

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA Nos. 1103 to 1105/Chd/2019
निर्धारण वर्ष / Assessment Years : 2011-12 to 2013-14

Oswal Polycot (India) Pvt. Ltd. Office No. 23#B 20, 350, Krishna Nagar, New Shopping Center, Ghumar Mandi, Ludhiana -141001	बनाम	The DCIT, Central Circle-1, Ludhiana
स्थायी लेखा सं. / PAN NO: AABCO2785N		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं. / ITA Nos. 1107 & 1108/Chd/2019
निर्धारण वर्ष / Assessment Years : 2011-12 to 2012-13

The DCIT, Central Circle-1, Ludhiana	बनाम	Oswal Polycot (India) Pvt. Ltd. Office No. 23#B 20, 350, Krishna Nagar, New Shopping Center, Ghumar Mandi, Ludhiana -141001
स्थायी लेखा सं. / PAN NO: AABCO2785N		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Gaurav Sharma, C.A
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT, DR

सुनवाई की तारीख/ Date of Hearing : 26/08/2024
उद्घोषणा की तारीख/ Date of Pronouncement : 14/11/2024

आदेश/ Order

PER BENCH :

These are cross appeals filed by the Assessee and the Revenue against the respective orders passed by the Ld. CIT(A)-5, Ludhiana as per following details:

Sl.No.	Appeal No.	Name of Case	CIT(Appeal / s)	Order dt.	A.Y.
1.	ITA No. 1103/Chd/2019	Oswal Polycot (India) Pvt. Ltd.	CIT(A)-5, Ludhiana	03/05/2019	2011-12
2.	ITA No. 1104/Chd/2019	Oswal Polycot (India) Pvt. Ltd.	CIT(A)-5, Ludhiana	03/05/2019	2012-13
3.	ITA No. 1105/Chd/2019	Oswal Polycot (India) Pvt. Ltd.	CIT(A)-5, Ludhiana	03/05/2019	2013-14

4.	ITA 1107/Chd/2019	No.	Oswal Polycot (India) Pvt. Ltd.	CIT(A)-5, Ludhiana	03/05/2019	2011-12
5.	ITA 1108/Chd/2019	No.	Oswal Polycot (India) Pvt. Ltd.	CIT(A)-5, Ludhiana	03/05/2019	2012-13

2. With the consent of both the parties, the appeal of the Assessee in ITA No. 1103/Chd/2019 and Cross appeal filed by the Revenue in ITA No. 1107/Chd/2019, both pertaining to Assessment Year 2011-12 were taken as a lead case for the purpose of discussion and arguments were heard at length.

2.1 In ITA No. 1103/Chd/2019, the assessee has taken the following revised grounds of appeal which read as under:

"1. a. That the Learned Commissioner of Income Tax (Appeals) has erred in law and facts of the case, by holding that the Assessment Order passed by the Learned Assessing Officer under Section 153A/143(3) of the Act is legal and not bad in the eyes of law, in spite of the fact that no Search under Section 132 of the Act had ever been conducted on the Appellant Company. That the Learned Commissioner of Income Tax (Appeals) has erred in law and facts of the case by holding that inadvertent mentioning of Section 153A/143(3) of the Act instead of 153C/143(3) of the Act will not vitiate the Assessment.

b. That, however, as per the order sheet entries, the Learned Assessing Officer initiated proceedings under Section 153C of the Act on 25.11.2014 after filing the Proceedings under Section 153A of the Act, but he himself had not considered such initiation on the "FORM" of Assessment Order, as the same had been passed under Section 153A/143(3) of the Act and he himself had not considered such initiation in the "SUBSTANCE" of Assessment Order, as the same talks of incidents of Section 153A of the Act alone with no reference to any event of Section 153C of the Act. Hence, the Assessment Order passed under Section 153A/143(3) of the Act should be quashed as no Search under Section 132 of Act had ever been conducted on the Appellant Company.

c. That the "FORM" and "SUBSTANCE" of the Assessment Order contains Section 153A/143(3) of the Act, and not Section 1530/143(3) of the Act, and this is clear from another fact (arose by inspection of Assessment Record) that the Learned Assessing Officer has completed the Assessment on the basis of Notice under Section 143(2) of the Act, issued against Return of Income filed by the Appellant Company under Section 153A of the Act, whereas no Notice under Section 143(2) of the Act had ever been issued against the Return of Income filed by the Appellant Company under Section 153C of the Act. Hence, the Assessment Order passed under Section

153A/143(3) of the Act should be quashed as no Search under Section 132 of Act had ever been conducted on the Appellant Company.

2. Without prejudice to Ground No. (1) above, even if it is presumed that the Assessment has been completed under Section 153C/143(3) of the Act, even then, the same should be quashed on the grounds:

a. that the "SATISFACTION NOTE" for initiating Proceedings under Section 153C of the Act has been recorded after two and a half years from the date of Search as the SATISFACTION NOTE was provided by the Learned Assessing Officer to the Learned Commissioner of Income Tax (Appeals) with his Remand Report during the course of first appellate proceedings.

b. that during the inspection of Assessment Record of the Appellant Company for the year under consideration, it was found that the SATISFACTION NOTE, furnished by the Learned Assessing Officer with his Remand Report during the course of first appellate proceedings, was not a part of such Assessment Record or the Order Sheet Entries or the Assessment Order.

c. that during the inspection of Assessment Record of the Searched Persons for all the Assessment Years, it was found that the above said SATISFACTION NOTE has not been a part of either the Order Sheet Entries or the Assessment Record or the Assessment Order in the Assessment Proceedings of the Searched Persons.

3. Without prejudice to Ground No. (1) above, even if it is presumed that the Assessment has been completed under Section 153C/143(3) of the Act, even then the same should be quashed on the ground that no Notice under Section 143(2) of the Act had ever been issued by the Learned Assessing Officer against the Return of Income filed by the Appellant Company under Section 153C of the Act.

4. That the Learned Assessing Officer has made the additions on technical grounds without considering the seized material, hence the addition based on wrong notion of law may please be deleted as no SATISFACTION NOTE containing any seized material had ever been provided to the Appellant Company during the course of Assessment Proceedings.

5. That the Learned Commissioner of Income Tax (Appeals) has not deleted the addition of INR 50,00,000/- and INR 98,00,000/- made by the Learned Assessing Officer under Section 68 of the Act relating to M/s JMD Cloth and Garments Private Limited and M/s Fantastic Commercials Private Limited respectively and it is requested and prayed to delete the above said additions.

6. That the Appellant Company craves to leave amend, alter, take additional grounds of appeal at the time of hearing or before the time of hearing."

2.2 In ITA No. 1107/Chd/2019, the Revenue has taken the following grounds of appeal:

1. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.2.62 crore made u/s 68 of the I.T. Act, 1961 only on the ground that the transactions are routed through banking channels.*

2. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.2.62 crore made u/s 68 of the I.T. Act, 1961 by relying upon the bank statement of the company M/s Gayatri Investment & Consultants Pvt. Ltd. showing the receipts from the Group companies holding that there may be business exigencies and the financial requirements regarding the transfer of funds from the group companies.*

3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.2.62 crore made u/s 68 of the I.T. Act, 1961 without appreciating the fact that despite repeated opportunities, the directors of the investor company were not produced for examination.*

4. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.2.62 crore u/s 68 of the I.T. Act, 1961 and failed to appreciate that the assessee could not explain and establish the genuineness of the transaction of receipt of Rs.2.62 crores and the AO had correctly taxed the same as per provision of section 68 of the I.T. Act, 1961.*

5. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has failed to appreciate the surrounding circumstances of the group transactions which clearly show that large sums of money are being rotated through bank accounts of various entities of the group indicating dubious nature of the transactions.*

6. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of Rs.2.62 crore u/s 68 of the I.T. Act, 1961, made on account of share capital/premium received from M/s Gayatari Investment and Consultants Pvt. Ltd. while confirming the additions u/s 68 of the I.T. Act, 1961 of credits of Rs.1.48 crore on account of share premium received from the other group paper companies M/s Fantastic Commercial Pvt. Ltd. and M/s JMD Cloth & Garments Pvt. Ltd. in similarly placed transactions.*

7. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in accepting the argument that M/s Gaytari Investment and Consultants Pvt. Ltd. had share capital/Reserve and Surplus of Rs.6,73,25,000/- whereas these are not by regular capital accretions but simple rotation of funds between paper companies of the group.*

8. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has failed to appreciate the group transactions which clearly show that*

large sums of money are being rotated through bank accounts of various entities of the group indicating dubious nature of the transactions.

9. *The Appellant craves leave to add or amend the grounds of appeal on or before is heard and disposed off."*

3. Briefly the facts of the case are that search and seizure operations were carried out at the business and residential premises of Oswal group of companies, Ludhiana on 10/05/2012. As per the AO, the assessee relates to Oswal group of companies and deals in trading of fabrics, yarns and hosiery goods and during the course of search and post search proceedings, it was found that there were huge investment in form of shares and share application money, share premium etc. in different years. The case of the assessee was thereafter centralized under Section 127 dt. 29/10/2013 and notice under Section 153A was issued to the assessee on 24/03/2014. In response, the assessee filed its return of income and notice under section 143(2) and 142(1) were issued calling for the necessary information and documentation.

4. As per the AO, the assessee has received share application money from M/s Gayatri Investment Consultants Pvt. Ltd. M/s Fantastic Commercial Pvt. Ltd. and M/s JMD Cloth & Garments Pvt. Ltd. amounting to Rs. 4,10,00,000/- during the year against which the assessee was to allot 50,000 shares @ Rs. 818/- per share. As per the AO, the assessee failed to prove the genuineness of the credit entries in the books of account by way of share application money, thus, the onus casted upon the assessee was not discharged and the addition of Rs. 4,10,00,000/- was made by invoking the provision of Section 68 of the Act and assessment order u/s 153A r/w section 143(3) dated 30/03/2015 was passed by the AO.

5. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A). The Ld. CIT(A) after considering the submissions so made by the assessee

held that after dropping the proceedings u/s 153A, the AO initiated the proceedings u/s 153C after recording of satisfaction on 25/11/2014, notice u/s 153C was duly served on the assessee, return of income was thereafter filed by the assessee on 09/01/2015 and proceedings attended to by the assessee before the AO and mere inadvertent mentioning of 143(3)/153A instead of 143(3)/153C will not vitiate the assessment proceedings and the order so passed by the AO. It was further held by the Id CIT(A) that the addition of Rs. 2,62,00,000/- on account of share application money received from M/s Gayatri Investment Consultant Pvt. Ltd. is not sustainable as even the source of source has been mentioned in the assessment order itself and the amendment of Section 68 by way of proviso was made by the Finance Act, 2012 with effect from 01/04/2013. Hence the same is not applicable to the year under consideration. In this regard, it was further held by the Id CIT(A) that the rotation of funds within the group companies can be on account of financial requirements and accommodation due to business exigencies and the same cannot be treated as unaccounted income of the assessee. However the same cannot be said in respect of amount received from other two companies. It was held that in case of M/s Fantastic Commercial Pvt. Ltd. during its reassessment proceedings, addition has been made vide order dt. 24/12/2018 by treating it as a company used for the purpose of receiving and transferring money to different parties in the name of purchase and sales of shares by using its bank account in lieu of its commission. Further, on perusal of the assessment order passed by the AO, it was held by the Id CIT(A) that in the instant case, the AO has duly brought on record about the credit balance in the account of the assessee on account of these transactions and the fact that the assessee has not been able to substantiate the genuineness of the same by producing the Directors of the investor companies. Therefore the genuineness of the money received amounting to Rs. 98,00,000/- and Rs. 50,00,000/- from the other two

investor companies cannot be proved and addition of Rs. 1,48,00,000/- was confirmed.

6. Against the said findings and directions of the Id. CIT(A), both the Assessee and the Revenue are in appeal before us wherein the assessee has challenged the assessment proceedings and sustenance of addition of Rs. 1,48,00,000/- and the Revenue has challenged the deletion of addition of Rs. 2,62,00,000/- so made by the Id CIT(A).

7. In its appeal, the assessee has taken various grounds of appeal challenging the assumption of jurisdiction by the AO and the subsequent assessment proceedings, therefore, it was deemed appropriate to first address these grounds of appeal so taken in the assessee.

8. In Ground No. 1, the assessee has challenged the passing of the order under section 153A r.w.s 143(3) for the reason that no search under section 132 has ever been conducted on the assessee company. It has been further contended that the form and substance of the assessment order relates to proceeding under section 153A r.w.s. 143(3) and not Section 153C r.w.s 143(3) and therefore, the Ld. CIT(A) has erred in law and fact by holding that there is only inadvertent mention of Section 153A r.w.s 143(3) instead of 153C r.w.s 143(3) and same will not vitiate the assessment proceeding and the order so passed by the AO.

9. It was submitted by the Id AR that the assessee has taken the said ground by way of additional ground of appeal before the Ld. CIT(A). In this regard, it was submitted that the assessment has been completed under section 153A r/w 143(3) for the year under consideration inspite of the fact that no search under section 132 had ever been conducted on the assessee company. It was further contended before the Ld. CIT(A) that notice under Section 153A dt. 24/03/2014 was issued by the AO. Thereafter, the AO himself filed the proceedings under

section 153A and issued fresh notice under Section 153C dt. 25/11/2014. In this regard, our reference was drawn to the notice so issued by the AO u/s 153C which is submitted at page no. 24 of the assessee's paper book no. 2 and the order sheet entry so passed by the AO which is available at page no. 9 of the paper book-2. It was further submitted before the Ld. CIT(A) that where the proceedings initiated under Section 153A are filed by the AO himself as per the order sheet entry and as per the fact given by the AO in his Remand Report, the order so passed under section 153A r.w.s 143(3) deserve to be quashed.

10. It was submitted that the Ld. CIT(A) thereafter called for the Remand Report from the AO during the appellate proceedings. The AO in his remand report has stated that due to typographical mistake, the assessment order has been passed under section 143(3) r.w.s 153A instead of 143(3) r.w.s 153C. As per AO, as per the order sheet entry dt. 25/11/2014, the AO himself has categorically stated that proceedings under Section 153A has been filed and proceedings under Section 153C has been initiated which means that mentioning of Section 153A r.w.s 143(3) on the assessment order is nothing else but mere typographical mistake.

11. The Ld. CIT(A) after considering the submissions and the Remand Report so submitted by the AO recorded his findings. As per CIT(A), as per the noting made by the AO, the assessee company after issue of notice under section 153C on 25/11/2014 filed a return of income on 09/01/2015 and thereafter the assessment was completed. As per the Ld. CIT(A), the AO has duly mentioned in the remand report submitted during the appellate proceedings that inadvertently due to typographical mistake, it has been mentioned that the assessment order is passed under section 143(3) r.w.s 153A instead of 143(3) r.w.s 153C. The Ld. CIT(A) further stated that the perusal of the assessment record shows that after dropping the proceedings under Section 153A, the AO started proceedings under section 153C and notice was duly served upon the assessee

and in response to which, return has also been filed by the assessee and the proceedings were attended before the AO. The Ld. CIT(A) referred to the decision of Hon'ble Supreme Court in case of Isha Beevi Vs. TRO (1975) 101 ITR 449 and held that the wrong reference to a section under which an order is made does not vitiate the assessment order but to see whether an order is valid or not has to be determined by seeking whether the AO has any power at all to make such order and if power is otherwise available or established, the fact that the source of power has been incorrectly described shall not invalidate the order. It was held by the Ld CIT(A) that in this case, the AO has mentioned Section under which the assessment is made as 143(3) r.w.s 153A instead of 143(3) r.w.s. 153C and the AO in this case had the power to pass the assessment order under section 153C r.w.s 143(3) and hence there is an inadvertent mention of Section 143(3) r.w.s 153A which shall not vitiate the assessment order so passed by the AO and the ground so taken by the assessee was found without merits.

12. It was submitted by the Id AR that the assessee is aggrieved with the aforesaid findings of the Ld. CIT(A) and the same are not acceptable hence, being challenged before this Tribunal.

13. In this regard, it was submitted that there is concept of substance over Form in which one needs to look at substance /spirit/nature/intention rather than form / nomenclature. In the present case, substance stands for nature of assessment proceedings actually carried out by the AO whether under section 153A or 153C whereas the Form stands for the mentioning of sections on the notices so issued and the order so passed by the AO, i.e; Section 143(3)/ 153A/153C.

14. It was submitted that regarding the typographical mistake so mentioned by the AO in the Remand Report and accepted by the Ld CIT(A), there are

various type of assessment under the Act such as assessment under Section 143(3),144,147,153A,153C and each and every type of assessment is dealt with by the separate set of Sections right from the start of the assessment till the very end. It was submitted that there is no provision of the Act in which the AO can shuffle such set of Sections and the AO cannot start an assessment from, say, Section 153A and end it with, say, Section 143(3).

15. It was submitted that each and every type of assessment dealt with a particular situation and the AO is required to apply only the requisite set of Sections to such particular situation and therefore mentioning the correct section are of prime importance especially while carrying out the assessment proceedings and even concept of Form cannot be applied in the present case.

16. It was further submitted that if we look at substance / intention/spirit behind the assessment order passed by the AO, it can be noted that even the substance of such assessment order clearly depicts the proceedings under section 153A and not under section 153C of the Act.

17. It was submitted that AO in his Remand Report has only stated that "As per Order Sheet Entry dated 25.11.2014, the proceedings under section 153A has been filed and 153C has been initiated" and apart from the same, the AO has nothing further to say. It was submitted that if we look at the contents of the assessment order and gone by the substance of such assessment order, it will be clearly seen that the assessment proceedings have been carried out under section 153A and not under section 153C of the Act.

18. It was submitted that Section 153A deals with the situation where the search is conducted on the premises of the assessee under section 132 of the Act and Section 153C deals with the situation where incriminating material found on the premises of the searched person and such material actually

belongs to the assessee and has a bearing on determination of total income for the impugned assessment year.

19. In this regard it was submitted that in the first paragraph of the assessment order, the AO has stated that the search has been conducted on the assessee company and thereafter, he has stated that the notice under section 153A has been issued on 24/03/2014. Thereafter, in para 2 of the assessment order, the AO has considered the return of income filed by the assessee company under section 153A as the final return of income for assessment purposes and he has himself not called such return of income as infructuous even when as per the Remand Report, he initiated the proceedings under section 153C of the Act on 25/11/2014. It was further submitted that in the assessment order, there is no mentioning of any filing of proceedings under section 153A of the Act or founding incriminating material belonging to the assessee company from the premises of the searched person or recording of a satisfaction note or initiation of proceedings under section 153C of the Act. It was submitted that where the AO in the Remand Report has stated that he has initiated proceedings under section 153C on 25/11/2014, he himself is not considering such initiation in the assessment order and relied on the proceedings under section 153A of the Act, which if we look at the order sheet entry, has also been filed by him on 25/11/2014.

20. Regarding the findings of the Ld. CIT(A) that after issue of notice under Section 153C on 25/11/2014, the assessee has filed the return of income on 09/01/2015 and thereafter the assessment was completed, it was submitted that the AO has not considered the return of income so filed on 09/01/2015 but has considered the return of income filed against the notice under section 153A as can be seen from para 2 of the assessment order.

21. Regarding the decision of Hon'ble Supreme Court in case of Isha Beevi Vs. TRO(supra) relied upon by the Ld. CIT(A), it was submitted that the said decision was in the context of the order of the TRO with respect to recover proceedings and there is no mention of the word "Assessment order" in the whole of the decision so rendered by the Hon'ble Supreme Court. It was submitted that the assessment proceedings and the recovery proceeding cannot be taken to be on the same footing. The decision of Hon'ble Supreme Court deals with the fact where the TRO is having jurisdiction to recover tax from the assessee, then he can do so and the mentioning of the wrong section on the notice or the order will not have a bar on his jurisdiction. However, in the present case the issue is with respect to the assessment proceedings and not tax recovery proceedings. It was submitted that if the above decision so rendered by the Hon'ble Supreme Court is applied in the present case, then the very spirit of the Income Tax Assessment Proceedings which contains separate set of scheme / procedure / sections for each particular situation will cease to exist. It was submitted that if the findings of the Ld. CIT(A) is accepted then the AO may assess the assessee in whichever set of sections / procedure, whatever particular situation the case of the assessee falls in.

22. It was submitted that the finding of the Ld. CIT(A) that there is inadvertent mention of Section 143(3) r.w.s. 153A instead of 143(3) r.w.s 153C is not correct as there is no advertent mistake on part of the AO rather he has in substance completed the proceedings u/s 153A as apparent from the contents of the assessment order. In support, reliance was placed on the decisions of Coordinate Delhi Benches in case of Mr. Trilok Chand Chaudhary Vs. ACIT (2019) in ITA No. 5870/Del/2017 and in case of Ankit Gupta Vs. DCIT(2022) in ITA No. 4279/Del/2019 and Coordinate Bangalore Benches in case of M/s Ickon Projects Vs. ITO(2023) in ITA No. 771 & 772/Bang/2017. It was accordingly submitted that there is no jurisdiction of the AO to pass the assessment order in the case of the

assessee company under section 153A of the Act and therefore the assessment proceedings deserves to be quashed as the substance and form of the assessment order and assessment proceedings have been under Section 153A and not Section 153C of the Act and in the present case, Section 153A is not applicable as it is an admitted fact duly admitted by the AO that no search has ever been conducted on the assessee company.

23. In Ground No. 2, the assessee has challenged the proceedings stating that even where it is assumed that assessment has been completed under section 153C r.w.s 143(3), the same deserves to be quashed for the reason that the "Satisfaction Note" for initiating proceedings under Section 153C has been recorded after two and a half year from the date of search as the Satisfaction Note was provided by the AO to the Ld. CIT(A) with his Remand Report during the course of appellate proceedings. It was submitted that during the inspection of the assessment records of the assessee company as well as the assessment records of the searched persons, it was found that the said satisfaction note was neither recorded and taken note of as part of the order sheet entry nor available as part of the assessment records or the respective assessment orders of either the assessee or the searched persons.

24. In this regard, it was submitted by the Ld. AR that the assessee has contended before the Ld. CIT(A) that the AO has not provided a copy of the Satisfaction Note for initiating the proceedings under Section 153C as recorded on 25/11/2014 and there is no reference or show cause notice on this issue which clearly indicates that no incriminating material was found relating to the assessee company from the premises of the searched person and that too, for the impugned assessment year and which has a bearing on determination of total income. It was submitted that the Satisfaction Note for initiating the proceedings under section 153C has in fact been recorded after two and a half year after date of search which again creates doubt for the satisfaction of note

as well as the completeness thereof. Further, reliance was placed on the CBDT Circular Number 24/2015 dt. 31/12/2015.

25. It was submitted that during the course of appellate proceedings, the Remand Report was called from the AO wherein he has stated that the satisfaction was recorded on 25/11/2014 and notice under section 153C r.w.s 142(1) were issued to the assessee on 25/11/2014 which was received by the assessee on 27/11/2014 and the assessment has been completed on the basis of incriminating material concerning to the respective assessment year.

26. The Ld. CIT(A) after considering the submissions and the Remand Report has stated that perusal of the assessment records and the documents submitted during the appellate proceedings shows that the AO initiated the proceedings under Section 153C after recording satisfaction on 25/11/2014, as per which during the search under section 132 at the premises of M/s Oswal Apparels Pvt. Ltd. Village Bhamian Kalan, Tajpur Road, Ludhiana, certain incriminating material belonging to the assessee M/s Oswal Polycot (India) Ltd. were found and seized. These documents were pages 1-25 of Annexure A-2, pages 1-8, 21-85 of Annexure A-3 and pages 29-30, 46-48, 107-11 of Annexure A-4. The details of these documents are discussed by the AO in the satisfaction note and on this basis, the notice under Section 153C was issued and the additional ground so raised by the assessee was dismissed.

27. The Id AR submitted that the assessee is aggrieved with the aforesaid findings of the Ld. CIT(A) and it was reiterated that the satisfaction for initiation of proceedings under Section 153C dt. 25/11/2014 has been recorded after two and a half year after date of search which creates doubt for the recording of the satisfaction note. Further, reference was drawn to pages no. 15-23 of the assessee paper book – 2 and the Order Sheet at page no. 9 of the Paper Book-2 and at both the places, the reasons for initiating proceedings under section

153C had been stated as survey on the assessee company under section 133A and not finding of incriminating material belonging to the assessee company in the premises of the searched person and that too, for the impugned assessment year having a bearing on determination of total income.

28. It was further submitted that where the Satisfaction Note had been prepared then the AO must have mentioned about the same in the Order Sheet Entry of the assessee company for the year under consideration or in any one year out of the total seven years but that is not so as the Order Sheet Entry of all the seven years in the case of the assessee company can be examined and the same are placed as part of assessee's paper book number 2.

29. It was further submitted as the AO of both the assessee company and the searched person are same, then he is required to prepare Satisfaction Note only once and that too in the case of searched person . For this, the query has been raised by the Ld. CIT(A) in his letter to the AO but the AO has not properly answered the same in his reply to the Ld. CIT(A). It was further submitted that the assessee has obtained the copy of all the Order Sheet Entries of the two searched persons namely Mr. Rajesh Kalia and M/s Oswal Apparels Pvt. Ltd. and such order sheet entries of all the seven years of both these persons are placed at part of assessee's paper book no. 2 and nowhere in such Order Sheet Entries, there is any mention of any satisfaction note. It was accordingly submitted that the existence of satisfaction note on 25/11/2014 is very much in doubt and hence the assessment order should be quashed as there was no proper satisfaction note at the time of initiation of proceedings under section 153C and the same have been prepared after two and half years from the end of assessment proceedings as an afterthought and only in response to the query raised by the Ld. CIT(A). In support, reliance was placed on the CBDT Circular No. 24/2015 dt. 31/12/2015 as well as on the decision of Coordinate Mumbai Benches in case of Dilip B Patel Vs. DCIT(2024) in ITA No. 354/Mum/2012.

30. In Ground No. 3, the assessee has stated that even if it is presumed that the assessment proceedings have been properly initiated under section 153C/143(3), even then the same should be quashed on the ground that no notice under section 143(2) had ever been issued by the AO against the return of income filed by the assessee company in response to notice issued under Section 153C of the Act.

31. In this regard, reference was again drawn to the Order Sheet Entries so passed by the AO wherein the notice under Section 153C was issued on 25/11/2014 and thereafter, assessee filed its return of income on 09/01/2015. It was submitted that after filing of the return of income, there is no notice which has been issued under section 143(2) of the Act and the AO thereafter has proceeded and completed the assessment proceedings. It was submitted that the issuance of notice under section 143(2) is mandatory where the AO in repudiation of return filed in response to notice proceed to make an assessment and the provision of Section 292BB cannot come to the rescue of the AO as the scope of the said provision was to make service of notice having certain infirmities to be proper and valid if there was requisite participation on the part of the assessee, however the said provision does not save complete absence of notice under section 143(2) of the Act and in the instant case, since there is no notice which have been ever issued by the AO, in response to return of income filed under section 153C of the Act, the AO lacks the necessary jurisdiction and the entire reassessment proceedings stood vitiated and in support reliance was placed on the decision of Hon'ble Supreme Court in case of CIT Vs. Laxman Das Khandelwal (2019) 417 ITR 325.

32. The Id CIT/DR in her response submitted that the AO has validly and legally assumed jurisdiction u/s 153C and the order so passed is in substance and effect an order passed under section 153C r/w 143(3) of the Act. It was submitted that initially notice u/s 153A was issued to the AO, however, the same was

subsequently filed and fresh notice u/s 153C was issued by the AO. It was submitted that the said notice was issued by the AO after recording the necessary satisfaction and a copy thereof is available on record and which has also been referred to by the Id AR. It was accordingly submitted that there is no merit in the contentions of the AR regarding assumption of jurisdiction by the AO and issue of notice u/s 153C of the Act. It was further submitted that the assessee pursuant to such notice has filed its return of income and which was considered and thereafter, the assessment order was passed by the AO. It was submitted that once a notice u/s 153C has been issued to the AO and the assessee has been put to notice by the AO regarding initiation of proceedings under section 153C of the Act and in such a situation, there is no statutory requirement to issue any further notice u/s 143(2) of the Act. It was accordingly submitted that the assessment order so passed was in substance and effect an order passed u/s 153C r/w 143(3) of the Act and the various contentions so raised by the Id AR deserve to be dismissed. Further, she relied on the order and findings of the lower authorities.

33. We have heard the rival contentions and perused the material available on record. Firstly, it is an admitted and undisputed position that no search u/s 132 has been conducted on the assessee and only survey u/s 133A has been conducted at its premises. The same is evident from the correspondence exchanged between the Assessing officer and DDIT(Investigation)-I, Ludhiana between 27/10/2014 to 14/11/2014 available as part of the APB pages 15-23 which has subsequently been recorded by AO by way of the order sheet entry dated 25/11/2014. In the said order sheet entry, the AO has referred to the said correspondence and basis the same, has recorded his findings that the proceedings earlier initiated by issuance of notice u/s 153A in the case of the assessee has been filed, in other words, dropped not warranting any further action. During the appellate proceedings, the AO in his remand report has

reiterated the said position and the Id CIT(A) has taken duly cognizance of the same. There is thus no dispute that no search has been conducted on the assessee's premises u/s 132 of the Act and therefore, there was no power available to the AO to pass any order u/s 153A r/w 143(3) of the Act.

34. This takes us to next question as to whether the subsequent proceedings so initiated are proceedings initiated under Section 153C after assuming the requisite jurisdiction and order so passed by the AO on completion of such proceedings was in substance and effect an order passed u/s 153C r/w 143(3) and whether the Id CIT(A) was correct in holding that there was mere an inadvertent mention of Section 153A r/w 143(3) instead of 153C r/w 143(3) while passing the order and same will not vitiate the assessment proceeding and the order so passed by the AO and such an order is in effect an order passed u/s 153C r/w 143(3) of the Act.

35. The Id. CIT(A) has placed reliance on the decision of **Hon'ble Supreme Court** in case of **Isha Beevi Vs. TRO** (*supra*) and held that the wrong reference to a section under which an order is made does not vitiate the assessment order but to see whether an order is valid or not has to be determined by seeking whether the AO has any power at all to make such order and if power is otherwise available or established, the fact that the source of power has been incorrectly described shall not invalidate the order. In the case before the Hon'ble Supreme Court, the appellant had asked for writ of prohibition and in that regard, their Lordships have held that in order to substantiate a right to obtain a writ of prohibition from a High court or from this court, an applicant has to demonstrate total absence of jurisdiction to proceed on the part of the officer or authority complained against. It was further held by the Lordships that it is not enough if a wrong section or provision of law is cited in a notice or order if the power to proceed is actually there under another provision.

36. There is no dispute regarding the said legal proposition and useful reference can be drawn to a recent **Hon'ble Supreme Court** decision in case of **Patna Municipal Corporation vs M/s Tribro Ad Bureau** (Civil Appeal No. 11117 of 2024 dated 16/10/2024) wherein the Lordships have held as under:

*"29. The other aspect, which we would like to cover, is the proportionality/reasonableness in the enhancement of the rate from Re.1 per square foot to Rs.10 per square foot. Whilst at first blush, the jump may seem high, being ten times, ultimately, it is subjective. Nothing has been canvassed before us to indicate that such rate was exorbitant or disproportionate, requiring judicial interdiction. There is no dispute that in the Meeting held on 29.08.2005, the advertising companies did not object to payment of royalty, as sought by the Corporation. Hence, a challenge could, later be mounted on limited grounds to the quantum/rate of royalty, and not on the decision to charge royalty itself. Even otherwise, as we do not find that the 'royalty' was a tax/levy, the action of the Corporation cannot be struck down merely on the ground of having quoted [Section 431](#) of the Act (wrongly), for, quoting the wrong provision of law, when the power to do an act otherwise exists, would not invalidate or render illegal the act in question. A Bench of three learned Judges in *N Mani v Sangeetha Theatre*, (2004) 12 SCC 278 held:*

'9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law.' (emphasis supplied)

30. The decision in *N Mani (supra)* was relied upon by two learned Judges in [Ram Sunder Ram v Union of India](#), 2007 (9) SCALE 197, wherein this Court reiterated that quoting the wrong provision of law, when the authority concerned is otherwise empowered to carry out an act, could not vitiate the act on such ground alone. Likewise, and on taking note of *N Mani (supra)* and [Ram Sunder Ram \(supra\)](#), 2 learned Judges in [P K Palanisamy v N Arumugham](#), (2009) 9 SCC 173 opined as under:

'27. ... Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity. It is a well-settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor.' (emphasis supplied)

31. The above principle found acceptance also, inter alia, in [Mohd. Shahabuddin v State of Bihar](#), (2010) 4 SCC 653 and [State of Haryana v Raj Kumar](#), (2021) 9 SCC 292.

32. Respondent No.1 placed strong emphasis on the Patna Municipal Corporation (Grant of Permission for Display of Advertisements & Similar Devices) Regulations, 2012 dated 04.07.2012 and published in the Official Gazette on 13.08.2012. We find that this relates only to grant of permission for display of advertisements and similar devices in any place within the jurisdiction of the Corporation. However, it cannot be said that these Regulations would have conferred the right to demand royalty by the Corporation, which we find was traceable to the agreement/arrangement between the parties."

37. The assessee has challenged the assumption of jurisdiction by the AO u/s 153C on account of delay in recording of satisfaction by the AO, improper and incomplete satisfaction note and not referring to any incriminating material found from the premises of the searched person which has a bearing on determination of total income for the impugned assessment year and has thus challenged that the AO has no powers for assuming jurisdiction under Section 153C of the Act. The assessee has further submitted that there are certain apparent inconsistency in recording of entries in the order sheet and the contents of the assessment order and given that, the form and substance of the assessment order so passed by the AO relates to proceedings under section 153A r/w 143(3) and not Section 153C r/w 143(3), the order so passed by the AO deserve to be set-aside.

38. Firstly, we shall address the matter relating to assumption of jurisdiction by the AO u/s 153C of the Act as the same goes to the core of present dispute and where it is found that the powers to assume jurisdiction does exist with the AO and the same has been rightly exercised, we shall examine the other contention regarding form and substance of the order so passed by the AO and whether the order so passed is in substance and effect an order u/s 153C r/w 143(3) of the Act.

39. The power to assume jurisdiction under Section 153C arises from the satisfaction recorded by the Assessing officer that the books of accounts or other documents seized during the course of search belong to person other than the searched person and the same has a bearing on the determination of total income for the relevant assessment year in hands of the other person. In the present case, the AO has recorded the satisfaction on 25/11/2014 for initiation of proceedings under Section 153C of the Act in the case of the assessee company for A.Y 2007-08 to 2012-13. The relevant provisions of Section

153C as amended by Finance (No. 2) Act 2014 w.e.f 01/10/2014 as relevant for the impugned assessment year read as under:

"1. Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 where the AO is satisfied that any money, bullion, jewellery or other valuable article or things or books of account or documents seized or requisitioned belong or belongs 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 AO having jurisdiction over such other person and that AO 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 AO, is satisfied that books of account or documents or assets seized or requisitioned have a bearing on the determination of total income of such other person for the relevant assessment year or years referred to in Sub Section 1 of Section 153A of the Act."

40. On reading of the aforesaid provisions, it is clear that the satisfaction has to be firstly recorded by the Assessing officer of the searched person that *interalia* books of accounts or documents seized belongs to a person other than the searched person. Thereafter, after recording such satisfaction by the Assessing officer of the searched person, the books of account or documents so seized shall be handed over to the AO having jurisdiction over such other person who on receipt of the aforesaid satisfaction and upon examination of such books of account or documents relating to such other person, has to record his own and independent satisfaction that the books of account or documents seized 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. The statute thus mandates recording of satisfaction twice, firstly by the AO of the searched person and then by the AO of the person, other than the person searched and both the satisfaction so recorded have to individually and cumulatively meet the requirements of law as so laid down.

41. On the importance and criticality of recording of the satisfaction before acquiring jurisdiction u/s 153C by the Assessing officer, the **Hon'ble Delhi High Court** in case of **Pepsi Food Pvt. Ltd. Vs. ACIT** reported in 367 ITR 112 has held

that the Assessing officer of the person searched must arrive at a clear satisfaction that the documents seized from him does not belongs to him but to some other person and after such satisfaction is arrived at, the documents shall be handed over to the Assessing officer of the person to whom the such documents belongs. Referring to the provision of Section 132(4A)(i), it was held that the said provision clearly stipulates that when any document is found in possession or control of any person in the course of a search, it may be presumed that such documents belongs to such person and similarly provisions are contained in Section 292C(1)(i) of the Act. It was held by the Hon'ble High Court that whenever a document is found from a person being searched, the normal presumption is that such documents belong to that person. It is for the AO to rebut that presumption and comes to a conclusion or satisfaction that the documents in fact belongs to somebody else. It was held by the Hon'ble High Court that there must be some cogent material available with the AO before he arrives at the satisfaction that the seized documents does not belongs to the seized person but to somebody else. It was further held by the Hon'ble High Court that surmises and conjectures cannot take the place of satisfaction and the AO is required to arrived at the conclusive satisfaction that the documents belongs to a person other than the searched person because the AO has to rebut the normal presumption which are suggested by the statute under section 132(4A)(i) and 292C(1)(i) of the Act. It was further held by the Hon'ble High Court that use or mentioned of the word "satisfaction" or the word "I am satisfied" in the order or the note would not meet the requirement of the concept of satisfaction as used in Section 153C. The satisfaction note itself must display the reason or basis for the conclusion that the AO of the person in respect of whom the search was conducted is satisfied that the seized documents belongs to another person and it was accordingly held in the said case that very first step prior to the issuance of notice under section 153C had not been fulfilled which being a condition precedent and notice under section

153C was quashed. In our view, though the said decision was rendered in context of nature of satisfaction to be recorded by the Assessing officer of the searched person, however, the legal proposition as to the requirement of recording the satisfaction in terms of having cogent material, not based on surmises and conjectures, to display the reasons and to arrive at a conclusive satisfaction that the documents seized belong to the person, other than the person searched, applies equally in context of satisfaction to be recorded by the AO of person, other than the searched person, as in the instant case, that documents so seized have a bearing on the determination of total income of such other person for the relevant assessment year(s).

42. The **Hon'ble Supreme Court** in case of **M/s Super Malls Private Limited Vs. PCIT** (in Civil Appeal Nos 2006-2007 of 2020 vide its order dt. 05/03/2020) has approved the aforesaid findings of the Hon'ble Delhi High Court in case of Pepsi Food Pvt. Ltd. (supra) to the effect that the satisfaction note prepared by the AO of the searched person that the documents so seized during the search and seizure from the searched person belongs to the other person and transmitting such material to the AO of the other person is mandatory.

43. The Hon'ble Supreme Court further expounded on the subject wherein the AO of the searched person and the other person is the same and held that it is sufficient for the Assessing Officer to note in the satisfaction note that the documents seized from the searched person belonged to the other person. It was further held that in such cases, there can be only one satisfaction note prepared by the Assessing Officer, as he himself is the Assessing Officer of the searched person and also the Assessing Officer of the other person. However he must be conscious and satisfied that the documents seized/recovered from the searched person belongs to the other person. In such a situation, the satisfaction note would be qua the other person. The second requirement of transmitting the documents so seized from the searched person would not be there as he

himself will be the Assessing Officer of the searched person and the other person.

44. In the instant case, we refer to the contents of the satisfaction note recorded by DCIT, Central Circle -1, Ludhiana on 25/11/2014. In the first paragraph of the satisfaction note so recorded, the DCIT, Central Circle-1, Ludhiana has stated that the search and seizure operation was conducted in M/s Oswal group of cases, Ludhiana on 10/05/2012 and during the course of search operation under section 132 at the premises of M/s Oswal Apparels Pvt. Ltd., the aforesaid documents belongs to M/s Oswal Polycot India Pvt. Ltd. namely pages 1 – 25 of Annexure A-2, Pages 1 – 8, 21 to 185 of Annexure A-3 and pages 29-34, 46-48, 107 – 111 of Annexure -4 were found and seized. Thereafter, the DCIT, Central Circle -1, Ludhiana referred to the description of the documents so seized (in total numbering 31 documents) which are in the form of registration deeds/agreement/MOU for purchase of different parcel of land at Village Pojewal from different persons / entities for a specified sum of money which were found from the premises of Shri Rajesh Kalia, B-34, 5375, Guru Nagar, Haibowal Kalan, Ludhiana (Party Code –H). Thereafter, referring to the statement of Shri Vikas Jain, Director of the assessee company recorded on 31/05/2012 and details submitted by him wherein he admitted that these documents belongs to his company i.e; M/s Oswal Polycot India Ltd, the DCIT, Central Circle -1, Ludhiana recorded his satisfaction that the documents so seized in Annexure A-2, A-3, A-4 belongs to M/s Oswal Polycot India Ltd and it is a fit case for issuance of notice under section 153C for A.Y. 2007-08 to 2012-13 i.e; sixth assessment year immediately preceding assessment year in which the seizure was made and notices under section 153C were thereafter issued for the aforesaid six assessment years.

45. In this regard, we find that DCIT, Central Circle -1, Ludhiana has initially stated that the aforesaid documents have been seized from the premises of M/s

Oswal Apparels (P) Ltd and later on, he has stated that these documents have been seized from the premises of Sh. Rajesh Kalia. Apparently, the search has been conducted at the premises of both, M/s Oswal Apparels (P) Ltd and Sh. Rajesh Kalia, and certain documents have been seized, however there is self-contradiction at whose premises the documents have been found and seized as per the contents of the satisfaction note itself. It is also an admitted fact that the Assessing officer of both these persons being searched as well as that of the assessee is the same i.e, DCIT, Central Circle -1, Ludhiana, thus, the exact premises where the documents have been found and seized are not as such detrimental to the Revenue as the AO is the same. Further, the requirement of recording separate satisfaction by the AO of the person beings searched and that by the AO of the assessee and the requirement of transmitting the documents so seized from the searched person would not be there as he himself will be the Assessing Officer of the searched person and the assessee in the instant case.

46. At the same time, it is essential for the Assessing Officer to arrive at a conclusive finding and satisfaction that documents so seized from the searched person belongs to the assessee and that such documents have a bearing on the determination of the total income of the assessee and bearing on total income for which of the sixth assessment year(s) and record the same in the satisfaction note so prepared.

47. As we have noted above, the AO has referred to in total 31 documents in the form of registration deeds, agreements for purchase of land and MOU's containing details regarding purchase of land by the assessee. The AO has also referred to the statement of the Director of the assessee company, Mr Vikas Jain recorded on 31/05/2012 wherein he admitted that these documents belongs to his company i.e; M/s Oswal Polycot India Ltd and basis the same, the AO recorded his satisfaction that the documents so seized in Annexure A-2, A-3, A-4

belongs to M/s Oswal Polycot India Ltd. However, the satisfaction as to how such documents have a bearing on the determination of the total income of the assessee and for which of the sixth assessment year(s) has not been recorded by the AO. Merely recording the satisfaction that the documents so seized belong to the assessee is no doubt the essential step of the satisfaction to be recorded by the AO. However, while recording such satisfaction, the AO is equally required to determine and record his satisfaction as to how the documents so seized and belonging to the assessee have a bearing on the determination of the total income of the assessee for the relevant assessment year or years. The AO is required to record his satisfaction as to which all documents so seized have a bearing on the determination of the total income of which assessment year(s) as the same is now the requirement and mandate of the statute absolutely made clear after amendment which has been brought in by the Finance (No. 2) Act, 2014 in sub-section (1) of Section 153C of the Act.

48. Even prior to the aforesaid amendment, such a position do exist and in this regard, useful reference can be drawn to the decision of **Coordinate Pune Benches** in case of **Sinhgad Technical Education Society Vs. ACIT** (2011) 140 TTJ 233 wherein it was held that where no assessment years specific incriminating material or document is found, assessment of such assessment year cannot be disturbed by invoking the provisions of Section 153C and that in absence of any reference to any assessment year specific incriminating information or documents relatable to the assessee for the assessment year in question, the assessment under section 153C was held as bad in law. The said decision has since been affirmed by the **Hon'ble Supreme Court** in case of **CIT Vs. Sinhgad Technical Education Society** (*in Civil Appeal No. 11081 of 2017 dt. 29/08/2017*) wherein their Lordships referring to the findings of the Coordinate Bench that incriminating material which was seized had to pertain to the Assessment Years in question and the fact that the documents which was seized had not

established any correlation document wise with these four assessment years and the same is essential for assessment under section 153C and goes to the very root of the matter, held that the reasoning so adopted by the Tribunal to be logical and valid having regard to the provisions of Section 153 C of the Act and the relevant findings are contained at para 18 of its order which read as under:

“18) 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.”

49. We find that the legislature by bringing in the amendment by Finance Act, 2014 in sub-section (1) to section 153C has accepted the aforesaid decision and has provided in the statute itself that the AO has to record his satisfaction with respect to each assessment year where he is satisfied that the seized material belonging to the assessee have a bearing on the determination of the total income of assessee and for which of the six assessment years. In the instant case, we find that there is no such finding arrived at by the AO and in absence thereof, there is no satisfaction recorded by the AO. The AO has merely referred to the particulars of the registration deed etc in terms of land area, location, name of the party from whom the land was purchased and the amount of

consideration and the premises from where these documents were seized. There is no finding in terms of date of payment of consideration, signing of the registration deed, etc, the year of transfer and purchase of land by the assessee and there is thus no correlation which has been established between the documents so seized and the bearing it has with determination of total income of the relevant assessment years. Infact, a consolidated satisfaction note has been prepared for the assessment years 2007-08 to 2012-13 including for the period when the assessee company was not even in existence (date of incorporation was 25/03/2010) which shows total non-application of mind on part of the Assessing officer.

50. In light of aforesaid discussion, we are of the considered view that in the instant case, the Assessing Officer has failed to arrive at a conclusive finding and satisfaction as to how the documents so seized from the searched person, though belonging to the assessee, have a bearing on the determination of the total income of the assessee and for which of the sixth assessment years and in particular, for the impugned assessment year 2011-12. In absence of the same, the mandate of the statute has not been satisfied and the AO thus lacks the necessary jurisdiction u/s 153C of the Act and he has thus no powers to proceed further with the proceedings so wrongly initiated. In light of the same, the notice so issued under section 153C is hereby set-aside.

51. In light of above, where we have set-aside the notice u/s 153C due to lack of jurisdiction, the consequential proceedings deserve to be set-aside and are hereby set-aside and the various other contentions and grounds of appeal so raised by the assessee have thus become academic and are left open.

52. In the result, the appeal of the assessee in ITA No. 1103/Chd/2019 is allowed and the appeal of the Revenue in ITA No. 1107/Chd/2019 is dismissed.

53. In ITA No. ITA No. 1104/Chd/2019 filed by the assessee and cross appeal in ITA No. 1108/Chd/2019 filed by the Revenue for A.Y 2012-13 and in ITA No. 1105/Chd/2019 filed by the assessee for A.Y 2013-14, both the parties fairly submitted that the facts and circumstances of the case are identical and similar contentions as raised supra may be considered.

54. In light of our discussions supra and on parity of facts and circumstances of the case, our findings and directions contained in ITA No. 1103/Chd/2019 and ITA No. 1107/Chd/2019 shall apply *mutatis mutandis* to these appeals. Consequentially, the appeals of the assessee are allowed and that of the Revenue is dismissed.

55. In the result, the appeals of the assessee are allowed and that of the Revenue are dismissed.

Order pronounced in the open Court on 14/11/2024.

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar