

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT  
&  
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.6569/DEL/2016  
Assessment Year 2011-12

ACIT, Central Circle-14, New Delhi.	v.	M/s. Realtech Construction Pvt. Ltd., D-22, Defence Colony, New Delhi.
TAN/PAN: AADCR 1099N		
(Appellant)		(Respondent)

Appellant by:	Smt. Sulekha Verma, CIT-DR		
Respondent by:	S/Shri Salil Agarwal, Adv. & Shailesh Gupta, Adv.		
Date of hearing:	17	10	2019
Date of pronouncement:	14	01	2020

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the Revenue against impugned order dated 22.09.2016, passed by Id. CIT (Appeals)-XXIX, New Delhi for the quantum of assessment passed u/s.153C/143(3) for the Assessment Year 2011-12. In the grounds of appeal, the Revenue has challenged the deletion of addition of Rs.13,90,26,749/-.

2. The brief facts of the case are that, a search and seizure action was initiated in Kalra Group of cases on 28.07.2011. The main company of this group was Consortium Securities Pvt. Ltd. which was a stock brokering company. This group

was also engaged in dealing with real estate business. As per the Assessing Officer, during the search operation in M/s. Consortium Group of cases, certain documents were retrieved which relates to assessee, M/s. Realtech Constructions Pvt. Ltd. The documents were in the nature of MOUs between promoters of Realtech Group, namely, Shri Yogesh Gupta, Shri Pankaj Dayal and Shri Rajeev Behl along with some working pertaining to Realtech Group. The seized annexure also gives details of working of assets and liabilities of different projects of Realtech group. It has been further observed by the Assessing Officer that during the course of post search proceedings, the seized documents were confronted to Shri Paraminder Singh Kalra, who has stated that these documents does not pertain to him and he further explained that due to dispute between the promoters of Realtech group, MOU was drawn by the partners for partition of the group and each partner has appointed one arbitrator which should be acceptable to the remaining two promoters of the group and there was one such arbitrator Shri Paraminder Singh Kalra appointed by the Realtech Group Promoters. Besides him, two other, Shri B.N. Chanok and Shri Kuldeep Ahuja were also appointed as arbitrator. During the course of search proceedings summons were issued to three promoter directors of M/s. Realtech Group, out of which only Mr. Yogesh Gupta appeared before the investigation Wing. It was observed by the Investigation wing that books of account were not produced to corroborate the various entries. Accordingly,

proceedings u/s.153C was initiated in the case of the assessee company and notice was issued on 12.08.2013. In response to which assessee has filed its return of income on 24.09.2016 declaring income of Rs.30,87,530/-. Thereafter, survey operation was carried out in the case of Shri Yogesh Gupta by the Investigation Wing on 15.03.2012 wherein various incriminating documents pertaining to M/s. Realtech Group for the Assessment Year 2011-12 was seized from the premise D-22, Defence Colony, New Delhi. The said impounded document contains details of payment received by M/s. Meter & Instruments Pvt. Ltd. from M/s. Realtech Constructions Pvt. Ltd. as on 31.03.2010. As per the details, Shri Yogesh Gupta had paid cash amount of Rs.3,25,00,000/- in respect of sale at Delhi shop and Mr. Ajeet has paid cash amount of Rs.10,65,26,749/- on behalf of the assessee. The scanned copy of cash transaction as per the impounded material has been incorporated in the assessment order. Assessing Officer further noticed that in the statement of Shri Yogesh Gupta recorded on 03.08.2012, he has accepted that the seized page belongs to the assessee in which he was acting as one of the Directors and the transaction mentioned in the page are real and actual transaction. In response to the show cause notice, the assessee submitted that, these documents does not belong to the assessee-company and it contains some rough working which may have been kept by the Director of the company. It was further submitted that there was a dispute between the

Directors of the company and the said director of the company may have kept his personal noting. However, ld. AO held that in view of the provision of Section 292C (1), the presumption is against the assessee. Accordingly, he made the addition of Rs.13,90,26,749/-.

3. Ld. CIT (A) after considering the assessee's submission as incorporated from pages 8 to 38 of the appellate order as well as other material facts placed on record deleted the addition. In sums and substance, his findings are:-

- The addition has been made relates to M/s. Meter and Instrument Pvt. Ltd. and not of the assessee which was found from the possession of Mr. Yogesh Gupta's survey. Further, statement of Mr. Yogesh Gupta cannot be held to be reliable as there were dispute amongst the promoters of the assessee-company and him and he does not have stake in the company nor any interest at the time of survey, therefore, his statement alone has not binding on the assessee company as an evidence.
- Secondly, the addition has been made on standalone generated computer printout which has neither been signed by the assessee and has been found from the premises of Shri Yogesh Gupta, whose identity is different from the identity of the assessee company. No corroborative evidence has been found to substantiate that assessee has generated such unexplained cash and

it is based on the document returned to a third party, i.e., Meter and Instrument Pvt. Ltd.

- Further, the document mentions payment to be received from M/s. Realtech Constructions Pvt. Ltd. which indicates that his documents belongs to M/s. Meter and Instrument Pvt. Ltd. which has been discovered from Mr. Yogesh Gupta who was not controlling the assessee-company at that point of time. Nowhere the document indicates that these payments have been made on behalf of the assessee company and the contents of the documents did not support the addition made; and in any case assessee is not the beneficiary of such cash receipt.
- One important and finding given by the Ld. CIT(A) is that, here in this case proceedings have been initiated u/s.153C by issuance of notice dated 12.08.2013 pursuant to the details found in Kalra Group of cases held on 28.07.2011, but satisfaction has been recorded by the Assessing Officer of the assessee on 08.08.2013; and from the bare perusal of the said satisfaction, it reveals that main reason for the satisfaction is some MOU found during the course of search in Kalra Group and its key person has stated that the promoters wanted to resolve the difference between amongst them and the Realtech group. He further observed that Assessing Officer of the Kalra Group has not recorded the satisfaction and the document seized does not indicate

any suppression of income by the assessee and emanating from the search.

- Ld. CIT(A) held that here the addition of Rs.13,90,26,749/- has been made on the basis of survey conducted at the premises of Mr. Yogesh Gupta, wherein a document was found from his premises wherein the name of the assessee company had also appeared, wherein M/s. Meter and Instrument Pvt. Ltd. has been shown to receive Rs. 3,25,00,000/- from Mr. Yogesh Gupta for sales at Delhi Shop and Rs.10,65,26,749/- shown to have received from Mr. Ajeet for sale at Chandigarh Shop in cash. Based on these facts, he has held that ***“his addition has been made on the basis of document found during the survey and hence technically not the issue with reference to the proceedings u/s.153C of the Act.”*** He also relied upon the judgment of Hon’ble Delhi High Court in the case of **RRJ Securities, 2015 66 Taxman.com 69.**
- Another fact noted by Ld. CIT(A) is that, from the statement of Mr. Yogesh Gupta it is evident that he has accepted the transaction to be real and actual but same has not reached to finality as it was subject to final settlement and these noting regarding cash receipt has already been surrendered as income during survey. The relevant observation in this regard reads as under:

*“10.7 It is evident from the above statement that though Mr. Yogesh Gupta accepted the transactions to be real and actual but the same has not reached to the finality, subject to final settlement and these notings regarding cash receipt is already surrendered as income during survey. It is pertinent to mention that during the course of survey, Rs.24,50,00,000/- have been offered as additional income for taxation for the period relevant to AY 2008-09 and that has also got a bearing to the project-City Emporiyo at Chandigarh. From the assessment order in the case of appellant for AY 2008-09 it is also found mentioned and a further addition of Rs.20,00,00,000/- is made being undisclosed income from cash receipts over and above the booking amount.*

*10.8 It has not been substantiated by the AO that the cash mentioned in impugned document is over and above such surrender and additions made and hence to consider this receipt again as income of the appellant is not justified.”*

- He further held that here in this case the addition has been based upon a standalone document which is a computer printout, found from the premises of Mr. Yogesh Gupta and from the statement of Mr. Yogesh Gupta, it cannot be conclusively established that cash payments received by Mr. Yogesh Gupta and Mr. Ajit are actually emanating from the funds of the assessee company. The documents *per se* relates to the third party, Meter Instrument Pvt. Ltd.

- Another important observation and finding of the Ld. CIT (A) is that **the assessee has already disclosed a sum of Rs. 24.50 crore as additional income during the survey owing to such real estate business which has been further enhanced by the Assessing Officer for the relevant Assessment Year, and therefore, it is not proper to consider this cash as the income of the assessee.** The relevant findings reads as under:

*“10.10 It is also observed that the appellant has disclosed a sum of Rs. 24.50 crores as additional income during survey owing to such real estate business which is further enhanced by the AO for the relevant assessment year and therefore it is not appropriate to consider this cash as income of the appellant, again, when the source of income and business of the appellant is same and no evidence has been found or investigated during assessment proceedings.”*

4. Finally, he deleted the addition by concluding as under:

*“10.11 Therefore, looking to the facts and circumstances of this case and also following the case laws relied upon by the appellant, and discussions made in the foregoing paragraphs, it is found that the proceedings under section 153C initiated with reference to the search in the Kalra group, no satisfaction found recorded by the AO of Kalra group and the additions are not related to the documents found during their search but additions have been made on the basis of standalone document found during survey in the case of Mr. Yogesh Gupta, who has serious differences and his statement is not reliable as well as nowhere confirmed regarding additional*

*source of unexplained income, his statement refers to the earlier disclosure of additional income, there are mathematical errors as pointed out by the appellant, the said document does not goes to prove that this cash payment has been made by the appellant, there is no generation of unexplained income in cash has been corroborated by any conclusive evidence, the correctness of the document is not fully substantiated, even if there is a hint of cash payment in the impugned document but not backed by any corroborative evidence, no additions made either in the hands of Mr. Yogesh Gupta and Mr. Ajit or in the case of Meters & Instruments P. Ltd., the additional income disclosed by the appellant in the earlier assessment year and no other source of such income has been found or brought on record, therefore, I hereby inclined to accept the contentions of the appellant and it is held that the such addition amounting to Rs.13,90,26,749/- is devoid of any merit and deserves to be deleted. Accordingly, ground of appeal nos.1.2 to 1.5 are allowed and appellant gets a relief.”*

5. Before us, ld. CIT-DR submitted that one of the finding of the Ld. CIT(A) is that no satisfaction was recorded by the Assessing Officer of Kalra Group which deserves to be rejected in the light of the following judgments of the Hon’ble Delhi High Court:-

1. *PCIT vs. Sheetal International Pvt. Ltd. (2017-TIOL-1355-HC-DEL-IT)*,
2. *PCIT vs. Instronics Ltd. (2017) 82 taxmann.com 357 (Delhi)*
3. *Ganpati Fincap Services P. Ltd. vs. CIT, (2017) 82 taxmann.com 408 (Delhi).*

Wherein it has been held that, where satisfaction note was recorded by Assessing Officer of searched person who also happened to be Assessing Officer of assessee (other person) to affect that seized documents belonged to assessee, issuance of notice under section 153C against assessee on basis of said note was justified.

6. Regarding observation of the Ld. CIT(A) addition are not related to the document found during the course of search of Kalra Group and is based on the documents found during the course of survey of Mr. Yogesh Gupta, she submitted that in the satisfaction note filed by the Revenue in the Paper Book on 14.10.2019 ( page 132 & 133), it is mentioned by the AO that the documents seized as per Annexure A- 8 & Annexure A-11 in which working of assets and liabilities of different projects have been given and where a MOU was also seized for partition of the group which could not be corroborated with the books of accounts before the Investigation Wing post search proceedings. Neither the two promoter directors except Sh. Yogesh Gupta eared in response to summon nor were the books of accounts produced before Investigation Wing. Yogesh Gupta in his statement dated 07.12.2011 has confirmed that these documents belong to the assessee company. Hon'ble Delhi High Court in the case of **Ganpati Fincap Services (P.) Ltd. v/s CIT [2017] 82 taxmann.com 408 in para 47 to para 50** has held that if after giving sufficient opportunity, the assessee fails to demonstrate how the documents are incriminating or not and no submissions on merits of the case

are made, then no fault can be found with the AO for making addition. Further, the survey in the case of Shri Yogesh Gupta was conducted on 15.03.2012 as a result of search and during the course of survey document as Annexure A-35, page 2 (running page 10 of the Paper Book filed by the revenue on 14.10.2019) was found where transaction of cash payment over and above the cheque payment made to Meter & Instruments Pvt. Ltd. for City Emporio, Chandigarh was narrated and this has direct nexus with the seized material where the investment made in the project of City Emporio Chandigarh and the valuation made of this project have been mentioned and on this basis the addition of Rs.13,90,26,749/- of unexplained cash payment has been made by the AO. Further, in the case of Canara Housing Development Company, 274 CTR 122 dated 25.07.2014 Hon'ble Karnataka High Court relying upon the judgment of Hon'ble Delhi High Court in the case of Anil Kumar Bhatia 211 taxman 453 has held that if the search proceedings have already been initiated, any other material can be considered by the AO in that proceedings and no separate proceedings is required to be initiated as in the new scheme of 153A/153C multiple proceedings cannot go together as was under 158BC earlier.

7. She further submitted that statement of Yogesh Gupta is not reliable, because of differences with other shareholders, mathematical errors and not corroborated by any conclusive evidence of unexplained income. CIT (A) has totally erred in

making such statement as Sh. Yogesh Gupta had appeared during the course of proceedings u/s 153C before Income Tax Authorities and even in the return of income filed u/s 153C, address of Sh. Yogesh Gupta was given and all the notices were given to him for this proceeding and there was no objection on behalf of any other shareholder or director. Rather the other two shareholders never appeared before Investigation Wing even in response to summons or during the assessment proceedings except Sh. Yogesh Gupta. Further, there is no mathematical error in the sheet and addition was made only in respect of the cash payment over and above the cheque payment made to Meter & Instruments Pvt. Ltd. on the basis of the impounded documents found during the course of survey from the possession of the director Sh. Yogesh Gupta. Reliance was placed by her on the case of Hon'ble Delhi High Court of Sonal Construction 359 ITR 532 where Hon'ble Court has held in para 17 held that the corroboration sought by the Tribunal in support of the seized documents, it is not an inviolable rule applicable to all situations and to all cases that every seized document should be corroborated before any addition can be made based on it. If calculations and computations have been made in the seized documents in such a manner that its probative value and genuineness cannot be doubted, nothing prevents the Assessing Officer from making additions on the basis of such documents despite the absence of any corroboration.

8. No addition was made in the hands of Mr. Yogesh Gupta and Mr. Ajit or in the case of Meters & Instruments Pvt. Ltd. When the business is conducted by the appellant company and Sh. Yogesh Gupta is the director who admitted that this transaction relates to the appellant company and the impounded document also suggests that pertains to the assessee company as on the top of it name of the assessee company was mentioned, then no addition can be made in the hands of other persons who dealt with the cash on behalf of the company. Further, Meters & Instruments Pvt. Ltd. is a company with whom the assessee company has entered into a Property Development agreement who was the owner of the industrial plot of land for developing, constructing and building the commercial complex. Hence, as the cash was given by the appellant company, the addition has to be made in the hands of the appellant company as unexplained.

9. The additional income was disclosed by the appellant in the earlier assessment year. The submission of the appellant and the observation of CIT (A) is erroneous as it is an admitted fact that during the course of survey operation conducted in the case of the appellant company incriminating documents were impounded which contains details of booking made and payment received for the project City Emporio at Chandigarh outside the books of accounts and only Rs. 1,21,41,199/- was surrendered as additional income by the appellant company during A.Y. 2008-09. (Copy of assessment order u/s 143(3), dated 30.12.2010 is enclosed from page 51

to 55). Further this document clearly mentions the date as 31.03.2011 and the cash payment was made by the assessee company to Meter & Instruments Pvt. Ltd. for construction of commercial complex. Hence, no set off can be given of this surrender income against the addition of Rs. 13,90,26,749/- made in A.Y. 2011-12. She also pointed out that Hon'ble ITAT, Delhi Bench has already considered this fact in A.Y. 2008-09 in ITA No. 3624/Del/2012 order dated 16.10.2017 and held in para 9 that the assessee is carrying on two projects and during the course of survey and search proceedings it was found that in both the projects assessee is collecting "on money" towards the sale of space.

10. On the arguments advanced by the Ld. Counsel during the course of hearing on 14.10.2019 that 153C proceedings can only be initiated if the documents seized are incriminating in nature and reliance placed upon the decision of RRJ Securities of Hon'ble Delhi High Court; in the case of Green Range Farms Pvt. Ltd. of Hon'ble ITAT Delhi Bench and the case of Dream City Buildwell of Hon'ble Delhi High Court, she submitted that this issue first of all does not arise from the order of CIT(A) and no cross objection has been filed by the assessee, hence no fresh legal ground can be taken by the assessee at this stage. Without prejudice, she submitted that this issue is covered by the decision of Hon'ble Delhi High Court in the case of SSP Aviation 346 ITR 177 where Hon'ble Delhi High Court after detailed discussion made regarding the

provision of Section 153C has held various ratios in para 14, 15, 17 & 18 which are as under:

*“Now there can be a situation when during the search conducted on one person under section 132, some documents or valuable assets or books of account belonging to some other person, in whose case the search is not conducted, may be found. In such case, the Assessing Officer has to first be satisfied under section 153C, which provides for the assessment of income of any other person, i.e., any other person who is not covered by the search, that the books of account or other valuable article or document belongs to the other person (person other than the one searched). He shall hand over the valuable article or books of account or document to the Assessing Officer having jurisdiction over the other person. Thereafter, the Assessing Officer having jurisdiction over the other person has to proceed against him and issue notice to that person in order to assess or reassess the income of such other person in the manner contemplated by the provisions of section 153A. Now a question may arise as to the applicability of the second proviso to section 153A in the case of the other person, in order to examine the question of pending proceedings which have to abate. In the case of the searched person, the date with reference to which the proceedings for assessment or reassessment of any assessment year within the period of the six assessment years shall abate is the date of initiation of the search under section 132 or the requisition under section 132A. For instance, in the present case, with reference to the 'P' Group of Companies such date will be 5.1.2009. However, in the case of the other person, which in the present case is the assessee herein, such date will be the date of receiving the*

*books of account or documents or assets seized or requisition by the Assessing Officer having jurisdiction over such other person. In the case of the other person, the question of pendency and abatement of the proceedings of assessment or reassessment of the six assessment years will be examined with reference to such date. [Para 14]*

*It needs to be appreciated that the satisfaction that is required to be reached by the Assessing Officer having jurisdiction over the searched person is that the valuable article or books of account or documents seized during the search belong to a person other than the searched person. There is no requirement in section 153C(1) that the Assessing Officer should also be satisfied that such valuable articles or books of account or documents belonging to the other person must conclusively reflect or disclose any undisclosed income. [Para 15]*

*It will be appreciated from the above that the procedure envisaged by section 153C, which is applicable to re assessee herein, does not in any way infringe any rights of the assessee or curtail or curb his right to be heard by the Assessing Officer or to file appeals and question the assessments made pursuant to the notice under section 153A. There is no ground for any apprehension that the assessee will not be heard before the assessments or reassessments for the six assessment years are completed. In fact, in the case of the assess-i itself the Assessing Officer has not made any addition in the assessments completed under section 153A read with section 153C for the assessment years 2003-04 to 2006-07 and 2008-09. He has made the addition of Rs. 86 crores only in the assessment year 2007-08 against which an appeal has already been filed. Thus, full*

*opportunity of being heard is available, and in fact was made available to the assessee herein to represent against the proposed assessments or reassessments. [Para 15]*

*The assessee contended that the seizure of the document must be of such nature that even closed assessments for six years could be reopened and this requirement postulates that the provisions of section 153C can be set in motion only if there is a finding that the seized document or books of account or valuable article represents the undisclosed income of the other person. In this regard, it can be said that this section merely enables the revenue authorities to investigate into the contents of the document seized, which belongs to a person other than the person searched so that it can be ascertained whether the transaction or the income embedded in the document has been accounted for in the case of the appropriate person. It is aimed at ensuring that income does not escape assessment in the hands of any other person merely because he has not been searched under section 132. It is only a first step to the enquiry, which is to follow. The Assessing Officer who has reached the satisfaction that the document relates to a person other than the searched person can do nothing except to forward the document to the Assessing Officer having jurisdiction over the other person and thereafter it is for the Assessing Officer having jurisdiction over the other person to follow the procedure prescribed by section 153A in an attempt to ensure that the income reflected by the document has been accounted for by such other person. If he is so satisfied after obtaining the returns from such other person for the six assessment years, the proceedings will have to be closed. If the returns filed by the other person for the period of*

*six years do not show that the income reflected in the document has been accounted for, additions will be accordingly made after following the procedure prescribed bylaw and after giving adequate opportunity of being heard to such other person. That, in sum and substance, is the position. [Para 17]*

*A reference to section 158BD, which falls under the Chapter XIV-B, may be of some use. This section provides for assessment of the undisclosed income by any person other than the person searched under section 132. It applies to search conducted prior to 31.05.2003.*

*It will be seen that whereas section 158D refers to the satisfaction of the Assessing Officer that any 'undisclosed income' belongs to any person other than the searched person, section 153C(1) in contrast refers merely to the satisfaction of the Assessing Officer that the valuable article or books of account or document 'belongs' to a person other than the searched person, (para 18).”*

*This decision of Hon’ble Delhi High Court is also followed in the case of RRJ Securities wherein para 34 Hon’ble Court has held that “34. In SSP Aviation Ltd. (supra), this Court had noted the difference between the provisions of Section 158BD of the Act and the provisions of Section 153C. Whereas Section 158BD referred to the satisfaction of an AO with regard to any "undisclosed income" belonging to a person other than the searched person, Section 153C(1) of the Act in contrast referred merely to the AO being satisfied that assets/documents seized during a search belonged to a person other than one searched. It is, thus, clear that it was not necessary for the AO, at the stage of recording the satisfaction under Section 153C to come to a*

*conclusion that seized assets which belong to another person represent any undisclosed income. If the AO of a searched person is satisfied that an asset/documents seized belong to another person, he has a duty to forward the documents or the valuable assets seized to the AO of the person concerned; apart from doing so, the AO can do nothing more.”* However, relief was given on the ground that the hard disk did not belong to the assessee in this case.

11. Further in the case of Ganpati Fincap (supra), Hon'ble Delhi has considered the case of RRJ Securities in para 37 and mentioned that in that case the seized hard disk did not belong to the company and on this account, relief was given. Further in the case of Index Securities Pvt. Ltd. 86 taxmann.com 84 also, relief was given to the assessee as trial balance and balance sheet seized from other person did not belong to assessee or relate to relevant assessment years. Hence, in the case of Green Range Farms Hon'ble Tribunal has not considered the judgment of Hon'ble Delhi High Court of SSP Aviation at all and not considered judgment of RRJ Securities and Index Securities properly. Similarly, in the case of Dream City Buildwell, Hon'ble High Court has held that the documents did not belong to the assessee and the document in the form of license given by director town & country planning has no relevance for determining escapement of income whereas in the instant case of the appellant the seized documents of Annexure A-7 & Annexure A-11 clearly related to the commercial project City Emporio Mall, Chandigarh and subsequently the incriminating impounded documents of

Annexure A-35 (page 10 of the Paper Book filed on 14.10.2019) has direct nexus on determination of the income of the" appellant company and cannot be ignored and brushed aside by the appellate authorities.

12. On the other hand, ld. counsel for the assessee, Mr. Salil Aggarwal submitted that here in this case proceedings have been initiated u/s.153C based on documents seized from search operation carried out on M/s. Consortium Group of cases on 28.07.2011; and based on these documents, 'satisfaction' has been recorded u/s.153C to initiate the proceedings u/s.153C/143A. However, neither the document was incriminating in nature nor any addition has been made by the AO based on such seized documents. The basis for addition in this case is based on survey material which cannot be used in the proceedings u/s.153C. For acquiring jurisdiction u/s.153C, the seized documents must be incriminating and relate to the assessee and to each of the Assessment Year seized for which assessment was sought to be reopened. Here the seized documents referred to Assessing Officer's satisfaction note, first of all, are merely certain MOUs between the promoters of Realtech Group which has no correlation with any income or undisclosed income. Therefore, in view of the settled judicial principle by the Hon'ble Jurisdictional High court in the case of **RRJ Securitates, 394 ITR 569 (Del.). PCIT vs. Index Securities Pvt. Ltd., reported in (2017) 86 Taxmann.com 84**, such seized documents which are not incriminating cannot lead to

acquisition of jurisdiction u/s.153C and therefore, addition made on the basis of survey documents cannot be the foundation for making assessment u/s.153C. He further drew our attention to the relevant finding of the Ld. CIT (A) as we have discussed above.

13. We have heard the rival submissions and also perused the relevant finding given in the impugned orders as well as material placed on record. On the facts as discussed above, it is clear that the satisfaction note u/s.153C was based on certain seized documents found during the course of search and seizure action initiated in Kalra Group cases/Consortium Securities Pvt. Ltd. The satisfaction note of the Assessing Officer for acquiring jurisdiction u/s 153C reads as under:

*“A search & seizure action in Kalra group of cases was initiated on 28.07.2011. Main company of the group is Consortium Securities Private Ltd. and it is a stock brokering company having membership of National Stock Exchange (NSE), Bombay Stock Exchange (BSE), MCX Exchange Ltd. (MCX-SX), United Stock Exchange Ltd.(USE) and depository participant of National Securities depositories Limited (NSDL). The main persons controlling the group are Sh. Paraminder Singh A his sons Sh. Harveer Singh and Sh. Bikramjit Singh Kalra. Consortium group of companies are promoted by Sh. Paraminder Singh Kalra and the registered office of the group companies are in New Delhi. Sh. Paraminder Singh Kalra is the main person who is controlling the affairs of the group companies and his sons namely Sh. Harveer Singh Kalra and Sh. Bikramjit Singh Kalra are also assisted him in controlling the affairs of the group*

companies. The main company of the group is Consortium Securities Private Ltd. It is a stock brokering company having membership of NSE, BSE, MCX Exchange Ltd, United Stock Exchange Ltd and is also rendering depository services with the help of NSDL. The group is also engaged in the real estate dealings.

During the search operation in M/s. Consortium Croup of cases on 28/07/2011 certain documents were retrieved. While going through these documents it was found that they are relating to M/s. Realtech Construction Private Limited.

(i) Page no. 14 to 36 of Annexure A-8

(ii) page nos. 94 to 139 of Annexure A-II

These are mainly MOUs between the promoters of Realtech Croup namely Sh. Yogesh Gupta, Shri Pankaj Dayal and Shri Rajeev Behl along with some working pertaining to Realtech group

As per the MOU, it appears that Sh. Pankaj Dayal, Yogesh Gupta and Sh. Rajeev Bahai are promoters, directors and shareholders in equal proportions in various companies running and functioning under the Realtech Croup.

Page no. 118 to 139 of Annexure A-II is a annexure of MOU wherein working of assets and liabilities of different projects of Realtech group have been mentioned.

As per clause 1.1 of MOU, "Company" means any of the group company of "Realtech" namely (i) Redltech Infrastructure Private Limited (ii) Realtech Construction Private Limited (iii) Realtech Projects Private Limited (iv) Realtech Maintenance Services Private Ltd. (v) Realtech Sports Academy Private limited (vi)

*Realtech Facilitators Private limited (vii) Realtech Promoters Private Limited (viii) Realtech Developers Private limited (ix) Realtech Heights Private limited (x) Realtech Skiers Private Limited (xi) Vivid Builders Private Limited (xii) 5.S. Con Build Private Limited (xiii) Dove Infrastructure Private Limited (ix) Pacific Sports Academy Private Limited. During the course of post search proceeding, when the abovementioned documents were confronted to Sh. Pcraminder Singh Kalra, he submitted that these papers/documents don't pertain to him. He explained that due to dispute between the promoters of Realtech Croup, namely, Shri Pankaj Dayal Shri Yogesh Gupta and Shri Rajeev Behl a memorandum of understanding was drawn by the partners for partition of the group. As per the terms of the MoU, each partner has to appoint one arbitrator which should be acceptable to the remaining two promoters of the Group and he was one such arbitrator appointed by the Realtech Group promoters. Besides him, Shri B.N. Chandok and Shri Kuldeep Ahuja were also appointed as Arbitrators by the Realtech Group. During the course of post search proceedings summons were issued to three promoter directors of M/s. Real Tech Group, out of which only Mr. Yogesh Gupta appeared before the Investigation Wing and as per the report of the Investigation Wing, Mr. Yogesh Gupta remained evasive on various replies. The books of accounts were not produced to corroborate the various entries in the seized documents.*

*The above facts on the seized documents of M/s. Realtech Construction P. Ltd. and reluctance on the part of the Realtech Group to explain the seized documents, casts a heavy degree of suspicion on the affairs of Realtech Group.*

*It may be noted that books of account of Realtech Construction Pvt. Ltd. have not been produced. As such it could not be ascertained that the above entries/liabilities mentioned/noted in the seized documents as discussed above have actually been recorded in the respective books of accounts maintained by the Pvt. Ltd.*

*In the view of above facts and looking at revenue implication involved in the M/s. Real Tech Group. I am satisfied that proceeding u/s.153C of the Income Tax Act, 1961 are required to be initiated in this case. The case has already been centralize with this office u/s. 127 of the I.T. Act, 1961 vide CIT, Central-II, New Delhi's order F.No. CIT(C)-II/Cent./2012-13/1368 dt. 06.11.2012.”*

14. From a bare perusal of the ‘satisfaction’ note, it can be seen that the seized documents are mainly MOUs between promoters of Realtech group, namely, Shri Yogesh Gupta, Shri Pankaj Dayal and Shri Rajeev Behl along with the some working of the Realtech Group. There is no reference in the assessment order or in the seized documents that these are in the nature of incriminating documents from where inference can be drawn that there is any undisclosed income or any other income which has escaped assessment. Apart from that, it is further noticed that the basis and the foundation of the Assessing Officer for making the addition is the document found during the course of survey operation carried out on the premises of Shri Yogesh Gupta, who was earlier Director of the assessee-company, carried out by the Investigation Wing on 15.03.2012. During the course of such survey, a

document was retrieved from computer, which was in the form of computer printout, which contained details of payment to be received by M/s. Meter & Instrument Pvt. Ltd. from M/s. Realtech Constructions Pvt. Ltd. Further, Assessing Officer has inferred that as per the details, Shri Yogesh Gupta has paid cash of amount of Rs.3,25,00,000/- with respect to sale of Delhi Shop and Mr. Ajeet for Rs.10,65,749/- with respect to sale of Chandigarh shop. As observed by the Ld. CIT (A), the addition has been made on the basis of document found during the course of survey which has no reference to the proceedings u/s.153C, because 153C has been initiated on the basis of document seized during the course of search carried out on 28.07.2011 in the case of Kalra Group.

15. Now it is well settled law by the Hon'ble Jurisdictional High Court as stated above that, to acquire jurisdiction u/s.153C, the seized documents must be incriminating and must relate to the assessment year whose assessment are sought to be reopened. In the case of **PCIT vs. Index Securities Pvt. Ltd. (supra)**, Hon'ble Delhi High Court after referring and relying upon by the principle laid down by the Hon'ble Supreme Court in the case of **CIT vs. Singhad Technical Educational Society reported in (2017) 84 Taxmann.com 290** and **RRJ Securities (supra)** has observed and held as under:

*“30. In the present case, the documents seized were the trial balance and balance sheets of the two Assessees for the period*

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

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

32. In the present case, the two seized documents referred to in the Satisfaction Note in the ease of each Assessee are the trial balance and balance sheet for a period of five months in 2010. In the first place, they do not relate to the AYs for which

*the assessments were reopened in the case of both assessees. Secondly, they cannot be said to be incriminating. Even for the AY to which they related, i.e. AY 2011-12, the AO finalised the assessment at the returned income for each Assessee without making any additions on the basis of those documents. Consequently even the second essential requirement for assumption of jurisdiction under Section 153 C of the Act was not met in the ease of the two Assesseees.”*

16. The sequitur of the judgment of Hon’ble Jurisdictional High Court in the case of **RRJ Securities Pvt. Ltd. (supra) and Index Securities Pvt. Ltd. (supra)** are that, if the documents belonging to the assessee are found from the possession of a person search u/s.132, that does not *ipso facto* mean that, concluded assessment of the assessee are necessarily to be reopened u/s.153C. If the documents seized have no relevance or bearing on any income of the assessee for the relevant Assessment Year which could not possibly reflect any undisclosed income, then provision of Section 153C cannot be resorted too. Here, in this case, the seized documents as noted above and also noted by the Ld. CIT(A) is not incriminating at all and has no co-relation with any undisclosed income of the assessee and accordingly based on such documents the jurisdiction u/s.153C could not have been initiated. In another decision Hon’ble Delhi High court in the case of **PCIT vs. Dream City Buildwell Pvt. Ltd.** (supra), the Hon’ble High Court after taking the note of the amendment w.e.f. 1<sup>st</sup> June, 2016 in Section 153C has observed and held as under:

15. It can straightaway be noticed that the crucial change is the substitution of the words 'books of account or documents, seized or requisitioned belongs to or belong to a person other than the person referred to in s. 153A' by two clauses i.e., (a) and (b), where cl. (b) is in the alternative and provides that 'such books of account or documents,' seized or requisitioned' could 'pertain' to or contain information that 'relates to' a person other than a person referred to in s. 153A of the Act.

16. The trigger for the above change was a series of decisions under s. 153C, as it stood prior to the amendment, which categorically held that unless the documents or material seized 'belonged' to the assessee, the assumption of jurisdiction under s. 153C of the Act qua such assessee would be impermissible. The legal position in this regard was explained in *Pepsi Foods (P) Ltd. vs. Asstt. CIT* (2014) 270 CTR (Del) 459; (2014) 108 DTR (Del) 297 : (2014) 367 ITR 112 (Del) where in para 6 it was held as under :

"6. On a plain reading of s. 153C, it is evident that the AO of the searched person must be 'satisfied' that inter alia any document seized or requisitioned 'belongs to' a person other than the searched person. It is only then that the AO of the searched person can hand over such document to the AO having jurisdiction over such other person (other than the searched person). Furthermore, it is only after such handing over that the AO of such other person can issue a notice to that person and assess or reassess his income in accordance with the provisions of s. 153A. Therefore, before a notice under s. 153C can be issued two steps have to be taken. The first step is that the AO of the person who is searched must arrive at a

*clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is- after such satisfaction is arrived at that the document is handed over to the AO of the person to whom the said document 'belongs'. In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to examine the provisions of presumptions as indicated above. Sec. 132(4A)(i) clearly stipulates that when inter alia any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in s. 292C (1)(i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the AO to rebut that presumption and come to a conclusion or 'satisfaction' that the document in fact belongs to somebody else. There must be some cogent material available with the AO before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of 'satisfaction'.*

17. Further, the Hon'ble High Court held that the onus was on the Revenue to show that incriminating material/document recovered at the time of search belongs to the assessee and it is not enough for the Revenue to show that documents pertained to the assessee or contains information that relates to the assessee.

18. Coming to the arguments relied upon by the Ld. CIT-DR in so far as contention that the Ld. CIT (A) has erroneously held that satisfaction should be recorded by the Assessing Officer and the Kalra Group and not that of the assessee is accepted in view of the judgment of Hon'ble Delhi High Court in the case of **PCIT vs. Sheetal International Pvt. Ltd. (supra) and Ganpati Finserve Ltd. (supra)**. However, the other arguments raised by the ld. CIT-DR in view of the categorical judgments of Hon'ble Delhi High Court in the case of **RRJ Securities Ltd. (supra), PCIT vs. Dream City Buildwell** cannot be accepted.

19. Further, the objection raised by the Ld. CIT-DR that ld. counsel for the assessee cannot raise this issue without filing the Cross Objection cannot be accepted, because the assessee can very well challenged the scope of the addition on legal grounds, when here in this case Ld. CIT(A) has given a categorical finding that technically in this case proceedings u/s.153C could not have been initiated because the satisfaction and the proceedings are not based on any seized documents albeit on the documents found during the course of survey.

20. Apart from that, it is seen that the Ld. CIT (A) has noted that the assessee has disclosed a sum of Rs.24.50 crores as additional income during survey owing to such real estate business of the assessee, and therefore, if at all there is any element of cash payment or cash income and the source of

income of the business is the same and no further evidence has been found or investigated during the assessment proceedings, then no addition can be made again in this Assessment Year.

21. Thus, the entire addition is held to be beyond the scope of Section 153C and the same is deleted. Accordingly, the order of the Ld. CIT (A) is upheld and appeal of the Revenue is dismissed.

22. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 14<sup>th</sup> January, 2020.**

Sd/-  
**[G.S. PANNU]**  
**VICE PRESIDENT**

DATED: 14<sup>th</sup> January, 2020

PKK:

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**