

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K.N.CHARY, JUDICIAL MEMBER

ITA No. 1455/Del/2015
(Assessment Year: 2010-11)

ACIT, Central Circle-06, New Delhi	Vs.	Rohan Patel, 10, Executive Club Road, Chandanholla Mehrauli, New Delhi PAN: ASJPP8428L
(Appellant)		(Respondent)

ITA No. 1456/Del/2015
(Assessment Year: 2010-11)

ACIT, Central Circle-06, New Delhi	Vs.	Himanshu Patel, 10, Executive Club Road, Chandanholla Mehrauli, New Delhi PAN: ACTPP8270C
(Appellant)		(Respondent)

ITA No. 1457/Del/2015
(Assessment Year: 2010-11)

ACIT, Central Circle-06, New Delhi	Vs.	Praduman Patel, 10, Executive Club Road, Chandanholla Mehrauli, New Delhi PAN: AJHPP2206P
(Appellant)		(Respondent)

ITA No. 1458/Del/2015
(Assessment Year: 2010-11)

ACIT, Central Circle-06, New Delhi	Vs.	Krish Patel, 10, Executive Club Road, Chandanholla Mehrauli, New Delhi PAN: AQVPP2875R
(Appellant)		(Respondent)

ITA No. 1459/Del/2015
(Assessment Year: 2010-11)

ACIT, Central Circle-06, New Delhi	Vs.	Urmila Chandulal Patel, 10, Executive Club Road, Chandanholla Mehrauli,
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		New Delhi PAN: AEIPP1395R
(Appellant)		(Respondent)

Revenue by :	Smt Sulekha Verma, CIT DR
Assessee by:	Shri Raj Gupta, CA Shri Sumit Goyal, CA
Date of Hearing	28/11/2018
Date of pronouncement	31/12/2018

O R D E R

PER BENCH

1. These are the five appeals filed by the revenue against the order of the ld CIT (A)-31, New Delhi dated 01.12.2014 for the Assessment Year 2010-11. Similar grounds of appeal are raised in all these matters as common issue is involved. Following grounds of appeal in ITA No. 1455/Del/2015 for the Assessment Year 2010-11.
 - “1. *The order of the ld CIT(A) is not correct in law and facts.*
 2. *On the facts and circumstances of the case the ld CIT(A) has erred in law in treating the assessment order invalid by holding defect in assumption of jurisdiction u/s 153C by following the decision of jurisdictional High Court of Delhi in the case of Pepsi Foods Pvt. Ltd.*
 3. *On the facts and circumstances of the case the ld CIT(A) has erred in law in not deciding the issues on merits of the case.”*
2. The Only issues involved in these appeals is whether the ld AO has correctly assumed jurisdiction u/s 153 C of the act by holding that documents found during the course of search on Shela Foams private Limited on 28/11/2011 ‘belongs’ to the assessee.
3. As the facts involved in all these appeals are similar, we 1st take up ITA number 1455/del/2015 in case of Shri Rohan Patel and state facts relating to his case for assessment year 2010 – 11. Search and seizure operation under section 132 of the income tax act was conducted at business premises of Sheila form private limited on 28/11/2011. During the course of search annexure A – 1, 2, A – 13 were found and seized. Notice under section 142 (1) of the act was issued on 3/10/2013 in response to which return was filed on 9/12/2013. During the course of search, it was observed that the shares held by Shri Pradyman Patel group

and other Patel group in Sheila Foams private limited was acquired by another company Serta India private limited during financial year 2009 – 10. The AO noted that on the basis of search operation various incriminating documents were found and seized from the premises of Sheila foams private limited which established that for acquiring shares by Rahul Gautam group from the Pradyman Patel Group substantial consideration was paid in cash outside the books of accounts. Ld. AO noted that the total sale consideration of the shares of INR 88.90 crores was decided and out of which INR 52.7,8 crores was paid through cheques and the balance amount of INR 36.10 crores were paid in cash to the sellers of the shares. The learned AO referred to page number 41 – 85 of Annexure A-1, page number 20, 21 of annexure A – 7, page number 12 of annexure A – 5, page number 21 of annexure A – 8 and noted that Shri Rahul Gautam , Managing director of Sheila Foams Private limited has paid huge amount of cash as indicated on the seized documents to Shri Patel group for purchase of shares. He noted that page number 41 of annexure A – 1 is seized from the office premises of Sheila foam private limited is an excel sheet exhibiting detailed working in respect of the transfer of shares held by Patel group to Rahul Gautam group. He further held that page number 41 clearly shows the details of consideration by cheque and consideration by cash. He further referred to page number 49 – 53 of annexure A-1 which is a payment schedule as per the settlement worked out in page number 41 of annexure A – 1. He therefore held that the payment made to Patel group had both cash and cheque components. During the course of assessment proceedings the assessee was asked to furnish details in respect of shares sold to Rahul Gautam group and the consideration received with documentary evidence. Further the show cause notice dated 31/12/2013 was also issued to assessee to furnish the details in respect of the above transaction. The assessee submitted vide letter dated 23/1/2014 that the complete payment has been received through cheque and long-term capital gain of INR 2.92 crores (In case of Rahul Patel only, other assesses have also shown their long term capital gain as per their shareholdings) has been earned thereon. Assessee completely denied the receipt of any cash sale consideration from the Rahul Gautam group. Assessee submitted on

7/2/2014 that all these seized papers are found from the office of Sheila foam private limited and none of these documents belongs to the assessee. None of these documents had been maintained by the assessee and none of these documents are in the handwriting of assessee or his representative. It was further stated that assessee is not aware as to who has and on whose instructions these documents were maintained. The assessee submitted that he is not a party to any of these documents, except for the receipt signed by the assessee acknowledging the receipt of cheques against the sale consideration of shares received. The learned assessing officer considered the explanation of the assessee and stated that though all these papers have been seized from the office of the company, but they do not belong to the assessee is not acceptable. The seized documents contain details of shares held by Patel group, rate of sale of those shares, payment received through cheque, payment received in cash, balance payable in cash and cheques , payment received in cash, balance payable in cash and cheques , receipts of payment for transfer of shares by the assessee and the copy of cheques where payment received clearly belongs to the assessee. He further held that the seized documents also bear the signature of the assessee. Therefore, on the basis of the above, The learned AO made an addition of INR 29230665/- as undisclosed capital gain on sale of shares received in cash to the total returned income of the assessee of Rs. 29457200/- and determining the total income of the assessee of INR 5 8687865/-. Such order was passed under section 153C of the act on 28/3/2014. Similar Order with varying amounts of additions were also passed in the hands of the other assesses.

4. The assessee aggrieved with the order of the learned assessing officer challenged the order before the learned Commissioner of Income Tax (Appeals) on the ground that as none of the documents found and seized in search on Sheila foams private limited 'belong' to the assessee within the meaning of section 153C (1), hence the proceedings initiated under section 153C are illegal and without jurisdiction. The assessee also challenged the addition on the merits of the case. The assessee explained the seized documents found from the Sheila foams private limited and stated that they do not 'belong' to the assessee which is a prime condition for making an

assessment under section 153C of The Income Tax Act. The assessee also submitted that the addition is not sustainable on merits of the case also for the reason that if any adverse view is to be taken of the material seized from a third-party before the same can be used against the assessee, the assessee has a statutory right to cross-examine the owner of the document. The learned CIT – A, noted that the satisfaction note recorded in the case of the assessee is similar to the satisfaction note recorded in the case of Pepsi foods private limited as reproduced in the order of the honourable Delhi High Court in case of Pepsi foods private limited vs ACIT. He further stated that the learned assessing officer has not given any ‘basis or reason’ for his satisfaction that the seized documents belonging to the appellant. He therefore, relies on the ratio of M/s Pepsi foods private limited and held that the assumption of jurisdiction by the learned assessing officer under section 153C of the act is bad in law. He further stated that the AO has merely stated in the satisfaction note that the documents ‘belonging’ to the appellant were found and seized. He further held that there are no reasons expressed in that satisfaction note in arriving at such a conclusion. He therefore held that satisfaction as required under the law pronounced in Pepsi foods private limited is not coming out of the satisfaction note recorded by the learned assessing officer before issuing notice under section 153C and therefore the action of the learned assessing officer is bad in law as per the above decision of the honourable High Court. Therefore respectfully following the ratio of the honourable High Court in case of Pepsi foods private limited, He held that the assumption of jurisdiction under section 153C by the learned assessing officer was bad in law in as much as he has not stated the ‘basis and reasons’ for holding that the documents mentioned in the satisfaction note ‘belong’ to the appellant. However he did not decide the issue on the merit but has allowed the appeal of the assessee on this ground. Similar orders were also passed by Ld CIT (A) in case of other assesses. Therefore, now the assessing officer aggrieved with the order of the learned CIT – A, has preferred an appeal before us.

5. The learned CIT DR vehemently supported the order of the learned assessing officer and assailed the order of the learned Commissioner of Income Tax Appeals stating that the learned Assessing Officer has correctly

assumed jurisdiction under section 153C of the income tax act. She stated that satisfaction note of PepsiCo and satisfaction note in the case of the assessee are not the same. She further stated that the detailed reasons and statement given on the documents clearly shows that the documents belonging to the assessee. She further stated that the CIT – A, has held that merely because the basis of reasons is not given by the learned assessing officer, initiation of the proceedings is bad in law, is not the proposition requirement of the law. She vehemently stated that in the documents the names are mentioned of the assessee and therefore if the documents are speaking louder than the reasons, the learned Commissioner of income tax appeals should have considered those documents. She further stated that PepsiCo was merely a writ and no question of law was framed in that particular case, therefore, the findings given in that case do not apply to the facts before the coordinate bench. Even otherwise she stated that the learned Commissioner of Income Tax Appeal has wrongly relied upon the PepsiCo holding decision whose facts are different and distinguished from the facts before the coordinate bench in impugned appeals. She further stated that the chart of documents at page number 10 of the order of the learned CIT – A, along with the submission of the assessee, Clearly shows that the transaction and the background of transaction is accepted by the assessee and there is a sufficient material to show that the transactions are entered into by the assessee of earning of unaccounted capital gain. She therefore stated that the matter should go back to the learned CIT – A, for a fresh decision on merits and it is required to be upheld that documents 'belong' to the assesses.

6. The learned CIT DR also submitted a detailed note comprising of several judicial precedents. She also relied upon the common submissions filed by the assessee during the course of 153C proceedings before the learned assessing officer and the reply of the learned assessing officer dated 7/2/2014 to the appellant along with the satisfaction note in the case of Sheela Foams private limited. She submitted as under:-

A. In the above case, it is humbly submitted that the following decisions may kindly be considered u/s 153C of I.T.Act:

1. *PCIT Vs Sheetal International Pvt Ltd (2017-TIQL-1355-HC-DEL-IT) where Hon'ble Delhi High Court held that proceedings u/s 153C cannot be invalidated, merely because the AO of the searched who was also that of the Assessee, did not record a separate satisfaction note.*

2. *PCIT Vs Instronics Ltd [2017] 82 taxmann.com 357 (Delhi) where Hon'ble Delhi High Court held that where satisfaction note was recorded by Assessing Officer of searched person who also happened to be Assessing Officer of assessee (other person) to affect that seized documents belonged to assessee, issuance of notice under section 153C against assessee on basis of said note was justified.*

3. *Ganpati Fincap Services (P.) Ltd. Vs CIT [2017] 82 taxmann.com 408 (Delhi) where Hon'ble Delhi High Court held that where Assessing Officer of searched person recorded that documents seized during search belonged to assessee, merely because he had not categorically stated that documents mentioned therein did not belong to searched person would not invalidate assumption of jurisdiction under section 153C in respect of assessee.*

Where proceeding under section 153C was initiated against assessee on basis of seized documents which could not be said to be non-incriminating on bare perusal and despite of being given several opportunities no submission on merits of case was made by assessee, assessment order passed under said section to make additions was justified.

4. *PCIT Vs Super Malls Pvt Ltd [2016] 76 taxmann.com 267 (Delhi) / [2017] 393 ITR 557 (Delhi)/[2017] 291 CTR 142 (Delhi)*

where Hon'ble Delhi High Court held that where Assessing Officer had issued satisfaction note under section 153C after satisfying himself with contents of documents seized, Tribunal could not declare it as invalid on hyper technical ground of incorrect terminology used in said note. Satisfaction note recorded u/s 153C in respect of the assessee, being the third party, could not be said to be invalid on a hyper technical ground by interpreting the expression "belonging to" too literally.

5. *PCIT Vs M/s Nau Nidh Overseas Pvt Ltd. (ITA No.58/2017) where Hon'ble Delhi High Court held that satisfaction recorded by the Officer issuing notice u/s 153C is sufficient if the AO of the searched person and third party are the same.*

6. *Kamleshbhai Dharamshibhai Patel Vs CIT IT20131 31 taxmann.com 50 (Gujarat) I T20131 214 Taxman 558 (Gujarat) I T20131 263 CTR 362 (Gujarat)*

where Hon'ble Gujarat High Court held that where assessee sold certain land to purchaser, documents, viz., sale deeds of said land and agreements executed between assessee and erstwhile tenants regarding their eviction, found during search upon purchaser, would be said to be belonging to assessee for purpose of section 153C

7. *Rajesh Sunderdas Vaswani Vs ACIT {[20161 76 taxmann.com 311 (Gujarat)}*

where Hon'ble Gujarat High Court held that where Assessing Officer of search person recorded that document found during search was copy of a ledger of books of account of assessee company which evidenced certain cheque payments as well as cash payments to a company by assessee, there was prima facie material to suggest that satisfaction as per section 153C was duly recorded and thus, notice issued to file return to assessee was justified

8 *SSP Aviation Ltd Vs DCIT (20 taxmann.com 214)*

where Hon'ble Delhi High Court held that in view of provisions of section 153C, satisfaction that is required to be reached by Assessing Officer having jurisdiction over searched person is that valuable article or books of account or documents seized during search belong to a person other than searched person and, it is not necessary that documents so seized must reflect any undisclosed income

9. *CIT Vs Classic Enterprises (35 taxmann.com 244, 219 Taxman 237, 358 ITR 465. 268 CTR 364)*

where Hon'ble Allahabad High Court held that where after search at business premises of

assessee-firm and its partner, books of account were handed over to concerned Assessing Officer, who after recording satisfaction issued notice under section 153C and completed assessment under section 153C/143(3), assessment was in accordance with law

10. Savegh Kumar Aqarwal Vs Union of India (35 taxmann.com 85. 216 Taxman 109. 353 ITR 26)

where Hon'ble Allahabad High Court held that even if assessing authority receiving satisfaction note had not found any thing adverse against assessee on examination of account books, and further seized goods had already been released, notice under section 153C could still be issued to assessee to file return of income. Where bullion seized was released to assessee for having been validly entered in stock books, Assessing Officer on receiving satisfaction note could still proceed under section 153A against assessee to find out source of income.

B. Common submissions filed by the appellant during the course of 153C proceedings before AO - Annexure B page 1 to 2.

C. Reply of AO dated 07.02.2014 to the appellant Smt. Urmila Patel, Rohan Patel, Krish Patel, Pradyuman Patel regarded satisfaction recorded - Annexure C page 1 to 5.

D. Satisfaction note in the case of Sheela Foam Pvt. Ltd -Annexure-D (Page 1-5)

7. The learned authorised representative submitted brief synopsis of his arguments as under:-

“ASSTT. U/S.153C CORRECTLY HELD BY CIT (A) AS WITHOUT JURISDICTION

ONE - Satisfaction note of A.O. of searched person is silent on reasons and basis for that seized documents belongs to third party

- Search u/s. 132 on Sheela Foam (P) Ltd. on 28.11.11 (A.Y.2012-13)
- Proceedings U/S.153C in the assessee's case on the basis of satisfaction note dtd. 29.08.13 by the A.O. of searched person (1, 13, 10, 12)
- Sec. 153 C(l) mandates that 153C can be initiated only when the documents/material found belongs to assessee

- As per satisfaction note, following seized material have been mentioned as belonging to assessee for which proceedings u/s. 153C initiated:-
 - Pg. No.41 (Annex. A-1) (5)
 - Pg. No.75 (~ do») (6)
 - Pg. No.81 (-do-) (7)
 - Pg. No.69 (- do -) (8)
 - Pg. No.21 (Annex. A-2) (9)
- For invoking Sec. 153C, the satisfaction note of the A.O. of searched person should indicate that the seized document do not belong to searched person
- Further, said satisfaction note must display the reason and the basis for the conclusion that the seized documents belong to a person other than searched person
- The A.O. of the searched person, in the satisfaction note should give a specific finding as to how the seized material belong to assessee
- In the satisfaction note, there is no finding that the seized documents do not belong to the searched person
- Also, the satisfaction note do not display the reason or the basis for the conclusion that the A.O. of searched person is satisfied that seized documents belong to a person other than searched person (1)
- Also there is a total failure of the A.O. of the searched person to record a specific satisfaction as to how the recovered material belonged to the assessee (1)
- In the absence of above stated mandatory conditions, the impugned satisfaction note cannot provide a legally valid jurisdiction U/S. 153C for initiating the proceedings and for framing the asstt. on assessee U/S. 153C

CASE LAWS

Pepsi Foods (P.) Ltd. Vs. ACIT 231 TAXMAN 58. (DEL.) (1 - 7/RP 6-7)
(SLP DISMISSED BY SC IN 252 TAXMAN 372 SC) (8)

"Para - 11- It is evident from the above satisfaction note that apart from saying that the documents belonged to the petitioner and that the Assessing Officer is satisfied that it is a fit case for issuance of a notice under Section 153C, there is nothing which would indicate as to how the presumptions which are to be normally raised as indicated above, have been rebutted by the Assessing Officer. Mere use or mention of the word "satisfaction" or the words "I am satisfied" in the order or the note would not meet the requirement of the concept of satisfaction as used in Section 153C of the said Act. The satisfaction note itself must display the reasons or basis for the conclusion that the Assessing Officer of the searched person is satisfied that the seized documents belong to a person other than the searched person. We are afraid, that going through the contents of the satisfaction note, we are unable to discern any "satisfaction" of the kind required under Section 153C of the said Act."

PR. CIT VS. N.S.SOFTWARE 403 ITR 259 (DEL.)

“Para - 24 - In the present case, therefore, the failure of the AO to record a specific satisfaction as to how the recovered material belonged to the assessee in the note that preceded the notice issued under it, vitiates the assessments ”

Pepsico India Holdings (P.) Ltd. Vs. ACIT 370 ITR 295 (DEL.)

(9 - 16/RP 15)

“Para - 13. Having set out the position in law in the decision of this Court in the_ case of Pepsi Foods Pvt. Ltd. (supra), it must be seen as to whether the Assessing Officer of the searched person (the Jaipuria Group) could he said to have arrived at a satisfaction that the documents mentioned above belonged to the petitioners.

Para 14. First of all we may point out, once again, that it is nobody"s case that the Jaipuria Group had disclaimed these documents as belonging to them. Unless and until it is established that the documents do not belong to the searched person, the provisions of Section 153C of the said Act do not get attracted because the very expression used in Section 153C of the said Act is that "where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A ..." In view of this phrase, it is necessary that before the~~ provisions of Section 153C of the said Act can be invoked, the Assessing Officer of the searched person must be satisfied that the seized material (which includes documents) does not belong to the person referred to in Section 153 4 (i.e., the searched person). In the Satisfaction Note, which is the subject matter of these writ petitions, there is nothing therein to indicate that the seized documents do not belong to the Jaipuria Group. This is even apart from the fact— that, as we have noted above, there is no disclaimer on the part of the Jaipuria Group insofar as these documents are concerned.,,

Canyon Financial Services Ltd. Vs. ITO 399 ITR 202 (DEL.)

(SLP DISMISSED BY SC IN 253 TAXMAN 341 SC)

“ Para - 19. As a result, the Court holds that the satisfaction note prepared by the AO of the searched person does not fulfil the legal requirement spelled out in Section 153C (I) of the Act. The satisfaction note of the AO of the Assessee, being a carbon copy of the satisfaction note of the AO of the searched person also fails to fulfil the jurisdictional requirement. No reasons are recorded for the identical conclusion in either satisfaction note that the seized documents mentioned therein belong not to the searched person but to the Assessee. ” —

Pr. CIT Vs. Vinita Chaurasia 394 ITR 758 (Del.) (63-73)

(SLP of Deptt. dismissed - 407 ITR 26 (St.) (74)

TWO - The word "pertain to" substituted in Sec.153C(l) w.e.f. 01.06.15 j

Prior to 01.06.15, the documents found were required to be belonging to a 3rd person as per Sec. 153C(1)

However the scope of Sec.153C(l) stood enlarged w.e.f. 01.06.15 by substituting Sec.153C(l) wherein, the word "belongs to" stood substituted by "pertain to" in respect of documents found and seized

Thus, prior to 01.06.15, a finding of belonging alongwith the reasons and basis of such finding has to be there in the satisfaction note of the searched person for providing valid jurisdiction U/S.153C

CASE LAWS

Pr. CIT Vs. Index Securities (P.) Ltd. 86 taxmann.com 84 (Delhi)

(17 - 27/RP-26)

Section 153C of the Income-tax Act, 1961 - Search and seizure - Assessment of I any other person (Condition precedent - Position prior to 1-6-2015) - Assessment I years 2007-08, 2008-09 and 2010-11 - Whether essential jurisdictional requirement for assumption of jurisdiction under section 153C (prior to its amendment with effect from 1-6-2015) qua 'other person' is that seized documents forming basis of satisfaction note must not merely 'pertain' to other person but must belong to 'other person' - Held, yes - Whether in order . to justify assumption of jurisdiction under section 153C, documents seized must be incriminating and must relate to each of assessment years whose assessments are sought to be reopened - Held, yes - During course of assessment proceedings in case of a company, a number of documents were found and seized which contained trial balance and balance sheet of assessee company for period 1-4- 2010 to 13-9-2010 - Though seized documents might pertain to assessee, same was not proved to belong to assessee - Further, said documents did not relate to relevant assessment years and secondly, they could not be said to be incriminating - Whether since, both essential requirements for assumption of jurisdiction under section 153C were not met, issuance of notice was unjustified - Held, yes [Paras 30 & 32] [In favour of assessee]

ARN Infrastructure India Ltd. Vs. ACIT 394 ITR 569 (Delhi)

"Para - 13. As regards the seized documents, what is mentioned in the Satisfaction Note are two documents: the ledger account maintained by the

Petitioner running into 3 pages showing the commission payments made by the Petitioner to RGEPL and the letter dated 27th January, 2010

written by the Petitioner to RGEPL. As far as the latter document is concerned, it is a letter written by the Petitioner to RGEPL and, therefore, should be treated as a document belonging to RGEPL and not to the Petitioner. Whether it may or may not be related to the Petitioner is not relevant since the amendment to Section 153 C of the Act in that regard was prospective with effect from 1st June 2015 i.e. subsequent to the date of preparation of the 'Satisfaction Note' in the present case.”

CIT Vs. RENU CONSTRUCTIONS (P) LTD. (ITA NO. 499/2011, Delhi high court order dtd. 06.09.17) (28 - 33/RP-32)

Held that - “Pertained to” is added w.e.f 01.06.15, which is prospective in nature.

THREE - None of the documents belong to assessee

- Total 05 documents have been stated to be belonging to assessee in the satisfaction note (1)
- The nature of these documents is as under:-

Ann .	Pg - No	Nature as mentioned by AO in letter dtd. 06.01.2014	Explanation of assessee as to why it do not belong to assessee	PB PG. NO-
A- 1	41	Photocopies of paper relating to the settlement statement for the transfer of shares from the Patel Goup to Rahul Gautam group (Sheela Foam) and also to some other persons.	<ul style="list-style-type: none"> • It is a document prepared by Gautam group for their self use only. • It is owned by Gautam Group and not by Patel Group. • It is not in the hand writing of Patel Group. • It is not authored by Patel Group. • It is not prepared on instructions / knowledge of Patel Group. • It is some table found and seized from SFPL, not owned by assessee and for the reasons mentioned above does not belong to assessee. 	<5
	75	-do-	-do-	6
	81	-do-	-do-	7

	69	Details of sale of shares 1052400 of M/s. Sheela foam (P) Ltd. for a consideration of Rs. 17,09,01,955/- by assessee with details of payments.	<ul style="list-style-type: none"> • It is a document prepared by Gautam group for their self use only. • It is owned by Gautam Group and not by Patel Group. • It is not in the hand writing of Patel Group. • It is not authored by Patel Group. • It is not prepared on instructions / knowledge of Patel Group. • It is a detail of shares sold by assessee and sale consideration thereof found and seized from SFPL, not owned by assessee and for the reasons mentioned above does not belong to assessee. 	8
A - 2	21	Receipt dtd 21/10/2009 of Rs. 50064810/- issued to Rahul Gautam by Urmila Patel for sale of shares of Sheela Foam (P) Ltd.	<ul style="list-style-type: none"> • It is a receipt issued to Rahul Gautam of Sheela Foam, signed by assessee acknowledging the receipt of cheque for share sale consideration, which has been declared in return of assessee. • It, since, issued to Rahul, thus belongs to Rahul Gautam, owned by Rahul Gautam and not by assessee. 	9

- Thus these documents, do not at all belong to assessee and belongs only to Rahul Gautam (Sheela Foam) as well as Owned by Rahul Gautam Group
- The definition of “belong” and its meaning stands cleared from following case laws:-

CWT VS. BISHWANATH CHATTERJEE (1976) 103 ITR 536 (SC)

The expression ‘belong’ means ‘to be the property or rightful possession of. So it is the property of a person, or that which is in his possession as of right which is liable to wealth tax. In other

words, the liability to Wealth Tctx arises out of ownership of the assets, and not otherwise.

CIT VS. MEGHMANI ORGANICS LTD. 221 TAXMAN 25 (GUJ.)(MAG.)

This decision has been given following VIJAYBHAI N. CHANDRANI V. ACIT 333 ITR 436 (GUJ.)

“We find that in the present case, very similar situation has arisen. The document on the basis of which the Assessing Officer initiated proceedings under section 153C of the Act was admittedly not written by the assessee. It, of course, had certain references to the estimations and expenditure, etc. of the properties belonging to the assessee. Nevertheless, we cannot hold that such document belonged to the assessee. ”

ARN Infrastructure India Ltd. Vs. ACIT 394 ITR 569 (Delhi)

“Para - 13. As regards the seized documents, what is mentioned in the Satisfaction Note are two documents: the ledger account maintained by the Petitioner running into 3 pages showing the commission payments made by the Petitioner to RGEPL and the letter dated 27th January, 2010 written by the Petitioner to RGEPL. As far as the latter document is concerned, it is a letter written by the Petitioner to RGEPL and, therefore, should be treated as a document belonging to RGEPL and not to the Petitioner. Whether it may or may not be related to the Petitioner is not relevant since the amendment to Section 153 C of the Act in that regard was prospective with effect from 1st June 2015 i.e. subsequent to the date of preparation of the 'Satisfaction Note' in the present case.”

V.K.FISCAL SERVICES (P) LTD. Vs. DCIT (DELHI ITAT ORDER DTD. 27.11.2013 (34 - 62/RP - 42)

In this case following documents were found from the hard disk of computer of the searched person:-

- (i) Confirmation of A/c.
- (ii) Copy of bank A/c of ABN Amro of assessee.
- (iii) Trial Balance of Assessee.
- (iv) Copy of Profit & loss A/c and Balance Sheet of Assessee.
- (v) Copy of Part Cash book for 6 months of assessee during which transaction were done by assessee with searched person.
- (vi) Copy of IOB Bank Ledger A/c. of the assessee.

These documents were held by A.O. as belonging to assessee for the purposes of section 153C.

Hon'ble ITAT in Para - 11.1 has held that these are not the documents belonging to the assessee. The Hon'ble ITAT in this decision has considered some other decisions also. For ready reference Para - 11.1 is abstracted below:-

“77.7. A perusal of the Satisfaction Note demonstrates that in the hard disk of one of the computers some accounts of the assessee company were found. A print out of these books have been furnished to us by the Ld.CIT,D.R. A perusal of the print out show that page 1 is a “confirmation of accounts ” given by the assessee company M/s V.K.Fiscal Services P.Ltd. to Global Reality Ventures Ltd., for the period is 1st April,2008 to 31st March, 2009. As an attachment to this “confirmation of account”, V.K.Fiscal Services P.Ltd. has given a copy of ABN Amro Bank (626643) books, copy of trial balance, copy of profit and loss a/c, copy of balance sheet, copy of a part of the cash book, for the period of six months i.e. the period for which it had transactions with Global Reality Ventures, copy of ledger account of Global Reality Ventures and copy of Indian Overseas Bank (7556) ledger account. These in our view are not books of account belonging to the assessee, as sought to have been made out in the Satisfaction Note. This demonstrates that, the Satisfaction Note which says that books of accounts are contained in the hard disk, is a wrong recording of facts.

The entire cash book or the bank book is not available in the hard disk. What was available in the hard disk was confirmation of accounts given by the assessee to Global Reality Ventures and statement of 10 accounts, ledger etc. in support of the same. The relevant portion of the cash book, where the entries of Global Reality Ventures Ltd. are recorded was also there in the hard disk. Thus to hold that the hard disk contains books of accounts of M/s V.K.Fiscal Services P.Ltd. is prima facie wrong. Thus, in our view no money, bullion, jewellery or other valuable articles or books of accounts or documents seized belong to the assessee, warranting issue of notice u/s 153 'C

Thus none of the documents is owned by assessee, neither in his hand writing, nor got prepared on his instructions/knowledge but only for the internal use / information of Rahul Gautam Group, therefore cannot be taken as belonging to assessee

FOUR - One document cannot belonged to (owned) more than one persons

The following seized documents have been mentioned by the A.O. in the satisfaction notes of following persons as belonging to those persons:-

Ann.	Pg- No.	Held By The A.O. As Belongs To Following Persons & Also To Assessee							PB PG. NO
		Urmila	Renu	Krish	Rohan	Pradu man	Himan shu	Serta	
A- 1	41	Yes	Yes	Yes	Yes	Yes	-	-	5,- ,16,17,15
	75	Yes	-	-	-	Yes	Yes	-	5,15,18
	81	Yes	-	-	-	Yes	Yes	-	5,15,18
A - 2	21	Yes	-	-	-	-	Yes	Yes	5,18,19

- Thus document Pg.41 has been mentioned to 05 persons, Pg.75 to 03 persons, Pg.81 to 03 persons and Pg.21 to 03 persons
- One page will generally belong (owned), to only one person
- Also, seized Pg.21 is a receipt issued by Urmila Patel (assessee), and there is no connection of this page with Himanshu and Serta, although in their satisfaction notes also, this page has been mentioned as belonging to them which is apparently wrong recording of satisfaction (1, 18, 19)
- It shows that the satisfactions have been recorded in a very casual and mechanical manner and without application of mind and such satisfactions cannot provide valid jurisdiction U/S.153C.

FIVE - No mentioning in satisfaction note that seized material is of incriminating nature and/or shows any undisclosed income

- The satisfaction note of A.O. of searched person do not mention that the documents referred to in satisfaction note are of incriminating nature (1)
- Also the satisfaction note do not mentioned that said documents shows any prima facie undisclosed income (1)
- It is necessary that satisfaction note should record that the documents found during search were incriminating in nature and prima facie represents undisclosed income
- In the absence of above categorical findings in satisfaction note. 153C proceedings cannot be initiated

CASE LAWS

CIT Vs. IBC Knowledge Park (P) Ltd. 385 ITR 346 (Kar.)

“We answer the substantial question of law no.2 by holding that the tribunal was not correct in holding that the assessment under section 153C was valid despite there being no satisfaction recorded to the effect that the document found during the search on 17 June 2008 were incriminating in nature and prima facie represented undisclosed income” (RP 378, Para-56)

Lucky Fashion Pt Ltd. Vs. ITO (Delhi ITAT order dtd. 18.07.18, 1TA No. 807/Del/2017t

Held that - In the absence of a finding in the satisfaction note for the documents found and seized are of incriminating nature, no legally valid proceedings U/s. 153C can be initiated.

8. The learned authorised representative also submitted a paper book containing 36 pages covering the satisfaction note recorded in case of a searched person and the letter dated 6/1/2014 of the learned assessing officer stating that the documents belonging to the assessee. The paper book also contains the copies of the seized documents relied upon by the learned assessing officer. It also contains the application made by the assessee on 8/8/2014 under the right to information act and reply thereto dated 17/9/2014. The assessee is also included the satisfaction note recorded by the learned assessing officer in case of all the 5 assessee in these appeals and in case of the buyer of the share. The assessee also relied upon the decision of the honourable the early High Court in case of Pepsi foods private limited vs ACIT 231 taxman 58 and PepsiCo India Holdings private limited vs ACIT 370 ITR 295. It also relied upon the decision of the honourable Delhi High Court in case of principal Commissioner of income tax vs Vinita Chaurasia 394 ITR 758 along with many other judicial precedents.
9. The learned Commissioner of income tax Department representative in rejoinder reiterated the same arguments and stated that there is a clear-cut satisfaction recorded by the learned assessing officer that the documents does not belong to the person searched and the heavy reliance placed by the assessee on the decision of honourable Delhi High Court are distinguishable clearly on the facts of the case. She further relied upon the decision of the honourable Delhi High Court in case of as SSP aviations Ltd vs Deputy Commissioner of income tax 20 taxmann.com 214 stating that it is not necessary that the documents seized must reflect any undisclosed income of the assessee. Therefore, she supported the order of the learned assessing officer.
10. We have carefully considered the rival contentions and perused the orders of the lower authorities. It is important to keep in mind here that the search took place owned 28/11/2011. Therefore, the necessary condition that is required to be satisfied for invoking the provisions of section 153C of the act

is that the seized documents from M/s Sheela forms private limited must belong to the assesses. They must not merely pertain to the assessee.

11. Apparently the learned deputy Commissioner of income tax, central circle – 11, New Delhi on 29/8/2013 recorded the satisfaction in case of Selah form private limited for assessment year 2006 – 07 to 2011 – 12. That during the course of search and seizure operation conducted on 28/11/2011 at the premises of the above company documents marked as annexure A – 1 to A – 13 were found and seized. The learned assessing officer noted that the above seized material contains the following documents belonging to see but the Urmila Devi Chandulal Patel

- i. annexure A – 1, P – 41, photocopies of the papers relating to the settlement statement for the transfer of shares from the Pradyuman Patel group to Rahul Gotham group
 - P – 75 and 81 photocopies of papers relating to the settlement statement for the transfer of shares from UrmilaDevi Patel to the Rahul Gotham group
 - P – 69, contains details of sale of shares of 1052400 of M/s Sheela form private limited for a consideration of INR 170901955/- by Urmila baby with the details of payments
- ii. annexure A – 2, page 21, contains receipt dated 20/12/2009 of INR 50064810/- issued to Sri Rahul Gautam by Mrs. UrmilaDevi Patel for sale of 1052400 shares of M/s Shela form private limited

the learned AO further noted that in view of the above, he is satisfied that the documents seized belongs to a person other than person search under section 132 of the income tax act, 1961.

Hence, the proceedings under section 153C of the income tax act, 1961 is initiated in the case of Mrs. Urmiladevi Chimanlal Patel.

12. The identical satisfaction note was also recorded in case of all other assesses. As held by the honourable Delhi High Court in 367 ITR 112 in Pepsi foods private limited vs ACIT that The satisfaction note itself must display the reasons or basis for the conclusion that the Assessing Officer of the searched person is satisfied that the seized documents belong to a

person other than the searched person. The above decision has also considered the decision of the honourable Delhi High Court in case of SSP aviation Ltd vs Deputy Commissioner of income tax 346 ITR 177, on which ld CIT DR has placed heavy reliance. The Honourable High court further held that 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 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". 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".

13. Honourable Delhi high court in *Pepsico India Holdings (P.) Ltd. v. Asstt. CIT* [2014] 50 taxmann.com 299/[2015] 228 Taxman 116 (Mag.)/270 CTR 467

(Delhi) has also held that The expression 'belongs to' with the expressions 'relates to' or 'refers to'. A registered sale deed, for example, 'belongs to' the purchaser of the property, although it obviously 'relates to' or 'refers to' the vendor. In this example if the purchaser's premises are searched and the registered sale deed is seized, it cannot be said that it 'belongs to' the vendor just because his name is mentioned in the document. In the converse case if the vendor's premises are searched and a copy of the sale deed is seized, it cannot be said that the said copy 'belongs to' the purchaser just because it refers to him and he (the purchaser) holds the original sale deed. In this light, it is obvious that none of the three sets of documents copies of preference shares, unsigned leaves of cheque books and the copy of the supply and loan agreement can be said to 'belong to' the assessee.

14. The Id CIT DR has heavily relied up on the decision of Honorable Delhi High court in SSP Aviations Limited V DCIT 346 ITR 177 . The above decision of Honorable Delhi high court in pepsi Foods Limited (Supra) has also considered the decision of the honourable Delhi High Court in case of SSP aviation Ltd vs Deputy Commissioner of income tax and held as under :-

“8. In so far as the decision in the SSP Aviation Ltd. (supra) is concerned we do not find anything therein which militates against the view that we are taking. In fact the very distinction between section 153C and section 158BD (although section 158BD is not mentioned) is indicated by the following observations of the Division Bench in SSP Aviation Ltd. (supra) (page 188 of 346 ITR) :

"It needs to be appreciated that the satisfaction that is required to be reached by the Assessing Officer having jurisdiction over the searched person is that the valuable article or books of account or documents seized during the search belong to a person other than the searched person. There is no requirement in section 153C(1) that the Assessing Officer should also be satisfied that such valuable articles or books of account or documents belonging to the other person must be shown to show to conclusively reflect or disclose any undisclosed income."

9. It is only in this context that the Division Bench was of the view that the issuance of the section 153C notice was only first step in the process of enquiry.”

15. On careful reading of the satisfaction note in case of Sheela foams the private limited in case of various assessee is individually the learned assessing officer has merely mentioned the documents and then stated that

he is satisfied that the document seized belongs to a person other than the person searched under section 132 of the income tax act. The satisfaction note, did not give any basis of reason that why these documents do not belong to Sheela Foams private limited but to the other assesses.

16. The Id CIT (A) has dealt with the whole issues as under :-

“4.10.3 I have considered the submissions of the AR, perused the assessment orders and also the documents submitted in the paper book. It is noted that the satisfaction note recorded by the AO is almost similar to the satisfaction note recorded in the case of Pepsi Foods Pvt. Ltd. as reproduced in the order of Hon. High Court of Delhi in the case of Pepsi Foods Pvt. Ltd. vs. ACIT (W.P.) (C) 415/414 and CM823/2014 at page 12 to 14 of the said order. The AO has not given any basis/reason for his satisfaction that the seized documents belonged to the appellant. As recorded in the case of Pepsi Foods Pvt. Ltd.(supra), he has straightway mentioned that material seized from M/s Sheela Foam Pvt. Ltd. contained certain documents belonging to the appellants and that he was satisfied that the documents seized belonged to a person other than the person searched and hence proceedings u/s. 153C were being initiated the case of the appellants.

Satisfaction note as recorded in the case of M/s Pepsi Foods Pvt. Ltd. as recorded in the said decision of Hon. High Court of Delhi and the satisfaction note as recorded by the AO in the case of the present appeals are reproduced below for ready reference:-

M/s Pepsi Foods Pvt.

AY 2006-07 to 11-12

02.08.2013 Satisfaction Note for issue of Notice u/s 153C of Income Tax Act, 1961 in the case of M/s Pepsi Foods Pvt. Ltd, for the Assessment Years 2006-07 to 2011-12.

Satisfaction Note

A search and seizure operation u/s 132(1) of the I.T. Act was carried out at the various premises of M/s Jaipuria Group on 27.03.2012. The group is also into various other business viz. Raymond Retail franchisee, real estate construction, fast foods, mining, education, ayurvedic products, information technology and medical sendees. One of the major allegations against the Jaipuria Group is that the assessee group in order to reduce its taxable profit indulged in enhancing the cost of raw material purchased. On examination of the accounts of various concerns, it is noticed that raw material are procured from fixed vendors. Since bulk purchases are made, rates should have been lower. However raw material are being procured on a high rates resulting in lower taxable income. The bottler shall buy all units of concentrate required for the

manufacture of the beverage from PFL (Pepsi Foods Ltd.), or a manufacturer approved in writing by PFL (Pepsi Foods Ltd.) at a price and in accordance with the terms and conditions established by the seller. Being the sole supplier of concentrate to Jaipuria Group, Pepsi Foods Pvt. Ltd. is closely associated to Jaipuria Gr.

During the post search investigation, summonses were issued to M/s Pepsi Foods Pvt. Ltd. to furnish certain details. The complete details were not furnished.

The following documents were also found and seized during the course of search and seizure action u/s 132(1) of I.T. Act, 1961 belonging to (PFL) M/s Pepsi Foods Pvt. (PAN:AAACP1557E) over which the jurisdiction lies with the undersigned:

<i>rty/Ann./Page No.</i>	<i>Description of Annexure</i>
<i>C-4/A-2/77</i>	<i>This page contains summary of PFL Claims as on 29-11 -20 (Claims up to 31 / 10/2011)</i>
<i>C-4/A-4/18-20</i>	<i>These pages contain a detail of D YAT impact (April 10- June 10) Vs PFL Support report and MRP Plan.</i>
<i>C-4/A-4/21-23</i>	<i>These pages contain a details of discount per C/S PDL VS PFL.</i>
<i>C-4/A-4/27</i>	<i>These pages contain a details of status of PFL claims.</i>
<i>C-4/A-5/54</i>	<i>This page contains details of concentrate stock summary as on 31.12.2010.</i>
<i>C-4/A-5/99</i>	<i>This page contains a summary of PFL claims as on 8/9/2011. Claims upto 31 / 8/2011.</i>
<i>C-4/A-5/100</i>	<i>This page contains a detail of PF Support year 2011</i>

Accordingly, section 153C of the I.T. Act, 19 is applicable to M/s Pepsi Foods Pvt. Ltd. which state that "where an Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong or belongs to a person other than the person referred to in section 153A, then the books of account, or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A."

In view of facts narrated above, I am satisfied that the case of M/s Pepsi Foods Pvt. Ltd. is a fit case for issue of notice u/s 153C of the I.T. Act, 1961. Notice u/s 153C dated 02.08.2013 is issued requiring the assessee to file return of income for the A.Y. 2006-07 to 2011-12.

(Pukini Lokho)

M/s SHEELA FOAM PRIVATE LIMITED

During the course of search and seizure operation conducted on 28.11.2011 at Premises No. 37/2, Site-IV, Sahibabad Industrial Area, Ghaziabad, U.P., of Sheela Foam Private Limited, documents marked as Annexure A-1 to A-13 were found and seized.

It is seen that the above seized material contains following documents belonging to Sh. Praduman Patel:-

- 1. Annexure A-1, P-41, photocopies of paper relating to the settlement statement for the transfer of shares from the Pradhuman Patel group to Rahul Gautam Group.
 - P-75 & 81 contains photocopies of paper relating to the settlement statement for the transfer of shares from the Pradhuman Patel group to Rahul Gautam Group.**
- 2. Annexure A-2, Page 15 to 19 contains receipt dated 20/12/2009 of Rs. 52476363/- issued to Rahul Gautam by Pradhuman Patel for sale 1052400 shares of M/s Sheela Foam Pvt. Ltd.
 - Page-19 receipt dated 20/12/2009 of Rs. 55156365/- issued to Rahul Gautm by Pradhuman Patel for sale 678680 shares of M/s. Sheela Foam Pvt. Ltd.*
 - Page-22 & 25 contains photocopies of cheque issued by M/s Sheela Foam Private Limited, M/s Serta India P Ltd., Rahul Gautam to Pradhuman Pates.*
 - Page-27, receipt dated 21/10/2009 of Rs. 41334060/- issued to Rahul Gautam by Pradhuman Patel for sale shares of M/s Sheela Foam Pvt. Ltd.*
 - Page 29, receipt dated 20/12/2009 of Rs. 35000/- issued to Rahul Gautm by Pradhuman Patel for sale shares of M/s Polyflex Marketing P Ltd.*
 - Page 28, receipt dated 21/10/2009 of Rs. 34000/- issued to Rahul Gautm by Pradhuman Patel for sale shares of M/s Starlite India Pvt. Ltd.*
 - Page 36, contain confirmation regarding no claim against M/s Sheela Foam Private Limited.*
 - Page 35 contains confirmation regarding current or contingent liabilities against the legal & beneficiary ownership of sale of shares.**

- Page 30 contains receipt dated 31/10/2009 for Rs. 35000/- issue to Sh. Rahul Gautam against sale 350 equity shares.

In view of the above, I am satisfied that documents seized belongs to a person other than the person under section 132 of the IT Act, 1961. Hence, the proceedings u/s 153C of the IT Act, 1961 is initiated in the case of Sh. Pradhuman Patel.”

4.10.4 From the above satisfaction notes it is observed that as in the case of M/s Pepsi Foods Pvt. Ltd., in the case of present appeals also, AO has not given any reason or basis for arriving at the conclusion that the seized documents belonged to the appellants. The satisfaction notes in the case of all the 6 appellants are identical except for the page Nos. of the documents forming part of the list of documents held to be belonging to the appellants.

4.10.5 It is noted that the satisfaction noted by the A.O. describes the documents which do contain names of the appellants as transferors of the shares concerned. The AO has stated in the satisfaction note that during the course of search at the premises of M/s Sheela Foam Pvt. Ltd., the above said documents belonging to the appellant were found and seized. However, there is no reason or justification given in the note as to why he was coming to the conclusion that the documents belonged to the appellant.

4.10.6 The satisfaction note of the AO. suffers from defects due to the law as pronounced by the Hon'ble High Court of Delhi. In the case of Pepsi Foods (P) Ltd. (Supra), the Hon'ble High Court of Delhi has held that mere use or mention of the word “satisfaction” or the word “I am satisfied” in the satisfaction note would not meet the requirement of the concept of satisfaction as used in section 153C of the Act. It has been held that the satisfaction note itself must display the reasons or the basis for the conclusion that the A.O. of the searched person was satisfied that the seized documents belonged to a person other than the searched person. It has been held in the same case that the A.O. of the searched person must first arrive at a clear satisfaction that a particular documents seized did not belong to the person from whom it has been seized. Thereafter, he should form a satisfaction that the seized document belongs to such and such other person. U/s 132(4A)(i), there is a presumption that the documents seized from a person belonged to such person. There is also presumption u/s 292C(l)(i) that a document which is found from a person who was searched, would be belonging to that person. The Hon'ble High Court has held that the A.O. must at the first instance rebut such a presumption provided in the Act itself and only thereafter he should come to the conclusion or satisfaction that the seized document belonged to someone else. There must be some cogent material available with the A.O. before he arrives at a satisfaction that the seized

document did not belong to the searched person but to somebody else and that surmises and conjectures can not take the place of satisfaction.

4.10.7 The Hon'ble jurisdictional of High Court of Delhi has further held that finding photocopies in the possession of a searched person would not necessarily mean that they belonged to a person who holds the originals. The possession of documents and possession of photocopies of documents were two separate things. Further it has also been observed that one should not confuse the expression "belong to" or "refers to". A registered sale deed for example "belongs to", the purchaser of the property but obviously "relates to" or "refers to" a vendor.

4.10.8 On considering the ratio of the two cases namely M/s Pepsi Food (P) Ltd.(supra), and M/s Pepsico India Holding Pvt. Ltd. (supra), it is seen that the assumption of jurisdiction by the A.O. u/s. 153C of the Act is bad in law. In the satisfaction, he has merely stated that documents belong to the appellant were found and seized. He has not expressed any reasons in arriving at such a conclusion. He does not say as to how he has felt that the photocopies of the sale deed etc. did not belonging to the party who was searched and that the same belonged to the appellant. The Hon'ble High Court of Delhi has held that the said satisfaction should be very much emanating from the note made before issuing notice u/s 153C. The satisfaction note itself must display the reasons or basis for conclusion that the seized documents belong to a person other than the searched person. The relevant para 11 & 12 of the order of Hon'ble High Court of Delhi in the case of Pepsi Foods Pvt Ltd vs ACIT (Supra) is reproduced below for ready reference:

"11. It is evident from the above satisfaction note that apart from saying that the documents belonged to the petitioner and that the Assessing Officer is satisfied that it is a fit case for issuance of a notice under Section 153C, there is nothing which would indicate as to how the presumptions which are to be normally raised as indicated above, have been rebutted by the Assessing Officer. Mere use or mention of the word "satisfaction" or the words "I am satisfied" in the order or the note would not meet the requirement of the concept of satisfaction as used in Section 153C of the said Act. The satisfaction note itself must display the reasons or basis for the conclusion that the Assessing Officer of the searched person is satisfied that the seized documents belong to a person other than the searched person. We are afraid, that going through the contents of the satisfaction note, we are unable to discern any "satisfaction " of kind required under Section 153C of the said Act.

12. This being the position the very first step prior to the issuance of a notice under Section 153C of the said Act has not been

fulfilled. Inasmuch as this condition precedent has not been met, the notices under Section 153C are liable to be quashed. It is ordered accordingly. The writ petitions are allowed as above. There shall be no order as to costs. ”

4.10.9 Since, such satisfaction as required under the law pronounced in Pepsi Foods Pvt. Ltd. (supra), is not coming out of the note recorded by the A.O. before issuing notice u/s 153C, the action of the A.O. is bad in law as per the above decisions of the High Court. Therefore, respectfully following the said ratio of the Hon'ble High Court Delhi in the case of M/s Pepsi Foods (P) Ltd. (supra), I hereby hold that the assumption of jurisdiction u/s 153C by the A.O. was bad in law in as much as he has not stated the basis and reasons for holding that the documents mentioned in the satisfaction note belonged to the appellant.”

17. Further on careful analysis of various documents stated by the learned assessing officer belonging to the assessee, it is apparent that no doubt in those documents the name of the assessee appear and certain transactions are also referred with the assessee. But, we are not concerned here with the issue that whether those documents pertained to the assessee or not, but with the issue that whether those documents belong to the assessee or not. Naturally there is no denying that these documents also pertained to, relate to the assessee but the requirement at that particular time to invoke the provisions of section 153C of the act was to see whether those documents belong to the assessee or not. The seized annexure A – 1 page number 41, 75, 81 and 69 are the relevant documents. Page 41 is an excel sheet containing transactions with respect to share of shares of sheela foams P Limited found from that company or from the managing director of that company, Mr. Rahul Gautam. That the document belongs to that person only. Similarly, is the case of page number 75 and page number 81. Seized document at page number 69 and 21 is a receipt given by 1 of the assessee to the other party for receipt of payment by cheque of the consideration received. Naturally receipt belongs to the person who holds it as a discharge of debts and not to the issuing person of the receipt. Therefore, those documents also do not belong to the assessee but to the person in whose favour the debt is discharged.
18. It is also true that in the satisfaction note of the learned assessing officer there is no basis or reasoning provided to show that on what basis and

reasons these documents belong to the assessee in the opinion of the learned assessing officer. Before a notice under section 153C could be issued, Assessing Officer is required to arrive at a conclusive satisfaction that documents belongs to a person other than searched person such is the mandate of the honourable Delhi High Court in- *Pepsi Foods (P.) Ltd. v. Asstt. CIT* [2014] 52 taxmann.com 220 (Delhi).

19. In *Commissioner of Income-tax-III, Pune v. Sinhgad Technical Education Society* [2017] 84 taxmann.com 290 (SC)/[2017] 250 Taxman 225 (SC)/[2017] 397 ITR 344 (SC)/[2017] 297 CTR 441 (SC) honourable Supreme Court has dealt with the 2 decisions relied upon heavily by the learned departmental representative. In para number 20 of the decision of the honourable Supreme Court dealt with the decision of the honourable Gujarat High Court in case of *Kamleshbhai Dharamshibhai Patel v. CIT* [2013] 31 taxmann.com 50/214 Taxman 558 (Guj.) And in para number 21 has dealt with the decision of the honourable Delhi High Court in *SSP Aviation Ltd. v. Dy. CIT* [2012] 20 taxmann.com 214/207 Taxman 260/346 ITR 177 (Delhi) as under :-

“20. Insofar as the judgment of the Gujarat High Court relied upon by the learned Solicitor General is concerned, we find that the High Court in that case has categorically held that it is an essential condition precedent that any money, bullion or jewellery or other valuable articles or thing or books of accounts or documents seized or requisitioned should belong to a person other than the person referred to in Section 153A of the Act. This proposition of law laid down by the High Court is correct, which is stated by the Bombay High Court in the impugned judgment as well. The judgment of the Gujarat High Court in the said case went in favour of the Revenue when it was found on facts that the documents seized, in fact, pertain to third party, i.e. the assessee, and, therefore, the said condition precedent for taking action under Section 153C of the Act had been satisfied.

21. Likewise, the Delhi High Court also decided the case on altogether different facts which will have no bearing once the matter is examined in the aforesaid hue on the facts of this case. The Bombay High Court has rightly distinguished the said judgment as not applicable giving the following reasons:

"8. Reliance on the judgment of the Division Bench of the High Court of Delhi reported in case of SSP Aviation Ltd. v. Deputy Commissioner of Income Tax [2012] 346 ITR 177 is misplaced. There, search was carried out in the case of "P" group of companies. It was found that the assessee before the Hon'ble Delhi High Court had acquired certain development rights from "P" group of companies. Based thereon, the satisfaction was recorded by the Assessing Officer and he issued notice in terms of Section 153C. Thereupon the proceedings were initiated under section 153A and the assessee was directed to file returns for the six assessment years commencing from 2003-04 onwards. The assessee filed returns for those years but disclosed Nil taxable income. These returns were accepted by the Assessing Officer, however, in respect of the assessment year 2007-08 there was a significant difference in the pattern of assessment for this year also, the return was filed for Nil income but there were certain documents and which showed that there were transactions of sale of development rights and from which profits were generated and taxable for the assessment year 2007-08. Thus, the receipt of Rs.44 crores as deposit in the previous year relevant to the assessment year 2008-09 and later on became subject matter of the writ petition before the Delhi High Court. That was challenging the validity of notice under section 153C read with section 153A. In dealing with such situation and the peculiar facts that the Delhi High Court upheld the satisfaction and the Delhi High Court found that the machinery provided under section 153C read with section 153A equally facilitates inquiry regarding existence of undisclosed income in the hands of a person other than searched person. The provisions have been referred to in details in dealing with a challenge to the legality and validity of the seizure and action founded thereon. We do not find anything in this judgment which would enable us to hold that the tribunal's understanding of the said legal provision suffers from any error apparent on the face of the record. The Delhi High Court judgment, therefore, will not carry the case of the revenue any further."

We, thus, do not find any merit in these appeals."

20. The honourable Supreme Court held that the decision of the honourable Gujarat High Court has laid down the correct proposition that provisions of section 153C can be invoked only if the documents belong to the 3rd party and on the facts In that particular case, it was held that the documents belong to the 3rd parties. In that particular case the agreement between the tenants and the assessee were found which were not at all related to the any other part but to the 3rd party only. No such kinds of documents were found in the present case.

21. Further, in the case of the honourable Delhi High Court which is also been considered by the honourable Supreme Court in the peculiar facts of that particular case. It was not shown to us that the facts of the present case are also similar to that decision. In any way the satisfaction note, does not give any basis of reasons for holding that the documents belong to the assessee.
22. Honorable Delhi High court in PCIT V Index Securities Limited [2017] 86 taxmann.com 84 (Delhi) has held as under :-

“Analysis and reasons

27. The recent decision of the Supreme Court in Sinhgad Technical Education Society (supra) is a complete answer to both points urged by the Revenue. The said decision, therefore, requires to be discussed in some detail.

28.1 The Supreme Court noted that the Assessee had raised a challenge to the validity of the assumption of jurisdiction by the AO under Section 153C of the Act for the first time before the ITAT. It was urged on behalf of the Revenue that the ITAT erred in allowing the said challenge by the Assessee by way of additional grounds. A reference was made by the Revenue to the decision of this Court in SSP Aviation Ltd. v. Dy. CIT [2012] 346 ITR 177/207 Taxman 260/20 taxmann.com 214 (Delhi) and that of the Gujarat High Court in Kamleshbhai Dharamshibhai Patel v. CIT [2013] 214 Taxman 558/31 taxmann.com 50 which according to the Revenue held to the contrary.

28.2 The Supreme Court noted that the appeals relating to four of the AYs i.e. 2000-01 to 2003-04 were covered by the notice under Section 153C of the Act. In dealing with the question as to whether the ITAT was right in permitting the Assessee to raise this additional ground for the first time before it, the Supreme Court in paras 18 and 19 observed as under:

"18.

The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents

which were seized did not establish any correlation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the satisfaction note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges there from is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also give its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the Respondent, argued that notice in respect of assessment years 2000-01 and 2001-02 was even time barred.

19. We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the Respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy."

28.3 From a reading of the above two paragraphs, it is plain that the Supreme Court (i) agreed with the ITAT that the documents seized had to relate to the AYs whose assessments were reopened and that this was an essential jurisdictional fact and (ii) upheld the decision of the

ITAT to permit the additional ground to be raised before it for the first time.

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

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

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

30. In the present case, the documents seized were the trial balance and balance sheets of the two Assesseees for the period 1st April to 13th September 2010 (for ISRPL) and 1st April to 4th September 2010 (for VSIPL). Both sets of documents were seized not from the respective Assesseees but from the searched person i.e. Jagat Agro Commodities (P) Ltd. In other words, although the said documents might 'pertain' to the Assesseees, they did not belong to them. Therefore, one essential jurisdictional requirement to justify the assumption of jurisdiction under Section 153 C of the Act was not met in the case of the two Assesseees.

31. As regards the second jurisdictional requirement viz., that the seized documents must be incriminating and must relate to the AYs

whose assessments are sought to be reopened, the decision of the Supreme Court in *Sinhgad Technical Education Society (supra)* settles the issue and holds this to be an essential requirement. The decisions of this Court in *RRJ Securities and ARN Infrastructure India Ltd. v. Asstt. CIT [2017] 394 ITR 569/81 taxmann.com 260 (Delhi)* also hold that in order to justify the assumption of jurisdiction under Section 153 C of the Act the documents seized must be incriminating and must relate to each of the AYs whose assessments are sought to be reopened. Since the satisfaction note forms the basis for initiating the proceedings under Section 153 C of the Act, it is futile for Mr Manchanda to contend that this requirement need not be met for initiation of the proceedings but only during the subsequent assessment.

32. In the present case, the two seized documents referred to in the Satisfaction Note in the case of each Assessee are the trial balance and balance sheet for a period of five months in 2010. In the first place, they do not relate to the AYs for which the assessments were reopened in the case of both assessees. Secondly, they cannot be said to be incriminating. Even for the AY to which they related, i.e. AY 2011-12, the AO finalised the assessment at the returned income qua each Assessee without making any additions on the basis of those documents. Consequently even the second essential requirement for assumption of jurisdiction under Section 153 C of the Act was not met in the case of the two Assesseees

33. This Court does not consider it necessary to examine the merits of the case as far as the deletions by the CIT (A) of the additions made by the AO under Section 153C of the Act are concerned. In any event, a detailed analysis has been undertaken by the CIT (A) of the materials produced by the Assessee which justified the deletion of such additions. Even on this score, no interference is warranted with the impugned order of the CIT (A).

23. The above decision of the honourable Delhi High Court has also considered the decision of the Gujarat High Court and honourable Delhi High Court relied upon by the learned CIT DR. The above decision has reiterated the same position that unless the document belongs to the assessee is shown by the learned AO in the satisfaction note itself with a reason and the basis.
24. Even the honourable Delhi High Court in case of *Ganpati Fincap Private limited vs CIT[2017] 82 taxmann.com 408 (Delhi)/[2017] 395 ITR 692 (Delhi)/[2017] 298 CTR 174 (Delhi)* in para number 41(ii) has held that Where proceedings are proposed to be initiated under Section 153C of the

Act against the 'other person', it has to be preceded by a satisfaction note by the AO of the searched person. He will record in this satisfaction note that the seized document belongs to the other person. Depending on the nature and contents of the document he may be required to give some reasons for such conclusion. Therefore, it is apparent that if the satisfaction note, does not have any reasons for such conclusion, it is not in accordance with the law. For invoking jurisdiction under section 153C of the income tax act. Such is the case before us, where there is no reason recorded by the learned assessing officer stating that why these documents belong to the assessee and not to the person from whom it is found.

25. However before parting we would also like to state that it cannot be a rule in its absoluteness that one document cannot be held to be belonging to more than one person. The striking example of the same is a joint bank account pass book of several persons together may be belonging to all those persons.
26. Therefore, respectfully following the above judicial precedents of the honourable Delhi High Court, we do not find any reason to interfere in the order of the learned CIT – A, wherein it has been held relying upon the decision of the honourable Delhi High Court in case of Pepsi foods private limited (supra) that there is no satisfaction recorded by the learned assessing officer that the impounded documents belong to the various assesses and therefore the jurisdiction assumed by the learned assessing officer u/s 153C of the income tax act is invalid.
27. Accordingly all the appeals of the revenue with respect to all these assesses are dismissed.

Order pronounced in the open court on 31/12/2018.

-Sd/-

(K.N.CHARY)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:31/12/2018

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)

5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi