

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 5587/MUM/2024
Assessment Year: 2012-13**

M/s Kishor D. Naik (HUF),
Namrata Villa, Nallasopara
Road, Bolinj, Virar (West),
Virar-401303.

**PAN NO. AAEHK 8794 K
Appellant**

Vs.

Asst. CIT Central Circle-2,
6th Floor, Room No. 13, Ashar I.T.
Park, Road No. 16-Z. Wagle
Industrial Estate,
Thane (West)-400604.

Respondent

Assessee by : Mr. Suchek Anchaliya, CA
Revenue by : Mr. Biswanath Das, CIT-DR

Date of Hearing : 20/03/2025
Date of pronouncement : 21/04/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 14.06.2024 passed by the Ld. Commissioner of Income-tax (Appeals), Pune [in short 'the Ld. CIT(A)'] for assessment year 2012-13, raising following grounds :

- 1. On the facts and in the circumstances of the case and in law, the order of the learned Commissioner of Income-tax confirming the assessment order passed u/s.143(3) r.w.s.254 r.w.s.153C*



of the Income-tax Act, 1961 is both bad-in-law and bad-in-facts in so far as the assessment was completed without assuming valid jurisdiction in absence of recording of satisfaction in the case of searched.

2. *On the facts and in the circumstances of the case and in law, the order of the learned Commissioner of Income-tax confirming the assessment order passed u/s.143(3) r.w.s.254 r.w.s.153C of the Income-tax Act, 1961 is both bad-in-law and bad-in-facts in so far as the assessment was completed after assuming jurisdiction without appreciating the fact that the documents found from digital evidence of Swastik Group did not belong to the appellant.*
3. *On the facts and in the circumstances of the case and in law, the order of the learned Commissioner of Income-tax confirming the assessment order passed u/s.143(3) r.w.s.254 r.w.s. 153C of the Income-tax Act, 1961 is both bad-in-law and bad-in-facts in so far as the assessment order was passed without generating DIN.*
4. **ADDITION ON ACCOUNT OF UNACCOUNTED LOAN AS REFLECTED IN SEIZED DOCUMENT IN BUNDLE NO.8, PARTY NO.A-3 (DIGITAL EVIDENCES) : RS.50,00,000/-**

On the facts and in the circumstances of the case and in law, the order of the learned Commissioner of Income-tax in confirming the addition of Rs,50,00,000/- made by the assessing officer on account of Unaccounted loan as reflected in seized document in Bundle No.8, Party No.A-3 (Digital Evidences) without satisfying that noting of the seized record found during the course of search has to be found to be correct in terms of sec. 292C of the Income-Tax Act, 1961.

2. At the threshold, the learned counsel for the assessee submitted that the present appeal has been instituted with a delay of seventy-six (76) days. In support thereof, reliance has been placed upon the affidavit sworn by Shri Ritesh, the accountant of the assessee. It has been submitted that the delay occasioned as a result of the inadvertent misplacement of the impugned order by the said accountant. Consequently, the said order could not be furnished to the authorised consultant within the prescribed period



for filing the appeal. Upon the eventual retrieval and transmission of the said order to the consultant, and acting upon the professional advice so received, the appeal was filed without any further delay. Learned counsel has contended that the lapse was purely inadvertent and unintentional, devoid of any element of malafide, and has accordingly prayed for condonation of delay on account of bona fide circumstances.

3. We have considered the rival submissions advanced by the parties in relation to the issue of condonation of delay. Upon perusal of the material on record and the explanation offered by the assessee, we are satisfied that sufficient cause has been shown for the delay in filing the appeal. The delay appears to have been occasioned by an inadvertent and bonafide lapse on the part of the accountant, without any malafide intent attributable to the assessee. In view thereof, and in the interest of substantial justice, we are inclined to condone the delay of seventy-six (76) days in filing the appeal. The appeal is accordingly admitted for adjudication on grounds raised.

3. Briefly stated, facts of the case are that assessee had filed return of income u/s 139(1) of the Income-tax Act, 1961 (in short the 'Act') i.e. the original return, on 12.02.2013 declaring total income at Rs.82,26,430/-. Subsequently, a search and seizure action u/s 132 of the Act was carried out on the premise of "Swastik Group" on 31.07.2014. The assessee is also one of the



entities of “Swastik group” though it was not directly covered under the search action. The Assessing Officer recorded satisfaction required u/s 153C of the Act that certain incriminating material pertaining to the assessee was found during the search in other cases of the ‘Swastik’ group and the Assessing Officer being same for the searched person as well as assessed person, he issued notice u/s 153C of the Act for a period of six years including the year under consideration. In response, the assessee filed return of income u/s 153A for the year under consideration on 31.03.2015. The assessment for the year under consideration was completed on 24.08.2016 u/s 153A r.w.s. 153C at total income of Rs.2,50,90,430/-. The assessment order passed was being *ex-parte* qua the assessee, therefore, the Ld. CIT(A) after calling for a remand report from the Assessing Officer on the additional evidence filed by the assessee, allowed part relief to the assessee but further enhanced the income to incorporate addition of unsecured loan on the basis of the document seized at Bundle No. 8, Party No. A-3

4. On further appeal by the assessee, the ITAT vide its order dated 28.11.2018 in ITA No. 7011/Mum/2017 and others for AY 2009-10 and other AYs, remanded the entire matter back to the Assessing Officer for fresh adjudication. In the assessment completed by the AO consequent to the direction of the ITAT, he made addition only for the unsecured loan of Rs.50,00,000/- treating the same as unexplained cash credit in terms of section 68



of the Act on the basis of document inventoried at Bundle No. 8 seized from the party No. A-3 of Swastik Group. The relevant finding of the Assessing Officer is reproduced under:

“11.4. Unexplained Loan as reflected in seized document in Bundle No.8, Party No. A-3 (Digital Evidences)

The assessee was issued show cause notice on 7/10/2019 which was duly received by the assessee on the same day. Relevant part of the show cause notice is reproduced below:

"Please refer to Bundle No.8 (copy enclosed). This page show the details of daily cash statement and other details which are as under:

| Page No. | Date | Amount (in Rs.) | Particulars in brief |
|----------|------------|-----------------|----------------------|
| F.Y. | 2011-12 | | |
| 131 | 30.08.2011 | 50,00,000 | Loan |

LOANS: *As reflected in this page, it is evident that you have received loan amounting to Rs. 50,00,000/- during FY 2011-12. You are given opportunity to prove the identity, genuineness and creditworthiness of the loan parties along with supporting documentary evidences vide this show cause notice. **In case of failure to comply to this show cause notice, it is proposed to add the sum of Rs. 50,00,000/- to your income for AY 2012-13 being the amount of loan received by you as genuineness and credit worthiness of the party from whom loan received is not established"***

It is seen that the assessee had ample of time (almost 8 months) to organize his submissions on relevant & important details, from the date of order of ITAT to till date to submit the necessary evidences & explanations in respect of the seized documents. as per notice and the details requested in the questionnaires issued. However, the assessee has not submitted any details & evidences to prove the identity, creditworthiness and genuineness of loan as reflected in seized documents. Therefore, in the absence of any clarification and evidence from the assessee and in view of the material on record, loan reflected in seized documents amounting to Rs. 50,00,000/- are added to the total income of the assessee u/s 68 of the Income Tax Act, 1961 as unexplained credit entries. As such the assessee has not



offered or disclosed the income to the tune of Rs 50,00,000/- which is evident from the search and seizure action u/s 132 of the Act, hence the assessee is subjected to penal provisions of section 271(1)(c) of the Act. Penalty proceedings u/s.271 (1)(c) of the Income Tax Act, 1961 are therefore separately initiated for misreporting of income by way misrepresentation and suppression of facts.

(Addition - Rs. 50,00,000/-)

4.1 On further appeal, the assessee challenged validity of the reassessment proceedings u/s 153C of the Act as well as additions sustained on merit, but , the Ld. CIT(A) rejected both the legal as well as grounds raised on merit relying on the order passed by the Ld. CIT(A) in first round of proceedings. The relevant finding of the Ld. CIT(A) rejecting legal ground is reproduced as under:

“13.1 The second contention of the appellant is that the assessing officer of searched person has not recorded any satisfaction u/s 153C of the Act which is mandatory. In this connection, it is seen that a satisfaction note u/s 153C was recorded by the DCIT Central Circle-2, Thane on 30/01/2015 and a copy of same stands provided to the appellant vide letter dated 19/01/2017, during the earlier appellate proceedings before the then CIT(A)-11, Pune.

13.2 A perusal of the ground of appeal suggests that the appellant as such does not have any grievance on this satisfaction note recorded by his assessing officer and the only grievance is that no separate satisfaction was recorded by the assessing officer of the searched person. In this connection, it may be stated that in the present case, the assessing officer of the searched person as well as the assessing officer of the appellant is the same person and as held by the Hon'ble Supreme Court in the case of Super Malls (P) Limited vs PCIT [2020] 115 taxmann.com 105 (SC), in such a situation, there is no necessity of recording two separate satisfaction note u/s 153C of the Act. In the satisfaction note recorded by the assessing officer, it has been clearly recorded that the documents seized during the search indicate undisclosed income of the appellant. In view of these facts, the second contention of the appellant that two separate



satisfaction notes were not recorded in this case, does not have any force.”

5. Before us, the Ld. counsel for the assessee filed a Paper Book containing pages 1 to 158.

5.1. In the ground challenging validity of notice u/s 153C of the Act, the Ld. counsel for the assessee has mainly contested that:

(i) The Assessing Officer in the capacity of the AO of assessed person has not recorded satisfaction specifically that book of accounts or the document seized, had a bearing on the determination of the total income of the assessee for the relevant assessment year i.e. AY 2012-13.

(ii) No satisfaction has been recorded in relation to documents on the basis of which addition has been made in the year under consideration i.e. AY 2012-13.

5.2 The Id Counsel submitted that the Id CIT(A) only dealt with one aspect of challenge of section 153C i.e. recording of one satisfaction by the AO of assessed person and not by the AO of the searched person and he ignored the above two contentions of the assessee and therefore, the reassessment proceedings u/s 153C read with section 153A of the Act being not in accordance with provisions of law , are liable to be set-aside. The Id DR on the other hand relied on lower authorities.



6. We have heard rival submission of parties and perused the relevant material on record. To analyze the controversy raised by the assessee, it is relevant to reproduce section 153C of the Act:

“ 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, ⁴⁷belongs to; or
- (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned **shall be handed over to the Assessing Officer having jurisdiction over such other person** ⁴⁸[and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, **that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person** ⁴⁹[for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153A] :]

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to ⁵¹[sub-section (1) of] section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person

Provided further that the Central Government may by rules⁵³ made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made ⁵⁴[and for the relevant assessment year or years as referred to in sub-section (1) of section 153A] except in cases where any assessment or reassessment has abated.]



(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

- (a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or*
- (b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or*
- (c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.]”*

6.1 The provisions of section 153C(1) extracted above are provisions amended by way of Finance Act, 2015 which are effective from 1/6/2015. The relevant provisions of Section 153C Act as they stood before the amendment made by Finance Act 2015 stood as under.

” 153-C. Assessment of income of any other person.—(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, any money, bullion, jewellery or other valuable article or thing or books of account or documents, seized or requisitioned, belongs or belong to a person other than the person referred to in Section 153-A, 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.....



6.2. The Hon'ble Supreme Court in the case of **ITO v. Vikram Sujit Kumar Bhatia [(2023) 149 taxmann.com 123 (SC)]** held that the amendment made to section 153C w.e.f. 1/06/2015 would be applicable also to the searches conducted u/s 132 of the Act before 01.06.2015.

6.3 On combined reading of the provisions of the section 153C(1) of the Act and the decision of the Hon'ble Supreme Court (supra), we are opinion that the satisfaction of initiating action u/s 153C of the Act has to be recorded at two stages.

6.4 At first stage, the Assessing Officer of the searched person has to record a satisfaction that either (i) "*any money, bullion, jewellery or other valuable article or thing*", which are in the nature of assets, are found from searched person but belongs to the other person or (ii) "*books of accounts or the documents*" seized from the searched person pertain to or any information contained therein relate to the other person. Thereafter, he is required to handover such seized "*money, bullion, jewellery or other valuable article or thing*" or "*books of accounts or documents*" to the Assessing Officer of the other person.

6.5 In second stage, after receipt of the satisfaction note of the AO of searched person and receipt of relevant seized "*money, bullion, jewellery or other valuable article or thing*" or "*the books of accounts or documents*", the Assessing Officer of the other person is required



to record satisfaction that said assets found or seized or books of account or the documents seized have bearing on the determination of the total income of such other person.

6.6 After recording of such satisfactions by the AO of searched person as well as assessed person and receipt of seized assets or books of account or documents, the Assessing Officer of assessee i.e. assessed person is required to issue notices in accordance with the provisions of section 153A of the Act for the years specified in section 153A(1) of the Act.

6.7 In the instant case, the Assessing Officer of the searched person and the assessed person or other person is the same and therefore, he has recorded only one satisfaction. The Hon'ble Supreme Court in the case of Super Malls P Ltd Vs PCIT in 423 ITR 281(SC) held that *where the AO of searched person and assessed person is one and same, there is no requirement of handing over of the assets or books of account or document and no need to record two satisfaction and satisfaction in the capacity of AO of assessed person is sufficient.* To this extent, we don't find any infirmity in the finding of ld CIT(A). But he has not adjudicated the other arguments of the assessee challenging the deficiencies while recording satisfaction. Since, it is the satisfaction recorded which is bone of contention between parties, it important to reproduce said satisfaction recorded by the AO as under:



“ Order sheet

Satisfaction note for assessment u/s 153C of the IT Act, 1961

| Name & Address of the assessee | Status | PAN | Assessment year |
|---|--------|------------|-----------------|
| Kishore D Naik HUF 1, Namrata Bungalow , bolinj Patilali nallasopara- Bolinj Link Road, Virar(West) | HUF | AAEHK8794D | 2009-10 |
| | | | 2010-11 |
| | | | 2011-12 |
| | | | 2012-13 |
| | | | 2013-14 |
| | | | 2014-15 |

The case of Kishore D Naik HUF with address at Namrata villa , bolinj Nallasopara Road, Bolinj, Virar(West) was centralized with this office vode CIT-III, Thane order No. Thn/Cit/III/ Centralisation / MAAdGroup/2014-15/1956 dated 12.12.2014

A search action u/s 132 of the Income Tax Act, 1961 was carried out at the business and residential premises of the Swastik Group of Virar on 31.07.2014.

As a part of search action, the office premises of the group concerns M/s. Swastik Spaces Pvt. Ltd, M/s. Jivdani Housing Projects Ltd at 2d floor, Gulmohar Plaza, next to Divekar Hospital, Viva College road Virar (W) was also covered u/s 132. Incriminating documents in the case of the assessee **Kishore naik(HUF)** were seized from the said office premises(covered by serach Party A-3). These documents were seized as Loose paper Bundle No. 13, Pages1 to 289.

The loose paper documents seized as page nos 206,208 of bundle no 13 show transaction of sale of lands to Tata Housing Development Co. Ltd for a consideration of Rs. 54,53,47,500/- in respect of land at Betegaon, Boisar and earning profit on these transactions in the hands of Shri.Pankaj Thakur (HUF), Shri. Deepak P Shah(HUF) and **Shri Kishor Naik(HUF)**. This [page shows survey Number, Owner, date of purchaser, date of sale, cost, Sale price, and the loss required. As per this document, the profit earned to Shri.Pankaj B Thakur (HUF), **Shri Kishor Naik(HUF)**, Shri. Deepak P Shah(HUF) and Kishore D naik at sale of Land is Rs. 45,91,97,720/-. The last column shows ‘ Loss Required.’ The page



indicats that in order to reduce the tax liability , the assessee's had required a loss of Rs. 34,30,00,000/-.

To avoid the tax on this income, transactions for inflating expenses were arranged as payments to two companies namely

- a. Yomaya Goods Pvt Ltd and
- b. Pathfinder Vyapaar Pvt Ltd.

These companies were found to be paper companies. The total sale was shown at Rs. 45.91 Crores, out of which Rs. 11.61 crores was shown in the regular books of accounts. On confronting the above documents and the facts, the assessee admitted to the above tax evasion.

A statement was recoded u/s 132(4) of the IT Act at the time of search from Shn Deepak Shah at Deep Darshan Bunglow, Cross Naka, Near Telephone Exchange Bhandarwada Agashi Virar (E). In this statement, in reply to Question No.9 has stated that the loose papers and documents shown to him were related to sale of lands to Tata Housing Development Co. Ltd in respect of land at Betegaon, Boisar. Further, he is also stated that, there are discrepancies in respect of income from the transaction of land at Betegaon, Boisar given through Development Agreement to Tata Housing Development Co.Ltd. After, discussing this issue with all other partners, namely Shri Pankaj Thakur, Shri Kishor Naik and Shri Hemant Mhatre, a total amount of Rs.36,30,86,077/- was offered an additional income in the hands of Shri Pankja Thakur HUF (Rs. 14,44,16,671/-) Shri Deepak Shah HUF(Rs. 19,20,16,671/-) and **Shri Kishore Naik HUF (Rs. 2,65,70,084/-)**

The relevant portion of statement recorded of Shri. Deepak Shah and countersigned by Pankaj Thakur and **Shri Kishore naik** is reproduced as below :-

Q.9 "I am showing you, the loose paper documents seized as page nos.170 to 215 of bundle no. 13 seized from the office premises of Swastik Group mentioned above. These are printed from the data on the server of the group having path 1Iswastikserver|dS|data\raindvisvakarma/amitjain. These show that you had entered into a transaction of sale of lands to Tata Housing Development Co.Ltd. in respect of land at Betegaon, Boisar and have incurred profit on this transaction in the hands of Shri Pankaj Thakur HUF, Shri Deepak Shah HUF and Shri Kishor Naik HUF. These loose papers suggest that in order to avoid the tax on this income you have arranged transactions with two companies namely Yogmaya Goods Pvt.Ld and Pathfinder Vyapaar Pvt.Ltd.



The agreements were entered into with these companies and their rights were created on those lands artificially. In lieu of such rights an amount of Rs.35 crores was paid to them. Such transaction of accommodation and creation of rights and incurring artificial cost of acquisition in order to avoid tax on the profits was arranged. This is very much evident from the documents shown to you as above. Please explain as to why such creation of rights and artificially inflated cost of acquisition should not be disallowed and brought to tax in the hands of these persons."

Ans. "I have perused the seized loose papers and documents shown to me and have gone through them carefully. I have discussed this issue with my all the partners namely Shri Pankaj Thakur, Shri Kishor Naik and Shri Hemant Mhatre. After this I say and state that there are discrepancies as stated by you in respect of income from the transaction of land at Betegao Boisar given through Development Agreement to Tata Housing Development Co.Ltd. We have shown some income in the return of income in respect of such transactions and the additional income is declared after deducting such income from the gross declaration. I agree to such discrepancies and am hereby admitting the additional income on the issue as follows:

| Sr. No. | Name of Assessee | Financial year | Amount of additional income offered |
|---------|-------------------------|----------------|---|
| 1. | Shri Pankaj Thakur HUF | 2010-11 | (15,00,00,000/-)-(55,83,329/-)=14,44,16,671/- |
| 2. | Shri Deepak P. Shah HUF | 2010-11 | (20,00,00,000/-)-(79,00,678/-)=19,20,99,322/- |
| 3. | Shri Kishor D. Naik HUF | 2010-11 | (5,00,00,000/-)-(2,34,29,916)= 2,65,70,084/- |
| 4. | Total | | 36,30,86,077/- |

In view of the above, I am of the opinion that the cases of the assessee Shri. Kishore D Naik (HUF) falls within the purview of the provisions of section 153C of the I.T Act 1961 and action is initiated to assessee or reassess the income for the above said assessment years calling the return of income for the above said six assessment years as required u/s 153C r.w.s 153A of the I.T Act 1961. The returns are to be filed within 30 days from the date of receipt of the notice.

Date 30.01.2015

(ALOK MAL'VIYA)
Dy. Commissioner of Income-tax,
Central Circle-2, Thane"

6.8 On perusal of the above satisfaction recorded by the Assessing Officer, in the capacity of AO of searched person, we find that he has referred only to the loose paper documents inventoried at page



No. 206 and 208 of Bundle No. 13 seized from the premises of M/s Swastik Space Pvt. Ltd. The said documents contain information relating to transaction of the sale of land to Tata Housing Development Company Ltd. through two companies namely 'Yomaya Goods Pvt. Ltd'. and 'Vyapaar Pvt. Ltd'. On the basis of the said documents, the Assessing Officer of the assessee has recorded satisfaction of bearing on the total income for assessment year 2010-11 in respect of three assesseees, namely, (i) Shri Pankaj Thakur (HUF), (ii) Shri Deepak P Shah (HUF) and (iii) Shri Kishor Naik (HUF) i.e. the assessee. Therefore, **firstly**, it is obvious that there is no satisfaction has been recorded by the Assessing Officer of the assessee that the seized documents have bearing in the income of the year under consideration i.e. AY 2012-13. **Secondly**, the addition in the year under consideration has been made for the unsecured loan based on document inventoried as Bundle No. 8 seized from party No. A-3, whereas in the satisfaction recorded there is no reference of Bundle No. 8 and the transaction of unsecured loan referred by the AO. The satisfaction note has been recorded only qua the assessment year 2010-11 in respect of transaction of sale of the land to Tata Housing Development Company Ltd. In view of the above, no satisfaction has been recorded by the Assessing Officer for invoking proceedings u/s 153C of the Act qua the assessment year 2012-13 and qua the Bundle No. 8 which is the basis of the addition by the AO in the assessment order.



6.9 It is well settled that the jurisdiction of the Assessing Officer to initiate proceedings under Section 153C of the Income Tax Act, 1961, in the case of a person other than the one subjected to search under Section 132, is contingent upon the recording of satisfaction to the effect that the documents or assets seized during the course of the search pertain to such other person and have a bearing on the determination of his total income. Where the satisfaction so recorded is vague, deficient, or does not specifically refer to any particular document or material that has a nexus with the income of the assessee sought to be assessed, the Assessing Officer cannot lawfully proceed to make additions based on such unspecified or undisclosed material. Jurisdiction under Section 153C is not to be invoked on the basis of conjecture, surmise, or general reference, but must be rooted in tangible material that is clearly identified and linked to the other person. Furthermore, if satisfaction is recorded in respect of a particular assessment year, it is impermissible for the Assessing Officer to travel beyond the scope of such satisfaction and make additions in relation to other assessment years, unless independent and specific satisfaction is duly recorded with respect to such other years and the documents in question demonstrably pertain thereto. In our considered opinion, the scope of assessment or reassessment under Section 153C is confined strictly to the material forming the basis of the recorded satisfaction. Any action beyond the parameters of such satisfaction would be ultra vires and without jurisdiction.



6.10 In view of aforesaid discussion, we are of opinion that the addition for unsecured loan of Rs. 50,00,000/- invoking section 68 of the Act made by the AO in the year under consideration is beyond the purview of section 153C of the Act and liable to be deleted. In support of the finding, we rely on the decision of the Hon'ble Delhi High Court in the case of **M/s TDI Infrastructure Pvt. Ltd. in ITA No. 494 & 495/2022**, wherein the finding of the Tribunal that no addition could have been made u/s 153C without any satisfaction of the material belonging or documents pertaining has been recorded by the Assessing Officer of the searched person, has been upheld. The relevant question of law raised by the Revenue is reproduced as under:

"D. Whether Hon'ble ITAT has erred in considering Section 153C restricts assessment beyond the documents considered for deriving satisfaction note for starting the proceedings of the other person?"

E. Whether Hon'ble ITAT has erred in considering Section 153C restricts assessing officer to enquire beyond the documents considered for deriving satisfaction note for starting the proceedings of the other person?"

6.11 The Hon'ble High Court (supra) held as under:

"22. ITAT while referring to the decisions of this Court RRJ Securities (supra) and Dreamcity Buildwell (P) Ltd. (supra) came to the following conclusions in Para No. 23 of its order, which is reproduced below:-

"The principle and ratio discussed in the aforesaid decision will apply here in this case also because admittedly none of the additions made in the impugned assessment orders are based on any seized/incriminating material either found during the course of search or has been recorded in the 'satisfaction note' by the



Assessing Officer, and therefore, none of these additions can be made in the proceedings u/s. 153C. The argument raised by the Id. CIT-DR stands answered in view of the aforesaid decisions of the Hon'ble Jurisdictional High Court and moreover none of these additions are based on documents belonging to the assessee and what Id. CIT-DR is trying to canvass before us that, even if the seized documents pertaining or containing information that relates to the assessee is sufficient enough. This issue stands answered by the Hon'ble Jurisdictional High Court in the case of PCIT v. Build Well Pvt. Ltd. and moreover looking to nature of addition also none of these additions are based on any satisfaction note. Thus, we do not find merits in the contention raised by the Id. CIT-DR. Accordingly, all the additions which are based on survey documents stands deleted being beyond the scope of proceedings u/s. 153C."

23. Keeping in view of the aforesaid, we are of the opinion that the question of law raised in the present appeals has already been settled by the earlier Division Bench of this Court in Kabul Chawla case (supra) and Dreamcity Buildwell (P) Ltd. (supra). Accordingly, no substantial question of law arises for consideration in the present appeals. The same are accordingly dismissed."

6.12 The Hon'ble Jurisdictional High Court in the case of Ashok Commercial Enterprises v. ACIT in write petition Nos. 2595, 2593, 2847, 2588, 2598, 2597, 2696, 2625 & 2594 of 2021 has laos decided the identical question. The finding of the Hon'ble High Court(supra) is reproduced as under:

"19 (a).....

(b).....

(c).....

(d) The question of whether any material found during the course of proceedings under Section 132 of the Act in the case of Hubtown Limited is incriminating or otherwise has to be tested based only on the satisfaction note recorded by the Assessing Officer/s. The contents of the said satisfaction note are the only item/material to be looked at in this regard and respondent cannot seek to augment, supplement or add to materials recorded to support the claim that incriminating material has been found. Further respondent cannot refer to any other documents or material to establish such a claim. We find support in (i) Ananta



Landmark Pvt. Ltd. (Supra) and ii) Jainam Investments (Supra), where the Courts have held that the question of the Assessing Officer's jurisdiction to undertake proceedings has to be tested/examined only on the basis of reasons recorded at the time of issuing a notice under Section 148 of the Act seeking to reopen an assessment. These reasons cannot be improved upon and/or supplemented much less substituted by affidavit and/or oral submission;”

6.13 Respectfully, following the decisions of Hon'ble High Court(supra), we hold that no addition could have been made in the year under consideration in 153C proceedings. Accordingly, the ground No. 1 and 2 of the appeal of the assessee are allowed. Since we have already held that no addition could have been made in the reassessment proceedings u/s 153C of the Act, the grounds challenging on merit is not required to be adjudicated upon. The ground No. 3 and 4 challenging the order passed without Document identification Number (DIN) are also rendered academic, therefore, the ground No. 3 and 4 of the appeal are not adjudicated at this stage.

7. In the result, the appeal of the assessee is accordingly allowed.

Order pronounced in the open Court on 21/04/2025.

**Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 21/04/2025
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant



2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai