

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.As. No.6067 & 6068/DEL/2014
Assessment Years: 2010-2011 & 2011-12

Dy. Commissioner of Income Tax, Central Circle-19, New Delhi.	vs.	M/s. Vision Town Planners Pvt. Ltd., Noida.
TAN/PAN: AACCV9600Q		
(Appellant)		(Respondent)

Appellant by:	Ms. Sunita singh, CIT-DR
Respondent by:	Shri Rakesh Joshi, CA
Date of hearing:	22 04 2021
Date of pronouncement:	24 05 2021

ORDER

PER AMIT SHUKLA, JM

The aforesaid appeals have been filed by the Revenue against the impugned order dated 16.07.2014, passed by Ld. Commissioner of Income Tax (Appeals)-XXXIII, New Delhi for the quantum of assessment passed u/s.153C r.w.s. 153A for the Assessment Years 2010-11 and 2011-12. The common grounds raised by the Revenue in both the years read as under:

“1 On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition by holding that the additions made without any incriminating material found during the course of search are outside the scope of section 153A of the Act,

when section 153A mandates the Assessing Officer to assess or re-assess the total income.

2. On the facts and in the circumstances of the case, the CIT(A) has erred in allowing the appeal of the assessee without going into the merits of the case.

3. The order of the CIT (A) is erroneous and is not tenable on facts and in law.”

2. The facts in brief are that M/s. Vision Town Planners Pvt. Ltd was incorporated under the Companies Act, 1956 on 20/03/2009 to carry on the business of real estate. For the Assessment Year 2010-11, original return of income was filed by the appellant company on 12.10.2010 declaring loss of 97,880/-. It was accepted as such u/s 143(1) of the I.T. Act, 1961 vide intimation order dated 25th February, 2011. Similarly, for the Assessment Year 2011-12, original return of income was filed by the appellant company on 30/09/2011 declaring loss of 53,735/-. It was accepted as such u/s 143(1) of the I.T. Act, 1961 vide intimation order dated 30th March, 2012. Earlier in these cases, proceedings u/s.153C was initiated for these captioned assessment years on 27.07.2012, on the basis of certain documents allegedly belonging to the assessee company having been seized during the search operations conducted on 07.12.2010 on BPTP Group. Thereafter, assessment was completed u/s.153C/153A determining the income of Rs.385,21,03,120/- vide order dated 28.03.2013. Post completion of the assessment u/s.153C on 28.03.2013, ld. Assessing Officer has reinitiated

the proceedings by issuing fresh notice on 26.09.2013 on the basis of two loose papers seized during the search action on M/s. Aakriti Hotels Pvt. Ltd. conducted on 22.11.2011. The satisfaction note recorded by the Assessing Officer along with the seized documents (scan copy) is incorporated herein:-

**SATISFACTION NOTE UNDER SECTION 153C OF
THE INCOME TAX ACT, 1961**

In the case of M/s Aakriti Hotels Pvt. Ltd.

Address: 12, 3rd Floor, Community Centre, Saket, New Delhi-110017

A search and seizure operation was carried at the premises of Aakriti Hotels Pvt. Ltd. on 22/11/2011. During the course of search and seizure operation following documents were found and seized at the following premises:

Searched Party: M/s Aakriti Hotels Pvt. Ltd., 12, 3rd Floor, Community Centre, Saket, New Delhi-110017

PARTY NO. DW-2, ANNAXURE: A-10

PAGES	DESCRIPTION
42	Authorisation for VAT Registration (In the letter head of M/s Vision Town Planners Pvt. Ltd. and Signed by its Director)

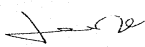
Searched Party: M/s Aakriti Hotels Pvt. Ltd., 12, 3rd Floor, Community Centre, Saket, New Delhi-110017

PARTY NO. DW-2, ANNAXURE: A-12

PAGES	DESCRIPTION
53	Documents required (In the letter head of M/s Vision Town Planners Pvt. Ltd.)

From perusal of the above mentioned documents seized, I am satisfied that these documents belong to M/s Vision Town Planners Pvt. Ltd and does not belong to M/s Aakriti Hotels Pvt. Ltd. Therefore, the above said seized records are being handed over to the A.O. of M/s Vision Town Planners Pvt. Ltd. for necessary action.

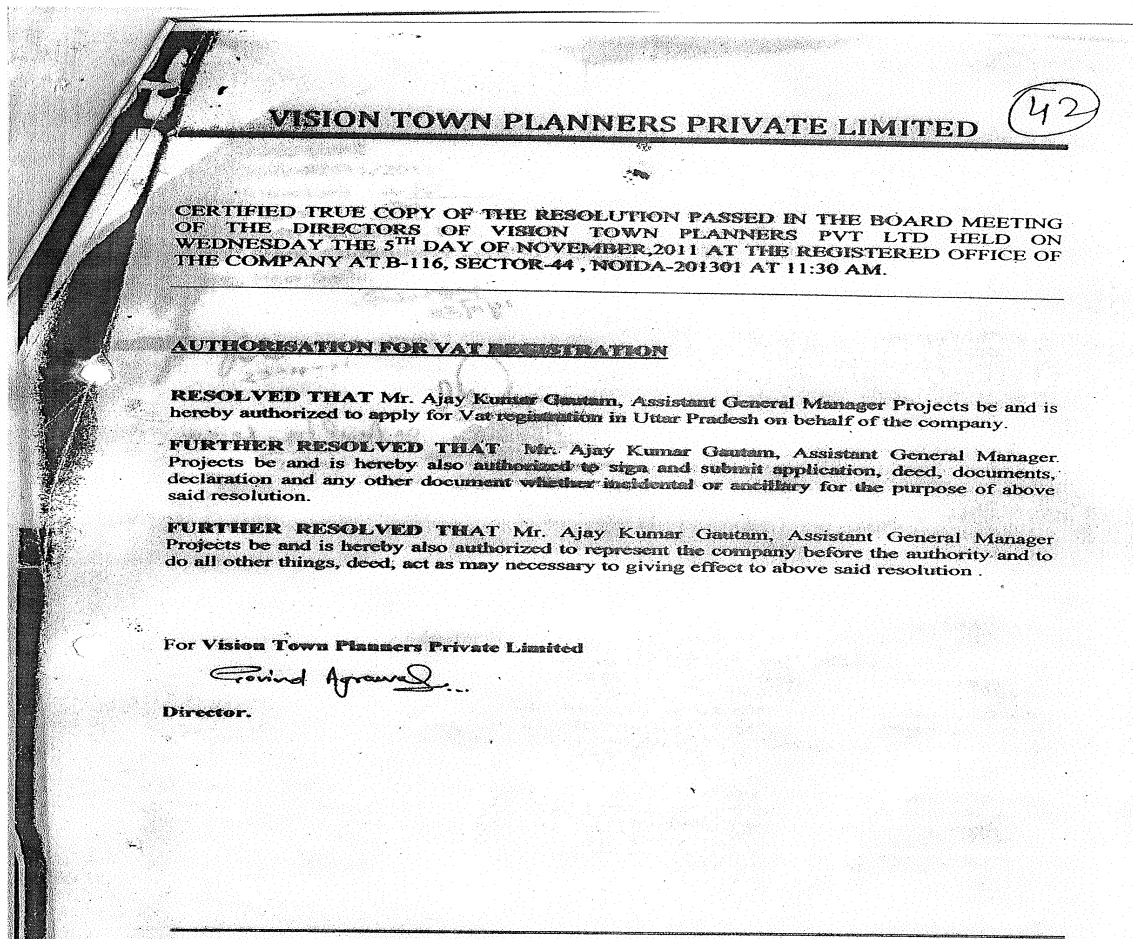



 (K.K. George)
 Assistant Commissioner of Income Tax
 Central Circle-23, New Delhi
 K.K. George
 Asstt. Commissioner of Income Tax
 Central Circle-23, R. No. 353
 E-2, ARA Centre, Jhandewalan Extn.,
 New Delhi-110055

VISION TOWN PLANNERS PRIVATE LIMITED

Documents Required

1. Common Seal
2. Cash Book/ Bills/ Vouchers/ Journal for 2008-09, 2009-10, 2010-11
3. Signed Copy of Notice, Directors Report for 2008-09
4. Signed Copy of Notice, Directors Report, Balance Sheet for 2009-10
5. Signed Copy of Notice for two EGMs
6. Resolution Copies if any passed after Nov 2009 for recording in Minutes of Board Meeting
7. Minutes of AGM of 2009-10 duly signed
8. Application, PAN Copy, MOA, Resolution, Receipt & Confirmation, Bank Statement, Copy of ITR/AO for allotment made to BPTP International
9. Transfer deed of transfer of Shares to M/s Godhuli Vanijya Private Limited
10. Original Subsidiary Certificate



3. However, in the impugned assessment order, the Assessing Officer has merely reiterated the earlier assessment order and instead of raising any query regarding satisfaction note or seized documents, he show caused/asked the assessee, as to why the assessment may not be finalized on the basis of material discussed in respect of earlier assessment proceedings available on record. The relevant portion of his order in this regard reads as under:

VII. After giving due consideration to the order passed and as reproduced above, the assessee was show caused vide order sheet noting dated 3.3.2014 as to why the assessment may not

be finalized on the basis of material in respect of earlier assessment proceeding available on record. In response to the same, the assessee furnished its reply vide letter dated 21.03.2014, which is reproduced as under:

4. The assessee objected to the proposal of the Assessing Officer on various grounds which in sums and substance can be summarized as under:

- These seized two loose papers do not belong to the appellai company. One of the seized papers is a certified true copy of th Board resolution dated 05.11.2011, authorizing Ajay Kuma Gautam, AGM, Projects for VAT registration and signed by the director. This paper, once issued and dispatched by the company no more belongs to the appellant company.
- Another loose paper is a computer generated paper, which makes mention of a list of documents required for undertaking a specific job, for completion of which from some Govt./Civic agency, requirement of documents such as copy of ITR/PAN Card, MOA, resolutions, bank statements, minutes of AGM etc. has been noted down by someone. The documents enumerated on this paper appear to be mentioned by someone, for his own information and use, which could be required for certain official purpose.
- These two loose papers hardly form 'books of account or document' as envisaged in section 153C, which may enable the AO to initiate proceedings u/s.153C. Further these seized pages are not in the nature of incriminating documents suggesting prima-facie belief of hidden income.

Further neither of them relate to the assessment year under consideration. The Assessing Officer should not have proceeded mechanically in issuing the notices u/s 153C.

- These two seized papers neither belong to the assessee nor are of the nature as to be called "books of account or document", nor are of any significance or financial worth. These have absolutely no relevance to the assessment or initiation of assessment.

5. Apart from that, various judgments were also relied upon for the proposition that, since no incriminating documents have been found as per the satisfaction note in the seized documents, therefore, no addition can be made in the present proceedings u/s.153C.

6. Ld. Assessing Officer however did not accept the assessee's contention and using the same language of the earlier assessment order repeated the same addition of Rs.385,21,02,120/-. Thus, the earlier assessment order dated 28.03.2013 has been verbatim reiterated in the impugned assessment order dated 31.03.2014.

7. Ld. CIT (A) has quashed/deleted the assessment after observing and holding as under:-

"I have considered the assessment order, written submission and oral arguments of Ld. AR.

The assessment for both assessment years was made earlier u/s 153C on 28.03.2013. In present assessment proceedings, the same addition has been repeated.

The main arguments of Ld. AR are that the seized paper found during the present search proceedings u/s 132 in the case of M/s Akriti Hotels Pvt. Ltd on 22.11.2011, relied in the satisfaction recorded u/s 153C are not incriminating in nature & do not belong to the appellant.

Without going into the controversy of whether the seized documents relied upon belong to the appellant or not, I will examine the contents of seized document whether the same is incriminating or not.

I have perused the entire assessment order and the nature of seized documents relied upon. Nowhere in the assessment order, the contents of the seized documents are discussed and there is no linkage between the additions made for both the assessment years with the seized documents relied upon in the satisfaction notes. In view of the above facts, I intend to agree with the arguments of Ld. AR that the documents relied upon in the satisfaction notes u/s 153C are not incriminating in nature for assessment of income.

Now the issue is whether in absence of any incriminating seized documents for any assessment year, addition can be made u/s 153C read with section 153A in respect of closed assessment. Present case i.e. for A.Y. 2010-11 & 2011-12 in appellant was assessed earlier u/s 153C therefore, definitely both the assessment are closed assessment. Ld. AR relied upon the decision of Jai Steel India Vs. ACIT (259 CTR 281) Raj. & Singhad Technical Education Society Vs. ACIT (ITAT, Pune), where it has been held that other person (not searched) cannot be proceeded against such persons u/s 153C unless

documents / papers seized belongs to such person & are of incriminating in nature.

Ld. AR has further relied upon the decision of hon'able ITAT, Pune in the case of Kumar & company dt.02.02.2010 where it has been held that documents relied for proceeding u/s 153C must be prima facie incriminating. Incriminating nature of the seized document is an essential factor for the proceedings u/s 153C. Ld. AR has further relied upon the decision of S.B. of ITAT, Mumbai vide order dt.06.07.2012 in the case of All Cargo Logistics Ltd. vs. DCIT, where it has been held that assessment u/s 153A can be made on the basis of incriminating material found during the search. Ld.AR argued that the assessment u/s 153C is based on the provisions of section 153 A therefore; the decision will be squarely applicable for assessment u/s 153C also. Ld.AR further argued that hon'ble High Court of Delhi in the case of CIT vs. Anil Kumar Bhatia (ITA No. 1626, 1632,1998,2006,2019 & 2020) also had not given opinion for the scope of assessment u/s 153A where no incriminating documents have been seized. Hon'ble ITAT SMC Delhi, in the case of parivar Properties Pvt. Ltd New Delhi, vs. DCIT, CC-12, New Delhi has decided that addition can be made without incriminating documents in only in the case of open assessment u/s rebated assessment 153A/153C Ld. AR relied upon the decision of SSP Aviation Ltd. Vs. DCIT (2012) 346 ITR 0177 (Del), LMJ International Ltd. (2008) 22 SOT 315 Kol, MGF Automobiles Ltd. Vs. ACIT CC-7, New Delhi (ITA Nos. 4212 & 4213/Del/2011, ITAT 'E' Bench, New Delhi.

Ld. AR further argued that in the amendment in Budget-2014 u/s 153C required that the paper on the basis of which satisfaction is recorded must bearing on the determination of income.

“Further, we would like to draw your attention to the fact that the intentions of the legislature are also clear. In this regard, as changes have been introduced by Finance Bill 2014, to amend Section 153C of the Income Tax Act, 1961. As per the Budget-2014, clause 53 of the Finance Bill seeks to amend section 153C of the Act so as to enable the Income Tax Department to proceed against the “other person”, the documents/papers/books of account “belonging to” whom, have been seized, only in the event of those seized papers/documents/books of account being of such nature as to have a bearing on the determination of the total income of the said other person.

I have considered entire judicial pronouncements relied by Ld. AR. As I have held earlier that there is no incriminating documents relied upon in the satisfaction note recorded u/s 153C, in present case, in my view no addition can be made under this circumstances. In fact, decision of jurisdictional High Court of Delhi in the case of Sh. Anil Kumar Bhatia also does not support as there is no incriminating documents even for one assessment year covered u/s 153C. Accordingly, addition made by the assessing officer for both the assessment years are/hereby deleted. These grounds of appeals are allowed for both the Assessment Years.”

8. We have heard both the parties, perused the relevant material referred to before us and also the relevant finding given in the impugned order. Admittedly, the present proceedings u/s.153C which has been initiated vide notice dated 26.09.2013 is based on search and seizure action on M/s. Aakriti Hospital Pvt. Ltd. conducted on 22.11.2011. The content of 'satisfaction note' and the seized documents have already been incorporated above. From a bare perusal of the seized documents as well as satisfaction note, it can be seen that, the documents which were found were in the nature of, authorization for VAT registration in the letter of M/s. Vision Town Pvt. Ltd. which was signed by its Director and certain list of documents required which were mostly statutory record like cash book, bills, vouchers and journals for various financial years, Director's report, balance sheet, notice for resolution, copies for recording minutes of board meeting, minutes of AGL, application for PAN, MOA, transfer deed of transfer of shares, etc. None of these documents have been referred or has been discussed or has been made the basis for the present assessment order nor do they have any correlation with the addition which has been made. In fact, the Assessing Officer has reiterated the same assessment order and the additions which were made in the earlier assessment order dated 28.03.2013, which was passed in pursuance of earlier proceedings u/s.153C initiated vide notice dated 27.01.2012, which again in turn was based on all together

different search operation conducted on 07.12.2010 on BPTP Group.

9. Admittedly, both the assessment years i.e. A.Y. 2010-11 and 2011-12 are non-abated assessment year as per proviso to section 153A of the Act, which is clear from the following chart summarizing the various events:-

	Particulars	A.Y. 2010-11	A.Y. 2011-12
1.	Search on Akriti Hotel. P. Ltd.	22.11.2011	22.11.2011
2.	Notice issued u/s. 153C	26.09.2013	26.09.2013
3.	Deemed date of search as per proviso to section 153C(1)	26.09.2013	26.09.2013
4.	Return filed u/s.139	12.10.2010	30.09.2011
5.	Last Date of issue notice u/s. 143(2)	30.09.2011	30.09.2012
6.	Assessment Completed u/s.143(1)	25.02.2011	30.03.2012

Though there is no date mentioned in the satisfaction note recorded by the Assessing Officer, but certainly it was much after the earlier 153C proceeding which was concluded vide assessment order 28.03.2013. It is not the case here nor has been brought on record that Assessing Officer had received these documents seized in Akriti Search which was on 22.11.2011 and satisfaction was recorded in and around at that time. Had been so, then he need not had to initiate separate proceedings u/s153C again and could have

discussed the same in the then on-going earlier proceedings. Ergo, it is very clear that the deemed date of search here in this case is much after 28.03.2013, because earlier proceedings u/s 153C was culminated into assessment order on this date. The present proceedings are fresh proceedings u/s 153C in wake of another search in altogether different entity and that is why fresh notices were issued on 26.09.2013.

9. Before us, the ld. CIT-DR though admitted that in the present assessment order no fresh addition has been made on the basis of any seized or incriminating material or documents, but the Assessing Officer was completely justified in reiterating the same assessment in the present assessment order for the reason that earlier assessed income has to be reiterated in the present assessment order.

10. On the other hand, ld. counsel heavily relied upon the order of the ld. CIT (A) and submitted that now issue stands covered by the order of Hon'ble Delhi High Court in the case of **CIT Vs. Kabul Chawla, reported in 380 ITR 573 (Delhi)**, and latest decision of Hon'ble Delhi High Court in the case of **PCIT Vs. Allied Perfumes P. Ltd. (2021) 431 ITR 237 (Delhi)**. He also relied upon the judgment of Hon'ble Supreme Court in the case of **CIT Vs. Singhad Technical Education Society (397 ITR 344) (SC)**. Once the present assessment order has been framed without any fresh material or any incriminating documents, then no addition can be made and

the fate of the earlier assessment order would depend upon the facts and issue involved therein which matter is *subjudice*. In so far as present appeals are concerned, the additions have no leg to stand. He submitted that, it has rightly been observed by the Id. CIT (A) that the nature of seized documents referred in the satisfaction note and the contents therein has no linkage between additions made for both the assessment years. In fact, these documents are nowhere in the nature of incriminating material for making any addition u/s.153C/153A. Thus, in view of various settled principles laid down by the Hon'ble Jurisdictional High Court, wherein it has been held that once the addition has been made without any incriminating material or document especially for unabated assessment then such additions cannot be roped in assessment made u/s.153A. It has been categorically held that completed assessment can be inferred by the Assessing Officer while making the assessment u/s.153A only on the basis of same incriminating unearths during the course of search or acquisition of document or any undisclosed income discovered during the course of search which were not produced or have not been already disclosed. These principles of CIT Vs. Kabul Chawla have been reiterated in the case of **Principal CIT vs. Meeta Gutgutia 395 ITR 526 (Del)**, have been elaborated in great detail. Further, Hon'ble Supreme Court in case of **CIT Vs. Singhad Technical Education Society (397 ITR 344) (SC)** wherein exactly similar legal/technical ground was taken for the first time

before the ITAT, the Hon'ble Apex Court held that addition cannot be made in the years where there is no incriminating documents found during the course of search even in the context of proceedings u/s 153C.

11. We are in tandem with the submissions of the Ld. Counsel that, in the present assessment orders passed u/s 153C/153A are not based on seized documents or satisfaction note, albeit, are repetition of earlier assessment order (supra) and same addition has been reiterated. If Assessing Officer has initiated fresh assessment proceedings u/s 153C vide notice dated 26.09.2013, arising out different search on 22.11.2011 carried in the case M/s. Akriti Hotel. P. Ltd., then the present assessment proceedings has to be based on this search and materials found in this search and all the provisions of sections 153A to 153D shall apply. Further, as discussed above and it is an admitted position that, these assessment years are unabated assessments and hence in view of the aforesaid cited judgements and principles laid down in CIT Vs. Kabul Chawla and Principal CIT vs. Meeta Gutgutia (supra) the assessment and additions can be made only on the basis of any incriminating documents found during the search or referred to in the satisfaction note, which has not been done.

12. Further, Hon'ble Supreme Court in case of **CIT Vs. Sinhgad Technical Education Society (397 ITR 344) (SC)** apart from the fact that similar legal/technical ground was

taken for the first time before the ITAT, though which is not the case here, but further, the Hon'ble Apex Court upheld the order of the Tribunal that addition cannot be made for the assessment years for which there are no incriminating documents found during the course of search in the assessments framed u/s 153C. The Hon'ble Court upheld the order of the Tribunal in the following manner:-

16) In these appeals, qua the aforesaid four Assessment Years, the assessment is quashed by the ITAT (which order is upheld by the High Court) on the sole ground that notice under Section 153C of the Act was legally unsustainable. The events recorded above further disclose that the issue pertaining to validity of notice under Section 153C of the Act was raised for the first time before the Tribunal and the Tribunal permitted the assessee to raise this additional ground and while dealing with the same on merits, accepted the contention of the assessee.

17) First objection of the learned Solicitor General was that it was improper on the part of the ITAT to allow this ground to be raised, when the assessee had not objected to the jurisdiction under Section 153C of the Act before the AO. Therefore, in the first instance, it needs to be determined as to whether ITAT was right in permitting the assessee to raise this ground for the first time before it, as an additional ground.

18) The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the

basis of facts already on the record and, therefore, could be raised. **In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act.** Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.

19) We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the

same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy.

The sequitur of the judgment which can be culled out is that, seized incriminating material has to pertain to the assessment year in question and have co-relation, document-wise, with the assessment year. This requirement u/s 153C is essential and becomes a jurisdictional fact. It is an essential condition precedent that any money, bullion or jewellery or other valuable articles or thing or books of accounts or documents seized or requisitioned should belong to a person other than the person referred to in S. 153A. This judgment of the Hon'ble Supreme Court clearly clinches the issue in favour of the assessee in this case.

13. Recently, Hon'ble Delhi High Court in case of **PCIT Vs. Allied Perfumes P Ltd. (2021) 431 ITR 237 (Delhi)** held as under:-

“13. Upon reading of the aforesaid extracted portion of the impugned order, it is clearly discernable that the ITAT has given a finding of fact that the assessments make no reference to the seized material or any other material for the years under consideration, that was found during the course of search, in the case of the assessee. Mr. Maratha is also

unable to point out any incriminating material related to the assessee which could justify the action of the Revenue. Merely because a satisfaction note has been recorded, cannot lead us to reach to this conclusion, especially when the Revenue has not laid any foundation to support their contention. In the factual background as explained above, the assumption of jurisdiction under section 153C cannot be sustained in view of the decision of this Court in the case of Kabul Chawla (supra)”

14. In view of the facts and circumstances of the present case and the aforesaid binding judicial precedence, we hold that the present additions which has been made in the present assessment orders passed u/s.153C/153A, which are unabated assessments, is beyond the scope and purview of Section 153C/153A. Firstly, for the reason that no incriminating documents or material have been referred in the present assessment order relating to the addition; and secondly, the Assessing Officer has merely reiterated the addition which were made in the earlier round of proceedings u/s.153C. Accordingly, we hold that ld. CIT (A) is justified in deleting the additions on this ground.

15. In the result, the appeals of the Revenue are dismissed.

Order pronounced in the Open Court on 24th May, 2021

Sd/-

**[PRASHANT MAHARISHI]
[ACCOUNTANT MEMBER]**

DATED: 24/05/2021

PKK:

Sd/-

**[AMIT SHUKLA]
JUDICIAL MEMBER**