

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.879/Mum/2022
(Assessment Year :2012-13)**

Jt. Commissioner of Income Tax (OSD) Central Circle 1(4), Mumbai 9 th Floor, 902, Pratishta Bhavan, Old CGO Building (Annexe) M.K.Road, Mumbai-400020	Vs.	M/s. Goodways Realtors Pvt. Ltd. 85, Podar Centre Parel Post Office Lane Opp. Ambedkar Road Parel, Mumbai – 400 012
PAN/GIR No.AAECG4351K		
(Appellant)	..	(Respondent)

Assessee by	Shri Siddharth Kothari
Revenue by	Shri Kishor Dhule
Date of Hearing	10/01/2023
Date of Pronouncement	17/03/2023

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No. 879/Mum/2022 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-47, Mumbai in appeal No.CIT(A)-47, Mumbai/10282/2019-20 dated 27/01/2022 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 153C of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 26/12/2019 by the Id. Dy. Commissioner of Income Tax, Central Circle -1 (4), Mumbai (hereinafter referred to as Id. AO).

2. The only effective issue to be decided in this appeal of the revenue is as to whether the Id. CIT(A) was justified in deleting the addition made in the sum of Rs 2,25,00,000/- u/s 68 of the Act towards share application money received by the assessee , in the facts and circumstances of the instant case.

3. Before us, the Id. AR raised the legal issue under Rule 27 of the Income Tax Appellate Tribunal (ITAT) Rules, 1963, contending that, before the Id. CIT(A), the assessee had raised legal arguments that the addition made by the Id. AO is not based on any incriminating material or evidence found during the course of search relating to the addition made by the Id. AO and is beyond the scope of section 153C of the Act. Since this issue has been decided against the assessee by the Id. CIT(A) vide para 7 of his order, the assessee is entitled to raise this issue before this tribunal in Rule 27 of the ITAT Rules. This contention of the Id. AR is accepted and accordingly Rule 27 Petition of the assessee is hereby accepted and taken up for adjudication.

4. The facts in brief qua the legal issue are that assessee is a private limited company engaged in the business of rendering maintenance services. The assessee had filed the return of income u/s 139(1) of the Act for the A.Y. 2012-13 on 25.09.2012 declaring NIL income. The assessment was completed u/s 143(3) of the Act on 27.03.2015 determining total income at Rs 2,24,81,707/-. A search and seizure action u/s 132(1) of the Act was carried out on various entities of Poddar Institutional group on 09.01.2018. Consequent upon the search, a notice u/s 153C of the Act was issued on 21.09.2019 after recording the satisfaction. In response, assessee has filed the return on 23.09.2019 declaring NIL income. From the perusal of the assessment order, it is

seen that the Id. AO has mentioned certain modus operandi followed by Poddar group for channelizing bogus donations and out of bogus cash generated money has been channelised into the books of accounts of different entities of Poddar group in the form of share capital /share application money. The Id. AO further noted that during the year under consideration, assessee company had received share capital and share premium of Rs. 2.25 crores from 13 entities, the details of which have been given at page nos. 3 and 4 of the assessment order. Thereafter, the Id. AO based on various statements of employees and persons recorded during the search action in the Poddar group, has treated the share capital amount received as bogus and after detail discussion he has made addition of Rs. 2.25 crores u/s 68 of the Act, holding that assessee was not able to prove the creditworthiness, identity of the subscribers and genuineness of the share application money received.

5. Before the Ld. CIT (A), the assessee has raised various legal grounds challenging that addition in respect of share application money was not based on any incriminating material or documents found during the course of search and has no relation with the satisfaction note or material referred therein. Thus, the entire addition is without any incriminating material suggesting any undisclosed income. The assessee also pleaded that no documents pertaining to or relating to assessee company were found during the course of search and hence the proceedings u/s 153C of the Act ought not to have been initiated on the assessee company at all.

6. The Ld. CIT(A) has held that even though the statements recorded during the course of search in the other group entities, which though has been retracted, will construe incriminating material enough to proceed against assessee in accordance with the provisions of section 153C of the Act. The relevant observation and findings of Ld. CIT (A) reads as under:-

7. I have carefully considered the facts of the case, submissions of the Appellant, the observations of the AO contained in the assessment order and the other materials on record on this issue. During the course of search & seizure action, in the present case and other group entities, it was found that donations to the tune of Rs. 96.90 crores was given by M/s. Podar Group of Trust including the assessee trust to various entities namely Delhi Vocational School Society, Gyan Shakti Education Welfare Trust, Nav Chetna Educational Trust, Prabodh Foundation etc. These entities after retaining their commission returned the cash to the assessee group. These facts were clearly stated by Shri Kirtikumar Darshibhai Suba in his statement on oath u/s 131, during the course of survey proceedings u/s 133A carried out simultaneously with the search action. Shri Kirtikumar Darshibhai clearly mentioned that cash was received back by the trustees, Shri N.K. Sodhani, Shri Navin Nishar CA etc. In fact Shri N.K. Sodhani in his statement also very clearly accepted that donations given to the tune of Rs. 96.90 Crores were bogus in nature and were channeled back in Podar Group of entities in the form of cash. These donations have been given by Podar Education and Sports Trust from A.Y. 2011-12 onwards to various trusts and is returned back in the form of cash after deducting their commission. No doubt, these statements were retracted later on, but these statements will form the basis for "incriminating material" enough to proceed against the assessee in accordance with provisions of Section 153A of the Income Tax Act. Moreover, during the remand proceedings in the cases of connected Trusts, opportunities of cross examination etc. were given to the respective assessee. Opportunities are also given during the appellate proceedings. In these circumstances, I don't agree with the contentions of the appellant that there was no incriminating material found and seized against the appellant, opportunities were not given, etc. Accordingly ground nos. 1 to 5 taken by the assessee are **rejected**.

7. Thereafter on merits, the Ld. CIT(A) after following the decision of the co-ordinate bench of this Tribunal in the case of a group concern M/s Hemadri Machines Tools Pvt Ltd (group concern of the assessee before us) in ITA No. 714/Mum/2020 dated 09.08.2021 wherein similar issues and facts were involved, deleted the additions after observing as under:-

8.2 Considering the fact that Hon'ble ITAT has held the transaction of receipt of share application money (share capital along with share premium) as genuine and issue being the same (by relying upon the statements of same set of employees and CAs, absence of any incriminating material and following same modus-operandi), addition of income amounting to Rs. 2,24,81,707/- as unexplained cash credit within the meaning of section 68 of the ITA, 1961 is deleted and the ground of the appellant is **allowed**.

8. Before us, the Ld. CIT-DR strongly objected to the legal grounds raised by the Ld. Counsel before us, stating that assessee has not filed any cross objection. He further submitted that there was enough material found during the course of search in the case of Poddar entities that the

group was involved in channelizing unaccounted money for getting share application money from bogus entities. This is sufficient for assuming the jurisdiction u/s 153C of the Act. Further he submitted that the statements recorded from employees and CAs of assessee company would also strengthen the fact of assumption of jurisdiction u/s 153C of the Act, as the statements would constitute 'incriminating material' found during the course of search.

9. On the other hand, the Ld. AR submitted that nowhere during the course of search, any books of account belonging or pertaining to the assessee was found or seized from any of the premises of Poddar group nor there is any such material relating to the assessee has been referred in the assessment order which can be related to the assessee company. In fact, there is no mention about the assessee company at all even by the Ld. AO in his assessment order. Thus, without any incriminating material, the addition could not have been made in the assessment which has been already abated at the time of search/recording of satisfaction u/s 153C of the Act.

10. We have heard the rival submissions and also perused the relevant findings given in the impugned order and the material referred to before us qua the legal issue raised by the Ld. AR before us. We find that this matter was even raised before the Ld. CIT (A), wherein the detailed submissions were made by the assessee. The following submissions have been made before the Ld. CIT(A) on this issue, which are as under:-

Ground No. 1

9. It is submitted that in order to invoke the provisions of section 153C, the assessing officer has to be satisfied that any money bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or any books of account or documents, seized or requisitioned, pertains or pertain to, relates to, a person other than the person referred to in section 153A.

10. It is submitted that during the course of search no money, bullion, jewellery or other valuable article or thing or any books of accounts or documents belonging to the appellant were seized from the premises of Podar Group, and hence the provisions of section 153C are not applicable to the facts of the appellant's case.

11. In the assessment order, the AO has relied upon the following documents seized from the Podar Centre, ChamarBaug, Parel, Mumbai :-

i. Page 8 of Annexure - A-7

ii. Page 3 of Annexure-11

12. Apart from the documents mentioned above, the AO has also placed reliance on the File named 'REP' retrieved from laptop of Shri Jayesh Zanani. It is submitted that the said file retrieved from the laptop of Shri Jayesh Zanani has not been provided to the appellant and thus, the veracity of such file could not be ascertained by the appellant. Further, in the absence of appellant's comments/explanation regarding the said seized material, it cannot be said that it contained any data which is incriminating in nature and thus, no adverse inference can be drawn in respect of the appellant on the basis of such data.

13. It is submitted that the seized material mentioned in para 11 above are placed at page no. 716 & 717 of paper book. On perusal of the said seized material, it is evident that such papers do not contain anything which can be said as incriminating in nature. It contains rough workings, noting and jottings which are not in any manner connected or relating/ pertaining to the appellant. In fact, there is absolutely nothing to indicate or link the appellant with such noting. It does not even contain the name of the appellant to establish that the same pertains to the appellant in order to attract the provisions of section 153C of the Act.

14. The AO, in the impugned order has stated that on perusal of above seized material, it is seen that the investor companies i.e., Amazing Suppliers Pvt. Ltd. has received accommodation entries in the form of share premium. However, the AO has not spelt out the contents of the seized material so as to establish that the appellant has indulged in receipt of bogus share premium. In fact, the name of the appellant is nowhere mentioned so as to draw any adverse inferences against him. That being so, the Ld.AO is not enabled to invoke the provisions of section 153C of the Act against the appellant.

15. Further, it is submitted that the search took place on 09.01.2018 and as on the date of search the assessment for the assessment year under consideration had attained finality; no assessment or reassessment was pending that could be abated as per the second proviso to sub-section (1) of section 153A.

16. It is therefore stated that in respect of such completed assessment, and when no assessment/reassessment was pending as on the date of search, no addition/disallowance could be made in the absence of any incriminating material found during the course of search.

17. The AO has failed to bring on record any incriminating material in respect of the additions made by the AO and thus, the said additions are liable to be deleted.

18. In view of the above, it is submitted that the notice issued u/s 153C is illegal, bad in law and otherwise void for want of jurisdiction and thus, the same is liable to be deleted.

Ground no. 2:-

19. It is submitted that in order to invoke the provisions of section 153C, the assessing officer has to be satisfied that any money bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or any books of account or documents, seized or requisitioned, pertains or pertain to, relates to, a person other than the person referred to in section 153A. The precondition for initiating the proceedings u/s 153C of the Act is that the Learned Assessing Officer (In short 'Ld. A.O') of the searched person should record a satisfaction that incriminating material relating to other person (other than the searched person) has been found during the course of search.

20. However, in the present case, despite being specifically requested to provide the satisfaction note, during the course of assessment proceedings, the AO has failed to provide the same which establishes that he has failed to record any satisfaction before issuing of notice u/s 153C.

21. In the case of CIT vs RRJ securities Ltd. reported in 380 ITR 612 (Del), it is having been held by the Hon'ble the Delhi high court that according to section 153C, the AO of the searched party is obligated to examine o if the seized document belonged to another person other than the searched person. At this juncture the AO is not required to ascertain whether the documents reflect undisclosed income. The documents are then transferred to the jurisdictional AO who will record reasons before proceeding under Sec 153C. The Hon'ble court followed the decision in Pepsi Foods Pvt. Ltd. vs. ACIT 367 ITR 112 (del.) wherein it has been held that the recording of satisfaction with respect to the documents seized is necessarily the first step towards initiation of proceeding u/s 153C. This is a must even though both the AOs concerned are one and the same person.

22. In the case of the appellant there is no evidence that satisfaction as prescribed under law has been recorded. In the absence of such satisfaction, the proceedings initiated by issue of notice u/s 153C is null and void, and consequently the assessment deserves to be quashed.

11. However, the Ld. CIT (A) has dismissed the aforesaid submission in the manner as incorporated above.

12. It is an undisputed fact that return of income for A.Y. 2012-13 was filed on 25.09.2012 and at the time of issuance of notice u/s 153C of the Act, i.e., on 21.09.2019, the assessment for A.Y. 2012-13 had attained

finality which has to be reckoned as 'unabated assessment' in terms second proviso to section 153A of the Act. It is well settled proposition that assessments which had attained finality and are not abated, then additions can be made only when there is any incriminating documents or seized material found during the course of search. In the case of '**other person**' covered u/s 153C of the Act, it is *sine qua non* that, *firstly*, any money, bullion, jewellery or other valuable article or things seized or requisition belongs to; **or** *secondly*, any books of account or documents, seized or requisition pertains to or any other information contained therein, relates to a person other than the person who was searched. It has only when such document pertains to or information contained therein relates to the assessee, then only the Ld. AO can acquire jurisdiction to frame the assessment u/s 153A r.w.s. 153C of the Act. Thus, even in the case of 'other person' covered u/s 153C of the Act, the process of assessment has to be done in terms of section 153A of the Act and therefore, in case of unabated assessment, the addition can be made only if there is any incriminating document or information pertaining to the assessee which has been found from the possession of the persons searched. In this regard, reliance is placed on the decision of *Hon'ble Delhi High Court in the case of Kabul Chawla reported in 380 ITR 573 (Del)*; decision of *Hon'ble Calcutta High Court in the case of Principal CIT vs M/s Salasar Stock Broking Ltd in G.A.No. 1929 of 2016 ITAT No. 264 of 2016 dated 24.8.2016* and the decision of *Hon'ble Calcutta High Court in the case of CIT vs Veerprabhu Marketing Ltd reported in (2016) 73 taxmann.com 149 (Cal)*. Infact the decision in the case of Veerprabhu Marketing Ltd referred to supra was rendered in the context of proceedings u/s 153C of the Act.

13. Here in this case, the Ld. AO in the impugned assessment order has referred to various evidences found during the course of search and survey of Poddar group which he has analyzed by him in detail and the same reads as under:-

20. Evidences in form of documents, computer data etc. were seized/impounded during the course of search and survey operation on Podar Group. They are analyzed in detail as under: -

*20.1 It is seen that during the course of Search Proceedings u/s 132 at Podar Centre, Chamar Baug, Parel, Mumbai, Diaries and Loose papers were found from the office of Sh. Jayesh Zanani. In his statement recorded u/s 132(4) of the Act, Sh. Jayesh Zanani has admitted that he used to make the notings of the accommodation entries taken in the Podar Group. The same is explained in the Page wise explanation for **brown colored Sun Signs diary page 1 to 46 Annexure-A7 and brown colored diary Page 1 to 11 A-11** which were found and Seized from the Premise MOI i.e. Podar Centre, Chamar Baug, Parel, Mumbai. On perusal of Page 8 of Annexure -A7 and page 3 of Annexure A-11, it is seen that investor companies i.e. Amazing Suppliers Pvt. Ltd. has received accommodation entries in the form of share premium of Rs. 1.14 crores and its subsequent transfer to various entities as per direction of Shri Ajay Podar and accommodation entries in the form of share premium Rs. 1,15,58,750/- and the payment made for the same as bogus donation was Rs.1,16,22,352/- respectively.*

21. It is seen that during the course of Search Proceedings u/s 132 in the case of Jayesh Zanani at Flat No. 1303, Wing-C, Skyline CHS, Shanti Park, Near St. Xavier School, Mira Road, Thane - 401 107, data back-up of laptop were taken from the home of Sh. Jayesh Zanani, In his statement, Sh. Jayesh Zanani has admitted that he used to make the notings of the accommodation entries taken in the Podar Group companies. The same is explained in the data back-up of computer wherein few retrieved deleted files named "REP" date (different file having different dates) marked as MR-11. On perusal of these retrieved deleted file named "REP", it is seen that unaccounted money was being generated in the case of Podar Group. The same was being routed through shell companies and finally received in various concerns of Podar Group in different forms such as share capital, share premium, sale proceeds of penny script investments etc.

*22. Further, on perusal of data back-up of laptop, file related to share valuation of Podar group companies being assessed u/s 153C of the Act has been found namely "**share valuation 1**". It is further observed that: -*

1. The share valuation of Goodways Realtors of Rs.52.83 is arrived as per working found in the file named "share valuation 1" in the data backup of laptop whereas share has been issue issued to share applicant at huge premium of Rs.45/- per share and 440/- per share.

2. The share valuation of Parel Graphics of Rs.52.89 is arrived as per working found in the file named "share valuation 1" in the data backup of laptop whereas share has been issued to share applicant at huge premium of Rs.440/- per share.

3. The Share Valuation of Podar Media and Entertainment of Rs.7.55 is arrived as per working found in the file named "share valuation 1" in the data back-up of laptop whereas has been share issued to share applicant at face value of Rs. 10/- per share.

4. The share valuation of Goodluck Appreals Pvt. Ltd. of Rs.9.95 is arrived as per working found in the file named "share valuation 1" in the data back-up of laptop whereas share has been issued to share applicant at huge premium of Rs.45/- per share.

5. The Share Valuation of Shreesai Printing Private Limited of Rs.9.95 is arrived as per working found in the file named "share valuation 1" in the data back-up of laptop whereas share has been issued to share applicant at huge premium of Rs.40/- per share.

23. These incriminating materials discredit the arguments of assessee and establishes the fact that share premium received in assessee's books is an "accommodation entry". Assessee has brought into its books of account unaccounted monies through the medium of share subscription. It is seen that shares of various Podar group companies were issued at huge premium without justified valuation of the company as found in file named "Share Valuation 1". The existence of these materials show that the share subscriptions were collected as part of a pre-meditated plan. On the basis of the above findings, the transactions have not been proved to be genuine and they were only instruments used by the assessee to mislead the income tax authorities.

23.1 Further, the provision of section 153C of the IT Act entails as under:-

"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 the relevant assessment year or years referred to in sub- section (1) of section 153A] :]"

23.2 The assessee contention that proceedings u/s 153C is bad in law is also found to be not acceptable. The proceedings u/s 153C is valid. Incriminating materials found from searched premises have a bearing on the determination of the total income of assessee. Further, reasons have also been recorded as

required under the Income Tax Act, 1961. In this respect, reliance has been placed on following case laws :-

a. Ajay Kumar Sharma (2002) 124 taxman 814 (Raj) / (2003) 259 ITR 240 (Raj) / (2002)539(Raj) wherein search assessment, entries in regular books can be taxed. Merely because some entries are shown in regular books of account that does not prohibit Assessing Officer to tax that amount in block period, if that amount has not been taxed in regular assessment.

14. From the perusal of the aforesaid analysis done by the Ld. AO and also the documents referred to before us at the time of hearing, we find that, nowhere any of the seized material or documents relates to the assessee company or can be said to pertaining to the assessee company. Nowhere there is any of the statement which has been incorporated and discussed in detail, wherein the name of the assessee company has been figured. It mostly speaks about that the Poddar group of companies were taking accommodation entries. Nowhere the Ld. AO has pointed out that any of the seized material; or in any of the statement; or there is any whisper in the assessment order that any such information also pertains to the assessee or assessee was also part of any such beneficiary of the accommodation entry scheme. The details of the companies with whom the assessee has received the money are as under:-

Sr. No.	Name	Address	PAN	CIN	Date of Incorporation	Amount in Rs.
1	Asian Investments & Financial Services P. Ltd.	103/B, 104, Sagar Shopping Centre, 76, J.P.Road, Andheri (W) Mumbai-400 068	AAGCA6 526N	U65990MH200 7PTC169514	02-04-2007	19,12,500
2	Crown Crops Science P. Ltd.	G-9, Shop No.9, Janta Co-op.Housing Soc., Jesal Park,	AADCC3 551E	U72100MH200 0PTC127661	15-04-2008	19,35,000/-

		Bhayender (E)				
3	Dipankar Steel Pvt. Ltd	Office No.14/15, 1 st Floor, Bhatbazar Narsinath Street Masjid Bunder Mumbai – 400 009	AADCD8 268M	U74120MH201 0PTC198254	01-01-2010	19,35,000/-
4	Kasare Fincap Services Pvt. Ltd.	Office No.G-3, Vijay Apartment, Gurunanak Nagar, Navghar, Behind HDFC Bank, Vasai, Thane-401 202	AADCK2 164P	U67190MH200 7PTC169632	04-04-2007	13,50,000/-
5	Khushi Industries Ltd	4A, 2 nd Floor Bombay Hospital Trust, Building 134, Meadou/s street, Fort, Mumbai	AAACJI4 57F	U70100MH198 7PLC045620	05-02-2009	18,00,000/-
6	Kurmi Developers Ltd.	Office No.14/15, 1 st Floor, Bhatbazar Nasinatha Street, Masjid Bunder, Mumbai – 400 009	AAECK3 351M	U70200MH201 0PTC198655	07-01-2010	19,35,000/-
7	Nirvana Clothing Pvt. Ltd.	Office No.16, 4 th Floor, Bhatbazar Nasinatha Street Masjid Bunder, Mumbai – 400 009	AADCN6 287G	U17120MH201 0PTC198511	27-05-2011	19,35,000/-
8	Rishi Automation Pvt. Ltd	9, Janta CHS, Jesal Park, Bhayender (E) Thane- 401	AAACR8 467K	U99999MH199 4PTC083972	22-12-1994	19,35,000/-

		105				
9	Shorey Infraprojects Pvt. Ltd.	103/B, 104, Sagar Shopping Centre 76, J.P. Road, Andheri(W) Mumbai – 68	AAOCS3 992G	U45202MH201 0PTC199969	11-02-2010	10,12,500/-
10	Shree Pawan Exim Pvt. Ltd.	67, Prakash Chambers, 2 nd Floor, 77, Nagindas Master Road, Fort, Master Road, Fort Mumbai-400 023	AACCS7 675L	U51900MH199 6PTC098954	18-04-1996	19,35,000/-
11	Statford Textile Specialties Ltd.	104, Auto Commerce House, Kennedy Bridge, Nana Chowk, Opera House, Mumbai-400 007	AANCS6 616A	U17120MH199 3PLC072836	13-07-1993	19,35,000/-
12	Thadeshwar Finin Service Pvt. Ltd	G-3, Vijay Apt, Gurunanak Nagar, Navghar, Vasai, Thanem 412 202	AACCT7 897B	U93000MH200 7PTC170488	01-05-2007	9,45,000/-
13	Zeme Realtech Pvt. Ltd	4/A, 2 nd Floor, Birla Mansion, 134, Nagindas Master Road, Fort, Mumbai	AAACZ4 928R	U70102MH200 9PTC198227	31-12-2009	19,35,000/-
						2,25,00,000/-

15. Had it there been any information or material found during the course of search regarding assessee company or any of the subscriber

companies that these are bogus, then the Ld. AO was justified not only acquiring the jurisdiction u/s 153C of the Act, but also making the addition, because that it would have been based on incriminating material or information pertaining to the assessee. The so called page-8 of Annexure A-7 and page 3 of Annexure A-11 as mentioned by the Ld. AO, contains information regarding Emerging Supply Pvt. Ltd. who has received accommodation entry in the form of share premium and subsequent to various transfer entities as per the direction of Shri Ajay Podar was sum aggregating to Rs. 1.15 crores. Nowhere has it been brought on record that this money was transferred in the form of share application money or share premium in the case of the assessee company. All these might be incriminating materials, but those incriminating material should have some reference of the assessee company or something can be inferred in the case of the assessee company, i.e., it pertains to the assessee. The modus operandi unearthed during the course of search in the case of Poddar entities may be relevant for other cases within the group entities wherein there is direct evidence or material which has been discussed in the assessment order as well as in the various statements. But in so far as the assessee is concerned, there is no such reference of any such material or neither any information nor it has been discussed in the entire assessment order. It is based on the entire premise that some modus operandi of Podar group for routing through their unaccounted money in the form of share application / share premium in the group entities was unearthed. Based on that, the Ld. AO has assumed that assessee is also part of the same modus operandi wherein assessee has brought its unaccounted money through the medium of share subscribers. There has to be prima facie material which pertains to the assessee found from the search to rope in the assessee company within the scope of section 153C of the Act to make the additions. The Ld. AO may have discussed the issue on merits but has

failed to take any such documents or information that during the course of search anything pertains to the assessee was found or the addition which has been made by him flows from such incriminating material or documents or information. He has made reference to various statements recorded during the course of search but nowhere there is any reference of the assessee company which is evident from the perusal of the entire assessment order running into 72 pages.

16. Thus, we hold that in absence of any information pertaining to the assessee or any documents found during the course of search of Podar entities, no addition can be made in the case of assessee company specially when the A.Y. 2012-13 had attained finality and was not abated either at the time of search or either at the time of recording of satisfaction. Thus, on this ground, the addition made by the Ld. AO is quashed on the legal issue raised by the assessee.

17. In so far as revenue appeal, we are not deciding this issue on merits at all nor going through the findings given in the impugned orders, as we have quashed the addition on legal issue, being beyond the scope of assessment u/s 153C of the Act. Accordingly, the revenue appeal is dismissed.

18. In the result, the appeal filed by the revenue is dismissed.

Order pronounced on 17/03/2023 by way of proper mentioning in the notice board.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 17/03/2023
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai