

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

Before Shri George George K, JM & Ms.Padmavathy S, AM

ITA No.18/Bang/2021 : Asst.Year 2006-2007
ITA No.19/Bang/2021 : Asst.Year 2007-2008
ITA No.20/Bang/2021 : Asst.Year 2008-2009
ITA No.21/Bang/2021 : Asst.Year 2009-2010
ITA No.22/Bang/2021 : Asst.Year 2010-2011
ITA No.23/Bang/2021 : Asst.Year 2011-2012

M/s.Silicon Estates #14, 6 th Floor, Geneva House Cunningham Road Bangalore – 560 001. PAN : ABEFS6150N.	v.	The Deputy Commissioner of Income-tax, Central Circle 1(4) Bengaluru.
(Appellant)		(Respondent)

Appellant by : Sri.Tata Krishna, Advocate
Respondent by : Sri.K.Sankar Ganesh, JCIT –DR

Date of Hearing : 10.11.2022	Date of Pronouncement : 14.11.2022
-------------------------------------	---

ORDER

Per Bench :

These appeals at the instance of the assessee are directed against six separate orders of the CIT(A), all dated 24.11.2020. The relevant assessment years are 2006-2007 to 2011-2012. Common issues are raised in these appeals, hence, they were heard together and are being disposed off by this consolidated order.

2. The brief facts of the case are as follows:

The assessee is a partnership firm. It is engaged in the business of real estate and development of projects. A search

was conducted u/s 132 of the I.T.Act in the premises of M/s.H.M. Construction on 30.06.2011. Consequent to the search action, the case of the assessee was centralized from Income Tax Officer, Ward 8(1), Bangalore to the office of the Deputy Commissioner of Income-tax, Central Circle 1(4), Bangalore, vide order dated 25.11.2011. Notice u/s 153C of the I.T.Act was issued to the assessee for assessment years 2006-2007 to 2011-2012. In response to the notice issued u/s 153C of the I.T.Act, the assessee filed returns of income for assessment years 2006-2007 to 2011-2012 on 11.05.2012. The details of the relevant assessment years, return of income filed pursuant to the notice u/s 153C of the I.T.Act, are detailed below:-

Sl. No.	Assessment year	Declaration of income pursuant to notice issued u/s 153C of the I.T.Act.
1.	2006-2007	Nil
2.	2007-2008	Nil
3.	2008-2009	Rs.2,35,116 (as declared in the original return)
4.	2009-2010	Rs.2,74,866 (as declared in the original return)
5.	2010-2011	Rs.2,98,530 (as declared in the original return)
6.	2011-2012	Rs.2,49,942 (after claiming deduction u/s 80IB of the I.T.Act) (original return was Nil after claiming deduction of Rs.65,26,38,968)

3. The Assessing Officer issued notices us 143(2) and 142(1) of the I.T.Act. The assessee in response to the said notices, furnished details called for. The A.O. completed the assessment orders u/s 153C r.w.s. 143(3) of the I.T.Act, vide orders dated 30.03.2014 for assessment years 2006-2007 to

2011-2012. The A.O. treated the assessee firm as an AOP. For the assessment years 2011-2012, the claim of deduction u/s 80IB of the I.T.Act was denied by the A.O.

4. Aggrieved by the orders of the assessment for assessment years 2006-2007 to 2011-2012, the assessee preferred appeals before the first appellate authority. The CIT(A) disposed off the appeals vide the impugned orders dated 24.11.2020. The CIT(A) partly allowed the appeals of the assessee.

5. Aggrieved by the orders of the CIT(A), the assessee has filed the present appeals before the Tribunal. For the assessment years 2006-2007 to 2010-2011, identical grounds are raised, except for variance in figures (ground 5 for levy of interest). For assessment year 2011-2012, the assessee has also raised grounds with regard to denial of deduction u/s 80IB of the I.T.Act.

6. The assessee has raised a legal ground, namely ground 3.2, which is common for all the six appeals. The learned AR, first made submission with reference to the issue raised in ground 3.2. The ground 3.2 reads as follows:-

“3.2 The notice issued under section 153C of the I.T.Act is bad in law, for want of requisite jurisdiction especially when the pre-requisites to assume jurisdiction did not exist and the mandatory requirements to assume jurisdiction under section 153C of the I.T.Act have not been complied with and consequently the assessment is liable to be cancelled on the facts and circumstances of the case.”

7. By raising the above grounds, the learned AR contends that there is no valid satisfaction recorded by the A.O. of the search person. Further, it was stated that the satisfaction recorded in the case of the assessee (other than the searched person) is vague and does not satisfy the requisite conditions, for initiation of proceedings u/s 153C of the I.T.Act. Hence, it was submitted that the assessment completed is void ab initio and bad in law. In this context, the learned AR by referring to the satisfaction note (in the case of the assessee), which is placed on record from pages 205 to 210 of the paper book submitted by the assessee, stated that the list of books / documents that are seized are not mentioned and with the same, how A.O. is satisfied that what is found belongs to the assessee. In support of the contention, the learned AR relied on various judicial pronouncements and CBDT Circular No.24/2015 dated 31.12.2015.

8. The learned Departmental Representative has filed a report of the Assessing Officer of the search person, namely, M/s.H.M. Construction. In the said report, it is fairly stated that he has not been able to find any satisfaction note recorded to initiate proceedings u/s 153C of the I.T.Act in case of the present assessee. The learned DR, however, submitted that in assessment order of assessee (page 2 of A.O. for A.Y. 2006-2007), it is clearly stated what are the seized material that belong to the assessee.

9. We have heard rival submissions and perused the material on record. As mentioned earlier, search was

conducted in the case of M/s.H.M.Construction on 30.06.2011. The relevant extract from the assessment order in the case of M/s. H M Constructions, reads as follows:

“The assessee Firm belongs to M/s. H.M. Constructions & group of cases. A search action u/s. 132 of the Income-tax Act, 1961 was conducted on 30.06.2011 at the office premises of M/s. H.M. Constructions, 6th Floor, Geneva House, No. 14, Cunningham Road, Bangalore. Consequent to the search action, the case was notified from ACIT, Circle-8(1), Bangalore to DCIT CC-1(4), Bangalore by the Commissioner of Income-tax, Bangalore-IV, Bangalore vide order No.6A/Centralization/CIT.IV/2011-12, dt., 25.11.2011.”

9.1 As per the paragraph 2 of the assessment order in the case of the assessee was centralized on 25.11.2011. The relevant extract reads as follows:

“2. The assessee belongs to M/s. H.M. Constructions & group of cases. A search action u/s. 132 of the Income-tax Act, 1961 was conducted in the case of M/s. H.M. Constructions on 30.06.2011. Consequent to the search action, the case was notified from ITO Ward 8(1), Bangalore to this Circle by the Commissioner of Income-tax, Bangalore-IV, Bangalore vide order No. 6A/Centralization/CIT.IV/2011-12, dated 25.11.2011, with effect from 25.11.2011.”

9.2 Therefore, vide Centralization Order dated 25.11.2011, the case of the searched person (i.e., H M Construction) and case of other than the searched person (i.e., assessee) were centralised to Central Circle, Bangalore with effect from 25.11.2011. Thereafter, the Assessing Officer issued notice under section 153A of the I.T.Act, dated 30.11.2011 on H M Constructions (i.e., searched person) and notice under section 153C of the I.T.Act dated 02.03.2012 on the assessee (i.e., other than the searched person). The copies

of the notices dated 30.11.2011 issued under section 153A of the I.T.Act are placed on record at pages 195 to 198 of the paper book. The copies of the notices dated 02.03.2012 issued under section 153C are also enclosed from pages 199 to 204 of the paper book. The satisfaction recorded by the Assessing Officer (in case of the assessee) before issuing notice under section 153C is enclosed from pages 205 to 210 of the paper book filed by the assessee.

9.3 The Hon'ble Apex Court in the case of Calcutta Knitwears reported in (2014) 362 ITR 673 (SC) had laid down that for the purpose of section 153BD of the I.T.Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the Assessing Officer before he transmits the record to the other A.O. who has jurisdiction over such other person u/s 155BD of the I.T.Act. The Hon'ble Apex Court held that satisfaction note could be prepared at any of the following stages:-

- (a) at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; or
- (b) in the course of the assessment proceedings under section 158BC of the Act; or
- (c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person.

9.4 The relevant finding of the Hon'ble Apex Court in the case of Calcutta Knitwears (supra), reads as follows:-

“41. We would certainly say that before initiating proceedings under Section 158BD of the Act, the assessing officer who has initiated proceedings for completion of the assessments under Section 158BC of the Act should be satisfied that there is an undisclosed income which has been traced out when a person was searched under Section 132 or the books of accounts were requisitioned under Section 132A of the Act. This is in contrast to the provisions of Section 148 of the Act where recording of reasons in writing are a sine qua non. Under Section 158BD the existence of cogent and demonstrative material is germane to the assessing officers' satisfaction in concluding that the seized documents belong to a person other than the searched person is necessary for initiation of action under Section 158BD. The bare reading of the provision indicates that the satisfaction note could be prepared by the assessing officer either at the time of initiating proceedings for completion of assessment of a searched person under Section 158BC of the Act or during the stage of the assessment proceedings. It does not mean that after completion of the assessment, the assessing officer cannot prepare the satisfaction note to the effect that there exists income tax belonging to any person other than the searched person in respect of whom a search was made under Section 132 or requisition of books of accounts were made under Section 132A of the Act. The language of the provision is clear and unambiguous. The legislature has not imposed any embargo on the assessing officer in respect of the stage of proceedings during which the satisfaction is to be reached and recorded in respect of the person other than the searched person.”

9.5 Several High Courts have held that provisions of section 153C of the I.T.Act are substantially similar / *pari material* to the provisions of section 158BD of the I.T.Act, and therefore, the guidelines of the Hon'ble Apex Court in the case of Calcutta Knitwears (supra) would apply to the proceedings u/s 153C of the I.T.Act, for the purpose of assessment of income other than the search person. This view was accepted by the Board Circular No.24/2015 dated 31.12.2015. The relevant extracts of the Circular reads as follows:-

“The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitwears in its detailed judgment in Civil Appeal No. 3958 of 2014 dated 12-3-2014 [2014] 43 taxmann.com 446 (SC) (available in NJRS at 2014-LL-0312-51) has laid down that for the purpose of section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person u/s 158BD.

3. Several High Courts have held that the provisions of section 153C of the Act are substantially similar/pari-materia to the provisions of section 158BD of the Act and therefore, the above guidelines of the Hon'ble SC, apply to proceedings u/s 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.

4. The guidelines of the Hon'ble Supreme Court as referred to in para 2 above, with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgment. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD/153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court.”

9.6 Further, the Hon'ble Apex Court in the case of super Malls (P) Ltd. v. PCIT reported in (2020) 423 ITR 281 (SC) had held that recording satisfaction before initiation of proceedings u/s 153C of the I.T.Act is a condition precedent. The relevant finding of the Hon'ble Apex Court, reads as follows:-

“6. This Court had an occasion to consider the scheme of Section 153C of the Act and the conditions precedent to be fulfilled/complied with before issuing notice under section 153C of the Act in the case of Calcutta Knitwears (supra) as well as by the Delhi High Court in the case of Pepsi Food (P.) Ltd. (supra). As held, before issuing notice under section 153C of the Act, the Assessing Officer of the searched person must be "satisfied" that, inter alia, any document seized or requisitioned "belongs to" a person other than the searched person. That thereafter, after recording such satisfaction by the Assessing Officer of the searched person, he may transmit the records/documents/things/papers etc. to the Assessing Officer having jurisdiction over such other person. After receipt of the aforesaid satisfaction and upon examination of such other documents relating to such other person, the jurisdictional Assessing Officer may proceed to issue a notice for the purpose of completion of the assessment under section 158BD of the Act and the other provisions of Chapter XIV-B shall apply.

6.1 It cannot be disputed that the aforesaid requirements are held to be mandatorily complied with. There can be two eventualities. It may so happen that the Assessing Officer of the searched person is different from the Assessing Officer of the other person and in the second eventuality, the Assessing Officer of the searched person and the other person is the same. Where the Assessing Officer of the searched person is different from the Assessing Officer of the other person, there shall be a satisfaction note by the Assessing Officer of the searched person and as observed hereinabove that thereafter the Assessing Officer of the searched person is required to transmit the documents so seized to the Assessing Officer of the other person. The Assessing Officer of the searched person simultaneously while transmitting the documents shall forward his satisfaction note to the Assessing Officer of the other person and is also required to make a note in the file of a searched person that he has done so. However, as rightly observed and held by the Delhi High Court in the case of Ganpati Fincap Services (P.) Ltd.(supra), the same is for the administrative convenience and the failure by the Assessing Officer of the searched person, after preparing and dispatching the satisfaction note and the documents to the Assessing Officer of the other person, to make a note in the file of a searched person, will not vitiate the entire proceedings under section 153C of the Act against the other person. At the same time, the satisfaction note by the Assessing Officer of the searched person that the documents etc. so seized during the search and seizure from the searched person belonged to the other person and transmitting such material to the

Assessing Officer of the other person is mandatory. However, in the case where the Assessing Officer of the searched person and the other person is the same, it is sufficient by the Assessing Officer to note in the satisfaction note that the documents seized from the searched person belonged to the other person. Once the note says so, then the requirement of section 153C of the Act is fulfilled. In case, where the Assessing Officer of the searched person and the other person is the same, there can be one satisfaction note prepared by the Assessing Officer, as he himself is the Assessing Officer of the searched person and also the Assessing Officer of the other person. However, as observed hereinabove, he must be conscious and satisfied that the documents seized/recovered from the searched person belonged to the other person. In such a situation, the satisfaction note would be qua the other person. The second requirement of transmitting the documents so seized from the searched person would not be there as he himself will be the Assessing Officer of the searched person and the other person and therefore there is no question of transmitting such seized documents to himself.”

9.7 The Bangalore Bench of the Tribunal in the case of ACIT v. T.H.Suresh Babu in ITA No.1890/Bang/2018 (order dated 06.04.2022), after considering the judgment of the Hon’ble Apex Court in the case of CIT v. Calcutta Knitweaves (supra) and Super Malls (P) Ltd. v. PCIT (supra) had held that recording satisfaction before issuing notice u/s 153C of the I.T.Act is mandatory and provisions of section 153A / 153C have to be strictly adhered to before initiating the proceedings thereunder. The relevant finding of the Bangalore Bench of the Tribunal in the case of ACIT v. T.H.Suresh Babu (supra), reads as follows:-

“26. Now the controversy in this appeal is limited to applicability of section 153C of the Act. On a plain reading of the above provisions, it is clear that the provisions of section 153A, 153B & 153C of the Act lay down the scheme of assessment in the case of search and requisition u/s. 132 & 132A of the Act. The provisions of section 153A is with regard to searched person u/s. 132 of the Act where books of account

or other documents or assets are requisition u/s. 132A of the Act after 31st May, 2003. The provisions of section 153B lay down the time limit for completion of assessment u/s. 153A. The provisions of section 153C provide that where AO is satisfied that any money, bullion, jewellery or other valuable or article or thing or books of account or documents seized are requisition belong to or belonged to person other than the person searched, the AO shall proceed against such other person by issuing notice and assess or reassess the income of such other person.

27. From a bare reading of the provisions of sec.153C, it is crystal clear that the condition precedent for issue of notice u/s 153C is that money, bullion, jewellery or other valuable article or thing or books of account or document seized or requisitioned should belong to such person. If this requirement is not satisfied, recourse cannot be had to the provisions of sec.153C. The very same provisions had come for interpretation before the Hon'ble Delhi High Court in the case of Pepsi Foods (P.) Ltd. (367 ITR 112) wherein the Hon'ble Delhi High Court observed at page 117 as follows:—

32. The ratio that can be culled out from the above decisions is that unless revenue establishes that the assessee is the owner of the seized documents, provisions of sec.153C cannot be invoked. Even the Hon'ble Delhi High Court as well as the Hon'ble Gujarat High Courts held that merely because there is a reference to the name of the assessee in the seized documents, it does not mean that the assessee is the owner of those documents. In the satisfactory note recorded by the AO there should be something to indicate that the searched person had disclaimed those documents and therefore, AO of the searched person reached a conclusion or satisfaction that the documents do not belong to the searched person but other third person. The High Courts, even went to the extent of holding that possession of documents and possession of photo copies of documents are two separate things. It may be quite possible that photo copies may be belonging to the searched person and whereas the original may be owned by some other person.

37. Coming to the facts of the present case, the AO recorded the satisfaction in the case of assessee as follows:-

“14.11.2011

A search action u/s. 132 was initiated in the case of Sri B. Nagendra and in connection with the same, the premises of Sri T.H. Suresh Babu, Laxmi Narasimha Swamy Nilaya, Near

Railway Quarters, Bamboo Bazar, Siraguppa Road, Bellary was also searched and documents / assets were seized as per inventory A-1/THS annexed to the panchanama dated 03.11.2010 for the search conducted in the premises of Sri T.H. Suresh Babu, Laxmi Narasimha Swamy Nilaya, Near Railway Quarters, Bamboo Bazar, Siraguppa Road, Bellary. Hence, a notice calling for the returns of the income for the Asst. Year 2010-11 as envisaged u/s. 153C issued.”

38. As seen from the above, in the satisfaction note recorded by the AO there was no mention that he was satisfied about the undisclosed income belonging to the assessee on the basis of seized material as held by the Supreme Court in the case of Super Malls Pvt. Ltd. v. PCIT (supra) in terms of section 153C of the Act that where the AO of the searched person and the third person is the same, it is sufficient by the AO to record in the satisfaction note that the documents seized from the searched person belonged to other person and there is no requirement of transmitting documents so seized from searched person.

39. In the light of the above observations of the Supreme Court, if we go through the above order sheet entry of the AO of the searched person, we cannot make out a case that to whom the seized document marked as inventory A-1/THS belongs to and what is the undisclosed income related to assessee mentioned in it. Further, the AO does not even say “I am satisfied” or “belonged to unsearched person” i.e., the assessee. Hence there is no compliance with the provisions of law laid down by the Supreme Court in the case of Super Malls P. Ltd. (supra). Being so, in our opinion, there is no satisfaction recorded by the AO of the searched person to indicate that the searched person had disclaimed the seized document as it belonged to him before reaching the conclusion/satisfaction that document did not belong to searched person, but to other third person i.e., the present assessee. More so, in the present case, it is also brought on record by the assessee that the impugned addition was already subject matter of assessment in the case of Sri B. Sreeramulu and the expenditure relating to assessee’s marriage at Rs.101,96,322 has been disclosed in his capital account for the period ending 31.3.2010, copy of which is kept on record filed before this Tribunal on 3.3.2022. Hence, on the basis of the above order sheet entry, the assessment of present assessee has been reopened so as to frame the assessment u/s. 143(3) r.w.s. 153C of the Act. The AO who searched the premises of B. Nagendra on whose case warrant u/s. 132 was issued, has not recorded his satisfaction that documents found in the course of search of the premises of

present assessee viz., T.H. Suresh Babu belonged to present assessee and AO has not recorded his satisfaction in his order sheet entry to this effect. As such, the mandatory requirement u/s. 153C of the Act in the facts and circumstances of the case have not been complied with. The satisfaction note in the form of order sheet entry by the AO of Sri B. Nagendra who was searched has not recorded the finding that the document seized belonged to Shri T.H. Suresh Babu. Being so, the requirement of section 153C of the Act has not been fulfilled. On these facts, we are in clear agreement with the view taken by the CIT(Appeals) in quashing the assessment framed u/s. 143(3) r.w.s. 153C of the Act and accordingly uphold the order of the ld. CIT(Appeals). The grounds taken by the revenue are dismissed.”

9.8 In the instant case, satisfaction has been admittedly not recorded by the A.O. in the case of search person, namely, M/s.H.M.Construction. The report of the A.O. of the search person with reference to the same reads as follows:-

*“Sir,
Kindly refer to your mail dated 20.10.2022.*

I have gone through the records of M/s.H.M.Construction, however, the satisfaction note recorded to initiate proceedings u/s 153C in the case of M/s.Silicon Estates is not available in any of the folders.

It is found later the same would be forwarded immediately.

Regards

*Praveen Sinha
ACIT, Circle 1(1)(1)
Room No.215, 2nd Floor, BMTC Building, 80 Feet Road
Koramangala 6th Block, Bengaluru-560 095
Karnataka, India.”*

9.9 The satisfaction recorded by the Assessing Officer in the case of the assessee before issuing notice u/s 153C of the I.T.Act is enclosed from pages 205 to 210 of the paper

book filed by the assessee. The satisfaction recorded for assessment year 2006-2007, reads as follows:-

Date of Search: 30.06.2011

M/s. Silicon Estates
PAN: ABEFS6150N
No. 14, 6th Floor,
Geneva House,
Cunningham Road,
Bangalore.

ORDER SHEET
Page No.

Name of the case : M/s. Silicon Estates
Name of the group : H.M. Constructions
A.Y : 2006-07
PAN : ABEFS6150N

Asst. Year: 2006-07
Date: 02.03.2012

Satisfaction note for initiating action u/s 153C:

Action u/s 132 was conducted in the residential premises of M/s. H. M. Constructions and Group on 30.06.2011 based on the Authorisation issued by the Addl .DIT Unit-I, Bangalore vide Warrant No. _____ dated _____.

During the course of search in the case of M/s. H. M. Constructions and Group the following books/documents were found and seized u/s 132.

<u>Exhibit I.D</u>	<u>Page Nos</u>
--------------------	-----------------

On a scrutiny of the above documents seized it is seen that the above materials belongs to M/s. Silicon Estates, I am satisfied that action u/s 153C has to be initiated in the case of M/s.. Silicon Estates for the A.Ys 2006-07 to 2011-12. Hence, issue notice u/s 153C.

Date: 02.03.2012: Notice u/s 153C issued calling for return of income with in 30 days of receipt of notice.

दिनांक/Date.....

अभिधारण वर्ष.....

के विषये धा.153C/153C(1) के अन्तर्गत प्रेषित जाने की गई
Notice u/s. 153A/153C 148, 149/142(1) issued for A.Y. 2006-07

आ.प्र.अ. /DCIT

पावनी दिनांक से रेकर्ड में राखी गयी
Acknowledgement placed on record on.....

TRUE COPY

9.10 Similar is the satisfaction note for the other assessment years also. The above satisfaction note is bad and invalid for the following reasons:-

- (i) The satisfaction note is just a standard format;
- (ii) The satisfaction note is in a printed format with all the blanks being kept unfilled;
- (iii) The satisfaction note does not give list of documents seized from M/s. H M Constructions. In the absence of such list, it is not known how any person properly instructed would derive satisfaction. It is amazing to note that it is written that 'on a scrutiny of the above documents....', in the above note. When the so called above documents are not even listed, it is not known what scrutiny has been carried out.
- (iv) The satisfaction note does not give list of documents which 'belong to' the assessee. Neither the documents seized are listed nor the documents found to belong to the assessee are listed. It is not known what was seized, what was scrutinised and what was found to belong to the assessee.
- (v) The satisfaction note does bear the name, designation and full signature of the Assessing Officer.
- (vi) The satisfaction note states that the search was conducted at the residential premises of M/s. H M Constructions. There cannot be residential premise for M/s. H M Constructions which is a partnership firm. As per Panchanama dated 01.07.2011, the search was conducted at # 14, 6th Floor, Geneva House, Cunningham Road, Bengaluru - 560 001 which is an office complex and not residential premise of any person. In the assessment order of M/s. H M Constructions in AYs 2006-07 to 2011-12,

it is clearly stated that the search was conducted at the office premises of # 14, 6th Floor, Geneva House, Cunningham Road, Bengaluru - 560 001.

(vii) The satisfaction note is vague;

9.11 The above omissions are not just minor deviations but are material in nature. These omissions are so material that they reduce the so called satisfaction note to nullity in the eyes of law. In the instant case, there is no satisfaction recorded in the case of the search person, stating that the seized material does not belong to him but to other persons. Further, even assuming that the A.O. of the searched person and the assessee is the same, there is no valid satisfaction recorded in the files of the assessee as mentioned above before initiating proceedings u/s 153C of the I.T.Act. The learned DR had stated that in the impugned assessment order, it is clearly mentioned what are the seized material that belongs / pertains to the assessee (i.e., the person other than the searched person). Therefore, it was contended by the learned DR that there is a valid satisfaction. This content of the learned DR cannot be accepted, since the judicial pronouncements, cited supra, and Board Circular No.24/2015 (supra) has clearly stated that satisfaction has to be recorded, prior to initiation of proceedings u/s 153C of the I.T.Act. Therefore, the very initiation of proceedings u/s 153C of the I.T.Act is held to be invalid and void ab initio. Hence, the legal ground 3.2 is allowed. The grounds regarding merits is left open and not adjudicated.

9.12 Before concluding, it is to be mentioned that the Revenue could take a plea for protection u/s 292B of the I.T.Act. Section 292B of the I.T.Act reads as follows:-

“No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.”

9.13 Section 292B of the I.T.Act states that no ROI, assessment, notice, summons issued in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice if such is in substance and effect in conformity with or according to the intent and purpose of this Act. Section 292B of the I.T.Act can be relied upon for resisting a challenge to the notice, etc., only if there is a technical defect or omission in it. For section 292B of the I.T.Act, there should be mistake, defect or omission in an otherwise valid ROI, assessment, notice, summons which is in substance and effect in conformity with or according to intent and purpose of the IT Act. In the instant case, the provisions of section 292B of the I.T.Act do not come to the rescue of the Revenue for the following reasons:

- (i) The section 292B is applicable ROI, assessment, notice, summons and does not apply to satisfaction note;

(ii) As mentioned earlier, recording of satisfaction through satisfaction note is mandatory. This jurisdictional requirement goes to the root of the assumption of jurisdiction for making assessment under section 153C. Not recording or blank satisfaction note cannot conceivably be said to be in conformity with or according to intent and purpose of the IT Act.

(iii) When a satisfaction note does not record any satisfaction, there is no question of noticing any mistake or defect or omission therein.

9.14 As per Circular No. 24/ 2015, dated 31.12.2015, the Board has stated that *“In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgment. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD /153C of the I.T.Act should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court.”* In the instant case, as stated above, the satisfaction note recorded by the Assessing Officer does not meet the guidelines laid down by the Apex Court in *Calcutta Knitwears (Supra)* and Board Circular No. 24/ 2015 (supra). Hence, the Assessment Orders passed under section 153C of the I.T.Act for assessment years 2006-2007 to 2011-2012 is quashed.

10 In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 14th day of November, 2022.

Sd/-
(Padmavathy S)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 14th November, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-11, Bangalore
4. The Pr.CIT (Central), Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore