

(Applicant) (Respondent)
Assessee By : Shri Gautam Jain, Adv
Ms. Monika Agarwal, Adv
Shri Lalit Mohan, CA

Department By : Shri P.N. Barnwal, CIT-DR

Date of Hearing : 28.11.2023

Date of Pronouncement : 30.11.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned bunch of four separate appeals by two different assesseees by the assessee and two different assesseees by the Revenue are preferred against the common order of the Id. CIT(A) - 3, Gurgaon dated 29.06.2011 & 20.12.2011 pertaining to Assessment Year 2009-10.

2. Since underlying facts in the issues are identical in the captioned appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. 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.

4. Briefly stated, the facts of the case are that search and seizure operation was carried out at the premises of Shri Shiv Kumar Garg, Shri Jai Bhagwan Garg and Reliable Realtech Pvt Ltd. At this stage, it is made clear that no search was conducted at the 4th appellant i.e. Decent Realtech Pvt Ltd having registered office at BN-57, East Shalimar Bagh, New Delhi-110088.

5. Pursuant to search, notices u/s 153A of the Income-tax Act, 1961 [the Act, for short] was issued and served upon the assessee, in response to which, the assessee filed their return of income as under:

	<u>Dated</u>	<u>Declared income</u>
Decent Realtech Pvt Ltd	12.09.2009	Rs. 7,681/-
Reliable Realtech Pvt Ltd	29.09.2009	NIL
Shri Shiv Kumar Garg	08.05.2009	Rs. 9,27,787/-
Jai Bhagwan Garg	28.07.2009	Rs. 4,90,756/-

6. Assessment of Decent Realtech Pvt Ltd was framed on 30.03.2016 wherein addition of Rs. 33 crores was made on account of sale of shares. Assessment of Reliable Realtech Pvt Ltd was completed on 30.03.2016 wherein addition of Rs. 20,08,77,853/- was made on account of sale of shares. Shri Shiv Kumar Garg was assessed on 29.03.2016 wherein addition of Rs. 13.20 crores was made on account of transfer of 2000 shares of Decent Realtech Pvt Ltd and Jai Bhagwan Garg was assessed on 29.03.2016 with an addition of Rs. 19.80 crores on account of transfer 3000 shares of Decent Realtech Pvt Ltd.

7. Addition in the hands of Decent Realtech Pvt Ltd and Reliable Realtech Pvt Ltd were made on protective basis whereas in the hands of Shri Shiv Kumar Garg and Jai Bhagwan Garg addition was made on substantive basis.

8. When all the four appeals came up for hearing before the Id. CIT(A), he chose to frame one consolidated order by which substantive additions in the hands of Shri Shiv Kumar Garg and Jai Bhagwan Garg were deleted, against which the Revenue is in appeal and protective additions in the hands of Decent Realtech Pvt Ltd and Reliable Realtech Pvt Ltd were converted into substantive additions, though the

quantum has been disturbed in the hands of the Decent Realtech Pvt Ltd Rs. 22,80,70,000/- was confirmed and in the case of Reliable Realtech Pvt Ltd were Rs. 18,87,95,601/- was confirmed. Both these assesseees are in appeal before us.

9. Before us, the ld. counsel for the assessee moved an application u/r 27 of the Rules claiming that the assessment order in the case of Reliable Realtech Pvt Ltd, Shiv Kumar Garg and Jai Bhagwan Garg are devoid of any incriminating material and deserve to be quashed.

10. A search and seizure operation was also conducted on the very same date i.e. 05.02.2014 at the residence of one Shri Rajbir Singh Goyat who also happens to be the director of Reliable Realtech Pvt Ltd and Decent Realtech Pvt Ltd.

11. From the premises of Shri Rajbir Singh Goyat, certain documents were found and seized which are MOU dated 26.04.2008 between Decent Realtech Pvt Ltd and M/s Sanman Infrastructure Pvt Ltd and MOU dated 20.03.2008 between Reliable Realtech Pvt Ltd and Antriksh Engineers Construction Corporation. Alongwith some details of cash payments received on different dates, MOUs found were considered as

incriminating material, basis which the impugned additions have been made.

12. The challenge before us is that the impugned assessment orders are devoid of any incriminating material found at the time of search and therefore, the ratio laid down by the Hon'ble Jurisdictional High Court of Delhi in the case of *Kabul Chawla* 380 ITR 573 affirmed by the Hon'ble Supreme Court in the case of *Abhisar Buildwell Pvt Ltd* 454 ITR 212 squarely apply making the impugned assessment order null and void.

13. In furtherance of the appreciation of underlying facts, it would be pertinent to refer to the following observations of the Id. CIT(A):

"6.1 A search and seizure action u/s 132 of the Act was carried out in the cases of the above appellants on 05.02.2014. M/s Decent Realtech Pvt Ltd (hereafter referred as M/s Decent) and M/s Reliable Realtech Pvt Ltd(here after referred as M/s Reliable), group concerns having common directors, have purchased land measuring 25.3 acres (13.425 acre belonging to M/s Decent and 9.67 acres belonging to M/s Reliable) entered into a

collaboration and got license as per letter of Intent dated 26.03.2008 from the Director, Town and Country Planning, Government of Haryana to develop a residential housing project (Antriksh Heights) in sector -84, Gurgaon jointly. Shri Jai Bhagwan Garg and Shri Shiv Kumar Garg were the directors/ share holders of M/s Decent and M/s Reliable. Shri Rajbir Singh Goyat and Shri Rakesh Yadav, directors of M/s Sanman Infrastructure Pvt Ltd (hereafter referred as M/s Sanman) and partners of M/s Antriksh Engineers Corporation (hereafter referred as M/s Antriksh) were also covered u/s 132 on 05.02.2014. During the search proceedings at the residential premise of Shri Rajbir Singh Goyat, two original and duly signed MOUS, one between the M/s Decent and M/s Sanman dated 26.04.2008 and the second MOU between M/s Reliable and M/s Antriksh dated 20.03.2008 were found and seized. The terms and conditions of both the MOUs were more or less similar. As per the MOU dated 26.04.2008 entered between M/s Decent and M/s Sanman, signed by Shri Jai Bhagwan Garg, Shri Rajbir Singh Goyat and Shri Rakesh Yadav in the presence of two witnesses and executed on the stamp paper, M/s Sanman has agreed to purchase development rights in respect of 50% of FSI (Floor Space Index) measuring 5,11,693 sq. ft. in the above residential housing project (M/s Antriksh Heights, Gurgaon) for total consideration of Rs. 39 crores @ 721/- per sq. ft. Similarly as per the MOU entered between M/s Reliable and M/s Antriksh, signed by Shri Jai Bhagwan Garg, Shri Rajbir Singh Goyat and Shri Rakesh Yadav in the presence of two witnesses and executed on the stamp paper, M/s Antriksh has agreed to purchase

development rights in respect of 50% of FSI (Floor Space Index) measuring 3,68,762 sq. ft. in the above residential housing project (M/s Antriksh Heights, Gurgaon) for total consideration of Rs. 26,58,77,853/-@ 721/- per sq. ft.”

XXXXXX

6.4 On going through the seized documents vide Annexure A-5 (found and seized from the residence of Shri Rajbir Singh Goyat, which is the MOU dated 26.04.2008 between M/s Decent and M/s Sanman), it was found that it was containing details of cash receipts on the backside of page 36 on various dates from 12.05.2008 to 12.12.2008 for Rs. 2.86 crore; as part of consideration towards 50% of FSI. These receipts were in original handwriting and have been duly signed by Shri Shiv Kumar Garg, Similarly on further going through Annexure A-5 (found and seized from the residence of Shri Rajbir Singh Goyat, which is the MOU dated 20.03.2008 between M/s Reliable and M/s Antriksh), it was found that there were details of cash receipts on the backside of page 55 on various dates during the year under consideration for Rs. 4.95 crore, as part of consideration towards 50% FSI. These receipts were in original handwriting and have been duly signed by Shri Shiv Kumar Garg, These cash receipts are in addition to cash receipts of Rs. 80 lacs as mentioned in the MOU. Thus there were total cash receipts of Rs. 5.75 crore in case of M/s Reliable. Further from the perusal of page no. 69-71

of Annexure A-5 (supra), it was found that M/s Sanman has made payment of Rs. 38.50 crore (including cash payments of Rs. 2.86 crore) to M/s Decent during the year under consideration. Similarly from the perusal of page no. 69-71 of Annexure A-5 (supra), it was found that M/s Antriksh has made payment of Rs. 26 crore (including cash payments of Rs. 6.25 crore) to M/s Reliable during the year under consideration. Thus it was found that 50% of development rights in Antriksh Heights Project were transferred by M/s Decent and M/s Reliable to M/s Sanman and M/s Antriksh through the above MOUs. Various terms and condition of the said MOU have been complied with as discussed above. Thus the said MOUs have been acted upon by both the parties to effect sale of development rights in the said project.

6.5. However these amounts have been reflected on the liability side of balance sheets of M/s Decent and M/s Reliable under the head current liabilities (advances). Further it has been discussed by the AO in the assessment order that a separate bank account was opened in the name of M/s Reliable at Pitampura with Indian Bank on 10.04.2008 immediately after signing of the MOUs. The address of M/s Reliable in the said bank account has been shown as Flat No. 34 Pocket C-8, Sector-8, Rohini (Delhi) which was the office address of M/s Sanman and M/s Antriksh and it was being operated by Shri Rakesh Yadav and Shri Rajbir Singh Goyat. It is relevant to mention here that as per further understanding between M/s Decent and M/s Reliable, the complete project was executed by M/s Reliable. Further from the seized

record, it was noticed that two balance sheets were being prepared separately by both the groups which were later merged at the end of the year and a consolidated balance sheet was prepared for the purpose of ROC and the Income Tax return in the name of M/s Reliable. Further as per Annexure A-1, page no. 169-176 seized from BN-57, Shalimar Bagh, New Delhi (which was office address of the Garg group), It was found that there were two trial balances being prepared in respect of both parts of the project controlled by each group independently in the name of M/s Reliable. As per the data in the seized hard disk there were separate books of account prepared for each part of project by both the groups. Thus the AO reached to the inference that the MOUs have been acted upon in letter and spirit. It was further revealed from the seized record that M/s Sanman has entered into a MOU on 11.03.2008 with the Ministry of External Affairs Employees Welfare Society to construct and sell 300 flats in the Antriksh Heights Projects, Gurgaon in respect of which it has purchased FSI and all initial payments of Rs. 48.39 crore for this purpose were received by M/s Sanman from the said society. As discussed above Shri Shiv Kumar Garg, director of M/s Decent and M/s Reliable admitted in his statement recorded u/s 132(4) of the Act on 05.02.2014 and 07.03.2014 that they have divided 50% of the project between them and Shri Rakesh Kumar Yadav / Shri Rajbir Singh Goyat. Share holding of M/s Reliable and M/s Decent has been transferred proportionately with 5000 shares of M/s Decent were transferred by Shri Shiv Kumar Garg (3000) and Shri Jai Bhagwan Garg (2000 shares) at face value in favour of second group. Similarly 42,750 shares of M/s Reliable were

transferred by various family members of the e Garg Garg family family i in favour of M/s Antriksh. However from the perusal of books of accounts of M/s Reliable, it was noted that the entire project was being shown in the books of M/s Reliable in-spite of the fact that sale of 50% of project rights in favour of M/s Sanman and M/s Antriksh, thus M/s Decent and M/s Reliable have not recognized any profit from the sale of 50% of the project [development rights] in their books of account by adopting colorable device.”

14. The alleged incriminating material which is the very basis/foundation of the assessments under consideration was found from the premises of Shri Rajbir Singh Goyat which has been categorically accepted by the lower authorities which means that these incriminating material were not found from the premises of Reliable Realtech Pvt Ltd, Shiv Kumar Garg and Jai Bhagwan Garg, whose premises were extensively searched.

15. The Hon'ble Supreme Court in the case of Abhisar Buildwell [supra] has set at rest the entire quarrel revolving around the assessments devoid of incriminating material. The relevant findings read as under:

"In view of the above and for the reasons stated above, it is concluded as under:

i) that in case of search under [Section 132](#) or requisition under [Section 132A](#), the AO assumes the jurisdiction for block assessment under [section 153A](#);

ii) all pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under [Section 132](#) or requisition under [Section 132A](#) of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under [Sections 147/148](#) of the Act, subject to fulfilment of the

conditions as envisaged/mentioned under [sections 147/148](#) of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.

15. Insofar as the aforesaid Civil Appeals preferred by the assessee - M/s Kesarwani Zarda Bhandar Sahson, Allahabad are concerned, these appeals have been preferred against the impugned judgment and order dated 06.09.2016 passed in ITA Nos. 270/2014, 269/2014, 15/2015, 16/2015, 268/2014 and 17/2015, as also, against the order dated 21.09.2017 passed in the review applications.

It is required to be noted that the issue before the Allahabad High Court was, whether in case of completed/unabated assessments, the AO would have jurisdiction to re-open the assessments made under [Section 143\(1\)\(a\)](#) or 143(3) of the Act, 1961 and to re-assess the total income taking notice of undisclosed income even found during the search and seizure operation.

15.1 In view of the discussion hereinabove, once during search undisclosed income is found on unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total income even in case of

completed/unabated assessments. Therefore, the impugned judgment(s) and order(s) passed by the High Court taking the view that the AO has the power to reassess the return of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to material that was available at the time of original assessment does not require any interference. Under the circumstances, the aforesaid appeals preferred by the assessee - M/s Kesarwani Zarda Bhandar, Sahson, Allahabad deserve to be dismissed and are accordingly dismissed. In the facts and circumstances of the case, no costs."

16. Even if, for the sake of arguments, it is accepted that the documents found from the premises of Shri Rajbir Singh Goyat were incriminating material pertaining to/belonging to Reliable Realtech Pvt Ltd, Shri Shiv Kumar Garg and Jai Bhagwan Garg, even then, could not have triggered the additions u/s 153A of the Act in the hands of the three assesseees and, at the most, provisions of section 153C of the Act would have been applied, as done in the case of Decent Realtech Pvt Ltd.

17. But by any stretch of imagination, the impugned/alleged incriminating material cannot be considered as incriminating material

found from the premises of the searched persons being Reliable Realtech Pvt Ltd, Shri Shiv Kumar Garg and Jai Bhagwan Garg.

18. Moreover, the first appellate authority himself has accepted that the entries were duly recorded in the regular books of account as advances and incidentally, in the assessment of Reliable Realtech Pvt Ltd, books have been accepted and returned income has been assessed as such, as the assessee has offered the income under POCM i.e. Profit on Completion Method.

19. Considering the facts of the case in totality, we are of the considered view that the additions in the hands of Reliable Realtech Pvt Ltd, Shri Shiv Kumar Garg and Jai Bhagwan Garg have been made without any incriminating material found from their premises at the time of search. Therefore, following the decisions of the Hon'ble Supreme Court in the case of *Abhisar Buildwell* [supra], we quash the impugned assessment orders.

20. Application u/r 27 of the ITAT Rules in the case of the three assesseees, namely, Reliable Realtech Pvt Ltd, Shri Shiv Kumar Garg and Jai Bhagwan Garg are allowed.

21. Now coming to the appeal of Decent Realtech Pvt Ltd in ITA No. 1973/DEL/2022, satisfaction is recorded at pages 16 to 18 of the Paper Book, which is as under:

Verification 2/2/16

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Name and address of the Assessee	M/s Decent Realtech Pvt. Ltd., PN-57, East Shalimar Bagh, New Delhi
PAN	AACCD7465M
Status	Company
Assist. Year	2008-2009 To 2013-14

Reasons/Satisfaction note for taking up the case of M/s Decent Realtech Pvt. Ltd., PAN: AACCD7465M under section 153C of the Income Tax Act, 1961

By virtue of the authorization of the Director of Income Tax (Investigation), Chandigarh, a search & seizure operation u/s 132(1) of the Act was also carried out on 05.02.2014 at House No. 21, F-17, Sector-8, Rohini Delhi, which is the residential premises of Sh. Rajbir Singh Goyat director in the assessee company M/s Decent Realtech Pvt. Ltd. as well as the person associated with M/s Dwarkadhis Buildwell Group of cases. During the course of above referred search & seizure operation, certain loose papers were found and seized as Annexure - A-5 & A-6 to the Panchnama, which included certain document. The description of such document and analysis of the document is given in Table-A below:

Table-A

S. No.	Annexure/Page number	Description	Analysis
1.	Annexure- A-5/ Page no. 55-59	Page No. 55 to 59 is a MOU executed on 20.03.2008 between M/s Reliable Realtech Pvt. Ltd. through Jai Bhagwan Garg Director & M/s Antriksh Engineers Construction Corporation through Sh. Rajbir Singh Goyat & Sh. Rakesh Kumar Yadav, Director. As per these pages, the assessee company has sold its 50% FSI (development rights alongwith land) measuring 368762.625sq.ft. in residential group housing project namely Antriksh Heights at Sector-84, Gurgaon at the rate of 721/- per sq. ft. and total consideration comes Rs. 26,58,77,855/-. The assessee company has received payment against said MOU in various modes i.e. cash/cheques etc. in the F.Y. 2007-08, 2008-09 & 2009-10. The Antriksh Heights project at Sector-84, Gurgaon is constructed on land owned by both M/s Reliable Realtech Pvt. Ltd. & M/s Decent Realtech Pvt. Ltd.	These are incriminating documents belonging to M/s Decent Realtech Pvt. Ltd. These documents require verification as to whether the assessee company has reflected said consideration in its books of account or not. The genuineness of expenses incurred and reflected in regular books of account may also need verification. These documents, therefore, have bearing on the determination of the total income of M/s Decent Realtech Pvt. Ltd.
2	Annexure- A-5/ Page no. 36-39	Page No. 36 to 39 is a MOU executed on 26.04.2008 between M/s Decent Realtech Pvt. Ltd. through Jai Bhagwan Garg Director & M/s Sanman Infrastructure Pvt. Ltd. through Sh. Rajbir Singh Goyat & Sh. Rakesh Kumar Yadav, Director. As per these pages, the assessee company has sold its 50% FSI (development rights alongwith land) measuring 511693sq.ft. in residential group housing project namely Antriksh Heights at Sector-84, Gurgaon at the rate of 762/- per sq.ft. and total consideration	

Signature

Signature
Authorised Signatory

		comes Rs. 39,00,00,000/-. The assessee company has received payment against said MOU in various modes i.e. cash/cheques/RTGS etc. in the F.Y. 2008-09. The Antriksh Heights project at Sector 84, Gurgaon is constructed on land owned by both M/s Reliable Realtech Pvt. Ltd. & M/s Decent Realtech Pvt. Ltd.	
3.	Annexure-A-6/ Page No 12	This page contains ledger account of M/s Decent Realtech Pvt. Ltd. in the books of Dwarkadhis Projects Pvt. Ltd. for the period 01.08.2007 to 31.08.2007. As per this ledger account, M/s Decent Realtech Pvt. Ltd. has purchased land amounting to Rs. 19,30,00,000/- from M/s Dwarkadhis Projects Pvt. Ltd.	This is incriminating document belonging to M/s Decent Realtech Pvt. Ltd. The genuineness of this consideration need verification and the assessee company has reflected in its regular books of account or not. This document, therefore, have bearing on the determination of the total income of M/s Decent Realtech Pvt. Ltd.

2. Apart from the above analysis, it is pertinent to mention here that search warrant in the cases of Sh. Rajbir Singh Goyat (from where these incriminating documents found), M/s Reliable Realtech Pvt. Ltd., M/s Antriksh Engineers Construction Corporation & M/s Sanman Infrastructure Pvt. Ltd. the parties between whom MOU has been signed, were also executed. The case of the assessee M/s Decent Realtech Pvt. Ltd. was covered in survey u/s 133A pertaining to F.Y. 2013-14 i.e. A.Y. 2014-15, but the assessee has made various transactions in previous years also with M/s Antriksh Group of Cases which also needs verification. Further, these MOUs are related to Antriksh Heights, Sector-84, Gurgaon which is jointly constructed/run by Garg Family & Sh. Rajbir Singh Goyat & Sh. Rakesh Kumar Yadav. They are the shareholder of the company M/s Decent Realtech Pvt. Ltd. after signing of MOU dated 26.04.2008 and transfer of shares as discussed below:-

Sr. No.	Name of Transferor	Date of Transfer	Name of Transfree	No. of Share (In Nos.)
1.	Jai Bhagwan Garg	18.05.2008	Rajbir Singh Goyat	1000
2.	Shiv Kumar Garg	18.05.2008	Rakesh Kumar Yadav	1000
3.	Jai Bhagwan Garg	03.08.2008	Rakesh Kumar Yadav	500
4.	Shiv Kumar Garg	03.08.2008	Rajbir Singh Goyat	750
5.	Shiv Kumar Garg	03.08.2008	Rakesh Kumar Yadav	250
6.	Jai Bhagwan Garg	17.10.2008	Sanman Infrastructure Pvt. Ltd.	1000
7.	Rajbir Singh Goyat	19.11.2008	Sanman Infrastructure Pvt. Ltd.	1750
8.	Rakesh Kumar Yadav	19.11.2008	Sanman Infrastructure Pvt. Ltd.	1750
9.	Jai Bhagwan Garg	03.12.2008	Sanman Infrastructure Pvt. Ltd.	500

Holding after considering above transfer effects		
Sr. No.	Name of Share Holder	No. of Shares Held
1.	Sanman Infrastructure Pvt. Ltd.	5000
2.	Shiv Kumar Garg	2000
3.	Jai Bhagwan Garg	2000

Rajbir Singh Goyat

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For DECENT REALTECH PVT. LTD.

Rajbir Singh Goyat
Authorised Signatory

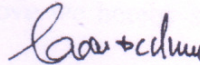
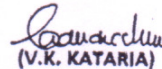
3. In view of the above and as per the provisions of sub section (1) of Section 153C of the Act, I am satisfied that the documents seized from the residence of Sh. Rajbir Singh Goyat director, during the search & seizure operation u/s 132(1) of the Act carried out on 05.02.2014 at House No. 21, F-17, Sector-8, Rohini Delhi, as per Table-A above belongs to a person i.e. M/s Decent Realtech Pvt. Ltd., who is other than the person referred in section 153A.

4. The jurisdiction over the case of M/s Decent Realtech Pvt. Ltd. has been assigned to this office u/s 127 of Income Tax Act, 1961 by the worthy Commissioner of Income Tax-IV, New Delhi vide order F. No. CIT-IV/Centralization/212/2013-14/1014 dated 09.07.2014.

5. In view of the above and as per the provisions of sub section (1) of Section 153C of the Act, I am satisfied that the documents seized from the residence of Sh. Rajbir Singh Goyat director, during the search & seizure operation u/s 132(1) of the Act carried out on 05.02.2014 at House No. 21, F-17, Sector-8, Rohini Delhi, as per Table-A above have a bearing on the determination of the total income of M/s Decent Realtech Pvt. Ltd. for the relevant assessment year or years referred to in sub-section (1) of section 153. Such satisfaction is based on the analysis of the seized document shown in the Table-A and para 2 above. Such analysis is also based on the fact that M/s Decent Realtech Pvt. Ltd. is run by same group of persons i.e. Sh. Rajbir Singh Goyat, Sh. Rakesh Kumar Yadav, Sh. Jai Bhagwan Garg & Sh. Shiv Kumar Garg in whose cases search action 132(1) of the I.T. Act, 1961 was conducted.

6. Accordingly notice shall be issued to such person M/s Decent Realtech Pvt. Ltd., New Delhi and total income of M/s Decent Realtech Pvt. Ltd. shall be assessed or reassessed for A.Y. 2008-09 to A.Y. 2013-14 in the manner provided in the section 153A of the Income Tax Act, 1961.

Dated : 04.12.2015

(V.K. KATARIA)
Deputy Commissioner of Income Tax
Central Circle, Karnal

22. The bone of contention is the mention of the word “belongs”. It is the say of the ld. counsel for the assessee that even though the word “pertaining” has been replaced to “belong” by amendment and even if it is held that the amendment is retrospective, but scope of satisfaction cannot be expanded and no new word can be added/deleted from the Satisfaction Note recorded on 04.12.2015 and documents referred to the Satisfaction Note do not belong to Decent

Realtech Pvt Ltd. Documents were found from the premises of Shri Rajbir Singh Goyat.

23. We have given thoughtful consideration to the orders of the authorities below and to the submissions made by the representatives. The Hon'ble High Court of Bombay in the case of Ashok Commercial Enterprises 154 Taxmann.com 144 was, inter alia, was seized with the following question :

(d) The question of whether any material found during course of proceedings under Section 132 of the Act in the case of Hubto Limited is incriminating or otherwise has to be tested based only on satisfaction note recorded by the Assessing Officer/s. The contents of said satisfaction note are the only item/material to be looked at in t regard and respondent cannot seek to augment, supplement or add materials recorded to support the claim that incriminating material H been found. Further respondent cannot refer to any other documents material to establish such a claim. We find support in (i) Ananta Landma Pvt. Ltd. (Supra) and (ii) Jainam Investments (Supra), where the Coun have held that the question of the Assessing Officer's jurisdiction undertake proceedings has to be tested/examined only on the basis reasons recorded at the time of issuing a notice under Section 148 of th Act seeking to reopen an assessment. These reasons cannot be

improve upon and/or supplemented much less substituted by affidavit and/or or submission;”

24. Similarly, the Hon'ble High Court of Bombay in the case of Ananta Landmark Pvt Ltd 323 CTR 138 has, inter alia, considered the following:

“As regards ground No. (ii) that it is subsequent to the assessment proceedings it was noticed that the assessee had wrongly claimed the deduction under section 57 of the Act and that it went unnoticed by the Assessing Officer during the course of original assessment proceedings and hence, the jurisdictional requirement under section 147 of the Act has been fulfilled, that is not the case made out in the reasons to believe. As held In First Source Solutions Limited (supra), the reasons for reopening an assessment has to be tested/examined only on the basis of the reasons recorded at the time of issuing a notice under section 148 of the said Act seeking to reopen an assessment. These reasons cannot be improved upon and/or supplemented much less substituted by affidavit and/or oral submissions.”

25. The Hon'ble Jharkand High Court in the case of Naveen Kumar Jaiswal 455 ITR 539 had the occasion to consider a similar quarrel. The relevant findings read as under:

"7. The law is now no more *res integra* that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No Inference can be allowed to be drawn based on reasons not recorded. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches the court, on the strength of affidavit or oral submissions advanced. Admittedly, in the instant case the Assessing Officer has referred that the assessee had purchased immovable property valued of Rs. 1,80,60,000 on March 9, 2017 whereas the fact is divergent. As such, the notice issued for initiation of reassessment proceeding does not have any legs to stand in the eye of law."

26. Moreover, considering the Satisfaction Note, mentioned elsewhere, there is nothing in the Satisfaction Note to show that if the searched person i.e Shri Rajbir Singh Goyat has disclaimed the said seized document executed on 26.04.2008 between Decent Realtech Pvt Ltd through Jai Bhagwan Garg and M/s Sanman Infrastructure through Shri Rajbir Singh Goyat seized from the residential premises of Shri Rajbir Singh Goyat.

27. The Hon'ble Delhi High Court in the case of Pepsico India PVt Ltd 370 ITR 295 has concluded that since it was not even alleged that the searched person had disclaimed the said documents as belonging to them and thus it cannot be held that the documents do not belong to the searched person and once it could not be held so, then the provisions of section 153C of the Act cannot be invoked as the Assessing Officer of the searched person must be satisfied that the seized material does not belong to the person referred to in section 153A of the Act i.e. searched person.

28. The Hon'ble Delhi High Court in the case of PCIT Vs. N.S. Software 403 ITR 259 has held as under:

"23. This court concurs with the impugned order. In the present case, the Ld. AO has not explained steps taken by him to determine that the seized material belonged to the Assessee Firm. The satisfaction note has been prepared in a standard mechanical format and it does not provide any details about the books of accounts which allegedly belong to the Assessee Firm. Most importantly, a satisfaction note was not recorded by the AO of Sh. Narendra Kumar from whose premises the documents were seized. In light of the decision in Nikki Drugs and Chemicals Pvt. Ltd. it is now a settled proposition of law that even if the Assessing Officer for the person from whose premises the

documents are seized is the same as the Assessing Officer for the person to whom the document belongs, separate satisfaction notes must be recorded. Here the AO's note nowhere reflects whether any document seized, on application of his mind, disclosed that it belonged to the assessee, and if so, its prima facie nature. Whilst an AO of the searched party and that of the individual under [Section 153C](#) may be the same, nevertheless at the stage of sending notice under [Section 153C](#), the AO has to record a specific reason or reasons, why the material seized from the other person has a nexus to the assessee, to whom the notice under that provision is addressed. In this case, this never happened. Thus, for the previous years, the rule in Commissioner of Income Tax v Kabul Chawla 380 ITR 573 (Del), i.e., that in the absence of any incriminating materials, the previous years' assessments cannot be disturbed, applies."

29. The observations of the Hon'ble Delhi High Court in the case of Pepsico Foods 367 ITR 112 are apt at this stage. The Hon'ble High Court, after noting the provisions of section 153C of the Act in para 5 has held as under:

"[Section 132\(4A\)\(i\)](#) clearly stipulates that when inter alia any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in [Section](#)

292C(1)(i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or "satisfaction" that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of "satisfaction".

30. Considering the facts of the case in totality, in light of the Satisfaction Note r.w. the judicial decisions discussed hereinabove, we are of the considered view that the Assessing Officer has not referred to any material much less, cogent material, to assume and conclude that the documents seized from the premises of the searched person belonged to the appellant company and do not belong to the searched person.

31. In the absence of such a burden having been discharged by the searched person invocation of provisions contained in section 153C of the Act is not in accordance with law. Assessment order is accordingly quashed.

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

33. In the result, the appeals of the Revenue in ITA Nos. 2158 and 2159/DEL/2022 are dismissed and those of the assessee in ITA Nos. 1973 & 1974/DEL/2022 are allowed.

The order is pronounced in the open court on 30.11.2023 in the presence of both the rival representatives.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

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

Dated: 30th NOVEMBER, 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	