

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
&
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.-6336/Del/2014 (A.Y. 2003-04)
ITA No.-6337/Del/2014 (A.Y. 2004-05)
ITA No.-6338/Del/2014 (A.Y. 2005-06)
ITA No.-6339/Del/2014 (A.Y. 2006-07)
ITA No.-6340/Del/2014 (A.Y. 2007-08)
ITA No.-6341/Del/2014 (A.Y. 2008-09)

M/s. Instronics Limited F-345, Lado Sarai, New Delhi-110030 PAN : AAACI0163R	Vs.	ACIT Central Circle-21, Room No. 344, ARA Centre, Jhandewalan Extension, New Delhi -110055
Appellant		Respondent

ITA No.-6553/Del/2014 (A.Y. 2005-06)
ITA No.-6554/Del/2014 (A.Y. 2006-07)
ITA No.-6555/Del/2014 (A.Y. 2007-08)
ITA No.-6556/Del/2014 (A.Y. 2008-09)

ACIT Central Circle-21, Room No. 344, ARA Centre, Jhandewalan Extension, New Delhi -110055	Vs.	M/s. Instronics Limited F-345, Lado Sarai, New Delhi-110030 PAN : AAACI0163R
Appellant		Respondent

Assessee by : None
Revenue by : Sh. Inder Pal Singh Bindra, CIT-DR

ORDER

PER BENCH :

(A) The following grounds of appeal have been taken in this batch of appeals :

ITA No.-6336/Del/2014 (A.Y. 2003-04)

1. *“That on the facts and circumstances of the case and the provision of law, the Ld. CIT (A) has failed to appreciate that the notice issued u/s 153C and assessment order passed by the Ld. AO u/s. 153C/143(3) is illegal, bad in law, without jurisdiction, time barred, and wrong on facts. The additions made are unjust, unlawful and arbitrary and are made against the principles of natural justice.*
2. *That on the facts and circumstances of the case and the provisions of law, the Ld. CIT (A) has failed to appreciate that the Ld. AO was not justified to ignore the submissions of the appellant that the assessment proceedings for the year under appeal was not pending on the date of the recording of satisfaction u/s. 153C and since the same didn't abate, the proceedings u/s. 153C of the I.T. Act in this case are bad in law and deserves to be quashed.*
3. *That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has failed to appreciate that the assessment framed by Ld. AO is against the statutory provisions of the Act and without complying the procedures prescribed u/s. 153C of the I.T. Act and as such the assessment being bad in law deserves to be quashed.*
4. *That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has failed to appreciate that the Ld AO was not justified to ignore the submissions of the appellant that assessment u/s 153C of the Income Tax Act be restricted to assessment in respect of seized documents of*

incriminating nature in the case of the appellant for only the year to which said documents relates to, and in absence of any such incriminating seized document in the case of appellant, assessment framed u/s. 153C of the I.T. Act for the year under consideration, is bad in law and deserve to be quashed.

5. *That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has erred in not admitting the additional evidences i.e. confirmations of parties' etc., filed u/r. 46A along with request for its admission, remand report and rejoinder, during the appellate proceedings. The Ld CIT (A) has also erred in ignoring the explanations given, evidences and material placed and available on record.*

6. *That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in sustaining of additions on account of disallowances of the expenses of Rs.6,51,666/-; and sustaining the additions on account of Loans & Advances of Rs. 12,99,115/- and sustaining the additions on account of share application money received of Rs. 18,00,000/- of the appellant company on mere suspicion, conjectures and surmises, even when no adverse material is there;*

7. *That on the facts and on the circumstances of the case and the provision of law, the CIT (A) has erred in ignoring the fact that the AO has erred both on facts and in law, in using statement of various persons without giving a copy of the same and opportunity to cross examine.*

8. *That on the facts and circumstances of the case and the provisions of law, the Ld. CIT (A) and Ld. AO has erred in ignoring the concept of real income and not allowing telescoping of the income.*

9. *That on the facts and circumstances of the case, the various observations and findings of the Ld CIT (A) and Ld AO in the impugned appellate order and assessment order, respectively, is irrelevant and vitiated in the law.*

10. *That the appellant craves the right to amend, append, delete any or all grounds of appeal.*

ITA No.-6337/Del/2014 (A.Y. 2004-05)

1. *“That on the facts and circumstances of the case and the provision of law, the Ld. CIT (A) has failed to appreciate that the notice issued u/s 153C and assessment order passed by the Ld. AO u/s. 153C/143(3) is illegal, bad in law, without jurisdiction, time barred, and wrong on facts. The additions made are unjust, unlawful and arbitrary and are made against the principles of natural justice.*

2. *That on the facts and circumstances of the case and the provisions of law, the Ld. CIT (A) has failed to appreciate that the Ld. AO was not justified to ignore the submissions of the appellant that the assessment proceedings for the year under appeal was not pending on the date of the recording of satisfaction u/s. 153C and since the same didn't abate, the proceedings u/s. 153C of the I.T. Act in this case are bad in law and deserves to be quashed.*

3. *That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has failed to appreciate that the assessment framed by Ld. AO is against the statutory provisions of the Act and without complying the procedures prescribed u/s. 153C of the I.T. Act and as such the assessment being bad in law deserves to be quashed.*

4. *That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has failed to appreciate that the Ld AO was not justified to ignore the submissions of the appellant that assessment u/s 153C of the Income Tax Act be restricted to assessment in respect of seized documents of incriminating nature in the case of the appellant for only the year to which said documents relates to, and in absence of any such incriminating seized document in the case of appellant, assessment framed u/s. 153C of the I.T. Act for the year under consideration, is bad in law and deserve to be quashed.*

5. *That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has erred in*

not admitting the additional evidences i.e. confirmations of parties etc., filed u/r. 46A along with request for its admission, remand report and rejoinder, during the appellate proceedings. The Ld CIT (A) has also erred in ignoring the explanations given, evidences and material placed and available on record.

6. That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in sustaining of additions on account of disallowances of the expenses of Rs.4,51,989/-; and sustaining the additions on account of share application money received of Rs. 46,90,000/- of the appellant company on mere suspicion, conjectures and surmises, even when no adverse material is there. No defect is pointed out in the books of account and the evidences produced, confirmations received have been illegally and arbitrarily ignored.

7. That on the facts and on the circumstances of the case and the provision of law, the CIT (A) has erred in ignoring the fact that the AO has erred both on facts and in law, in using statement of various persons without giving a copy of the same and opportunity to cross examine.

8. That on the facts and circumstances of the case and the provisions of law, the Ld. CIT (A) and Ld. AO has erred in ignoring the concept of real income and not allowing telescoping of the income.

9. That on the facts and circumstances of the case, the various observations and findings of the Ld CIT (A) and Ld AO in the impugned appellate order and assessment order, respectively, is irrelevant and vitiated in the law.

10. That the appellant craves the right to amend, append, delete any or all grounds of appeal.”

ITA No.-6338/Del/2014 (A.Y. 2005-06)

1. That on the facts and circumstances of the case and the provision of law, the Ld. CIT (A) has failed to appreciate that the notice issued u/s 153C and assessment order passed by the Ld. AO u/s. 153C/143(3) is illegal, bad in law, without jurisdiction

and wrong on facts. The additions made are unjust, unlawful and arbitrary and are made against the principles of natural justice.

2. That on the facts and circumstances of the case and the provisions of law, the Ld. CIT (A) has failed to appreciate that the Ld. AO was not justified to ignore the submissions of the appellant that the assessment proceedings for the year under appeal was not pending on the date of the recording of satisfaction u/s. 153C and since the same didn't abate, the proceedings u/s. 153C of the I.T. Act in this case are bad in law and deserves to be quashed.

3. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has failed to appreciate that the assessment framed by Ld. AO is against the statutory provisions of the Act and without complying the procedures prescribed u/s. 153C of the I.T. Act and as such the assessment being bad in law deserves to be quashed.

4. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has failed to appreciate that the Ld AO was not justified to ignore the submissions of the appellant that assessment u/s 153C of the Income Tax Act be restricted to assessment in respect of seized documents of incriminating nature in the case of the appellant for only the year to which said documents relates to, and in absence of any such incriminating seized document in the case of appellant, assessment framed u/s. 153C of the I.T. Act for the year under consideration, is bad in law and deserve to be quashed.

5. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has erred in not admitting the additional evidences i.e. confirmations of parties' etc., filed u/r. 46A along with request for its admission, remand report and rejoinder, during the appellate proceedings. The Ld CIT (A) has also erred in ignoring the explanations given, evidences and material placed and available on record.

6. That on the facts and circumstances of the case and the provision of law, the Ld CIT (A) has erred in

holding the conclusion that the 'audited books' notwithstanding, the book results are required to be rejected, since the narrations are artificial, sham and not reflective of the actual business / commercial transactions. However, the Ld CIT (A) still relying on these books /book results for giving directions to the AO for the purpose of calculating the peak from the entries in the cash book of the appellant for the relevant year.

7. A). That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in disregarding the purchases of Rs.6,21,52,257/- of the appellant on mere suspicion, conjectures and surmises, even when no adverse material is there;

B). That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in disregarding the 50% expenses of Rs.5,68,727/- of the appellant on mere suspicion, conjectures and surmises, even when no adverse material is there;

C) That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in disregarding the loans and advances paid of Rs. 1,70,50,000/- of the appellant on mere suspicion, conjectures and surmises, even when no adverse material is there;

D) That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in disregarding the share application money received of Rs.3,60,000/-of the appellant on mere suspicion, conjectures and surmises, even when no adverse material is there;

8. A) That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in wrongly directing the AO to work out the peak from the entries in the cash book and the bank book of the appellant for the relevant year and make a singular addition of the said amount, as unexplained investment/expenditure, ignoring the fact that the same has duly been entered in the audited books of accounts of the appellant for the year under

consideration;

B) That the Ld CIT (A) did not give sufficient opportunity of being heard to the appellant company and ignored the concept of 'Real Income' and wrongly directed the AO to work out the peak from the entries in the cash book and the bank book of the appellant for the relevant year, without granting the credit of the peak of financial transactions as per the cash book for the preceding years.

9. That on the facts and on the circumstances of the case and the provision of law, the CIT (A) has erred in ignoring the fact that the AO has erred both on facts and in law, in using statement of various persons without giving a copy of the same and opportunity to cross examine.

10. That on the facts and circumstances of the case, the various observations and findings of the Ld CIT (A) and Ld AO in the impugned appellate order and assessment order, respectively, is irrelevant and vitiated in the law.

11. That the appellant craves the right to amend, append, delete any or all grounds of appeal.

ITA No.-6339/Del/2014 (A.Y. 2006-07)

"1. That on the facts and circumstances of the case and the provision of law, the Ld. CIT (A) has failed to appreciate that the notice issued u/s 153C and assessment order passed by the Ld. AO u/s. 153C/143(3) is illegal, bad in law, without jurisdiction and wrong on facts. The additions made are unjust, unlawful and arbitrary and are made against the principles of natural justice.

2. That on the facts and circumstances of the case and the provisions of law, the Ld. CIT (A) has failed to appreciate that the Ld. AO was not justified to ignore the submissions of the appellant that the assessment proceedings for the year under appeal was not pending on the date of the recording of satisfaction u/s. 153C and since the same didn't abate, the proceedings u/s. 153C of the I.T. Act in this case are bad in law and deserves to be quashed.

3. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has failed to appreciate that the assessment framed by Ld. AO is against the statutory provisions of the Act and without complying the procedures prescribed u/s. 153C of the I.T. Act and as such the assessment being bad in law deserves to be quashed.

4. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has failed to appreciate that the Ld AO was not justified to ignore the submissions of the appellant that assessment u/s 153C of the Income Tax Act be restricted to assessment in respect of seized documents of incriminating nature in the case of the appellant for only the year to which said documents relates to, and in absence of any such incriminating seized document in the case of appellant, assessment framed u/s. 153C of the I.T. Act for the year under consideration, is bad in law and deserve to be quashed.

5. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has erred in not admitting the additional evidences i.e. confirmations of parties' etc., filed u/r. 46A along with request for its admission, remand report and rejoinder, during the appellate proceedings. The Ld CIT (A) has also erred in ignoring the explanations given, evidences and material placed and available on record.

6. That on the facts and circumstances of the case and the provision of law, the Ld CIT (A) has erred in holding the conclusion that the 'audited books' notwithstanding, the book results are required to be rejected, since the narrations are artificial, sham and not reflective of the actual business / commercial transactions. However, the Ld CIT (A) still relying on these books / book results for giving directions to the AO for the purpose of calculating the peak from the entries in the cash book of the appellant for the relevant year.

7. A). That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in disregarding the purchases of

Rs.4,24,20,731/- of the appellant on mere suspicion, conjectures and surmises, even when no adverse material is there;

B). That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in disregarding the 50% expenses of Rs.5,76,895/- of the appellant on mere suspicion, conjectures and surmises, even when no adverse material is there;

C). That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in disregarding the advances received against orders of Rs. 10,64,500/- of the appellant on mere suspicion, conjectures and surmises, even when no adverse material is there;

D). That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in disregarding the share application money given of Rs. 16,00,000/- of the appellant on mere suspicion, conjectures and surmises, even when no adverse material is there;

8. A) That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in wrongly directing the AO to work out the peak from the entries in the cash book and the bank book of the appellant for the relevant year and make a singular addition of the said amount, as unexplained investment/expenditure, ignoring the fact that the same has duly been entered in the audited books of accounts of the appellant for the year under consideration;

B) That the Ld CIT (A) did not give sufficient opportunity of being heard to the appellant company and ignored the concept of 'Real Income' and wrongly directed the AO to work out the peak from the entries in the cash book and the bank book of the appellant for the relevant year, without granting the credit of the peak of financial transactions as per the cash book for the preceding years.

9. That on the facts and on the circumstances of the case and the provision of law, the CIT (A) has erred in ignoring the fact that the AO has erred both on facts

and in law, in using statement of various persons without giving a copy of the same and opportunity to cross examine.

10. That on the facts and circumstances of the case, the various observations and findings of the Ld CIT (A) and Ld AO in the impugned appellate order and assessment order, respectively, is irrelevant and vitiated in the law.

11. That the appellant craves the right to amend, append, delete any or all grounds of appeal.”

ITA No.-6340/Del/2014 (A.Y. 2007-08)

1. That on the facts and circumstances of the case and the provision of law, the Ld. CIT (A) has failed to appreciate that the notice issued u/s 153C and assessment order passed by the Ld. AO u/s. 153C/143(3) is illegal, bad in law, without jurisdiction and wrong on facts. The additions made are unjust, unlawful and arbitrary and are made against the principles of natural justice.

2. That on the facts and circumstances of the case and the provisions of law, the Ld. CIT (A) has failed to appreciate that the Ld. AO was not justified to ignore the submissions of the appellant that the assessment proceedings for the year under appeal was not pending on the date of the recording of satisfaction u/s. 153C and since the same didn't abate, the proceedings u/s. 153C of the I.T. Act in this case are bad in law and deserves to be quashed.

3. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has failed to appreciate that the assessment framed by Ld. AO is against the statutory provisions of the Act and without complying the procedures prescribed u/s. 153C of the I.T. Act and as such the assessment being bad in law deserves to be quashed.

4. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has failed to appreciate that the Ld AO was not justified to ignore

the submissions of the appellant that assessment u/s 153C of the Income Tax Act be restricted to assessment in respect of seized documents of incriminating nature in the case of the appellant for only the year to which said documents relates to, and in absence of any such incriminating seized document in the case of appellant, assessment framed u/s. 153C of the I.T. Act for the year under consideration, is bad in law and deserve to be quashed.

5. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has erred in not admitting the additional evidences i.e. confirmations of parties' etc., filed u/r. 46A along with request for its admission, remand report and rejoinder, during the appellate proceedings. The Ld CIT (A) has also erred in ignoring the explanations given, evidences and material placed and available on record.

6. That on the facts and circumstances of the case and the provision of law, the Ld CIT (A) has erred in holding the conclusion that the 'audited books' notwithstanding, the book results are required to be rejected, since the narrations are artificial, sham and not reflective of the actual business / commercial transactions. However, the Ld CIT (A) still relying on these books / book results for giving directions to the AO for the purpose of calculating the peak from the entries in the cash book of the appellant for the relevant year.

7. A). That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in disregarding the purchases of Rs. 1,00,450/- of the appellant on mere suspicion, conjectures and surmises, even when no adverse material is there;

B) . That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in disregarding the 50% expenses of Rs.2,47,696/- of the appellant on mere suspicion, conjectures and surmises, even when no adverse

C) . That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in disregarding the expenses incurred for

increase in authorized share capital of Rs.2,89,250/- of the appellant on mere suspicion, conjectures and surmises, even when no adverse material is there;

8. A) That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in wrongly directing the AO to work out the peak from the entries in the cash book and the bank book of the appellant for the relevant year and make a singular addition of the said amount, as unexplained investment/expenditure, ignoring the fact that the same has duly been entered in the audited books of accounts of the appellant for the year under consideration;

B) That the Ld CIT (A) did not give sufficient opportunity of being heard to the appellant company and ignored the concept of 'Real Income' and wrongly directed the AO to work out the peak from the entries in the cash book and the bank book of the appellant for the relevant year, without granting the credit of the peak of financial transactions as per the cash book for the preceding years.

9. That on the facts and on the circumstances of the case and the provision of law, the CIT (A) has erred in ignoring the fact that the AO has erred both on facts and in law, in using statement of various persons without giving a copy of the same and opportunity to cross examine.

10. That on the facts and circumstances of the case, the various observations and findings of the Ld CIT (A) and Ld AO in the impugned appellate order and assessment order, respectively, is irrelevant and vitiated in the law.

11. That the appellant craves the right to amend, append, delete any or all grounds of appeal.

ITA No.-6341/Del/2014 (A.Y. 2008-09)

"1. That on the facts and circumstances of the case and the provision of law, the Ld. CIT (A) has failed to appreciate that the notice issued u/s 153C and assessment order passed by the Ld. AO u/s. 153C/143(3) is illegal, bad in law, without jurisdiction

and wrong on facts. The additions made are unjust, unlawful and arbitrary and are made against the principles of natural justice.

2. That on the facts and circumstances of the case and the provisions of law, the Ld. CIT (A) has failed to appreciate that the Ld. AO was not justified to ignore the submissions of the appellant that the assessment proceedings for the year under appeal was not pending on the date of the recording of satisfaction u/s. 153C and since the same didn't abate, the proceedings u/s. 153C of the I.T. Act in this case are bad in law and deserves to be quashed.

3. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has failed to appreciate that the assessment framed by Ld. AO is against the statutory provisions of the Act and without complying the procedures prescribed u/s. 153C of the I.T. Act and as such the assessment being bad in law deserves to be quashed.

4. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has failed to appreciate that the Ld AO was not justified to ignore the submissions of the appellant that assessment u/s 153C of the Income Tax Act be restricted to assessment in respect of seized documents of incriminating nature in the case of the appellant for only the year to which said documents relates to, and in absence of any such incriminating seized document in the case of appellant, assessment framed u/s. 153C of the I.T. Act for the year under consideration, is bad in law and deserve to be quashed.

5. That on the facts and circumstances of the case and the provisions of law, the Ld CIT (A) has erred in not admitting the additional evidences i.e. confirmations of parties' etc., filed u/r. 46A along with request for its admission, remand report and rejoinder, during the appellate proceedings. The Ld CIT (A) has also erred in ignoring the explanations given, evidences and material placed and available on record.

6. That on the facts and circumstances of the case and the provision of law, the Ld CIT (A) has erred in

holding the conclusion that the 'audited books' notwithstanding, the book results are required to be rejected, since the narrations are artificial, sham and not reflective of the actual business / commercial transactions. However, the Ld CIT (A) still relying on these books /book results for giving directions to the AO for the purpose of calculating the peak from the entries in the cash book of the appellant for the relevant year.

7. A). That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in disregarding the purchases of Rs.2,67,970/- of the appellant on mere suspicion, conjectures and surmises, even when no adverse material is there;

B). That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in disregarding the 50% expenses of Rs.11,45,939/- of the appellant on mere suspicion, conjectures and surmises, even when no adverse material is there;

C). That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in disregarding the loans and advance given of Rs.2,32,25,000/- of the appellant company on mere suspicion, conjectures and surmises, even when no adverse material is there;

8. A) That on the facts and on the circumstances of the case and the provision of law, the Ld. CIT (A) has erred in wrongly directing the AO to work out the peak from the entries in the cash book and the bank book of the appellant for the relevant year and make a singular addition of the said amount, as unexplained investment/expenditure, ignoring the fact that the same has duly been entered in the audited books of accounts of the appellant for the year under consideration;

B) That the Ld CIT (A) did not give sufficient opportunity of being heard to the appellant company and ignored the concept of 'Real Income' and wrongly directed the AO to work out the peak from the entries in the cash book and the bank book of the appellant for the relevant year, without granting the credit of the

peak of financial transactions as per the cash book for the preceding years.

9. *That on the facts and on the circumstances of the case and the provision of law, the CIT (A) has erred in ignoring the fact that the AO has erred both on facts and in law, in using statement of various persons without giving a copy of the same and opportunity to cross examine.*

10. *That on the facts and circumstances of the case, the various observations and findings of the Ld CIT (A) and Ld AO in the impugned appellate order and assessment order, respectively, is irrelevant and vitiated in the law.*

11. *That the appellant craves the right to amend, append, delete any or all grounds of appeal.”*

ITA No.-6553/Del/2014 (A.Y. 2005-06)

“1. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in restricting the addition of disallowance of unverified purchases amounting to Rs. 5,68,727/- by adopting the peak amounts of Cash Book & Bank Book, after reducing the respective opening balance.

2. The Ld. Commissioner of Income Tax(Appeals) has erred in law and on facts in restricting the addition of disallowance of unverified expenses of Rs. 6,21,52,257/- by adopting peak amounts of Cash Book & Bank Book, after reducing the respective opening balance.

3. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in adopting the working of peak amounts submitted by the appellant, whereas the Id. CIT(A) has herself recorded reasons for not admitting additional evidence and as such rejected the additional evidence.

4. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in relying on Cash Book and Bank Book for telescoping, whereas CIT(A)has herself recorded reasons in the appellate order for confirming

the rejection of books of accounts of the assessee.

5. (a) The order of the Ld. CIT(Appeals) is erroneous and not tenable in law and on fact.

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

ITA No.-6554/Del/2014 (A.Y. 2006-07)

1. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in restricting the addition of disallowance of unverified purchases amounting to Rs. 4,24,20,731/- u/s 69C of the IT Act, by adopting the peak amounts of Cash Book & Bank Book, after reducing the respective opening balance.

2. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in restricting the addition of 50% disallowance of expenses of Rs. 5,76,895/- claimed by the assessee in P & L a/c by adopting peak amounts of Cash Book & Bank Book, after reducing the respective opening balance.

3. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in adopting the working of peak amounts submitted by the appellant, whereas the Id. CIT(A) has herself recorded reasons for not admitting additional evidence and as such rejected the additional evidence.

4. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in relying on Cash Book and Bank Book for telescoping, whereas CIT(A) has herself recorded reasons in the appellate order for confirming the rejection of books of accounts of the assessee:

5. (a) The order of the Ld. CIT(Appeals) is erroneous and not tenable in law and on fact.

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

ITA No.-6555/Del/2014 (A.Y. 2007-08)

1. The Ld. Commissioner of Income Tax (Appeals) has

erred in law and on facts in restricting the addition of disallowance of unverified purchases amounting to Rs. 1,00,450/- u/s 69C of the IT Act, by adopting the peak amounts of Cash Book & Bank Book, after reducing the respective opening balance.

2. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in restricting the addition of 50% disallowance of expenses of Rs. 2,47,696/- claimed by the assessee in P & L a/c by adopting peak amounts of Cash Book & Bank Book, after reducing the respective opening balance.

3. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in adopting the working of peak amounts submitted by the appellant, whereas the Id. CIT(A) has herself recorded reasons for not admitting additional evidence and as such rejected the additional evidence.

4. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in relying on Cash Book and Bank Book for telescoping, whereas CIT(A) has herself recorded reasons in the appellate order for confirming the rejection of books of accounts of the assessee.

5. (a) The order of the Ld. CIT(Appeals) is erroneous and not tenable in law and on fact.

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

ITA No.-6556/Del/2014 (A.Y. 2008-09)

1. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in restricting the addition of disallowance of unverified purchases amounting to Rs. 2,67,970/- u/s 69C of the IT Act, by adopting the peak amounts of Cash Book & Bank Book, after reducing the respective opening balance.

2. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in restricting the

addition of 50% disallowance of expenses of Rs. 11,45,939/- claimed by the assessee in P & L A/c by adopting peak amounts of Cash Book & Bank Book, after reducing the respective opening balance.

3. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in adopting the working of peak amounts submitted by the appellant, whereas the Id. CIT(A) has herself recorded reasons for not admitting additional evidence and as such rejected the additional evidence.

4. The Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in relying on Cash Book and Bank Book for telescoping, whereas CIT(A) has herself recorded reasons in the appellate order for confirming the rejection of books of accounts of the assessee.

*5. (a) The order of the Ld. CIT(Appeals) is erroneous and not tenable in law and on fact,
(b) The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

(B) For the sake of convenience, this batch of appeals is being disposed off through this consolidated order. These appeals were earlier disposed off by co-ordinate Bench of ITAT, Delhi vide consolidated order dated 13th March, 2015 whereby the six appeals of assessee pertaining to assessment years 2003-04 to 2008-09 were allowed and the four cross appeals of revenue for assessment years 2005-06 to 2008-09 were dismissed. Vide the aforesaid consolidated order dated 13.03.2015 co-ordinate Bench of ITAT, Delhi had quashed the assessment orders passed by the Assessing Officer for assessment years 2003-04 to 2008-09. The assessment orders were quashed by co-ordinate Bench of ITAT, Delhi by aforesaid order dated 13.03.2015 by observing that the satisfaction note was not recorded by the Assessing Officer of the

searched person before initiating proceedings u/s 153C of Income Tax Act in the case of the assessee. Revenue filed appeals u/s 260A of Income Tax Act before the Hon'ble Delhi High Court against the aforesaid consolidated order dated 13.03.2015 of coordinate Bench of ITAT, Delhi. Vide consolidated order dated 25.05.2017, the Hon'ble Delhi High Court restored the matters to the file of ITAT. In the aforesaid consolidated order dated 25.05.2017 the Hon'ble Delhi High Court observed as under :

“15. In the present case, the ITAT overlooked the fact that the Satisfaction Note was in fact recorded by the AO of the searched person who also happened to be the AO for the Assessee (the other person) as well. This is clear from the sentence in the Satisfaction Note which reads; “The undersigned is the jurisdictional AO of these cases.” The AO of the searched person has recorded the satisfaction that the seized documents belonged to the Assessee. In similar circumstances in Principal Commissioner of Income Tax v. Satkar Fincap Ltd. (supra), this Court held likewise. The Satisfaction Note in the present case, therefore, satisfies the requirement of the law. Consequently, the question framed is answered in the negative i.e., in favour of the Revenue and against the Assessee.

16. The learned counsel for the Petitioner then urged that the documents referred to in the Satisfaction Note were not incriminating and, therefore, on that ground also, the assumption of jurisdictional under Section 153C by the AO was erroneous.

17. The Court finds that there is no discussion in the impugned order of the ITAT on whether the documents referred to in the Satisfaction Note were, in fact, incriminating. The ITAT invalidated the proceedings under Section 153 C of the Act only on the ground of there being no Satisfaction Note by the AO of the searched person. As discussed earlier, this was factually erroneous. There was no occasion for the ITAT to examine the other grounds of challenge to the

assumption of jurisdiction under Section 153 C of the Act.

18. Consequently, the impugned order dated 13th March, 2015 of the ITAT is hereby set aside. The Court restores to the file of the ITAT for a further hearing all the appeals in which the impugned order was passed for consideration of the further grounds including the question whether the assumption of jurisdiction by the AO under Section 153C qua the Assessee was justified on the ground that the documents seized and stated to belong to the Assessee were not incriminating.”

(C) The aforesaid order dated 25.05.2017 of Hon'ble Delhi High Court, for ease of reference, is reproduced below :-

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

ITA 613/2016

*PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 Appellant
Versus
INSTRONICS LTD. Respondent
With*

*+ ITA 614/2016
PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 Appellant
Versus
INSTRONICS LTD. Respondent
With*

*+ ITA 615/2016
PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 Appellant
Versus
INSTRONICS LTD. Respondent
With*

*+ ITA 801/2016
PR. COMMISSIONER OF INCOME TAX .. Appellant
Versus
INSTRONICS LTD Respondent
With*

ITA 805/2016
PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 *Appellant*
Versus
INSTRONICS LTD. *Respondent*

With
+ *ITA 809/2016*
PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 *Appellant*
Versus
INSTRONICS LTD. *Respondent*

With
+ *ITA814/2016*
PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 *Appellant*
Versus
INSTRONICS LTD. *Respondent*

With
+ *ITA840/2016*
PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 *Appellant*
Versus
INSTRONICS LTD. *Respondent*

With
ITA No. 848/2016
PR. COMMISSIONER OF INCOME
TAXCENTRAL-3 *Appellant*
Versus
INSTRONICS LTD. *Respondent*

AND
+ *ITA 849/2016*
PR. COMMISSIONER OF INCOME
TAX CENTRAL-3 *Appellant*
Versus
INSTRONICS LTD. *Respondent*

Through: Mr.Ashok K.Manchanda, Sr.Standing Counsel with Mr.Raghvendra Singh, Mr. Anand K.Chaudhari, Advocates for the appellants.

Mr. Vikas Jain, Advocate for the Respondents.
CORAM: JUSTICE S. MURALIDHAR
JUSTICE CHANDER SHEKHAR

C.Ms.No. 30398/2016 & 30399/2016 (delay) in ITA No. 613/2016 C.Ms.No. 30401/2016 & 30402/2016 (delay) in ITA No. 614/2016 C.Ms.No. 30404/2016 & 30405/2016 (delay) in ITA No. 615/2016 C.Ms.No. 42538/2016 & 42539/2016 (delay) in ITA No. 801/2016 C.Ms.No. 43053/2016 & 43054/2016 (delay) in ITA No. 805/2016 C.Ms.No. 43253/2016 & 43254/2016 (delay) in ITA No. 809/2016 C.M.No. 43265/2016 & 43266/2016 (delay) in ITA No. 814/2016 C.Ms.No. 43686/2016 & 43687/2016 (delay) in ITA No. 840/2016 C.Ms.No. 44047/2016 & 44048/2016 (delay) in ITA No. 848/2016 C.Ms.No. 44055/2016 & 44056/2016 (delay) in ITA No. 849/2016

1. For the reasons explained in the applications, the delay in filing as well as re-filing is condoned. The applications are disposed of

ITAs Nos. 613/2016, 614/2016, 615/2016, 801/2016, 805/2016, 809/2016, 814/2016, 840/2016, 848/2016, 849/2016.

2. These are ten appeals by the Revenue directed against the common order dated 13th March, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITAs Nos. 6336, 6337, 6338, 6339, 6340 and 6341/Del/2014 for the Assessment Years ('AYs') 2003-04 to 2008-09 and ITAs Nos. 6553, 6554, 6555 and 6556/Del/2014 for the AYs 2005-06 to 2008-09. Of the 10 appeals, 6 were by the Assessee and 4 by the Revenue. The Revenue's appeals were for the AYs 2005-06 to 2008-09.

3. By the impugned order, the ITAT has partly allowed all the appeals filed by the Assessee and dismissed the cross appeals of the Revenue.

4. Admit.

5. The following question of law is framed for consideration:

“Whether the ITAT was correct in holding that in the absence of any satisfaction of the Assessing Officer (AO) of the searched person, the assessment framed by invoking the provisions of Section 153C cannot be sustained?”

6. In the present case, the search took place in the cases of Shri B.K.Dhingra, Smt. Poonam Dhingra and Madhusudan Buildcon Pvt. Ltd., associates of Thapar Group of Companies on 20th October, 2008. During the course of the search at the residential premises at F-6/5, Vasant Vihar, New Delhi, certain documents belonging to the Assessee, Instronics Ltd. were found and seized. After about two years of the search, the AO of the searched person on 30th September, 2010 recorded a satisfaction that some of the documents belong to the Assessee. The satisfaction note recorded on 30th September, 2010 reads as under :

“In the case of Sh. B. K. Dhingra, Smt. Poonam Dhingra, M/s Mayank Traders Pvt. Ltd., M/s. Horizon Pvt. Ltd., search & seizure took place u/s 132 on 20.10.2008. The undersigned is the jurisdictional AO of these cases. During the course of search & seizure documents/papers at pages 1 to 38 of Annexure A-87, Annexures, A-96, A-97, A-98 and A-99, are found to belong to M/s. Instronics Ltd., 192C, J & K Pocket, Dilshad Garden, New Delhi. I have examined the above mentioned documents/papers and provision of Section 153C is invokeable in this case. As the undersigned is also the jurisdictional AO of M/s. Instronics Ltd. 192C, J & K Pocket, Dilshad Garden, New Delhi, this satisfaction note is recorded and is placed in the file before issuing notice u/s 153C.”

7. Thereafter, notice under Section 153C of the Act was issued to the Assessee by the ACIT, Central Circle-17 on 1st October, 2010 calling upon the Assessee to file its return of income for AYs 2003-04 to 2008-09 within 15 days from the date of service of the notice. The case was subsequently transferred to Central Circle-21 by an order dated 19th October, 2010. In response to the notice under Section 153C, the Assessee filed returns for the aforementioned AYs.

8. By separate assessment orders dated 31st

December 2010, for each of the AYs 2003-04 to 2008-09 the AO finalised the assessment under Section 143(3) read with Section 153C of the Act making additions to the returned income in each of the AYs.

9. The appeals by the Assessee was dismissed by the CIT(A) by separate orders dated 5th September, 2014 sustaining most of the additions and disallowances. The objection raised by the Assessee to the assumption of jurisdiction under Section 153C of the Act was negated by the CIT(A).

10. It is the case of the Revenue that at the stage of the proceedings before the CIT(A), the Assessee did not place on record any replies received by it in response to an application made under the Right to Information Act, 2005 ('RTI Act') despite their being available with the Assessee.

11. Against the decision of the CIT(A), both the Assessee and the Revenue filed appeals before the ITAT. At this stage, the Assessee placed on record the information gathered pursuant to the application made under the RTI Act. It was contended before the ITAT by the Assessee that the satisfaction note recorded on 30th September, 2010 was by the AO of the Assessee and not the AO of the searched person. Accepting this submission, the ITAT by the impugned order held that the assumption of jurisdiction against the Assessee under Section 153C of the Act was unsustainable in law.

*12. It is contended by Mr. Ashok Manchanda, learned Senior Standing Counsel for the Revenue that the ITAT erred in observing that there is no satisfaction note of the AO of the searched person in the present case. It overlooked that in the satisfaction note itself, the AO specifically notes that he is also the jurisdictional AO for all of the cases i.e., for the searched persons as well as the other persons. This basic error led the ITAT to hold that the assumption of jurisdiction under Section 153C of the Act was illegal. He relied inter alia on the decisions of this Court in **Principal Commissioner of Income Tax v. Satkar Fincap Ltd.** (order dated 16th*

November, 2016 in ITA No. 82/2016) and in **Principal Commissioner of Income Tax v. Super Malls Ltd.** (order dated 13th January, 2017 in ITA No. 450/2016).

13. Mr. Vikas Jain, learned counsel for the Respondent As'sessee, on the other hand, sought to place reliance on the decisions of this Court in **ARN Infrastructure India Ltd. v. ACIT** (order dated 24th April, 2017 in W.P. (C) No. 2768/2016), **CIT-7 v. RRJSecurities Limited [2015] 62 taxmann.com 391 (Del)**, **PCIT-(Central-2) v. IECS Solutions Private Limited** (order dated 19th October, 2015 in ITA No. 806/2015) and **Principal Commissioner of Income Tax v. Aakash Arogya Mandir Pvt. Ltd.** (order dated 28th July, 2015 in ITA No. 509/2015).

14. Today by a separate judgment in the batch of writ petitions, the lead case being W.P.(C) 525/2015 (**Ganpati Services Pvt. Ltd. v. Commissioner of Income Tax etc**), the Court summarised the legal position in respect of the Satisfaction Note under Section 153 C of the Act as under:

"38. To summarise the legal position:

(i) No search under Section 132 (1) of the Act can be initiated without a satisfaction note being recorded by the AO of such searched person. This is followed by issuance of a notice to such searched person under Section 153 A of the Act. At that stage the AO does not have to record another satisfaction note **qua** the searched person.

(ii) Where proceedings are proposed to be initiated under Section 153C of the Act against the 'other person', it has to be preceded by a satisfaction note by the AO of the searched person. He will record in this satisfaction note that the seized document belongs to the other person. Depending on the nature and contents of the document he may be required to give some reasons for such conclusion.

(iii) Where the AO of the searched person is different from the AO of the other person the AO will,

simultaneous with transmitting the documents along with his satisfaction note to the AO of the other person, make a note in the file of the searched person that he has done so. But this is for administrative convenience. The failure by the AO of the searched person, after preparing and despatching the satisfaction note and documents to the AO of the other person, to make a noting to that effect in the file of the searched person will not vitiate the proceedings under Section 153 C against the other person.

(iv) *Where the AO of the searched person and the other person is the same, such a satisfaction note **qua** the other person has to be recorded by the AO of the searched person **prior** to the initiation of the proceedings against the other person. This is a **sine qua non** for triggering the proceedings against the other person under Section 153 C of the Act.*

(v) *There does not have to be two separate satisfaction notes prepared by the AO of the searched person even where he is also the AO of the other person. In such event, the AO need make only one satisfaction note. That satisfaction note is **qua** the other person. Further it is sufficient that such satisfaction note is placed in the file of the other person by the AO in his capacity as the AO of such other person.*

(vi) *It is only in certain cases, where the document is such that it may belong to more than person (including the searched person) that the AO will have to indicate in the satisfaction note the reasons why he is of the opinion that the document belongs to the other person and not the searched person.*

(vii) *Where the AO of the searched person records that the seized document in question belongs to the other person, and where necessary gives the reasons therefor, the requirement of Section 153 C stands satisfied. The failure by the AO in such case to record in the satisfaction note that such document does not belong to the searched person will not vitiate the proceedings under Section 153 C against the other*

person."

15. In the present case, the ITAT overlooked the fact that the Satisfaction Note was in fact recorded by the AO of the searched person who also happened to be the AO for the Assessee (the other person) as well. This is clear from the sentence in the Satisfaction Note which reads: "The undersigned is the jurisdictional AO of these cases." The AO of the searched person has recorded the satisfaction that the seized documents belonged to the Assessee. In similar circumstances in **Principal Commissioner of Income Tax v. Satkar Fincap Ltd. (supra)**, this Court held likewise. The Satisfaction Note in the present case, therefore, satisfies the requirement of the law. Consequently, the question framed is answered in the negative i.e., in favour of the Revenue and against the Assessee.

16. The learned counsel for the Petitioner then urged that the documents referred to in the Satisfaction Note were not incriminating and, therefore, on that ground also, the assumption of jurisdiction under Section 153C by the AO was erroneous.

17. The Court finds that there is no discussion in the impugned order of the ITAT on whether the documents referred to in the Satisfaction Note were, in fact, incriminating. The ITAT invalidated the proceedings under Section 153 C of the Act only on the ground of there being no Satisfaction Note by the AO of the searched person. As discussed earlier, this was factually erroneous. There was no occasion for the ITAT to examine the other grounds of challenge to the assumption of jurisdiction under Section 153 C of the Act.

18. Consequently, the impugned order dated 13th March 2015 of the ITAT is hereby set aside. The Court restores to the file of the ITAT for a further hearing all the appeals in which the impugned order was passed for consideration of the further grounds including the question whether the assumption of jurisdiction by the AO under Section 153C qua the Assessee was justified

on the ground that the documents seized and stated to belong to the Assessee were not incriminating.

19. The aforementioned appeals be listed before the ITAT on 3rd July, 2017 for directions.

20. The present appeals of the Revenue are allowed in the above terms.”

(D) It is in this background that this batch of appeals came up before ITAT once again for fresh hearings. When the matters, came up for hearing before us, Revenue was represented by Sh. Inder Pal Singh Bindra, Commissioner of Income Tax (Departmental Representative); “Ld. CIT-DR” for short. However, assessee was represented by none. Earlier also, when the appeals were fixed for hearing on 14.11.2019 the assessee was represented by none even on that date. The hearing fixed on 01.10.2019 was also adjourned to 14.11.2019 on the request of Ld. Counsel for the assessee. In the absence of any representation from the assessee’s side on 02.01.2020, when the appeals came up for hearing before us, we heard the Ld. CIT-DR for Revenue who relied on the orders of the Ld. Commissioner of Income Tax (Appeals) and the Assessing Officer. After hearing the Ld. CIT-DR and after perusal of the materials on record we find that the Hon’ble Delhi High Court, vide aforesaid consolidated order dated 25.05.2017 has directed the ITAT to consider further grounds including the question whether the assumption of jurisdiction by the Assessing Officer u/s 153C of Income Tax Act qua the Assessee was justified on the ground that the documents seized and stated to belong to the Assessee were not incriminating. The Hon’ble High Court, has expressed that the AO of the searched person had recorded the satisfaction

that the seized documents belonged to the assessee, and further that the Satisfaction Note satisfied the requirements of law. The question, “*whether ITAT was correct in holding that in the absence of any satisfaction of Assessing Officer (AO) of the searched person, the assessment framed by invoking the provisions of Section 153C cannot be sustained ?*”, was answered by the Hon’ble High Court in the negative i.e. in favour of Revenue and against the assessee. However, the Hon’ble High Court found that there was no discussion in the aforesaid consolidated order dated 25.05.2017 of ITAT, on whether the documents referred to in the Satisfaction Note were, in fact, incriminating. It was in this background that the Hon’ble High Court directed ITAT to consider whether the documents seized and stated to belong to the assessee, were incriminating or not. From the perusal of the separate appellate orders dated 05.09.2014, 08.09.2014, 09.09.2014, 10.09.2014 and 11.09.2014 pertaining to assessment years 2003-04, 2004-05, 2005-06, 2006-07 and 2007-08 passed by the Ld. CIT(A); we find that there is no discussion as to whether the documents seized from the searched person and stated to belong to the assessee, were incriminating or not. Therefore, in the fitness of things, we set aside the impugned appellate orders of Ld. CIT(A); and we restore all the disputed issues to the file of the Ld. CIT(A) for fresh order in accordance with law, after deciding and giving a categorical finding on whether the documents seized from the searched person, and stated to belong to the assessee were incriminating or not.

(E) Before we part, we wish to specifically take note of Rules 24 and 25 of Income Tax (Appellate Tribunal) Rules 1963. The assessee will be at liberty to move ITAT for setting aside this present order and for restoration of the appeals if the assessee satisfies that there was sufficient cause for non-appearance when the appeals were called on for hearing on 2nd January, 2020.

Order pronounced in the open court on 16.01.20.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 16.01.2020
BR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	03.01.2020
Date on which the typed draft is placed before the dictating Member	06.01.2020
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

