

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH: 'E' NEW DELHI ]**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER**

**AND**

**SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 3608/DEL/2017 (A.Y. 2009-10)**

ACIT Central Circle-6 New Delhi <b>( APPELLANT )</b>	Vs.	Lipi Finstock Ltd. C-30, Panchsheel Enclave New Delhi <b>PAN No. AAACL2220N</b> <b>( RESPONDENT )</b>
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<b>Assessee by :</b>	<b>Sh. Gagan Kumar, Adv &amp; Sh. Vivek Kumar, CA</b>
<b>Department by:</b>	<b>Ms. Sarita Kumari, CIT DR</b>

<b>Date of Hearing</b>	<b>31.05.2023</b>
<b>Date of Pronouncement</b>	<b>21.06.2023</b>

**ORDER**

**PER YOGESH KUMAR U.S., JM**

This appeal is filed by the Revenue against the order dated 17/03/2017 passed by the CIT (A)-24, (hereinafter referred to 'CIT(A)') New Delhi for assessment year 2009-10.

2. The Revenue has raised the following grounds of appeal:-

1. *“The order of Ld. CIT(A) is not correct in law and on facts.*
2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition of Rs. 54,59,00,000/- on account of unexplained share capital by holding that the additions other than those based on seized documents cannot be done in the assessment proceedings u/s 153C.*
3. *On the facts and circumstances of the case, the CIT(A) has erred in relying on the order of Hon’ble Delhi High Court in case of M/s RRJ Securities as Sec. 153C does not restrict the assessment to incriminating documents.*

3. Brief facts of the case are that, a search and seizure operation u/s 132 of the Income Tax Act was carried out on the Rockland Group of cases on 06.09.2011. The assessee belongs to the Rockland group, but warrant was not issued against the assessee. However, notice u/s 153C dated 31.05.2013 was issued to the assessee. The A.O. held that during search and seizure action, various incriminating documents were found and seized relating to share allotment at a heavy premium by sister concerns of the Rockland Group viz., M/s Rockland Hospitals Ltd., M/s Rockland Hotels Ltd. and M/s Rockland Media & Communications Pvt. Ltd. After considering the submissions of the appellant and taking into account various evidence his possession, the A.O. made addition of Rs. 54,59,00,000/- as unexplained cash credit u/s 68 ( on account of share capital received during the year, but treated as accommodation entries) and Rs. 163,77,000/- towards unexplained

expenditure that would have been incurred on arranging the accommodation entries. The A.O. noted that many assesseees of the Rockland Group of cases, including the assessee itself, had filed applications for settlement before the Income Tax Settlement Commission in March, 2014. The assessee appellant had filed an application in the capacity of a party “related to” certain other assesseees of the Rockland Group which had also filed Settlement petitions in the capacity of “specified person” u/s 245C of the Income Tax Act, 1961. The Settlement Commission has not admitted the application of the assessee on the grounds that the assessee does not qualify as a “related” person to the “specified person”. The A.O. also made addition of Rs. 1,00,000/- on account of additional income reflected in its settlement application before the Income Tax Settlement Commission.

4. Aggrieved by the assessment order dated 20/06/2014, the assessee preferred an Appeal before the CIT(A). The Ld.CIT(A) allowed the Appeal on the ground that the ‘seized document belong to the assessee mentioned in the satisfaction note does not pertain to the Assessment Year 2009-10’ and even otherwise the document mentioned in the satisfaction note have not been utilized by the A.O. in framing the assessment, accordingly, the Ld.CIT(A) allowed the Appeal of the assessee.

5. Aggrieved by the order of the CIT (A), the Department preferred the present Appeal on the grounds of mentioned above.

6. The Ld. DR vehemently submitted that the CIT(A) erred in law in deleting the addition of Rs. 54,59,00,000/- on account of unexplained share capital by holding that addition other than those based on seized document cannot be done in the assessment proceeding u/s 153C and erred in relying on the order of the Delhi High Court of M/s R R J Securities as Section 153C of the Act does not restrict the assessment to incriminating documents.

7. On the other hand, the Ld. AR contended that the Ld.CIT (A) rightly observed that the purported incriminating material pertains to Assessment Year 2010-11 and not pertain to Assessment Year 2009-10, in view of the said undisputed fact, the issue is squarely covered by the judgment of the Hon'ble Supreme Court in the case of Hon'ble Supreme Court in the case of CIT III-Pune Vs. Singhad Technical Education Society[2017] 397 ITR 344. Therefore, the substantive addition based on purported incriminating pertaining to Assessment Year 2010-11 cannot found basis of addition in the Assessment Year 2009-10, therefore, submitted that the present appeal filed by the Revenue is devoid of merit.

8. We have heard both the parties and perused the material available on record. The Ld. A.O made addition of Rs.29.73 crores on protective basis and Rs. 24.27 crore on substantive basis in following manners:-

*“3.15 In view of the above discussion, it is established beyond doubt that the share application money and share premium received by the assessee from various investors is nothing but unexplained cash*

*credits in the books of accounts of the assessee company. The same has also been admitted by the assessee before the Settlement Commission. Further, it has also been established above that the assessee company is a paper company without any real business and has been created as a conduit to receive unaccounted income of flagship companies in the garb of investments, and pass it back to the flagship companies as investment. Such flagship company in this case is M/s. Rockland Hospital Limited and M/s. Rockland Hotels Limited. Hence the unaccounted investment is the unaccounted cash income generated by M/s. Rockland Hospital Limited and M/s. Rockland Hotels Limited. The case of Rockland Hospital Limited is pending before Settlement Commission and the outcome is awaited. It has already been stated in the preceding paras that out of investments received by the assessee in the relevant FY a sum of Rs. 1,15,00,000/- has been received back in Rockland Hotels Limited and Rs. 28,58,34823/- has been received back in Rockland Hospital Limited. The amount received by Rockland Hotels Limited has already been added on substantive basis in the assessment of Rockland Hotels Limited in AY 2011-12 & 2012-13. The case of Rockland Hospital Limited is before the Settlement Commission. Hence in total a sum of Rs. 29,73,34,823/- will be added on protective basis in the hands of the assessee and the remaining Rs. 24,27,44,823/- will be added on substantive*

*basis u/s 68 of the IT Act to declared income of the assessee company. In case the Hon'ble Settlement Commission holds that this unaccounted income on account of unexplained investments does not belong to Rockland Hospital Limited, then the protective addition will be held as substantive in the hands of the assessee. Similarly if the appellate authorities in the case of Rockland Hotels Limited, hold that the unaccounted income on account of unexplained investments does not belong to Rockland Hospital Limited, then the protective addition will be held as substantive in the hands of the assessee. As the assessee has concealed the income to the extent of unexplained cash credit amounting. to Rs.297334823/- on protective basis and Rs.242744823/- on substantive basis, which clearly attracts provisions of penalty proceedings u/s 271(1)(c) of the IT Act. The penalty proceedings u/s 271(1)(c) of the IT Act has been initiated separately.*

*(Addition of Rs.297334823/- on protective basis)  
(Addition of Rs.242744823 on substantive basis).”*

9. Since an amount of Rs.29,73,34,823/- has been made protective basis and and a sum of Rs. 24,27,44,823/- has been made on substantive basis a specific query has been raised with the Ld. Assessee's Representative regarding the outcome of addition made on protective basis. The Ld. Assessee's Representative brought to our notice that Rockland Hospital Group moved an application before the Income Tax Settlement Commission

("Ld. Settlement Commission"), and accordingly, the Ld. Settlement Commission vide its order dated 16.10.2015 accepted the contention of Rockland group that a sum of Rs. 8.73 crores were circulated on multiple occasion to introduced share capital. The Ld. Settlement Commission recorded its finding at para 4.2.3 of its order dated 16.10.2015 wherein it also dealt with share capital introduced by the assessee i.e., M/s Lipi Finstock limited. The addition was confirmed in the hands of other assessees as listed out at para 4.2.3. of the Ld. Settlement Commission order in following manners:-

***“4.2.3. Commission's observations and finding***

*The Commission on 07.08.2015 during the hearing, directed the Addl. DIT (Inv.) to verify the daim of the applicant about the rotation of entries for Introduction of share capital by RHL. On verification, it was found that the total circulating capital was Rs. 8.73 crores and not Rs. 7.73 crores. Out of this the applicant has declared Rs. 6.79 crore in 12 cases before us and the remaining Rs. 1.04 crore has been stated to be opening cash in hand. Later on, vide letter dated 6.10.2015 during the course of hearing in the cases of individuals, Rs. 1.04 crore also has been declared additionally in the case of Individuals as the source of Initial cash in hand could not be fully substantiated by the applicant on the plea of old records. It has been found on verification that the applicant's claim is correct with regard*

to repetition of accommodation entry and the initial amount was Rs. 8.73 crore.

The fund flow statement showing the manner of rotational increase in share capital and the investment in building as verified by Addl. DIT(Inv.) is as under:-

F.Y.	Opening Cash + Undisclosed Income	Returned By Somya	Amount given to Various Entry Providers (Shareholders of Table Co.) (Rs.)	Balance (Rs.)	Money paid by 15 Co. to Rockland Hospital Ltd.	Rockland Hospital Ltd. Paid to Somya	Somya Paid to Various Vendor	Somya Cash Expenses	Balance Cash
1	2	3=8+9	4	5=2+3-4	6	7	8	9	10=(2-4+8+9)

2005-06	26,541,939	2,787,176	19,750,000	9,579,115	19,990,000	5,571,564	1,476,176	1,311,000	9,579,115
2006-07	42,500,000	-	40,000,000	12,079,115	39,920,000	-	-	-	12,079,115
2007-08	18,300,000	41,228,525	71,607,640	-	70,580,000	43,378,751	29,628,525	11,600,000	-
2008-09	-	209,600,000	209,600,000	-	207,320,000	306,799,606	177,422,380	32,177,620	-
2009-10	-	212,450,000	212,450,000	-	211,630,000	415,077,512	208,909,407	3,540,593	-
2010-11	-	199,689,748	199,689,748	-	186,995,000	315,319,993	185,133,689	14,556,059	-
2011-12	-	127,800,000	127,800,000	-	141,950,000	517,050,352	108,800,000	19,000,000	-
	87,341,939	793,555,449	880,897,388		* 878,385,000	1,603,197,778	711,370,177	82,185,272	

\* Out of the above funds further distribution is as under:-

Particulars	15 Co. paid to Rockland Hospitals Ltd. Group
Rockland Hospitals Ltd.	** 767645000
Rockland Hotels Ltd	52490000
Rockland Media & Com. P Ltd	58250000
<b>Grand Total</b>	<b>878385000</b>

\*\*Further the details of Rs. 76.76 crore and the total share capital of Rs. 154.50 cores are as under:-

Shareholder's name	Amount Received	Amount Refunded	Net Amount
Sister Concern			
Aesthetica Enterprises Pvt. Ltd.	54460000	600000	53860000
AkhilMeditech Private Limited	61450000	-	61450000
Himanshu Medicare Pvt. Ltd.	71600000	1000000	70600000
Hitesh Contractions Pvt. Ltd.	9400000	-	9400000
Kunal Medicare Pvt. Ltd.	61640000	5400000	56240000
Paradise Realtech Pvt. Ltd.	58640000	-	58640000
Radhika Surgical Pvt. Ltd	9100000	-	9100000
Regal Builders & Promotes Pvt. Ltd..	12500000	-	12500000
Umesh Pharmaceuticals Pvt. Ltd.	14100000	-	14100000
Aditya Medicos Pvt. Ltd.	46860000	400000	46460000
AveeMedi Surgical P Ltd	8980000	500000	8480000
Glory Lifesciences Pvt. Ltd.	61630000	6280000	55350000
LipiFinstock Limited	294335000	8450000	285885000
Mona Infotech Pvt. Ltd.	14870000	400000	14470000
Prabhat Health Care Services Pvt. Ltd.	11110000	-	11110000
<b>Total (1)</b>	<b>790675000</b>	<b>23030000</b>	<b>767645000</b>

Corporate Subscribers			
Somya Constructions Pvt. Ltd	2000000		2000000
Sukumar Enterprises Pvt Ltd	38100000	113	38099887
Rock Land Ltd.	450000		450000
Sunskriti Tradex Pvt Ltd	57000000	58	56999942
Rockland Media & Comm. Pvt. Ltd	8500000		8500000
Vaibhav India Surgicals Pvt Ltd.	111000000	72	110999928
Rockland Hotels Limited.	24900000	3200000	21700000
Purnendu Traders Pvt Ltd	34290000	146	34289855
<b>Calls In Advance:</b>			
Regal Builders & Promotes. Pvt. Ltd.	1900000		
Umesh Pharmaceuticals Pvt. Ltd.	3400000		
Prabhat Health Care Services Pvt. Ltd.	230000		
<b>Total (2)</b>	<b>281770000</b>	<b>3200389</b>	<b>273039611</b>
<b>Sub Total (1+2)**</b>	<b>1072445000</b>	<b>26230389</b>	<b>1040684611</b>
International Finance Corporation (IFC)-USA	399990321		399990321
<b>Total (3)</b>	<b>399990321</b>	<b>0</b>	<b>399990321</b>
<b>Total (4) (2+3) Corporate Subscribers</b>	<b>681760321</b>	<b>3200389</b>	<b>673029932</b>
<b>Other Investors- Individual</b>			
Aditya Bhandari	528000	159	527842
Chanchal Bhandari	1090000	0	1090000
Mr. Prabhat Kumar Srivastava	20940142	900098	20040044
Mr. Rajesh Kumar Srivastava	19109415	1215135	17894280
Mr. Rishi Kumar Srivastava	25440650	5420045	20020605
Mrs. Mala Srivastava	315000		315000
Mrs. Sushmita Srivastava	3245016		3245016
Mr. S.K. Saxena	300000		300000
Mr. Rajeev Saxena	1200000		1200000
Pankaj Gupta	5000000		5000000
Shashi Srivastava	970000		970000
<b>Total (5)</b>	<b>78138223</b>	<b>7535436</b>	<b>70602787</b>
<b>Grand Total (1+4+5)</b>	<b>1550573544</b>	<b>33765825</b>	<b>1511277719</b>
Less:- Calls in Advance not consider in Ruje 9 report in column no 2 (The calls in advance in turn has been utilised in share allotment)	5530000		
	<b>1,545,043,544</b>	<b>33,765,825</b>	<b>1,511,277,719</b>

From the above chart the investment of individuals have also been verified along with investment from 4 companies namely M/s Sukumar Enterprises Pvt. Ltd., M/s Vaibhav India Surgicals Pvt. Ltd., M/s Punendu Traders Pvt. Ltd. and M/s Sunskriti Tradex Pvt. Ltd. These 4 companies were assessed u/s 143(3) without any

*adverse Inference. The applicant has given copy of assessment order u/s 143(3) passed by respective A.O's.*

*The modus operandi admitted in the application and rotation of funds starting from Initial undisclosed investment of Rs. 8.73 crore in the hands of applicants in A.YS 2006-07 and 2007-08, use of such funds to obtain share capital from accommodation entry providers by 15 companies, investment by such companies to share capital of RHL, Inflation of cost of construction of hospital building by RHL through Somya Construction Pvt. Ltd., obtaining of share capital again through accommodation entry providers, rotation of such funds from A.Ys 2006-07 to 2012-13 has been found to be correct during the proceedings before us. The inflation In cost of hospital building by RHL and non-genuine share capital in RHL is found to be Rs. 82.34 crore. RHL has withdrawn depreciation claim on Inflated cost of hospital building.*

*During present proceedings, we Inquired of the AR as to the purpose of raising such share capital by way of inflated purchases bills/assets. The AR stated that the purpose was to obtain higher finance from banks/financial Institutions. He further added that the applicant is not a defaulter of any financial institutions.*

*Since the necessary verification has been done and found to be satisfactory, the additional amount of Rs. 1.04 crore over and above*

*the amount of Rs. 6.79 crore in accordance with applicant's letter dated 06.10.2015 is directed to be added in their respective individual hands as- under:*

Sr. No	Name	Amount(Rs.)	A.Y.
1.	Aditya Kumar Bhandari	15.00 lacs	2006-07
2.	Rajesh Kumar Srivastava	15.00 lacs	2006-07
3.	Prabhat Kumar Srivastava	15.00 lacs	2006-07
4.	Rishi Kumar Srivastava	15.00 lacs	2006-07
5.	Mala Srivastava	15.00 lacs	2006-07
6.	Sushmita Srivastava	15.00 lacs	2006-07
7.	Chanchal Bhandari	10,41,939	2006-07

Considering the above fact that the addition was confirmed in the hands of other Assesseees and not on the assessee here in by the settlement Commission, the protective assessment made in the hands of the assessee does not survive.

10. In so far as addition of Rs. 24,27,44,823/- on substantive basis, the said addition has been deleted by the CIT(A) on the ground that the incriminating material found during the search is pertaining to Assessment Year 2010-11 and not for the year under consideration i.e. Assessment Year 2009-10. The Ld. CIT(A) while deleting the addition has held as under:-

*“4.1.9. The first issue to address is that the preliminary objection of the appellant that the additions made by the A.O. are not emanating from the incriminating material unearthed during search. It is therefore necessary to examine whether the additions were made for A.Y. 2009-10 have their origin in material unearthed during search. The primary evidence in this regard is the statement*

*of Sh. Anil Aggarwal, the hawala entry operator who admitted that he has provided accommodation entries to the appellant. However, closer look at the statement shows that his admission relates to entries provided during the period December, 2010 to August 2011, which is subsequent to the previous year relevant to the A.Y. 2009-10 under consideration here. Secondly, the accommodation entries admitted by him to pertain to share capital entries provided by his companies Ankay Associates Pvt. Ltd., B.R. Gupta and Co. Pvt. Ltd. and Rachiyata Buildcon Pvt. Ltd. These are all Delhi-based companies which Sh. Anil Aggarwal controls. Sh. Anil Aggarwal is not connected to any of the Kolkata-based companies who have provided share capital to the appellant during the A.Y. 2009-10, nor has he admitted having facilitated the accommodation entries through these Kolkata-based companies. The statement u/s 132(4) of Sh. Anil Aggarwal is corroborated and admitted by the Rockland group (including the appellant-company) in its petition before the Hon'ble Settlement Commission. It has been admitted that the unaccounted income of Rs.7.73 crores made during A.Y. 2006-07, 2007-08 and 2008-09 by various companies, notably Sowmya Constructions P. Ltd. This income was introduced as share capital in the Rockland group companies. Sowmya Construction P. Ltd. offset its artificially inflated revenue by inflating cost of construction by booking bogus expenditure. The cash so generated was used to inflate the share capital of the Rockland group companies by converting the cash into cheques through the entry operator; this process was repeated many times, so as to increase the equity capital of Rockland Hotels Ltd and Rockland Hospitals Ltd, ultimately increasing their share capital (equity) by Rs.82.34 crores, for the purpose of raising finance (debt) from Financial Institutions. It would however be noticed that the share capital inflow of A.Y. 2009-*

*10 is not covered in this admission. There is no other evidence seen in the assessment order which indicates that any incriminating material has been unearthed during the search (including statement of the Directors or third parties), which would show that the additions are based on material unearthed during the search. Of course there is evidence to doubt the genuineness of the equity increase for this year, in the form of local enquiries at Kolkata, Lai Bazar, Post Office and the statements of the purported auditor of the investor companies as well as the Directors of the Investor companies. But the results of these enquiries cannot be said to be material unearthed during search. It appears that the results of these enquiries ( if it were indeed available during the search) were not even confronted to the Directors of the appellant company during the search. The fact that there is evidence of bogus share capital from the period 2006-07 to 2008-09 does not automatically constitute evidence regarding share capital for A.Y. 2009-10. The additions made by A.O., though based on vigorous activity in evidence collection, falls outside the scope u/s 153C as held by the Hon'ble Jurisdictional Delhi High Court in the case of CIT vs. RRJ Securities Ltd. (2015) 62 Taxmann.com 391 (Del), reproduced below, and which I am bound to follow:*

*“21. As discussed hereinbefore, once the AO of the searched person is satisfied that the seized assets/documents belong to another person and the said assets/documents have been transferred to the AO of such other person, the proceedings for assessment/reassessment of income of the other person has to proceed in accordance with provisions of Section 153A of the Act. Section 153A requires that where a search has been initiated under Section 132 of the Act, the AO is required to issue notice requiring the noticee to furnish returns of income in*

*respect of six assessment years relevant to the six previous years preceding the previous year in which the search is conducted. As discussed hereinbefore, by virtue of second proviso to Section 153A, the assessment/reassessment pending on the date of initiation of search abate. In the context of proceedings under Section 153C of the Act, the reference to the date of initiation of the search in the second proviso to Section 153A has to be construed as the date on which the AO receives the documents or assets from the AO of the searched person. Thus, by virtue of second proviso to Section 153A of the Act as it applies to proceedings under Section 153C of the Act, the assessment/reassessment pending on the date on which the assets/documents are received by the AO would abate. In respect of such assessments which have abated, the AO would have the jurisdiction to proceed and make an assessment. However, in respect of concluded assessments, the AO would assume jurisdiction to reassess provided that the assets/documents received by the AO represent or indicate any undisclosed income or possibility of any income, that may have remained undisclosed in the relevant assessment years, this Court in CIT v. Kabul Chawla [2015] 61 taxmann.com 412 (Delhi) has held that completed assessments could only be interfered with by the AO on the basis of any incriminating material unearthed during the course of the search or requisition of the documents. In absence of any incriminating material, the AO does not have any jurisdiction to interfere in concluded assessments. This Court had summarized the legal position in respect of Section 153A of the Act as under:—*

*'37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the*

*aforementioned decisions, the legal position that emerges is as under:*

*i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*

*ii Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*

*ii The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".*

*iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."*

*v. In absence of any incriminating material, the completed*

*assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is re la table to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*

*vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153.4 merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material! existing or brought on the record of the AO.*

*vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made, known in the course of original assessment.'*

*22. The aforesaid principles would be equally applicable to proceedings initiated under Section 153C of the Act as Section 153C(1) of the Act expressly provides that once the AO has received "money, bullion, jewellery or other valuable articles or thing or books of account or documents seized" from the AO of the searched person, he would proceed to assess or reassess the income of the person to whom such assets/books belong in accordance with Section 153A of the Act."*

.....

36. *The decision in SSP Aviation Ltd. (supra) cannot be understood to mean that the AO has the jurisdiction to make a reassessment in every case, where seized assets or documents are handed over to the AO. The question whether the documents/assets seized could possibly reflect any undisclosed income has to be considered by the AO after examining the seized assets/documents handed over to him. It is only in cases where the seized documents/assets could possibly reflect any undisclosed income of the Assessee for the relevant assessment years, that further enquiry would be warranted in respect of those years. Whilst, it is not necessary for the AO to be satisfied that the assets/documents seized during search of another person reflect undisclosed income of an Assessee before commencing an enquiry under Section 153C of the Act, it would-be impermissible for him to commence such enquiry if it is apparent that the documents/assets in question have no bearing on the income of the Assessee for the relevant assessment years.*

37. *As expressly indicated under Section 153C of the Act the assessment or reassessment of income of a person other than a searched person would proceed in accordance with the provisions of Section 153A of the Act. The concluded assessments cannot be interfered with under Section 153A of the Act unless the incriminating material belonging to the Assessee has been seized.*

38. *As indicated above, in the present case, the documents seized had no relevance or bearing on the income of the Assessee for the relevant assessment years and could not possibly reflect any undisclosed income. This being the undisputed position, no investigation was necessary. Thus, the provisions of section 153C, which are to enable an investigation in respect of the seized asset,*

*could not be resorted to; the AO had no jurisdiction to make the reassessment under Section 153C of the Act.”*

4.1.10. *This aspect is further noticed on a reading of the satisfaction note which is reproduced below:-*

**M/S. ROCKLAND HOTELS LIMITED &**  
**M/S ROCKLAND HOSPITAL LIMITED**

*During the course of search and seizure operation conducted on 06/09/2011 at Premises C-30, Panchsheel Enclave, New Delhi of M/s Rockland Hotels Limited and A-33-34, Qutub Institutional Area, New Delhi, of M/s Rockland Hospital Limited, documents marked as Annexure A-1 to A-132 & Annexure AA-1 to AA-7 were found and seized.*

*It is seen that the above seized material contains following documents belonging to M/s Lipi Finstock Private Limited:-*

1. *Annexure A -9 of party S-2, page 124 to 126, schedule for year ending on 31.03.2010;*

*P-127-128 P & L A/cyear ending on 31.03.2010*

*P-129 balance sheet year ending on 31.03.2010*

*P-158-169 trial balance ending on 31.03.2010*

2. *.Annexure A-2 of party S-1, page 7 to 9 Ledger account from 01-10-09 to 05-09-11*

*In view of the above, I am satisfied that documents seized belongs to a person other than the person searched under section 132 of the IT Act, 1961.*

*Hence the proceeding u/s 153C of the IT Act, 1961 is initiated in the case of M/s Lipi Finstock Limited.*

*(A L Prasad)*

*Deputy Commissioner of Income Tax  
Central Circle-11, New Delhi*

*4.1.11. It can be seen that the seized documents belonging to the appellant mentioned in the Satisfaction Note do not pertain to the assessment year 2009-10. Even otherwise, the documents mentioned in the satisfaction note have not been utilized by the A.O. in framing this assessment.”*

11. From the above findings of the CIT(A) it is found that the incriminating material found during the search is pertaining to Assessment Year 2010-1 and not pertaining to Assessment Year 2009-10, further, even before us the Revenue has not refuted the finding of the Ld. CIT(A). The Hon'ble Supreme Court in the case of Commissioner of Income Tax-III, Pune Vs. Sinhgad Technical Education Society [2017] 397 ITR 344 (S.C) held as under:-

*“18. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provision of Section 153C of*

*the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under the provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Not and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004 05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges there from is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senio counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was eve time barred.*

*19. We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy.”*

12. By respectfully following the ratio laid down in the case of *Sinhgad Technical Education Society (supra)*, we find no error or infirmity in the order

of the CIT(A) in deleting the addition and find no merit in the grounds of Appeal of the Revenue.

13. In the result, the Appeal filed by the Revenue is dismissed.

Order pronounced in the open court on : **21/06/2023.**

**Sd/-**  
**( ANIL CHATURVEDI )**  
**ACCOUNTANT MEMBER**  
Dated : 21/06/2023

**Sd/-**  
**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

*\*R.N, Sr. PS\**

Copy forwarded to :-

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI