

**IN THE INCOME TAX APPELLATE TRIBUNAL "F", BENCH MUMBAI  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.1547/Mum/2015  
(Assessment Year :2010-11)**

M/s Vivil Investments Pvt.Ltd. 375, J.S.S.Road,4 <sup>th</sup> Floor "D" Vidhyut Building Mumbai-400 002	Vs.	DCIT Central Circle-3 Old CGO Annexe M.K.Road Mumbai-400 020
<b>PAN/GIR No.AABCV0724A</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Rushabh Shah
Revenue by	Sushil Kumar Poddar
<b>Date of Hearing</b>	<b>04/07/2019</b>
<b>Date of Pronouncement</b>	<b>23/08/2019</b>

**आदेश / ORDER**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-36, Mumbai dated 20/10/2014 and it pertains to the Assessment Year 2010-11.

2. The assessee has raised the following grounds of appeal:-

1. *The Learned CIT(A) erred in the facts and circumstances of the case and in law, in confirming the unwarranted adjustments to the Book Profits determined as per provisions of section 115JB of the Income Tax Act, 1961*

2. *The Learned CIT(A) erred in the facts and circumstances of the case and in law, in confirming the disallowance of the donations amounting to Rs,7,20,00,000/-and adding back the said amount to the book profit u/s.115JB of the Income Tax Act, 1961.*

3. *The Learned CIT(A) erred in the facts and circumstances of the case and in law, In confirming the disallowance of the provision for doubtful debt\* amounting to Rs. 5,01,00,000/- and adding back the said amount to the book profit u/s.115JB of the Income Tax Act, 1961.*

4. *The Learned CIT(A) erred in the facts and circumstances of the case and in law, in confirming the disallowance of the set off of Short Term Capital Loss suffered by the appellant on sale of shares incurred during the year.*

5. *The Learned CIT(A) erred in the facts and circumstances of the case and in law, in confirming the disallowance of the Capital Loss incurred on the sale of shares amounting to Rs,4,26,87,149/- and adding back the said amount to the book profit u/s 115JB of the Income Tax Act, 1961.*

6. *The appellant craves leave to add, amend, alter or delete the said ground of appeal.*

3. The assessee, has also filed a petition for admission of additional grounds, vide letter dated 02/08/2018. The relevant additional grounds filed by the assessee are as under:-

1) *On the facts and circumstances of the case as well as in Law, the Learned Assessing Officer has erred in passing the assessment order u/s, 143(3) r.w.s 153C of the Income Tax Act, 1961 which is not In compliance of The provision of law, hence nut! and void ab-initio*

2) *On the facts and circumstances of the case as wet! as in law, the Learned Assessing Officer has erred in initiating the proceedings u/s. 153C of the Income Tax Act,1961, without appreciating the fact that no satisfaction recorded before issuing notice u/s. 153C of the income Tax Act, 1961, in both the capacity as a Assessing Officer of "searched person" and the "other person.*

3) *On the facts and circumstances of the case as wet! as in Law, the Learned Assessing Officer has erred in initiating the proceedings u/s.153C of the Income Tax Act,1961 without any incriminating documents were found during the course of search of the applicant company.*

4. The Ld.AR for the assessee, at the time of hearing submitted that the additional grounds taken by the assessee, challenging validity of assessment order passed u/s 143(3) r.w.s. 153C of the

I.T.Act, 1961, is a legal issue, which goes to question jurisdiction of the AO in completion of assessment without any valid satisfaction as required u/s 153C of the I.T.Act, 1961. Therefore, the same may be admitted for hearing.

5. The Ld. DR, on the other hand, strongly opposing additional grounds of appeal filed by the assessee submitted that the way in which, the assessee has taken additional grounds, after gap of more than four years from the date of filing original appeal before the Tribunal and also in recalled proceedings clearly establishes the intent of the assessee to go scot free from the proceedings. Therefore, the additional grounds of appeal filed by the assessee should not be admitted at this stage.

6. Having heard, arguments of both the sides and considered relevant materials on record, we find that the additional grounds taken by the assessee challenging validity of assessment order u/s. 143(3) r.w.s. 153C of the I.T.Act, 1961, is purely a legal issue, which goes to question jurisdiction of the AO in assessment of income u/s 153C without any valid satisfaction, as required under law. We, further noted that when additional grounds of appeal filed by the assessee is purely a legal issue, the same can be filed at any time of

proceedings, even if the same was not taken before the lower authorities. Therefore, by considering the issue involved in additional grounds taken by the assessee and also by following the decision of Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. Vs. CIT (229 ITR 383), we are of the considered view that additional grounds filed by the assessee needs to be adjudicated on merits and hence, the same are admitted for hearing.

7. The brief facts of the case are that, the assessee company is engaged in the business of investment in quoted & unquoted shares and also in properties, filed its return of income for AY 2010-11 on 07/03/2011, declaring total income at Rs. 1,41,440/- under normal provision of the I.T.Act, 1961, and declared book profit of Rs. 7,42,32,550/- u/s 115JB of the I.T.Act, 1961. A search and seizure action u/s 132 of the I.T.Act, was conducted on 04/02/2011 in the case of M/s. Allied Digital Services Ltd. The assessee company being closely related and run by the cousins of the Directors of M/s Allied Digital Services Ltd., it was covered u/s 133A of the I.T.Act, 1961. During the course of survey u/s 133A, it was found that there has been a wrong/bogus claim of expenses of donations of Rs. 7,20,00,000/-, as also of provision of Doubtful Debts for Rs. 2,01,00,000/- in the books of accounts, so as to claim, the benefit of

deduction u/s 80G of the I.T.Act, 1961. During the course of survey on 04/02/2011, Shri Kamlesh Manish Kapdia, statutory Auditor of the company along with Shri Nitin Shah, as well as Shri Prakash Shah, cousins of the directors of the assessee company, in the statements recorded u/s 132(4) have confirmed that claim of expenditure under the head donations was bogus. They, further stated that for the year, the income of the company only from the Long Term Capital Gain, which is exempt u/s 10(38) of the I.T.Act, and hence, book profit as per financial statements shall be offered to tax.

8. Consequent to, search notices u/s 153C of the I.T.Act, 1961, was issued. In response, the assessee has filed return of income on 07/09/2012, declaring total income at Rs. 1,41,340/- under normal provision of I.T.Act, 1961, and book profit at Rs. 7,44,15,260/- under the provisions of section 115JB of the I.T.Act, 1961. The case has been selected for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee has claimed various expenses including donation and provision of Doubtful Debts. Therefore, called upon, the assessee to furnish necessary evidences, including the name of Trust/Institution, who received donations, details of Long Term Capital Gain computed from sale of shares and also details of provision for Doubtful Debts. In response, the assessee has filed various details as called for by the AO, vide

letter dated 04/01/2013 and explained that under wrong assumption of facts,during the course of survey, the donations have been admitted as bogus, however, the same has supported by necessary evidence, including receipts issued by the institutions. The assessee has also explained claim of provision for bad and Doubtful Debts with necessary evidences. The Ld. AO, after considering relevant facts submission of the assessee and also taken note of, facts gathered during survey proceedings and also statements recorded from statutory auditors and directors of the company, came to the conclusion that the assessee has booked various bogus expenditures, in order to reduce profit computed u/s 115JB of the I.T.Act, 1961. Therefore, opined that the expenditure claimed under the head donations and provision for bad and Doubtful Debts is a colourable device used by the assessee to reduce tax liability. Accordingly, by relied upon various judicial precedents including the decision of Hon'ble Supreme Court in the case of Mc Dowell vs CTO 1997 (69 ECR 29) (SC) held that the assessee has suppressed book profit by booking bogus expenditure in form of donations and provision for Doubtful Debts and accordingly, recomputed book profit by adding back donations and provision for Doubtful Debts amounting to Rs. 12,21,00,000/- and determined book profit of Rs.

23,65,99,220/- . T AO has also recomputed loss of the assessee at Rs. 8,53,100/-

9. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A). Before, the Ld.CIT(A), the assessee reiterated its arguments taken before the AO. The assessee, further contended that once books of accounts are audited under the companies Act, and the same has been approved by the shareholders in general meeting, the Ld. AO has no power to tinker with those books of accounts to recompute book profit u/s 115JB of the I.T.Act, 1961, except to the extent ,as provided in explanation 1 to section 115JB of the I.T.Act, 1961. The Ld. CIT(A), after considering relevant facts and submission of the assessee and also relied upon certain judicial precedents, including the decision of ITAT, Kochin Bench in the case of Padinjarekara Agency Pvt.Ltd. vs ACIT in ITA.No. 375/Kochin/2014 dated 17/10/2014 held that the AO is entitled to examine deviations, if any from accounting standards, when it has an impact on the book profits to compute tax payable under MAT provision of the Act, Therefore he opined that there is no error in the findings of the Ld. AO in re-computation of book profit u/s 115JB of the I.T.Act, 1961 and accordingly, sustained additions made by the AO and dismissed appeal filed by the assessee.

Aggrieved by the Ld. CIT(A) order, the assessee is in appeal before us.

10. The Ld. AR for the assessee, at the time of hearing, referring to additional ground of appeal filed submitted that the assessment order passed u/s 143(3) r.w.s. 153(C) of the I.T.Act, 1961 is bad in law and liable to be quashed, because the AO, before issue of notice u/s 153(C) of the I.T.Act, 1961, has not recorded satisfaction as required u/s 153C of the I.T.Act, 1961, therefore whole proceedings, including assessment order passed by the AO is void ab-initio and liable to be quashed. The Ld. AR further submitted that the Hon'ble Supreme Court in the case of CIT vs Calcutta Knitwears [214 362 ITR 673] (SC) had considered the issue of notice issued u/s 153C of the I.T.Act, 1961 and also explained the procedure to be followed by the AO before issue of notice. The Ld. AR further submitted that as per the ratio laid out by Hon'ble Supreme Court in the case of CIT vs Calcutta Knitwears, the AO of the searched person must record satisfaction having regard to the books of account and other assets requisitioned during the course of search that such undisclosed income or books, belongs to a person other than a searched person, then, either at the time or along with initiation of proceedings against the searched person or in the

course of assessment proceedings u/s 158BC of the I.T.Act,1961 or immediately, after the assessment proceedings are completed u/s 158BC of the Act, 1961, of the searched person, shall record satisfaction and handover such undisclosed income or books of accounts to the Assessing Officer having jurisdiction over other person. Further, the AO of other person shall record satisfaction before issue of notice u/s 153C of the Act.

11. The Ld. AR further submitted that the CBDT has also issued a Circular dated 31/12/2015 vide Circular No.24 of 2015, wherein referring to the decision of the Hon'ble Supreme Court in the case of CIT vs M/s Calcutta Knitwears, (supra) in para 3 has accepted that the provisions of section 153C are in pari materia to the provisions of section 153BD of the Act. The Circular in para-4 further issued guidelines to the AO to strictly follow the decision in the case of CIT vs M/s Calcutta Knitwears (supra) for recording satisfaction and has stated that even if the AO of the searched person and the 'other person' is one and the same, then also he is required to record his satisfaction as has been upheld by the Courts before handing over books of accounts and other materials belonging to the person other than searched person. The CBDT further clarified that any pending litigation with regard to recording of satisfaction note u/s 158BD

/153C should be withdrawn/not pressed, if it does not meet the guidelines laid down by the Apex Court. The Ld. AR further submitted that in this case, it is very clear from the record that the AO of the searched person or the person whom proceedings u/s 132 has been initiated has not recorded satisfaction as required u/s 153C of the Act, having regard to books of account and other assets that such books of accounts are belong to a person other than searched person. Further, when the Bench has directed the DR to produce necessary assessment records ,in order to verify, whether the AO of the searched person and the AO for the assessee has recorded any satisfaction as required under the law, but the Ld. DR failed to produce assessment records and also stated that no assessment records are available. From the above, it is abundantly clear that the AO of the searched person and the AO of the assessee are failed to record satisfaction as required u/s 153C of the I.T.Act, 1961, before issue of notice u/s 153C and, hence the assessment order passed u/s 143(3) r.w.s. 153C of the I.T.Act, 1961, is vitiated and accordingly, liable to be quashed. In this regard, he relied upon the decision of ITAT Mumbai 'H' Bench in the case of M/s Karnataka Strips Ltd. in ITA No. 4184-4188/Mum/2009 dated 28/06/2019.

12. The Ld. DR, on the other hand, submitted that there is no merit in the contention raised by the Ld. AR for the assessee that even if

the AO of the searched person and the 'other person' is one and the same, a separate satisfaction is required to be recorded before issue of notice u/s 153C of the Act, because the law is very clear as per which the AO of the searched person is required to record satisfaction before handing over books of accounts and other asset requisitioned during the course of search, but belonged to person other than the searched person. In this case, since, the AO of the searched person and the other person is one, therefore, the AO before issuance of notice u/s 153C has recorded satisfaction with reference to books of accounts and other materials found during the course of search that undisclosed income is belongs to the assessee, therefore, it is very clear that the satisfaction as required u/s 153C of the Act has been recorded by the AO before issue of notice. The Ld. DR further submitted that although the Hon'ble Supreme Court in the case of CIT vs M/s Calcutta Knitwears, (supra) has issued certain guidelines to the AO for issue of satisfaction as required u/s 158BD and also the said judgment has been accepted by the Department by issuing a Circular, where it was held that even if the AO of the searched person and other person is one and the same, then the separate satisfaction as required u/s 153C is required to be recorded, but the fact remains that the judgment of the Hon'ble Supreme Court was rendered in the year 2014 and the

Board has been issued circular in the year 2015, therefore, the AO cannot foreseen or anticipate the procedure required to be followed for issue of notice u/s 153C of the Act, which is otherwise not specified under the provisions of the Act. Since, the AO has recorded satisfaction before issue of notice u/s 153C of the Act, which is sufficient as per provisions of law and hence, there is no merit in the contentions of the assessee and accordingly, the legal plea raised by the Ld. AR for the assessee should be rejected. The Ld. DR, further submitted that if you look at circumstances, in which additional grounds of appeal has been taken by the assessee, it is very clear that the assessee want to go scot free from the proceedings, because the additional ground has been taken after lapse of more than four years from the assessment and also the validity of proceedings initiated u/s 153C has not been raised either before the AO or the Ld. CIT(A). Therefore, there is no merit in arguments of the assessee that in absence of satisfaction recorded, as required u/s 153C of the I.T.Act, 1961, the whole proceedings is vitiated and liable to be quashed.

13. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The assessee has questioned validity of assessment order passed u/s

143(3) r.w.s. 153C of the I.T.Act, 1961, on the ground that non recording of satisfaction by the AO having jurisdiction of over the searched person before handing over books of accounts or assets requisitioned, during the course of search, but belong to other person and also recording of satisfaction by the AO having jurisdiction over the assessee that books of accounts or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A of the Act vitiated whole proceedings, consequently any order passed, in pursuance of such notice is void ab-initio and liable to be quashed. The provision of section 153C of the I.T.Act, 1961, is very clear, as per which the AO of the searched person is satisfied that, any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to or 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 persons referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the AO having jurisdiction over such other person. Further, the AO of such other person is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the

determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A of the Act, he shall issue a notice u/s 153C of the Act. From the reading section 153C of the Act, it is very clear from the plain reading of words contained in the said section that where the AO is satisfied that any income, any money, bullion, jewellery or any books of account or documents pertains to or 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. Further, the AO having jurisdiction over other person, if he is satisfied that the books of accounts or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person, then he shall proceed to assess or reassess the income of other person in accordance with provisions of section 153A of the Act. The said legal position has been explained by various Courts, including the Hon'ble Supreme Court in the case of CIT vs M/s Calcutta Knitwears (supra), where, the Hon'ble Supreme Court in the context of provisions of section 153BD has laid down certain guidelines to the AO for issue of notice 153BD of the Act, as per the which, the AO of the searched person must record satisfaction to the effect that any money, bullion,

jewellery or other valuable article or thing or any books of account or documents, seized or requisitioned, pertains to, or relates to a person other than the person referred to in section 158BC of the Act. Therefore, it is very clear from the observations of the Hon'ble Supreme Court that before handing over books of accounts or assets seized or requisitioned, if the AO is satisfied that such money, bullion or jewellery or books of account belongs to, relates to person other than the person refer to in section 153A, then he shall record satisfaction to that effect. Similarly, as per the said provision, it is very clear that if the AO is satisfied that the books of accounts or documents, are seized or requisitioned have bearing on the determination of total income of such other person, then he shall proceed to assess or reassess the income of other person in accordance with the provisions of section 153A of the Act. From the reading of above provisions of the Act in conjunction with observations of the Hon'ble Supreme Court in the case of CIT vs M/s Calcutta Knitwears (supra), it is very clear that the AO having jurisdiction over searched person must record satisfaction before handing over the books of account or assets of other person and also the AO of other person must record satisfaction before issue of notice u/s 153C of the Act. This legal position has been accepted by the Department and accordingly, issued a circular vide Circular

No.24/2015 dated 31/12/2015, where the CBDT referring to the decision of the Hon'ble Supreme Court in the case of CIT vs M/s Calcutta Knitwears (supra), clarified the position of law that recording of a satisfaction is pre-requisite and the satisfaction note must be prepared by the AO before he transmits the record to other AO who has jurisdiction over such 'other person'. The CBDT further clarified in para-4 of said circular that even if the AO of the searched person and the other person is one and the same, then also he is required to record his satisfaction as has been held by the Courts. The Board further clarified to its field officers that in view of the decision of the Hon'ble Supreme Court in the case of CIT vs M/s Calcutta Knitwears (supra), filing of appeals on the issue recording of satisfaction note should also be decided in the light of above judgment accordingly, the Board directs the field officers that pending litigation with regard to recording satisfaction u/s 158BD/153C should be withdrawn/not pressed if it does not meet guidelines laid down by the Hon'ble Apex Court. From the conjoint reading of the provisions of section 153C, the decision of the Hon'ble Supreme Court in the case of CIT vs M/s Calcutta Knitwears (supra) and CBDT Circular No.24/2015, it is very clear that even if the AO of the searched person and the other person is one and the same, then also he is required to record separate satisfaction as required u/s 153C of the Act. If, no

satisfaction is recorded, then whole proceedings becomes null and void. In this case, the departmental representative filed to produce satisfaction note recorded by the AO, in spite of bench directed to do so. Therefore, we are of the considered view that, there is no satisfaction was recorded by the AO of the searched person and the AO of the assessee, and hence, the assessment order passed u/s 143(3) r.w.s. 153C of the Act, cannot be held valid.

14. The assessee has relied upon the decision of ITAT, Mumbai 'H' Bench in the case of Karnataka Strips Ltd. vs DCIT in ITA No. 4184 to 4188/Mum/2009, dated 28/06/2019. We find that the coordinate bench had considered an identical issue and after considering relevant facts and also by following the decision of Hon'ble Supreme Court in the case of CIT vs M/s Calcutta Knitwears (supra) held that in absence of valid satisfaction as required u/s 153C of the I.T.Act, 1961, the whole proceedings including the assessment order passed u/s 143(3) r.w.s. 153C of the I.T.Act, 1961 is void ab-initio and liable to be quashed. The relevant findings of Tribunal are as under:

*10. We have heard both parties, perused the material available on record and gone through the orders of authorities below. The sole dispute is with regard to non recording of satisfaction by the AO having jurisdiction over the searched person before handing over the books of accounts or assets requisitioned during the course of search but belonged to other*

person. Otherwise, there is no dispute with regard to the fact that the AO of the assessee has recorded satisfaction as required u/s 153C of the Act, before issue of notice u/s 153C dated 11/08/2008. In fact, the Ld. DR furnished copy of satisfaction note recorded by the AO on 11/08/2008, as per which it is an order sheet entry in the case of the assessee M/s Karnataka Strips Ltd. and the heading of the order sheet entry states that reasons recorded prior to issue of notice u/s 153C of the Act. It is also not in dispute that the AO of the searched person and other person is one and the same. In this factual background, the issue needs to be resolved is whether, a separate satisfaction as required u/s 153C of the Act shall be recorded by the AO before handing over books of accounts and other assets found during the course of search but belongs to other person and also before issue notice u/s 153C of the Act, even though the AO of the searched person and other person is one and the same. As per provisions of section 153C(1) of the Act, where the Assessing Officer is satisfied that, any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to or 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 for the relevant assessment year or years referred to in sub-section (1) of section 153A of the Act. From the reading of the above section 153C of the Act, it is very clear from the plain reading of words contained in the said section that where the AO is satisfied that any income, any money, bullion, jewellery or any books of account or documents pertains to or 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. Further, the AO having jurisdiction over other person, if he is satisfied that the books of accounts or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person, then he shall proceed to assess or reassess the income of other person in accordance with provisions of section 153A of the Act. The said legal position has been explained by various Courts including the Hon'ble Supreme Court in the case of CIT vs M/s Calcutta Knitwears (supra), where, the Hon'ble Supreme Court in the context of provisions of section 153BD has laid down certain guidelines to the AO for issue of notice 158BD of the Act, as per the which, the AO of the searched person must record satisfaction to the effect that any money, bullion, jewellery or other valuable article or thing or any books of account or documents, seized or requisitioned, pertains to, or relates to a person other than the person referred to in section 158BC of the Act. Therefore, it is very clear from the observations

of the Hon'ble Supreme Court that before handing over books of accounts or assets seized or requisitioned, if the AO is satisfied that such money, bullion or jewellery or books of account belongs to, relates to person other than the person refer to in section 153A, then he shall record satisfaction to that effect. Similarly, as per the said provision, it is very clear that if the AO is satisfied that the books of accounts or documents, are seized or requisitioned have bearing on the determination of total income of such other person, then he shall proceed to assess or reassess the income of the other person in accordance with the provisions of section 153A of the Act. From the reading of above provisions of the Act in conjunction with observations of the Hon'ble Supreme Court in the case of CIT vs M/s Calcutta Knitweaves (supra), it is very clear that the AO having jurisdiction over searched person must record satisfaction before handing over the books of account or assets of other person and also the AO of other person must record satisfaction before issue of notice u/s 153C of the Act. This legal position has been accepted by the Department and accordingly issued a circular vide Circular No.24/2015 dated 31/12/2015, where the CBDT referring to the decision of the Hon'ble Supreme Court in the case of CIT vs M/s Calcutta Knitweaves (supra), clarified the position of law that recording of a satisfaction is pre-requisite and the satisfaction note must be prepared by the AO before he transmits the record to other AO who has jurisdiction over such 'other person'. The CBDT further clarified in para-4 of said circular that even if the AO of the searched person and the other person is one and the same, then also he is required to record his satisfaction as has been held by the Courts. The Board further clarified to its field officers that in view of the decision of the Hon'ble Supreme Court in the case of CIT vs M/s Calcutta Knitweaves (supra), filing of appeals on the issue recording of satisfaction note should also be decided in the light of above judgment accordingly, the Board directs the field officers that pending litigation with regard to recording satisfaction u/s 158BD/153C should be withdrawn/not pressed if it does not meet guidelines laid down by the Hon'ble Apex Court. From the conjoint reading of the provisions of section 153C, the decision of the Hon'ble Supreme Court in the case of CIT vs M/s Calcutta Knitweaves (supra) and CBDT Circular No.24/2015, it is very clear that even if the AO of the searched person and the other person is one and the same, then also he is required to record separate satisfaction as required u/s 153C of the Act. In this case, on perusal of satisfaction note furnished by the Ld. DR, we find that the said satisfaction note was taken from assessment record of the assessee, which is evident from the copy of the note filed by the Ld. DR that it is an order sheet entry in the name of M/s Karnataka Strips Ltd. and the heading states that reasons recorded prior to issue of notices u/s 153C of the Act. The said satisfaction note was recorded by the AO having jurisdiction over other person i.e. in this case, the assessee, before issue of notice u/s 153C of the Act. Therefore, we are of the considered view that satisfaction as required u/s 153C of the Act, before transmitting books of accounts or other assets belongs to or relates to other than the searched person was not recorded by the AO of searched person as required u/s 153C of the Act, consequently, the whole proceedings

*including assessment order passed u/s 143(3) r.w.s. 153C of the Act, is bad in law and liable to be quashed. Hence, we quashed the assessment order passed by the AO u/s 143(3) r.w.s. 153C of the Act for AY 2003-04 to 2006-07.*

*11. Coming to the assessment year 2007-08. The AO has completed assessment for AY 2007-08 u/s 143(3) of the Act. We find that the as per the proviso of section 153C of the Act, an assessment for AY 2007-08 (the year in which search was conducted) was also need to be completed u/s 153C of the Act. Therefore, as per the provisions of section 153A r.w.s 153C of the Act, AY 2007-08, ought to have been completed u/s 153C of the Act. This also means that the AO of the person searched ought to have record satisfaction as required u/s 153C of the Act that any money or bullion, jewellery or other valuable articles or thing are seized or requisitioned belongs to or any books of accounts or documents seized or requisitioned pertains or pertains to any person other than the person referred to in section 153A of the Act. Since the AO of the searched person has not recorded satisfaction as required u/s 153C of the Act, before handing over books of accounts or assets of other person, the whole proceedings including assessment order passed u/s 143(3) r.w.s. 153C of the Act for AY 2007-08 bad in law and liable to be quashed. Hence, we quashed assessment order passed u/s 143(3) r.w.s. 153C of the Act for 2007-08*

*12. The assessee has challenged issues involved on merits for all assessment years. Since, we have quashed assessment order passed u/s 143(3) r.w.s. 153C of the Act, for all assessment years, grounds taken by the assessee challenging issues involved on merit become academic in nature and does not require specific adjudication at this point of time, hence, we dismissed other grounds taken by the assessee regarding issues involved on merit.*

*13. In the result, appeals filed by the assessee for Assessment Years 2003-04 to 2007-08 are allowed.*

15. In this case, on perusal of letter dated 16/11/2018 filed by Ld. DR, we find that the AO, in response to additional grounds of appeal filed by the assessee clearly expressed her inability to produce assessment records to ascertain the facts with regard to satisfaction recorded by the AO of the searched person and also the AO of the assessee. We further noted that the AO, in the said letter offered her comments in respect of assessment proceedings and conduct of the assessee, but nowhere stated about availability of satisfaction note

recorded by the AO of searched person and the person other than the searched person. In absence of records and also inability of the AO to produce satisfaction note recorded during assessment proceedings, the only inference that could be drawn is that there is no satisfaction note is available with the records and consequently, the only possible inference that could go, in favour of the assessee is that the AO of the searched person and the AO of the assessee have not recorded satisfaction as required u/s 153C of the I.T.Act, 1961, before issue of notice u/s 153 of the Act. Therefore, we are of the considered view that in absence a valid satisfaction note recorded by the AO of the searched person and the AO of the assessee, the notice issued u/s 153C of the I.T.Act, 1961 is bad in law and consequently, whole proceedings including assessment order passed u/s 143(3) r.w.s. 153C of the I.T.Act, 1961 is void ab-initio and liable to be quashed. Therefore, considering facts and circumstances of this case and also by following the decision of Hon'ble Supreme Court in the case of M/s Calcutta Knitwears vs CIT (supra), we quashed assessment order passed by the AO u/s 143(3) r.w.s. 153C of the I.T.Act. 1961

16. The assessee has raised various grounds challenging additions made by the AO towards disallowances of donation and

provision for bad and Doubtful Debts to recompute book profit u/s 115JB of the I.T.Act, 1961. Since, we have already quashed the assessment order passed u/s 143(3) r.w.s. 153C of the I.T.Act, 1961, the issues involved on merits becomes academic in nature and hence, the ground taken by the assessee challenging various additions to recompute book profit u/s 115JB of the I.T.Act, 1961, has been dismissed as infructuous.

**17. In the result, appeal filed by the assessee is allowed.**

Order pronounced in the open court on this 23 /08/2019

**Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER**

**Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER**

Mumbai; Dated 23/08/2019  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai