

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
(DELHI BENCH 'C' NEW DELHI)**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER AND  
SH. NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA Nos. 350, 351 & 352/Del/2019 for A.Y. 2014-15, 2015-16  
and 2016-17

Smt. Kavita Chaudhary B-30, Gamma-1, G.B. Nagar, Greater Noida 201308  <b>PAN No. ANHPK 4047 R</b>	Vs.	DCIT, Central Circle Noida
Appellant		Respondent

ITA No. 362/Del/2019 for A.Y. 2011-12

Smt. Kiran Wati, New Delhi.  <b>PAN No. AHNPK8472A</b>	Vs.	DCIT, Central Circle, Noida
Appellant		Respondent

Assessee by	Sh. Sandeep Jain, CA
Revenue by	Ms. Monika Dhami, CIT DR

Date of Hearing	29/04/2024
Date of Pronouncement	31/05/2024

**ORDER**

**PER BENCH:**

All these appeals filed by the assessee are directed against the common order dated 12.07.2018 passed by the CIT(A) – IV, Kanpur, arising out of the order passed by the DCIT, Central Circle, Noida under Section 153C r.w.s. 143(3) and Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for A.Y. 2014-15, 2015-16 and 2015-16 respectively.

2. Since all the matters relate to the same issue, these are heard analogously and are being disposed of by this common order.

3. All these appeals are barred by limitation for a period of 129 days. An application for condonation of delay has been filed by the assessee in the respective appeals. In this connection the Ld. AR submitted before us that upon completion of the assessment proceedings, all bank accounts were freezed by the department for recovery of outstanding dues, as a result whereof the financial position of the assessee has severely been damaged. In fact, the assessee suffered huge losses due to shortage of funds and also due to delay in running the projects as the assessee is engaged in real estate business. Due to such financial crunch and blockage of bank accounts of all major companies and key managerial personnel, the assessee become unable to arrange funds in order to deposit appeal fees for filing the appeals. The delay was further aggravated by the reason of one of the projects site stopped by the

mining department at Greater Noida during the period of June-July,2018 due to which the substantial time was deputed for release of the said site. Under these circumstances, the assessee was not been able to file the appeals in time and, therefore, prays for condonation of delay before us.

4. The explanation so rendered by the assessee seems to be genuine. Relevant to mention that the Ld. DR has also not raised serious objections for condonation of delay as prayed for by the assessee before us with all his fairness.

5. Thus having heard the Learned counsels appearing for the respective parties and having regard to the facts and circumstances of the case, we condone the delay.

**ITA No.350/Del/2019 (A.Y. 2014-15)**

6. The brief fact leading to the case is this that on 30.09.2015 a search and seizure operation under Section 132 of the Act, 1961 was carried out at the premises of the Airwell Group, involved in the development of housing and commercial projects. Upon centralization of the case with AO under Section 127 of the Act on 13.10.2017, a notice under Section 153C of the Act was issued on 17.10.2017 in response whereof the assessee submitted the copy of the ITR and computation thereof. In fact, the search under Section 132(1) of the Act was carried out at the business premises M/s. Air

well business Park developers Pvt. Ltd., JBK developers Pvt. Ltd. at B-20, 21-22, Sector-16, Noida U.P. Upon examination of seized documents and data retrieved from the Hard disc seized, satisfaction was recorded by the Learned AO and proceeding under Section 153C of the Act was initiated against the assessee. The assessment was finalized upon making addition of Rs. 5,00,000/- on the ground of unexplained cash deposit Rs.5,00,000/-which was further confirmed by the Learned CIT(A). Hence the instant appeal before us.

7. The issue, practically, revolves around cash deposit of Rs.5 lacs on 24.06.2013 made by the assessee with the bank, the source whereof was asked to explain, failing which the same was added to the total income of the assessee.

8. At the time of hearing of the matter, the Learned Counsel appearing for the assessee raised the ground of maintainability of the proceedings on the point of jurisdictional error. It was submitted before us that such satisfaction note was never provided to the assessee during the assessment proceedings or even during the appellate proceedings. However, at the time of hearing of the instant appeal, the Learned DR filed a satisfaction note to us which was claimed to have been filed even earlier when the matter was taken up by the different constitution.

9. The Learned AR further submitted that the satisfaction note does not specify any incriminating material so as to allege unexplained cash deposit made by the assessee addition whereof has been made. Not only that, but also no reference of any incriminating material in the possession of the Ld AO, so seized, during search which could lead to finalize the assessment order making addition on unexplained cash deposit under Section 153C of the Act has been made by the Learned AO. He, therefore, prays for quashing of the assessment proceeding due to lack of jurisdiction. On the other hand, Learned DR strongly relied upon the orders passed by the authorities below. Further that, according to him, the *prima facie* satisfaction, that the documents seized have bearing on the determination of the total income of the assessee, while assuming jurisdiction under Section 153C of the Act, is sufficient.

10. We have heard the Learned Counsels appearing for the parties, we have also perused the relevant materials available on record.

11. We have carefully considered the satisfaction note recorded by the Learned DCIT, Central Circle, Noida. In order to address the issue on the maintainability of assessment proceedings under Section 153C of the Act, we would like to discuss the contents of the satisfaction note, which is reproduced as follows:

**“Satisfaction Note for initiation of action u/s 153C of the Act**

<i>Name of the Assessee</i>	<i>Smt. Kavita Chaudhary</i>
<i>Address of the Assessee</i>	<i>B-30, Sector-CAMA, Gr. Noida</i>
<i>PAN</i>	<i>ANHPK4047R</i>
<i>Ward/Circle</i>	<i>Central Circle, Noida</i>
<i>Status</i>	<i>Incl.</i>
<i>A.Y.</i>	<i>2010-11 to 2016-17</i>

*A search & seizure operation u/s 132 of the Income Tax Act, 1961 was conducted on 30/09/2015 on the premises of the assessee comprising Airwill Group of firms. The AIRWIL Group is a Realty/Real Estate group of Noida, which is involved in the development of housing as well as commercial projects. A CTR has been received in the name of Assessee in which various cash transactions have been found. The same was analysed and confronted to the Assessee but no satisfactory reply was filed. The assessee failed to explain the sources of cash deposits in the bank accounts.*

*Hard disks seized on 30.09.2015 during search proceeding u/s 132 of the I. T. Act, 1961 from M/s JBK Developers Pvt. Ltd., M/s Airwil Infra Ltd., B-20, 21, 22, Sector-16, Noida, it contains the transactions belonging to the Assessee-*

- 1. Page-854 to 873 It contains copy of balance sheet, profit period of 01.04.2008 to 31.03.2016 of of Kavita Chaudhary. & loss A/c, trial balance from the period of 01.04.2008 to 31.03.2016 of Kavita Chaudhary.*

*In addition to above, it has been also gathered that the Assessee has made huge investment in the movable & immovable properties and of which sources could not be explained. The possibility of investment of unaccounted cash generated from the real estate business in the purchase of immovable properties in the name of self and family members cannot be overruled.*

*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 deep investigation and to plug the leaked revenue.*

*Sd/-  
(Akhtar H. Ansari)  
Dy. Commissioner of Income Tax  
(Central Circle), Noida”*

12. It appears that the satisfaction note speaks about various cash transactions alleged to have been made by the assessee but no specific details has been spelt out there. Further that, reference of page numbers 854 to 873 retrieved from the hard disk seized on 30.09.2015 containing the copy of balance sheet, profit and loss account, trial balance from the period of 01.04.2008 to 31.03.2016 though made but failed to demonstrate the relevance of those documents to the issue of unexplained cash deposit made by the assessee leading to addition in the assessment under section 153C of the Act. Meaning thereby, no incriminating material seems to have been found during search under Section 132 of the Act which could lead the assessment proceeding initiated under Section 153C of the Act culminating into addition on the ground of unexplained cash deposit made by the assessee. Further that neither these documents speak about cash deposit in respect of respective assessment year made by the assessee which ultimately could have been said to be unexplained and addition thereupon could be found to be sustainable. In the absence of the same, the satisfaction note is found to be vague; the material seized does not properly disclose how the same belongs to the appellant. Neither it has establish any co-relation, document-wise with these three years.

13. On this issue the assessee before us has relied upon various judgments in his written notes of submission, the contents whereof is as follows :

***“Hon'ble Supreme court in the case of CIT-3, Pune Vs Sinhgad Technical Education Society (2017) 397 IRE 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."*

***Further, Hon'ble Delhi High Court in para 31 has held in the case of Index Security Pvt. Ltd [86 [taxmann.com](http://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."*

***Further, Hon'ble Delhi High Court in the case of PCIT Vs Vikas Telecom Ltd ITA 112/2020 & CM APPL. 6464/2020 held as follows:***

*"In this case the learned Assessing Officer while framing the assessment order has not referred to any seized documents belonging to the assessee found during the course of search proceedings. In the remand proceedings the learned Assessing Officer has also submitted that no any incriminating materials have been referred to while framing the assessment order. A perusal of the seized documents and their description revealed that the seized documents mentioned in the satisfaction note do not relate to the accommodation entry transactions. The case laws relied by the learned Departmental Representative are not applicable in the present facts of the case and the learned DR could not bring any cogent material for justifying the order of the Assessing Officer. There was no pending assessment for the assessment year 2003-04 at the time of search. Therefore, in our considered opinion, no addition could be made u/s. 153C of the Act without reference of any incriminating material found in the course of search."*

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

*Reliance is also placed on following case laws as well.*

- a) Hon'ble Jurisdictional High Court in the case of CIT Vs. RRJ Securities Ltd. 62 taxmann.com 391 (Del)***
- b) SSP Aviation Ltd. 20 taxmann.com 214 (Delhi High Court), wherein the HC had held that no incriminating material is found, no assessment u/s 153C of the Act could be made.***
- c) ITA No. 3639/Del/2014 (2017-TIOL-729-ITAT-DEL) ACIT, CC-19, Delhi vs. New Indig City Developers Ltd-***

*"..... Whether when there is search conducted and no reference was there regarding any amount pertaining to assessee, no addition could be made in such a situation YES: ITAT".*

- d) ITA No.244/KoU2017 (2018-TIOL-1271-ITAT-KOL), DCIT, Circle-1, Kolkata vs. Anand Kumar Agarwal c/o Sky Wheels Pvt. Ltd.***

*“...Whether in absence of any document which does not mention assessee's name or search statement can form basis of the on-money addition in hand of Assessee- NO: ITAT”*

*At the very outset, it is stated that for initiating the valid proceedings w/s 153C the Ld. AO has to first record satisfaction note in the file thereafter, such satisfaction notes along with the seized documents or books of account to be placed in the file of such other person. **Reliance is placed in the judgement of ACIT New Delhi vs M/S Victory Accommodations Pvt. on 27 June, 2018, where ITAT. Delhi had held that satisfaction note is mandatorily to be placed before initiating the proceedings u/s 153C of the Act.***

*It is further stated that from bare reading of the assessment order it is apparent on record that the Ld. AO had not discussed the satisfaction note in his assessment order. **Mere saying that satisfaction note was recorded (whose copy was also not provided to the appellant), the satisfaction note would indicate that it is totally vague and it does not disclose what material is found during the course of search, which belonged to the appellant. It is settled in law that the proceedings u/s 153C is invalid if the satisfaction note is vague. Reliance is placed in the case of IT(SS)A No.27/AHD/2012 in the case of M/s Shiv Associates vs. DCIT, CC-2, Baroda, (2015-TIOL-2010-ITAT-AHM) where the ITAT had held that “we find that the satisfaction notes in other cases as well as recorded in the case of assessee are verbatim same except the assessment years. A perusal of the satisfaction note would indicate that it is totally vague. It does not disclose what material is found during the course of search, which belonged to the assessee. There is no reference to any such documentary evidence. Therefore, respectfully following the order of the Coordinate Bench cited supra, we allow appeal of the assessee and quash assessment order. Since, we quashed the assessment order, therefore, there is no need to adjudicate other issues rated by the assessee”***

*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 incriminating material and relevant assessment year. In the instance case, admittedly, addition is not based on any incriminating document found as a result of search. In view of the detailed discussion and the judicial authority mentioned 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.*

14. The basic contention made by the Ld. AR in regard to maintainability of the assessment proceedings initiated under Section 153C of the Act to this effect that the Learned AO has no jurisdiction to initiate such proceeding without recording satisfaction that the documents seized or requisitioned have any bearing on the determination of the total income of the assessee. The AO failed to establish co-relation, with the data/ document/ cash deposit *qua* respective assessment year which is the precondition envisaged for initiation of a proceeding under Section 153C of the Act upon recording satisfaction of this jurisdictional fact. We find force in such case made out by the assessee before us.

15. Even otherwise while finalizing the assessment order the Learned AO failed to refer any such incriminating material in his possession seized during search which could lead to make the addition against the assessee.

Moreso, in the third paragraph of the Satisfaction and specifically record “the possibility” shows preponderance of probability, surmise and conjecture which should not be encouraged as a ground for initiation of proceeding under Section 153C of the Act.

16. It appears from the satisfaction note that it has simply referred hard disk seized on 30.09.2022 during search proceeding initiated under section 132 of the Act from M/s. JBK Developers Private Limited and Airwil Infra Limited lying and situated at B-20,

21, 22 Sector-16, Noida wherein documents particularly pages 854 to 873 containing balance sheet, trial balance and P & L account from the period 01.04.2008 to 31.03.2016 of the assessee found. Further that though it has referred that the assessee made huge investments in the immovable and movable properties source of which could not be explained no specific details whereof is available. Thus it appears, rather crystal clear that no specific documents incriminating in nature has been found which could have been mentioned in the satisfaction note having relation with the assessee for respective assessment year specifically and separately. Moreso, mentioning of “the possibility of investment of unaccounted cash generated from the real estate business in the purchase of immovable properties in the name of self and family members cannot be overruled” speaks nothing but vague and uncertainty in the mind of the AO in drawing the satisfaction note itself which failed to mention the relation between the document qua the total income of the assessee for the year under consideration. Naturally, the said cannot be termed as proper satisfaction recorded by the ld AO leading to initiation of proceeding under section 153C of the Act. Non fulfillment of the precondition prescribed under Section 153C of the Act cannot justify the further notice under Section 153C which in this particular facts and circumstances of the case is found to be invalid and thus not sustainable in the eye of law. In fact in the present facts and circumstances of the case no incriminating documents or undisclosed assets were found as a result of search

albeit, no document belonging to the appellant was found and seized under section 132 of the Act. When the proceeding under section 153C of the Act is very specific and clearly explained in the statute itself non fulfillment of such conditions cannot justify the initiation of the proceeding against the assessee under Section 153C of the Act culminating into an order of addition made by the learned AO. The entire proceeding is, therefore, vitiated and thus quashed.

17. The appeal preferred by the assessee, is, therefore, allowed.

18. The observation made herein above is also applicable meet it is built and is in all other Assessee's appeal is preferred by assessee

**ITA No.352/Del/2019 for A.Y. 2016-17**

19. Apart from the above legal ground, the Learned Counsel appearing for the assessee drew our attention to this particular fact that the assessment was initiated though on the basis of the satisfaction recorded by the Learned AO under Section 153C of the Act it was ultimately finalized under Section 143 (3) of the Act. Moreso, while making addition to the tune of Rs.8 lacs, no section has been quoted by the Learned AO. In view that of the matter, the entire assessment proceeding is invalid and that is liable to be quashed. On this particular issue, he has relied upon the judgment passed by the Co-ordinate Bench in the case of Smt. Sudha

Loyalka, New Delhi vs. ITO in ITA No.399/Del/2017, wherein the following has been observed:

*“It has not been mentioned either by AO or by Ld. CIT(A) as to under which section of the Income Tax Act, these closing credit balances appearing as on 31.03.2012 could be added. Therefore, non-mentioning the precise provision of law makes the impugned addition bad in law.”*

20. Keeping in view of the ratio laid down in the matter above referred, we do not find any reason to deviate from the same and respectfully relying upon it we find that the order passed by the learned AO is not sustainable in the eye of law and therefore, quashed.

21. In the result all appeals preferred by the assesseees are allowed.

Order pronounced in the open court on 31<sup>st</sup> May, 2024.

**Sd/-**

**(NAVEEN CHANDRA)  
ACCOUNTANT MEMBER**

*Date:- 31.05.2024*

*Priti Yadav, Sr. PS\**

Copy forwarded to:

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

**Sd/-**

**(MADHUMITA ROY)  
JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI