(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made :

***Provided** that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:*

***Provided further** that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this [sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate*

12.6.3 On the other hand, for Assessment Years 2006-07 and 2007-08, the provisions of Section 153C of the Act enjoins upon the AO of the person searched; that on being satisfied that books of account seized or requisitioned belongs to or pertain to some other persons, to handover the books of account to the AO having jurisdiction over such other person. Thereafter, the second AO, on being satisfied that the books of account and documents received have a bearing on the determination of the total income of the other person, should assume jurisdiction under section 153C of the Act. After assuming jurisdiction under section 153C of the Act, the AO proceeds to carry out an assessment in terms of section 153A r.w.s. 143(3) of the Act. In this regard, it is relevant to extract section 153 of the Act hereunder:-

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

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

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

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person 17[for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153A :

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

12.6.4 From the above, it is seen that the jurisdictional conditions and circumstances prescribed by the legislature for assumption of jurisdiction and taking action under sections 153A and 153C of the Act are different and are not interchangeable. The jurisdiction to make an assessment under section 153A of the Act arises when there is a search conducted under section 132 of the Act. Whereas, jurisdiction to make assessment under section 153C of the Act arises when satisfaction is reached that the materials found in the course of search of

some other person have a bearing on the determination of the income of the assessee. Further, in the first proviso to section 153C of the Act, it is provided that the reference to the date of search in the second proviso to section 153A of the Act; dealing with abatement of pending proceedings on the date of search; shall for the purpose of the persons proceeded under section 153C of the Act be construed as the date on which the seized materials are received by the AO.

12.6.5 In the case on hand, we find that there was a search under section 132 of the Act in the case of the assessee on 26.10.2007. After the search, notices under section 153A of the Act were issued, assessments were framed thereunder by the AO. During the pendency thereof; the AO received material / information from the AO of Shri. Manoj Kumar Jain. As per the second proviso to section 153C of the Act, the assessment proceedings pending under section 153A of the Act in the case of the assessee before the AO would abate on the date the AO received the seized material from the AO of Shri. Manoj Kumar Jain and fresh proceedings under section 153C of the Act ought to have been initiated. However, it is seen that, upon receipt of the said information / materials, the AO did not assume jurisdiction under section 153C of the Act, but rather chose to use the said materials / information for making additions in the impugned orders of assessment concluded under section 153A of the Act. The AO has discussed these additions in the order of assessment under the caption "ISSUE ARISING OUT OF SEARCH CONDUCTED IN THE CASE OF SHRI. MANOJ KUMAR JAIN". The AO noted that the assessment proceedings in the case of Shri. Manoj Kumar Jain were 'being concluded at Central Circle-1, Belgaum'. Thereafter, he has gone on to set-out the issues in the case of Shri. Manoj Kumar Jain, relevant to the assessee in the case on hand. But, no satisfaction, it appears, has been recorded that these materials have a bearing on the determination of income. Thus, the AO has not followed the procedure laid down in section 153C

of the Act for taking cognizance of the material found / seized in the case of Shri. Manoj Kumar Jain and making an assessment with reference to those materials in the case on hand.

12.6.6 The Kolkata Bench of ITAT in the case of Krishna Kumar Singhania (168 ITD 217) has considered the provisions of sections 153A and 153C of the Act and after examining the different scope of these two sections, at para 10 of its order, has held as under:-

> *"We have heard the rival submissions. We find that it is not in dispute that there were no documents that were seized from the premises of the assessee except loose sheets vide seized document reference KKS / 1 comprising of 8 pages , for which satisfactory explanation has been given by the assessee and no addition was made by the Id AO on this seized document. The seized document used by the Id AO for making the addition in section 153A assessment is CG/1 to 11 and CG/HD/1 which were seized only from the office premises of Cygnus group of companies in which assessee is a director. In this regard, it would be pertinent to note that as per section 292C of the Act, there is a presumption that the documents , assets, books of accounts etc found at the time of search in the premises of a person is always presumed to be belonging to him / them unless proved otherwise. This goes to prove that the presumption derived is a rebuttable presumption. Then in such a scenario, the person on whom presumption is drawn , has got every right to state that the said documents does not belong to him / them . The Id AO if he is satisfied with such explanation , has got recourse to proceed on such other person (i.e the person to whom the said documents actually belong to) in terms of section 153C of the Act by recording satisfaction to that effect by way of transfer of those materials to the AO assessing the such other person. This is the mandate provided in section 153C of the Act. In the instant case, if at all, the seized documents referred to in CG/1 to 11 and CG/HD/1 is stated to be belonging to assessee herein, then the only legal recourse available to the department is to proceed on the assessee herein in terms of section 153C of the Act. In this regard, we would like to place reliance on the recent decision of the Hon'ble Delhi High Court in the case of CIT v. Pinaki Misra & Sangeeta Misra [(2017) 148 DTR 219 (Delhi)] = [TS-5161-HC-2017(DELHI)-0] wherein it was held that, no addition could be made on the basis of evidence gathered from*