

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"B" JAIPUR

श्रीसंदीपगोसाई,न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 344 TO 347/JP/2022  
निर्धारणवर्ष/Assessment Year :2009-10, 2010-11, 2011-12 & 2013-14

Shri Arun Agarwal Mansarovar, RameshwaramParisar Sitabari, Tonk Road, Jaipur	बनाम Vs.	ACIT C.C. 3 Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ABYPA 8137 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Mukesh Khandelwal, CA  
राजस्व की ओर से / Revenue by: Shri Shailendra Sharma, CIT-DR

सुनवाई की तारीख / Date of Hearing : 11/10/2022  
उदघोषणा की तारीख / Date of Pronouncement: 22 /11/2022

आदेश / ORDER

PER BENCH:

These four appeals have been filed by the assessee against four different orders of the ld. CIT(A)-4 Jaipur dated 10-08-2022 for the assessment years 2009-10, 2010-11, 2011-12 & 2013-14 respectively wherein the assessee has raised following grounds of appeal in each appeals.

ITA No. 344/JP/2022 – A.Y. 2009-10

“1. That the ld. CIT(A) has erred in law and on facts in sustaining the action of the AO in assuming jurisdiction to the case of the assessee u/s 153C for the year in appeal which

is part of extended period of assessment in terms of explanation 1 to 4<sup>th</sup> proviso to Section 153A without appreciating that the assumption of jurisdiction for assessing the case of the assessee u/s 153C itself was not valid. Relief may please be allowed by quashing the assessment so framed.

2. That the Id. CIT(A) has erred in law in holding that the case of assessee for relevant assessment year was validly proceeded ignoring the fact that the same was without proviso to Section 153A of the I.T.Act, 1961 and also ignoring the vital fact that the AO herself has considered the additional income as assessed u/s 69C of the Act.

3. That the Id. CIT(A) has erred in law and on facts in interpreting the judgement of Hon'ble Income Tax Settlement Commission in the case of Shri Baldeep Goyal (the searched person) as per her own wish and relied only the portion which suited her and ignoring the other parts of judgement which were in favour of the appellant.

4. That the Id. CIT(A) has erred in not deciding the argument of the assessee that how the case of the assessee for extended assessment year can be taken up when no such action had been taken in the case of Shri Baldeep Goyal (the searched person) on the basis of whom proceedings u/s 153C had been taken up in the case of the assessee.”

ITA No. 345/JP/2022 – A.Y. 2010-11

“1. That the Id. CIT(A) has erred in law and on facts in sustaining the action of the AO in assuming jurisdiction to the case of the assessee u/s 153C for the year in appeal which is part of extended period of assessment in terms of explanation 1 to 4<sup>th</sup> proviso to Section 153A without appreciating that the assumption of jurisdiction for assessing the case of the assessee u/s 153C itself was not valid. Relief may please be allowed by quashing the assessment so framed.

2. That the Id. CIT(A) has erred in law in holding that the case of assessee for relevant assessment year was validly proceeded ignoring the fact that the same was without proviso to Section 153A of the I.T.Act, 1961 and also ignoring the vital fact that the AO herself has considered the additional income as assessed u/s 69C of the Act.

3. That the Id. CIT(A) has erred in law and on facts in interpreting the judgement of Hon'ble Income Tax Settlement Commission in the case of Shri Baldeep Goyal (the searched person) as per her own wish and relied only the portion which suited her and ignoring the other parts of judgement which were in favour of the appellant.

4. That the Id. CIT(A) has erred in not deciding the argument of the assessee that how the case of the assessee for extended assessment year can be taken up when no such action had been taken in the case of Shri Baldeep Goyal (the searched person) on the basis of whom proceedings u/s 153C had been taken up in the case of the assessee.”

ITA No. 346/JP/2022 – A.Y. 2011-12

“1. That the Id. CIT(A) has erred in law and on facts in sustaining the action of the AO in assuming jurisdiction to the case of the assessee u/s 153C for the year in appeal which is part of extended period of assessment in terms of explanation 1 to 4<sup>th</sup> proviso to Section 153A without appreciating that the assumption of jurisdiction for assessing the case of the assessee u/s 153C itself was not valid. Relief may please be allowed by quashing the assessment so framed.

2. That the Id. CIT(A) has erred in law in holding that the case of assessee for relevant assessment year was validly proceeded ignoring the fact that the same was without proviso to Section 153A of the I.T.Act, 1961 and also ignoring the vital fact that the AO herself has considered the additional income as assessed u/s 69C of the Act.

3. That the ld. CIT(A) has erred in law and on facts in interpreting the judgement of Hon'ble Income Tax Settlement Commission in the case of Shri Baldeep Goyal (the searched person) as per her own wish and relied only the portion which suited her and ignoring the other parts of judgement which were in favour of the appellant.

4. That the ld. CIT(A) has erred in not deciding the argument of the assessee that how the case of the assessee for extended assessment year can be taken up when no such action had been taken in the case of Shri Baldeep Goyal (the searched person) on the basis of whom proceedings u/s 153C had been taken up in the case of the assessee.”

ITA No. 347/JP/2022 – A.Y. 2013-14

“1. That the ld. CIT(A) has erred in law and on facts in sustaining the action of the AO in holding that the AO has assumed proper jurisdiction to assess the case u/s 153C of the Income Tax, 1961 ignoring the crucial evidence to the fact that the AO had recorded satisfaction for initiating action u/s 153C even prior to transfer of the case with her and hence was invalid.”

2.1 First of all, we take up the appeal of the assessee in ITA No. 347/JP/2022 for the assessment year 2013-14 being the solitary ground as to the jurisdiction to assess the case of the assessee u/s 153C of the Act, for adjudication.

2.2 Apropos solitary ground of the assessee, the facts as emerges from the order of the ld. CIT(A) are as under:-

“4.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:

(i) A search was conducted against the appellant group-Swaroop Narain Shiv Narain&Kumawat Group u/s 132(1) of the Act on 28.09.2017. During the

course of search, 13 highly incriminating papers were found from the bedroom of Sh. Baldeep Goyal situated at C-42, Lajpat Marg, C-Scheme, Jaipur which were seized as Page nos. 11 to 23 of Exhibit-2. The printed papers have details of loans from various entities mainly Kolkata based companies with time period mentioned and interest amounts calculated. The hand written pages are working of the above loans and payments to RIICO by 'A' (Sh. Arun Agarwal) and by 'B' (Sh. Baldeep Goyal). Separate BG A/c (Sh. Baldeep Goyal Account) is also there in handwritten papers. The entries of these papers (handwritten and printed) corroborate each other.

(ii) The factual position is that a plot in Pratap Nagar, Tonk Road, Jaipur was purchased in auction from Rajasthan Housing Board (RHB) by a company M/s Aditya Propcon Pvt. Ltd. Sh. Baldeep Goyal and Sh. Arun Agarwal both are directors in the company. This plot was purchased for a sale consideration price of Rs. 26.11 Crore from RHB. M/s Aditya Propcon Pvt. Ltd. has taken unsecured loans from Kolkata based various entities. This unsecured loan was taken in various AYrs. Noting in Exhibit-2 makes it clear that cash was paid by Sh. Baldeep Goyal and Sh. Arun Agarwal to Kolkata based entities and same was received back in the form of unsecured loan in M/s Aditya Propcon Pvt. Ltd. and from this unsecured loan, the loan was repaid to RIICO. Page Nos. 11 and 12 reflect that total cash of Rs. 7,88,80,000/- was paid by Sh. Arun Agarwal.

(iii) These papers reflect that entries have been taken in M/s Aditya Propcon Pvt. Ltd. from various parties (mostly Kolkata Companies) for which cash has been paid by Sh. Baldeep Goyal and Sh. Arun Agarwal. On perusal of these entries, it was also found that these pages also contain some of the entries which pertains to period beyond six years from assessment year relevant to previous year in which search was conducted. The details of these entries are as under:

<u>F.Y.</u>	<u>Amount (in Rs.)</u>
2008-09	1.08 Crore
2009-10	3.28 Crore
2010-11	2.55 Crore
2012-13	.97 Crore

(iv) On this basis, the AO initiated action against the appellant by recording a satisfaction note for opening the case of the appellant u/s 153C and consequently on the basis of the seized material, the AO issued notice under section 153C dt. 16.12.2019 calling upon the appellant to file returns for assessment years in question. Appellant filed his return declaring certain taxable income. The AO completed the assessment u/s 153C r.w.s. 143(3), by making

various additions to the appellant's income and framed the assessment u/s 153C of the Act.

(v) Before me, the Ld. AR of the appellant has contended that the case of the present appellant was transferred to Asstt./Dy. CIT, Central Circle-3, Jaipur vide order dt. 02.09.2019 passed by the Hon'ble Pr. CIT-2, Jaipur. Further it was contended that during the assessment proceedings, satisfaction note as prepared by the AO was obtained and on perusal of the aforesaid note prepared by the AO, the Ld.AR of the appellant contended that the same was prepared on 01.08.2019 which is prior to the date of the case being transferred to the AO. Accordingly, the Ld. AR argued that on the date of recording such satisfaction i.e. 01.08.2019, the Ld. AO did not have any jurisdiction over the case of the appellant and hence the satisfaction note so prepared is a scrap document and could not have been relied by the AO for proceeding further in the matter.

(vi) As regards the aforesaid contention of the Ld. AR of the appellant, that the satisfaction note in the case of the appellant was prepared by the AO on 01.08.2019 whereas the order assigning the case to the AO u/s 127 was vide order dt.02.09.2019 and therefore the AO has wrongly assumed jurisdiction in the case of the appellant, it is observed that the satisfaction note though appears to have been prepared by the AO on 01.08.2019 for the AYrs 2012-13 to 2018-19 however, it is also observed that the AO has issued the notice u/s 153C after obtaining the correct jurisdiction u/s 127 of the Act. Since the case of the person searched i.e. of ShBaldeep Goyal was with the same AO, on the basis of which notice u/s 153C was issued to the appellant, therefore in such circumstances, it appears that the AO prepared the satisfaction note in the case of the appellant for the year under consideration, however, the fact also remains that the AO issued notice u/s 153C of the Act to the appellant after receiving the case on transfer vide order dt. 02.09.2019 passed by the Hon'ble Pr. CIT-2, Jaipur. It is further observed that the notice u/s 153C of the Act for the year under consideration was issued on 11.09.2019, in compliance to which the return of income was e-filed by the appellant on 24.09.2019 declaring a total income of Rs. (-) 10,88,612/-. I find that it is not a case of absence of satisfaction note. Thus, I do not find any strength in the arguments of the Ld. AR challenging the jurisdiction of the AO in initiating the proceedings u/s 153C of the Act.

(vii) As regards the reliance placed by the Ld. AR of the appellant on the decision of Hon'ble Supreme Court in the case of Calcutta Knitwears, it is observed that in that case, the AO had passed the order u/s 158BD without recording any satisfaction note and therefore the Hon'ble Supreme Court quashed the whole proceedings for want of a satisfaction note. Similarly the other

decisions relied by the Ld. AR of the appellant are also based on the facts that no such satisfaction note was prepared in the case of the assessee's. However the facts in the instant case of the appellant are distinguishable since a proper satisfaction note has been prepared by the AO before issuing notice u/s 153C in the case of the appellant.

(viii) As regards the contention of the appellant that the Board has categorically stated that such satisfaction has to be recorded in the case of person searched as well as the other person whose books of accounts/documents have been found during such search, reference is made to the judgement of the Hon'ble Cochin Tribunal in the case of DCIT v. Damac Holdings (P.) Ltd. (2015) 33 ITR 331/67 SOT 148 (URO)(Cochin)(Trib.) wherein it has been held that where the same Assessing Officer had completed assessment proceeding of appellant-company and its director, recording of satisfaction may not be necessary because there was no necessity for Assessing Officer to handover document to another Assessing Officer. (AY. 2007-08, 2008-09).

(ix) Further, the Hon'ble Delhi High Court in the case of Ganpati Fincap Service Pvt. Ltd. Vs. Commissioner of Income Tax (2017) 395 ITR 692 (DEL) has considered the Circular of CBDT explaining the requirements to be followed by the Assessing Officer before issuing notice u/s 153C of the Act. In this case, there was no satisfaction note by the Assessing Officer of the searched person. However, it was noted that the Assessing Officer of the assessee and the Assessing Officer of the searched person was the same. Therefore the Hon'ble Delhi High Court held that in case, the Assessing Officer of the searched person and the other person is the same, there need not be two separate satisfaction notes recorded by the Assessing Officer of the searched person, where he is also the Assessing Officer of the other person.

(x) This issue has been put to rest by a very recent decision of the Hon'ble Supreme Court in the case of M/s Super Malls Pvt. Ltd. vs. Pr. Commissioner of Income Tax 8, New Delhi in Civil Appeal Nos. 2006-2007 of 2020 (Arising out of SLP I Nos. 8449-50/2017) wherein this issue has been considered in the case where the Assessing Officer of the searched person and the other person is the same. It was held that -

"However, as rightly observed and held by the Delhi High Court in the case of Ganpati Fincap/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 u/s 153C of the Act against the other person.

....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.”

(xi) Further on perusal of satisfaction note in the instant case of the appellant, it emerges that the Assessing Officer was satisfied that the documents contain the details of payment of cash by the appellant against unsecured loans obtained by M/s Aditya Propcon Pvt. Ltd Kolkata based companies. The appellant in one of the directors in the aforesaid company. The AO was also satisfied that the documents were seized from Sh. Baldeep Goyal during the course of search at his residence. Thus, the Assessing Officer was satisfied that the documents so seized belonged to the appellant i.e. other person. In view of the aforesaid judgment of the Hon'ble Supreme Court in the case of M/s Super Malls, it cannot be said that the mandatory requirements of sec. 153C of the Act have not been complied with, in the case of the appellant. Thus there is no ambiguity found in recording of the satisfaction by the AO and subsequent issue of notice u/s 153C of the Act and therefore the contention of the appellant is not found acceptable on this issue.

(xii) Further the AR of the appellant has contended that the notice u/s 153C is illegal for the AY beyond 2012-13 as the alleged notings on the seized documents is not income representing any asset. I have considered the arguments of the AR and it is observed that this argument of the appellant is not applicable in the current A.Y 2013-14, as also admitted by the appellant and is accordingly, rejected.

(xiii) Thus, it is observed that the AO recorded satisfaction after procuring certain documents seized during the course of search and seizure action u/s 132 against Sh. Baldeep Goyal. Proceedings were initiated against the appellant u/s 153C read with section 153A on the basis of these documents. As per Section 153C, it was clear that where AO is satisfied that any money, bullion, jewellery, books of account or other documents belonged to person other than person searched, then such documents or assets, should be handed over to AO of 'other person'. AO has recorded the satisfaction on 01.08.2019 before issuing the notice u/s 153C which is in accordance with the said provisions. In view of the above facts, I find that the AO has rightly assumed valid and lawful jurisdiction to proceed with the matter of assessment u/s 153C in the case of the appellant. Therefore, looking to the facts of the case, I am of the view that there is no ambiguity in the legality of the assessment order passed by the AO in the case of the appellant for the year under consideration. Accordingly, the Ground of Appeal No. 1 is treated as dismissed.

2.3 During the course of hearing, the ld. AR of the assessee prayed that in this case the notice issued by the AO u/s 153C is wrong and not tenable in the eyes of law as the AO had issued the notice u/s 153C of the Act on 11-09-2019 for the year under consideration. The ld. AR further submitted that the AO recorded the satisfaction in the case of the assessee vide order sheet dated 01-08-2019 as required u/s 153C of the Act whereas the case of the assessee was transferred to the jurisdiction of the AO (ACIT, Central Circle-3, Jaipur) vide order dated 02-09-2019 by the ld. Pr. CIT, Jaipur-2 which indicates that the AO (ACIT, Central Circle-3, Jaipur) had recorded the satisfaction of the reasons prior to getting authority over the case of the assessee vide order dated 02-09-2019 from the ld. Pr.CIT, Jaipur-2 and hence the satisfaction note dated 01-08-2019 is without authority and notice issued u/s 153C on the basis of unauthorized recording of

satisfaction is illegal and proceedings undertaken based on such illegal notice requires to be quashed. During the course of hearing, the ld. AR relied on following case laws.

1. CIT vs Calcutta Knitwears, Ludhiana, 362 ITR 673 (SC)
2. Super Malls Pvt. Ltd. vs PCIT, 423 ITR 281 (SC)
3. Manish Maheshwari vs ACIT, 289 ITR 341 (SC)
4. ACIT vs Rangoli Buildcon (P) Ltd. (ITA 5015/Del/2014)
5. K.M. Sharma vs ITO , 254 ITR 772 (SC)

He further submitted that in all the above four cases, the Hon'ble Courts have given verdict about mandatory condition of recording satisfaction prior to initiation of proceedings u/s 153C of the Act. The written submission filed by the assessee is as under:-

“The appellant challenges the proceedings u/s 153C on two counts i.e. no proper grounds for initiating such action and condition of proper recording of satisfaction not fulfilled correctly.

Regarding first limb of objection the appellant wishes to submit that the working in the papers seized by the department (APB 1-16) do not clearly depict that any cash changed hands from the appellant to the companies named therein and further the ld. AO before proceeding in the case did not bring any evidence to prove the contention. This fact was appreciated by the Hon'ble Income Tax Settlement Commission also while dealing with the case of the searched person Shri Baldeep Goyal wherein at page no. 35 of the order (APB 54) passed u/s 245D(4) the following has been stated :-

*"The applicant was only a minority shareholder and the documents in question do not explicitly indicate cash payment by the applicant. PCIT has not brought on record that there was indeed an accommodation entry transaction. His proposition is limited to mere jottings on the said document which do not constitute adequate evidence to make an addition in the case of the applicant."*

Therefore the notice u/s 153C issued to the appellant is without satisfying the conditions stipulated in section. It has been held by various judicial authorities that there has to be satisfaction more than suspicion about any undisclosed income of the other person as found in the documents seized from person searched, for proceeding u/s 153C against such other person, which condition has not been fulfilled. Therefore the action of the ld. AO in issuing notice u/s 153C is illegal and unjustified and hence the order passed consequent to such illegal proceedings deserves to be quashed.

Regarding the other limb of objection this is to submit that the ld. AO recorded a satisfaction note dated 01.08.2019 (APB 17) as per which she opined that seized papers pertained to the appellant. With this satisfaction note the ld. AO did not assume jurisdiction to assess the case of the appellant u/s 153C of the Income Tax Act, 1961 on account of following reasons :-

1. It is pertinent to state that at the time of recording such satisfaction note the ld. AO was not having jurisdiction over the case of the appellant as the case was transferred to her vide order dated 02.09.2019 passed by the worthy PCIT - 2, Jaipur (APB 19). Therefore such satisfaction note does not confer any authority on the ld. AO to proceed against the appellant u/s 153C. The ld. CIT (A) has stated in her order at page 8 in para (vi) that the satisfaction note was valid as notice u/s 153C had been issued after receiving jurisdiction of the appellant. She forgot to appreciate that in online process no notice can be issued by any officer other than jurisdictional AO and hence her argument is not on correct footings.

2. The ld. CIT (A) has stated at page 8 of her order in para (vi) that notice u/s 153C was issued by the ld. AO after transfer of case to her and she had prepared the satisfaction note as she was AO of the searched person as well as the appellant. The ld. CIT (A) has missed a crucial part of this matter that on the date of recording such satisfaction the AO was not AO of both the persons viz. the searched person and the appellant and therefore such satisfaction note can not be relied upon for assuming jurisdiction for assessing the case of other person. The ld. AO had issued notice u/s 153C on 11.09.2019 which was on the basis of above said illegal satisfaction note and therefore the instant assumption of jurisdiction to assess the case of the appellant u/s 153C is illegal and deserves to be struck down.

3. The ld. AO did not record any satisfaction note in the case of searched person that some document pertain to person other than searched person, which is of quite importance and without recording of which she could not have proceeded against the appellant, who is other person. In place what she has done is that she has straight away recorded satisfaction note in the case of the appellant being other person which fact is apparent from the satisfaction note itself. Similar circumstances arose before the Hon'ble ITAT, Delhi in the case of **ACIT v/s M/s. Rangoli Buildtech (ITA 5015/Del/2014) vide order dated 22.10.2020** and the Hon'ble Bench held such satisfaction note containing name, address, PAN etc. on the top of the satisfaction note (APB 36) as having been recorded in the case of other person and without there being any satisfaction note in case of person searched the whole order of assessment was quashed. Copy of said judgment is at APB 29-32 of Case law index. It is true that as per verdict of the Hon'ble SC in the case of **CIT v/s Super Malls P Ltd. (423 ITR 281)** - (Copy at APB 19-24 of case law index) in case of common AO only one satisfaction note is sufficient. However in the cited case the jurisdiction over the case of the person searched and the other person was with the same AO at the time of recording satisfaction (as noted on APB 19 back) and under such circumstances the Hon'ble SC held like this. In this case the aggrieved party viz. Super Malls raised an issue that since recording of satisfaction note was mandatory in the case of searched person which was missing in this case and the satisfaction note had been directly prepared in the case of other person and hence request was made to quash the proceedings. The Hon'ble SC while examining the issue of recording of only one satisfaction note has reproduced the satisfaction note prepared by the ld. AO (at APB 2 - back) as per which it is evident that such satisfaction note was prepared by the ld. AO on 22.02.2013 and the jurisdiction over the case of other person had been assigned to him on 15.01.2013 and therefore at the time of recording such satisfaction note the jurisdiction over the case of both the persons viz. searched person as well as other person was with the same AO.

Therefore for strict applicability of the above cited case of the Hon`ble SC in the present case dwells upon the crucial issue of jurisdiction of both the person at the time of recording of satisfaction note and hence is not applicable in the instant case. Therefore no proper jurisdiction was assumed by the AO for assessing the case of the appellant and hence the order deserves to be quashed. The ld. CIT (A) at page 8 in para (vi) in last line states that since the case of the person searched i.e. of Shri Baldeep Goyal was with the same AO, on the basis of which notice u/s 153C was issued to the appellant, therefore it appears that the AO prepared the satisfaction note in the case of the appellant for the year under consideration. However CIT (A) is silent on the issue of jurisdictional defect in recording the satisfaction note which was argued right since beginning in the case. Therefore her justification of the action of the ld. AO is unlawful.

4. The observations of the ld. CIT (A) in para (iv) at page 8 of her order is that the ld. AO issued notice u/s 153C on 16.12.2019 calling upon the appellant to file return of income This fact is wrong as the ld. AO has issued notice u/s 153C on 11.09.2019 for the instant year. In fact notices u/s 153C dated 16.12.2019 were issued for four years prior to six years from the year of search whereas the present year comes in the purview of six years only. This fact was not relevant from any angle for disposing off the instant case. This shows non application of mind.

5. The ld. CIT (A) has stated at page 7 in para (iii) that the ld. AO verified from the seized pages that there were certain transactions pertaining to years prior to six years and details of such entries are as under :-

FY	Amount (Rs.)
2008-09	1.08 Crores
2009-10	3.28 Crores
2010-11	2.55 Crores
2012-13	0.97 Crores

The above entries have been written by the ld. CIT (A) on her own notion whereas the ld. AO in recording subsequent satisfaction note dated 13.12.2019 (APB 18) recorded above entries as under :-

AY 2008-09	0.83 Crores
AY 2009-10	1.08 Crores
AY 2010-11	3.28 Crores
AY 2011-12	2.55 Crores

It seems that the ld. CIT (A) has mentioned wrong details in order to justify the action of the ld. AO only and such approach is not in accordance with law. It is beyond understanding as to on what basis she changed the notings of the satisfaction note in her order. Therefore the action of the ld. CIT (A) in holding the satisfaction note as valid is wrong and unjustified.

It is therefore sincerely prayed that instant order of the ld. CIT (A) may kindly be quashed and oblige.”

2.4 On the other hand, the ld. DR supported the order of the ld. CIT(A).

2.5 We have heard both the parties and perused the materials available on record. Brief facts of the case are that the assessee is engaged in the business of commodities trading in MCX/NCDEX. The assessee is partner in the firm M/s. MAA Chandi Stone, M.s. Arun Udyog, M/s. Agarwal Mineral, M/s. Arun Industries, M/s. Yugal Transport Co. M/s. Silika King, M/s. Ashok Mineral for which the assessee received remuneration and interest and also earned income from other sources being interest from saving bank account and commission. It is noted that the assessee filed original return of income on 29-09-2013 for the A.Y. 2013-14 declaring a total income at Rs (-) 10,88,612/-. Thereafter, the case of the assessee was selected for scrutiny and assessment u/s 143(3) of the Act was completed on 29-02-2016 at total assessed income of Rs.Nil. In this case, the ld. CIT(A) has observed that the assessee belongs to Swaroop Narain Shiv Narain&Kumawat Group of Jaipur on whose premises a search u/s 132 of the Act took place on 28-09-2017 where various assets/ books of accounts and documents were found and seized as per annexure prepared during the course of search. It is also noted from the assessment order that during the course of search, 13, highly incriminating documents were found from the bedroom of Shri Baldeep Goyal, situated at C-42, Lajpat Marg, C-Scheme, Jaipur which were seized as page Nos. 11-23 of Exhibit-2. Out of these, 13 papers, Page No. 11-17 are handwritten papers while Page No. 18-23 are computer generated papers. These are bit of old papers

starting from F.Y. 2007-08 to F.Y. 2012-13. These pages contain details of loans taken by M/s. Aditya Propcon Pvt. Ltd., a company in which the assessee and Shri Baldeep Goyal are directors, from mainly Kolkata companies to repay the loan taken from RIICO by M/s. Aditya Propcon Pvt. Ltd for buying land from Rajastha Housing Board. In the opinion of the AO, these loans taken from Kolkata companies were only accommodation entries and the assessee as well as Shri Baldeep Goyal paid unaccounted cash to these companies on receiving loans through cheque / other modes. Accordingly, the AO recorded a satisfaction note dated 01-08-2019 for proceeding u/s 153C of the Act in the case of assessee. As regards the case of Shri Baldeep Goyal, he had filed a petition before the Hon'ble Income Tax Settlement Commission, Delhi who vide order dated 11-01-2021 u/s 245D (4) of the Act settled the case. It is also noted that the AO (ACIT, Central Circle-3, Jaipur) who was AO of Shri Baldeep Goyal, got the jurisdiction over the case of the assessee vide order dated 02-09-2019 passed by Id. Pr. CIT, Jaipur-2 u/s 127 of the Act. From the entire conspectus of the case, it appears that the AO had recorded the satisfaction note prior to assuming jurisdiction over the case of the assessee as the AO got charge over the case of the assessee on 02-09-2019. It is further observed that the Id. CIT(A) had sustained the validity of notice u/s 153C of the Act on the ground that *the AO has issued the Notice u/s 153C after obtaining the correct jurisdiction u/s 127 of the Act.* It is further noted from the submissions

of the ld. AR of the assessee where he submitted that the ld. CIT(A) had forgotten to appreciate that in online process, no notice can be issued by any officer other than jurisdictional AO and hence her argument is not on correct footing. We feel that the submission of the ld. AR is justified which we concur. It is also observed that the ld. CIT(A) taken the resort in the case of Super Malls Pvt. Ltd. vs PCIT-8, New Delhi in Civil Appeal Nos. 2006-2007 of 2020 (arising out of SLP I Nos. 8449-50/2017 wherein this issue has been considered in the 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. We have noted that as on 01-08-2019 when satisfaction note was prepared the AO was not having jurisdiction over both the cases i.e. Shri Baldeep Goyal and the assessee- Shri Arun Agarwal. Hence, the case of M/s. Super Malls Pvt Ltd. (supra) has been incorrectly relied upon by the ld. CIT(A). In view of the above deliberations, we feel that ld. CIT(A) is not justified in sustaining the action of the AO in holding that the AO has assumed proper jurisdiction to assess the case u/s. 153C of the Act. Hence, the solitary ground raised by the assessee is allowed by quashing the orders of the ld. CIT(A) and the AO.

2.6 As regards the other appeals of the assessee for the A.Y. 2009-10, 2010-11 & 2011-12 which are within extended period of assessment in terms of explanation

1 to 4<sup>th</sup> proviso to Section 153A, since we have quashed the order of the AO as well as Id. CIT (A) by holding that the AO did not have jurisdiction to assess the case of the assessee for A.Y. 2013-14 due to facts mentioned hereinabove and the decision taken by us in ITA No. 347/JP/2022 shall apply mutatis mutandis in the appeal of the assessee in ITA No. 344 to 346/JP/ 2022. Thus these appeals of the assessee are allowed.

3.0 In the result, the above appeals of the assessee are allowed

Order pronounced in the open court on 22/11/2022.

Sd/-

(राठोडकमलेशजयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)  
(Sandeep Gosain)  
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 22/11/2022

\*Mishra

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Shri Arun Agarwal, Jaipur
2. प्रत्यर्था / The Respondent- The ACIT, Central Circle-3, Jaipur
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 347/JP/2022)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar