

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "C", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI L.P. SAHU, ACCOUNTANT MEMBER

I.T.A. No. 1682/DEL/2016		
A.Y. : 2010-11		
ACIT, CENTRAL CIRCLE-6, NEW DELHI R.NO. 364, ARA CENTRE, JHANDEWALAN EXTN., NEW DELHI	VS.	KARTIK PATEL, AKAR COMPLEX, NATHALAL COLONY, STADIUM ROAD, NARANPURA, AHMEDABAD (PAN: ACMPP1888M)
(ASSESSEE)		(RESPONDENT)

Revenue by : Smt. Puja Jindal, CIT(DR)Smt. Rar
Jain, Adv. & Sh. R.K. Aggarwal, CA
Assessee by : Smt. Rano Jain, Adv. & Sh. R.K.
Aggarwal, CA

ORDER

PER H.S. SIDHU : JM

The Revenue has filed this Appeal against the impugned Order dated 28.1.2016 of the Ld. CIT(A)-23, New Delhi relevant to assessment year 2010-11.

2. The grounds raised in the appeal read as under:-

- i) The order of the Ld. CIT(A) is not correct in law and on facts.

ii) On the facts and circumstances of the case, the CIT(A) has erred in quashing the order u/s. 153C wherein the additions were done on the basis of information mentioned in it for initiating the proceedings u/s. 153C.

iii) On the facts and circumstances of the case, the CIT(A) has erred in holding that the seized document has to belong to the assessee instead of information mentioned in it for initiating the proceedings u/s. 153C.

iv) The appellant craves leave to add, amend any / all the grounds of appeal before or during the course of hearing of the appeal.

2. The brief facts of the case are that a search and seizure operation under section 132 of the Income Tax Act, 1961 (in short "Act") was conducted at business premises of Sheela Foam Private Limited on 28.11.2011. The AO observed that the shares held by Pradhuman Patel Group (PP Group) and other Patel Group in M/s Sheela Foam Private Limited were acquired by company M/s Serta India Private Limited (Rahul Gautam Group) during the financial year 2009-10. During the search operation various incriminating evidences were found and seized from the office premises of M/s Sheela Foams Pvt. Ltd. which established beyond doubt that for acquiring such shares by Rahul Gautam Group from the Pradhuman patel Group and others Patel Group, substantial consideration was paid by the Rahul Gautam Group to the Pradhuman Patel Group and others in cash outside the books of account. AO further observed that the total sale consideration for the shares as held by the Pradhuman Patel Group and other Patel Group in M/s Sheela Foams Pvt

Ltd was Rs. 88.90 crores out of which Rs 52.78 crores was paid through cheques and the balance amount of Rs. 36.10(Rs. 31.85 crores to Pradhuman Patel Group & 4.25 crore to other patel group) crores was paid in cash by the Rahul Gautam Group to the Pradhuman Patel Group and other Patel group. As per seized documents (Page no. 41 to 85 of Annexure - A1, Page no. 20, 21 Annexure A-7, Page no. 12 of Annexure A-5, Page no. 21 of Annexure A-8), it is clearly evident that the group run by Sh.Rahul Gautam, MD of M/s. Sheela Foam Private Limited, has paid huge amount of cash as indicated on the seized documents to Sh. Praduman Patel and his group for purchase of shares. As per the statement of Shri Rahul Gautam (MD of M/s. Sheela Foam Private Limited) vide ques. No. 44 the shares of M/s. Sheela Foam Private Limited were purchased by M/s. Serta India Private Limited from Patel Group. The AO 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. Therefore, he held that the seized documents also bear the signature of the assessee and observed that it is proved beyond doubt that the assessee has received cash amounting to

Rs. 1,86,42,733/- from M/s Serta India Private Limited for sale of shares of M/s Sheela Foam Private Limited during the year and also held that since the assessee has not shown the above cash amount in total sale consideration of shares sold during the year, the same was added to assessee's declared income as undisclosed capital gain on sale of shares to M/s Serta India Limited. and accordingly made addition of Rs. 1,86,18,090/- as undisclosed capital gain during the year and assessed the income of the assessee at Rs. 6,97,60,823/- u/s. 153C of the Act vide order dated 28/3/2014. Against the assessment order, assessee appealed before the Ld. CIT(A) 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 AO 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 assessee 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 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 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 assessee. However he did not decide the issue on the merit but has allowed the appeal of the assessee on this ground. Therefore, now the Revenue has preferred an appeal before us.

3. The learned CIT DR vehemently supported the order of the Assessing Officer and assailed the order of the Ld. Commissioner of Income Tax Appeals stating that the 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 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 assessee.

4. On the other hand, the Ld. counsel for the assessee has relied upon the order of the Ld. CIT(A) and submitted that a search and seizure operation in the Sheela Foam Group was conducted as on 28.11.2011. On the basis of certain documents found during the course of search, notice u/s. 153C of the Act dated 29.8.2013 was issued to the assessee. The AO in his order dated 28.3.2014 alleging that an amount of Rs. 1,86,42,733/- were received by the assessee in cash from M/s Serta India Pvt. Ltd. for sale of shares of M/s Sheela Foam Pvt. Ltd. He further submitted that the assessee went in appeal before CIT(A) challenging the validity of assessment made in pursuance of notice u/s 153C as well as the merits of the addition. The CIT(A) after considering the detailed submissions made by the assessee and also after a detailed verification in which three remand reports were called from the Assessing Officer, ultimately held that the satisfaction note on the basis of which the assessing officer initiated the proceedings u/s 153C of the Act is bad in law in as much as the same is not a proper satisfaction in terms of various judgments of the jurisdictional High Court as well as the Supreme Court. Further, the documents mentioned in the satisfaction note also do not 'belong to' the assessee. The adjudication done by the CIT(A) starts from page 49 of his order at para 4.3 onwards. Relevant findings are at Page 55, Para 4.3.8. It was further submitted that there are twofold contentions which were

raised before the Ld. CIT(A) and on the basis of which he has given relief to the assessee. Firstly the satisfaction note prepared by the A.O. was not as per law as far as the same does not contain a proper satisfaction as to the fact that how the material does not belong to the searched person and in fact belong to the assessee. This gets corroborated by the fact that the notice under section 153A in the case of searched person and notice under section 153C issued to the assessee are of the same date. The second issue was that the documents referred in the satisfaction note do not belong to the assessee. Since the case relates to a period before the amendment under section 153C w.e.f. 1.06.2015, the documents should 'belong to' the other person. He further submitted that the case of the assessee is squarely covered by the ITAT, 'F' Bench, New Delhi decision dated 31.12.2018 in similar case in ITA No. 1455-1459/Del/2015 (AY 2010-11) in the case of ACIT vs. Rohan Patel; Himanshu Patel; Praduman Patel; Krish Patel and Urmilla Chandulal Patel wherein the Tribunal on exactly similar and common facts, dismissed the appeals of the Revenue by upholding the action of the Ld. CIT(A) on the issue of jurisdiction. Further to support her view, she relied upon the following judgements:-

1. The satisfaction note is not based on correct legal foundations.
 - i). Hon'ble Supreme Court in ACIT & Another V. Pepsi Foods Pvt. Ltd., SLP No. 4659/2015, dt. 04.12,2017, dismissed the SLP and affirmed the view of Delhi High Court, wherein it has been held as under:

"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.

ii. In the case of Pr. CIT Delhi-18 V. M/s. N.S. Software (Firm), ITA 791/2017, dt. 1: I- 2018. Delhi High Court held as under:

23. This court concurs with the impugned order. In the present case, the Ld. AO has not explained steps taken by him to determine that the seized material belonged to the Assessee Firm. The satisfaction note has been prepared in a standard mechanical format and it does not provide any details about the books of accounts which allegedly belong to the Assessee Firm. Most importantly, a satisfaction note was not recorded by the AO of Sh. Narendra Kumar from whose premises the documents were seized. In light of the decision in Nikki Drugs and Chemicals Pvt. Ltd. it is now a settled proposition of law that even if the Assessing Officer for the person from whose premises the documents are seized is the same as the Assessing Officer for the person to whom the document belongs, separate satisfaction notes must be

recorded. Here the AO's note nowhere reflects whether any document seized, on application of his mind, disclosed that it belonged to the assessee, and if so, its prima facie nature. Whilst an AO of the searched party and that of the individual under Section 153C may be the same, nevertheless at the stage of sending notice under Section 153C, the AO has to record a specific reason or reasons, why the material seized from the other person has a nexus to the assessee, to whom the notice under that provision is addressed. In this case, this never happened. Thus, for the previous years, the rule in Commissioner of Income Tax v Kabul Chawla 380 ITR 573 (Del), i.e., that in the absence of any incriminating materials, the previous years' assessments cannot be disturbed, applies.

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iii. Supreme Court in Tapan Kumar Dutta Versus CiT, West Bengal, Civil Appeal No. 2014 of 2007, dt. 24.04.2018, wherein it was held as under:

Although Section 158BD does not speak of 'recording of reasons' as postulated in Section 148, but since proceedings under section 158BD may have monetary implications, such satisfaction must reveal mental and dispassionate thought process of the Assessing Officer in arriving at a conclusion and must contain reasons which should be the basis of initiating the proceedings under section 158BD."

"A search was conducted against M/s Nitya Kali Rice Mill under Section 132 of the IT Act. Since the notice under Section 158BC issued to M/s Nitya Kali Rice Mill and the notice under Section 158BC issued to the Appellant were on the same day i.e., on 09.09.1999, the question of coming to a satisfaction that any undisclosed income based on seized books of accounts or documents or assets belonged to the present Appellant did or could not arise inasmuch as no

reasonable or prudent man can come to such satisfaction unless the seized books of accounts or documents or assets are perused, examined and verified. Therefore, the Assessing Officer was right in arriving at a decision that the notice under Section 158BC issued to the present Appellant on 09.09.1999 did not satisfy the requirement of Section 158BD of the IT Act.”

2. The seized material referred to in the satisfaction note do not 'belong to' the assessee.

i) In CIT V. Renu Constructions Pvt Ltd., Ankit Gupta And Pr. CIT, Delhi V. Ankit Gupta, L/H Manoj Kumar, [2017] 399 ITR 262 (Del), the hon'ble Delhi High Court held as under:

9. Consequently, this Court rejects the contention of the learned counsel for the Revenue that even prior to 1st June 2015 at the stage of initiation of proceedings under Section 153C of the Act, it is sufficient if the seized document 'pertained to' the other person and it is not necessary to show that the seized material belonged to' the other person. This legal position this Court in its recent decision dated 10th 3241/2015 (Canyon Financial Services Ltd. has been explained by 2017 in W.P. (C) No. Income Tax Officer).”

ii.) In Pepsico India Holdings Private Limited Versus ACIT, [2015] 370 ITR 295 (Del), the hon'ble Delhi High Court held as under:

“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 153 A"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 153A (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."

iii) CIT-III, Pune V. Sinhgad Technical Education Society, [2017] 397 ITR 344 (SC)

iv) Hon'ble Supreme Court in ITO V. M/s Canyon Financial Services Ltd., SLP dt. 19.02.2018, dismissed the SLP and affirmed the view of - gh Court wherein it was held as under:

13. In the first place, the satisfaction note of the AO of the searched person has to record that the document seized "belongs or belong to the person other than the person referred to in Section"153 A" of the Act. It was explained in Pepsico India Holdings (P) Ltd v. Assistant Commissioner of Income Tax (supra) and reiterated in Pepsi Foods (P) Ltd. v. Assistant Commissioner of

Income Tax (supra) that, given the nature of a particular seized document, in the process of recording his. satisfaction, the AO of the searched person may have to note the reasons for his conclusion that the said document does not belong to the searched person but to the other person.

v. In PR. CIT-06 Versus Nikki Drugs & Chemicals Pvt. Ltd., [2016] 386 ITR 680, the hon'ble Delhi High Court held as under:

"21. The IT AT considered the above contentions and following the decision of this Court in Pepsico India Holdings Pvt. Ltd. v. Assistant Commissioner of Income Tax: (2015) 370 ITR 295 (Delhi) held that the documents in question could not be said to belonging to the Assessee. In Pepsico India Holdings Pvt. Ltd. (supra), this Court has explained that the expression 'belongs to' must not be confused with the expression 'relates to'. As an illustration, this Court has referred to a registered sale deed which, although, registered by the vendor would belong to the purchaser of the property and could not be considered to be belonging to the vendor only because the vendor's name was mentioned in the documents. In the present case, although the photocopies of the documents handed over to SVP Builders India Ltd may be copies of the original documents that belong to the assessee, the said photocopies would belong to SVP Builders India Ltd., as the same were handed over to it in connetion with the investment made by the Assessee. Similarly, a certified copy of the -ssessee s resolution signed by its Directors, would also belong to the SVP Builders India Ltd. even though the minutes of the Board meeting

form a part of the record of the Assessee. We find no infirmity with the view taken by the IT AT in this regard. Thus, notwithstanding the controversy whether the assessing officer of the searched persons had recorded his satisfaction that the-specified seized documents belonged to the Assessee, the initiation of proceedings under section 153C of the Act, in respect of the Assessee would be without jurisdiction.”

vi) In CIT-7 V. RRJ Securities Ltd. And Vica-Versa, [2016] 380 ITR 612, the Hon’ble Delhi High Court held as under:

“13. The first and foremost step for initiation of proceedings under Section 153C of the Act is for the AO of the searched person to be satisfied that the assets or documents seized belong to the Assessee (being a person other than the searched person). The AO of the Assessee, on receiving the documents and the assets seized, would have jurisdiction to commence proceedings under Section 153C of the Act. The AO of the searched person is not required to examine whether the assets or documents seized reflect undisclosed income. All that is required for him is to satisfy himself that the assets or documents do not belong to the searched person but to another person. Thereafter, the AO has to transfer the seized assets/documents to the AO having jurisdiction of the Assessee to whom such assets/documents belong. Section 153C(1) of the Act clearly postulates that once the AO of a person, other than the one searched, has received the assets or the documents, he is to issue a notice to assess/re-assess the income of such person - that is, the Assessee other

than the person searched - in accordance with provisions of Section 153A of the Act.”

5. We have carefully considered the rival contentions and perused the orders of the lower authorities and the case laws cited before us. We find that a search and seizure operation in the Sheela Foam Group was conducted as on 28.11.2011. On the basis of certain documents found during the course of search, notice u/s. 153C of the Act dated 29.8.2013 was issued to the assessee. The AO in his order dated 28.3.2014 alleging that an amount of Rs. 1,86,42,733/- were received by the assessee in cash from M/s Serta India Pvt. Ltd. for sale of shares of M/s Sheela Foam Pvt. Ltd. We further note that assessee went in appeal before CIT(A) challenging the validity of assessment made in pursuance of notice u/s 153C as well as the merits of the addition. The CIT(A) after considering the detailed submissions made by the assessee and also after a detailed verification in which three remand reports were called from the Assessing Officer, ultimately held that the satisfaction note on the basis of which the assessing officer initiated the proceedings u/s 153C of the Act is bad in law in as much as the same is not a proper satisfaction in terms of various judgments of the jurisdictional High Court as well as the Supreme Court. Further, the documents mentioned in the satisfaction note also do not 'belong to' the assessee. We further note that Ld. CIT(A) has elaborately discussed the issue in dispute in his impugned order at page no. 49 to 57 vide para no. 4 to 4.4, the relevant findings of the Ld. CIT(A) are reproduced as under:-

"4. I have considered the submissions of the appellant and the assessment order.

Since the grounds on legal points as well as on merits of the additions, and the facts of all the five cases of the Kartik Patel Group family members in appeal are similar/same, all these appeals are decided together for the sake of convenience.

4.1 Ground No. 01 is general and need no separate consideration.

4.2 In Ground No. 02 the appellant has challenged the order u/s 127 of the Act. Since the appellant cannot take this ground before CIT(A), the same is dismissed.

4.3 In ground nos. 03, 04, and 10 the appellant has challenged the jurisdiction for initiation and issuance of notice u/s 153C of the Act on the ground that no proper satisfaction was recorded and because the documents found during search of the searched party did not belong to the appellant, and hence proceedings are unwarranted and void ab-initio, as also on account of adequate opportunity not provided by the AO. The appellant has inter alia argued that,

a. no books of account or other incriminating material belonging to the assessee representing any

undisclosed income/transaction were found during the course of search on the searched person, which is a condition precedent for initiating proceedings under section 153C of the Act;

b. the impugned order has been passed on the basis of third party material and without recording satisfaction that the photocopy of certain documents found and seized from M/s. Sheela Foam Private Limited (SFPL) on 28.11.2011, and relied upon by the AO to make reassessment of the appellant, belonged to" the appellant;

c. without affording adequate opportunity of being heard, in gross violation of settled principles of natural justice;

d. the satisfaction note which was enclosed with the notice u/s 153C of the Act sent to the assessee is unsigned and undated, it is observed that and seizure operation carried out in the case of.

4.3.2 The appellant has enclosed the copy of the satisfaction note as given to the assessee by the AO in the paper book (PB) and has submitted that no reasons or the basis has been given by the AO for the conclusion in the satisfaction recorded that these seized documents

belong to a person other than the person searched; that it simply mentions that Annexure A-1 to A-13 were seized from SFPL during search and that "if is seen that the above seized material contains following documents belonging to Smt. Veena Vijay Kumar Malviya"and thereafter the details of the documents have been noted as under:

- (i) 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;*
- (ii) P- 59 printouts of the e-mail dated 07/10/2009 from Karlik Chandulal Patel of Win-Door Marketing regarding the transfer and deposit of the money of Rs. 1 crore +1.8 crores in his and his family member's various bank accounts as mentioned in the e-mails.*
- (iii) P 57, 58 & 67 print out of e-mail contain bank account details of Veena Vijay Kumar Malviya.*

The appellant states that on receipt of above documents the assessee filed objection against initiating proceedings under section 153C vide letter dt. 12.01.2014 and 30.1.2014 submitted before the AO denying that any of the above documents belong to the assessee, inter alia mentioning that photocopy of some

rough calculation/notings which was unsigned and could not be authenticated as identity of the author of the said paper was never ascertained: these were recovered from the premises of SFPL and the same impugned document has been alleged as belonging to Serta India Private Limited (SIPL) (which later merged in SFPL) and various other persons also; that the same document cannot belong to many persons; that copy of email correspondence between Kartik Patel and Ravinder Singh, staff of SFPL related to sharing of bank details for the . transfer of consideration as agreed and which is duly disclosed in the books of accounts; and that without prejudice, as the above e-mail correspondence was addressed to one and was found from his possession from premises of SFPL it at all can only be presumed to belong to Ravinder singh and not to the appellant; however the AO has considered theses as belonging to assessee without elaborating upon the reasons as to how and why A-1 P-41 belong to the appellant and that such satisfaction which do not clearly spell out and mention the reason and the basis for holding such documents as belonging to other person is not a valid satisfaction and the proceedings initiated under section 153C in pursuance to such satisfaction are

bad in law, nor the AO has recorded statement of any other selling parties from Kartik Patel group. The appellant has placed reliance on the judgments of the Hon'ble delhi High Court in PepsiCo India Holdings (P.) Ltd v ACIT [2014] 50 taxmann.com 299 (Delhi) & Pepsi Foods Pvt. Ltd v ACIT [2014] 52 taxmann.com 220 (Delhi) and has stated that on of the satisfaction note and the documents referred therein, it will kindly be that the documents referred therein are:

- Photocopy of a loose paper(s) containing certain rough noting in relation to alleged sale of shares and the consideration payable to seller(s);*
- Photocopy of email correspondence not belonging to assessee being sharing of bank details by Kartik Patel with Ravinder Singh of SFPL.*

and that unless there is a finding that the assets/documents so found/seized is property of some other person (other than the person searched), which are incriminating in nature.

4.3.2.2 It is also submitted that none of the alleged documents was seized/recovered from the possession of assessee but was seized from the office of SFPL, hence presumption of s.132(4)/292C is not applicable to the

assessee. The appellant has placed reliance on the judgement of the Hon,ble Supreme Court in the case of P.R. Metrani V. CIT: 287 ITR 209 (SC) and Mumbai Bench of the Tribunal in the case of Straptex (India) (P.) Ltd vs. DCIT: 84 ITD 320 and other cases cited wherein it was held that presumption under section 132(4A) of the Act is only against the person in whose possession search material is found and not against any other person. It was further held that the presumption is rebuttable and not conclusive and it cannot be applied in the absence of corroborative evidence.

4.3.2.3 It has also been submitted that in the case of searched party, SFPL, notice u/s 153A was issued on 29.08.2013, and in the case of assessee also notice u/s. 153C has been issued on the same date i.e. 29.08.2013, and that the satisfaction note stating that the impugned documents belong to third party has also been recorded on

29.08.2013 in the case of SFPL; that the AO had never questioned SFPL whether those documents belonged to SFPL or not either prior to 29.08.2013 or on 29.08.2013; SFPL never admitted that these documents do not belong to them; that no enquiry was also done from the assessee for enquiring into the nature and

status of such documents w.r.t. assessee; that no finding could had been given holding some documents as belonging to 3rd person i.e. other than the party searched; and therefore in the absence of any material for holding that these documents actually belonged to assessee, there was no satisfaction recorded in the case of the searched person that the alleged documents "belong to" the appellant. Therefore, there can be no question of initiating proceedings under section 153C of the Act in the case of the said other person, the assessee.

4.3.3 It has also been submitted that the AO did not provide copies of all the documents seized from SFPL nor the copies of the statements of Sh Praduman Patel and Shri Rahul Gautam and referred and used against the appellant in the assessment order were provided to the appellant and the assessing officer has primarily relied upon unreliable documents collected behind the back of the assessee thus violating the settled canons/ principles of natural justice, and has submitted that it has been consistently held by various Courts, including the Hon'ble Supreme Court and jurisdictional High Court of Delhi that the assessment order passed in violation of the principles of natural justice, i.e., without providing

documents/statements used against the assessee and without affording adequate opportunity cross-examination and of being heard to the assessee, is bad in law and liable to be set aside - CIT vs. Dhakeshwari Cotton Mills Ltd : 26 ITR 775 (SC), Mohinder Singh Gill vs. Chief Election Commissioner : AIR 1978 SC 851, R.B. ShreeramDurga Prasad vs. Settlement Commission : 176 ITR 169 (SC), Tin Box Company vs. CIT : 249 ITR 216 (SC), J.T. (India) Exports vs. UOI : 262 ITR 269 (Del) (FB), CIT vs. GangaramChapolia& Co.: 187 ITR 594 (Ori.)

4.3.4 In view of the submissions of the appellant made on 27.02.2015 and 16.03.2015 the Lnd. CIT(A)-24, New Delhi vide his letter F.No.CIT(A)-24/Remand Report/2015- 16/69 dt. 08.05.2015 directed the AO to submit his report/comments on the following points:

"In the above case AO has made an addition of Rs.59,55,384/- on the allegation that the appellant received unaccounted cash on sale of shares of Sheela Foam Pvt. Ltd. The said addition is based upon documents seized during action u/s 132 in the case of Sheela Foam Pvt. Ltd. In the satisfaction note made before issuing notice u/s 153C, AO has referred to these documents as belonging to the appellant. The appellant

has taken the legal ground that the assumption of jurisdiction u/s 153C was bad in law and that those seized documents did not belong to the appellant. Appellant has also made submissions on merit.

The submissions of the appellant containing their arguments on legal ground as well as on merit are forwarded here with. The AO is requested to submit his comments, on AR's submission relating to both legal ground as well as on merit. He is also requested to cover the following points in his report, which involve ascertainment of facts of the case from assessment and search records:

i. What are the evidences which show that the seized documents referred to in the 'Satisfaction Note' have been disowned/denied as belonging to the 'Searched assessee'.

ii. What are the evidences on the basis of which it can be held that these documents referred to in the satisfaction note belong to the appellant?

iii. The comments and inputs of the AO on the submissions of the appellant that the emails do not belong to the appellant and that even otherwise, the

contents of this email are not at all incriminating in nature.

The AO vide his letter F.No.ACIT/CC-06/2015-16/275 dt. 08.06.2015 submit his report/comments wherein he has mentioned that the appellant did not object to the assessment proceedings during the period 29.08.2013 to 28.03.2014 when the assessment proceedings were carried out and order was passed and his reproduced the letter dt. 30.01.2014 of the appellant submitted to the AO. In the very first para the appellant has objected to the basic fact that the papers provided to them and alleged to be belonging to them are part of the documents seized from the premises of the searched party and these papers do not belong to them nor has any nexus with the assessee, and no incriminating material was found from the possession of the assessee and had also referred to the presumption u/s 132(4A) of the Act and had stated that therefore no addition could be made in the hands of the assessee. With regard to the other two points, the AO has reproduced the para-3 of the assessment order, but has not commented on the point no. 1 above. However, the copy of the remand report was provided to the appellant and they are submitted their rejoinder on 03.11.2015

which is reproduced at para 3.3 herein above wherein the appellant has reiterated her submissions made earlier and has also submitted that in the case of Sh. Praduman Patel and his family members/group the Lnd. CIT(A)-24, New Delhi, following the judgments in PepsiCo India Holdings (P.) Ltd v ACIT [2014] 50 taxmann.com 299 (Delhi) & Pepsi Foods Pvt. Ltd v ACIT [2014] 52 taxmann.com 220 (Delhi) vide his order dt. 01.12.2014 in Appeal Nos. 137 to 141/14-15 and 151/14-15 in the cases of Sh. Praduman Patel, Smt. Renu Patel, Sh. Himanshu Chandulal Patel, Sh. Krish Patel, Sh. Rohan Patel and Smt. Urmila Devi Chandulal Patel for AY 2010-11 in each case has held that the assumption of jurisdiction u/s 153C of the Act was bad in law in as much as much the AO has not stated the basis and reasons for holding that the documents mentioned in the satisfaction note belong to the appellant and has held the assessment orders as invalid.

4.3.5 On transfer of the appeal to the undersigned, and on consideration of the WS/PB on file it was observed that a search and seizure operation was conducted against SFPL on 28.11.2011 wherein certain documents were found and seized according to which the shares of

SFPL held by the Praduman Patel Group, Himanshu Patel group, Varsha Patel, and the Kartik Patel group (to which the appellant belongs) were sold to SIPL (Serta) and which indicated that beside payments made by cheque to the, payments in cash were also made. To examine the contentions of the appellant, vide this office letter F.No.CIT(A)-23/2015-16/178 dt. 03.11.2015 the AO was directed to provide copies of all documents and statement recorded of different persons referred to and relied upon by the AO in the assessment order to which the AO vide his letter no. 1268 dt. 30.11.2015 once again refereed to the reply of the AO dt. 27.01.2014 and

30.01.2014 submitted to him during assessment proceedings and quoted the reply of the appellant that "all the papers provided to us and alleged to belonging to us are part of the documents seized from the premise of the searched party (Sheela Group) and these papers do not belong to us" which while being contradictory to his earlier reply dt.08.06.2015,and further mentioned at para 4.3 that the AO had not relied upon the statements of Sh. Praduman Patel and Sh. Rahul Gautam in the assessment order which is factually incorrect as mentioned at para 3 page 2 and para 6 page 12 and 13

of the assessment order. Thereafter vide this office letter no. 1246 dt. 15.12.2015 the AO was specifically directed to provide

(i) copies of pages -41 to 85 of Annex-A1, pages - 20 and 21 of Annex - A7, page- 12 of Annex-A5, page- 21 of Annex-A8 (referred at pages-2, 5 & 7 of the assessment order); pages-15 to 34 of Annex-A2, all pages of Annex-A5, A7 and A8 (referred at page 4 of assessment order); page-35 of Annex-2;

(ii) copies of the statements of Shri Pradhmun Patel and Sh Rahul Gautam, whether recorded during the search or survey or u/s 131 of the Act (referred at pages 02, 12 and 13 of the assessment order); give sufficient opportunity to all the appellants / appellants AR, Sh Ridhi Karan Aggarwal, and submit his remand report by 04.01.2016 by incorporating independent findings, if any, and not to quote the portions of the assessment order (which may be referred wherever necessary). The AO was also asked to send the assessment folders with his report. Thereafter the AO provided copies of all the above documents referred to in the assessment order to the appellant on 18.12.2015 and also forwarded the assessment folders, and the appellant has submitted her explanation with regard to

each document which was submitted to the AO during the remand proceedings on 22.12.2015 alongwith her submissions dt. 06.01.2006. It is worth noting that the AO has not submitted any report in terms of my letter dt. 03.11.2015 and 15.12.2015 till date even after the submissions of the appellant mentioned above.

4.3.6 The background of the case is that Praduman Patel Group, Himanshu Patel group, Varsha Patel, and the Kartik Patel group (to which the appellants belong) sold their shares in Sheela Foam Private limited (SFPL) to Serta India Private Limited (SIPL) as per share purchase agreement dt 29.10.2009 between them and SIPL. The appellant's family members share holdings were as under:

S. No.	Name	Shares	Amount of Sale consideration (in Rs.)
Kartik Patel & Family			
1	Kartik Patel	6,26,080	5,59,28,199
2	Meenakshi Patel	2,01,200	1,79,73,348
3	Abhishek Patel	2,00,000	1,78,66,151
4	Veena Malviya	2,00,000	1,78,66,151
5	Kartik Patel (HUF)	2,00,000	1,78,66,151
Sub Total		14,27,280	12,75,00,000

Subsequent to the search and seizure operation conducted on 28.11.2011 against M/sSheela Foam Pvt. Ltd (SFPL) whereby documents inventorised as Annx-A1

to A-13 were seized, and thereafter beside notices issued u/s 153A of the Act to SFPL notices u/s 153C of the Act were issued to the Praduman Patel Group, Himanshu Patel group, Varsha Patel, and the Kartik Patel group as well as to SIPL. The DCIT Central Circle-11, New Delhi passed assessment order u/s 153C of the Act on 25.03.14 for AY 2010- 11 making therein the addition of the entire amount of Rs. 36,09,75,891/- in the case of SIPL being the alleged cash payments in lieu of the shares of SFPL purchased by SIPL as against Rs. 36,10,53,838 mentioned in the seized document Pg-41 of Annx-A1. However, SIPL had merged in SFPL w.e.f 01.04.2010 vide order of the Hon'ble Delhi Court dt. 18.10.2011. Accordingly, the Lnd. CIT(A)-31, New Delhi vide his order dt.

31.10.2014 in appeal no. 338/14-15 for AY 2010-11 quashed the order of the AO in the case of SIPL holding that the company was not in existence as on 01.04.2010 following the decision of Spice Infotainment Ltd. vs CIT (2012) 247 CTR 500 (Del) and other decisions. Copy of the assessment order and the CIT(A)'s order have been filed. As submitted by the appellant's AR, the department has not filed 2nd appeal in view of the fact of non-existence of the SIPL as on

01.4.2010. In fact, the appeals of AYs 26-07 to 2012-13 of SFPL are also pending and under proceeding before me. I have perused the assessment order in these assessment years of SFPL and I find that no reference to any of the seized documents Annx-A1 to A13 in any of the assessment years in the case SFPL and no additions have been made therein which are based on the seized material, particularly in AY 2010-11, and there is no whisper whatsoever as to the payments made by SIPL for purchase of the shares to the different family members of Praduman Patel Group, Himanshu Patel group, Varsha Patel, and the Kartik Patel group. Thus, the addition of the alleged amount received allegedly in cash by the sellers of share has neither been assessed in the hands of SIPL or SFPL as the purchaser of the shares of SFPL.

4.3.7 The appellant was asked to file copies of the said seized documents which was filed on 12.01.2016. I have examined the documents and the page-wise details of the seized documents referred in the assessment order at para 3 pages 1 to 13 is as under:

Seized document	Ref. of assff. order	Particulars in seized document / related to
Annx.-1		
Pg-41	Page 2-12	Enclosed at pg 3 of assessment order, this page is a copy of a typed statement of the shares of Sh. Praduman Patel (PP) group, Sh. Himanshu Patel (HP) group, Smt. Varsha Patel (VP) group and Sh. Kartik Patel group, their number of shares, the rate per share, consideration due, paid and balance payable.
Pg-49 to 53	Page-5	Pg 49 and 50 enclosed at pg 6 and 8 of assessment order, are payments by cheque and cash upto 15.12.2009 and payable on 20.12.2009 to be paid by 18.02.2010 in respect of PP and HP groups.
Pg-54-55	Page-5	Similar to pg 49-50
Pg-56	Page-7 & 10	Same as pg 49 sent to one Sh. K.A. Charanjit Grover with cc to Sh. Rahul Gautam by Sh. Ravinder Singh, employ of SFPL.
Pg-61	Page-7	Book value of shares of SFPL as on 31.03.2008.
Pg-73 •	Page-5 & 7	Receipt of 2.50 crore received by PP from Rahul Gautam, but unsigned and undated.
Pg-82	Page-7	Same as pg 41.
Annx.-2		
Pg-35	Page-7	A certificate from PP dt. 20.12.2009 given to Sh. Rahul Gautam that there is no current or contingent liabilities outstanding against the ownership of 678680 shares.

From the above details it is observed that the entries in the documents referred in the assessment order relate to either PP group or HP group except for page 41 of Annx.-A1 which mentions the family members of the appellant group with entries of Rs. 12.75 crore due to them for 1427280 shares held by them, and out of consideration 'A' Rs.7.30 crore paid and balance of Rs.5.45 crore and out of consideration B' of Rs.4.25 crore due, Rs.45 lakh paid and Rs.3.80 crore due.

I have examined the seized documents as per Annx.-A5, A7, A8 which are notings in diaries not relevant and not

referred/utilized in the assessment order as well as pages 12-35 of Annx.-A2 provided to the appellant by the AO and submitted by the appellant. Pages 15-21 of A2 are receipts dt. 20.12.2009 on revenue stamp given by Sh. Praduman Patel on behalf of himself and that of Smt. Urmila Patel and Sh. Himanshu Patel (both HP group) for payments received from Sh. Rahul Gautam by cheque, pages 27-34 are similar receipts from PP and those of Smt. Renu Patel, Sh. Rohan Patel and Sh. Krish Patel (all of PP group) of payments received by cheque, and pages 22-25 are photocopies of cheques issued to them by Sh. Rahul Gautam.

4.3.8 Thus, in none of the seized documents except for page 41 of Annx.-A1 as mentioned above, there is any reference to payments related to the appellant group nor of any cash payment them. Even otherwise there is no corroborative evidence of cash payments to the appellant group's family members as also contended by the appellant. Therefore, reliance placed by the AO on the documents referred in the assessment order do even not "relate to" the appellant's group family members, not to talk about the documents seized "belonging to" them. As has been submitted by the appellant, the notice u/s 153A in the case of SFPL and

notice u/s 153C in the cases of the Sh. Kartik Patel group family members were issued on 29.08.2013 simultaneously, and as mentioned at para 4.3.6 above, there is no finding given by the AO in the case of SFPL that the documents seized from SFPL do not "belong to" SFPL nor is there any reference in the assessment orders of SFPL for AYs 2006-07 to 2012-13 that SFPL had denied that the said impugned documents did not "belong to" them, nor is there any finding in the assessment orders of SFPL or in the satisfaction note that these impugned documents "belong to" the Kartik Patel group family members. Under these facts and circumstances, additions made on account of documents "belonging to" others are not sustainable in terms of the judgments of the Hon'ble Delhi High Court in PepsiCo India Holdings (P.) Ltd v ACIT & Pepsi Foods Pvt. Ltd v ACIT (supra), CIT vs RRJ Securities 62 taxmann.com 39, CIT vs Nikki Drugs 64 taxmann.com, 367 ITR 112, 270 CTR 467. The above principles have been followed in many other decisions by the jurisdictional ITAT of Delhi - Deputy Commissioner of Income-tax v. Aakash Arogya Mindir (P.) Ltd. [2015] 58 taxmann.com 293 (Delhi - Trib.); Tanvir Collections (P.) Ltd. v. Assistant Commissioner of Income Tax, Central Circle-21, New

Delhi [2015] 54 taxmann.com 379 (Delhi - Trib.); Deputy Commissioner of Income-tax , Central Circle-5, New Delhi v. Qualitron Commodities (P.) Ltd. [2015] 54 taxmann.com 295 (Delhi - Trib.). In Director of Income-tax (IT)- II v. Ingram Micro (India) Exports (P.) Ltd [2015] 60 taxmann.com 57 (Bombay) the Hon'ble Bombay High Court have also held that once it was found that there was nothing in assessment order which would indicate that Assessing Officer arrived at satisfaction that seized material pertained to assessee, Tribunal was justified to nullify proceedings.

4.3.9 As regards the satisfaction note per se, the appellant had filed a copy thereof at page 11 to 17 of the PB filed on 27.02.2015 which was provided to the appellant vide vl 'AO's letter F.No.DCIT/CC-11/2013-14/1634 dt. 06.01.2014 enclosing therewith the satisfaction note and pages 41, 57 to 58 and 67 of Annx-1 seized from SFPL. Beside the issue of whether these documents "belong to" the appellant and the application of mind on the implication of these documents on undisclosed income of the appellant, the satisfaction note enclose with his notice is unsigned, there is no mention of date of satisfaction and the assessment year, while the satisfaction is

stereotype in all the TTve cases'Sf'the Kartik Patel family group. On the other hand in the assessment folder the same the same satisfaction note, dt. 29.08.2013 for AYs 2006-07 to 2011-12 and duly signed was found on the note sheet side of the folder (after the note sheets) both this satisfaction notes were forwarded to the AO vide this office letter no. 1269 dt. 06.01.2016 with the following observations:

"2. I have perused the assessment folders of these cases forwarded by you with your letter F.No.ACIT/CC-06/15-16/1459 dated 30.12.2015. I find that the satisfaction recorded u/s 153C of the Act placed on the note sheet side of the files is different from the unsigned and undated satisfaction forwarded to the assesseees with the notices u/s 153C of the Act dated 06.01.2014 in all the five cases. In fact, except for the case of Sh. Meenakshi Patel (note sheet page-4) the satisfaction page is not page numbered in the other cases. Copies of both the sets of satisfactions in all these five cases are enclosed at Annexure-1 and 2 respectively. The appellants have challenged the assumption of jurisdiction u/s 153C of the Act on the ground that the impugned satisfactions received by them are undated and unsigned. I find mat even the

assessment year is not mentioned on the satisfactions sent to the assesseees with said notices u/s 153C.

3. You are directed to submit a report explaining why the two sets of satisfactions are different, and justify how and why the assumption of jurisdiction u/s 153C of the Act is legally valid in the respective cases, bv 20.01.2016,

4. The assessment folders sent by you in all these cases are returned herewith. However, these case records be sent back to me for necessary perusal and consideration with your remand report (even if you do not submit the remand report by this date)."

The AO submitted the remand report vide his letter no. 1537 dt. 14.01.2016 wherein he has reported as under:

"It is submitted that remand report stands submitted vide this office letter dated 04.01.2016.

Regarding two sets of satisfaction note, it is submitted that the assessments under consideration were completed by predecessor of the undersigned. The assessment records as available in this office were sent as desired by your goodself. Thus, the undersigned is

unable to explain the unsigned/undated copies of satisfaction notes as claimed by the assessee.”

Thus, it is seen that the impugned satisfaction note provided to the assessee vide AO's letter F.No.DCIT/CC-11/2013-14/1634 dt. 06.01.2014 (X1) was unsigned, with no date indicating the date on which satisfaction was drawn, and with no mention of the assessment year for which satisfaction was drawn, while the satisfaction found in the assessment folder is on the note sheet side (X2) - with no page marking on the satisfaction prior to 06.01.2016 when the assessment folders were sent back to the AO by me, but subsequently found marked as page 5 in the case of the appellant and that of Sh. Kartik Patel and Sh. Abhishek Kartik Patel and as page 4 and 6 respectively in the case of Smt. Meenakshi Patel and M/s Kartik Chandulal Patel HUF (in fact the satisfaction in the file of Sh. Kartik Patel is that of Smt. Meenakshi Patel) - and the correspondence sheets are marked up to pages 187, 411, 192, 194 and 187 respectively which do not include the satisfaction note on the correspondence side. Besides, on the satisfaction note, both X1 & X2, the name of the searched company M/s Sheela Foam Pvt Ltd is noted on top, meaning thereby that the

satisfaction was recorded in the case of SFPL on 28.08.2013 when notice u/s 153A was issued to SFPL, but there is no satisfaction recorded in the case of the appellants (Kartik Patel Group family members). In this view of the matter, and in terms of the AO's reply that "the undersigned is unable to explain the unsigned/undated copies of satisfaction notes as claimed by the assessee", the satisfaction enclosed with the AO's letter F.No.DCIT/CC- 11/2013-14/1634 dt. 06.01.2014 sent to the appellant cannot be considered as valid satisfaction of the AO.

Since the AO has mentioned in his reply dt. 14.01.2016 that "The assessment records as available in this office were sent as desired by your goodself, it is necessary to mention that the assessment folders of all the five cases of the group was sent back to the AO on 06.01.2016 and the AO's reply is dt. 14.01.2016.

4.3.10 In this view of the matter, as held by me at paras 4.3.8 and 4.3.9, the satisfaction recorded by the AO and the issuance of notices u/s 153C of the Act are held to be invalid and therefore the reassessment orders in these cases cannot be sustained. I hold accordingly. These grounds of appeal are accordingly allowed.

4.4 In view of the decision herein above, ground nos. 05 to 08 on merits of the additions are not considered separately."

5.1 After perusing the aforesaid findings of the Ld. CIT(A), we note that in none of the seized documents except for page 41 of Annx.-A1, there is any reference to payments related to the assessee group nor of any cash payment them. Even otherwise there is no corroborative evidence of cash payments to the Assessee's group's family members as also contended by the appellant. Therefore, reliance placed by the AO on the documents referred in the assessment order do even not "relate to" the assessee's group family members, not to talk about the documents seized "belonging to" them. As has been submitted by the assessee, the notice u/s 153A in the case of SFPL and notice u/s 153C in the cases of the Sh. Kartik Patel group family members were issued on 29.08.2013 simultaneously, and there is no finding given by the AO in the case of SFPL that the documents seized from SFPL do not "belong to" SFPL nor is there any reference in the assessment orders of SFPL for AYs 2006-07 to 2012-13 that SFPL had denied that the said impugned documents did not "belong to" them, nor is there any finding in the assessment orders of SFPL or in the satisfaction note that these impugned documents "belong to" the Kartik Patel group family members. Under these facts and circumstances, additions made on account of documents "belonging to" others are not sustainable in terms of the judgments of the Hon'ble Delhi High Court in PepsiCo India Holdings (P.) Ltd v ACIT & Pepsi Foods Pvt. Ltd v ACIT

(supra), CIT vs RRJ Securities 62 taxmann.com 39, CIT vs Nikki Drugs 64 taxmann.com, 367 ITR 112, 270 CTR 467. The above principles have been followed in many other decisions by the jurisdictional ITAT of Delhi - Deputy Commissioner of Income-tax v. Aakash Arogya Mindir (P.) Ltd. [2015] 58 taxmann.com 293 (Delhi - Trib.); Tanvir Collections (P.) Ltd. v. Assistant Commissioner of Income Tax, Central Circle-21, New Delhi [2015] 54 taxmann.com 379 (Delhi - Trib.); Deputy Commissioner of Income-tax , Central Circle-5, New Delhi v. Qualitron Commodities (P.) Ltd. [2015] 54 taxmann.com 295 (Delhi - Trib.). In Director of Income-tax (IT)- II v. Ingram Micro (India) Exports (P.) Ltd [2015] 60 taxmann.com 57 (Bombay) the Hon'ble Bombay High Court have also held that once it was found that there was nothing in assessment order which would indicate that Assessing Officer arrived at satisfaction that seized material pertained to assessee, Tribunal was justified to nullify proceedings and also the decision of the ITAT, 'F' Bench, New Delhi dated 31.12.2018 in similar case in ITA No. 1455-1459/Del/2015 (AY 2010-11) in the case of ACIT vs. Rohan Patel; Himanshu Patel; Praduman Patel; Krish Patel and Urmilla Chandulal Patel. We further find that as regards the satisfaction note is concerned, the assessee had filed a copy thereof at page 11 to 17 of the PB filed on 27.02.2015 which was provided to the appellant vide 'AO's letter F.No. DCIT/CC-11/2013-14/1634 dt. 06.01.2014 enclosing therewith the satisfaction note and pages 41, 57 to 58 and 67 of Annx-1 seized from SFPL. Beside the issue of whether these documents "belong to" the assessee and the application

of mind on the implication of these documents on undisclosed income of the assessee, the satisfaction note enclose with his notice is unsigned, there is no mention of date of satisfaction and the assessment year, while the satisfaction is stereotype in all the case of Kartik Patel family group. On the other hand in the assessment folder the same satisfaction note, dt. 29.08.2013 for AYs 2006-07 to 2011-12 and duly signed was found on the note sheet side of the folder (after the note sheets) both this satisfaction notes were forwarded to the AO vide this office letter no. 1269 dt. 06.01.2016 with the following observations:

"2. I have perused the assessment folders of these cases forwarded by you with your letter F.No.ACIT/CC-06/15-16/1459 dated 30.12.2015. I find that the satisfaction recorded u/s 153C of the Act placed on the note sheet side of the files is different from the unsigned and undated satisfaction forwarded to the assessees with the notices u/s 153C of the Act dated 06.01.2014 in all the five cases. In fact, except for the case of Sh. Meenakshi Patel (note sheet page-4) the satisfaction page is not page numbered in the other cases. Copies of both the sets of satisfactions in all these five cases are enclosed at Annexure-1 and 2 respectively. The appellants have challenged the assumption of jurisdiction u/s 153C of the Act on the ground that the impugned satisfactions received by them are undated and unsigned. I find mat even the assessment year is not mentioned on the satisfactions sent to the assessees with said notices u/s 153C.

3. *You are directed to submit a report explaining why the two sets of satisfactions are different, and justify how and why the assumption of jurisdiction u/s 153C of the Act is legally valid in the respective cases, bv 20.01.2016,*

4. *The assessment folders sent by you in all these cases are returned herewith. However, these case records be sent back to me for necessary perusal and consideration with your remand report (even if you do not submit the remand report by this date)."*

5.2 The AO submitted the remand report vide his letter no. 1537 dt. 14.01.2016 wherein he has reported as under:

"It is submitted that remand report stands submitted vide this office letter dated 04.01.2016.

Regarding two sets of satisfaction note, it is submitted that the assessments under consideration were completed by predecessor of the undersigned. The assessment records as available in this office were sent as desired by your goodself. Thus, the undersigned is unable to explain the unsigned/undated copies of satisfaction notes as claimed by the assessee."

5.3 Thus, it is seen that the impugned satisfaction note provided to the assessee vide AO's letter F.No.DCIT/CC-11/2013-14/1634 dt. 06.01.2014 (X1) was unsigned, with no date indicating the date on which satisfaction was drawn, and with no mention of the assessment year for which satisfaction was drawn, while the satisfaction found in the assessment

folder is on the note sheet side (X2) - with no page marking on the satisfaction prior to 06.01.2016 when the assessment folders were sent back to the AO by me, but subsequently found marked as page 5 in the case of the appellant and that of Sh. Kartik Patel and Sh. Abhishek Kartik Patel and as page 4 and 6 respectively in the case of Smt. Meenakshi Patel and M/s Kartik Chandulal Patel HUF (in fact the satisfaction in the file of Sh. Kartik Patel is that of Smt. Meenakshi Patel) - and the correspondence sheets are marked up to pages 187, 411, 192, 194 and 187 respectively which do not include the satisfaction note on the correspondence side. Besides, on the satisfaction note, both X1 & X2, the name of the searched company M/s Sheela Foam Pvt Ltd is noted on top, meaning thereby that the satisfaction was recorded in the case of SFPL on 28.08.2013 when notice u/s 153A was issued to SFPL, but there is no satisfaction recorded in the case of the appellants (Kartik Patel Group family members). In this view of the matter, and in terms of the AO's reply that "the undersigned is unable to explain the unsigned/undated copies of satisfaction notes as claimed by the assessee", the satisfaction enclosed with the AO's letter F.No.DCIT/CC- 11/2013-14/1634 dt. 06.01.2014 sent to the assessee cannot be considered as valid satisfaction of the AO. We further note that since the AO has mentioned in his reply dt. 14.01.2016 that "The assessment records as available in this office were sent as desired by your goodself, it is necessary to mention that the assessment folders of all the five cases of the group was sent back to the AO on 06.01.2016 and the AO's reply is dt. 14.01.2016.

6. Keeping in view of the aforesaid discussions and respectfully following the precedents, as aforesaid we do not find any reason to interfere in the order of the Ld. CIT(A), wherein it has been held that the satisfaction recorded by the AO and the issuance of notices u/s. 153C of the Act held to be invalid and therefore, the reassessment orders in this case cannot be sustained and appeal of the assessee was rightly partly allowed on the legal issue itself, hence, we uphold the action of the Ld. CIT(A) on the legal issue and dismiss the appeal of the Revenue.

7. In the result, the Revenue's Appeal stands dismissed

Order pronounced on 18/03/2019.

Sd/-

**[L.P. SAHU]
ACCOUNTANT MEMBER**

Date 18/03/2019

SRBHATNAGAR

Copy forwarded to: -

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

By Order,

Assistant Registrar, ITAT, Delhi Benches