

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A Nos.2241 to 2244/Del/2019
निर्धारणवर्ष/Assessment Years:2011-12 to 2014-15**

DCIT Central Circle-II, 2 nd Floor, ARTO Complex, Sector-33, Noida, Uttar Pradesh.	बनाम Vs.	Apple Commodities Ltd., 701-A, 7 th Floor, GD-ITL Tower, Plot No.B-08, Netaji Subhash Place, Pitampura, New Delhi. PAN No.AADCA0300K
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

&

**Cross Objection Nos. 124 to 127/Del/2019
(In ITA Nos. 2241 to 2244/Del/2019)
Assessment Years: 2011-12 to 2014-15**

Apple Commodities Ltd., 701-A, 7 th Floor, GD-ITL Tower, Plot No.B-08, Netaji Subhash Place, Pitampura, New Delhi. PAN No. AADCA0300K	बनाम Vs.	DCIT Central Circle-II, 2 nd Floor, ARTO Complex, Sector-33, Noida, Uttar Pradesh.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

Revenue by	Shri Zafarul Haque Tanweer, CIT-DR
Assessee by	Shri Amit Goel, CA Shri Nippun Mittal, CA & Shri Pranav Yadav, Adv.

सुनवाईकीतारीख/ Date of hearing:	15.11.2023
उद्घोषणाकीतारीख/ Pronouncement on	29.12.2023

आदेश / O R D E R

PER C.N. PRASAD, J.M.

These appeals are filed by the Revenue and Cross Objection by the Assessee against the common order of the Ld.CIT(Appeals)-4, Kanpur dated 28.12.2018 for the AY 2011-12 to 2014-15. The Revenue has raised the following common grounds in its appeal:

“1. Whether on facts and circumstances of the case and in law, the Ld. CIT (A) erred in applying the decision of the Hon’ble Supreme Court in the case of M /s Sinhgad Technical Education Society, which was distinguishable on the facts of the present case as the same pertained to prior period to 01.04.2005 whereas after 01.04.2005 153C notice can be issued when AO is satisfied that seized material has a bearing on the assessment of income of other person.

2. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) erred in law while holding that there was no incriminating material for the issuance of notice u / s 153C, without appreciating that in the satisfaction note the AO had brought out the facts and circumstances, which indicated that the Assessee company has entered into transactions which remained unexplained hence such documents constituted “incriminating material” for the purpose “of the issue of notice u/s 153C in the context of assessee.

3. Whether on facts and circumstances of the case and in law, the Ld CIT(A) erred in not appreciating that after 01.4.2005 the test of issue of notice u/s 153C is availability of seized material Which has bearing on assessment of income which has to be only in nature of prima facie belief having live nexus & not in nature of absolute evidence based on detailed investigation.

4. *That the appellant craves leave to add or amend any other more ground of appeal as state above as and when needs for doing so may arise.*

5. *The order of the Ld CIT(A) is erroneous in law and on facts of the case and is liable to be set aside and the order of the AO be restored.”*

2. The only issue to be adjudicated in the appeals of the Revenue is as to whether the additions made by the Assessing Officer as an unexplained investment being share capital and share premium are sustainable in the absence of incriminating material seized in the course of search.

3. The Ld. Counsel for the assessee submits that additions towards share capital and share premium were made by the AO based on the ledger accounts, confirmation accounts by various parties which are all part of regular books of accounts and there is no incriminating material was seized in the course of search belonging to the assessee so as to make the additions while completing the assessments u/s 153C/144 of the Act. The Ld. Counsel submits that as there was no incriminating material seized in the course of search which belongs to the assessee the Ld.CIT(A) deleted the additions following the decision of the Hon’ble Supreme Court in the case of PCIT Vs. Sinhagad Technical Education Society (397 ITR 344).

4. On the other hand, the Ld. DR strongly supported the orders of the AO.

5. Heard rival contentions, perused the orders of the authorities below. We find that the Ld.CIT(A) after analyzing the satisfaction note recorded by the DCIT (Central Circle), the materials found in the course of search concluded that no incriminating documents found as a result of search which belong to the assessee company. The Ld.CIT(A) also observed that AO failed to demonstrate that seized document belongs to the assessee company and no seized documents were found as a result of search have a bearing on the determination of total income of the assessee and, therefore, jurisdictional condition for issue of notice u/s 153C is not satisfied.

The Ld.CIT(A) while holding so observe as under: -

“5.1 Ground no. 1 to 5 for each assessment year relate to the legal validity of notice issued u/s 153C of the Act. During this appeal proceeding, Ld. A.R. of the appellant has submitted that the assessment framed u/s 153C of the Act are bad in law and without jurisdiction because of the following reasons;

5. Notice issued u/s 153C by the A.O. is without jurisdiction and barred by limitation.

ii. That the notice issued u/s 153C is bad-in-law and without jurisdiction as no satisfaction as required u/s 153C of the Act has been recorded by the assessing officer of the searched person.

iii. That the notice issued u/s 153C is bad-in-law and without jurisdiction as no document(s) belonging to the assessee was found and seized during the course of search.

iv. That the proceedings initiated u/s 153C and the consequent assessment order passed are liable to be quashed as no incriminating documents material has been found and there is no co-relation of year wise incriminating documents mentioned in the assessment order.

v. The additions made by the A.O. are beyond the scope of jurisdiction of section 153C of Income Tax Act, 1961.

The Ld. A.R. of the appellant has also submitted that after the decision of Hon'ble Supreme Court in the case of PCIT-III, Pune Vs. Sinhgad Technical Education Society, the law is crystal clear, that issue of notice u/s 153C without incriminating material for the relevant assessment year is legally not sustainable.

5.2 Upon the legal challenge of Ld. A.R., the AO, vide this office letter F. No. CIT (A)-IV/KNP/Remand Report/2018-19/171 dated 09.10.2018 was specifically requested to comment on the legal contention of the appellant.

The letter of this office is reproduced here-in-under:

“Sub: Remand; Report u/s 250(4) of the Income Tax Act In the case of M/s. Apple Commodities Ltd. for the A.Y. 2011-12 to A.Y. 2013-14 (3 Years) PAN:AADCA0300K- Regarding-

“Please find enclosed herewith copies of Submission filed by the appellant before the undersigned on 01.10.2018.

Vide above submissions, the appellant has challenged legal validity of the issuance of notice u/s 153C of the Act. It was submitted by (the appellant that appellant has challenged that AO of the searched person has not recorded the satisfaction that seized documents

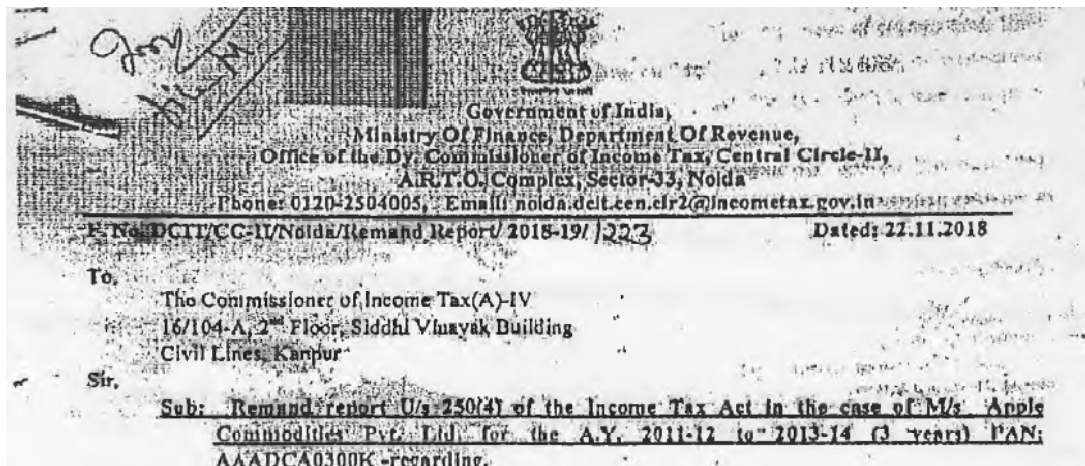
belongs to the appellant. Further, it has challenged by the appellant that no incriminating material was found for above said assessment years for which notice u/s 15 3C of the Act was issued.

Appellant has also submitted that satisfaction recorded by AO does not fulfill the requirement -of provisions of section 153C of the Act. The appellant also relied upon the finding given by various Hon'ble High Court/Hon'ble Supreme Court in support of its legal challenge Hence, notice issued u/s 153C of the Act and the assessment framed is ab-intio-invalid.

In the context, you are requested to please go through the contents of said legal submissions and your detailed report u/s 250(4) of the income Tax Act, to this office positively by 22/10/2018.

The matter may please be given 'top priority' keeping in view the directions given in Central Action Plan 2018-19."

5.3 The AO submitted his report vide letter F. No. DCIT/CC-IT/Noida/Remand Report/2018-19/223 dated 22.11.2018 which is reproduced herein under:



Kindly refer to your letter dated 09.10.2018 on the above mentioned subject.
8. Search and seizure operation u/s 132(I) of Income Tax Act, 1961 has been conducted in the case of Tirupati Sunworld Group of companies on 11.11.2014. In view of the search operation, the case was centralized to the Assessing Officer on 09.02.2015.

9. Perusal of seized material prima facie shows that these are related to M/s Apple Commodities Ltd. which is incriminating in nature. Based on the incriminating materials found and seized during the search belonging to the Assessee Company, requisite satisfaction was recorded before the commencement of proceeding u/s 153C of the Act and notice u/s 153C of the Act issued and served to the assessee (Copy of the same is enclosed). Subsequently assessment has been completed u/s 153C r.w.s. 143(3) of the Income Tax Act, 1961 after taking prior approval of the Joint Commissioner of Income Tax (Central), Meerut.

10. During the year under consideration, addition on account of non genuine share capital/Share Premium, unsecured loan, understated profits, disallowance of interest, unexplained cash deposit, unexplained foreign remittances and unexplained investment was made.

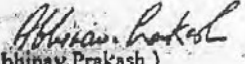
11. Whether the seized material is incriminating or not, is to be seen in context of totality of facts and circumstances and in the context of the person in whose hands such entries in the documents represent the unexplained income. While recording the satisfaction for issue of 153C the test for "incriminating material" has to be only in nature of prima facie belief based on some material having live nexus and not in the nature of absolute evidence established after detailed investigation of facts or law.

12. Under section 68 of the Income Tax Act, the onus lies upon the Assessee to prove the identity, genuineness of the transactions and capacity of creditors to give the loan. The Hon'ble Apex court in the case of Roshan De Hatt Vs CIT (SC) 107 ITR 938 held that in

case of credits in the name of third parties, it is the duty of the assessee to prove identity of credits, capacity of creditor to advance money and genuineness of transaction. Mere filing of confirmation (CIT Vs. Korlay Trading Co. Ltd (Cal) 232 ITR 820) or transaction through cheques (CIT Vs. Precision Finance P Ltd (Cal) 208 ITR 465) is not enough to prove the genuineness of cash credit and it can be assessed.

13. Penalty proceedings u/s 271(1)(C) & 271(1)(b) was initiated as per Income Tax Act, 1961. On the legal issues raised by the Appellant, your good self may take appropriate decision in accordance with law.

Yours faithfully,


(Abhinav Prakash)
Dy. Commissioner of Income Tax,
Central Circle-II, Noida

5.4 *The comments of the appellant were also called for on the report of the AO. The appellant submitted its comments vide written submission, which is reproduced as under:*

“Please refer to remand report dated 22.11.2018 of the Assessing Officer, our rejoinder is as under:

- 1. Notice issued u/s 153C by the AO is without jurisdiction and barred by limitation.*
- 2. That the notice issued u/s 153C is bad-in-law and without jurisdiction as no satisfaction as required u/s 153C of the Act has been recorded by the assessing officer of the searched person.*
- 3. That the notice issued u/s 153C is bad-in-law and without jurisdiction as no document(s) belonging to the assessee was found and seized during the course of search.*
- 4. That the proceedings initiated u/s 153C and the consequent assessment order passed are liable to be quashed as no incriminating documents material has been found and there is no co-relation of year wise incriminating documents mentioned in the assessment order.*
- 5. The additions made by the A. O. are beyond the scope of jurisdiction of section 153C of Income Tax Act, 1961.*

In the remand report, the A.O. has not rebutted the appellant’s submission. The A.O. has only .made vague remarks without bringing on record any incriminating material or evidence. In our submission we have referred to provisions of law and various judicial pronouncements including those of Hon’ble Apex Court. The assessing officer has not made any rebuttal. As a matter of fact, in the remand report the A.O. has realized that on legal issues the order passed by him is not sustainable and therefore as per para 8 of the remand report the A. O. has mentioned that Quote on the legal issues raised by the appellant your goodself

may take appropriate decision in accordance with law
Unquote.

In view of the above, the orders passed by the Assessing Officer are liable to be quashed on legal issues itself.

In view of the above, it is submitted that the additions made by the A.O. are liable to be deleted.”

5.5 The appellant has submitted another detailed written submission dated 28.12.2018, which is common for A.Y. 2009-10 to A.Y. 2014-15, on the satisfaction recorded by the AO, which is reproduced as under:

“In 1st para of the satisfaction note, the assessing officer has made general observation with regard to business activities of the companies and there is nothing incriminating.

2. *In para 2 to 3.2 of the satisfaction Note the A.O. has not referred to any seized document. He has merely referred to certain information gathered from Hard Disk with regard to certain loans and share capital received by the company. As per the A.O. himself these are the information gathered and not the document seized. Therefore, even the primary condition of recording satisfaction based on the seized document has not been fulfilled leave alone the question of fulfilling the requirement that the seized documents must belong to the assessee.*

Moreover, merely receipt of loans and share capital cannot be a ground for reopening of assessment u/s 153C of the Act. Every company will have some share capital and according to the methodology of the assessing officer if during the course of search in case of a person, any information relating to any other person being a company is found, proceedings u/s 153C can be initiated on the ground that the company has received share capital. Your goodsself appreciate that is not the position of law. The assessing officer of the searched person has to records satisfaction that Documents belonging to (and not merely any information relating to or pertaining to) such other

person has been found and seized during the course of search.

The documents found must be of incriminating nature.

The documents found must has a bearing on the determination of income of the year for which notice u/s 153C is being issued. Thus year wise analysis of the seized material is required to be made and stated in the satisfaction Note.

In the present case of the assessee, the above requirements have not been fulfilled.

3. In para 4 of the satisfaction Note the A.O. has referred to Annexure LP-2J & LP-22 and LP-1 to LP-18. In this regard, it is submitted that in the entire satisfaction Note the A.O. has not recorded any satisfaction that these seized annexures belong to the assessee.

Without prejudice to the above, it is submitted that (here is nothing incriminating in the aforesaid seized-material. The page wise description / contents of the aforesaid seized material is given separately and it is self-evident that there is nothing incriminating in these documents. As a matter of fact, the assessing officer has not made any addition in the assessment order based on these documents.

4. In para 5 of satisfaction Note the A.O. has referred to annexure LP-1 and LP-2 page No. 23 to 33 stating them to be transactions with offshore units in Hongkong & Malasiya. In this regard it is submitted that in the satisfaction Note, the A.O. has nowhere recorded that these documents belong to the assessee company. Without prejudice to the above, it is submitted that the observation made by the assessing officer are factually erroneous. Page No. 23 to 33 of LP-1 contains draught survey report relating to coal, ' outgoing message report. These are not even pertaining to the assessee leave alone the question of belonging to the assessee. There is nothing incriminating in these documents. The assessing

officer has also not made any addition on the basis of these documents.

Similarly Page No. 23 to 33 of LP-2 are copy of Valuation report of Property bearing no. A-248, Defence Colony, Delhi in the name of Mrs. Ruchi Garg done on behalf of State Bank of India. These are also not even pertaining to the assessee leave alone the question of belonging to the assessee. There is nothing incriminating in these documents. The Assessing Officer has also not made any addition on the basis of these documents.

5. In para 5.1 of satisfaction Note the A.O. has referred to page No. 8 & 9 of annexure LP-3. In this regard it is submitted that in the satisfaction Note, the A.O. has nowhere recorded that these documents belong to the assessee company. Without prejudice to the above, it is submitted that the observation made by the assessing officer are factually erroneous. Name of the assessee company is nowhere mentioned on these pages. As a matter of fact, even as per the details tabulated in the satisfaction Note, the name of the assessee company is nowhere appearing. These are not even pertaining to the assessee leave alone the question of belonging to the assessee. There is nothing incriminating in these documents.

6. In para 6 of the satisfaction Note the A.O. has mentioned that survey ids 133A of the Act was conducted at the premises of the assessee and various documents were found and impounded. The A.O. has not pointed out or analysis any of the such document stated to be impounded during the course of survey.

Even otherwise, it is submitted that documents impounded during survey cannot be the basis for initiating proceedings u/s 153C of the Act. The prerequisite for invoking provisions of section 153C of the Act is that there should be a search in case of a person and during that search documents belonging to some other person must be found during the course of search.”

Further, Id, A.R. of the appellant has submitted the detailed page wise analysis of the seized document found, as a result of search in the case of) M/s. Apple Group of Companies ranging from LP-1 to LP-22, which is part and parcel of the appeal record. From the page wise detailed analysis Id. A.R. of the appellant has submitted that, the seized document neither belong to the appellant company nor it is incriminating in nature. Thus, the twin imperative conditions as stipulated under provision of section u/s 153C of the Act are not satisfied in the present facts of the case.

5.6 The undersigned has carefully gone through the assessment order, written submission, remand report by Assessing Officer and rejoinder filed as well as verbal arguments of the Ld. A.R. For the sake of brevity satisfaction note recorded by the A,O, is scanned and reproduced here-in-under:

**Satisfaction note in the case of M/s Apple Commodities Limited,
T-1 & 3, 3rd Floor, Anupam Plaza, IIT Crossing, Hauz Khas, Delhi - 16
AADCA0300K for the proceedings u/s 153C of the Act**

A search & seizure operation u/s 132 of the Income Tax Act, 1961 was conducted on 11/11/2014 on the premises of the assessee comprising Apple Group of cases. The group popularly known as 'Apple Group of Companies'(AGC) is a diversified group with multiple business interests and was established in 2000 as Apple Group of Companies. The group is presently engaged in various businesses & deal in various different fields like metal (mainly iron & steel), coal, construction, commodities trading (mainly includes steel & iron, coal & iron ore) etc. at Noida (where its Corporate office & Headquarters are located), Bellary (Karnataka), Anantpur (Andhra Pradesh), Hyderabad, Mumbai etc. M/s Apple Commodities Limited is one of the Group companies.

2. During the course of search, Hard disk found from office premise of the Apple Group at B.16, sector-2, Noida, AW-5A-7HDD of AMIT Choudhary, it was found that huge share premium has been received. As per seized materials, share capital / share premium of has been obtained. On query, no details of identity of the share holder/ share applicant, PAN complete address and copies of his bank statement for the relevant period was provided. Charts showing summary of share capital and share premium received by following assessee company and outstanding as on 31/03/2013 are tabulated below as under:-

Apple Commodities Limited						
List of Share Holders As On 31.03.2013						
SL. No.	Name of Share holders	Number of Eq. Share	Nominal Value Rs. 10/- Each	Premium	Total Value	%
1	Ankit Garg	2,850	28,500	969,000	997,500	0
2	Apple Bulltech Ltd	660,428	6,604,280	224,545,520	231,149,800	9
3	Archit Infratech Pvt Ltd	320,857	3,208,570	109,091,380	112,299,950	4
4	Sh.Cap.-Ashish Garg	630,000	6,300,000	13,250,000	19,550,000	9
5	Global Land Enterprises		6,432,100	218,691,400	225,123,500	9

P.T.O.

	Ltd	643,210				
6	Gunjan Garg	2,150	24,500		24,500	0
7	Jainson Derivatives Pvt. Ltd.	355,000	3,550,000	138,950,000	142,500,000	5
8	Jainson Futurex Pvt. Ltd.	355,000	3,550,000	138,950,000	142,500,000	5
9	Jainson Holdings Pvt. Ltd.	250,000	2,500,000	93,953,630	96,453,630	3
10	Jainson Mineral Development Pvt. Ltd.	126,942	1,269,420	47,706,650	48,976,070	2
11	Jainson Thermal Energy Pvt. Ltd.	317,571	3,175,710	107,974,140	111,149,850	4
12	Jumbo Brilliant Ltd	127,726	1,277,260	43,426,840	44,704,100	2
13	Madan Gopal Alloys Pvt. Ltd.	314,285	3,142,850	106,856,900	109,999,750	4
14	Manan Power Pvt Ltd.	467,142	4,671,420	108,828,280	113,499,700	6
15	M. G. Metalloy Pvt Ltd	314,285	3,142,850	106,856,900	109,999,750	4
16	Narendra Kr.Garg	5,100	51,000		51,000	0
17	Nishcal Jain	2,850	28,500	969,000	997,500	0
18	Nawan Garg	60,000	600,000		600,000	1
19	Pradeep Sharaf	75,000	750,000		750,000	1
20	Reshma Garg	2,550	25,500		25,500	0
21	Sanidhya Steels Pvt Ltd	498,857	4,988,570	129,611,380	134,599,950	7
22	Shaloo Garg	254,900	2,549,000		2,549,000	4
23	Shreem Ispat Pvt Ltd	337,428	3,374,280	114,725,520	118,099,800	5
24	Shubh Sponge Iron Pvt Ltd.	450,000	4,500,000	138,000,000	142,500,000	6

	S.Krishnaswami	80,000		3,200,000	4,000,000	1.
			800,000			
26	Tanya Enterprises Pvt Ltd.	600,000	6,000,000	84,000,000	90,000,000	8
	TOTAL	7,254,431	72,544,310	1,930,556,540	2,003,100,850	100

2.1 The identity, genuineness and credit worthiness of the shareholders have already been enquired during pre-search proceedings and found sham or bogus. In order to provide another opportunity, show cause notice vide F.No.DDIT-1/NOIDA/Apple/2014-15/312 dated 24.02.2015 have been issued to Sh. Ashish Garg, CEO of Apple Group of companies to prove the identity, creditworthiness and genuineness of the shareholders from whom the above companies have taken such huge amount of share capital and share premium. But, he failed to provide the details

3. The hard disks seized were scanned (namely Hard disk no. AW5/A-7/HDD of Sh. Amit Choudhary computer) and on perusal of the books of accounts, it has been gathered that following assessee have taken unsecured loans which were outstanding as on 31/03/2014:-

Sr.No	Apple Commodities Ltd Particulars	Amount (Rs.)
1	Amritvarsha Ispat Pvt. Ltd.	1,500,000
2	Apple Iron Enterprises Pvt Ltd	5,000,000
3	Ashima Gupta	3,000,000
4	Electra Therm India Ltd.	25,000,000
5	Namco Corp Ltd.	23,889,404
6	Neekunj Power Pvt Ltd. Loan	12,131,274
7	Nishu International Ltd.U/L	120,410,000
8	S.M.Edibles Pvt. Ltd.	22,191
9	Yuvan Steels Pvt Ltd.	55,510,000
	Total	246,462,869

3.1 Therefore, on 24.02.2015 show cause notice vide F.No.DDIT-1/NOIDA/Apple/2014-15/312 was personally served at the office of Apple group at B-16, Sector-2, Noida where the assessee has been specifically asked to prove the identity, creditworthiness and genuineness of the above lenders who have lend such huge amount to the group entities of Apple Group.

3.2 As the allegation of ploughing back the unaccounted cash in various group companies from bogus and non-existent Kolkata, Muzaffarnagar and Delhi based companies in the form of unsecured loans has been proved by conducting the spot investigation on following lenders during pre-search investigation, this investigation is further enlarged to second-leg in order to identify the source of funds given by such doubtful companies along with other companies from whom unsecured loans taken or accepted by the above group/associate companies of Apple Group as on 31/03/2013-

4. Further, it was also found that the company is engaged in making bogus sale/purchase transaction with Apple group of companies, Annexure LP-21 and LP-22 found from the premises no. B-16, Sec-2, Noida contain ledger accounts of the party. Summon was also issued to the parties but no compliance was made. Further, several transactions were found in the seized documents i.e LP- 01 to LP-18

5. In addition to above, during the course of search at the business premise of group companies at B-16 Sector -2 Noida, it was found in the LP-01 & LP-2 Page 23 to 33, there are transactions with its offshore units in Hong Kong & Malaysia. From the perusal of the same, it was found that huge investments in mines have been done by the Apple group of companies particularly Apple Commodities Pvt Ltd.

5.1 During the course of search & seizure u/s 132(1) of the Income tax Act, 1961 conducted at the business premises of M/s Apple Industries Ltd., M/s NirmanStelco Pvt. Ltd., M/s M.G. Metalloy Pvt. Ltd., M/s Promart Retail India Pvt. Ltd., B-16, Sector-2, Noida-201301, a document in the form of charts showing details of investment in mines and interest on mining has been worked out from the Pages 8 & 9 of LP-03 found and seized. From the analysis of the same, it was found that there are mines in Indonesia which are managed or controlled by the persons resident of ordinary resident of India and the same is tabulated below as under:-

Sl. No.	Name of Company	Address	Shareholders	Directors	Page Reference	Remarks	Date
A	PT. MULTI CIPTA INVESTAM	Setiabudi Atrium, 2 nd floor, Suite 209A,	M/s Apple Indo Energy Ltd and M/s Pacific Capital Resources	Sh. Ashish Garg and Sh. Nikunj Krshankumar Goyal	105 to 110 of LP-4	Resolution for releasing Nischal Jain from directorship	26.05.2014

	JL.RR. Rasuna Sald Kav. 62, Sub-District of Karet. District of Setiabudi South Jakarta-12920	Ltd					
PT. INTI PUTERA KANAN	The Plaza Office Tower, 29 th floor, FI Unit E, Thamrin Kav. 28-30, Jakarta-10350	PT. MULTI CIPTA INVESTAM A and M/s Pacific Capital Resources Ltd	Ashish Garg, Octavia Budi Raharjo and Nikunj Krishankumar Goyal.	99 to 104 of LP-4	to of	Resolution for releasing Ashish Garg from directorship	26.05.2014
PT. APPLE ETPNS,	Gedung Setiabudi Atrium, Lantai 2, Suite 209A, Jakarta, Selatan-12920	Gold Rise Limited and Nischal Jain	Mr. Luv Bhardwaj	93 to 98 of LP-4		To approve the sale and transfer of 60 lac shares from Nischal Jain to Nikunj Goyal	26.05.2014
PT. MENSA RESOURCE S	The Plaza Office Tower, 29 th floor, FI Unit E, Thamrin Kav. 28-30, Jakarta-10350	Apple Commodities Ltd, HK and Mr. Nischal Jain	Ankit Garg and Nischal Jain	88 to 92 of LP-4		Resolution for releasing Ashish Garg from directorship	26.05.2014



6. Consequent to search, survey action u/s 133A of the Act was conducted at the business premises, T - 1 B 3, 3rd Floor, Anupam Plaza, Near IIT Crossing, Hauz Khas, New Delhi and various incriminating documents in the form of bills/invoices were found and impounded.

The cases of this group are interconnected and required deep investigation to arrive at a logical conclusion. As such for taking a logical conclusion in this group of cases, every single seized document and entry appearing in the seized documents requires deep scrutiny and has its impact on the other cases of the group.

Considering the above facts, I am satisfied that it is a fit case for initiation of proceedings u/s 153C of IT Act for proper investigation and to plug the leaked revenue.

5.7 Detailed perusal and scanning of the satisfaction note recorded by the AO reveals the following facts:

i. AO has not mentioned the assessment years for which, it belongs to. There appears to be only one satisfaction note recorded by AO in relation to appellant company. Thus it is presumed that, satisfaction note is common for all the A.Y. 2009-10 to A.Y. 2014-15 (6 Years).

ii. AO has not mentioned the specific Seized documents, which belongs to the appellant company. Thus, no satisfaction is recorded by the AO of searched person to establish the fact that specific seized document indeed belongs to the appellant company.

iii. AO has mentioned in para 4 of the satisfaction note LP-21, LP-22 and LP-1 to LP-18. Further, AO has noted seized document page 23 to 33 of LP-2 in para -5 of the satisfaction note. AO has also recorded pages 8 & 9 of IP-3 in para 5.1 of the satisfaction note. However, AO has not recorded the-finding that this seized document indeed belongs to the appellant company and is incriminating in nature. Perusal of these documents reveals that neither they belong to the appellant company nor they are in incriminating nature. AO has not made any addition on the basis of these seized documents. Ld. A.R. of the appellant vide his submission dated 28.12.2018, which is reproduced in

para 5.5 of this order, has analyzed each seized document and correctly concluded that neither they belong to appellant nor they are incriminating in nature.

iv. Further, AO has not recorded the finding in the satisfaction note that any specific seized documents have the bearing on the determination of total income or any seized document is incriminating in nature. It is observed from the assessment orders framed by the AO that additions were made on account of share capital/share premium/unsecured loans, disallowance of interest and enhancement of gross profit or unexplained foreign remittances. However, AO has not discussed or mentioned any incriminating seized document, which is found and seized, as a result of search and belonging to the appellant company for making such additions in the assessment orders. It is evident from the assessment order that all the additions made by AO are not based on any seized incriminating document. On the other hand Id. A.R. of the appellant has submitted pagewise detailed analysis of LP-1 to LP-22, which is part of appeal proceedings, to demonstrate that twin imperative conditions of provisions of section 153C of the Act i.e.

i. Satisfaction of AO of searched person that seized document indeed belongs to the person whose case is covered u/s 153C of the Act, and

ii. The seized document is having its bearing on the determination of - acme meaning thereby that seized documents are incriminating in nature, is not fulfilled in the present facts of the case.

In fact, there does not exist any incriminating document as a result of search which 'belong to' the appellant company. The investments reflected in the balance sheet of M/s. Apple Commodities Ltd. cannot be taken as incriminating because these are the part of its regular books of account and already disclosed by the investing company as well as M/s. Apple Commodities Ltd in the return of income. All additions made by the Assessing

Officer are either from balance sheet or from profit A loss account, for which, no incriminating document was found and seized during search action. Hence, it is concluded that there exist no incriminating seized material for these relevant assessment year to justify issue of notice u/s 153C of the Act. The AO has not made any addition on the basis of any incriminating document found and also, additions made by AO does not co-relate with satisfaction noted by him. In absence of incriminating seized material relating to assessment year under consideration, action u/s 153C of the Act cannot be treated as valid in the eye of law.

5.8 The proceedings u/s 153C of the Act are very specific and clearly explained in the Act. For the sake of clarity, relevant provisions of Act is as under;

“153C. [(1)] [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]:”

A plain reading of provision u/s 153C makes it abundantly clear that some imperative condition need to be satisfied by the AO, prior to the issue notice u/s 153C of the Act. This pre-condition includes:

- i) Existence of undisclosed/unexplained asset or incriminating seized documents against the appellant, as a result of search.*
- ii) Recording of satisfaction by the AO of the person searched that, the undisclosed assets or incriminating document found as a result of search should "belongs to" the appellant, for relevant assessment year.*
- iii) Proper satisfaction is to be recorded by the AO for the relevant assessment year for issuance of notice u/s 153C.*

All the above three conditions are to be satisfied cumulatively and simultaneously as per provisions of section 153C of the Act. Non satisfaction of any of the pre-conditions mentioned here in above, would result in notice u/s 153C of the Act legally unsustainable or invalid, In the present facts of the case AO has failed to demonstrate that, seized document belongs, to the appellant company and no seized documents were found as a result of search and have bearing on the determination of total income of the appellant company. Hence, imperative jurisdictional condition for issue of notice 153C of the Act is not satisfied.

5.9 Hon'ble Supreme Court in the case of PCIT-3, Pune Vs Sinhgad Technical Education Society (2017) 397 ITR 344 (SC) has held that the nexus between issue of notice u/s 153C and the incriminating material found as a result of search must exist. Hon'ble Supreme Court in para 13 of the order has observed that one of the jurisdictional conditions precedent to the issue of a notice u/s 153C of the Act is that "money, bullion, jewellery or other valuable article or thing" or any "books of account or document must be seized or requisitioned for the relevant assessment year for issue of notice u/s 153C of the Act." The observation of the Supreme Court in para 18 of the order mentioned here in above is reproduced below:

“The ITAT permitted this additional ground by giving a reason that it 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 provisions 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 that 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 Note 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 senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.”

Thus, facts of the instant case are squarely covered by the ratio of judgment mentioned here-in-above.

5.10 Hon'ble Delhi High Court in para 31 has held in the case of Index Security Pvt. Ltd [86 taxmann.com 84 (Del)] as follows:

“As regards the section jurisdictional requirement viz, that the seized documents must be incriminating and must relate to the A.Ys. whose assessments are sought to be reopened, the decision of the Supreme Court in Commissioner of Income Tax-III, Pune Vs.

Sinhgad Technical Education Society (Supra) settles the issue and holds this to be an essential requirement. The decision of this Court in CIT-7 Vs RRJ Securities (2016) 380ITR 612 (Del) and ARN Infrastructure India Ltd. Vs A CIT [2017] 394ITR 569 (Del) also held that in order to justify the assumption of jurisdiction under section 153C of the Act the documents seized must be incriminating and must relate to each of the A Fs whose assessments are sought to be reopened."

Thus, by now, it is a settled law that notices u/s 153C of the Act is ab-initio-invalid in absence of incriminating seized material. From the plain reading of language of section 153C of the Act and various judicial pronouncement cited herein above, it is abundantly clear that in order to reopen the assessment of other person u/s 153C of the Act for the assessment year earlier to the year of search, direct correlation must exist between existence of incriminating material and relevant assessment years. In the instance case, admittedly, additions are not based on any incriminating document found, as a result of search. Further, AO has not recorded the satisfaction for these relevant assessment years, as envisaged u/s 153C of the Act. In fact, no assessment year is mentioned in the satisfaction note recorded by the AO.

5.11 In view of the detailed discussion mentioned here in above end respectfully following the judgement of the Supreme Court in the case of Sinhgad Technical Educational Society, it is concluded that notice u/s 153C issued by the AO need to be treated as ab-initio invalid and legally not sustainable, therefore, assessment framed on the basis of legally unsustainable notice is hereby quashed and annulled. Thus, these legal grounds of appeals i.e. for A.Y. 2009-10 to A.Y. 2014-15 are decided in favour of the appellant."

6. It could be observed from the above, it is the finding of the Ld.CIT(A) that there is no seized materials impounded in the course

of search belong to the assessee. After analyzing the satisfaction note of the DCIT (Central Circle) the Ld.CIT(A) held that the three conditions enumerated in Section 153C of the Act are not satisfied cumulatively and simultaneously. It is the finding of the Ld.CIT(A) that in the case of the assessee admittedly additions are not based on any incriminating document found as a result of search and AO has not recorded the satisfaction for the relevant assessment years as envisaged u/s 153C of the Act. It is also the observation of the Ld.CIT(A) that in fact no assessment year is mentioned in the satisfaction note recorded by the AO and, therefore, conditions stipulated in Section 153C have not been satisfied cumulatively and simultaneously. Non-satisfaction of any of the pre-conditions mentioned in the provision of Section 153C of the Act would result in notice under 153C legally unsustainable or invalid. The ratio of the decision of the Hon'ble Supreme Court in the case of PCIT Vs. Sinhagad Technical Education Society (supra) and the decision of the Hon'ble Delhi High Court in the case of Index Security Pvt. Ltd. (86 taxmann.com 84) was rightly applied to the facts of the assessee's case. Thus, we see no infirmity in the orders passed by the Ld.CIT(A). The same is sustained.

7. As we have sustained the order of the Ld.CIT(A) who has annulled the assessments the cross objections filed by the assessee are treated as infructuous.

8. In the result, appeals of the Revenue are dismissed and cross objections of the assessee are dismissed as infructuous.

Order pronounced in the open court on 29/12/2023

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 29/12/2023

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT
(DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi