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

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER

I.T.A. No.4054/DEL/2017
Assessment Year: 2011-2012

ACIT, Central Circle-30, New Delhi.	vs.	M/s. Ankit Nivesh & Management Pvt. Ltd., 203 Puja House, Karampura Commercial Complex, New Delhi.
TAN/PAN: AACCA2546A		
(Appellant)		(Respondent)

Appellant by:	Ms. Shushma Singh, CIT-DR		
Respondent by:	Shri Ajay Wadhwa, Adv.		
Date of hearing:	18	06	2021
Date of pronouncement:	15	09	2021

O R D E R

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the Revenue against the impugned order dated 31.03.2017, passed by Ld. Commissioner of Income Tax (Appeals)-XXX, New Delhi for the quantum of assessment passed u/s. 153A/153C for the Assessment Year 2011-12. In the grounds of appeal, the Revenue has raised following grounds:-

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to delete the addition made u/s 68 of the I.T. Act on account of unexplained cash credits amounting to Rs. 6,56,85,362/-.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in directing the A.O. to delete the addition of Rs. 3,01,250/- as unexplained expenditure on account of brokerage.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts by relying on the decision in the case of Sh. Kabul Chawla by the jurisdictional High Court which has not been accepted by the department and SLP against the same has been filed before Hon'ble Supreme Court.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in arriving at the conclusion that the words 'total income' as used in Section 153C/153A would only mean undisclosed income discovered from seized / incriminating material.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in adopting a restrictive and pedantic interpretation of the scope of assessment u/s 153C/153A of the Act.

6. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in arriving at the conclusion that the words 'total income' as used in section 153C/153A would only mean income unearthed during search when the decision of the Hon'ble High Court of Karnataka in the case of Canara Housing Development Company Vs. DCIT dated 09.08.2014 has held that total income includes income unearthed during search and any other income.

7. That the grounds of appeal are without prejudice to each other.

8. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."

2. From the perusal of the impugned order and the grounds raised by the Revenue, it is seen that the main issue involved is whether the additions made in the impugned assessment order are based on any incriminating material found during the course of search or not, and therefore, whether they are covered by the decision of Hon'ble Jurisdictional High Court in the case of **CIT Vs. Kabul Chawla, reported in 380 ITR 573 (Delhi)**, and other catena of judgments by the Hon'ble Jurisdictional High Court and Co-ordinate Bench of the Tribunal. Nowhere the revenue has contended in its grounds of appeal that any of the additions made in the assessment order is based on incriminating documents found during search or part of satisfaction note recorded u/s 153C.

3. The facts in brief qua the aforesaid legal issue are that the original return u/s. 139(1) for the Assessment Year 2011-12 was filed on 28.09.2011 which was duly processed u/s.143(1). Thereafter a search and seizure action u/s.132 was conducted on various business premises of Prakash Industries Ltd. on 30.10.2012. As per the assessment order, certain documents belonging to the assessee, M/s. Ankit Nivesh and Management Pvt. Ltd. were found and accordingly a satisfaction note u/s 153C was recorded by the Assessing Officer of M/s. Prakash Industries and notice u/s.153A read with Section 153C was issued on 19.09.2014. In response to the said notice same return was filed showing Nil income which was filed earlier. In the assessment order, the

Assessing Officer noted that assessee had shown to have received share capital of Rs.6,02,50,000/ from M/s. Vanshi Farms Pvt. Ltd.

4. Apart from that, Assessing Officer also noted that during the relevant year assessee has made investment with M/s. Prakash Industries Ltd. amounting to Rs.10,89,64,617/- for stock-in-trade and sold/adjusted stock of Rs.38,11,08,805/-. However, no addition was made on this point.

5. Thereafter, the Assessing Officer after detailed discussion has made the addition of Rs.6,56,85,362/- u/s.68 and has also added alleged brokerage on such share capital of Rs.3,01,250/-/- which was taken the brokerage @ 0.5% on alleged bogus share application. One of the main argument before the ld. CIT (A) was that entire addition made by the Assessing Officer is not based on any incriminating material, and therefore, no addition could have been made in the impugned assessment year as the assessment for the Assessment Year 2011-12 had attained finality and it was not an abated assessment in terms of ***2nd proviso*** to Section 153A. Apart from that, it was also submitted that in the case of all the three share applicants, the proceedings u/s.153C was carried out, wherein similar addition has been made in their hands and same issue has been considered in their hands and nothing adverse material or adverse finding relating to assessee company has been found and therefore, in the hands of the assessee company such an addition is unwarranted.

6. Ld. CIT(A) after considering the entire gamut of facts and material on record and the submission made by the Assessing Officer as well as the finding of the Assessing Officer held that addition made in the assessment order are not based on any incriminating document and relying upon the decision of Hon'ble Delhi High Court in the case of **CIT vs. Kabul Chawla**, deleted the addition. He further held that statement recorded u/s.132(4) in some other case cannot be held to be incriminating document qua the assessee and for this proposition also, he relied upon the judgment of Hon'ble Delhi High Court in the case of CIT vs. Raj Pal Bhatia. The relevant finding of the Ld. CIT(A) on this issue reads as under:

> *5.4 I have carefully considered assessment order, written submission, submission on the report of ITI of investigation by appellant, case laws relied upon and oral arguments of Ld. AR. The objections/arguments of the appellant are discussed as under:-*
>
> *(i) The assessee has filed return of income u/s 139 of the Act, on 28.09.2011, declaring total income of Rs. 78,97,142/-. The return of income was processed u/s. 143(2) of the Act, was issued within the prescribed time limit.*
>
> *(ii) Subsequently, search and seizure action u/s 132 of the Act, was initiated on 30.10.2012 in M/s. Prakash group of cases. In the case of the assessee, notice u/s 153C of the Act, was issued on 09.10.2014 and 12.02.2015, after recording reasons. In the satisfaction recorded by the A.O., certain documents inventoried as Annexure A-2, A-3, A-8, A-7, A-13, A-14, A-28 and A-22 have been considered.*

(iii) In the assessment proceedings, the A.O. has observed that assessee has received aggregate share application money of Rs 6,02,50,000/-. The assessee has also traded online into shares of M/s Prakash Industries Ltd. through stock exchange / broker viz M/s Religare Securities Limited which resulting into purchase of stock in trade of shares of Rs 10,89,64,617/- and sale of stock in trade of shares of Rs 3,81,08,805/- and closing stock remained of Rs 6,56,85,362/-. Therefore, the A.O. has asked to explain the source of the share application money and sale of investments.

(iv) In the assessment order, the A.O. stated that the share applicants were having no worth for share capital & premium, therefore, the identity, creditworthiness & genuineness of transactions stands unproved.

The A.O. further observed that beside the above, another funds raised by sale proceeds of investments was also not genuine, which is utilized for making net investment of Rs 6,56,85,362/- with M/s Prakash Industries Ltd.. Therefore, the A.O. was of the view that the amount of Rs. 6,56,85,362/- invested in shares of M/s Prakash Industries Ltd. through funds raised from sale of investment, was not genuine and treated the entire amount of Rs. 6,56,85,362/- as unexplained credit in the hands of the assessee.

(v) In the assessment proceedings, the A.O. stated that in the statement recorded 132(4) of the Act, on 31.10.2012, of Shri Ved Prakash Agarwal, Chairman of M/s Prakash Industries Limited, he had admitted that unaccounted funds of M/s Prakash Industries Ltd., have been invested in its group companies in the form of share capital / premium, through paper companies in the different financial years, as under:-

S. No.	Name of the recipient	F.Y.	Amount (in crore)
1.	M/s. Amarjyoti Vanijya Pvt. Ltd.	2007-08	4.98
2.	M/s. Sanskriti Tie up Pvt. Ltd.	2010-11	24.68
3.	M/s. Sarvottam Commodities Pvt. Ltd.	2010-11	26.00
4.	M/s. Rajnil Sales Pvt. Ltd.	2007-08	8.32
5.	M/s. Ankit Nivesh Management Pvt. Ltd.	2007-08	9.74
6.	M/s. Lokpriya Trading Pvt. Ltd.	2007-08	8025
	Total		81.97

(vi) In the assessment order, the A.O. mentioned that in Q. No. 36, asked in respect o blank cheque books of certain companies impounded from the premises of M/s Prakasl Industries Ltd. during the search action, Shri Ved Prakash Agarwal, chairman of M/s Prakash Industries Limited, at the time of recording of his statement on 31.10.2012 and concluded that these companies were managed and controlled by Shri Ved Prakash Agarwal, the chairman of M/s Prakash Industries Ltd. On perusal of the table in para 7 of the assessment order, the description of seized papers, as per Annexure A-15 to A-25, are mentioned and for sake of clarity, same is reproduced as under:-

S. No.	Annexure number	Pages	Description (all cheques books of different companies)
1	A-15	1-200	M/s Pareek Overseas Pvt. Limited
			M/s Evershine Mercantile Pvt. Ltd
			M/s Sun view Trading & investment Pvt Ltd
2.	A-16	1 to 140	M/s Tools India Pvt. Ltd
			M/s Shree Labh Paxmi Capital Services
			M/s Sanskriti Tie-up Pvt. Ltd
3.	A-17	1 to 196	M/s Deo Steel & Mines Pvt. Ltd
			M/s Air Con Systems Pvt. Ltd
			M/s Vikram Agarwal (HUF)
4.	A-18	1 to 145	M/s Sarvottam Commodities Pvt. Ltd
			M/s Welter securities Ltd.
5.	A-19	1 to 152	M/s Prakash Ispat Ltd
			Sh. Ved Prakash Agarwal
6.	A-20	1 to 51	M/s GMK Buillders Pvt. Ltd

			M/s Dcean Ispat Pvt Ltd
7.	*A-21*	*1 to 200*	*M/s Vanshi Farms Pvt Ltd*
			M/s Amarjyoti Vanijya Pvt. Ltd
			M/s Deo Steel & mines pvt. Ltd
8.	*A-22*	*1 to 112*	*M/s Ankit Nivesh & management Pvt. Ltd*
			M/s Spring Mercantile Pvt. Ltd
			M/s Makrana Tradecom Pvt. Ltd
			M/s Chaibasa Steel Pvt. Ltd.
9.	*A-23*	*1 to 173*	*M/s Goyal Plastic Pvt. Ltd*
			M/s Prakash capital Services Pvt. Ltd
10	*A-24*	*1 to 183*	*Sh. Kanha Agarwal*
			M/s Prime Mercantile Pvt. Ltd
			M/s Rotary club of Rendezvous Trust
11	*A-25*	*1 to 180*	*M/s Hi-tech Mercantile Pvt. Ltd*
			M/s Vanshi Farms Pvt. Ltd

Besides the above, in the satisfaction note dated 19.9.2014, the A.O. has mentioned about relevant seized papers inventorised as A-2, A-3, A-8, A-13, A-14, A-28 and A-22, which contains, the trial balance, resolution, auditor reports, income tax returns, cheque books and certified copy of resolutions pertaining to the assessee.

(vii) In the assessment order, the A.O. stated that from material found during search action u/s 132 of the Act, which contain signed blank cheque book of various companies, at corporate office of M/s Prakash Industries Ltd., Srivan, Bijwasan, that the assessee company is completely controlled by Shri Ved Prakash Agarwal, Chairman of M/s Prakash Industries Ltd.

(viii) In the assessment proceedings, the Assessing Officer has stated that the share applicant, was not having any worth for investing in share capital of the assessee, therefore, creditworthiness and genuineness of transactions remained unexplained. Therefore, the Assessing Officer was of the view that the amount of Rs. 6,56,86,612/- is treated as unexplained cash credits u/s 68 of the Act and made addition of Rs. 6,56,86,612/-in the hands of the assessee.

(ix) In the appellate proceedings, the AR submitted that the appellant has received share application money of Rs 6,02,25,000/- from M/s Vanshi Farms Pvt. Ltd. and Rs 25,000/- from M/s Lokpriya Trading Pvt. Ltd. during the F.Y. 2010-11. The appellant also online traded into securities of M/s Prakash Industries Ltd through broker viz. M/s Religare Securities Limited in Demat account.

(x) In the appellate proceedings, appellant has submitted that it has taken loan of Rs 6 crore from M/s Lokpriya Trading Pvt. Ltd which is utilized for online trading into shares of M/s Prakash Industries Ltd which is refunded during the same financial year out of share application money received.

Moreover, the A.O. himself assessed the case of Investor companies and loan providing companies under section 153C / 147 of the Income Tax Act, 1961 for the respective A.Y. Therefore, source of trading into shares of M/s Prakash Industries Ltd through stock exchange / broker viz. M/s Religare Securities Ltd in Demat account, should not doubted and should not be treated as unexplained credit.

(xi) In the appellate proceedings, AR of the appellant has submitted that since the shares were in respect of a listed company and transaction was through registered broker in Demat account, which was as per the recognized Stock Exchange quoted price, then there was no reason to hold such nature of transaction as non-genuine.

(xii) In the appellate proceedings, appellant has submitted that the appellant received share application money from M/s Vanshi Farms Pvt. Ltd. out of loan taken from M/s ACG Associated Capsules Pvt. Ltd. and submitted all the details relating to loan

taken, were furnished by investor company in the assessment proceeding, as under:

(a) ledger account,

(b) relevant portion of bank statement showing the transactions of loan,

(c) detail of TDS deducted thereon and TDS payment Challan.

(xiii) In the appellate proceedings, the AR submitted that the case of investor company i.e. M/s Vanshi Farms Pvt. Ltd was also assessed by the A.O. u/s 153C of the Act for the respective A.Y and the A.O. has duly verified the source of source of investment in share application money of the appellant which is from loan taken from M/s ACG Associated Capsules Pvt. Ltd. is accepted as genuine.

However, A.O. took adverse view on the basis of post search enquiries in the case of Prakash group, bank enquiries, all the companies show meager profits, all companies are situated at table place not having any infrastructures, appellant failed to produce the person conducting the operations of these companies and also the statements recorded of various persons, relating to share capital. In this regard, the AR has submitted that the A.O. failed to bring on record any evidence, contrary to the transactions of share application money received and sale of investments, which will show that amount credited in the books for making investment in shares of M/s Prakash Industries Ltd, are unexplained. It has also been submitted by the AR that the statement recorded of various persons, were bald / irrelevant and vague in nature as Shri Ved Prakash Agarwal himself stated wrong fact that capital introduced in the assessment proceedings in the FY 2007-08 while no share capital / premium received by M/s Ankit Nivesh & Management Pvt. Ltd. The alleged entry operator himself nowhere admits that he has provided accommodation entries to the appellant during any financial years under consideration.

Moreover, statements of Shri Ved Prakash Agarwal, chairman of M/s Prakash Industries Ltd. and Shri Shiv Shankar Banka, alleged entry operator have retracted their statement by filing letter before the ADIT(Inv.) on 02.11.2012 and 5.11.2012, therefore, these statement have loses its evidentiary value.

(xiv) In the appellate proceedings, the AR has submitted that it is corroborated from the documents seized from the premises of the appellant that they are not incriminating in nature, as alleged by the A.O. in the assessment order. It is further submitted by the appellant that it is proved from the material found during search at corporate office of M/s Prakash Industries Limited, Srivan, Bijwasan, New Delhi, that the investor companies, are completely controlled by Shri Ved Prakash Agarwal, Chairman of M/s Prakash Industries Ltd., without considering the fact that data including cheque books, secretarial and other records etc. seized during the search operation at premises of the appellant, are the statutory and other related documents of the appellant and other promoter group companies and lying at the premises of the appellant for the purpose of filing various statutory returns of these companies and signed blank cheque books of its group companies, were lying for paying fees, taxes and statutory dues etc. Therefore, mere availability of certain documents of promoter group companies in the premises of the appellant, does not prove that these documents were used to manipulate accounts of the investor companies.

(xv) In the appellate proceedings, the appellant has further submitted that addition made by the A.O., merely on the basis of statement of Shri Ved Prakash Agarwal, Chairman of the appellant company recorded u/s 132(4) during the course of search & seizure operation u/s 132 of the Act, cannot be considered as "documents seized" as contemplated u/s 132 of the Act in any parlance. The AR also relied upon the judgment of Hon'ble Jurisdictional High Court

of Delhi in the case of Commissioner of Income-tax v. RajPal Bhatia [2011] 333 ITR 315.

(xvi) In the appellate proceedings, the appellant has further submitted that in the assessment / reassessment under the provisions of section 153C r.w.s 153A of the Act, no proceedings was pending at the time of initiation of action u/s 132 of the Act. It is further submitted that the appellant was already assessed u/s 143(1) of the Act and therefore, assessment was not abated. Consequent to the search action u/s 132 of the Act, such assessment has to be made on the basis of incriminating material found during the course of search. If no incriminating material has been found and the A.O. had already taken a view on such particulars of income, during regular assessment proceedings, then it is not open to the A.O. to make any addition in the assessment order u/s 153C/153A of the Act, in absence of any incriminating material found in the search action u/s 132 of the Act.

(xvii) In the appellate proceedings, AR has further submitted that the signed Blank cheque books of the promoter group companies, including one of the investor company M/s Ankit Nivesh & Management Private Limited, as annexure A-22, were lying for the purpose of payments of statutory dues, fees, taxes, etc. Therefore, it is submitted that these signed blank cheque books, have no bearing / determination on transactions of alleged amount received as share capital / premium in the appellant company. It is further submitted by the AR that Statement of Shri Ved Prakash Agarwal, Chairman of the appellant company, cannot be considered "document seized", as contemplated u/s 132 of the Act.

In view of the above submission, it is also submitted by the appellant that decision of the Hon'ble Jurisdictional High Court of

Delhi in the case of CIT Vs. Kabul Chawla [2015] 61 Taxmann.com 412(Del), is squarely applicable to the facts of the appellant.

From the above, following facts emerged:

- *The assessment proceedings was not pending at the time of initiation of action u/s 132 of the Act, 30.10.2012,*
- *Reference made by the A.O. in the assessment order, is in respect of Annexure A- 2, A-3, A-8, A-13, A-14, A-28 and A-22, which contains the trial balance, resolution, auditor reports, income tax returns, cheque books and certified copy of resolutions pertaining to the assessee of certain companies and*
- *No incriminating documents were found during the course of search action u/s 132 of the Act, carried out at the premises of the appellant.*

From the above facts, it is clear that the addition made in assessment order u/s 153C/153A of the Act dated 31.3.2015, are not based on any incriminating document. As such, facts of the appellant are squarely covered by the ratio laid down by Hon'ble Jurisdictional High Court of Delhi, in the case of CIT Vs. Kabul Chawla(supra). Similarly, the statement recorded u/s 132(4) of the Act, is not a document, as has been held by the Hon'ble Jurisdictional High Court of Delhi in the case of CIT Vs. Raj Pal Bhatia [2011], 333 ITR 315 (Delhi).

In view of the above, I agree with the arguments of the appellant and therefore, no addition can be made, in absence of any incriminating document."

6.1. Apart from that, he has again after detailed discussion has reiterated this issue while dealing on merits vide paragraph 7.3.

I have carefully considered assessment order, written submission, case laws relied upon and oral arguments of Ld. AR. The objections/arguments of the appellant are discussed as under: -

(i) *Assessment u/s 153A/153Cof the Act, was completed vide order dated 31.3.2015, at total income of Rs.5,80,89,470/-, as against returned loss of Rs. 78,97,142/-, after making the following additions on account of:-*

Unexplained cash credit u/s 68 of the Act on account of share application money/premium	*Rs.6,56,85,362/-*
Unexplained expenditure on account of brokerage @0.5% :	*Rs. 3,01,250/-*
Total	*: **Rs. 6,59,86,612/-***

Therefore, it is submitted by the appellant that in absence of any incriminating document, no addition can be made u/s 153 A of the Act, when the assessment is not abated.

(ii) *In the appellate proceedings, for the above grounds, besides giving various arguments and submissions, the appellant has also relied upon the ratio laid down in the decision of the Hon'ble Jurisdictional High Court of Delhi in the case of CIT Vs. Kabul Chawla 2015, 61 Taxmann.com 412(Del), since no incriminating document was found during search action u/s 132 and also assessment was not abated.*

(iii) *In the appellate proceedings, it is further submitted by the AR that the statements recorded during search action u/s 132 of the Act, cannot be considered as a document found & seized. For this argument, the AR also relied upon the ratio laid down in the decision of the Hon'ble Jurisdictional High Court of Delhi in the case of CIT Vs. Raj Pal Bhatia [2011], 333 ITR 315 (Delhi).*

As, I have already held (supra), while deciding in ground No. 4, that in absence of any incriminating documents found during search action u/s 132 and also assessment was not abated at the

time of initiation of action u/s 132 of the Act, on 30.10.2012, no addition can be made, in the assessment order passed u/s 153A of the Act. The facts of the appellant are squarely covered by the ratios laid down in the above 2 decisions of the Hon'ble Jurisdictional High Court of Delhi. In view of these facts and circumstances, in my considered opinion, now it is not required to adjudicate the grounds No.6 and 7 and therefore, same are considered as deemed to have been allowed."

7. After hearing both the parties and on perusal of the relevant finding given in the impugned orders as well as the material placed on record, we find that, first of all, nowhere in the assessment order the Assessing Officer has given any finding that impugned addition is based on any incriminating document found during the course of search. Whatever document which has been mentioned in the seized document, are ROC, TDS returns banks cheque books for payment of taxes, fees, etc. pertaining to the assessee. Ostensibly, such documents cannot be held to be incriminating and ld. CIT(A) has already noted that none of these documents are the basis or premise of the impugned additions. Another fact noted in the appellate order is that the Assessing Officer himself has concurrently assessed all the investor companies' right from the Assessment Years 2009-10 to 2012-13 and similar additions have been made in respect of the same amount in their hands which again does not warrant any addition in the hands of the assessee company. The documents as mentioned in the seized document has already been held to be not incriminating in nature which has been duly explained by the

assessee and appreciated by the ld. CIT(A) in the foregoing paragraphs as noted above. Apart from that, even before us there has been no rebuttal that the impugned additions are based on any incriminating seized documents which is also evident from the grounds raised by the Revenue wherein it has been stated that SLP has been filed against the decision of Hon'ble Delhi High Court in the case of Kabul Chawla (supra). Further, any statement recorded of a different person in the case of another search cannot be held to be incriminating material for the purpose of assessment within the scope of Section 153A and Section 153C has held by the Ld. CIT (A) following the decision of Hon'ble Jurisdictional High Court.

8. It has been well settled by the Hon'ble Supreme Court in case of **CIT Vs. Sinhgad Technical Education Society (397 ITR 344) (SC)** wherein 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.

9. 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)"***

10. Thus, it is a well settled law in view of the following decision that no addition can be made where the assessment have not abated and were pending at the time of search, no addition can be made without any incriminating material. Thus, the finding by the ld. CIT (A) which is based on various judicial principles and on the facts of the case cannot be tinkered with without any contrary material or rebuttal by the Department, therefore same is confirmed.

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

Above decision was announced on conclusion of Virtual Hearing in the presence of both the parties on 15th September, 2021

Sd/-	Sd/-
[Dr. B.R.R. KUMAR]	**[AMIT SHUKLA]**
[ACCOUNTANT MEMBER]	**JUDICIAL MEMBER**

DATED: 15/09/2021

PKK: