

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI**

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

**ITA Nos. 470 & 471/DEL/2019  
Asstt. Yrs: 2010-11 & 2011-12**

<b>DCIT, Central Circle, Noida.</b>	<u>Vs</u>	PGP Charitable Trust, 207/9, Sikka Complex, Preet Vihar, New Delhi-110092  <b>PAN- AABTP6175G</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Dr. Rakesh Gupta, Adv.; & Shri Deepesh Garg, Adv.	
<b>Department represented by</b>	Shri Mukesh Kumar Jha, Sr. DR	
<b>Date of hearing</b>	15.02.2024	
<b>Date of pronouncement</b>	01.05.2024	

**ORDER**

**PER M. BALAGANESH, AM:**

These appeals, by the Revenue, are directed against the consolidated order of learned Commissioner of Income Tax (Appeals)-IV, Kanpur, dated 11.10.2018, arising out of respective assessment orders, passed by the Assessing Officer u/s 153C/143(3) of the Income-tax Act, 1961, pertaining to the assessment year 2010-1 & 2011-12. Identical issues are involved in both these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience. The facts of Asst Year 2011-12 are taken up for adjudication and the decision rendered thereon shall apply with equal force for Asst Year 2010-11 also except with variance in figures.

2. The revenue has raised the following grounds of appeal before us for the Asst Year 2011-12:-

"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 Singhad Technical Education Society, without appreciating that the same pertained to prior period to 01.04.2005 whereas after 01.04.2005, the 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 not appreciating that after 01.04.2005 the test for 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 facing belief having live nexus & not in nature of absolute evidence on detailed investigation.

3. 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 all the facts and circumstances, which indicated that the assessee company is engaged in transactions, in the nature of accommodation entries and hence such documents constituted valid material which has bearing on assessment u/s 153C in the context of assessee.

4. Whether on facts and circumstances of the case and in law, the Ld. CIT (A) erred in law holding that assessment framed u / s 153 C of the Act was bad in law without jurisdiction because documents found were not in the nature if incriminating was not correct. The Assessee trust failed to establish the genuineness of donations received and further, the trustees in their statement has stated that they are the dummy persons.

5. The order of the 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.

6. That the appellant craves leave to add or amend any one or more of ground of appeal as stated above as and when needed for doing so may arise."

3. We have heard the rival submissions and perused the materials available on record. The assessee is a public charitable trust registered u/s

12A of the Act. The main objective of the trust was to promote the education, welfare activities and health consciousness among the society for the use of general public having motto as 'Co-existence of all faiths as one race' for enhancement of education, welfare of humanities and good health. A search and seizure action u/s 132 of the Act was carried out on 27.11.2014 in the case of Maconns, Meenu and Yadav Singh Group Noida covering its business premises and residences of Director, their family members and other business associates concern and other key persons. A copy of Trust Deed of the Trust was found at the time of search. This was considered as incriminating material by the search team. The assessee was directed to furnish the balance sheets of the Trust for the financial years 2009-10 to 2013-14 which were duly furnished. On verification of the same, the Id. AO observed that assessee had received huge corpus donations during these years which are tabulated in Page 3 of the assessment order. The assessee was asked to provide project/ activity wise details of receipts and expenditure for each year, along with name and address of the donors who had given Corpus Donations. The details were filed by the assessee. On perusal of the details, it was concluded that :-

- a) There is no written consent of the donors regarding the utilization of the funds.*
- b) There is no specific direction in writing by Donors to constitute a Corpus Donation.*
- c) No expenditure incurred for the charitable activities as per the Deed of the Trust.*

*d) The nexus of agricultural land purchased by the Trust is nowhere established with the charitable activities of the Trust as designated in the Trust Deed. During the year, the assessee has purchased agricultural land at Bankey Mauja Kurkunda Tehsil Mthura. But no corresponding evidences with regard to use of such immovable properties were provided either to establish the nexus between the receipts and utilization of the same for charitable purposes. Further, the Trustees also denied of having any role in the Trust.*

*e) During the search, the statement of Mr Man Singh, Mr Raghavendra Sharma and Mr Nishant Maheshwari, current Trustee, they categorically denied having any role in the activities of the Trust. Rather, they aditted that on the request of Shri Yadav Singh, their names are associated with the Trust. Statements recorded during the course of post search proceedings inevitably establish the fact that the assessee trust was receiving its own unaccounted funds in the form of donations.*

4. Accordingly , the Id. AO brought to tax the entire donation receipt of Rs 2,87,87,851/- during the year as income of the assessee. In addition to this, the Id. AO also brought to tax the interest receipt from Bank on deposits amounting to Rs 94,740/- and Rs 3,40,100/- . All these receipts were treated as business receipts and taxed at maximum marginal rate @ 30% by the Id. AO in the search assessment framed u/s 153C r.w.s. 143(3) of the Act on 28.12.2016 for the Asst Year 2011-12.

5. In addition to the above, the Id. AO also observed that the assessee had made investment in property ( a house) at Bankey Mauza, Karkunda Mathura which was purchased during 201-11 and further investments were made in subsequent years. During the year under consideration, a sum of Rs 13,60,970/- was claimed to be invested in construction of house. The property was referred to Valuation Cell on 18.07.2016 to determine the true value of

investment. The Ld. District Valuation Officer (DVO) vide letter dated 16.11.2016 estimated the cost of investment for the year under consideration at Rs 15,29,583/- . The Id. AO observed that the assessee could not explain the source of such investment and accordingly treated as unexplained investment in the sum of Rs 15,29,583/- in the assessment.

6. The assessee challenged the validity of assumption of jurisdiction u/s 153C of the Act on various legal issues and also on the validity of additions made on merits before the Id. CIT(A). The Id. CIT(A) observed as under:-

*"5.4 For adjudicating the legal issue raised by the appellant, it is imperative to study the satisfaction recorded by the A.O., which is reproduced here-in-under:*

*Satisfaction Note for Initiation of proceedings under section 153C of the Income Tax Act M/s PGP Charitable Trust PAN-AABTP6175G*

*In this case Incriminating documents were found and seized by party no. EW-7 at page no. 19-35 of annexure - LP-1, which needs investigation. Further During the course of post search proceedings by the Investigation wing, the income tax returns and balance sheet of the trust for the F.Y. 2009-10 to 2013-14 were analyzed and it was found that the Trust has received huge amount of donation during the impugned period, the year-wise details of which is tabulated as under:-*

<i>Sr. No.</i>	<i>F.Y.</i>	<i>Amount (Rs.)</i>	<i>Accumulated Amount (Rs.)</i>
<i>1</i>	<i>2009-10</i>	<i>1,60,99,211/-</i>	<i>1,60,99,211/-</i>
<i>2</i>	<i>2010-11</i>	<i>2,87,87,851/-</i>	<i>2,48,87,062/-</i>
<i>3</i>	<i>2011-12</i>	<i>83,84,701/-</i>	<i>5,32,71,763/-</i>
<i>4</i>	<i>2012-13</i>	<i>-</i>	<i>5,32,71,763/-</i>
<i>5</i>	<i>2013-14</i>	<i>31,00,000/-</i>	<i>5,63,71,763/-</i>
	<i>Total</i>	<i>5,63,71,763/-</i>	<i>5,63,71,763/-</i>

*Statement of Shri Man Singh one of the trustee was recorded in which he was specifically asked about activities of the trust. He categorically denied of having any association with the trust. He clearly stated that at the request of Sh. Yadav Singh only, his name was associated with the*

*trust. He further clarified that he was not aware of any land acquired by the trust during this tenure. Neither has he had any knowledge about the business activities of the trust. Relevant extract of statement of Sh. Man Singh recorded on 08.01.2015 is reproduced as under:-*

*Statement of Shri Man Singh S/o Sh. Charanjit Singh recorded on oath / solemn affirmation on 08/01/2015 at 11.45 AM in the office of undersigned at A-236, Sector-19, Noida.*

*I have been administered the oath by Shri S.K. Yadav, JDIT (Inv.) Noida that I shall speak the truth and nothing but the truth. I have further been made aware of the fact that any false or untrue statement given by me hereunder shall make the liable to prosecution under the Indian Penal Code and under the Income Tax Act 1961*

*Sd/-  
(Oath taken by)*

*Sd/-  
(Oath administered by)*

<i>Q 1</i>	<i>Please Identity yourself</i>
<i>A</i>	<i>I am Man singh Retired Asstt. Engineer PWD and presently residing at 3rd Floor A-12, Nehru Nagar Ghaziabad. My PAN Number is ACUPS221o0. I am submitting copy of my PAN card for ID proof</i>
<i>Q2</i>	<i>Please explain your source of income</i>
<i>A</i>	<i>Income from pension, Agricultural income and income from house property</i>
<i>Q3</i>	<i>Please explain whether you are Director in company. Partner in any firm or you have Any association with invel of eve</i>
<i>A</i>	<i>I am not Director in any company or have no interest in partnership firm. To the best of my knowledge I am a trustee in one trust namely, POP Charitable Trust. In this respect have to state that Sh. Yadav Singh who was my colleague in Noida Authority posting came to me in 2012 and asked for ID proof and took my signature on the papers related with trust, He stated that he has formed the trust with the purpose for education of poor children. At that point of time I had signed on those papers. I am absolutely not aware of any activity of the trust neither attended any meeting of the executive body,</i>
<i>Q4</i>	<i>As per amended trust deed of PGP Charitable Trust you are one of the trustees. Please give the name and address of other trustees</i>
<i>A</i>	<i>I don't know anything about the trust. As I stated I have Associated myself on request of Sh. Vadav Singh.</i>

Q5	<i>Trust is having a chunk of land on national highway of Delhi-Agra Are you aware of this land</i>
A	<i>No</i>
Q6	<i>Where is the bank account of the trust</i>
A	<i>I Don't know</i>
Q7	<i>From the reply of above question, it appears that either you are not stating the truth or you the dummy trustee of the trust. Please explain</i>
A	<i>I may be a dummy trustee but i don't know anything about the trust. As i stated that i had signed the papers on the friendly request of Sh. Yadav Singh i have nothing to do with trust.</i>
Q8	<i>Do you want to say anything else?</i>
A	<i>No</i>

*I have read the above statement, it is recorded what i stated in my statement. The above statement is true to the best of my knowledge.*

*Before the Investigation wing, no details regarding donation received by the M/s PGP Charitable trust were furnished, as such wing gave a finding that trust was receiving its own unaccounted funds in the form of donations. 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/impounded document and entry appearing in the seized/impounded documents requires a deep scrutiny and its impact on the other cases of the group. Considering the above facts, as discussed above, I am satisfied that it is a fit case for initiation of proceedings under section 153C of the Income Tax Act for proper deep investigation in this case and to plug the leaked revenue.*

*Sd/-*

*(Mahesh Kumar Shairwal)  
DCIT Central Circle, Noida*

*From the bare reading of satisfaction note recorded by the A.O. following facts emerges;*

*i) Assessing Officer has recorded the finding in the satisfaction note that seized document inventorized, as LP-1, page 19 to 35 represents incriminating document. However, the deeper examination of this document shows that, it is a xerox copy of the trust deed of the appellant trust. This document is executed on the stamp paper of Rs. 100/- and shows the content of the trust deed including the name of the trustees and other details like name, address and object of the trust. This seized document cannot be treated as incriminating document, as the same does not have any bearing on the determination of total income of the appellant trust.*

*ii) The statement of Shri Man Singh, which is recorded on 08.01.2015, is subsequent to the search and cannot constitute the seized document found, as a result of search. Thus, the reopening of assessment u/s 153C of the Act on the basis of the statement of Shri Man Singh could not be justified in law.*

*Thus, it is seen that, A.O. has not found any document, which is incriminating in nature. Further, no additions were made by the A. O. on the basis of seized document. A.O. made addition of disallowance of donation received in the corpus fund for which, no documents were found and seized in search action. Thus, seized document has no correlation by any stretch of imagination to the disallowance of corpus donation by Assessing Officer u/s 153C of the Act.*

*iii) A.O. has nowhere recorded the finding that, seized document has bearing on the determination of total income of the appellant, which was one of the condition precedent for issue of notice u/s 153C of the Act. In fact, there exist no incriminating seized documents, as a result of search u/s 132 of the Act.*

*5.5 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 1534, 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 1534, 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 1534].:]"*

*A plain reading of provision u/s 153C makes it abundantly clear that the 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 action u/s 132/132A of the Act.*
- ii) This undisclosed assets or incriminating document found as a result of search should "belongs to" or "pertain to" or "relate to" the appellant, for relevant assessment year and should have bearing on the determination of total income of the appellant.*
- 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 legally unsustainable or invalid. In the present facts of the case, A.O. has not mentioned any incriminating seized material found as a result of search and having bearing on the determination of total income of the appellant. Hence, imperative jurisdictional precondition for issue of notice 153C of the Act is not satisfied.*

*5.6 The undersigned has carefully gone through the assessment order, written submission, remand report by Assessing officer as well as verbal arguments of the Ld. A.R.. It is seen from the satisfaction note that Assessing Officer has initiated - proceeding u/s. 153C against the appellant on the basis of seized documents,. which are copies of trust deed of the appellant trust, which by any stretch of imagination cannot be categorized as incriminating in nature. Further, these seized documents have no co-relation to the disallowance of corpus donation*

*made by Assessing Officer u/s 153C of the Act. A.Q. has not brought out any seized material found u/s 132 of the Act, which is incriminating in nature and has bearing on the determination of total income of the appellant. Hence, it is concluded that there exist no incriminating seized material found as a result of search, belonging to the appellant 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.*

*5.7 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 was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the 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 therefrom 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 the judgment mentioned here-in-above.*

*5.8 Further, 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) 380 ITR 612 (Del) and ARN Infrastructure India Ltd. Vs ACIT [2017] 394 ITR 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 AYs whose assessments are sought to be reopened."*

*5.9 Further, Hon'ble Karnataka High Court in case of Principal Commissioner of Income-tax, Bengaluru v. Smt. Lakshmi Singh (78 taxmann.com 207) held that,*

*"A bare perusal of the impugned order clearly reveals that the learned Tribunal was seized with only the issue, whether the power under Section 153C of the Act could be invoked or not, specially when there was no incriminating document or evidence discovered during the search under Section 132 of the Act, against the assessee? Admittedly, the Revenue has not produced any evidence either before the Assessing Officer, or before this Court to show that any Incriminating evidence was discovered against the assessee during the search on 25.03.2008. In the absence of any incriminating evidence, the Assessing Officer was not justified in invoking his power under Section 153C of the Act".*

*5.10 Further, Hon'ble Supreme Court in case of CIT Vs. RRJ Securities[2017] 246 Taxmann 62(SC) has confirmed the ruling of the High Court that, wherein course of search carried out at premises of the assessee's Chartered Accountant, a hard disk containing working papers belonging to the assessee was seized, since, said hard disk did not contain any incriminating material, proceedings under section 153C of*

*the Act could not be initiated against the assessee on the basis of hard disk.*

*5.11 Thus, from the plain reading of language of section 153C of the Act and various judicial pronouncement cited here-in-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 material seized as a result of search action and having bearing on determination of total income of the appellant for relevant assessment years. Documents seized, thus, should be incriminating in nature. In the instance case, admittedly, additions are not based on any incriminating document found as a result of search. In fact, no incriminating document as a result of search is mentioned in the satisfaction recorded by Assessing Officer. Documents seized do not reveal any information or finding to show that, disallowance of corpus donation made by AO. In view of the detailed discussion mentioned here in above and respectfully following the judgments cited here-in- above, it is concluded that notice u/s 153C of the Act issued by the AO need to be treated as void ab-initio, invalid and legally not sustainable. Therefore, assessment framed on the basis of legally unsustainable notice is hereby annulled. Thus, these legal grounds of appeals i.e. for A.Y. 2010-11 to A.Y. 2014-15 are decided in favour of the appellant.*

*5.12 Though, addition made by AO was not justified in terms of provisions u/s 153C of the Act. However, Assessing Officer may execute appropriate remedial action to assess/reassess the escaped income, if any, in accordance with the provisions of income tax Act.*

*6. Since order u/s 153C of the Act is treated as annulled, remaining grounds of appeal for each assessment years consequently become infructuous. Therefore, same are not being adjudicated and treated as dismissed."*

7. At the outset, we find that there is no dispute that the only document that was found in the search was the Xerox copy of the trust deed of the trust, which obviously cannot be construed as incriminating material at all by any stretch of imagination. Hence it could be safely concluded that there was absolutely no incriminating material found in the course of search concerning the assessee herein. Moreover, the satisfaction note also contains a finding

that the corpus donations received by the trust requires deeper investigation. The only basis of framing the assessment for the Asst Years 2010-11 and 2011-12 u/s 153 C of the Act is the statement recorded from Shri Man Singh. The law is very well settled that the statement recorded during the course of search cannot constitute incriminating material. Reliance in this regard is rightly placed on the decision of Hon'ble Jurisdictional High Court in the case of PCIT vs Best Infrastructure (India) (P) Ltd reported in 397 ITR 82 (Del). It is not in dispute that the Asst Years 2010-11 and 2011-12 fall under the category of unabated assessments even if construed as on the date of search in Maconnns, Meenu and Yadav Singh group on 27.11.2014 or even if construed from the date of satisfaction note recorded, which would be the date of search qua the assessee herein. In either case, the assessments for the Asst Years 2010-11 and 2011-12 would be concluded assessments and in the absence of any incriminating material qua those assessment years qua the additions made thereon, the assessments earlier framed prior to the search, be it u/s 143(1) or 143(3) or 147 of the Act cannot be disturbed. This issue is no longer res integra in view of the recent decisions of the Hon'ble Supreme Court in the case of PCIT vs Abhishar Buildwell P Ltd reported in 454 ITR 212 (SC) ; CIT vs Sinhgad Technical Education Society reported in 397 ITR 344 (SC) ; DCIT vs U K Paints Overseas Ltd reported in 454 ITR 441 (SC).

8. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we do not find any infirmity in the order

of the Id. CIT(A) in annulling the assessments framed u/s 153C of the Act for the Asst Years 2010-11 and 2011-12 in the facts and circumstances of the instant case. Accordingly, the grounds raised by the revenue are dismissed for both the years under consideration.

9. In the result, both the appeals of the revenue are dismissed.

Order pronounced in open court on 01.05.2024.

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

**Dated: \_01.05.2024.**

\*MP\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI