisdiction of the Assessing Officer does not necessarily require any new verification of facts. Respectfully following the judgment of the Hon'ble High Court of Gujarat [supra] and further drawing support from the judgment of the Hon'ble Karnataka High Court in ITA No. 2638 of 2005 order dated 05.04.2010 in the case of CIT Vs. Pai Vaibhav Hotels Private Limited, we hold that the assessment is barred by limitation. We accordingly, reject the contention of the ld. DR and allow the additional ground of appeal raised by the assessee.

80. The ld. counsel for the assessee, in support of his claim of this new plea, vehemently stated that it goes to the root of the matter, in as much as, the jurisdiction of the Assessing Officer is questioned. It is

the say of the ld. counsel for the assessee that since the assessment is barred by limitation, the same cannot stand on its own legs.

81. The bone of contention is the period of limitation provided u/s 153B(b) of the Act. The said section reads as under:

> '153B. *Time-limit for completion of assessment under section 153A.*—(1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of or reassessment,—
>
> (a) in respect of each assessment year falling within six assessment years ret in clause (*b*) of sub-section (1) of section 153A, within a period of two years end of the financial year in which the last of the authorizations for search section 132 or for requisition under section 132A was executed;
>
> b) in respect of the assessment year relevant to the previous year in which conducted under section 132 or requisition is made under section 132A. period of two years from the end of the financial year in which the last of the authorizations for search under section 132 or for requisition under section was executed :

Referred to in clause (a) or clause *(b)* of this sub-section or nine months from the *end of the* financial year in which books of account or documents or assets seized questioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:

Provided further that in the case where the last of the authorizations for search section 132 or for requisition under section 132 A was executed during the Financial Year commencing on the 1st day of April, 2018,—

(i) the provisions of clause (a) or clause *(b)* of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted;

(ii) the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of eighteen months from the end of the financial year in which the last of the authorizations for search under section 132 or for requisition

Provided that in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause *(a)* or clause *(b)* of this sub-section or one year from the end of the financial year in which books of account or documents or

assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:

Provided further that in the case where the last of the authorizations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on or after the 1st day of April, 2004 but before the 1st day of April, 2010,—

(i) the provisions of clause (*a*) or clause *(b)* of this sub-section shall have effect as if / for the words "two years" the words "twenty-one months" had been substituted;

(ii) the period of limitation for making the assessment or reassessment in case of other J person referred to in section 153C, shall be the period of twenty-one months from the end of the financial year in which the last of the authorizations for search under section 132 or for requisition under section 132A was executed or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:.

Explanation.—In computing the period of limitation for the purposes of this Section (1) the period during which the assessment proceeding is stayed by an order or injunction of any court."

82. A plain reading of the aforesaid provisions alongwith proviso and relevant part of the explanation shows that the period of limitation expires nine months from the end of the F.Y. in which the books of account or documents or assets seized or requisition are handed over u/s 153C of the Act to the Assessing Officer having jurisdiction over such other person. As is evident from the assessment order, a satisfaction as per provisions of section 153A of the Act was recorded by the ACIT, Central Circle 4, New Delhi on 07.12.2006.

83. On 06.12.2006, the assessee filed a writ petition before the Hon'ble High Court of Calcutta challenging the order passed u/s 127 of the Act transferring the jurisdiction from ACIT, Circle – 11, Calcutta to DCIT, Central Circle-19, New Delhi. The Hon'ble High Court of Calcutta vide order dated 19.12.2006, in writ petition No. 1931 of 2006, stayed the proceedings for change of jurisdiction of the assessee from Calcutta to New Delhi till 02.03.2007 and vide order dated 02.03.2007,

it was directed that the interim order already granted shall continue till 30.03.2007.

84. The Revenue preferred an appeal before the Hon'ble High Court of Calcutta and the Hon'ble High Court of Calcutta, vide order dated 21.01.2008, dismissed the writ petition which has been filed by the writ petitioner before the trial court and allowed the appeal so preferred by the petitioner/appellant with the direction to the authorities to proceed with the matter under the provisions of section 127 of the Act.

85. In the light of the aforesaid facts, as mentioned elsewhere, the assessment proceedings u/s 153C of the Act were started on 11.12.2006 when the Assessing Officer received alleged satisfaction note and the documents belonging to the assessee. As per the provisions of the Act contained in section 153B(b) of the Act, as stated hereinabove, the Assessing Officer had to frame assessment order by 22.03.2008, excluding the period of stay and adding the same period to nine months whereas assessment order is framed on 30.12.2008 and is, therefore, well beyond the period of limitation. In our considered opinion, when the stay got vacated on 07.05.2017 and there being no

further stay only such time during which the order of the Hon'ble High Court had been passed granting stay till the same was allowed can alone be excluded.

86. Before us, the ld. DR vehemently stated that the time taken for filing the appeal by the department before the Hon'ble High Court of Calcutta should also be excluded. We do not find any merit in this contention of the ld. DR because the provision specifically provides that only that period will be excluded during which the proceedings have been stayed by the Hon'ble High Court. In our considered opinion, the facts on record clearly show that the assessment order framed u/s 153C r.w.s 153A of the Act dated 30.12.2008 is barred by limitation. Since the assessment order has been held to be barred by limitation, proceedings subsequent to the happenings get vitiated.

87. In the result, the appeals of the assessee are allowed.

88. The CIT(A) has annulled the impugned assessment order holding that no addition has been made on the basis of seized documents in the impugned A.Ys. Therefore, the Assessing Officer has initiated the proceedings u/s 153C r.w.s 153A of the Act without any jurisdiction. Therefore, the proceedings initiated u/s 153C of the Act are not as per law.

89. The Revenue is aggrieved by this finding of the first appellate authority for the impugned A.Ys.

90. Assessment has been framed u/s 153C r.w.s 153A of the Act vide order dated 24.12.2007 for A.Ys 201-12 and 2002-03. A perusal of the assessment order shows that the entire assessment has been framed on the strength of the documents seized from the premises of Shri R.K. Miglani and on the statement of Shri R.K. Miglani recorded u/s 132(4) of the Act.

91. We have discussed this issue in detail while adjudicating common grievance Nos. 1 and 2 elsewhere. For our detailed discussion therein, we hold that the assessment framed u/s 153C r.w.s 153A of the Act is without jurisdiction and accordingly, assessment order is annulled for want of jurisdiction.

92. In the result, Cross objections of the assessee are allowed and the appeals filed by the Revenue are dismissed.

Shadi Lal Enterprises Ltd
ITA Nos. 1864, 2678 & 2679/DEL/2010 [Assessee's appeals]

93. The sum and substance of the grievance of the assessee is that the assessment order framed u/s 153C r.w.s. 153A of the Act is without jurisdiction in as much as the documents relied upon by the Assessing Officer do not belong to the assessee.

94. We have discussed this issue in detail while adjudicating common grievance Nos. 1 and 2 elsewhere. For our detailed discussion therein, we hold that the assessment framed u/s 153C r.w.s 153A of the Act is without jurisdiction and accordingly, assessment order is annulled for want of jurisdiction.

95. In the result, the appeals filed by the assessee are allowed.

ITA No. 1310 to 1312, /DEL/2012
Saraya Industries [Assessee's appeals]

96. Assessment has been framed u/s 153C r.w.s 153A of the Act. The entire assessment has been framed on the strength of the documents seized from the premises of Shri R.K. Miglani and on the statement of Shri R.K. Miglani recorded u/s 132(4) of the Act. Search action was also conducted at the premises of the appellant. As per page 13 of Annexure A-2 impounded from the premises of the assessee, the Assessing Officer formed a belief that Rs. 2.63 crores have been paid by the appellant to UPDA from April to July 2005. The Assessing Officer was of the opinion that Rs. 75 lakhs was paid to UPDA in the month of July 2005. Since the alleged documents pertain to F.Y. 2005-06, assessment for A.Y 2000-01 was assessed on the income already assessed u/s 143(3) /250/154 of the Act vide order dated 19.03.2004.

97. Assessment was challenged before the CIT(A) on the ground that there is no material to support that the alleged documents in question belong to the assessee which is a mandatory requirement for assuming jurisdiction u/s 153C of the Act.

98. We have discussed this issue in detail while adjudicating common grievance Nos. 1 and 2 elsewhere. For our detailed discussion therein, we hold that the assessment framed u/s 153C r.w.s 153A of the Act is without jurisdiction and accordingly, assessment order is annulled for want of jurisdiction.

99. In the result, appeals of the assessee are allowed.

1537, 1538, 1539 & 4692/DEL/2012
Saraya Industries [Assessee's appeal]

100. The entire assessment has been framed on the strength of the documents seized from the premises of Shri R.K. Miglani. Certain documents were also found at the premises of the appellant. Scrutiny of page 13 of Annexure A-2 revealed that Rs. 2.63 crores have been paid by the appellant to UPDA from April to July 2005 and a further sum of Rs. 75 lakhs was paid to UPDA in the month of July 2005. The Assessing Officer was of the opinion that this payment stands verified from the amount received by UPDA from the documents found and seized from the premises of Shri R.K. Miglani where the amount received is shown at Rs. 74.98 lakhs and, therefore, matches with Rs. 75 lakhs

101. When these facts were confronted to the assessee and the assessee was asked to explain the sources of payments made by it as found in the documents seized from residence of Shri R.K. Miglani and from the premises of UPDA, no specific reply on this issue was filed by the assessee except strongly contending that he notings/entries on loose sheets/diaries found at the premises of Shri R.K. Miglani/UPDA do not have any evidentiary value. This contention of the assessee was rejected by the Assessing Officer who proceeded by holding that the unaccounted payments made by the assessee to UPDA are unexplained expenditure for the following F.Ys:

F.Y.	A.Y.	Amount [Rs.]
2002-03	2003-04	8,25,79,200/-
2003-04	2004-05	10,79,16,400/-
2004-05	2005-06	5,17,62,721/-
2005-06	2006-07	7,39,59,500/-

102. The assessee agitated the matter before the CIT(A), but without any success.

103. Before us, the ld. DR strongly supported the findings of the AO., the ld. AR vehemently stated that the Assessing Officer has erred in assuming jurisdiction u/s 153C/153A of the Act erroneously relying

upon the documents which did not belong to the assessee. It is the say of the ld. AR that the entries/notings/jottings found in the loose sheets/diaries seized from the premises of Shri R.K. Miglani/UPDA do not have any evidentiary value as per the ratio laid down by the Hon'ble Supreme Court in the case of CBI Vs. V.S. Shukla [1998] Taxmann.com 2155 and in the case of Common Cause, A Registered Society Vs. UOI 394 ITR 220.

104. Per contra, supporting the order of the lower authorities, the ld. DR strongly contended that the decisions relied upon by the ld. AR were rendered in the context of criminal proceedings/FEMA/CBI proceedings and I.T. proceedings are different from these proceedings. Therefore, the content of evidence is different in I.T. proceedings. Accordingly, the judgments delivered in the cases of V.C. Shukla and Common Cause, A registered Society [supra] are not relevant for the appeal under consideration. It is the say of the ld. DR that the notings found in the documents seized from the assessee clearly show a payment of Rs. 2.63 crores to UPDA. Therefore, it cannot be said that such documents do not have any evidentiary value.

105. We have given thoughtful consideration to the rival submissions and have carefully perused the orders of the authorities below. We have given elaborate findings on the documents seized from the premises of Shri R.K. Miglani/UPDA while adjudicating Common Grievance Nos. 1 and 2 elsewhere. For our detailed discussion given therein, we hold that such documents do not belong to the assessee and, therefore, the assessments framed on the strength of such documents are without jurisdiction and hence deserve to be annulled.

106. Now the issue is whether the entries in the seized documents were admissible as good evidence against the assessee. The answer is given by the Hon'ble Supreme Court in the case of V.C. Shukla [supra] wherein the Hon'ble Supreme Court held as under:

> "A conspectus of the above decisions makes it evident that even correct and authentic entries in books of account cannot without independent evidence of their trustworthiness, fix a liability upon a person. Keeping in view the above principles, even if we proceed on the assumption that the entries made in MR 71/91 are correct and the entries in the other books and loose sheets which we have already found to be not admissible in evidence under Section 34) are admissible under Section

9 of the Act to support an inference about the formers' correctness still those entries would not be sufficient to charge Shri Advani and Shri Shukla with the accusations levelled against them for there is not an iota of independent evidence in support thereof. In that view of the matter we need not discuss, deleve into or decide upon the contention raised by Mr. Altaf Ahmed in this regard. Suffice it to say that the statements of the for witnesses, who have admitted receipts of the payments as shown against them in MR 71/91, can at best be proof of reliability of the entries so far they are concerned and not others. In other words, the statements of the above witnesses cannot be independent evidence under Section 34 as against the above two respondents. So far as Shri Advani is concerned Section 34 would not come in aid of the prosecution for another reason also. According to the prosecution case itself his name finds place only in one of the loose sheets (sheet No. 8) and not in MR 71/91. Resultantly, in view of our earlier discussion, section 34 cannot at all be pressed into service against him."

107. Similar view was taken by the Hon'ble Supreme Court in the case of Common Cause, A registered Society [supra] wherein the Hon'ble Supreme Court considered the following facts:

"Raids were conducted on the Birla and Sahara Group of Companies and incriminating materials in form of random sheets and loose papers, computer prints, hard disk, pen drives etc. were found. Evidence of certain highly incriminating money transactions were also found.

- *Question arises as to whether a case was made out on the basis of above materials, to constitute Special Investigation Team (SIT) and direct investigation against the various functionaries/officers and further monitor the same?*

108. And held as under:

- *Loose sheets of papers are wholly irrelevant as evidence being not admissible under section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by this Court. [Para 20]*

- *The Court has to be on guard while ordering investigation against any important constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence and not admissible evidence , whether it would be safe to even initiate*

investigation? In case it is done, the investigation can be as against any person whosoever high in integrity on the basis of irrelevant or inadmissible entry falsely made, by any unscrupulous person or business house that too not kept in regular books of account but on random *papers at any given point of time. There has to be some relevant and admissible evidence and some cogent reason, which is* prima facie *reliable and that too, supported by some other circumstances pointing out that the particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period, which may have co-relations with the random entries. In case all these are not insisted, the process of law can be abused against all and sundry very easily to achieve ulterior goals and then no democracy can survive in case investigations are lightly set in motion against important constitutional functionaries on the basis of fictitious entries, in absence of cogent and admissible material on record, lest liberty of an individual be compromised unnecessarily. The materials which have been placed on record either in the case of Birla or in the case of Sahara are not maintained in regular course of business and thus lack in required reliability to be made the foundation- of a police investigation. [Para 21]*

- *In case of Sahara, in addition there is adjudication by the Income Tax Settlement Commission. The order has been placed*

on record. The Settlement Commission has observed that the scrutiny of entries on loose papers, computer prints, hard disk, pen drives etc. have revealed that the transactions noted on documents were not genuine and have no evidentiary value and that details in these loose papers, computer print outs, hard disk and pen drive etc. do not comply with the requirement of the Indian Evidence Act and are not admissible evidence. It further observed that the department has no evidence to prove that entries in these loose papers and electronic data were kept regularly during the course of business of the concerned business house and the fact that these entries were fabricated, non-genuine was proved. It held as well that the PCIT/DR have not been able to show and substantiate the nature and source of receipts as well as nature and reason of payments and have failed to prove evidentiary value of loose papers and electronic documents within the legal parameters. The Commission has also observed that department has not been able to make out a clear case of taxing such income in the hands of the applicant firm on the basis of these documents. [Para 22]

- *It is apparent that the Commission has recorded a finding that transactions noted in the documents were not genuine and thus has not attached any evidentiary value to the pen drive, hard disk, computer loose papers, computer printouts. [Para 23]*

- *Since it is not disputed that for entries relied on in these loose papers and electronic data were not regularly kept during course of business, such entries were discussed in the order passed in Sahara's case by the Settlement Commission and the documents have not been relied upon the Commission against assessee and thus such documents have no evidentiary value against third parties. On the sis of the materials which have been placed on record, it is opined that no case is made out to direct investigation against any of the persons named in the Birla's documents or in the documents of Sahara. [Para 24]*

- *In the case of* State of Haryana *v.* Bhajan Lai *1992 Supp (1) SCC 335, this Court has laid down principles in regard to quashing the F.I.R. The Court can quash FIR also if situation warrant even before investigation takes place in certain circumstances. This Court has laid down thus:*

(1) *Where the allegations made in the first information report of the complaint, even if they are taken at their face value and accepted in their entirety do not* prima facie *constitute any offence or make out a case against the accused.*

(2) *Where the allegations in the first information report and other materials, if any. accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under section 156(1) of the Code except under an order of a Magistrate within the purview of section 155(2) of the Code.*

(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

(4) *Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.*

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with* mala fide *and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. [Para 26]*

- *Considering the aforesaid principles which have been laid down, it is opined that the materials in question are not good enough to constitute offences to direct the registration of F.I.R. and investigation therein. The materials should qualify the test as per the aforesaid decision. The complaint should not be improbable and must show sufficient ground and commission of offence on the basis of which registration of a case can be ordered. The materials in question are not only irrelevant but are also legally inadmissibly under section 34 of the Evidence Act, more so with respect to third parties and considering the explanation which have been made by the Birla Group and Sahara Group, it is opined that it would not be legally justified, safe, just and proper to direct investigation. [Para 27]"*

109. It is true that the afore discussed judgments of the Hon'ble Supreme Court were not considered in the context of Income-tax proceedings, but the ratio decidendi is directly applicable on the facts of the case in hand. Therefore, we have no hesitation to hold that the additions made on the basis of the impugned seized documents do not hold any water and deserve to be deleted. This finding of ours is in addition to the detailed findings given in Common Grievance Nos. 1 and 2 elsewhere.

110. In the result, the appeals filed by the assessee are allowed.

1563 & 1564/DEL/2012
Saraya Industries [Revenue's appeals]

111. The sole grievance of Revenue in both the appeals is that the CIT(A) erred in deleting the disallowance of Rs. 3,16,91,550/- in A.Y 2004-05 and Rs. 4,12,20,600/- in A.Y 2005-06.

112. Since we have categorically held that assessment framed u/s 153C r.w.s 153A of the Act is without jurisdiction and the same is annulled for want of jurisdiction, therefore, we do not find it necessary to dwell into the merits of the case.

113. In the result, the appeals filed by the Revenue stand dismissed.

ITA Nos. 1654 to 1657/DEL/2013
SVP Industries Ltd [Revenue's appeals]

114. Common Grievance in both the impugned appeals by the Revenue is that the CIT(A) has erred in cancelling the assessment for the A.Ys under consideration.

115. Assessment has been framed u/s 153C r.w.s 153A of the Act vide order dated 19.12.2011 for A.Ys under consideration. Entire assessment has been framed on the strength of the documents found seized from the premises of Shri R.K. Miglani/UPDA and on the statement of Shri R.K. Miglani recorded u/s 132(4) of the Act.

116. Since we have given categorical finding while adjudicating Grievance Nos. 1 and 2 elsewhere that the impugned documents do not belong to the assessee and on such finding, we hold that assessment framed u/s 153C r.w.s 153A of the Act is without jurisdiction and the same is annulled for want of jurisdiction, therefore, we do not find it necessary to dwell into the merits of the case. There is no error or infirmity in the findings of the first appellate authority.

117. In the result, the appeals filed by the Revenue stand dismissed.

ITA No. 2013/DEL/2012
SVP Industries Ltd [assessee's appeal]

118. The sum and substance of the grievance of the assessee is that the entire additions made by the Assessing Officer and sustained by the

CIT(A) is on the basis of inference drawn from the paper seized from the residence of Shri R.K. Miglani,

119. Vide an application dated 30.10.2018, the assessee prayed for admission of following additional ground of appeal:

> *"That in the absence of requisite satisfaction contemplated u/s 153C of the Act, the Assessing Officer has no jurisdiction to frame the assessment and accordingly, the assessment so framed by the Assessing Officer dated 26.12.2008 u/s 143(3) of the Act is without jurisdiction."*

120. The ld. DR, at the very outset, vehemently objected for admission of this additional ground. It is the say of the ld. DR that this grievance was never taken before any authority in the first round of litigation. Therefore, the assessee now cannot take this additional ground.

121. We have elaborately discussed the admission of additional ground/challenges from the jurisdiction of the Assessing Officer in the case of Lord's Distillery Limited in ITA No. 2576 to 2578/DEL/2010 at para 79 page 74. For our detailed discussion therein, the additional

ground is admitted and since it goes to the root of the mater, we will first address to this additional ground raised by the appellant.

122. Facts of the case reveal that a satisfaction note received by the Assessing Officer is dated 10.04.2007 which date has to be taken as the date of search in the case of the "other person". In the light of the provisions of section 153C of the Act discussed elsewhere. Six A.Ys constitute block preceding year of search, therefore, in the case in hand, the six A.Ys will be as follows:

2007-08
2006-07
2005-06
2004-05
2003-04
2002-03

which means that the impugned A.Y 2006-07 is part of the block period, which means that the assessment ought to have been framed u/s 153C r.w.s 153A of the Act which is the mandate of relevant provisions relating to assessment in the case of search and seizure operation. The present assessment order is framed u/s 143(3) of the Act and is, therefore, bad in law. Accordingly, we do not have any

hesitation in annulling the assessment order. Since the assessment order has been annulled, all the subsequent happenings get vitiated.

123. In the result, the appeal filed by the assessee is allowed.

ITA No. 457/DEL/2010
Kesar Enterprises Ltd [Revenue's appeal]

124. The CIT(A) has annulled the impugned assessment order framed u/s 153C r.w.s 153A of the Act dated 26.12.2018.

125. A perusal of the order of the CIT(A) shows that the CIT(A) annulled the assessment holding the impounded documents from the premises of Shri R.K. Miglani/UPDA do not belong to the assessee. Therefore, the Assessing Officer has initiated the proceedings without any jurisdiction. Accordingly, the proceedings initiated u/s 153C of the Act are not as per law.

126. The Revenue is aggrieved by this finding of the first appellate authority for the impugned A.Y.

127. We have discussed this issue in detail while adjudicating common grievance No. 1 elsewhere. For our detailed discussion therein, we hold that the assessment framed u/s 153C r.w.s 153A of the Act is without jurisdiction and accordingly, assessment order is annulled for want of jurisdiction. No interference is called for.

128. In the result, the appeal filed by the Revenue is dismissed.

C.O. No.84/Del/2010
(In ITA No. 457/Del/2010)
Kesar Enterprises Limited

129. In its cross objection, the assessee has challenged the assumption of jurisdiction by the Assessing Officer u/s 153C of the Act on the basis of certain documents found during the search operations conducted at the premises of Shri R.K. Miglani and in the survey conducted at the premises of UPDA.

130. We have discussed this issue in detail while adjudicating common grievance No. 1 elsewhere. For our detailed discussion therein, we hold that since the assessment order has been annulled, all the subsequent happenings get vitiated.

131. In the result, the cross objection is allowed.

ITA Nos. 2226, 2227 & 3328 /DEL/2010
Kesar Enterprises Ltd [Assessee's appeal]

132. The sum and substance of the grievance of the assessee is that the CIT(A) grossly erred in confirming the action of the Assessing Officer in assuming jurisdiction u/s 153C r.w.s. 153A of the Act merely on the basis of certain documents found during the course of search. The assessee is further aggrieved by the addition of Rs. 3.367 crores in A.Y 2003-04, Rs. 3.07 in A.Y 2004-05 and Rs. 1.44 crores in A.Y 2005-06 made by the Assessing Officer on account of alleged unaccounted contribution made to UPDA on the basis of impounded documents and statements of Shri R.K. Miglani.

133. We have discussed this issue in detail while adjudicating common grievance Nos. 1 and 2 elsewhere. For our detailed discussion therein, we hold that the assessment framed u/s 153C r.w.s 153A of the Act is without jurisdiction and accordingly, assessment order is annulled for want of jurisdiction.

134. In the result, the appeals filed by the assessee are allowed.

135. The sum and substance of the grievance of the assessee is that the CIT(A) grossly erred in confirming the action of the Assessing Officer in assuming jurisdiction u/s 153C r.w.s. 153A of the Act when no satisfaction as per law was recorded in the case of the appellant company.

136. The assessee is further aggrieved by the addition of Rs. 39.81 lakhs added by the Assessing Officer on account of expenditure from undisclosed sources.

137. The peculiar facts of the case are that satisfaction note, which triggered the proceedings u/s 153C of the Act was recorded in the name of M/s Narang Distillery Limited. Moreover, the impounded documents found from the premises of Shri R.K. Miglani/UPDA contained the list of distilleries who have contributed to UPDA. Sl. No. 4 refers to Narang. Therefore, it cannot be conclusively stated that Narang refers to Narang Distilleries only because satisfaction has been recorded in the name of Narang Industries.

138. Be that as it may, assumption of jurisdiction u/s 153C of the Act on the basis of documents impounded from the premises of Shri R.K. Miglani/UPDA has been held by us as unlawful. Accordingly, we have annulled the assessment order so framed while deciding common Grievance No. 1. For our detailed discussion given therein, added with our findings given in common grievance No. 2, we hold that the assessment so framed u/s 153C r.w.s 153A of the Act is bad in law and without jurisdiction. Since we have annulled the assessment, there is no need to dwell into the merits of the addition.

139. In the result, the appeals of the assessee are allowed.

ITA No. 5056/DEL/2011
Narang Distillery Ltd [Assessee's appeal]

140. The sum and substance of the grievance of the assessee is that the CIT(A) grossly erred in confirming the action of the Assessing Officer in framing assessment without assumption of jurisdiction as per law upon the assessee and framing the impugned assessment u/s 143(3) without applying the mandatory conditions of section 153C of the Act. The assessee is further aggrieved by the addition of Rs. 1.98 crores as alleged undisclosed income of the assessee.

141. Facts on record show that the ACIT, Central Circle-4, New Delhi recorded satisfaction as per provisions of section 153A on 01.12.2006 that action u/s 153C of the Act was called for in this case as the assessee had made unaccounted payments/incurred illegal unaccounted expenditure. In the case of the appellant, the date of satisfaction note would amount to date of search i.e. 01.12.2006. Therefore, the six A.Ys forming block will be year ending 31.03.2006, 31.03.2005, 31.03.2004, 31.03.2003, 31.03.2002 and 31.03.2001, which means that for the year ending 31.03.2006 for A.Y 2006-07 , the A.Y under consideration, assessment had to be framed u/s 153C of the Act whereas the assessment has been farmed u/s 143(3) of the Act. Therefore, the same is bad in law.

142. Be that as it may, assumption of jurisdiction u/s 153C of the Act on the basis of documents impounded from the premises of Shri R.K. Miglani/UPDA has been held by us as unlawful. Accordingly, we have annulled the assessment order so framed while deciding common Grievance No. 1. For our detailed discussion given therein, added with our findings given in common grievance No. 2, we hold that the assessment so framed u/s 153C r.w.s 153A of the Act is bad in law and

without jurisdiction. Since we have annulled the assessment, there is no need to dwell into the merits of the addition.

143. In the result, the appeal of the assessee is allowed.

ITA No. 2827/DEL/2010
Narang Distillery Ltd [Revenue's appeal]

144. The revenue is aggrieved by the deletion of addition of Rs. 2.66 crores.

145. While deleting the impugned addition, the CIT(A) was of the view that since the original assessment was not pending as on the date of initiation of charge, the same has not abated and admittedly, nothing was found during the search to suggest that any income in regard to the ground raised by the assessee appellant has escaped assessment and no books of account, documents or other assets being found or seized in the search belong to the appellant. In regard to the additions made thereafter, no addition can be made to the income of the appellant u/s 153C r.w.s 153A of the Act which is not based on the books of account, documents or other assets found and seized during search.

146. Assessment/additions made on the basis of documents impounded from the premises of Shri R.K. Miglani/UPDA have been held by us not relevant for framing assessment u/s 153C of the Act while deciding common Grievance No. 1 elsewhere. For our detailed discussion given therein, added with our findings given in common grievance No. 2, we hold that the assessment so framed u/s 153C r.w.s 153A of the Act is bad in law and without jurisdiction.

147. In the result, the appeal of the Revenue is dismissed.

ITA No. 1658/Del/2010
ITA No. 1871/Del/2010

National Industrial Corporation Ltd

148. The sum and substance of the grievance of the assessee is that the CIT(A) grossly erred in confirming the assessment framed u/s 153C r.w.s. 153A of the Act merely on the basis of certain documents found and during the course of search from the premises of Shri R.K. Miglani.

149. We have discussed this issue in detail while adjudicating common grievance No. 1 elsewhere. For our detailed discussion therein, we hold that the assessment framed u/s 153C r.w.s 153A of the Act is

without jurisdiction and accordingly, assessment order is annulled for want of jurisdiction. Therefore, we do not find it necessary to dwell into the merits of the case.

ITA No. 1042/Del/2010
ITA No. 1043/Del/2010

ITA No. 1044/Del/2010

ITA No. 2806/Del/2010

ITA No. 2807/Del/2010

C.O. No. 127/Del/2010
C.O. No. 128/Del/2010
C.O. No. 129/Del/2010

National Industrial Corporation Ltd
[Revenue's appeals and assessee's cross objections]

150. Grievance of the Revenue is that the CIT(A) erred in annulling the assessment by holding that no document was seized during the search pertaining to this A.Y.

151. In its cross objection, the assessee has challenged the assumption of jurisdiction u/ 153C of the Act.

152. Be that as it may, assumption of jurisdiction u/s 153C of the Act on the basis of documents impounded from the premises of Shri R.K. Miglani/UPDA has been held by us as unlawful. Accordingly, we have annulled the assessment order so framed while deciding common Grievance No. 1. For our detailed discussion given therein, added with our findings given in common grievance No. 2, we hold that the assessment so framed u/s 153C r.w.s 153A of the Act is bad in law and without jurisdiction.

153. In the result, Cross objections of the assessee are allowed and the appeals filed by the Revenue are dismissed.

ITA No. 2053/Del/2010
ITA No. 2054/Del/2010
ITA No. 2772/Del/2012
ITA No. 2773/Del/2012
ITA No. 2774/Del/2012

Modi Industries Limited [Revenue's appeals]

154. All the above appeals by the Revenue have to be dismissed because of the following:

Sl No	Assessment Year	ITA Number	Total Quantum	Tax Effect [Calculated @ 33.99%]
1.	2000-01	ITA No. 2053/Del/2010	Rs. 17,58,000	Rs.5,97,544
2.	2002-03	ITA No. 2054/ Del/2010	Rs.32,89,000	Rs. 11,17,931
3.	2004-05	ITA No. 2772/Del/2012	Rs.12,51,000	Rs.4,25,215
4.	2005-06	ITA No. 2773/Del/2012	Rs.23,28,000	Rs.7,91.287
5.	2006-07	ITA No. 2774/Del/2012	Rs.5,44,000	Rs. 1,84,906

155. As can be seen from the afore-mentioned chart, the tax effect is less than Rs. 20 lakhs in all the A.Ys. In the light of the CBDT Circular No. 3/2018 dated 11.07.2018 by which the Board has revised the monetary limit for filing of appeals by the department before the ITAT and the monetary limit has been fixed at Rs. 20 lakhs. The Board at Clause 13 of the said Circular has clarified as under:

> *"This Circular will apply to SLPs/appeals/cross objections/ references to be filed henceforth in Supreme Court/High Court/Tribunal and it shall also apply retrospectively to pending SLPs/appeals/cross objections/ references. The pending appeals below the specified tax limit in para 3 above may be withdrawn/not pressed."*

156. However, it is observed that in case on re-verification at the end of the Assessing Officer it can be demonstrated that the tax effect is more, or Revenue's case falls within the ambit of exceptions provided in the Circular, then the Department will be at liberty to approach the Tribunal for recall of this order relatable to such case. Such application should be filed within the time period prescribed in the Act.

157. In the light of the aforesaid CBDT Circular, the appeals filed by the Revenue are dismissed.

158. In the result, all the appeals of the Revenue stand dismissed.

ITA No. 2177/Del/2012
ITA No. 2178/Del/2012
ITA No. 2496/Del/2010

Modi Industries Limited [Assessee's appeals]

159. The sum and substance of the grievance of the assessee is that the CIT(A) grossly erred in confirming the assessment framed u/s 153C r.w.s. 153A of the Act.

160. A perusal of the assessment order dated 28.12.2007 shows that the entire assessment has been framed on the strength of the documents seized from the premises of Shri R.K. Miglani and impounded from the premises of UPDA. Since we have annulled the assessment framed u/s 153C of the Act on the basis of documents found from the premises of Shri R.K. Miglani, for our detailed discussion given in common grievance Nos. 1 and 2, we hold that the assessment so framed u/s 153C r.w.s 153A of the Act is bad in law and without jurisdiction. Since we have annulled the assessment, there is no need to dwell into the merits of the case.

161. In the result, the appeals of the assessee are allowed.

ITA No. 2151/Del/2012

Modi Industries Limited [Revenue's appeal]

162. Assessment is framed u/s 143(3) of the Act on the strength of the documents found from the premise of Shri R.K. Miglani/UPDA and accordingly, additions have been made. We have annulled the assessment framed on the strength of the documents seized from the premises of Shri R.K. Miglani and impounded from the premises of

UPDA. Since we have annulled the assessment framed u/s 153C of the Act on the basis of documents found from the premises of Shri R.K. Miglani, for our detailed discussion given in common grievance Nos. 1 and 2, we hold that the assessment so framed u/s 153C r.w.s 153A of the Act is bad in law and without jurisdiction

163. In the result, the appeal of the Revenue is dismissed.

ITA No. 5572/Del/2014
ITA No. 4215/Del/2010
ITA No. 4216/Del/2010
ITA No. 4217/Del/2010

Simbholi Sugars Limited [Assessee's appeals]

164. The sum and substance of the grievance of the assessee is that since the assessment for A.Y 2006-07 was framed u/s 143(3) of the Act, reassessment on the total income u/s 153A of the Act can only be made on account of material found during the course of search operation. The assessee alleges that the assessment has been framed on the basis of documents found during the course of search and seizure proceedings conducted on third party, namely Shri R.K. Miglani or survey operation of UPDA. Therefore, the assessment framed is bad in law.

165. Before us, strong reliance was placed on the decision of the hsc in the case of Kabul Chawla 281 CTR 0045 [Del] which was followed in the case of Meeta Gutgutia 82 Taxmann.com 287.

166. The ld. DR vehemently stated that the ratio laid down in the case of Kabul Chawla do not apply on the facts of the case in hand. We do not find any force in the contention of the ld. DR. Now the issue is well settled in favour of the assessee by the Hon'ble Supreme Court in the case of Singhad Technical Education 397 ITR 344.

167. It would be pertinent to refer to the findings of the Hon'ble Delhi High Court in the case of Kabul Chawla [supra] which reads as under:

> *"The decision in CIT Vs. Anil Kumar Bhatia does not deal with a situation where, as in the present case, no incriminating material was found during the search conducted u/s 132*
>
> *Nevertheless, it was interesting to note that in CIT Vs. Chetan Das Lachman Das the court underscored the need for department to have unearthed material during the search to justifying the assessment sought to be made. It was held that an assessment u/s 153A has to be made under this section only on the basis of seized material.*

On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

(i) Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

(ii) Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

(iii) The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

(iv) Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information

available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

(v) In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

(vi) Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

(vii) Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which

were not produced or not already disclosed or made known in the course of original assessment."

168. Since the assessment has been held to be not tenable in law, we do not find it necessary to dwell into the merits of the case. Though the additions made by the Assessing Officer are on the basis of statement of Shri R.K. Miglani, this issue has been discussed at length by us while deciding common Grievance No. 2. On this count also, addition is not maintainable.

169. In the result appeals of the assessee are allowed.

ITA No. 3001/DEL/2014
Simbholi Sugars

170. Since the assessment has been held quashed, we do not find it necessary to dwell into the merits of the case.

171. In the result appeal of the Revenue is dismissed.

458/DEL/2010
Superior Industries Ltd

172. Grievance of the Revenue is that the CIT(A) erred in annulling the assessment by holding that no document was seized during the search pertaining to this A.Y.

173. Facts on record show that search and seizure operation u/s 132 of the Act was undertaken on the business premises as well as residential premises of Shri R.K. Miglani/UPDA. Facts on record also show that no documents have been seized which can be said to be belonging to the assessee for F.Y. 1999-2000 pertaining to A.Y 2000-01. Since no documents were seized for the A.Y under consideration, there was no question of framing assessment u/s 153C r.w.s 153A of the Act.

174. On the given facts, the CIT(A) has rightly annulled the assessment. Therefore, no interference is called for.

720/DEL/2012
721/DEL/2012
722/DEL/2012
1022/DEL/2012
1023/DEL/2012

Superior Industries Ltd [Assessee's appeals

175. Since the assessment has been held quashed, we do not find it necessary to dwell into the merits of the case.

176. In the result appeals of the assessee are allowed.

1024/DEL/2012
Superior Industries Ltd

177. The assessee is aggrieved by the addition of Rs. 2.54 crores made by the Assessing Officer on the alleged unaccounted payment made by the assessee to UPDA.

178. Facts on record show that additions have been made by the Assessing Officer on the strength of the notings found from the premises of Shri R.K. Miglani/UPDA and on the statement of Shri R.K. Miglani recorded u/s 132(4) of the Act for making the impugned addition.

179. While adjudicating common grievance No. 1, we have categorically held that the documents seized from the premises of Shri R.K. Miglani do not have any evidentiary value and further while adjudicating common grievance No. 2, we have held that the additions

made on the statement of Shri R.K. Miglani who was not subjected to cross examination is not sustainable.

180. We have discussed this issue in detail while adjudicating common grievance Nos. 1 and 2 elsewhere. For our detailed discussion therein, we hold that the assessment framed u/s 153C r.w.s 153A of the Act is without jurisdiction and accordingly, assessment order is annulled for want of jurisdiction. Therefore, the Assessing Officer is directed to delete the impugned addition.

181. In the result, the appeals of the assessee are allowed.

ITA No. 1648/Del/2013
ITA No. 1649/Del/2013
ITA No. 1650/Del/2013
ITA No. 1651/Del/2013
ITA No. 1652/Del/2013
ITA No. 1653/Del/2013

DCM Shriram Industries Ltd [Revenue's appeals]

182. Grievance of the Revenue in all the appeals is that the CIT(A) erred in cancelling the assessment for the years under consideration.

183. A perusal of the order of the CIT(A) shows that the CIT(A) has followed the earlier order of the Tribunal wherein the Tribunal has held that the documents seized and evidences gathered from the residence of Shri R.K. Miglani during search do not belong to the members of UPDA and as the present appellant is member of UPDA, assessment framed u/s 153C was held to be bad in law.

184. We have given elaborate findings on the documents seized from the premises of Shri R.K. Miglani/UPDA while adjudicating Common Grievance No. 1 elsewhere. For our detailed discussion given therein, we hold that such documents do not belong to the assessee and, therefore, the assessments framed on the strength of such documents are without jurisdiction and hence deserve to be annulled.

185. In the result, appeals of the Revenue stand dismissed.

C.O. No. 126/Del/2013
C.O. No. 127/Del/2013
C.O. No. 128/Del/2013
C.O. No. 129/Del/2013
C.O. No. 130/Del/2013
C.O. No. 131/Del/2013

186. The cross objections of the assessee are covered by our detailed findings given while adjudicating common grievance No. 2.

187 In the result, the cross objections of the assessee are allowed.

ITA No. 9/Del/2012
ITA No. 10/Del/2012
ITA No. 11/Del/2012
ITA No. 3208/Del/2013
ITA No. 3209/Del/2013
ITA No. 3210/Del/2013
ITA No. 3211/Del/2013

U.P. Distillers Association [Assessee's appeals]

188 The above appeals are preferred against the orders of the CIT(A), New Delhi for A.Ys 2001-02 to 2007-08. ITA Nos 11/D/2012 and 3211/DEL/2013 are appeals where assessment has been framed u/s 143(3) of the Act whereas all the other appeals are where assessment has been framed u/s 153A of the Act.

189. In so far as the assessment orders framed u/s 153A of the Act are concerned, the main grievance of the assessee is that the assessment so framed is bad in law as no search u/s 132 of the Act was carried on at the premises of the assessee.

190. Other grievance relate to cancellation of registration granted u/s 12AA of the Act and additions made u/s 68 of the Act and denial of the benefit of section 11 of the Act.

191. Since the first and main grievance of the assessee goes to the root of the matter, we will address on this issue.

192. The undisputed fact is that the assessments have been framed u/s 153A of the Act vide order dated 28.12.2007. The Assessing Officer has categorically mentioned that the premises of the assessee were searched u/s 132 of the Act on 14.02.2006 and various incriminating documents were found and seized.

193. There is no dispute that search operations were carried out when the Warrant of Authorisation u/s 132 of the Act is executed. The mandatory requirement of a Warrant of Authorisation u/s 132 as given in Form No. 45 are names of the persons to be searched and the names of the premises to be searched. A Warrant of Authorisation may contain name of more than one person but for each premise, Warrant of Authorisation is required. Both the ld. AR and ld. DR have supplied the copy of Warrant of Authorisation which is part of record. A perusal

of Warrant of Authorisation u/s 132 of the Act shows the names of the following persons:

1. Shri R.K. Miglani
2. Shri Lalit Khaitan
3. M/s Radico Khaitan Ltd
4. UPDA

194. Address on which this Warrant of Authorisation was to be executed is P/25, 1st Floor, South Extension, Part – 2, New Delhi. Indeed, the name of the assessee is very much there in the Warrant of Authorisation but the name of the premises is where Shri R.K. Miglani resided. This means that no Warrant of Authorisation u/s 132 of the Act was executed at the premises of the assessee on 14.02.2006.

195. The question arises, then what was executed at the premises of the assessee. The answer is given by authorisation u/s 133A of the Act dated 14.02.2006. This authorisation is also part of our record which clearly mentions the name of the premises as 4th Floor, PHD Chamber of Commerce, Hauz Khas, New Delhi. This is the address of the assessee.

196. Panchnama of the assessee reads as under:

"**Order u/s 133A(3) (1a) of the I.T Act.**

The following books of accounts/documents found during the course of survey u/s 133A at the premises of UPDA, 4th Floor, PHD House, August the premises of UPDA, 4th Floor, PHD House, August Kranti Marg, Delhi on 14/2/2006 are hereby impounded.

S. No.	Description	Pages
A-1	Executive Diary 2006	1to 22
A-2	Block Diary 2004	1 to 168
A-3	Organizer 2005	1 to 151
A-4	Ibico Spiral Note Book	1 to 40
A-5	Ibico Spiral Note Book	1 to 42
A-6	Loose Papers	1 to 14
A-7	Loose Papers	1 to 19
A-8	Loose Papers	1 to 24
A-9	CPU	One

Recovered Annexure A-1 to A-B
Along with the survey folder

R. K. Gupta
Asstt. Director of Income Tax
(Inv.) Unit-V(3), ARA Centre
E-2, Jhandewalan Extn.
New Delhi 110055

Copy to the assessee

R. K. Gupta
Asstt. Director of Income Tax
(Inv.) Unit-V(3), ARA Centre
E-2, Jhandewalan Extn.
New Delhi 110055."

197. From the Warrant of Authorisation, one thing is clear. Search operations were conducted at the premises of Shri R.K. Miglani u/s 132 of the Act and survey operation was conducted at the premises of the assessee u/s 133A of the Act. Panchnama of Survey operation is exhibited elsewhere.

198. At this stage, it is pertinent to mention that on 14.02.2006, when both operations took place, statement of Shri R.K. Miglani was recorded u/s 132(4) of the Act at the premises and u/s 133A of the Act at the premises of the assessee. This also makes it clear that Shri R.K. Miglani was searched and UPDA was surveyed. Otherwise, there was no need for examining Shri R.K. Miglani under two different sections i.e. 132(4) and 133A of the Act.

199. If the search warrant was never executed at the premises of the assessee, it leads to only one conclusion that the assessee wsa never searched. If the assessee was never searched u/s 132 fo the Act, assessments framed u/s 153A of the Act are bad in law because provisions of section 153A provides for assessment in case of search or requisition.

200. The ld. AR has heavily relied upon the decision in the case of N.K. Jewellers Vs. CIT wherein the Hon'ble Supreme Court has held that :

> *"In view of the amendment made in section 132A by the Finance Act 2017, 'reason to believe' as the case may be, is not required to be disclosed to any person or any authority or Appellate Tribunal as recorded by revenue authority u/s 132 or section 132A of the Act."*

201. We fail to understand how the decision in this case is relevant and applicable to the facts of the case in hand. As mentioned elsewhere, the dispute in the present case is whether the Warrant of Authorisation was executed at the premises of the assessee searched or not. It is not the case of the assessee that the person who has issued the Warrant of Authorisation has "reason to believe" or "reason to suspect".

202. Although we have held that the assessment framed u/s 153A of the Act is bad in law, but we will not rest our decision on this only but would like to proceed further to consider other issues.

203. The facts of the case are that the appellant is an association of U.P. Distillers. It is a non-profit charitable organization. Its composition is covered under the Principles of Mutuality. The main object of the association is to represent and resolve the problems of the distillers in the State of Uttar Pradesh with the Central and State Governmental authorities and other statutory bodies so as to subserve the common interests and pursuits of the distillers and to provide a fillip to the business interests. It also provides a solid platform for interacting and communicating with several authorities and other related entities for the promotion, perpetuation and progress of the objectives and interests of the members of the appellant association.

204. Several documents were found and seized from the premises of Shri R.K. Miglani and also from the premises of the assessee. While examining the seized documents, the Assessing Officer was of the firm belief that Shri R.K. Miglani, being Secretary General of the assessee, has received various payments from the member distilleries during the F.Y. 2002-03 to 2005-06 relevant to A.Ys 2003-04 to 2006-07. The details of such alleged payments are as under:

s. No.	Name of the Distillery	2002-03	2003-04	2004-05	2005-06 (till Jan)	Total (In Lakhs)
1	Saraya	945	1045	527.5	690 (Saraya + Balrampur	3207.5
2	Unnao	804	1134	636.9	889.6	3464.5
3	Rampur	752	945	599.4	705.6	3002
4	SSL (Mansurpur)	463	607	374.8	591	2035.8
5	Lords (D. K. Modi)	582	616	404.9	486.9	2089.8
6	Daurala (DCM)	374	453	310.2	245448.6	1585.8
7	Kesar (Baheri)	419	317	176.3	348.6245	1157.3
8	NIC (National)	327	359	242.4	348.6	1277
9	Simbholi	298	472	278.5	583.1	1631.6
10	Balrampur	298	328	244.5		870.5
11	Narang	61	153	105.1	235.7	554.8
12-13	Pilkhani & Shamli	214.4	333.1	185	214	947.0
14	Cooperative	150	182	99.8	194.8	626.6
15	M. Meakins	202	334	204.2	275.6	1015.8
16	Central	22	44	32.4		
17	Modi	21	125	149.7	308.8	98.4
18	Superior/ITRC	6	46	34.7	233.6	320.3
19	Majhola				72.5	72.5

205. From the above details, the Assessing Officer came to the conclusion that the assessee has received the following sums in the respective A.Ys:

Sl. No.	A.Y	Sum
1.	2003-04	56.80 crores
2.	2004-05	76.04 crores
3.	2005-06	45.42 crores
4.	2006-07	56.41 crores

206. The above amounts, extracted from the seized documents, have been treated as unexplained cash credits in the respective A.Ys.

207. As a result of search conducted at the resident of Shri R.K. Miglani on 14.02.2006, documents A-1 to A-10 were found and seized therefrom. The Assessing Officer has further observed that Annexure A-1 to A-10 were also impounded from the office of UPDA during survey for which Panchnama was provided.

208. The Assessing Officer has mentioned that what was taken out from the computer at UPDA premises were only copies of papers impounded from the residence of Shri R.K. Miglani. What was found from the residence of Shri R.K. Miglani cannot be construed as documents belonging to the assessee to trigger the provisions of section 153 of the Act unless in the case of Shri R.K. Miglani his Assessing Officer is satisfied that these documents do not belong to Shri R.K. Miglani but belong to UPDA. However, having made these observations, we would like to make it clear that the impugned assessments are not a product of section 153C but section 153A of the Act.

209. Adverting to the facts relating to the additions made u/s 68 of the Act, we must first understand the precondition for invoking the provisions of section 68 of the Act and the precondition is that where any sum is found credited in the books of the assessee maintained for any previous year. No such entries are found in the books of the assessee. What was found was merely notings in loose papers/spiral bound diaries. Whether entries in loose sheets can be construed as entries in the books of account, the Hon'ble Supreme Court in the cases of Common Cause, A Registered Society Vs. UOI 394 ITR 220 wherein the Hon'ble Supreme Court considered the following facts:

> *"Raids were conducted on the Birla and Sahara Group of Companies and incriminating materials in form of random sheets and loose papers, computer prints, hard disk, pen drives etc. were found. Evidence of certain highly incriminating money transactions were also found.*
>
> - *Question arises as to whether a case was made out on the basis of above materials, to constitute Special Investigation Team (SIT) and direct investigation against the various functionaries/officers and further monitor the same?*

And held as under:

- *Loose sheets of papers are wholly irrelevant as evidence being not admissible under section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by this Court. [Para 20]*

- *The Court has to be on guard while ordering investigation against any important constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence and not admissible evidence , whether it would be safe to even initiate investigation ? In case it is done, the investigation can be as against any person whosoever high in integrity on the basis of irrelevant or inadmissible entry falsely made, by any unscrupulous person or business house that too not kept in regular books of account but* on random *papers at any given point of time. There has to be some relevant and admissible evidence and some cogent reason, which is* prima facie *reliable and that too, supported by some other circumstances pointing out that the particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period, which may have co-*

relations with the random entries. In case all these are not insisted, the process of law can be abused against all and sundry very easily to achieve ulterior goals and then no democracy can survive in case investigations are lightly set in motion against important constitutional functionaries on the basis of fictitious entries, in absence of cogent and admissible material on record, lest liberty of an individual be compromised unnecessarily. The materials which have been placed on record either in the case of Birla or in the case of Sahara are not maintained in regular course of business and thus lack in required reliability to be made the foundation- of a police investigation. [Para 21]

- *In case of Sahara, in addition there is adjudication by the Income Tax Settlement Commission. The order has been placed on record. The Settlement Commission has observed that the scrutiny of entries on loose papers, computer prints, hard disk, pen drives etc. have revealed that the transactions noted on documents were not genuine and have no evidentiary value and that details in these loose papers, computer print outs, hard disk and pen drive etc. do not comply with the requirement of the Indian Evidence Act and are not admissible evidence. It further observed that the department has no evidence to prove that entries in these loose papers and electronic data were kept regularly during the course of business of the concerned business house and the fact that these entries*

were fabricated, non-genuine was proved. It held as well that the PCIT/DR have not been able to show and substantiate the nature and source of receipts as well as nature and reason of payments and have failed to prove evidentiary value of loose papers and electronic documents within the legal parameters. The Commission has also observed that department has not been able to make out a clear case of taxing such income in the hands of the applicant firm on the basis of these documents. [Para 22]

- *It is apparent that the Commission has recorded a finding that transactions noted in the documents were not genuine and thus has not attached any evidentiary value to the pen drive, hard disk, computer loose papers, computer printouts. [Para 23]*

- *Since it is not disputed that for entries relied on in these loose papers and electronic data were not regularly kept during course of business, such entries were discussed in the order passed in Sahara's case by the Settlement Commission and the documents have not been relied upon the Commission against assessee and thus such documents have no evidentiary value against third parties. On the sis of the materials which have been placed on record, it is opined that no case is made out to direct investigation against any of the persons named in the Birla's documents or in the documents of Sahara. [Para 24]*

- *In the case of* State of Haryana *v.* Bhajan Lai *1992 Supp (1) SCC 335, this Court has laid down principles in regard to quashing the F.I.R. The Court can quash FIR also if situation warrant even before investigation takes place in certain circumstances. This Court has laid down thus:*

(8) *Where the allegations made in the first information report of the complaint, even if they are taken at their face value and accepted in their entirety do not* prima facie *constitute any offence or make out a case against the accused.*

(9) *Where the allegations in the first information report and other materials, if any. accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under section 156(1) of the Code except under an order of a Magistrate within the purview of section 155(2) of the Code.*

(10) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

(11) *Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.*

(12) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(13) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(14) *Where a criminal proceeding is manifestly attended with* mala fide *and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. [Para 26]*

- *Considering the aforesaid principles which have been laid down, it is opined that the materials in question are not good enough to constitute offences to direct the registration of F.I.R. and investigation therein. The materials should qualify the test as per the aforesaid decision. The complaint should not be improbable and must show sufficient ground and commission of offence on the basis of which registration of a case can be ordered. The materials in question are not only irrelevant but are also legally inadmissibly under section 34 of the Evidence Act, more so with*

respect to third parties and considering the explanation which have been made by the Birla Group and Sahara Group, it is opined that it would not be legally justified, safe, just and proper to direct investigation. [Para 27]"

210. In the case of V.C. Shukla [1998] Taxmann.com 2155, Hon'ble Supreme Court held as under:

"A conspectus of the above decisions makes it evident that even correct and authentic entries in books of account cannot without independent evidence of their trust worthiness, fix a liability upon a person. Keeping in view the above principles, even if we proceed on the assumption that the entries made in MR 71/91 are correct and the entries in the other books and loose sheets which we have already found to be not admissible in evidence under Section 34) are admissible under Section 9 of the Act to support an inference about the formers' correctness still those entries would not be sufficient to charge Shri Advani and Shri Shukla with the accusations levelled against them for there is not an iota of independent evidence in support thereof. In that view of the matter we need not discuss, deleve into or decide upon the contention raised by Mr. Altaf Ahmed in this regard. Suffice it to say that the statements of the for witnesses, who have admitted receipts of the payments as shown against them in MR 71/91,

> can at best be proof of reliability of the entries so far they are concerned and not others. In other words, the statements of the above witnesses cannot be independent evidence under Section 34 as against the above two respondents. So far as Shri Advani is concerned Section 34 would not come in aid of the prosecution for another reason also. According to the prosecution case itself his name finds place only in one of the loose sheets (sheet No. 8) and not in MR 71/91. Resultantly, in view of our earlier discussion, section 34 cannot at all be pressed into service against him."

211. In the light of the ratio laid down by the Supreme Court in the above cases. We do not find any merits in the impugned additions made u/s 68 of the Act.

212. It is not in dispute that the entire additions have been made because some data is alleged to have been recorded in the computer of Shri R.K. Miglani. On the strength of such data, provisions of section 153C were invoked in the case of distilleries who are members of UPDA and additions have been made in their respective hands as unexplained expenditure. While making additions in the hands of the distillers, heavy reliance was placed on the statement of Shri R.K. Miglani

recorded u/s 132(4) of the Act. In answer to one of the questions, Shri R.K. Miglani had categorically stated that the member distillers have not made any payments to UPDA. Whatever payments have been made, the distillers have directly paid to the politicians/government officials. On the one hand on the basis of some data, the Revenue has taken a view in the hands of the distillers but the statement of Shri R.K. Miglani tells a different story when he says that he is not aware to whom the distillers had made payments and his office only keeps record of the contribution/ payments made by the various members of UPDA directly to politicians and other persons/agencies.

213. The Assessing Officer has heavily relied upon page 81/A-3 seized from Shri R.K. Miglani's residence in which total country liquor produced by each distillery is given, which is converted into number of cases, then contribution of each distillery is calculated @ Rs. 20 per case.

214. It is pertinent to mention here that UPDA, the appellant is neither a manufacturer nor a distributor of country liquor or any other liquor. Therefore, this seized document has no relevant in so far as the appellant is concerned. Though repetitive requests were made to

submit Shri R.K. Miglani for cross examination, but the same was not provided by the Revenue. The denial of cross examination of Shri R.K. Miglani has been discussed by us in length while deciding common grievance No. 2 elsewhere.

215. While discharging the duties of Secretary General of the appellant, it is not known why Shri R.K. Miglani was maintaining data relating to manufacture of country liquor by the members of UPDA. Moreover, Shri R.K. Miglani is not a computer literate person and does not know the principles of book keeping and accountancy and he has mentioned that he joined UPDA in June 2003, then how can he explain the data/entries in the loose sheets/impounded documents prior to June 2003. It appears that whatever he has stated in respect of transactions prior to June 2003 is nothing but hearsay. The appellant has recorded all the contributions made by members of UPDA in its books of account.

216. The ld. DR has heavily relied upon various judicial decisions to buttress his stand in respect of statements recorded u/s 132(4) of the Act and the presumption of entries found recorded in the books of account seized during search as per section 132(4) and 292C of the Act.

217. We do not find any relevance on these judicial decisions of the High Courts in as much as the presumption is against a person whose statement has been recorded u/s 132(4) of the Act during the course of search and seizure proceedings. As mentioned elsewhere, no search operation was conducted at the business of the appellant. It was Shri R.K. Miglani whose premises were searched. WE have summarized the assessment status of Shri R.K. Miglani elsewhere from which it can be seen from the returned income of Shri R.K. Miglani was assessed as such. Presumptions u/s 132(4), 132(4A) and 292C of the Act are available in respect of Shri R.K. Miglani only. Ironically, no such presumption was availed in the case of Shri R.K. Miglani as no additions were made in his hands.

218. It is an undisputed fact that the alleged amounts were not found noted anywhere in the books of accounts of the assessee. None is cited or referred by the Assessing Officer in his assessment. Though Shri R.K. Miglani in his statement has stated that the amounts mentioned in the seized documents have come from distillery member and were utilized for payment to civil servants and politicians, but neither Shri R.K. Miglani nor the Assessing Officer has brought anything on record which could suggest the names of the payees/recipients of

such illicit payments. Apart from the computerized sheets, there are loose papers seized which have been written by Shri R.K. Miglani in his own handwriting. The Assessing Officer alleges that Shri R.K. Miglani has written weekly information for the assessment years 2002-03, 2005-06. As mentioned elsewhere Shri R.K. Miglani joined in June 2003, then how can he write weekly data in his own handwriting for F.Y. 2001-02.

219. The entire case of the Revenue revolves around the payments made to UPDA by the distillery members and statement of Shri R.K. Miglani. Incidentally, the very same documents were considered by the Hon'ble High Court of Delhi in the case of Radico Khaitan Ltd 396 ITR 644 wherein the Hon'ble High Court has observed as under:

> *"The revenue's argument mainly hinges upon the clandestine payments to UPDA and statements of its Secretary General. These include various tables and charts mentioning the names of distilleries (members of the association) and the expected payment from such distilleries. These documents were signed by the Sh. Miglani and on behalf of the different distilleries. The revenue had prepared a chart for each assessment year and the payment made by the assessee to the fund, according to it, worked out to ` 29.95 crores. This was allegedly used to*

bribe public officials and politicians. The reasoning of the Commission was that these documents were in the possession of UPDA and the statements of Sh. Miglani were made not in the course of its search (i.e. of the assessee's premises) and therefore corroboration of the statements as well as the documents with the materials seized from the assessee's premises in this regard was necessary. The question here is whether this reasoning is sound.

24. Section 132 no doubt mandates a presumption in respect of search and seizure operations; yet textually the presumption relates to material documents and books of account seized of from the assessee's premises and the presumption that can be made from it, not from materials seized and statement recorded, of third parties. Only if the materials that are sought to be relied upon emanate from the premises of the party subject to assessment, that the presumption can be drawn. This is evident from Sections 132 (4) and (4A) of the Act, which read as follows:

"Section 132.... (4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in

evidence in any proceeding under the Indian Income- tax Act, 1922 (11 of 1922), or under this Act. 1 Explanation.- For the removal of doubts, it is hereby declared that the examination of any person under this sub- section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income- tax Act, 1922 (11 of 1922), or under this Act.] (4A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed-

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person' s handwriting, and in the case of a document stamped, executed

or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested."

It is evident that in the absence of these foundational facts, the revenue is under an obligation to establish through materials relatable to the assessee, what it alleged against it. What were the best pointers for further investigation were the discovery of material and evidence, which the revenue claim pointed to the assessee's failure to disclose full facts and income, should have resulted in further investigation and unearthing of material in the form of seized documents from the assessee's premises. Unfortunately the linkage between the material seized from the assessee's premises and those from UPDA's premises as well as the statement of Sh. Miglani was not established through any objective material. It is now settled law that block assessments are concerned with fresh material and fresh documents, which emerge in the course of search and seizure proceedings; the revenue has no authority to delve into material that was already before it and the regular assessments were made having regard to the deposition, the inability of the revenue to establish as it were, that the assessee's expenditure claim was bogus, or it had underreported income and that it resorted to over invoicing and diversion of funds into the funds allegedly maintained by

the UPDA, was not established. The findings of the Commission therefore cannot be faulted as contrary to law.

25. As far as suppression of profits for various financial years, alleged by the revenue, the Commission was of the opinion that the documents relied upon were work estimates and projections that revealed tentative profitability in respect of the assessee's activities towards sale of country liquor i.e. that the documents did not reflect actual figures. The documents reflected profit methods for both years which left the Commission to infer they were in fact not based upon actuals but alternative projections. Here again the view taken by the Commission cannot be said to be unreasonable as to warrant interference. Likewise, so far as suppression of profits for financial year 2004-05 is concerned the revenue in its Rule 9 report stated that the extra money generated was ` 33.35 crores and expenditure incurred was ` 17.35 crores [of this substantial bribe amount were paid]. According to the revenue major expenditure out of this ` 17.35 cores was illegal and could not be allowed. The assessee's stand was that the internal indications in the document itself showed that the figures were tentative calculations as evidenced from the expression "expected" and that it did not have anything to do with actual state of affairs. The assessee's managing director prepared these

estimates. The Commission accepted this contention and concluded that the revenue's arguments were based upon surmise; the Commission also felt that the documents did not disclose that any payments made were illegal. Furthermore it relied upon the document observing that it contained no writings highlighting that in case a means was made in further expenses would have been incurred in respect of various divisions of the assessee. Here too the interpretation of the documentary evidence by the Commission which is to be viewed with caution, does not appear to be contrary to law or unreasonable. In the circumstances the revenue's contentions on this aspect too cannot be accepted."

220. The very same documents are the subject matter of the present appeal and the Hon'ble High Court has categorically mentioned that the linkage between the material seized from UPDA's premise as well as statement of Shri R.K. Miglani was not established through any objective material. Without bringing any cogent material on record, it is merely a presumption that the UPDA has been primarily engaged in the work of facilitating the collection and payment of bribe money.

221. Some more issues have been raised by the ld. DR.

(i) On the basis seized from the residence of Shri R.K. Miglani, M/s Radico Khaitan Ltd surrendered Rs. 27.50 crores and Balrampur Chini Mills surrendered Rs. 8.90 crores.

222. We fail to understand how the action of some other tax payer is relevant in the case of the appellant. The wisdom of Radico Khaitan Ltd and Balrampur Chini Mills cannot be considered and should not be considered in the hands of the appellant.

(ii) Incriminating documents were also seized from the laptop of Shri Ajay Agarwal, General Manager of M/s Radico Khaitan Ltd.

223. Again, it is between M/s Radico Khaitan Ltd and its General Manager to explain the incriminating documents. The assessee cannot be held to be responsible for the same.

224. The ld. DR has further asserted that the Revenue has produced a number of evidences in support of the fact that the distillers had made unaccounted payments to UPDA. In this regard, we have to point out that except for the notings in the loose sheets/impounded documents,

the Revenue has brought nothing on record to establish any payments made by the distillers to UPDA. Whatever a member distiller has contributed to UPDA is recorded in the regular books of account of the assessee. Preponderance of probabilities do not allow us to assume or presume non existing facts. Considering the facts in totality from all possible angles, we do not find any merit in the additions made u/s 68 of the Act.

225. Coming to the issue relating to denial of benefit of sections 11 and 12 of the Act, the Assessing Officer in Para 13 of the assessment order for assessment year 2001-02 held that the assessee is not eligible for exemption u/ss 11 & 12 of the Act for the following reasons:

> "1. The A.O in Para 13 of the assessment order for Assessment Year 2001-02, held that assessee is not eligible for exemption u/s 11 & 12 of IT Act as follows:
>
> "13. The perusal of the object of the association, specially object mentioned above, it is, clear that the UP Distilleries Association is for production and promotion of Alcohol. They are also making illegal payments as discussed above.
>
> 13.1. The object as stated above can form a part of charitable purpose only if they come within the ambit of the clause " advancement of any other object of general public

utility". It now needs to be analysed whether the Assessee with its stated object can be considered as an association working for the object of general public utility. Consumption of alcohol is injurious to health and consumption of alcohol is against state policy so much that the states of Gujarat prohibits the consumption of alcohol. Time and again other states e.g. Haryana, Andhra Pradesh have also imposed ban on consumption of alcohol it is therefore clear that time and again the States has toyed with the idea of imposing a prohibition with consumption of alcohol. Even the article 47 of the Constitution of India, in the Directive Principles of State Policy has stated that " ……the state shall endeavor to bring about prohibition of the consumption except for medicinal purpose sine of intoxicating drink and of drugs which are injurious to health. The Constitution of India also visualizes the production and consumption of alcohol as being injurious to health and the objects of the association are against state policy. Many WHO articles have pointed out as to how the consumption of alcohol is injurious to health.

13.2. In addition to above, as per the seized documents and statement of Sh. Miglani as discussed above, association has been primarily engaged the work of facilitating the collection and payment of bribe money which is against the public policy welfare.

13.3. Due to the reasons explained above the object and activities of the Trust cannot be considered for charitable purpose and exemption u/s 11 and 12 of the IT Act, is denied and assessment is being made in the status of AO P."

In view of the above detailed reasons, the assessee is not eligible for exemption u/s 11 & 12 of IT Act in respect of following unaccounted receipts:

S. No.	Assessment Year	Amount (Rs.)
1	2003-04	56,80,00,000
2	2004-05	76,04,15,200
3	2005-06	45,22,94,401
4	2006-07	56,41,74,550

The above unaccounted receipts are not reflected in the return of income filed by the assessee. Moreover, at no stage of the proceedings, the assessee has claimed or furnished documentary evidence in support of the fact that the above amounts were spent for charitable purposes, which is the primary condition for claiming exemption u/s 11 & 12 of IT Act. "

226. Barring the issue relating to the additions made u/s 68 of the Act as per the aforesaid chart, the other issues were considered in the appellate proceedings for assessment year 2001-02 and the matter had travelled upto the Tribunal and the Tribunal in ITA No. 573/DEL/2005 has allowed the benefit of provisions of section 11 and 12 of the Act to the assessee.

227. The only distinguishing feature is the addition made u/s 68 of the Act. The allegation of the Assessing Officer is that the aforesaid receipts are unaccounted and are not reflected in the return of income filed by the assessee. In our findings elsewhere, relating to the additions made u/s 68 of the Act, we have elaborately discussed the issue and have categorically held that the additions made u/s 68 of the Act is not tenable in law and have directed to delete the same. Since the additions u/s 68 of the Act have been deleted by us and the other facts in issue are similar to the facts considered by the Tribunal in ITA No. 573/DEL/2005, respectfully following the findings of the co-ordinate bench, we direct the Assessing Officer to allow benefit of section 11 & 12 of the Act.

228. It would not be out of place to refer to the findings of the Hon'ble High Court given in the judgment delivered on 23.10.2017 in ITA No. 830/2017 wherein the Hon'ble High Court has clarified that the cancellation of registration in this case should have related back only from the date of introduction u/s 12AA(3) of the Act which is w,e,f 1.10.2014 and not earlier. Against this judgment of the Hon'ble High Court, the Revenue had preferred a SLP before the Supreme Court but the same was dismissed.

229. The ld. DR strongly relied upon the decision in the case of Bangalore Club Vs. CIT 350 ITR 509 to assert that the claim of mutuality does not apply to the facts of the case in hand. In our considered opinion, this decision relied upon by the ld. DR would not apply to the facts of this case because in the case of Bangalore Club [supra] the source of interest income was from an related party to which mutuality of interest could not be attributed. Whereas the facts of the case in hand show that the appellant collects subscription of membership fees from its members and those collections are deployed for defrayal of expenses for activities of the club. This means that the collection from the members is for the benefit of the members and being so, principles of Mutuality would apply.

230. In the light of clarification of the Hon'ble High Court [supra] and in the light of decision of the co-ordinate bench given in ITA No. 573/DEL/2005 and in the light of our decision relating to the additions made u/s 68 of the Act, we are of the considered opinion that the benefits of section 11 & 12 cannot be denied to the assessee.

231. In the result, the appeals of the assessee are allowed.

232. We will now address to the assessments framed u/s 143(3) of the Act in assessment year 2006-07 ITA Nos. 3211/DEL/2013 and assessment year 2007-08 in ITA No. 11/DEL/2012.

233. In ITA No. 3211/DEL/2013, the assessee is aggrieved by the rejection of registration granted u/s 12AA of the Act by adding a sum of Rs. 2,2,5,209/- and is further aggrieved by the addition of Rs. 56.41 crores being unexplained credit entries u/s 68 of the Act.

234. We have already granted benefit of sections 11 & 12 of the Act and in so far as rejection of registration granted u/s 12AA of the Act is concerned, as mentioned elsewhere, the Hon'ble High Court has protected the assessee by its order till 01.10.2014. Further, we have

directed for deletion of the addition made u/s 68 of the Act. Considering all these issues in totality, the appeal of the assessee is allowed.

235. In ITA No. 11/DEL/2012 for assessment year 2007-08, the assessee is aggrieved by the cancellation of registration granted u/s 12AA of the Act and is further aggrieved by the enhancement of the income by the ld. CIT(A) from NIL income to Rs. 4,88,140/- regardless of the fact that the amount of Rs. 4,88,140/- treated as income by the ld. CIT(A) was, in fact, the amount of contribution received by the assessee from the members for reimbursement of expenses.

236. In so far as cancellation of registration u/s 12AA is concerned, we have already mentioned hereinabove that the clarification of the Hon'ble High Court protected the assessee by its order till 01.10.2014. The same clarification applies for this year also.

237. Since the registration was cancelled, the assessee was assessed in the status of an AOP. The ld. CIT(A) found that surplus of receipt over expenditure is Rs. 4,88,140/-. According to the ld. CIT(A), this income

should have been brought to tax by the Assessing Officer. The ld. CIT(A) issued notice of enhancement in reply to which the assessee strongly contended that it is not carrying out any business activity and that it has not earned during the year under appeal which can be subjected to income tax. It was further brought to the notice of the first appellate authority that the assessee has only received membership subscription of Rs. 22.34 lakhs. The surplus of Rs. 4.88 lakhs is the unspent amount from out of the membership subscription received during the year under appeal.

238. The Hon'ble Bombay High Court in the case of Trustees of Shri Kot Hindu Stree Mandal Vs. CIT 209 ITR 396 has held that :

> *"When a person pays membership fee or subscription to a society or a trust, he does not make a gift of the membership fee or subscription amount to the society. The amount of subscription paid by a member to the society can never be considered as gratuitous payment made by the member to the society or as a payment without any consideration. membership and subscription amounts received by the applicant-trust/society from its members cannot be characterised as "voluntary contribution" . The subscription*

amount received by the assessee-trust was not liable to be included in the total income of the trust."

239. The ld. CIT(A) declined to recognize this judgment of the Hon'ble Bombay High Court only on the ground that the assessee has been assessed in the status of an AOP and its registration as member has been cancelled.

240. Since we have already pointed out that registration u/s 12AA of the Act has been protected till 01.10.2014, therefore, the action of the ld. CIT(A) is uncalled for. We accordingly, direct the Assessing Officer to delete the addition of Rs. 4,88,140/-.

241. In the result, the appeals of the assessee are allowed.

The order is pronounced in the open court on 14.12.2018.

Sd/-	**Sd/-**
[SUCHITRA KAMBLE**]**	**[N.K. BILLAIYA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 14th December, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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	