

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B ' Bench, Hyderabad**

Before

Before Shri Rama Kanta Panda, Accountant Member

AND

Shri Laliet Kumar, Judicial Member

Sl. No	ITA No	Assessment Year	Appellant / Assessee	Respondent
1	9/Hyd/2021	2011-12	M/s. Orbit Ventures, Hyderabad. PAN : AAEF08139J	DCIT, Central Circle – 3(4), Hyderabad.
2	10/Hyd/2021	2012-13		
3	13/Hyd/2021	2017-18		
4	34/Hyd/2021	2011-12	DCIT, Central Circle – 3(4), Hyderabad	M/s. Orbit Ventures, Hyderabad. PAN : AAEF08139J
5	35/Hyd/2021	2012-13		
6	36/Hyd/2021	2017-18		

Appellant by : Shri P. Murali Mohan Rao, C.A.
Respondent by : Shri M. Satish – CIT-DR

Date of Hearing : 13.09.2022

Date of Pronouncement : 17.10.2022

ORDER

Per Laliet Kumar, J.M.

The captioned six appeals filed by the assessee and Revenue are against the separate orders passed by the learned Commissioner of Income Tax (Appeals) – 11, Hyderabad for the above-mentioned assessment years.

2. The assessee has raised the following grounds in ITA 9/Hyd/2021 for A.Y. 2011-12 :

"1. The Ld. CIT (A) erred in not adjudicating the grounds urged by the assessee on correctness of additions / disallowance on merits.

2. The Ld. CIT (A) ought to have appreciated that the provisions of section 153C of the Act is not applicable to the year under reference as the same is beyond the period of six years preceding the financial year in which the search took place.

3. The Ld. CIT(A) erred in not adjudicating the legal point that the search and seizure operation was carried out in July 2017 and that therefore, the cases to be covered are up to AY 2012-13 and not beyond and thus making the assessment for AY 2010-11 is beyond the law.

4. The Ld. CIT (A) ought to have appreciated that the A.O. erred in passing assessment u/s 153C for AY 2010-11 which is beyond time as provisions of section 153C did not empower the A.O. to make assessment for the A.Ys beyond six years preceding the financial year in which the search was made.

5. The Ld. CIT(A) erred in not adjudicating on addition of Rs. 2,00,09,000 u/s 68 of the IT. Act as unexplained deposits in the assessment order made u/s 153C of the I.T. Act, without fairly appreciating the explanations / clarifications submitted by the appellant.

6. The Ld. CIT (A) ought to have appreciated the fact that the assessee has discharged its primary onus by providing required documents, clearly establishing the source of deposit in bank.

7. The Ld. CIT (A) failed to appreciate that the A.O. erred in passing the order u/s 143(3) r.w.s 153C of the Act dated 14.12.2019 without properly analyzing and appreciating the land procurement Agreements provided.

8. The ld.CIT(A) ought to have appreciated the fact that cash deposits for the Assessment year under consideration represents the amounts received back by the firm as per MOU, advanced by Partner for procurement of Lands, in the earlier years.

9. The Ld. CIT (A) failed to appreciate the fact that the Opening Balance of Land Advances for Syndication receivable which was

carried forward from the AY 2007-08 was Rs.9,32,63,200/- and the same were received back by the appellant firm for Land Syndication Activity.

10. The Ld. CIT (A) failed to appreciate the fact that the deposits for the assessment year under consideration are nothing but the advances returned back which were given by Partner for Land Syndication Activity and it represents opening balances.

11. The Ld.CIT (A) ought to have appreciated the fact that the amount as credited in banks accounts represents the advances returned back and such advance doesn't come under the purview of income of assessee. for this assessment year.

12. The Ld. CIT (A) ought to have appreciated the fact that as per the settled law any ambiguity in the material collected by the assessing officer must necessarily be read in favour of the assessee, particularly when the question is one of taxation, under a deeming provision.

13. The Ld. CIT (A) failed to appreciate that the A.O. erred in making addition of Rs. 2,00,09,000/- without fairly and judiciously appreciating the Rs. 2,00,81,620/- submissions made by the assessee during the scrutiny proceedings.

14. The Ld. CIT (A) ought to have appreciated the fact that as per the provisions of the I.T. Act, mere cash flow of any amount cannot be considered as income in the hands of the assessee unless it is chargeable to tax as per the charging sections of the Act under any five heads of income.

15. The Ld. CIT(A) erred in initiating the penalty proceedings u/s 271(1)(c) against concealment of income without appreciating the facts.

16. The Ld. CIT (A) has erred in charging interest u/s 234A, 234B and 234C of the Act basing on the income determined in the assessment proceedings and charged at higher rate.”

3. Similar grounds are raised by the assessee in other two appeals also i.e., ITA 10 and 13/Hyd/2021 for A.Y.s 2012-13 and 2017-18, except the amounts involved in.

4. The grounds raised by the Revenue in ITA No.34/Hyd/2021 for A.Y. 2011 -12 reads as under :

" 1. The ld.CIT(Appeal) erred both in law and on facts of the case in allowing relief to the assessee.

2. The ld. CIT (Appeal) erred in deleting the addition of Rs.2,00,09,000/- made u/s 68, without giving any credence to the material seized, post search enquiries made and the enquiries made during the assessment by the assessing officer.

3. The CIT (A) erred in holding that the proceedings u/s 153C were not validly initiated and that the incriminating seized material does not pertain to the A.Y.2011-12.

4. The ld. CIT (Appeal) erred in holding that the bank accounts found during the search were already declared to the Department though the assessee filed a return for assessment year 2011-12 on 24.11.2016, in which the only account number declared is 62343105741 of SBI and not 0446102000010362 of whose cheque book was found and seized during the search.

5. The ld. CIT (Appeal) erred in ignoring the fact that even the bank account number 62116116209 of SBH, in which cash deposits were made, was not declared in the return of income filed for the assessment year concerned.

6. The ld. CIT(Appeal) did not even revert back to the assessing officer to check whether the cheque book found during the search was declared in the return but believed in the plain averments of the assessee which are factually incorrect.

7. The ld. CIT(Appeal) based on wrong facts held the initiation of proceedings v] s 153C to be invalid whereas the assessing officer has correctly satisfied himself that income in the form of deposits in the bank account had escaped assessment and accordingly initiated 153C proceedings."

5. Similar grounds are raised by the Revenue in other two appeals also i.e., ITA 35 and 36/Hyd/2021 for A.Y.s 2012-13 and 2017-18, except the amounts involved in.

6. All the three appeals filed by the assessee are barred by limitation by 11 days. It has moved a condonation petition explaining reasons thereof. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit all the three appeals of assessee for hearing.

7. First, we will take up the appeals filed by Revenue.

7.1. Before us, at the outset, both the parties submitted that the issues raised in all the appeals were identical. In view of the aforesaid submissions, we, for the sake of convenience proceed to dispose of all the captioned appeals by a consolidated order but however, refer to the facts in ITA No.34/Hyd/2021 for A.Y. 2011-12 filed by the Revenue.

8. The brief facts of the lead appeal are that assessee is a firm engaged in the business of Realtors and Developers etc. A search and seizure operation was conducted in the case of Ajaz Farooqi, who is one of the partners of assessee firm and his related business concerns and other key persons on 04.07.2017 and seized some incriminating material. On verification of seized

material, it was found that it pertains to assessee firm. Accordingly, notice u/s 153C of the Act was issued on 27.02.2019. In pursuance of the said notice, assessee filed its return of income on 09.05.2019 admitting total income of Rs.25,56,581/-. It is pertinent to mention here that assessee had filed his original return of income on 24.11.2016 declaring total income at Rs.25,56,581/- which being beyond the time limit u/s 139 of the Act was not processed and treated by the AO as Non-est. During the course of scrutiny assessment, notices u/s 142(1) of the Act and show cause notices were issued to assessee on different dates asking for various details as required. With the information submitted by the assessee, AO had completed the assessment u/s 143(3) r.w.s. 153C of the Act by computing the total income at Rs.25,56,581/- by making an addition of Rs.2,00,09,000/- as unexplained cash credits u/s 68 of the Act. Subsequently, initiated penalty proceedings u/s 271(1)(c) for concealment of income on the above addition on account of cash deposits in the bank accounts. Paragraph 33 of the assessment order is reproduced hereinbelow for the completeness of the record.

***“33.0** Accordingly an amount of Rs 2,00,09,000/- is brought to tax as unexplained cash credits of assessee firm for A.Y. 2011-12 u/s 68 of the provisions of the Income Tax Act.*

(ADDITION: Rs 2,00,09,000/-)

Subject to the above, the assessment is completed as under.

After examining the details the total income for the assessment year 2011-12 is computed as under:

Income returned	=	25,56,581/-
MAT Income		-
Loss		-
Add : Unexplained income u/s 68 (as discussed above)	= 2,00,09,000/-	= 2,00,09,000/-
Total INCOME ASSESSED		= 2,25,65,581/-
Agricultural Income Returned	=	0
Income on special rate (Capital Gain Tax) of Rs.	=	
Tax on normal rate on income		67,69,674/-
Total Tax there on		= 67,69,674/-
Less : Rebate on Agri. Income	=	0
Add surcharge @ 0%		0
Total Tax (Tax+Surcharge)		67,69,674/-
Add: Education cess @ 3%	=	2,03,090/-
Tax on total Income		= 69,72,765/-
Add: Interest u/s 234A		64,14,943/-
Interest u/s 234B		73,21,403/-
Interest u/s 234C		29,229/-
Interest u/s 234D		0
Interest u/s 234F		0
Total Interest		1,37,65,576/-
Total tax +Interest		= 2,07,38,340/-
Less: TDS	=	0
Advance tax paid	=	0
Tax paid u/s 140A		6,56,720/-
Regular Tax Paid		0
TOTAL TAXES PAID		= 6,56,720/-
Refund Issued U/s 143(1)/143(3)/154/etc		0
Balance tax payable Round off		= 2,00,81,620/-

9. Feeling aggrieved with the order of AO, assessee carried the matter before Id.CIT(A), who partly allowed the appeal of assessee after examining the material relied upon by the Assessing Officer to record satisfaction for issuance of notice u/s 153C of the Act by holding at Paras 6.1 to 7.0 as under :

“6.1 The relevant portion of satisfaction note recorded by the AO of the person referred in Section 153A and that of AO for issuing notice u/s 153C is as under :

(Satisfaction of AO of person referred to in section 153A)

<p><i>5. Specific details of the seized material on the basis of which action under sec.153 is proposed: (f) Annexure/S.No. Page Number etc (Particulars to be specified)</i></p>	<p><i>i) A/JKD/Res/01 (Cheque books) ii) A/JKD/Res/04 (pen drive) iii) A/JKD/Res/05 (copies of bank account statements and other loose sheets)</i></p>
<p><i>7. Satisfaction of the AO of the person referred to in sec.153A that the seized material referred to in s.no.5 belongs to the person referred to in s.no.4</i></p>	
<p><i>i) During the course of search and seizure operation at the residential premises of Sri. Jayanta Kumar Datta at Flat No.402, GK's Crescendo, Plot No.558 & 559, Behind Neredmet Police Station, Neredmet, Secunderabad certain incriminating material/documents were found and seized. That contains cheque books, pend rives, copies taken from contents of pendriue, copies of bank account statements and other loose sheets annexed as A/JKD/Res/01, A/JKD/ Res/04, A/JKD/ Res/05.</i></p> <p><i>ii) On perusal of the seized material, it is noticed that it contains details of bank accounts, fixed deposits, cash deposits' and other debits and credits. From the further analysis of seized material it is found that the information contained therein relates/pertains to M/ s. Orbit Ventures and M/s. Orbite Ventures is one of the firm related to Sri. Azaj Farooqi on whom a warrant u/s.132 of the act was executed on 04.07.2017.</i></p> <p><i>iii) In view of the above, findings, I am satisfied that the information contained in the seized material pertains/ relates to M/s. Orbit Ventures and same is forwarded to DCIT, CC-3(4) for necessary action u/s.153C.</i></p>	

(Satisfaction note for initiation of proceedings u/ s.153C):

"3.0 During the course of Search and seizure operation at the residence of Sri. Jayanth Kumar Datta, certain incriminating material in the form of cheque book of M/ s. Orbit ventures, pendrives, copies of contents in pendrives and loose sheets were found and seized as annexure (i) A/ JKD/ Res/ 0 1 (Cheque books) ii) A/ JKD/ Res/ 04(pen drive) iii) A/ JKD/ Res/ 05(Sheet no. 14-23) which contains the information/ details of fixed deposits and other debits and credits of the assessee firm M/ s Orbit Ventures.

4.0 On perusal and further examination, it is found that assessee from M/ s. Orbit Ventures has fixed deposits maintained at State Bank of Hyd, Tarnaka branch valued more than Rs.50,00,000 during a.y-2011-12. Further, from the evidences available, it is seen that assessee firm M/ s. Orbit Ventures has made cash deposit of Rs.2,00,09,000/- in its bank account in A.Y-2011-12.And from the records it is seen that assessee firm M/s. Orbit Ventures filed ROI for A.Y. 2011-12 on 24.11.2016 by admitting income of Rs. 25,56,581 and same is not processed by ITD and non-est.

7.0 Further, the material/documents seized during Search and Seizure operation conducted on 04.07.2017 in the case of Sri. Jayant Kumar Datta, vide annexure (i) A/ JKD/ Res/ 01 (cheque books) ii) A/ JKD/ Res/ 04(pen drive) iii) A/ JKD/ Res/ 05 (Sheet No. 14-23) and information contained therein has following contents.

a. The assessee firm M/ s. Orbit Ventures which did not file ROI for a.y-20 11-12 but has made cash deposits of Rs.2, 00,09,000/ - . Thus, I (AO) has in possession books of account or other documents or evidence which reveal that the income, represented in the form. of -asset, which has escaped assessment amounts to or is likely to amount. to fifty-lakh. rupees or more in the relevant a.y or in aggregate in the relevant a.yrs.

b. The said income has escaped assessment for a.y-2011-12 as assessee did not file ROI.

c. The search u/s.132 was conducted on 04.07.2017 i.e after 01.04.2017

6.2. On careful examination of the above satisfaction note recorded, it is seen that the material relied on by the AO to initiate proceedings u/s 153C is:

- i) A/JKD/Res/01 (Cheque books)
- ii) A/JKD /Res/04 (Pen Drive)
- iii) A/JKD/Res/05 (Sheets 14-23)

6.3 The annexure A/JKD/Res/01 (Cheque Books) was produced before me by the AO. It is seen that the same contains the current cheque books issued by the banks to the 6 different account holders, The assessee M/s. Orbit Ventures is one of them. On examination of the contents it is seen that all the cheques are blank cheques and the details contained in the record slip pertain to cheques issued from 19.11.2016 to 30.03.2017. The appellant has filed return for A.Y-2011-12 on 24.11.2016 and ,the bank account is disclosed in the books of account/balance sheet in the Return of Income. The above material can not be termed as 'incriminating seized material' pertaining to A.Y-2011-12.

6.3.1 The Annexure A/JKD/Res/04 contains working copies of back up of 4 pen drives seized during the course of Search. The annexure A/JKD/Res/05 (Sheets 14-23) contains details of the bank accounts maintained by 5 firms and the transactions in the bank accounts of the firm during the period 25.09.2014 to 20.11.2014. These are the bank accounts discussed in relation to the cheque books above. The above bank accounts stands disclosed the accounts/balance sheet filed with the Return of Income for this year and for earlier years also. The sheets (14-23 of Annexure A/JKD/Res/05) and relevant copies of the material in the pen drive (A/JKD/Res/04) only. The above material can not be termed as 'incriminating seized material' pertaining to A.Y-2011-12.

6.4 As the AO has relied on the above material only for recording satisfaction for initiating proceedings u/s.153C, it can not be said that the satisfaction is based on 'incriminating seized material' in relation to the A.Y. 2011-12.

6.5 In view of the factual position and finding as above, it is held that the proceedings u/s.153C are not validly initiated for the above years and the subsequent orders passed u/s 143(3) r. w. s 153C do not survive and are quashed.

7.0 As the proceedings initiated ss] s.153C have been held to be invalid, the other grounds raised on merits/otherwise are academic and are not adjudicated.”

10. Feeling aggrieved with the order of ld.CIT(A), assessee and Revenue both are now in appeal before us for the grounds mentioned hereinabove.

11. Before us, ld.DR submitted that ld.CIT(A) erred in quashing section 153C proceedings as not based on any incriminating material during the course of search in issue conducted on 04.07.2017. It was submitted that the Assessing Officer recorded satisfaction on the basis of the material available on record and thereafter, made addition. He had drawn our attention to the order of ld.CIT(A), more particularly, Paras 6.1 to 6.3.1 wherein the ld.CIT(A) has wrongly deleted the addition made by the Assessing Officer on the pretext that no incriminating material was found during the course of the search pertaining to the assessment year under consideration. He has sought to distinguish the decision of Hon'ble Supreme Court in the case of CIT Vs. Sinhghad Technical Educational Society and also the decision of co-ordinate Bench of the Tribunal in the case of M/s. GVK Enterprises Vs. DCIT in ITA Nos.20 to 25/Hyd/2021 and others dt.21.12.2021. It was the further contention of ld.DR that the decision in the case of M/s. GVK Enterprises (supra) is not applicable as in the said case, assessee had filed the return of income under the Income Declaration Scheme, 2016 on 04.08.2016 and thereafter, the search has taken place on 04.07.2017. It was submitted by the ld.DR that no return of income was filed under the Income Declaration Scheme by the

assessee in the present case and therefore, the return of income filed by the assessee on 24.11.2016 is required to be treated as non-est. It was also the contention of Id.DR that the last date for availing the benefit under Income Declaration Scheme, 2016 was 31.07.2017. The Id.DR has also filed the written submissions along with the copy of the bank statement, seized documents etc., in support of the case of the Revenue. We are reproducing hereinbelow the written submissions filed by the Revenue :

"In the course of hearing before the Hon'ble Bench, the assessee's AR submitted that assessee-firm M/s. Orbit Ventures has filed IDS before the Department. However, no such information was produced during assessment proceedings, appeal proceedings or produced before the Hon'ble Bench. The records available with the Department also do not show any disclosure made by the assessee-firm under Income Disclosure Scheme. The assessee-firm filed its return of income for the AY 2011-12 only on 24-11-2016 whereas the due date for filing Return of Income was 31-7-2011. Thus, the Return of Income filed for Asst.Year 2011-12 on 24.11.2016 could not be processed as it was barred by limitation. Thus, the entire averment of the assessee, that ROI was filed within the limitation period cannot be entertained. It is also submitted that the Bank Account disclosed in the ROI and the details of bank A/c. seized during search u/s 132 of the IT Act, where cash deposits were made are different and the bank account details are not disclosed in the return of income which are as under:

Sl.No Asst.Year Bank A/cs. not declared in the Return of Income in which cash deposit were made. Bank A/c. declared in the Return of Income.

<i>Sl.No</i>	<i>Asst.Year</i>	<i>Bank A/cs. not declared in the Return of Income in which cash deposit were made.</i>	<i>Bank A/c. declared in the Return Income</i>

1	2011-12	(i)A/c.62116116209 [SBH,] wherein cash deposits were made. (ii)A/c.0446102000010362 [IDBI, whose cheque book was found and seized during the search.]	A/c.62343105741, SBI
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2. As the assessee has not disclosed the bank accounts, nor the sources of deposits were explained by the assessee-firm, an amount of Rs.2,00,09,000 was 'added to the total income of the assessee u/s 68 of the IT Act. The Ld.CIT(A) has deleted the addition made in the Assessment Order dated 11.09.2020 stating that there is no nexus with the seized material and holding that there is no incriminating material for issue of notice u/s 153C of the IT Act. The Satisfaction note of the AO dt 18.02.2019 clearly mentions the contents of pendrives which form the basis for issuing notice u/s 153C of the IT Act. It is humbly submitted that during search u/s 132 at the residence of Shri.Jayanth Kumar Dutta, a pendrive marked as Pendrive-1 was seized. A document in the Pen drive was available with the path (Pendrive-1 \:Hpv220w \Pen-D \HBS(tar).docx was available wherein details of deposits and transactions in the SBH bank account No.62116116209 were available. Similar details were also available in Pendrive-2 and Pendrive-3. The bank accounts as well as credits in the bank account and the fixed deposits made thereto were not disclosed. The Ld.CIT(A) has not verified all the documents seized and has deleted the addition basing the grounds filed by the assessee without verifying the facts or the seized documents. A copy of some of the extracts of the documents from pendrives seized is submitted along with these submissions which clearly indicate the basis for issuing notice u/s 153C of the I.T Act.

3.The case-law relied by the Ld.CIT(Appeal) and the assessee is *Sinhghad Technical Education Society Vs. CIT-III, Pune* reported in 397 ITR 344 (SC)/ [2017]. In this regard, it is submitted that the above decision of the Hon'ble Supreme Court was with regard to assessments made u/s 153C for A.Ys 2000-2001 to 2005-06. The Judgment pertains to pre amended Section 153C. However, there is an amendment to Section 153C w.e.f 1-10-2014 which reads as under:

[(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, (f, 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 153A1 :] (Emphasis Supplied)

[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 1

The portion of the Section which was amended w.e.f 1-10-2014 is reproduced as under:

".....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] :]"

4. The above words in the Section 153C show that the intent of the legislation is to bring out undisclosed income of any other person wherein the documents or material was seized from the searched person as the material seized has bearing on the determination of total income of such

other person for the six preceding AYs and relevant assessment years referred to in sub-section (1) of Section 153A.

5. *As mentioned above, all the bank accounts were not disclosed in the RoI filed. These deposits in the bank accounts definitely had a bearing on the total income of assessee for AY 2011-12 as the credits in the bank account could not be explained by the assessee-firm during search nor at the time of assessment proceedings. As the material seized has bearing on the determination of the total income of the assessee-firm for the Assessment year 2011-12, the notice u/s 153C is valid.*

6. *Further as seen from the bank account statements, the assessee-firm has deposited amounts Rs.9,99,990 most of the times only to evade the reporting in banks and thus has no intention to disclose these bank accounts, credits nor pay taxes on the same.*

7. *Further, it is submitted that there is no term 'incriminating material' defined in Income Tax Act, 1961. Section 153A or Section 153C only speaks of documents, books of accounts, things, assets. These documents/material will become incriminating if there is no explanation offered regarding the sources. The seized documents in pendrives form the basis for sheets 14-13 in Annexure A/JKD/Res/05. The Ld.CIT(A) has only taken into account these documents while allowing the appeal without considering the other documents seized in pendrives. The seized documents have details of bank accounts and details of fixed deposits pertaining to the Assessment Year 2011-12 and thus have bearing on the income of the assessee for AY 2011-12 and thus there is enough material to proceed u/s 153C of the IT Act. In this regard reliance is placed on the following case laws:*

- 1) *B.Kishore Kumar vs DCIT 229 Taxman 614 (Madras)/ [2015]*
- 2) *Gopal Lal Badruka Vs DCIT 346 ITR 106 (Andhra Pradesh)/ [2012]*
- 3) *EN Gopu kumar VS CIT(2017)390 ITR 131(kerala)*
- 4) *CIT ,(Central), Kanpur Vs. Raj Kumar Arora — (2014) 367 ITR 517 (Allahabad)*

8. *In view of the foregoing, as the notice u/s 153C was issued on the basis of the seized documents pertaining to the assessment year under consideration i.e., AY 2011-12, as mentioned above, it is prayed to allow the grounds filed by the Revenue and quash the order of the CIT(Appeal)*

9. *Further, the assessee-firm could not explain the sources of cash deposits in its bank accounts during post search enquiries and also during the course of assessment proceedings. The copies of purported documents*

produced wherein huge cash advances to the tune of Rs.54 crores in total were received from various persons were proved to be not genuine during enquiries. The copies of land syndication agreements and cancellation agreements were also proved to be made up agreements as the purported creditors are persons of no means without even filing returns of income. In this regard, it is submitted to the -Hon'ble Bench that the addition made was on sound footing. It is humbly prayed to the Hon'ble Bench to sustain the addition made on merits also."

12. Per contra, ld.AR submitted that ld.CIT(A) has rightly held that there was no incriminating material found during the course of search belonging to the assessee as stipulated u/s 153C of the Act. Besides that ld.AR submitted that the Assessing Officer was aware of the return of income filed by the assessee, which is clear from the satisfaction note reproduced hereinbelow wherein the Assessing Officer mentioned that the return of income was filed by the assessee during the demonetization period and also mentioned that the details of the accounts disclosed by the assessee in the said return of income.

SATISFACTION NOTE FOR NOTICE U/S 153C FOR AY 2011-12

A copy of satisfaction note and seized material pertains/relates to M/s Orbit Ventures pertains to AY 2011-12 was received from Dy. Commissioner of Income Tax, Central Circle 3(4), Hyderabad, (being the same assessing officer), on 14.02.2019 .

2.0 As per the details, a Search & seizure operation U/s 132 of IT Act, 1961 was conducted in the case of Sri Ajaz Farooqi and his related concerns and persons on 04.07.2017 also covering residential premises of Sri Jayanth Kumar Dutta.(who is GM finance in M/s KVR Rail infra projects pvt ltd-promoted by Sri Aijaz Farooqi)

3.0 During the course of search and seizure operation at the residence of Sri Jayanth Kumar Dutta, certain incriminating material in the form of

cheque book of M/s Orbit Ventures, pendrives , copies of contents in pendrives and loose sheets were found and seized as annexure (i) A/JKD/Res/01 (cheque books) (ii) A/JKD/Res/04(pendrive) (iii) A/JKD/Res/05 (sheet no 14-23) which contains the information/ details of fixed deposits and other debits & credits of the assessee firm M/s Orbit Ventures.

4.0 On perusal and further examination, It is found that Assessee firm M/s Orbit Ventures has fixed deposits maintained at State Bank of Hyderabad, Tarnaka branch valued more than Rs 50,00,000/-during AY 2011-12. Further from the evidences available, it is seen that Assessee firm M/s Orbit Ventures has made cash deposit of 2,00,09,000/- in its bank account **in AY 2011-12.And from the records it is seen that Assessee firm M/s Orbit Ventures filed ROI for AY 2011-12 on 24.11.2016 by admitting income of Rs 25,56,581/- and same is not processed by ITD and Non-est. (emphasis supplied by us).**

5.0 It is further noted that the search operation u/s 132 in the above group had taken place on 04.07.2017(FY 2017-18) and the date of handing over of seized documents for necessary action u/s 153C is on 14.02.2019. Accordingly, the instant AY 2011-12 falls in the category "relevant assessment year" as defined by explanation 1 to section 153A of Income Tax Act.

6.0 And as per the amended provisions, the latest provisions of section 153A and 153C of Income Tax Act to issue notice for relevant Assessment year are as follows.

"Assessment in case of search or requisition.

153A. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149 section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specifies' in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years :

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this subsection pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate :

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), Specify the class or classes of cases 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:

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

(a) the Assessing Officer has in his possession books of account or oilier documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being

land or building or both, shares and securities, loans and advances, deposits in bank account....."

Assessment of income of any other person.

153 C. [(1)J [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]"

7.0 Further, the material/documents seized during search and seizure operation conducted on 04.07.2017 in the case of Sri Jayanta Kumar Dutta, vide annexure (i) A/JKD/Res/01(chèque books) (ii) A/JKD/Res/04(pendrive) (iii) A/JKD/Res/05 (sheet no 14-23) and information contained therein has following contents.

(a) The assessee firm, M/s Orbit Ventures, which did not file ROI for AY 2011-12 but has made cash deposits of Rs 2,00,09,000/- in its bank account and subsequent Fixed deposits and thus, I (assessing officer) has in possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years.

(b) The said income has escaped assessment for AY 2011 -12 as assessee did not file ROI.

(c) The search u/s 132 was conducted on 04.07.2017, i.e after 01.04.2017.

8. In view of the above facts, I am satisfied that all the three conditions specified in Sub section 1 of Section 153A of the Income Tax Act being same also for notice u/s 153C to issue notice for relevant assessment year AY 2011-12 are met and the material seized and information contained therein has bearing on the determination of the total income of assessee firm, M/s Orbit Ventures for the relevant A.Y. 2011-12 as specified in Sub Section 1 of Section 153C of the Income Tax Act. Accordingly proceedings u/s 153C are initiated and notice u/s 153C is being issued."

13. The ld.AR also submitted that the documents mentioned in Para 6.2 of the order of ld.CIT(A) in ITA 34/Hyd/2021 do not pertain to the years under consideration and that the document No.1 is the cheque book of the IDBI Bank which does not pertain to the assessment year under consideration and it pertains to A.Y. 2014-15. Similarly, the details of documents in the pen drive and five sheets do not pertain to the years under consideration. The above said aspects have been duly examined by the learned ld.CIT(A) in Paras 6.3 and 6.3.1 of his order.

14. Lastly, the ld.AR relied upon the decision in the case of M/s. G.V.K. Enterprises (supra), wherein the co-ordinate Bench of the Tribunal has decided the issue in favour of the assessee, which is identical to the facts and issues of the present case. The ld.AR had also filed the written submissions which are to the following effect :

“Brief Facts of the Case :

The appellant, M/s. Orbit Ventures, is engaged in the business of engineering, acting as consultants and advisors in all matters relating to real estate. A search and seizure operation was conducted on 04.07.2017 in the case of Sri Ajaz Farooqi and his related business concerns and other key persons. Accordingly, a notice u/s 153C of the Income Tax Act 1961, dt 27.02.2019 was issued to furnish its return of income for all the AY's. The assessee filed its return of income for all the Assessment Years under consideration on 09.05.2019.

Subsequently notice u/ s 143(2) was issued and served on assessee through email and in person' also. During the course of scrutiny proceedings, notice u/s 142(1) of the Act was' issued to the appellant directing to submit the information. for completing the assessment. Thereafter, AO completed the Assessment u/ s.143(3) r.w.s 153C of the IT Act, and being aggrieved by the above order, the appellant preferred an appeal before Ld. CIT(A) Hyderabad: The Ld. CIT(A) has accepted the submissions 'made by the assessee and allowed the appeal in favour of assessee and deleted the impugned additions made by the AO.

Being aggrieved by the order of the Ld. CIT (A), both the Assessee and Revenue has preferred an appeal before the Hon'ble ITAT, Hyderabad.

1. We would like to, humbly, submit certain cross objections and clarifications on the main issue raised by the Revenue against the order of Hon'ble CIT(A), for your kind consideration as follows :

2. The impugned second appeal has arisen at the instance of Revenue out of the appellate order passed by the Hon'ble CIT(A). The first appeal by the assessee against the order of assessment by Assessing Officer, the Hon'ble CIT(A) has allowed the appeal, quashing the orders u/ s 143(3) r.w.s. 153C of the Act. The appeal is allowed by adjudicating the assessment orders as not maintainable and not as per law. The CIT(A) has observed that the satisfaction recorded by Assessing Officer basing on the availability of bank cheque books was adjudged as not an incriminating material proceeding u/ s 153C of the Act. The CIT(A) also observed that the bank transactions relating to cheque books have been duly accounted for and therefore, cannot be treated as incriminating. Thus, quashed this order as bad-in-law.

The gist of the appeal order of the CIT(A) is reproduced here under, for the sake of brevity and for clear understanding:

"6.2 On careful examination of the above satisfaction note recorded, it -is seen that the material relied on by the AO to initiate proceedings u/s 153C is

- i) A/JKD/Res/01 (Cheque books)
- ii) A/JKD/Res/04 (Pen Drive)
- iii) A/JKD/Res/05 (Sheets 14-23)

6.3 The annexure A/JKD/Res/01 (Cheque Books was produced before me by the AO. It is seen that the same contains the current cheque books issued by the banks to the 6 different account holders. The assessee M/s. Orbit Ventures is one of them. On examination of the contents it is seen that all the cheque's are blank cheques and the details contained in the record slip pertain to cheques issued from 19.11.2016 to 30.03.2017. The appellant has filed return for A.Y. 2017-18. on 31.03.2018 and the bank account is disclosed in the books of account/balance sheet in the Return of Income. The record slip of the bank cheque book of the appellant contains details of cheques issued during the period 19.11.2016 to 30.03.2017. The question arises whether such details amount to "incriminating seized material?" I am of the opinion that mere cheque book of the appellant which is reflected in the accounts/balance sheet alone cannot be treated as 'incriminating evidence' based on which proceedings u/s 153C.can be initiated.

6.3.1 The Annexure A/JKD/Res/04 contains working copies of back up of 4 pen drives seized during the course of Search. The annexure A/JKD/Res/05 (Sheets 1423) contains details of the bank accounts maintained by 5 firms and the transactions in the bank accounts of the firm during the period 25.09.2014 to 2011.2014. These are the bank accounts discussed in relation to the. cheque books above. The above bank accounts stands disclosed in the accounts/balance sheet filed with the Return of Income. The sheets (14-23) of Annexure A/JKD/Res/05) and relevant copies of the material in the pen drive (A/JKD/Res/04) only. The above material cannot be termed as. 'incriminating seized material pertaining to A .Y. 2017-18.

6.4 As the AO has relied on the above material only for recording satisfaction for initiating proceedings u/s 153C, it cannot be said that the satisfaction is based on incriminating seized material' in relation for the A Y. 2017-18.

6.5 In view of the factual position and finding as above, it is held :that the proceedings u/s 153C are. not validly initiated for the above years and the subsequent orders passed u/s 143(3) r.w.s. 153C do not survive and are quashed.

7.0 As the proceedings initiated u/s 153C have been held to be invalid, the other grounds raised on merits/otherwise are academic and are not adjudicated.

3. The being so, aggrieved of the above order, the Department has filed the above appeal raising certain grounds which are not exactly originating from the appellate order. To have better understanding of the grounds raised by the Department the same are reproduced here under:

"1. The Ld. CIT(Appeal) erred both in law and on facts of the case in allowing relief to the assessee.

2. The Ld. CIT(Appeal) erred in deleting the addition of Rs. X,XX,XX,XXX/- made u/s 68 without giving any evidence to the material seized, post search enquiries made and the enquiries made during the assessment by the assessing officer.

3. The CT(A) erred in holding that. the proceedings u/s 153C were not validly initiated as the incriminating seized material does not pertain to the A. Y. 2017-18.

4. The Ld. CIT(Appeal) erred in holding that the bank accounts found during the search were already declared to the Department though the assessee filed return for the assessment year 2017-18, in which the only account number declared is 62343105741. of SBI and not 0446102000010362 of IDBI, whose cheque book was found and seized during the search.

5. The Ld. CIT(Appeal) erred in ignoring the fact that even the bank 'account number '446102000010487 of IDBI, in which cash deposits were made, was not declared in the return of income filed for the concerned assessment year.

6. The Ld. CIT(Appeal) did not even. revert back to the assessing officer to check whether the cheque book found during the search and declared in the return but believed in the plain annexure of the assessee which are factually incorrect.

7. The Ld. CIT(Appeal) based on wrong facts held the initiation of proceedings u/s 153C to be invalid whereas the assessing officer has correctly satisfied himself that the seized material evidenced cash deposits in the bank account and ,accordingly initiated 153C proceedings.

8. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary. "

4. As could be observed from both the above appellate decisions of the CIT(A) and the grounds of appeal raised by the Revenue in the appeal, it can be clearly comprehended that the grounds raised are not originated from the grounds of decision of the CIT(A). Some grounds are raised basing on the facts which are not decided by the CIT(A) on merits. We would like to clarify the ground wise objections raised, and the decision rendered in the appellate order by the Hon'ble CIT(A), strongly objecting for the grounds raised by the Revenue.

4.1 Ground No. 1 is general in nature. Vide ground ,No.2, the Revenue has assailed the deletion of addition u/ s 68 of the Act on the facts of the case. However, the ground raised is not originated from the decision of CIT(A) and thus the ground raised is, baseless. This is so, because of the fact that the assessment order u/ s 143(3) was quashed on legal front as per para 7 of the decision of Hon'ble CIT(A). Thus, the ground raised has no base and it has no direct relation with the decision made by the CIT(A) in quashing the order on legal front.

4.2 As regards to the Grounds Nos.3, 4, and 5. raised by Revenue in respect of satisfaction for bringing the case to the scrutiny basket u/s 153C of the Act, on alleged reasons of non-mentioning of and non-accounting for deposits in IDBI Bank account, it may be humbly submitted that, actually the IDBI Bank account has, only been opened on 07.05.2016, i.e., in the financial year 2016-17 relevant to assessment year 2017-18 only. Thus, the IDBI account for the Assessment years 2016-17 and that of earlier years, is not existing at all to say that the IDBI account has not been mentioned in the return of. income. In view of the above factual matrix alone, the satisfaction arrived at by the Assessing Officer's concerned for these years (2011-12, 2012-13), is not with strong reasons and not based on facts of the case. It is to further submit that the account number of Assessee's IDBI Bank has been mentioned wrongly in grounds raised by the Revenue as 0446102000010362 instead of 0446102000010487.

4.3 It may be appropriate to mention here that the basic satisfaction of the Assessing Officer, assessing the searched party u/ s 153A of the Act and the impugned Assessing Officer for making The assessee's income u/ s 153C, are the very noticing of cheque books of bank and presumed non-admission of the 'IDBI Bank account in the returns. The ground raised on the particular issue by the Revenue- for 2011-12 & 2012-13 on the facts emanating is without any base and not maintainable for these years. This satisfaction for the Assessment years 2011-12,, 2012-13 and A.Y. 2017-18 is not correct for the reason that the IDBI account does not exist during the

previous years relevant for AY 2016-17 and earlier years. Therefore, the satisfaction recorded is not as per the provisions of section 153C of the Act on bringing the assessments within the ambit u/ s 153C of the Act for 2011-12, 2012-13 and A.Y. 2017-18 and thus the assessment is beyond the law.

4.4 While deciding the appeal, the Hon'ble CIT(A) has thoroughly examined this aspect and has rightfully allowed the appeal of the assessee by quashing' the assessment order. Hence, the orders of the CIT(A) are lawfully correct as they were passed after thorough examination and giving lucid reasoning.

4.5 Even in respect of assessment year 2017-18, the ground raised on the particular issue by the Revenue for 2017-18 on the facts emanating is without any base and not maintainable for this year. This satisfaction for the year 2017-18, is not correct for the reason that the IDBI account has already been recorded and the transactions have been duly admitted in the return of income. Therefore, the satisfaction recorded is not as per the provisions of section 153C. of the Act on bringing the assessments within the ambit u/ s 153C of the Act for 2017-18 and thus the assessment is, beyond the law. '

4.6 Through ground No.6, the Revenue had assailed the decision of CIT(A) in not reverting the issue to the Assessing Officer, which appears to be baseless, as the appellate authority has verified the facts of admission of bank transactions and reporting of bank accounts in the return of income.

5. Now, in the present appeal before the Hon'ble ITAT, the Revenue has, through ground Nos.3, 4 and 5, contended on factual ground that the assessee has not admitted IDBI account number and that is the reason for converting the case for block assessment u/ s 153C. But, as a matter of fact, as already stated supra, for the financial years relevant for assessment year 2016-17 and for earlier years the IDBI account does not exist. For the assessment year 2017-18, the assessee has duly recorded the bank account. in the books of. account and while deciding the appeal, the Hon'ble CIT(A) had made a specific mention in the order stating that it is. not incriminating seized material.

6. Further to this, for the assessment years 2015-16 and 2016-17, the returns have been filed well before the conduction of search u/ s 132 of the Act. in the returns of income the particulars of the bank account and the transactions relating to the SBI have duly been recorded and disclosed in accounts/balance sheet filed, along with return of income. Therefore, it cannot be said that the bank cheque books and bank transactions noticed in the

course of search and seizure operation in another parties premises ,as incriminating material leading to initiation of, assessment proceedings u/s 153C of the Act. Thus, the assessment proceedings u/ s 153C of the Act on the invalid satisfaction note is not valid in the eyes of law.

7. *As regards to the admission of bank transactions in IDBI in the financial year 2016-17 relevant to the assessment year 2017-18, it may be again reiterated that the assessee has duly reflected the transactions in the regular books of account and thus, there is no missing information in order to infer that the bank account found' is incriminating material.*

8. *Even in respect' of satisfaction note for making assessment u/s 153C of the Act by both Assessing Officer of the searched person and the impugned assessee on the alleged reason on. non-admission of the transactions, we have duly 'admitted the above transaction in the books of account/return. of income and that there is no reason for satisfying that the assessee's income/ transactions had escapement of admission of certain transaction and for picking up the cases for making assessment u/s 153C of the Act for all. six years, by treating wrongly the bank cheque books as incriminating material.*

9. *While adjudicating: the issue, on appeal the Hon'ble CIT(A) had also held clearly that the satisfaction recorded for making, assessment u/s 153C is not on related and reasonable grounds and thus had quashed the order u/ s 153C of the Act. The Ld. CIT(A) has categorically and with lucidly decided the issue clearly stating in the order that the satisfaction recorded by the Assessing Officer's concerned is not relevant grounds on facts for making assessment u/ s 153C of the Act for block periods. Therefore, the grounds, of appeal raised on the same issue by Revenue before ITAT is un-tenable, un-reasonable,. devoid of any merits and therefore, liable to be-quashed.*

10. *In fine, as a decisive point, it may be re-affirmed that through the ground No's.3, 4 and 5, the revenue has assailed the Appellate Order of the CIT(A), contending that the IDBI account was not declared in the return of income, which contention is baseless, devoid of merits and un-sustainable to the text of legal scrutiny. Further, this ground of Revenue is incorrect because, as clearly stated in earlier paragraphs the account transactions in IDBI bank have already been shown in assessment year 2017-18. For assessment year 2016-17 and earlier years, there is no existence of the IDBI Bank account and thus, the reasons for satisfaction for making assessment u/ s 153C for those years before 2017-18 are undoubtedly not reasonable and lawfully incorrect. In regard to assessment year 2017-18, also the bank account transactions and the bank account details have been duly admitted in the return of income. Therefore, the cheque books of the bank account found during the course of search and seizure*

operation cannot be, in any stretch of imagination and ,in the eyes of law, be treated as incriminating material for taking up the case for scrutiny in terms of section 153C of the Act. Thus, the orders were rightfully dismissed by the Hon'ble CIT(A) and that there is no infirmity or error in the order of appeal.

- *Relevant Extract of Bank Statement containing the account opening date is reproduced below for your kind consideration:*

- **Picture of IDBI Bank account.**

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In view of the above submissions and facts of the case, Assessee places reliance on the following case law:

- *Decision of Hon'ble ITAT, Hyderabad in the case of M/S. GVK. Enterprises vs DCIT having citation ITA No: 20 to 25/H/2021 is as follows:*

"We find no merit in the Revenue's instant argument. since not only hon'ble apex court's recent decision in CIT Vs. Sinhghad Technical Educational Society. (supra) but also various decisions of hon'ble high courts i.e. CIT vs. Kabul Chawla (2016) 360 ITR 573 (Del), CIT Vs. Salasar Stock Broking Limited (Calcutta, high court) inG.A.NO.1929 of 2016 dt.24.08.2016 and CIT vs. Continental Warehousing Corporation (2015) 374 ITR 64 (Bom) to name a few, indeed support the assessee's case that the impugned proceedings could be taken recourse to only in case of incriminating material to have been found or seized during the course of search. Hon'ble jurisdictional high court's judgment (supra) quoted at Revenue's behest also nowhere holds that such an assessment is valid even in absence of the foregoing incriminating material. Their lordships rather observe that whilst framing an assessment u/s 153A / 153C, the Assessing Officer is nowhere barred from taking cognizance of any other material as well.

7. Now comes the equally important question as to whether the assessee's return(s) in issue would be treated as invalid being belated ones or not. Our reply is negative in assessee's favour and against the department.

This is because of the fact that the assessee had filed its return(s) under the Income Declaration Scheme, 2016 on 04.08.2016 followed by the search in issue dt.04.07.2017. The Revenue's argument that it had not filed any return in the corresponding assessment year u/s 139(1) of the Act, we are of the opinion that the decision as to whether the income sought to be added as under the head "undisclosed income" has to be

seen on the date of search only which purely stands satisfied in the facts of instant appeal. We further wish to observe here that the assessee's returns filed under 2016 scheme stands stood duly accepted as there is no ground in Revenue's pleadings to the contrary. 8. Learned CIT-DR lastly contended that the assessee had not disclosed its IDBI bank account in the computation corresponding to the alleged returns filed in the year 2016. We find no substances in the instant last argument as well since' a perusal of the corresponding account documents indicate that the same had been opened only on 05.08.2016 and therefore, it could not be treated as an undisclosed bank account in assessment years 2010-11 to 2016-17 to say the least. So far as the last A. Y. 2017-18 is concerned, it is made clear that the relevant proceedings therein are in the search year itself only: We therefore decline the Revenue's foregoing arguments in light of all the relevant facts and circumstances forming part of record before us. Revenue's five appeals i.e. ITA 45 to 49/Hyd/2021 seeking to reverse the CIT(A)'s identical -action quashing the impugned section 153C assessments fail accordingly. "

15. We have heard the rival submissions and perused the material on record. This is a case where incriminating material was found and seized during the course of search operation conducted in the case of one of the partners of assessee firm by name, Ajaz Farooqui and his related business concerns. During the course of assessment, Assessing Officer, based on verification of entire records of assessee firm and also on the reply submitted by the assessee firm in pursuance to notice u/s 153C made an addition of Rs.2,00,09,000/- as unexplained cash credits u/s 68 of the Act and also initiated penalty proceedings for concealment of income on the above addition. The Id.CIT(A) in Paras 6.3 and 6.3.1 of his order (reproduced hereinabove) had examined the documents found during the course of alleged search, thread bear

and held that none of the documents / pen drive belong to / pertain to the years under consideration.

16. The ld.DR for the Revenue has failed to point out any incriminating document found during the course of search pertaining to / belonging to the assessee firm relevant to the assessment years under consideration from the records of Assessing Officer as well as from the record of the Tribunal which formed basis of making the addition in the hands of assessee. The law is fairly settled that no addition can be made in the hands of assessee u/s 153C in the absence of any incriminating material pertaining to the assessee firm for the years under consideration. Further, the assessee in this case had filed return of income which was duly noticed by the Assessing Officer at the time of recording satisfaction, however, despite knowing the return of income and alleged non-disclosure of the bank account in the return of income, the Assessing Officer has not resorted to proceed u/s 147 / 148 of the Act. In the present case, as mentioned above, a search was carried out in the premises of Ajaz Farooqui, one of the partners of the assessee firm, and his related business concerns and some incriminating material / documents were found and seized. However, the documents so found do not pertain to the years under consideration and therefore, cannot form the basis for making an addition in the hands of assessee under section 153C of the Act.

17. The ld.DR had filed the written submissions along with the documents on 20.09.2022 (the written submissions are reproduced hereinabove). The copy of the relevant extract from the working of the seized pen drives and also the other seized material are filed and the same are placed at pages 26 to 45.

18. The summary of the documents seized and filed by the Revenue are as under :

Page No.	Document	Date	Whether any addition was made by the Assessing Officer on such document or not
26	Letter to the Chief Manager, State Bank of Hyderabad for creating the FDR for 1.45 crores in favour of M/s. Orbit Ventures	27.01.2021	No
27	Letter to the Chief Manager, State Bank of Hyderabad for creating the FDR for 20 lakhs in favour of M/s. GVK Enterprises.	06.01.2011	No
28	Excel Sheet showing entries pertaining to various dates.		No
29	Statement of FD at SBH, Maredpalli for creating the 25 FDR valuing to Rs.11,98,00,000/- in favour of 1) M/s. Anka Relators, 2) GVK Enterprises, 3) Royal Engineering, 4) Ace Constructions and 5) Orbit Ventures.		No
30	Statement showing the FD details of SBH, Medchal Branch		No
31 to 35	Letters addressed to the Chief Manager, SBH, Tarnaka Branch transferring of Rs.29 lakhs in favour of M/s. Orbit Ventures by M/s. Anka Relators, 2) GVK Enterprises, 3) Royal Engineering and 4) Ace Constructions		No
36 to	Excel sheets showing various entries		No

45	pertaining to the period from 29.09.2014 to 20.11.2014, 18.09.2014 to 07.11.2014, 29.11.2014 to 16.10.2014, 10.01.2014 to 20.11.2014, 10.11.2014 to 20.11.2014, 10.01.2014 to 20.11.2014, 25.09.2014 to 20.11.2014 and 25.09.2014 to 20.11.2014		
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19. The perusal of the assessment order clearly shows that the addition was made in the hands of the assessee on account of cash deposit made on 13.04.2010 to 05.03.2011 as mentioned in Paragraphs 5 to 7 of the assessment order which is to the following effect :

“5.0 During this assessment year 2011-12, the Assessee firm has made following cash deposits totaling to Rs 2,00,09,000/- in the bank account, bearing No. 62116116209, of Assessee firm maintained at State Bank of Hyderabad:

Cash Deposits made by M/s. Orbit Ventures in Account No.62116116209 in State Bank of India / State Bank of Hyderabad, Tarnaka, Hyderabad			
Sl.No.	Date	Details	Cr. Amount
1	13.04.2010	Cash deposit by self	999800
2	15.04.2010	Cash deposit by self	999800
3	22.04.2010	Cash deposit by self	999900
4	14.05.2010	Cash deposit by self	999900
5	15.05.2010	Cash deposit by self	999900
6	18.05.2010	Cash deposit by self	999900
7	19.05.2010	Cash deposit by self	999900
8	31.05.2010	Cash deposit by self	999900
9	01.06.2010	Cash deposit by self	999900
10	06.01.2011	Cash deposit by self	999900
11	07.01.2011	Cash deposit by self	999900
12	11.01.2011	Cash deposit by self	999900
13	12.01.2011	Cash deposit by self	999900
14	24.01.2011	Cash deposit by self	999900
15	25.01.2011	Cash deposit by self	999900
16	27.01.2011	Cash deposit by self	999900

17	28.01.2011	Cash deposit by self	999900
18	29.01.2011	Cash deposit by self	999900
19	31.01.2011	Cash deposit by self	999900
20	07.01.2011	Cash deposit by self	999900
21	05.03.2011	Cash deposit by self	11300

6.0 It is also noted from the records that the assessee firm has made similar cash deposits in its bank accounts in other years also as per following details.

<i>M/s Orbit Ventures</i>			
<i>FY</i>	<i>AY</i>	<i>Account No.</i>	<i>Cash Deposits</i>
2009-10	2010-11	SBH, 62116116209	3,09,94,600
2011-12	2012-13	SBH, 62116116209	42,84,600
		SBH, 62187035052	1,50,08,500
2012-13	2013-14	SBH, 62187035052	99,58,900
2014-15	2015-16	SBH, 62343105741	1,30,07,600

7.0 Further it is also observed that similar cash deposits were also made into the bank accounts of "some other firms" promoted by Sri Ajaz Farooqi as per following details.

Cash deposits made into bank accounts of the firms during F.Y. 2009-10 to 2014-15					
FY	M/s. Ankaa Realtors	M/s. GVK Enterprises	M/s. Ace Constructions	M/s Royal Engineering	Total
2009-10	2,99,94,800	3,09,94,100	3,09,94,700	3,29,94,300	12,49,77,900
2010-11	2,10,09,400	2,00,09,750	2,00,08,900	1,90,09,300	8,00,37,350
2011-12	1,90,08,100	1,90,08,100	1,90,08,100	1,90,08,100	7,60,32,400
2012-13	99,58,900	99,58,900	99,58,900	99,58,900	3,98,35,600
2014-15	1,40,07,100	1,40,07,100	1,50,07,000	1,40,07,300	5,70,28,500
Total	9,39,78,300	9,39,77,950	9,49,77,600	9,49,77,900	37,79,11,750

20. From the perusal of the assessment order and the seized material, it is clear that no addition has been made by the Assessing Officer based on the incriminating material. Therefore, the plea of the Revenue that the additions were made on the basis of the seized material is without any basis. Further, we may point out that the Assessing Officer had also examined the return of income filed by the assessee in response to the notice which was duly considered by him and the income already been declared was considered while computing the total income for Rs. 2,25,65,581/-. Thus, the additions made by the Assessing Officer were not based on the incriminating material and hence, the action on the part of the Id.CIT(A) in our opinion is in accordance with the law.

21. We also draw support from the decision of the Tribunal in the case of the sister concern of the assessee titled as M/s. G.V.K. Enterprises Vs. DCIT (ITA Nos.20 to 25/Hyd/2021 and others dt.21.12.2021) wherein the co-ordinate Bench of the Tribunal had deleted the addition u/s 153C of the Act by holding as under :

"5. We have given our thoughtful consideration to rival contentions. Learned CIT-DR vehemently contended during the course of hearing that the impugned lower appellate findings are not sustainable in law since there existed ample incriminating material as per the Assessing Officer's sec 153C satisfaction. And that the CIT(A) has wrongly held the assessee to have filed its returns for A.Y. 2010-11 onwards validly whereas the same had been submitted only in the year 2016 i.e. on 04.08.2016 to be precise which ought to be treated as invalid ones being belated. He quoted case laws Gopal Bhadraka Vs.

DCIT 346 ITR 106 (Andhra Pradesh), E.N. Gopakumar Vs. CIT (2017) 390 ITR 131 (Kerala), ITA 270 of 2014 CIT Vs. Kesarwani Zarda Bhandar and CIT Vs. Raj Kumar Arora (2014) 367 ITR 517 (Allahabad) that it is nowhere necessary to initiate and frame section 153A / 153C assessments only in case of incriminating material found / seized during the course of search.

6. *We find no merit in the Revenue's instant argument since not only hon'ble apex court's recent decision in CIT Vs. Sinhghad Technical Educational Society (supra) but also various decisions of hon'ble high courts i.e. CIT vs. Kabul Chawla (2016) 360 ITR 573 (Del), CIT Vs. Salasar Stock Broking Limited (Calcutta high court) in G.A.No.1929 of 2016 dt.24.08.2016 and CIT Vs. Continental Warehousing Corporation (2015) 374 ITR 64 (Bom) to name a few, indeed support the assessee's case that the impugned proceedings could be taken recourse to only in case of incriminating material to have been found or seized during the course of search. Hon'ble jurisdictional high court's judgment (supra) quoted at Revenue's behest also nowhere holds that such an assessment is valid even in absence of the foregoing incriminating material. Their lordships rather observe that whilst framing an assessment u/s 153A / 153C, the Assessing Officer is nowhere barred from taking cognizance of any other material as well.*

7. *Now comes the equally important question as to whether the assessee's return(s) in issue would be treated as invalid being belated ones or not. Our reply is negative in assessee's favour and against the department. This is because of the fact that the assessee had filed its return(s) under the Income Declaration Scheme, 2016 on 04.08.2016 followed by the search in issue dt.04.07.2017. The Revenue's argument that it had not filed any return in the corresponding assessment year u/s 139(1) of the Act, we are of the opinion that the decision as to whether the income sought to be added as under the head "undisclosed income" has to be seen on the date of search only which purely stands satisfied in the facts of instant appeal. We further wish to observe here that the assessee's returns filed under 2016 scheme stands stood duly accepted as there is no ground in Revenue's pleadings to the contrary.*

8. *Learned CIT-DR lastly contended that the assessee had not disclosed its IDBI bank account in the computation corresponding to the alleged returns filed in the year 2016. We find no substances in the instant last argument as well since a perusal of the corresponding account documents indicate that the same had been opened only on 05.08.2016 and therefore, it could not be treated as an undisclosed bank account in assessment years 2010-11 to 2016-17 to say the least. So far as the last A.Y. 2017-18 is concerned, it is made clear that the relevant proceedings therein are in the search year itself only. We therefore decline the Revenue's foregoing arguments in light of all the relevant facts and circumstances forming part of record before us. Revenue's five appeals i.e. ITA 45 to 49/Hyd/2021 seeking to reverse the CIT(A)'s identical action quashing the impugned section 153C assessments fail accordingly.*

8. *The assessee's six cross appeals ITA 20 to 25/Hyd/2021 are dismissed as withdrawn in light of our findings recorded in the Revenue's foregoing appeals.*

No other ground has been pressed before us.

10. *To sum up, the Revenue's five appeals ITA 45 to 49/Hyd/2021 are dismissed whereas the assessee's cross appeals ITA 20 to 25/Hyd/2021 are dismissed as withdrawn. A copy of this common order be placed in respective case files."*

22. In view of the above discussions and in view of the support drawn from the decision of Co-ordinate Bench of the Tribunal in the case of M/s. G.V.K. Enterprises (supra), we dismiss the appeals filed by the Revenue. Though, the Id.DR had sought to distinguish the decision on the pretext that the assessee has not gone to the Income Declaration Scheme, 2016. However, we have already mentioned that once the assessee had filed the return of income and the same was also considered by the Assessing Officer at the time of assessment, therefore, non-

availing of IDS will not be a reason to distinguish the case. Further, we do not find any material on record to demonstrate that the order of Tribunal in the case of M/s. G.V.K. Enterprises (supra) has been set aside / stayed / overruled by any higher judicial forum. No other ground has been adjudicated by us, as the appeals of the assessee are liable to be dismissed on the sole ground adjudicated by us while deciding Revenue appeal. Accordingly, the appeal of Revenue in ITA No.34/Hyd/2021 for A.Y. 2011-12 is dismissed.

23. In the result, the appeal of Revenue in ITA No.34/Hyd/2021 is dismissed.

24. As far as the other two appeals of Revenue are concerned, in view of the submission of both the parties that the issues raised in A.Y. 2011-12 are identical to the other assessment years, we for the reasons stated hereinabove while deciding the appeal in ITA 34/Hyd/2021 and for similar reasons, dismiss the remaining two appeals of Revenue.

25. In the result, all the three appeals filed by the Revenue are dismissed.

26. Now coming to the appeals of assessee, the same are dismissed in view of the findings recorded in the Revenue's captioned appeals. No other ground has been pressed before us.

27. In the result, all the appeals filed by the assessee are dismissed as infructuous.

28. To sum up, all the captioned appeals filed by the Revenue are dismissed and the appeals of assessee are dismissed as infructuous. A copy of this common order is placed in respective case files.

Order pronounced in the Open Court on 17th October, 2022.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 17th October, 2022.

TYNM/sps

Copy to:

S.No	Addresses
1	M/s. Orbit Ventures, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad – 500082.
2	Deputy Commissioner of Income Tax, Central Circle – 3(4), Hyderabad.
3	CIT (Appeals) – 11, Hyderabad.
4	PCIT (Central), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order