

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 2894/Del/2015
(Assessment Year: 2005-06)

ACIT, Central Circle-07, Room No. 330, ARA Centre, Jhandewalan Extension, New Delhi	Vs.	CS Leasing Pvt. Ltd, R/o. A-1, CC Colony, Opp. Rana Pratap Bagh, New Delhi PAN: AAFC9884A
(Appellant)		(Respondent)

CO No. 107/Del/2016
(In ITA No. 2894/Del/2015)
(Assessment Year: 2005-06)

CS Leasing Pvt. Ltd, R/o. A-1, CC Colony, Opp. Rana Pratap Bagh, New Delhi PAN: AAFC9884A	Vs.	ACIT, Central Circle-07, Room No. 330, ARA Centre, Jhandewalan Extension, New Delhi
(Appellant)		(Respondent)

ITA No. 2885/Del/2015
(Assessment Year: 2008-09)

ACIT, Central Circle-07, Room No. 330, ARA Centre, Jhandewalan Extension, New Delhi	Vs.	Karat 087 Hotels Pvt. Ltd, 16/21, Padam Singh Road, Karol Bagh, New Delhi PAN: AALCS7171E
(Appellant)		(Respondent)

CO No. 102/Del/2016
(In ITA No. 2885/Del/2015)
(Assessment Year: 2008-09)

Karat 87 Hotels Pvt. Ltd, 16/21, Padam Singh Road, Karol Bagh, New Delhi PAN: AALCS7171E	Vs.	ACIT, Central Circle-07, Room No. 330, ARA Centre, Jhandewalan Extension, New Delhi
(Appellant)		(Respondent)

ITA No. 2882/Del/2015
(Assessment Year: 2008-09)

ACIT, Central Circle-07, Room No. 330, ARA Centre, Jhandewalan Extension, New Delhi	Vs.	SBP 87 Hotels Pvt. Ltd, R/o/ 16/21, Padam Singh Road, Karol Bagh, New Delhi, PAN: AALCS7171E
(Appellant)		(Respondent)

CO No. 100/Del/2016
(In ITA No. 2882/Del/2015)
(Assessment Year: 2008-09)

SBP 87 Hotels Pvt. Ltd, R/o/ 16/21, Padam Singh Road, Karol Bagh, New Delhi, PAN: AALCS7171E	Vs.	ACIT, Central Circle-07, Room No. 330, ARA Centre, Jhandewalan Extension, New Delhi
(Appellant)		(Respondent)

ITA No. 2880/Del/2015
(Assessment Year: 2009-10)

ACIT, Central Circle-07, Room No. 330, ARA Centre, Jhandewalan Extension, New Delhi	Vs.	Karat 87 Inn Pvt. Ltd, 18/19, WEA, Karol Bagh, Delhi PAN: AADCK5511G
(Appellant)		(Respondent)

CO No. 98/Del/2016
(In ITA No. 2880/Del/2015)
(Assessment Year: 2009-10)

Karat 87 Inn Pvt. Ltd, 18/19, WEA, Karol Bagh, Delhi PAN: AADCK5511G	Vs.	ACIT, Central Circle-07, Room No. 330, ARA Centre, Jhandewalan Extension, New Delhi
(Appellant)		(Respondent)

Revenue by :	Ms. Paramita M. Biswas, CIT DR
Assessee by:	Shri S. B. Gupta, CA
Date of Hearing	23/09/2021
Date of pronouncement	25/11/2021

ORDER

PER BENCH

1. These are the bunch of 8 appeals pertaining to three assessment years i.e. assessment year 2005 – 06, 2008 – 09 whether pronouncement may and 2009 – 10 involving identical issue therefore, these appeals are heard together and disposed off by this common order.
2. ITA No. 2880/Del/2015 is the appeal filed by the Id Asst. Id. Commissioner of Income Tax, Central Circle-7, New Delhi in case of **Karat 87 Inn Pvt. Ltd for Assessment Year 2009-10** against the order of Id CIT(A)-24, New Delhi dated 27.02.2015 raising following grounds of appeal:-
 - "1. *The order of Ld. CIT(A) is not correct in law and facts.*
 2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in quashing the order passed by the Assessing Officer by treating the assumption of jurisdiction u/s 153C bad in law by relying on the ratio of judgment of the Hon'ble High Court in the case of M/s Pepsi Foods (P) Ltd. (supra) and M/s PepsiCo India Holdings Pvt. Ltd. (Supra).*
 3. *On the fact and circumstances of the case the Ld. CIT(A) has erred in law in deciding the case without going into merits of the case."*
3. The assessee has filed cross objections in **CO No. 98/Del/2016 for Assessment Year 2009-10** raising following grounds of cross objections as under:-
 - "1. *That in the absence of challenge by the revenue in its appeal before the Hon'ble Appellate Tribunal to the finding of the Id. Commissioner (Appeal), on the basis of remand report furnished by the Assessing Officer during the course of appeal proceedings, that the Assessing Officer of the searched person had not recorded satisfaction note to the effect that the seized documents did not belong to his assessee, i.e., the person searched upon, but belonged to another person, i.e., the instant assessee, and, therefore, the appeal filed by the revenue is liable to be dismissed.*
 2. *That the addition of Rs. 77,256/- by estimating Net Profit on ad-hoc basis at 15% of Turnover is illegal and unjustified and, therefore, ought to be deleted.*
 3. *That the addition of Rs. 47,29,000/- on account of notional rent is illegal and unjustified and, therefore, ought to be deleted.*
 4. *That the addition of Rs. 1,72,63,785/- on account of documents seized from the premises of other persons pertaining to property not owned by the assessee, is illegal and unjustified and, therefore, ought to be deleted.*

5. *That no show cause notice or any other notice with respect to any adverse inference drawn by the Assessing Officer for making any addition of any nature whatsoever for the year under consideration was ever served upon the assessee and, therefore, the consequential assessment order is illegal and void.*
 6. *That the charging of interest u/s 234B is illegal, unjustified and ought to be deleted."*
4. ITA No. 2885/Del/2015 is also filed by the Id ACIT, Central Circle-7, New Delhi in case of **Karat 87 Hotels Pvt. Ltd for Assessment Year 2008-09** against the order passed by the Id CIT(A)-24, New Delhi dated 27.02.2015 raising following grounds of appeal:-
1. *The order of Ld. CIT(A) is not correct in law and facts.*
 2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in quashing the order passed by the Assessing Officer by treating the assumption of jurisdiction u/s 153C bad in law by relying on the ratio of judgment of the Hon'ble High Court in the case of M/s Pepsi Foods (P) Ltd. (supra) and M/s PepsiCo India Holdings Pvt. Ltd. (Supra).*
 3. *On the fact and circumstances of the case the Ld. CIT(A) has erred in law in deciding the case without going into merits of the case."*
5. CO No. 102/Del/2016 is filed by the assessee for Assessment Year 2008-09 as it was following grounds of appeal:-
- "1. *That in the absence of challenge by the revenue in its appeal before the Hon'ble Appellate Tribunal to the finding of the Id. Commissioner (Appeal), on the basis of remand report furnished by the Assessing Officer during the course of appeal proceedings, that the Assessing Officer of the searched person had not recorded satisfaction note to the effect that the seized documents did not belong to his assessee, i.e., the person searched upon, but belonged to another person, i.e., the instant assessee, and, therefore, the appeal filed by the revenue is liable to be dismissed.*
 2. *That the addition of Rs. 2,03,155/- by estimating Net Profit on ad-hoc basis at 15% of Turnover is illegal and unjustified and, therefore, ought to be deleted.*
 3. *That the addition of Rs. 1,50,000/- is illegal and unjustified because the entries as appearing in Page No. 107 of annexure A-72 forming part of the seized records are duly appearing in the books of accounts of the assess— being in the nature of bank withdrawals and, therefore, ought to be deleted.*
 4. *That, on the facts and circumstances of the case, the addition of Rs 4,72,90,000/- u/s 69 in respect of unexplained investment on account alleged fair market value of the property situate at 16/21, Padam Sing- Road, Karol Bagh, Delhi is illegal and unjustified*

because the said property does not belong to the assessee but belongs to other persons and therefore ought to be deleted.

5. *That the addition of Rs. 4,72,90,000/- u/s 69 is illegal because the Assessing Officer made the addition without having any incriminating document in his possession pointing out to the ownership of the assessee over the impugned property though the revenue had even searched all the premises of the assessee and in the absence of any direct incriminating material, any addition merely on the basis of fair market value hypothetically calculated by the Assessing Officer in respect of property not owned by the assessee, is illegal and unjustified and therefore, ought to be deleted.*
6. *That no show cause notice or any other notice with respect to any adverse inference drawn by the Assessing Officer for making any addition of any nature whatsoever for the year under consideration was ever served upon the assessee and, therefore, the consequential assessment order is illegal and void.*
7. *That the charging of interest u/s 234A and 234B is illegal, unjustified and ought to be deleted."*

6. ITA No. 2894/Del/2015 for **Assessment Year 2005-06** is filed by the Id ACIT, Central Circle-07, New Delhi in case **CS Leasing Pvt. Ltd** raising following grounds of appeal:-

- "1. *The order of Ld. CIT(A) is not correct in law and facts.*
2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in quashing the order passed by the Assessing Officer by treating the assumption of jurisdiction u/s 153C bad in law by relying on the ratio of judgment of the Hon'ble High Court in the case of M/s Pepsi Foods (P) Ltd. (supra) and M/s PepsiCo India Holdings Pvt. Ltd. (Supra).*
3. *On the fact and circumstances of the case the Ld. CIT(A) has erred in law in deciding the case without going into merits of the case."*

7. CO No. 107/Del/2016 is filed by the assessee **CS Leasing Pvt. Ltd** in ITA No. 2894/Del/2015 for Assessment Year 2005-06 raising following grounds of appeal:-

- "1. *That in the absence of challenge by the revenue in its appeal before the Hon'ble Appellate Tribunal to the finding of the Id. Commissioner (Appeal), on the basis of remand report furnished by the Assessing Officer during the course of appeal proceedings, that the Assessing Officer of the searched person had not recorded satisfaction note to the effect that the seized documents did not belong to his assessee, i.e., the person searched upon, but belonged to another person, i.e., the instant assessee, and, therefore, the appeal filed by the revenue is liable to be dismissed.*

2. *That, on the facts and circumstances of the case, the addition of Rs. 13,77,23,125/- u/s 69 in respect of unexplained investment, alleged as the difference between alleged fair market value of the property and the purchase consideration declared by the assessee is illegal and unjustified and therefore, ought to be deleted.*
3. *That, the addition u/s 69 of Rs. 13,77,23,125/- in respect of the property duly recorded by the assessee in its books of accounts is illegal because the mischief created by section 69 is attracted only if an asset is not recorded in the books of accounts.*
4. *That the addition of Rs. 13,77,23,125/- u/s 69 is illegal because the Assessing Officer made the addition without having any incriminating document in his possession pointing out to the payment by the assessee of any consideration over and above the consideration recorded in books of accounts though the revenue had even searched all the premises of the assessee and in the absence of any direct incriminating material, any addition merely on the basis of fair market value hypothetically calculated by the assessing officer is illegal, unjustified and therefore, ought to be deleted.*
5. *That, alternatively, on the facts and circumstances of the case, the addition of Rs. 13,77,23,125/- u/s 69 in respect of unexplained investment on account of difference between alleged fair market value of the property (Rs. 5,93,28,125/-) and the purchase consideration declared by the assessee (Rs. 2,16,05,000/-) is wrongly calculated because the difference comes to Rs. 3,77,23,125/- instead of Rs. 13,77,23,125/- as added by the Assessing Officer and therefore, ought to be deleted.*
6. *That, on the facts and circumstances of the case, the addition of Rs. 1,25,00,000/- u/s 69 in respect of unexplained investment on account of alleged accommodation entries received as beneficiaries, is illegal and unjustified and therefore, ought to be deleted.*
7. *That the addition on account of alleged accommodation entries received as beneficiaries is illegal because it is nowhere the allegation of Assessing Officer that the assessee had not recorded any asset in his books of accounts due to such alleged accommodation entries.*
8. *That the addition of Rs. 1,25,00,000/- on account of alleged accommodation entries is illegal because the addition was made without making any inquiry from the provider of amounts to the assessee. The addition is based merely upon the whims, fancies and caprices of the Assessing Officer.*
9. *That no show-cause notice or any other notice with respect to any adverse inference drawn by the Assessing Officer for making any addition of any nature whatsoever for the year under consideration was ever served upon the assessee and, therefore, the consequential assessment order is illegal and void.*

10. *That the charging of interest u/s 234A and 234B is illegal and hence ought to be deleted."*
8. The Id ACIT, Central Circle-7, New Delhi is filed ITA NO. 2882/Del/2015 for Assessment Year **2008-09 in case of SBP 87 Hotels Pvt. Ltd** against the order passed by the Id CIT(A)-24, New Delhi dated 27.02.2015 where the following grounds of appeal are raised:-
- "1. *The order of Ld. CIT(A) is not correct in law and facts.*
 2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in quashing the order passed by the Assessing Officer by treating the assumption of jurisdiction u/s 153C bad in law by relying on the ratio of judgment of the Hon'ble High Court in the case of M/s Pepsi Foods (P) Ltd. (supra) and M/s PepsiCo India Holdings Pvt. Ltd. (Supra).*
 3. *On the fact and circumstances of the case the Ld. CIT(A) has erred in law in deciding the case without going into merits of the case."*
9. **SBP 87 Hotels Pvt. Ltd in CO NO. 100/Del/2016** raising following grounds of appeal:-
- "1. *That in the absence of challenge by the revenue in its appeal before the Hon'ble Appellate Tribunal to the finding of the Id. Commissioner (Appeal), on the basis of remand report furnished by the Assessing Officer during the course of appeal proceedings, that the Assessing Officer of the searched person had not recorded satisfaction note to the effect that the seized documents did not belong to his assessee, i.e., the person searched upon, but belonged to another person, i.e., the instant assessee, and, therefore, the appeal filed by the revenue is liable to be dismissed.*
 2. *That the addition of Rs.26,509 /- by estimating Net Profit on ad-hoc basis at 15% of Turnover is illegal and unjustified and, therefore, ought to be deleted.*
 3. *That, on the facts and circumstances of the case, that the addition of Rs. 4,72,90,000/- u/s 69 in respect of unexplained investment on account of alleged fair market value of the property situate at 17A/2, WEA, Karol Bagh, Delhi is illegal and unjustified because the said property does not belong to the assessee but belongs to Mrs. Usha Gupta and therefore, ought to be deleted.*
 4. *That the addition of Rs. 4,72,90,000/- u/s 69 is illegal because the Assessing Officer made the addition without having any incriminating document in his possession pointing out to the ownership of the assessee over the impugned property though the revenue had even searched all the premises of the assessee and in the absence of any direct incriminating material, any addition merely on the basis of fair market value hypothetically calculated*

by the assessing officer in respect of property not owned by the assessee, is illegal and unjustified and therefore, ought to be deleted.

5. *That no show cause notice or any other notice with respect to any adverse inference drawn by the Assessing Officer for making any addition of any nature whatsoever for the year under consideration was ever served upon the assessee and, therefore, the consequential assessment order is illegal and void.*
6. *That the charging of interest u/s 234A and 234B is illegal, unjustified and ought to be deleted."*
10. To note down the brief facts of the case in all these appeals are identical. The facts of the case in ITA No. 2880/Del/2015 in case Karat 87 Inn Pvt. Ltd is culled out from the records and orders of the lower authorities, which shows that search and seizure u/s 132 of the Act was carried out on M/s. Sat Prakash and Brother group of cases on 28.10.2010 headed by Shri Satya Prakash Gupta. M/s. Karat 87 Inn Pvt. Ltd is one of the group companies in which Mr. Ghanshyam Gupta is director.
11. During the search on the group, certain documents relating to assessee were found and seized. Therefore, the Id AO noted that provision of section 153C are applicable in this case and therefore, he drew necessary satisfaction note and issued notice u/s 153C on 24.04.2012.
12. The assessee responded that the provisions of section 153C does not apply and is bad in law. The assessee requested to treat the return of income filed on 16.03.2010 as the return in response to the above notice. The assessee objected to that notice u/s 153C. The Id AO rejected the contention of the assessee stating that warrant was issued in the name of the assessee also. Thereafter, he proceeded to make an assessment and assessed the total income of the assessee at Rs. 6,46,79,849/- . Several additions were made. The assessee challenged the order before the LD CIT(A) on the issue of validity of issue of notice u/s 153C of the Act as well as on the merits of the case. The Id CIT(A) held that the satisfaction note recorded by the Id AO does not have any mention of any details, annexure page numbers of the documents or money, bullion, asset belonging to the appellant which has been found and seized during the course of search. Therefore, he relied on the decision of Pepsico Food Pvt. Ltd Vs. ACIT 52 Taxmann.com 220 and Pepsico Holding India Pvt. Ltd

Vs. ACIT 270 CTR 467 (Del) held that the jurisdiction has been assumed by the Id AO only on the ground that the appellant is closely related/ associated to the impugned assessee who has been searched and not because of any seized documents or assets belonged to the assessee. He held that presence of seized documents or asset belonging to the appellant is an essential and undisputed requirement of the law. He held that since such satisfaction is not given in satisfaction note recorded by the Id AO before issuing notice u/s 153C the action of the Id AO is bad in law in view of the above two decision of Hon'ble jurisdictional High Court. He further held that to assume jurisdictional u/s 153C of the Act as there has to be a satisfaction recorded in the case of the searched persons with respect to material pertaining to the third party. On enquiry of the record as well as after considering the reply of the LD AO, he noted that the LD AO of searched persons has not recorded any satisfaction note. Therefore, he quashed the assessment order on this ground. He did not deal on the merits of the addition. The LD AO is aggrieved with the order of the LD CIT(A) and therefore, has preferred this appeal.

13. The LD DR advert to the facts of the case extensively and submitted that the learned CIT – A erred in deleting the addition only on the basis of the technical ground and not considering the merits of the case. Her contention was that there are incriminating material found during the course of search pertaining to the assessee and based on this the LD AO has made addition to the total income of the assessee. He submitted that merely because the satisfaction note does not have any incriminating material referred into it, it does not mean that there is no incriminating material available. She further stated that the LD CIT(A) has wrongly deleted the addition of technical grounds. It was further stated that whether the substance is pitted against the technicalities then the Id CIT(A) has erred the giving unnecessary importance to the wording of section 153C of the Act in deciding the issue on the technicalities. Therefore, she submitted that the order of the Id CIT(A) is not sustainable.

14. The LD DR also referred to paper book containing 94 pages, which was submitted by the learned AO. She extensively referred to satisfaction note at page 1 and submitted that the assessee is non-cooperative during the assessment proceedings. She submitted that the assessee has grossly concealed its income and therefore, the issue does not need to be heard on the technical aspect. She vehemently urged that the matter should be decided not on technicalities of satisfaction note but on the merits of the case. She further submitted that looking to the quantum of the addition and the nature of the addition made by the learned assessing officer merely because the satisfaction note does not contain the reference of the incriminating material and despite no satisfaction note recorded by the AO of the searched person, the addition deserves to be upheld.
15. The LD AR extensively referred the order of the LD CIT(A). He further reiterated all the arguments raised before the Id CIT(A) once again before us and submitted that
 - a. there is no satisfaction recorded by the Id AO of searched persons and
 - b. Satisfaction recorded by the LD AO of the assessee does not refer to any of the impounded material pertaining to the assessee.

He further submitted that the issue in the case of the assessee is squarely covered in favour of the assessee by the judgment mentioned in the order of the LD CIT(A). He further submitted that revenue in the ground of appeal has not contested the finding of the learned CIT – A that when there is no satisfaction recorded in the case of searched person by the assessing officer of the searched person whole assessment order needs to be quashed in case of third party in whose case action is taken u/s 153C of the act. He therefore, submitted that this issue is reached the finality.

16. We have carefully considered the rival contentions and perused the orders of the lower authorities. The jurisdictional issue in this case is whether the satisfaction note recorded by the LD AO is sustainable in law or not. The second issue that remains is when there is no satisfaction e

recorded in the case by LD AO of the searched persons, whether assessment u/s 153C in the case of other person can be upheld or not.

17. This issue has been discussed by the Id CIT – A in para No. 4 of this order is as under:-

"4. Determination

4.1 It is noted that the appellant has challenged the order of the AO on jurisdictional issue as well as on merit. The assessment order in the appellant's case is almost identical in all respects with the assessment orders in the case of other members of the group. In the present case, the assessment orders for all the A.Ys. involved namely A.Y. 2009-10 and A.Y. 2010-11 are identical excepting for the amount involved. The submissions of the AR are also same for all the A.Ys. except for the amount involved. Hence the appeals for A.Y. 2009-10 and A.Y. 2010-11 are

4.2 I have considered the submissions of the AR and the assessment order. The orders have been passed u/s 153C r.w.s. 143(3) of the Act. Before issuing notice u/s 153C, the AO has recorded a satisfaction note. The contents of the satisfaction note is reproduced below: -

*M/s Karat 87 Inn Pvt. Ltd.
A.Ys. 2009-10 & 2010-11*

24.04.2012 Order u/s 127 received. Case of the assessee (M/s Karat 87 Inn Pvt. Ltd.) centralized by order u/s 127 of the I.T. Act, 1961 of the CIT-II, New Delhi vide F.No. CIT-II/Delhi/127 Order/2012-13/173 dated 23/04/2012

Satisfaction note

24.04.2012 A search and seizure operation u/s 132(1) of the I.T. Act was carried out at the various premises of M/s Satya Parkash & Brothers Pvt. Ltd. Group on 28.10.2010. M/s Satya Parkash & Brothers Pvt. Ltd. is engaged in the business of executing Govt, contracts working for PWD, CPWD and MCD & NDMC etc. During the course of Common Wealth Games 2010, the company executed work of street scaping & beautification of roads worth Rs. 159.05 crores. During the search, operation a large number of documents were seized which clearly indicated that the group including the assessee is earning huge profits which are reduced by introducing bogus expenses. The case of assessee namely M/s Karat 87 Inn Pvt. Ltd. is closely related/associated entity to the main assessee i.e. M/s Satya Parkash & Brothers Pvt. Ltd. In view of facts narrated above, I am satisfied that the case of M/s

Karat 87 Inn Pvt. Ltd. is a fit case for issue of notice u/s 153C of the I.T. Act, 1961. Notice u/s 153C date 24.04.2012 is issued requiring the assessee to file return of income for the A.Y. 2005-06 to 2010-11.

4.3 From the above satisfaction note, it is evident that there is no mention of any details/Annexure/Page nos. of the documents or money, bullion or assets belonging to the appellant that have been found and seized. The AO only writes that appellant is a closely related/associated entity to the main assessee i.e. M/s Satya Parkash & Brothers Pvt. Ltd. and that he was satisfied that the case of appellant is a fit case for issue of notice u/s 153. Such satisfaction is highly inadequate for assumption of jurisdiction u/s 153C. What is essential for assuming jurisdiction is the presence of seized material belonging to the appellant and a proper reason/basis to say that those seized material belong to the appellant and not to the person searched.

4.4 In the case of Pepsi Food (P) Ltd. Vs ACIT (2014) 52 taxmann.com 220 (Delhi), the Hon'ble High Court of Delhi has held that mere use or mention of the word "satisfaction" or the word "I am satisfied" in the satisfaction note would not meet the requirement of the concept of satisfaction as used in section 153C of the Act. It has been held that the satisfaction note itself must display the reasons or the basis for the conclusion that the A.O. of the searched person was satisfied that the seized documents belonged to a person other than the searched person. It has been held in the same case that the A.O. of the searched person must first arrive at a clear satisfaction that a particular documents seized did not belong to the person from whom it has been seized. Thereafter, he should form a satisfaction that the seized document belongs to such and such other person. U/s 132(4A)(i), there is a presumption that the documents seized from a person belonged to such person. There is also presumption u/s 292C(1)(i) that a document which is found from a person who was searched, would be belonging to that person. The Hon'ble High Court has held that the A.O. must at the first instance rebut such a presumption provided in the Act itself and only thereafter he should come to the conclusion or satisfaction that the seized document belonged to someone else. There must be some cogent material available with the A.O. before he arrives at a satisfaction that the seized document did not belong to the searched person but to somebody else and that surmises and conjectures cannot take the place of satisfaction.

4.5 In the subsequent case of M/s Pepsico India Holdings Pvt. Ltd. Vs ACIT (2014) 270 CTR 467 (Delhi) the Hon'ble jurisdictional of High Court of Delhi has further held that finding photocopies in the possession of a searched person would not necessarily mean that they belonged to a person who holds the originals. The possession of documents and possession of photocopies of

documents were two separate things. Further it has also been observed that one should not confuse the expression "belongs to" with the expressions "relates to" or "refers to". A registered sale deed for example "belongs to", the purchaser of the property but obviously "relates to" or "refers to" a vendor.

4.6 On considering the ratio of the two cases namely M/s Pepsi Food (P) Ltd.(supra), and M/s Pepsico India Holding Pvt. Ltd. (supra), it is seen that the assumption of jurisdiction by the A.O. u/s. 153C of the Act is bad in law. The satisfaction nowhere mentions about any seized documents as belonging to the appellant. The jurisdiction has been assumed only on the ground that the appellant is closely related/associated to the main assessee who has been searched and not because any seized documents or assets belonged to the appellant. Presence of seized documents or assets belonging to the appellant is an essential and indispensable requirement of law. Further, the Hon'ble High Court of Delhi has held that the said satisfaction should be very much emanating from the note made before issuing notice u/s 153C. The relevant para 11 & 12 of the order of Hon'ble High Court of Delhi in the case of Pepsi Foods Pvt Ltd vs ACIT (Supra) is reproduced below for ready reference:

"11. It is evident from the above satisfaction note that apart from saying that the documents belonged to the petitioner and that the Assessing Officer is satisfied that it is a fit case for issuance of a notice under Section 153C, there is nothing which would indicate as to how the presumptions which are to be normally raised as indicated above, have been rebutted by the Assessing Officer. Mere use or mention of the word "satisfaction" or the words "I am satisfied" in the order or the note would not meet the requirement of the concept of satisfaction as used in section 153C of the said Act. The satisfaction note itself must display the reasons or basis for the conclusion that the Assessing Officer of the searched person is satisfied that the seized documents belong to a person other than the searched person. We are afraid, that going through the contents of the satisfaction note, we are unable to discern any "satisfaction" of kind required under Section 153C of the said Act.

12. This being the position the very first step prior to the issuance of a notice under Section 153C of the said Act has not been fulfilled. Inasmuch as this condition precedent has not been met, the noticed under Section 153C are liable to be quashed. It is ordered accordingly. The writ petition are allowed as above. There shall be no order as to costs. "

4.7 Since such satisfaction is not coming out of the note recorded by the A.O. before issuing notice u/s 153C, the action of the A.O. is bad in law as per the above decisions of the High Court. The AO not even mentions that any documents belonging to the appellant were

found and seized. He has initiated the proceedings u/s 153C, only because assessee is related to Satya Parkash Group.

4.8 Further during appeal proceedings the AO was requested to produce copy of satisfaction note, if any, recorded in the case of "Searched Person" before handing over the seized documents to the AO of the present appellant. The AO has replied in the negative for the same. The main para of the letter seeking report from the AO on the issue and reply of the AO are reproduced below for ready reference:

Sub : Appeal proceedings in the case of Satya Prakash group of cases A.Y.A2006-07 to 2011-12-regarding-.

Ref. :- AO's letter dated 22/12/2014.

In the above cited letter the copies of satisfaction notes made in respect of different members of Satya Prakash group have been forwarded as required by this office letter of 18.12.2014. It may be clarified if the AO of the person who has been searched has also recorded a satisfaction note u/s 153C (to the effect that he was satisfied that the seized documents etc. do not belong to the searched person and that they belong to some other person in whose case proceedings u/s 153C have been initiated).

Further, if such a satisfaction has been recorded in the file of the searched person, a copy of the same in respect of the appeals as per list enclosed may be made available by 23/01/2015.

Reply of AO

On Perusal of assessment record of the searched person, it is observed that the AO had not recorded any satisfaction note in the file of the searched person, where he had mentioned that the seized documents etc. do not belongs to the searched person and the same documents belongs to some other person in whose case proceedings u/s 153C have been initiated.

4.9 From the above it is clear that the jurisdiction u/s 153C has also been assumed without fulfilling the requirements of S. 153C as interpreted in the case of DSL Properties Pvt. Ltd. Vs DCIT Central Circle-08 (2013) 33 Taxmann.com 420 (Delhi-Trib). In that case Hon'ble ITAT Delhi Bench has held that recording of satisfaction by the AO of the searched person is sine qua non for initiating action u/s 153C. Even on this count the assumption of jurisdiction in the present case fails.

4.10 Therefore, respectfully following the said ratio of the Hon'ble High Court Delhi in the case of M/s Pepsi Foods (P) Ltd. (supra) and Pepsico India Holdings Pvt. Ltd. (Supra), and the ratio in the case of DSL Properties Pvt. Ltd. Vs DCIT Central Circle-08 (2013) 33

Taxmann.com 420 (Delhi-Trib), I hereby hold that the assumption of jurisdiction u/s 153C by the A.O. was bad in law and hereby quash the order.

4.11 As the order of the A.O. is being held as invalid due to the defect in assumption of jurisdiction by following the decisions of Honourable High Court of Delhi, other grounds raised in the appeal do not survive."

18. The Id CIT(A) has extensively dealt with the satisfaction note dated 24.04.2012 recorded by the Id AO which does not have reference to any incriminating material found during the course of search. There is also no finding that such material pertaining to the assessee. Therefore, the issue is squarely covered by the decision of the Pepsico Food Products Ltd and Pepsico India holding pvt ltd. Further, based on the letter of Id AO dated 22.12.2014 referred to the para No. 4.8 of the order of the Id CIT(A), a finding is recorded that the Id AO of the searched persons has not recorded any satisfaction with respect to any of a material, which pertains to assessee company.
19. The provision section 153C are as under:-

"153C. (1) *Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—*

- (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*
- (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,*

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A :

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

Provided further that the Central Government may by rules¹³ made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.”

20. Therefore, on plain reading of the section it is apparent that there has to be a satisfaction in case of the persons searched by assessing officer that particular material or valuable articles found during the course of that search does not belong to the person who has been searched but that material is pertaining to the 3rd party. This is necessary to assume jurisdiction in the case of the third party. In present case there is no such satisfaction recorded by the learned assessing officer of the

searched person. Further, there is no reference of any material pertaining to the assessee in the satisfaction note recorded by the Id AO of the assessee i.e. third person. Thus, the issue is squarely covered in favour of the assessee. In view of the above facts and judicial precedents cited above we do not find any merit in the appeal of the learned AO in case of Karat 87 Inn Pvt. Ltd. Accordingly, same is dismissed.

21. As appeal of the Id AO is dismissed on jurisdictional issue and there is no requirement to deal with the cross objection of the assessee, which is on merit of the addition, hence, same, is also dismissed.
22. Similar, is the facts of the case in all other ITA filed by the Id AO and CO filed by the assessee. Therefore, for the reason stated above we dismiss all the appeals filed by the Id AO.
23. As the appeals of the Id AO are dismissed we do not find any reason to adjudicate all the cross objection on the merit of the addition filed by the assessee. Accordingly, same are also dismissed.
24. In the result, all the appeals filed by the Id AO are dismissed and the cross objections of the assessee are also dismissed.
Order pronounced in the open court on 25/11/2021.

-Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 25/11/2021
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi