

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'H' BENCH,
NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

ITA No. 674/DEL/2021 [A.Y. 2012-13]

ITA No. 675/DEL/2021 [A.Y. 2013-14]

ITA No. 676/DEL/2021 [A.Y. 2014-15]

ITA No. 677/DEL/2021 [A.Y. 2015-16]

ITA No. 678/DEL/2021 [A.Y. 2016-17]

Zoom Developers SEZ [Indore] Pvt. Ltd
C/o Kapil Goel [Adv]
F -26, /124, Sector 7,
Rohini, Delhi

Vs.

The A.C.I.T.
Central Circle - 13
New Delhi

PAN: AAACZ 3456 E

ITA No. 679/DEL/2021 [A.Y. 2012-13]

ITA No. 680/DEL/2021 [A.Y. 2013-14]

ITA No. 681/DEL/2021 [A.Y. 2014-15]

ITA No. 682/DEL/2021 [A.Y. 2015-16]

ITA No. 683/DEL/2021 [A.Y. 2016-17]

M/s Startle Constructions Pvt Ltd Vs.
C/o Kapil Goel [Adv]
F -26, /124, Sector 7,
Rohini, Delhi

The A.C.I.T.
Central Circle - 13
New Delhi

PAN: AAPCS 9178 R

ITA No. 688/DEL/2021 [A.Y. 2012-13]
 ITA No. 689/DEL/2021 [A.Y. 2013-14]
 ITA No. 690/DEL/2021 [A.Y. 2014-15]
 ITA No. 691/DEL/2021 [A.Y. 2015-16]
 ITA No. 692/DEL/2021 [A.Y. 2016-17]

Tyagi Portfolio Management Pvt. Ltd
 42/3, East Patel Nagar
 New Delhi

Vs. The A.C.I.T.
 Central Circle - 13
 New Delhi

PAN: AAACQ 3044 L

ITA No. 693/DEL/2021 [A.Y. 2012-13]
 ITA No. 694/DEL/2021 [A.Y. 2013-14]
 ITA No. 695/DEL/2021 [A.Y. 2014-15]
 ITA No. 696/DEL/2021 [A.Y. 2015-16]
 ITA No. 697/DEL/2021 [A.Y. 2016-17]

M/s Jaguar Equity Ltd
 C/o Kapil Goel [Adv]
 F -26, /124, Sector 7,
 Rohini, Delhi

Vs.

The A.C.I.T.
 Central Circle - 13
 New Delhi

PAN: AAACQ 1802 B

(Applicant)

(Respondent)

Assessee By : Shri Kapil Goel, Adv

Department By : Shri Sapna Bhatia, CIT-DR

Date of Hearing : 21.08.2023

Date of Pronouncement : 25.08.2023

ORDER**PER BENCH:-**

ITA No. 674/DEL/2021 to ITA No. 678/DEL/2021 are appeals of Zoom Developers SEZ [Indore] Pvt. Ltd preferred against the order of the Id. CIT(A) - 26, New Delhi dated 07.02.2020 pertaining to A.Ys 2012-13 to 2016-17.

2. ITA No. 679/DEL/2021 to ITA No. 683/DEL/2021 are appeals of M/s Startle Constructions Pvt Ltd preferred against the order of the Id. CIT(A) - 26, New Delhi dated 07.02.2020 pertaining to A.Ys 2012-13 to 2016-17.

3. ITA No. 688/DEL/2021 to ITA No. 692/DEL/2021 are appeals of Tyagi Portfolio Management Pvt. Ltd preferred against the order of the Id. CIT(A) - 26, New Delhi dated 07.02.2020 pertaining to A.Ys 2012-13 to 2016-17.

4. ITA No. 693/DEL/2021 to ITA No. 697/DEL/2021 are appeals of Jaguar Equity Ltd preferred against the order of the Id. CIT(A) - 26, New Delhi dated 07.02.2020 pertaining to A.Ys 2012-13 to 2016-17.

5. Representatives of both the sides agreed that the underlying facts in the issues are identical in all these appeals. Assessment orders and orders of the first appellate authority are identically worded, though the quantum may differ. Therefore, on such, concession, all these appeals are disposed of by this common order for the sake of convenience and brevity.

6. In all the captioned appeals, the challenge is two-fold -

- firstly, the assessee has challenged the validity of the assessments made u/s 153C of the Income-tax Act, 1961 [the Act, for short] and;
- secondly, the assessee has challenged the adhoc disallowance of assumed expenditure partly sustained by the ld. CIT(A).

7. As mentioned elsewhere, the underlying facts in the issues are identical. We have heard the representatives of both the sides on the facts of ITA No. 693/DEL/2021 for A.Y 2012-13 in the case of Jaguar Equity Ltd.

8. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

9. Briefly stated, the facts of the case are that pursuant to Warrant of Authorization, a search and seizure operation u/s 132 of the Act was conducted on 23.07.2015 and on subsequent dates at the residential as well as office premises of Shri Deepak Aggarwal, Shri Mukesh Kumar and Others group of cases based at Delhi.

10. Allegation was that this group was found to be a group of entry operators providing accommodation entries to beneficiaries. Various incriminating papers/documents were found and seized during the course of search and seizure operation in the group case and statements were recorded during the course of search and seizure operation and on subsequent dates, confirmed the belief of the department that the group was involved in providing accommodation entries.

11. During the course of search and seizure operations, incriminating papers/documents were found related to the captioned assessee and on the basis of such impounded material, satisfaction note was drawn on 23.03.2018 in the case of searched person and the other person [captioned assessee] u/s 153C of the Act. Satisfaction Note in the case of the “Other Person” i.e. the assessee reads as under:

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(Shri Deepak Agarwal, Shri Mukesh Kumar & Others)

M/s Jaguar Equity Ltd.,

(PAN: AAACQ1802B)

208, IV, Agarwal Chamber veer Saverkar Block Shakarpur New Delhi 110092

Recording of satisfaction u/s 153C of the Income Tax Act, 1961

23.03.2018

Search and seizure action u/s 132 of the Income Tax Act was carried out on 23.07.2015 in the cases of Shri Deepak Agarwal, Shri Mukesh Kumar & Others Group cases. During the course of assessment proceeding and on the perusal of seized data/documents in the case Shri Deepak Agarwal, Shri Mukesh Kumar & Others Group cases, certain documents as appended below have been found to be related to M/s Jaguar Equity Ltd. PAN: AAACQ1802B, Address: 208, IV, Agarwal Chamber veer Saverkar Block Shakarpur New Delhi 110092. After going through the contents of those Pages, it is found that such pages have bearing on the determination of the total income of such other person i.e. M/s Jaguar Equity Ltd. As I am satisfied that these pages belong to M/s Jaguar Equity Ltd. and having bearing on total income of M/s Jaguar Equity Ltd., hence the seized documents/material is being handed over to the assessing officer of M/s Jaguar Equity Ltd.

Annexure No.	Page No. of Annexure	Brief description of documents	Person to whom the documents belongs.
A-9	1-79	Investment by M/s Jaguar Equity Ltd. [208, IV, Agarwal Chamber, Ver Savarkar Block, Shakarpur Delhi-92] in 73177 equity shares of Mysore Finlease P Ltd. @ 200 per share [Rs.10 share with Rs.190 premium] aggregating to Rs.14635400/- under the signature of Brij Kishore and Rajender Dixit as director and also 'Receipt' issued under the signature of Rajender Dixit as director on letter head of the company confirming the sale of 73177 equity shares of Mysore Finlease P Ltd held by M/s Jaguar Equity Ltd. <u>leaving the particulars of shares sold, date of sale, amount of sale consideration, name of the buyer as BLANK</u> but confirming the receipt of entire amount against the sale of shares in question.	Jaguar Equity Ltd.

New Delhi-110092

12. Satisfaction Note in all the captioned appeals are identically worded though the name of the company, under the head “Brief Description of Documents” may be different with different quantity of shares and the amount thereof.

13. On the basis of the aforementioned satisfaction, the Assessing Officer initiated proceedings u/s 153C of the Act and completed proceedings by making addition on account of commission on accommodation entries on account of bogus purchases and bogus sales being 3% of the accommodation entries provided and further made disallowance on account of assumed expenditure which the assessee must have incurred in running its business of providing accommodation entries.

14. When the matter travelled before the Id. CIT(A), the Id. CIT(A) deleted the addition on account commission on accommodation entries and partly confirmed the disallowance of adhoc expenditure.

15. Satisfaction Note, which triggered the assessment proceedings u/s 153C of the Act, has already been exhibited elsewhere. A perusal of the same vis a vis the assessment completed by the Assessing Officer

shows that what is noted in the Satisfaction Note has no bearing at all with the additions made by the Assessing Officer.

16. The Hon'ble Supreme Court in the case of Singhad Technical Education Society 397 ITR 344 has held that when the seized documents did not establish any co-relation document wise with the assessment years in question, then the validity of the assessment so framed was legally unsustainable.

17. It would be pertinent to understand the scheme of assessment u/s 153C of the Act. Relevant provisions of the Act read 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 3 and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A.

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to 6 sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which

search is conducted or requisition is made⁴ and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year-

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section

(2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) *assessment or reassessment, if any, has been made, before*

the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

18. The above provision needs to be read with the Circular No. 1/2015 dated 21.01.2015 by the CBDT being Explanatory Notes to the Provisions of the Finance [No. 2] Act, 2014 and the same reads as under:

"45. Assessment of income of a person other than the person who has been searched 45.1 Section 153C of the Income-tax Act relates to assessment of income of any person other than the person in whose case search has been initiated or requisition is made. The provisions contained in sub-section (1) of section 153C of Income-tax Act, before its amendment by the Act, provided that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the said Act, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to any person, other than the person referred to in section 153A of the said Act, 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 such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A of the Income-tax Act. Page 50 of 59.

45.2 Section 153C of the Income-tax Act has been amended to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the said Act, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to any person, other than the person referred to in section 153A of the said Act, then 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 such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A if he 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 of the Income-tax Act.

45.3 Applicability:-This amendment takes effect from 1st October, 2014."

19. In light of the above, we are of the considered opinion that, even after the amendment, the Assessing Officer can proceed only on the basis of incriminating material which has a bearing on determination of the total income of such other person. Nowhere in the Satisfaction Note it has been mentioned that the said description of shares is related to alleged business of providing accommodation entries by the captioned assessees.

20. In light of the decision of the Hon'ble Supreme Court [supra] we are of the considered view that the additions/disallowance, devoid of any incriminating material found during the course of search, cannot validate the assessment orders framed u/s 153C of the Act.

21. The Id. DR relied upon certain judicial decisions in his Synopsis, which in our opinion, are not relevant on the facts of the case in hand. The decision of the Hon'ble Supreme Court in 1991 SCR 627 is on prima facie belief does not condition the final outcome and the Assessing Officer is not bound by the reasons recorded. This judgment is on the reopening of the assessment by issue of notice u/s 148 of the Act.

22. The question before us is whether the assessment order framed u/s 153C of the Act has any bearing on the impounded material considered as incriminating and exhibited elsewhere in the form of satisfaction note triggering proceedings u/s 153C of the Act.

23. This question has been answered by the Hon'ble Supreme Court [supra] and further supported by the amendment in the relevant provision of the Act as explained by the Circular by the CBDT mentioned elsewhere.

24. Considering the facts in totality, additions/disallowances made by the Assessing Officer are devoid of any incriminating material. Therefore, such assessment orders cannot be sustained and deserve to be quashed.

25. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case.

26. All the captioned appeals by the assessee are allowed on the challenge of validity of assessment order.

27. In the result, all the captioned appeals of the assessee are allowed.

The order is pronounced in the open court on 25.08.2023.

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 25th August, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	