आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री **एस. आर. रघुनाथा,** लेखा सदस्य **के समक्ष**

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.2270 to 2274/Chny/2024**
निर्धारण वर्ष/**Assessment Years: 2014-15 to 2018-19**

Arvind Nandagopal, No.6, 6th Street, Rutland Gate, Nungambakkam, Greams Road S.O., Chennai-600 006.	**v.**	The ACIT, Central Circle-3(1), Chennai.
[**PAN: AAFPA 6259 G**]		
(अपीलार्थी**/Appellant)**		**(**प्रत्यर्थी**/Respondent)**
अपीलार्थी की ओर से/ Appellant by	:	Mr.B. Ramakrishnan, CA (Virtual) & Ms. Lavanya, CA
प्रत्यर्थी की ओर से /Respondent by	:	Mr.M. Murali, CIT Mr.Kumar Chandan, JCIT
सुनवाईकीतारीख/Date of Hearing	:	26.08.2025
घोषणाकीतारीख /Date of Pronouncement	:	07.11.2025

आदेश / O R D E R

PER ABY T. VARKEY, JM:

These are appeals preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals), (hereinafter referred to as 'Ld.CIT(A)'), Chennai-20, all dated 29.06.2024 for the Assessment Years (hereinafter referred to as 'AY') 2014-15 to 2018-19. As the issues involved across all these appeals were common, they were heard together. Both the parties also argued them together raising identical

arguments on the issues impugned in all these appeals. Hence, for the sake of convenience and brevity, we are disposing all the appeals by this consolidated order.

2. Before we advert to the grounds raised before us, it would first be relevant to cull out the basic facts of the case in respect of all the AYs before us. Search u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was conducted against M/s KLP Projects Pvt Ltd on 09.11.2017 and on the same date the premises of M/s Binny Ltd was also covered. During the course of search, the books of accounts maintained by the company, M/s Binny Ltd., in their tally server was seized. It was inter alia gathered during the course of search that, M/s Binny Limited had received an amount of Rs.490 crores from M/s KLP Projects Pvt. Ltd. towards sale of its land at Perambur, Chennai pursuant to an agreement for sale was signed on 17.10.2013. Out of the said amount, sum of Rs.370 crores was received through banking channel during the period FY 2013-14 to 2016-17 which was found recorded in the regular books of accounts of M/s Binny Limited and the balance sum of Rs.120 crores is noted to have been separately offered to tax as the company's unaccounted income by their Director [*which offer was later retracted. And Binny Limited, approached the Settlement Commission wherein the Settlement Commission made an addition of ₹120 Cr. which*

issue is challenged before the Hon'ble High Court by both Binny Ltd. & M/s. KLP Projects].

3. It was also gathered by the search team that M/s Binny Limited had entered into a joint venture agreement with SPR Group to develop a certain parcel of land at Cook Road, Chennai for which it had received security deposit of Rs.250 crores, which was also recorded in their regular books of accounts. Later on in the post search enquiries, it was gathered that, out of the sums which were received through banking channel, M/s Binny Limited had inter alia advanced sums to the extent of Rs.212.56 crores to seven (7) concerns, which the Investigating authorities were unable to trace at their given addresses upon spot verification. Subsequently, the assessee who is the Managing Director of M/s Binny Limited was summoned u/s 131 of the Act and was asked to explain the nature of advances given by M/s Binny Ltd. to these seven (7) concerns, to which he inter alia stated that, the company, M/s Binny Limited was required to incur cash expenses for development of the land parcels, and therefore the company had made these bogus advances to generate unaccounted cash, which was received by the company and utilized to meet their expenses. It was further gathered by the Investigating Officer that similar modus operandi was also undertaken by M/s Binny Limited through another group company, M/s Mohan Breweries & Distilleries

Limited (in short 'MBDL') wherein also the monies received from M/s Binny Limited was allegedly advanced to bogus entities to receive back cash. The assessee is noted to have similarly averred in his statement u/s 131 of the Act that the cash so generated was utilized to meet the incidental expenses of MBDL. On the same date when the assessee was summoned i.e. 07.03.2018, the Investigating Officer also recorded the statement of Shri Bhawarlal Jain, who had purportedly facilitated the aforesaid transactions through these seven (7) concerns and he is noted to have submitted that, the advances received by these seven (7) companies were paid back in cash to M/s Binny Limited and MBDL respectively. The Investigating Officer is also noted to have examined the director/shareholder of one of the seven (7) concerns viz., Shri Shanmugavelu of M/s Sun Bright Designers Pvt. Ltd.

4. Taking note of the above statement(s) recorded in the course of the post search enquiries, the AO formed his view that, the principal officers of M/s Binny Limited and MBDL i.e., the assessee and his father, Shri M Nandagopal, were unable to properly explain the utilization of the cash generated by their companies from the bogus advances and the manner in which it was spent. The AO was therefore of the opinion that, the entire unaccounted cash generated was received by the assessee and his father and therefore it ought to be assessed in their hands. With these

observations, the AO is found to have recorded his satisfaction note qua the assessee on 08.02.2021 and notice(s) u/s 153C of the Act was issued upon the assessee for the AYs impugned before us.

5. Having regard to the deemed date of search viz., the date on which satisfaction note was recorded i.e., 08.02.2021, the AO is noted to have exercised his jurisdiction to issue notices u/s 153C of the Act in respect of six assessment years preceding the year of search i.e. AYs 2015-16 to 2020-21. The AO is further noted to have exercised powers conferred under Section 153C of the Act read with fourth proviso to Section 153A of the Act, which was inserted by Finance Act 2017 w.e.f. 01.04.2017, and also reopened AY 2014-15, which was beyond six assessment years but, according to the AO, within ten assessment years. It is not in dispute that, the income-tax assessments of the assessee for all AYs before us were either completed u/s 143(1)/143(3) of the Act and/or the time limit for issuance of notice u/s 143(2) of the Act had expired, at the time when the notices u/s 153C was issued by the AO. Accordingly, the income-tax assessments for AYs 2014-15 to 2018-19 did not abate consequent to the search. The income-tax assessments for all the respective AYs were completed together on 31.12.2021 u/s 153C/143(3) of the Act, in which the AO inter alia made addition(s) u/s 56(2)(vii), being 50% of the amount(s) advanced by M/s Binny Limited and MBDL to the alleged seven

shell entities. The reasons given by the AO for making the impugned addition is verbatim same across all the assessment order(s). Apart from the foregoing, the AO is also noted to have made addition on account of long term capital gain on sale of shares in the hands of the assessee in AY 2014-15. Being aggrieved by the order(s) of the AO, the assessee preferred appeal before the Ld. CIT(A) who dismissed the same. Now the assessee is in appeal before us.

6. We first take up ITA No.2270/Chny/2024 for AY 2014-15 as the lead case, and our findings rendered in this appeal shall apply mutatis mutandis to all other appeals for AYs 2015-16 to 2018-19. The original grounds raised by the assessee for AY 2014-15 are as follows:-

> "1. The order of the Ld. CIT(A) is contrary to the law and facts of the case.
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> 2. The Ld. CIT(A) ought to have accepted the information furnished and explanation offered by the appellant in connection with the additions made to the income returned.
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> 3.1 The Ld. CIT(A) erred by upholding the order of Ld. Assessing Officer wherein it was merely stated in the Assessment Order that the Assessing Officer has duly recorded satisfaction from out of material seized that the information contained therein has a bearing on the total income of the appellant, but without establishing such information while making the assessment.
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> 3.2 The Ld. CIT(A) erred in acknowledging the act of Ld. Assessing Officer in considering the books of account in tally software of Binny Limited during the course of search as incriminating material for initiating the proceedings under Section 153C of the Act in the case of the appellant.
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> 3.3 The Ld. CIT(A) erred by upholding the order of Ld. Assessing Officer wherein the assessment was made merely based on the statements obtained under Section 131 of the Act, which is not substantiated by any documentary evidence found during the search, as the statements obtained during the search or post search proceedings do not constitute incriminating material.

3.4 The Ld. CIT(A) ought to have appreciated the submissions of the appellant that when the statement recorded during the search cannot be made as basis for an addition, statement recorded under Section 131 of the Act post search proceedings cannot be the sole basis of addition when there is no incriminating evidence unearthed during the course of search.

3.5 The Ld. CIT(A) failed to observe that the Assessing Officer erred in making the assessment under Section 153C of the Act on assumptions / surmises / conjectures that the seized material contains information which has a bearing on the total income of the appellant.

3.6 The Ld. CIT(A) ought to have followed the position of law that when there are no seized assets/books of account /documents containing the information having a bearing on the total income of the appellant, the jurisdiction for making assessment under Section 153C of the Act cannot be assumed.

3.7 The Ld. CIT(A) ought to have established the nexus between the evidence contained in the seized material belonging to the third party and the addition made and ought to have brought out how fresh material discovered in the course of search is connected to the undisclosed income assessed under Section 153C of the Act.

4.1 Without prejudice to all the above points, even assuming that the initiation of assessment proceedings under Section 153C of the Act is right in law, the Ld. CIT(A) erred in confirming the addition made by Ld. Assessing officer amounting to Rs.1,54,58,427/-made under Section 56(2) (vii) of the Act *[which was later changed to Section 56(2)(x) by the Ld. CIT(A) for AY 2017-18 & AY 2018-19].*

4.2 The Ld. CIT(A) failed to appreciate the fact that the Ld. Assessing Officer erred in making the addition under Section 56(2)(vii) of the Act [later changed to Sec. 56(2)(x) by Ld. CIT(A) *for AY 2017-18 & AY 2018-19*], without specifying in the 'Show Cause Notice,' the section under which the addition is proposed to be made.

4.3 The Ld. CIT(A) erred in confirming that the trade advances given to various companies /concerns by Binny Limited and M/s. Mohan Breweries & Distilleries Ltd. (MBDL) are bogus transactions and are made to generate unaccounted cash, even though the said advances were appearing as receivable in the audited books of account of the respective companies and were subsequently settled.

4.4 The Ld. CIT(A) ought to have appreciated the fact that the receivables of Binny Limited were subsequently settled by way of assignment of the same to MBDL in consideration of redemption of preference capital of Binny Limited held by MBDL and the dividend arrears thereof, vide Resolution passed in the EGM dated 09.10.2021.

4.5 The Ld. CIT(A) erred by upholding the order of Ld. Assessing Officer wherein it was stated that the appellant and Shri. M. Nandagopal being the key persons of Binny Limited and MBDL and that with their active involvement and knowledge the said transactions were made and they have received the unaccounted cash for their personal benefit.

4.6 Even assuming that the said trade advances are not genuine, the Ld. CIT(A) erred in coming to the conclusion that the appellant had received the

alleged unaccounted cash for personal benefit, as the said conclusion is purely imaginary and not substantiated by facts / evidence.

4.7 The Ld. CIT(A) erred in accepting the conclusion of the Ld. Assessing Officer that the alleged unaccounted cash was received by the appellant, when it was categorically stated in the statement obtained from the appellant, Shri. Bhawarlal Jain and Shri. Shanmugavelu that the alleged cash was handed over back to the respective companies.

4.8 The Ld. CIT(A) erred in confirming the action of the Ld. Assessing Officer who considered the submissions of appellant on pick and choose basis i.e., by relying on the statement obtained under Section 131 of the Act from the appellant that unaccounted cash was generated out of the trade advances made by Binny Limited and MBDL, but conveniently omitted that portion of the statement wherein the manner of utilization of cash was mentioned.

4.9 The Ld. CIT(A) erred in rejecting the statement of the appellant that the unaccounted cash was utilized for the purpose of incurring regular business expenditure of the respective companies i.e. Binny Limited and MBDL, merely because the appellant has not produced the detailed proof of utilization of the said unaccounted cash, even though it was categorically stated in the statement under Section 131 of the Act that for the nature of said expenditure incurred out of the unaccounted cash, no documentary evidence could be obtained and maintained and the same was not claimed as expenditure.

4.10 The Ld. CIT(A) erred in arbitrarily adopting 50% of the trade advances made during the year under consideration, as the appellant's income under Section 56(2)(vii) for the year under consideration, without any basis.

5.1 The Ld. CIT(A) erred in confirming the invoking of the provisions of Section 56(2)(vii) of the Act by the Ld. Assessing officer [later changed to Sec. 56(2)(x) by Ld. CIT(A) *for AY 2017-18 & AY 2018-19*] for making addition in the appellant's hands of the cash received by the companies out of the trade advances made.

5.2 The appellant had not received any sum of money or movable or immovable property during the year under consideration, hence the Ld. CIT(A) erred in invoking the provisions of Section 56(2)(x) of the Act, as the said provisions are applicable only when an Individual or HUF receives during the previous year, any sum of money or movable or immovable property without adequate consideration.

5.3 The Ld. CIT(A) erred in upholding the order of Ld. Assessing Officer wherein the addition was made purely on hypothesis and suspicion, which cannot take form of evidence or proof while making an assessment.

5.4 The Ld. CIT(A) ought to have appreciated the position of law that tax shall be levied on the total income within the meaning of Section 5 of the Act, as per which all incomes which were received or accrued shall be treated as income. Income shall accrue only when the assessee has a right to receive.

5.5 The Ld. CIT(A) erred in ignoring the submissions made by the appellant that though the Income-tax Act takes into account two points of time at which the liability of tax is attracted, viz., the accrual of the income or its receipt, yet the substance of the matter is the income and if income does not result at all, there cannot be a tax.

5.6 The CIT(A) failed to consider the fact that the addition under Section 56(2)(x) of the Act of a particular sum [*for AY 2017-18 & AY 2018-19]*, without having received or accrued or earned by the appellant is against the provisions of the Act and Article 265 of the Constitution which states that -'no tax shall be levied or collected except by the authority of law'

5.7 The Ld. CIT(A) ought to have considered the fact that the Ld. Assessing Officer failed to discharge the onus in proving that the 50% of trade advances made by Binny Limited and MBDL during the year under consideration represents the income of the appellant represented in the form of any asset / investment / expenditure.

5.8 The Ld. CIT(A) failed to appreciate the fact that the Assessing Officer nor the Investigating Officers have found any asset / investment / expenditure which was unexplained in the hands of the appellant to presume that the cash was utilized for the personal benefit of the Appellant.

6.1 The Ld. CIT(A) erred in making an addition of Rs.40,84,64,861/- under the head Long Term Capital Gains on sale of Equity Shares of M/s Sagar Sugars and Allied Products Limited (SSAPL) based on the MoU dated 18.10.2011.

6.2 The Ld. CIT(A) erred by not considering that the Ld. Assessing Officer made the addition of Long Term Capital Gains while making the assessment under Section 153C of the Act, even though the said addition is not based on the assets/documents/books found during the search, which has a bearing on the total income of the appellant.

6.3 Without prejudice to the ground nos. 6.1 & 6.2, the Ld. CIT(A) erred in rejecting the quantum of Long Term Capital Gains already computed by the Assessing Officer during the assessment proceedings for the Assessment Year 2012-13 vide order dated 31.03.2015, which is the basis for making the addition for the year under consideration.

6.4 The Ld. CIT(A) ought to have followed the computation as stated in the assessment order dated 31.03.2015 for the Assessment Year 2012-13 by giving effect to the cost inflation index till the year under consideration.

7. The Ld. CIT(A) erred in not considering the judicial pronouncements relied on by the Appellant with regard to the additions made in the assessment order.

8. The appellant craves leave to add, alter, amend or delete any or all of the grounds either at the time of hearing of this appeal or before the hearing of this appeal."

7. The assessee further assailed the action of the Ld.CIT(A) by raising the following additional grounds of appeal in terms of Rule 11 of the Income Tax (Appellate Tribunal) Rules, 1963, which according to the Ld.AR was purely on question of law, if answered in favour of the

assessee goes to the root of the jurisdiction of the AO to frame the income-tax assessment u/s 153C of the Act for AY 2014-15.

> '8. For that the assessment made under section 153C of the Income Tax Act is bad in law on non-compliance with the applicable provisions of the fourth proviso to section 153A(1) of the Act in the absence of specific appropriate recording in the satisfaction note as provided therein to the effect that the income represented in the form of asset has escaped assessment for the subject AY 2014-15 which is falling beyond the six Assessment Years and forming part of 'relevant assessment year' as per provisions of Section 153A.
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> 9. For that the Learned Commissioner of Income Tax (Appeals) ought to have quashed the assessment u/s 153C of the Act that was made for an Assessment Year beyond the stipulated period of six assessment years as laid down under the applicable provisions of Section 153A/153C of the Act by appreciating that the date of recording satisfaction note in the case of the 'other person' by the Assessing Officer of the 'searched person' must be construed as the date of handing over of documents relating to the other person even where the Assessing Officer is one and the same for both the 'searched person' and the 'other person".
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> 10. For that the Learned Commissioner of Income Tax (Appeals) had erred in upholding the assessment made in violation of the principles of natural justice in that the opportunity to cross-examine the persons, whose sworn statements were relied upon in passing the Assessment Order, was not provided to the appellant.'

8. It is noted that the above grounds doesn't involve any fresh verification of facts and is purely a question of law and therefore in light of the decision of the Hon'ble Supreme Court in the case of **National Thermal Power Co. Ltd. v. CIT reported in [1998] 229 ITR 383 (SC)**, we admit the same for adjudication.

9. Ground Nos. 1, 2, 7 & 8 are noted to be general in nature which does not call for any separate adjudication. Perusal of Ground No. 3 and the additional grounds reveals that they are directed towards the legal validity of the jurisdiction of the AO to assess the assessee u/s. 153C of the Act. Having regard to the arguments made before us, we find that the

first legal challenge of the assessee in all the AYs is *inter-alia* to the validity of usurpation of jurisdiction u/s. 153C of the Act, without satisfying the mandatory condition precedent prescribed by Section 153C of the Act i.e. the AO has not recorded a valid satisfaction note before assumption of jurisdiction u/s 153C of the Act. In other words, the AO has issued notice u/s. 153C of the Act against the assessee, which was not subjected to search u/s. 132 of the Act, by invoking special provision of assessment u/s. 153C of the Act without satisfying the requirement of law as stipulated u/s. 153C of the Act, and therefore the action of AO is claimed to be ab-initio void. The second legal challenge of the assessee is inter alia to the validity of the addition(s) made in the impugned unabated AYs u/s 153C/143(3) of the Act sans any incriminating material found in the course of search from the premises of the searched person. The third legal challenge raised in AY 2014-15 was to the usurpation of jurisdiction u/s 153C of the Act by the AO, without first satisfying the essential condition precedent in the fourth proviso to Section 153A read with Explanation (2) of the Act. Without prejudice to these legal grounds, the assessee has raised Ground Nos. 4 & 5 objecting to the merits of the addition(s) made u/s 56(2)(vii) of the Act by the AO. Ground No.6 is against the merits of the addition made by way of long-term capital gain. We are inclined to first adjudicate the legal issues raised by the assessee,

which if found valid, goes to the root of the matter [since it challenges the jurisdiction exercised by the AO u/s 153C of the Act].

10. Assailing the action of the lower authorities, the Ld. AR Shri. B. Ramakrishnan C.A submitted that, in order to validly usurp jurisdiction u/s 153C of the Act, it was incumbent upon the AO to first identify the relevant material, that was found and seized from the premises of the searched person, which 'related to' or 'pertained to' the assessee and had a bearing on the determination of his total income. He relied on the decision of the Hon'ble Supreme Court in the case of **CIT vs Sinhgad Technical Education Society (397 ITR 344)** wherein the Court had held that it was incumbent for the AO to establish cogent correlation between the material seized from the premises of 'searched person' with the 'other person', document-wise and assessment year-wise, in his satisfaction note to validly assume jurisdiction u/s 153C of the Act. Taking us through the contents of the satisfaction note, the Ld. AR pointed out that, the only seized material referred to by the AO was the regular books of accounts seized from the premises of the 'searched person', M/s Binny Limited, which was marked as Annexure – ANN/AA/AEPL/ED/S. It was submitted that, these were regular books of accounts of the said company and did not relate or pertain to the assessee-individual in any manner. The Ld. AR showed us that, later on in the course of post search

enquiries, the Investigating Officer had examined these regular books of accounts and had taken note of the trade advances given by M/s Binny Limited to various concerns, which was tabulated by the AO in the impugned satisfaction note. He submitted that, these regular transactions were also between M/s Binny Limited and other concerns and it did not relate or pertain to the assessee. He therefore claimed that when there was no seized assets or books of accounts or documents found relating or pertaining to the assessee, which contained information having a bearing on his total income, the jurisdiction assumed by the AO u/s 153C of the Act was invalid. In support thereof, he also relied on the decision of the Hon'ble jurisdictional Madras High Court in the case of **CIT Vs Late J Chandrasekhar (20 taxmann.com 451)**.

11. The Ld. AR thereafter showed us that, the AO had primarily relied on the statement(s) recorded u/s 131 of the Act in the course of post search enquiries to justify the recording of his 'satisfaction note' for initiating proceedings u/s 153C of the Act against the assessee. He first argued that, where there was no incriminating material against the 'other person' i.e. the assessee found in the course of search and there is nothing in the form of 'valuable asset' (money, bullion, jewellery or other valuable article or thing seized), 'books of account' or 'document' seized or any information contained therein which relates to the 'other person'

[assessee], then the condition laid down u/s. 153C(1) cannot be said to have been met, merely on the basis of statement(s) of some third parties which were recorded behind his back, in post search enquiries, cannot justify initiation of proceedings u/s. 153C(1) of the Act. According to him, such statements alone cannot be the basis to justify initiation of proceedings u/s. 153C(1) of the Act. The Ld. AR further emphasized that, the statement(s) referred to by the AO was not recorded u/s 132(4) but u/s 131 of the Act and that a statement made u/s 131 of the Act cannot be equated with a statement recorded under section 132(4) of the Act. He submitted that, a statement recorded under section 132(4) is a valid and relevant piece of evidence but a statement recorded under section 131 doesn't carry the weight/evidentiary value, and hence cannot form the sole basis to justify adverse view unless corroborative material are unearthed. Nevertheless, according to him, when even a statement recorded u/s 132(4) of the Act alone cannot be used as a basis for making addition in the hands of 'searched person', unless it is corroborated by seized material; there cannot be any question of using such bald third party statement(s) u/s 131 of the Act in the matters of 'other person' to justify initiation of assessment u/s 153C of the Act. In support, the Ld. AR relied on the following decisions of this Tribunal:-

- DCIT vs. VVD & Sons (P.) Ltd [2024] 158 taxmann.com 395

- Saveetha Institute of Medical & Technical Sciences vs. ACIT [2012] 25 taxmann.com 138
- ITO vs. Ramachandra Setty & Sons [2024] 163 taxmann.com 666.

12. The Ld. AR then also took us through the statement(s) of Shri Bhawarlal Jain and Shri Shanmugavelu, which formed the AO's premise for alleging that the advances given by M/s Binny Limited to various concerns were bogus. He contended that, in none of their statements had they incriminated the assessee in any manner nor had they averred that they have paid cash back to the assessee. Rather, he showed that, Shri Jain was categorical in his answer that, the cash was paid back to the companies. He therefore submitted that, even if their statements are taken at face value, then also it did not contain anything which related to or pertained to the assessee-individual. According to him therefore, the AO had drawn his own whimsical assumption from their statements, though of no relevance, to draw distorted satisfaction against the assessee u/s 153C of the Act. The Ld. AR further argued that the statement(s) of these unrelated persons, which were relied upon by the AO, had also not been examined on the touchstone of cross-examination and therefore they were otherwise also inadmissible and unreliable. In this regard, he relied on the decisions of the Hon'ble Supreme Court in the cases of **Andaman Timber Industries Ltd v. CCE [2015] 62**

taxmann.com 3/52 GST 355 & **CIT v. Odeon Builders (P.) Ltd. [2019] 110 taxmann.com 64/266 Taxman 461/418 ITR 315** and the decision of the jurisdictional Hon'ble Madras High Court in the case of **Vetrivel Minerals v. ACIT [2021] 129 taxmann.com 126**.

13. The Ld. AR then brought to our attention the statement of the assessee, which was recorded u/s 131 of the Act in the post search enquiries, as was reproduced in the satisfaction note. It was shown to us that, the assessee had also nowhere admitted that the cash allegedly paid back by these concerns were received by him in his own personal capacity or was used for his personal benefit. Rather, the assessee had submitted in his statement that, the monies were utilized by the companies to meet their own cash expenses and development costs, whose details due to their very nature, was not available with them. The Ld. AR thus claimed that, the AO could not read the assessee's statement in a selective manner which suited his purpose. According to him, when the statement read as a whole did not suggest that the assessee had incriminated himself in his personal capacity, the AO's reliance on such statement to record satisfaction against the assessee u/s 153C of the Act was erroneous and thus, unjustified.

14. The Ld. AR additionally contended that, this statement of the assessee was based on incorrect facts and therefore it otherwise also

should not have been entertained. He placed before us the recent interim order passed by Securities Appellate Tribunal ('SAT') in the matters of M/s Binny Limited, which was available in public domain. Taking us through this order, he showed that the SAT had taken note of the company's submission that the advances which were paid to these seven entities, had been later on assigned to M/s Mohan Breweries, which in turn, had transferred/sold immovable properties of equivalent amount in satisfaction of the outstanding advances. According to M/s Binny Limited therefore the impugned advances had actually been received back in the form of equivalent value of assets, which was always shown in its books as receivables. In light of this development, the Ld. AR thus claimed that, the Revenue could not have alleged that any cash generated from these alleged bogus advances, when they had been received back in the books of accounts. He thus argued that the statement given by the assessee was factually incorrect and consequently the 'satisfaction note' recorded by the AO that the monies were received back by the assessee for his own personal gains, was based simply on conjectures and mistake of fact(s).

15. Overall therefore, the Ld. AR contended that, there was not even an iota of evidence or material referred to in the entire satisfaction note, basis which any prudent person could have inferred that 50% of the trade

advances given by the companies had been received back and utilized by the assessee for his own personal benefit. He also showed us that, even the search action and the post search enquiries didn't reveal any unearthing of any asset or material or information which would correlate with the allegation involving receipt of such huge magnitudes of cash by the assessee in his personal capacity. According to him therefore, the impugned satisfaction note was based purely on hypothesis and it was not backed by any tangible asset or document or books of accounts found in the course of search, which related to or pertained to the assessee. The Ld. AR thus urged us to quash the impugned order(s) passed u/s 153C/143(3) of the Act as the initiation of proceedings u/s 153C of the Act itself stood vitiated in law.

16. The next legal argument of the assessee was that the AYs impugned before us were all unabated assessments and therefore the impugned addition made u/s 56(2)(vii) in all these years as well as long term capital gain added in AY 2014-15 was unsustainable, since it was not based on any incriminating material found in the course of search. The Ld. AR relying upon the decisions of the Hon'ble Delhi High Court in the case of **CIT vs Kabul Chawla (380 ITR 573)**, which has since been affirmed by the Hon'ble Supreme Court in the case of **PCIT vs Abhisar Buildwell Pvt. Ltd. (149 taxmann.com 399),** urged that the addition(s) made, in

absence of incriminating material found in the course of search, deserves to be deleted.

17. The last legal challenge raised by the Ld. AR was only relevant to AY 2014-15 wherein he inter alia objected to the usurpation of jurisdiction u/s 153C of the Act by the AO, without first satisfying the essential condition precedent in the fourth proviso to Section 153A read with Explanation (2) of the Act. It was not in dispute that, the notice for AY 2014-15 was beyond the period of six (6) assessment years preceding the searched year and therefore the AO could have validly issued notice u/s 153C of the Act only when he had in his possession, any incriminating material, which revealed that income represented in the form of 'asset' valued at Rs.50,00,000/- or more, had escaped assessment. The Ld. AR of the assessee showed us that, the term 'asset' was specifically defined in Explanation (2) to the fourth proviso to Section 153A and argued that the AO had nowhere identified or averred to any such unexplained asset in the satisfaction note for him to have validly assumed jurisdiction u/s 153C of the Act. The Ld. AR pointed out that, the only material referred to in the entire satisfaction note was the regular books of accounts of M/s Binny Limited seized from the tally server which was marked as ANN/AA/AEPL/ED/S, which according to him, did not reveal any such 'asset' of the assessee which had escaped assessment. He also pointed

out that, the transactions contained in these books of accounts only contained information relating to M/s Binny Limited or the various concerns to whom advances were given in as much as the contents thereof had no relation to the assessee. The Ld. AR claimed that the contents of the aforesaid seized material could not by any stretch of imagination be construed as unexplained 'asset' of the assessee. The Ld. AR argued that, the AO's case that the alleged cash generated from these transactions was received back by the assessee was based on his own whims, subjective notions and guess work and that such an assumption could not be regarded as discovery of 'unexplained asset' qua the assessee in the course of search, to assume jurisdiction in terms of fourth proviso to Section 153A read with Explanation (2) of the Act.

18. Per contra, the Ld. CIT, DR, Shri M, Murali appearing for the Revenue, supported the action of the lower authorities. According to him, the facts on record revealed that M/s Binny Limited and the various concerns had admitted that the advances given was bogus, which was done to generate cash and therefore according to him, the books of accounts of M/s Binny Limited constituted incriminating material found in the course of search. He reiterated the findings recorded by the Ld. CIT(A) that, the fact that this information contained in the books of accounts itself had a bearing on determination of taxable income of the

assessee which was revealed on the basis of post search enquiries conducted by the Investigating Officer, justified the initiation of proceedings u/s 153C of the Act against the assessee. He further argued that, there was no such pre-requisite set out at the stage of initiation of the proceedings under Section 153C of the Act, that the Revenue is required to show document wise correlation with each of the assessment years which are sought to be reopened.

19. The Ld. CIT, DR further submitted that, the case of the AO, as recorded in the satisfaction note, was the receipt of unaccounted cash by the assessee in lieu of bogus advances given through M/s Binny Limited and MBDL, which according to him, constituted 'asset' within the meaning of Explanation (2) to the fourth proviso to Section 153A of the Act. He thus claimed that, the AO had validly reopened the assessment u/s 153C of the Act for AY 2014-15 in terms of the fourth proviso to Section 153A of the Act and thus urged us to reject this legal challenge raised by the assessee as well.

20. The Ld. AR in his rejoinder submitted that, the regular books of accounts of M/s Binny Limited cannot tantamount to incriminating material in as much as the transactions referred to therein evidently did not relate or pertain to the assessee. In this regard, he relied on the decision of the Hon'ble Bombay High Court in the case of **CIT Vs**

Lavanya Land (P) Ltd (297 ITR 246). He also cited the decision of Hon'ble Delhi High Court in the case of **PCIT vs Index Securities Pvt. Ltd. (86 taxmann.com 84)** wherein it was held that the regular books of accounts cannot be said to constitute incriminating material unearthed in course of search**.** He further pointed out to us that, the AO himself had not referred to these books of accounts of M/s Binny Limited in the impugned assessment order to justify the impugned addition and this fact was also categorically taken note of by the Ld. CIT(A) in his appellate order. This material aspect, according to him, evidenced that the Revenue itself did not treat the regular books of accounts as incriminating material qua the assessee.

21. To ascertain the complete facts, which otherwise was not discernible from the satisfaction note, the Bench had required the Ld. AR to elaborate on the source of funds out of which the advances given by M/s Binny Limited and whether the impugned advances were added in their hands as well. The Ld. AR brought to our notice that, the advances which were given by the companies, M/s Binny Limited and MBDL was out of their own regular tax-paid funds through banking channel. He also explained that, these advances were not claimed as expenditure or deduction at any given point of time by these companies and therefore there was no question of making any addition/disallowance qua the advances given by

them. He explained that, presuming the allegation of the Revenue to be true and if it is assumed that these companies had paid advances which were received back in cash to inter alia incur cash expenses, then also since the source of funds was explained viz., post-tax proceeds from land sale / deposits from joint venture, no addition was otherwise permissible in the hands of M/s Binny Limited u/s 68 to 69C of the Act. The Ld. AR attempted to illustrate his submission with an alternate scenario. He explained that, had the companies, M/s Binny Limited and MBDL not paid the advances to these concerns in lieu of cash, then they would have otherwise simply withdrawn the cash from their bank accounts and either kept it in their cash balance to meet their future cash requirements or spend it for their cash expenses. According to him, the tax consequence in this alternate scenario was akin to the present scenario before us. Like the advances given to various concerns had not been claimed or allowed as deduction, the cash spending out of the cash withdrawn from bank was not allowable as deduction due to the embargo set out in Section 40A(3) of the Act. He thus contended that, if viewed from the lens of income-tax laws alone, the Revenue did not have any case against M/s Binny Limited or MBDL. The Ld. AR further confirmed that no protective or substantive assessment on this issue has till date been made in the hands of M/s Binny Limited, which was not controverted by the Ld. CIT, DR appearing

for the Revenue. According to Ld. AR, the Revenue being well aware that there was no case of escapement of income qua M/s Binny Limited, the AO had made out a fanciful case against the assessee, without there being any incriminating material or statement whatsoever against him, under Section 56(2)(vii) alleging receipt of cash without consideration. He thus urged us that such whimsical action taken by the AO u/s 153C of the Act ought to be struck down.

22. We have heard both the parties and perused the relevant provisions of the Act. Before we advert to the legal issue raised by the assessee, it would first be necessary to take note of the legislation of Section 153C itself. We note that Section 153A/153C of the Act was introduced by the Finance Act, 2003 w.e.f. 01.06.2003. It replaced the provisions relating to block assessment contained in Chapter XIV-B and introduced an altogether new procedure for making assessment u/s. 153 of the Act. The Scheme of assessment u/s 153A/153C is available to the department in addition to all other methods of assessments, revisions and reassessments and each scheme has its distinct set of conditions and stipulations that must be strictly adhered to. The sub-heading of Section 153A of the Act is "*Assessment in case of Search or requisition*" which is a special provision for assessment in case of an assessee against whom search u/s. 132 or requisition under section 132A of the Act is carried out

by the department. Section 153B of the Act prescribes the time limit for completion of assessment u/s 153A and 153C of the Act. Section 153C of the Act bears the heading *"Assessment of income of any other person"* which is a special provision in respect of assessment of income of *"any other person"* (third party) against whom no search u/s. 132 or requisition u/s. 132A of the Act was carried out, provided certain conditions precedents are satisfied as envisaged under Section 153C of the Act; and Section 153D of the Act is the provision regarding approvals if necessary for assessment in case of search or requisition.

23. Section 153A of the Act is a special provision for assessment of the *'searched person'* and Section 153C of the Act is a special provision for assessment of income of *'any other person'* which is a third party who is not searched by the Department but will be assessed u/s. 153A of the Act, provided the AO is satisfied that —

> (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or
>
> (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to a person other than the person referred to in Section 153A.

24. So, from a reading of Section 153A of the Act, it is noted that in case of '*searched person*', the AO is mandated to issue notice for six AYs preceding the year of search in as much as once a person is searched, he is bound to call upon such an assessee to furnish returns of income for

the six preceding AYs. However, where during the course of search u/s 132 of the Act, if it is found that any money, bullion, jewellery or other valuable articles or things seized or requisitioned belongs to or any books of account or documents seized or requisitioned pertains to or any information contained therein relates to *"other than the person"* searched u/s. 153A of the Act *[i.e a third party, in this case the 'assessee']*, then the AO of the '*searched person*' has to first record his satisfaction that the money, bullion, jewellery or other valuable articles or things seized or requisitioned belongs to the *'other person'* or that any books of account or documents seized or requisitioned or any information contained therein relates to the *'other person'*, then the AO of the '*searched person*' shall first prepare a satisfaction note to that effect, segregate the seized material of the *'other person'* from that of the *'searched person*', and then the AO of the *'searched person'* has to hand over the relevant material which belongs/pertains/relates to the *'other person'* to the AO having jurisdiction over such *'other person'* and then the AO of the *'other person'* shall record his satisfaction that, the relevant incriminating material belongs/relates/pertains to the '*other person*' which has a bearing on the determination of the total income of such '*other person*'. As Section 153C is a special provision against an assessee who has not

been searched by the department, the safeguard stipulated by the provisions contained in Section 153C has to be scrupulously followed.

25. It is judicially settled that the recording of this satisfaction note would constitute a jurisdictional fact, in the absence of which no notice u/s 153C of the Act can be validly issued. The rationale behind this exercise stipulated by the Legislature is because, the special provision of Section 153A would ordinarily be triggered only against the persons who are subjected to search u/s. 132 of the Act. However, if any valuables /asset is found in the searched premises which belongs to a third party or books/documents is found which pertain to /relate to a third party, then the third party would be subject to assessment/re-assessment as per Section 153C of the Act. In order to do so, the condition precedent prescribed in Section 153C of the Act by the statute has to be scrupulously followed. It has to be kept in mind that satisfaction of AO before proceeding against *'other person'* who has not been searched cannot be done in a casual manner. The satisfaction of Assessing Officer should be based upon cogent material. The reason for it is that, Section 132(4A)(i) of the Act clearly stipulates that when inter alia any 'asset' or 'books of accounts' or 'document' is found in the possession or control of any person in the course of a search, it may be presumed that such asset / material belongs to such person (the '*searched person*'). The

presumption as to the asset, books of accounts, etc. found during the course of search u/s. 132 or survey u/s. 133A of the Act is also governed by Section 292C(1)(i) of the Act which provides that it belongs to the person from whom the said assets/documents was found. In other words, whenever an asset/document is found from a person who is being searched, the normal presumption is that the said asset/document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or 'satisfaction' that the asset/document in fact belongs/pertains/relates to somebody else viz., *'other person'*. There must be some cogent material available which was unearthed during search with the Assessing Officer before he/she arrives at the satisfaction that the seized asset/document does not belong to the *'searched person'* but to *'other person'*. Surmise and conjecture cannot take the place of *'satisfaction'* and the same interpretation has been given by various Courts.

26. At this juncture, we gainfully refer to the following observations made by the Hon'ble jurisdictional Madras High Court in the case of **Agni Vishnu Ventures Pvt. Ltd. vs DCIT (460 ITR 438)** which are as follows:

"77. The ingredients of Section 153 C are:

(i) Satisfaction of the Assessing Officer who is Assessing Officer of the section 153A notice that money/bullion/jewellery/other valuable article or thing/books of account or documents (incriminating materials) seized/requisitioned belongs to/pertain to or any information contained, relates to, a third party.

(ii) Recording of satisfaction as above.

(iii)Handing over of the incriminating material to the Assessing Officer having jurisdiction over the third party.

(iv) Recording of satisfaction by the Assessing Officer of the third party that the incriminating material has a bearing on the determination of total income of the third party.

(v) Upon condition of recording of the satisfaction of both officers as above, notices be issued to assess/reassess the income of the third party in accordance with the procedure stipulated under Section 153A.

78. In my considered view, there is a vital distinction between the object, intention as well as the express judge of Sections 153A and 153C. Section 153A addresses the searched entity and the procedure set evidently a notch higher for this reason. There is no discretion or condition precedent under Section 153A to the issuance of notice save the conduct of a search under Section 132 or making of a requisition under Section 132A. Upon the occurrence of one of the aforesaid events, it is incumbent upon the office to issue notice under Section 153Ato the searched entity in line with the procedure stipulated.

79. Section 153C however requires the satisfaction of two conditions prior to issuance of notice:

(i) Recording of satisfaction by the Assessing Officer of the searched entities that some of the incriminating materials relate to a third party.

(ii) Recording of satisfaction by the Assessing Officer of the third party that the incriminating materials have a bearing on the determination of the total income of that third party.

80. Notice under Section 153C would have to be issued only upon confront satisfaction of both conditions as aforesaid. To this extent, there is, in my considered opinion, a clear and marked distinction between the provisions of Section 153A and 153C.

The contention of the revenue that a mandate is cast upon the Assessing Officer of the third party to issue notice under Section 153C for all the years comprising the block, mechanically and automatically, is thus rejected.

81. To clarify, it is only where the satisfaction note recorded by the receiving Assessing Officer, i.e., the Assessing Officer of the third party reflects a clear finding that the incriminating material received has a bearing on determination of total income of the third party for 6 assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, that such notice would have to be issued for all the years.

82. It thus flows from the provision that the receiving assessing officer must apply his mind to the materials received and ascertain precisely the specific year to which the incriminating material relates. It is only when this determination/ascertainment is complete that the flood gates of an assessment would open qua those particular years. The issuance of a notice cannot be an automated function unconnected to this exercise of analysis and ascertainment by an assessing officer.

83. The construction of Section 153A and 153C is consciously different and is seen to apply different yardsticks to an entity searched and a third party, such yardstick being more exacting in the case of the former. The process of assessment is demanding and an assessee, once in receipt of a notice, is bound by the stringent procedure under the Act, till finalization of the process.

84. In other words, a Damocles sword appears over the head of an assessee with the issuance of every notice which is laid to rest only upon conclusion of the proceedings; The sword cannot be invoked lightly and except if the statutory condition is satisfied. That is to state, an officer has to analyze and compartmentalize the incriminating material year wise, to arrive at a categoric determination as to the year to which the incriminating material relates and issue notices only for those years.

85. Needless to state these are some situations/issue when the spread of information and the nature of the issue itself might need more, and in-depth probing before such year-wise determination is possible. In such cases, the officer would be well within his right to state the nature of the issue and detail the difficulties that present themselves in precise bifurcation at that stage. This would reflect application of mind and, in my considered view, would serve as sufficient compliance with the statutory condition."

(emphasis supplied)

27. It is therefore noted that, in a case to which Section 153C of the Act applies, the AO of the searched person has to come to a prima facie conclusion that the material handed over to him is likely to implicate and *"have a bearing on the determination of the total income"* of the '*other person*'. However, if the documents/material which are said to relate/pertain to the '*other person*', is found to have "*no bearing on the determination of the total income*" for any particular AY, the AO would stand deprived of the authority to initiate action under Section 153C for that year. Hence, where there is absence of material found from the premises of '*searched person*' which is *"having a bearing on the determination of the total income",* it would constitute the non-fulfilment of a jurisdictional fact, which is a pre-condition to assume jurisdiction u/s 153C of the Act. This is a vital stipulation which is to be met by the AO because if the same is ignored or is treated in a casual or farcical manner, then it would result in assessments coming to be reopened under Section 153C of the Act even though there is no material which relates to/pertains to the *'other person'* or is not having *'any bearing on his total income'* for the impugned AYs. In this regard, we gainfully refer to the following excerpts of the decision of the Hon'ble Supreme court in **Sinhgad Technical Education Society's case (supra)**, wherein their Lordship

took note of the Hon'ble High Court's findings while confirming Tribunals view which is as under:—

> "6. The tribunal has found that incriminating material seized and stated to be pertaining to all six assessment years did not establish any co-relation document-wise with the assessment year in question. In other words, the tribunal concluded that the present matter indicates that the issue of notice could be on the basis that there is specific incriminating information in possession of the Assessing Officer. It is in these circumstances that the tribunal found and as indicated in paragraph 8 of the impugned order that the revenue's assertion that the Assessing Officer is empowered under the statute to assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted and therefore the satisfaction which is recorded in the satisfaction note is enough, is erroneous. Therefore, the notice cannot be upheld and such stand of the revenue cannot be accepted. The reasons, therefor are to be found in paragraph 9 and 10 of the impugned order. If certain items pertain to assessment year 2004-05 or thereafter then it cannot be assumed, that the documents seized or incriminating material giving information are specific and to all assessment years. The tribunal found that they were concluded assessments. They could not have been disturbed. The documents in question are neither incriminating ones nor unaccounted transactions of the assessee. They also did not relate to the four assessment years. It is in these circumstances that the tribunal found that it will not be possible to uphold the stand of the revenue that overall approach in matters of concealment by the group assessee and all the discoveries of the search on Shri Navale and it concerns, will have to be taken into account while forming the satisfaction. The satisfaction note was very closely examined and the reasons assigned by the Assessing Officer were found to be silent about the assessment year in which specific incriminating information or unaccounted or undisclosed hidden information was discovered or seized by the revenue from the assessee. In the circumstances, the general satisfaction and as recorded in the note is not enough. The tribunal has found that with regard to cash and jewellery, the explanation of the assessee was that he had agricultural properties and derived agricultural income. That income was utilised to acquire jewellery that was belonging to him and his family. With regard to cash and stated to be recovered from the students for granting admissions, we do not find that any inquiries were made. There is absolutely nothing to indicate as to in which educational courses, the education is imparted and institution-wise. Whether the admissions are

granted to the technical courses merit-wise or on the basis of marks obtained in XIIth standard HSC exam. If any fee structure is approved and cash component is therefore collected over and above the sanctioned fees are matters which ought to have been gone into and there cannot be a general or vague satisfaction as is relied upon.

9. We are of the opinion that the tribunal's conclusion cannot be termed as perverse and given the above-noted factual background. None of these appeals raises any substantial question of law. They are accordingly dismissed. No costs."

28. And the aforesaid finding of Hon'ble High Court has been affirmed by the Hon'ble Supreme Court 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.

19. We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was

time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy."

(emphasis supplied)

29. It is thus apparent that only when the transmitted documents and material reaches the desk of the AO of the '*other person*' that he becomes empowered to initiate action under Section 153C of the Act. This is evident from a plain textual reading of the provision which speaks of the commencement point, being the handing over of documents or assets seized or requisitioned to the AO of the "*other person*" and in turn proceeding to issue notice to assess or reassess the income of the non-searched entity in accordance with Section 153A. However, the initiation of action under Section 153C is significantly premised upon the AO being satisfied that the books of account or documents and assets seized or requisitioned having *"a bearing on the determination of the total income of such other person"*. This is manifest from the provision employing the expression *"if, that Assessing Officer is satisfied"*. It would therefore necessarily follow that the issuance of a notice under Section 153C is clearly not intended to be an inevitable consequence to the receipt of material by the jurisdictional AO and that the AO before commencement of action under Section 153C is also obliged to record a valid satisfaction note that the material so received would *"have a bearing on the determination of the total income of such other person".* This in our

considered view is an aspect of significance and constitutes a jurisdictional fact. It may be kept in mind that the usage of the expression *"have a bearing"* would necessarily lead one to conclude that the mere discovery of books, documents or assets which belong/pertain/relate to the *'other person'* would not justify the initiation of proceedings under that provision. Upon receipt of the relevant seized material, the AO of the *'other person'* must additionally be satisfied that those are likely to have an impact on *"the determination of the total income"*. This leads us to the inevitable conclusion that the initiation of action u/s 153C of the Act would have to be founded on a formation of satisfaction by the AO of the '*other person*' that the material handed over and received pursuant to a search relates to such *'other person'* and is likely to influence the *"determination of the total income"* which would be of relevancy for the purposes of assessment or reassessment.

30. We in this regard bear in mind the well settled distinction which the law recognizes between the existence of power and the exercise thereof. Section 153C enables and empowers the jurisdictional AO to assess or reassess the six AYs' or the *'relevant assessment year'*. The Act thus sanctions and confers an authority upon the AO to exercise the power placed in its hands for up to a maximum of ten AYs. Despite the conferral of that power, the question which would remain is whether the facts and

circumstances of a particular case warrant or justify the invocation of that power. Ultimately, Section 153C is concerned with books, documents or articles seized in the course of a search and which are found to have the potential to impact or have a bearing on an assessment. Therefore, and unless the AO is objectively satisfied that the material gathered relates or pertains to the 'other person' and could potentially impact the determination of total income, it would be unjustified in mechanically reopening or assessing all the AYs in question.

31. In this context, we take note of the pertinent observations made by the Hon'ble Delhi High Court in the case of **CIT v. RRJ Securities Ltd (380 ITR 612)** wherein the Court held that merely because an article or thing may have been recovered in the course of a search which belongs to *'other person'* would not mean that the assessments of the *'other person'* has to *'necessarily'* be reopened under Section 153C unless the material obtained is shown to have a bearing on the determination of the total income. The Court laid stress on the existence of material that may be reflective of undisclosed income being of vital importance. The relevant portion of the judgment is as follows:-

> "33. The record slip belongs to the assessee and, therefore, the action of the Assessing Officer of the searched persons recording that the same belongs to the assessee cannot be faulted. However, the question then arises is whether the Assessing Officer of the assessee was justified in taking further steps for reassessing the income of the assessee in

> respect of the assessment years for which the assessments were concluded and in respect of which the seized document had no bearing. In our view, the same would be clearly impermissible as the seized material now available with the Assessing Officer, admittedly, had no nexus with those assessments and was wholly irrelevant for the purpose of assessing the income of the assessee for the years in question. Merely because a valuable article or document belonging to an assessee is seized from the possession of a person searched under section 132 of the Act does not mean that the concluded assessments of the assessee are necessarily to be reopened under section 153C of the Act. In our view, the concluded assessments cannot be interfered with mechanically and solely for the reason that a document belonging to the assessee, which has no bearing on the assessments of the assessee for the years preceding the search, was seized from the possession of the searched persons.
>
> ….
>
> 36. The decision in SSP Aviation (supra) cannot be understood to mean that the Assessing Officer has the jurisdiction to make a reassessment in every case, where seized assets or documents are handed over to the Assessing Officer. The question whether the documents/assets seized could possibly reflect any undisclosed income has to be considered by the Assessing Officer after examining the seized assets/documents handed over to him. It is only in cases where the seized documents/assets could possibly reflect any undisclosed income of the assessee for the relevant assessment years, that further enquiry would be warranted in respect of those years. Whilst, it is not necessary for the Assessing Officer to be satisfied that the assets/documents seized during search of another person reflect undisclosed income of an assessee before commencing an enquiry under section 153C of the Act, it would be impermissible for him to commence such enquiry if it is apparent that the documents/assets in question have no bearing on the income of the assessee for the relevant assessment years."

32. We also refer to the decision of the Hon'ble Supreme Court in the case of **Abhisar Buildwell (supra)** wherein it has been held in unequivocal terms that absent incriminating material, the AO would not be justified in seeking to assess or reassess completed assessments. The same position would prevail in context of Section 153C of the Act as well.

Here too, the AO is mandated to firstly identify the AYs' to which the material gathered in the course of the search may relate to and consequently those assessments would face the spectre of Section 153C of the Act. The additions here too would have to be based on material that may have been unearthed in the course of the search or on the basis of material requisitioned. The statute thus creates a persistent and enduring connect between the material discovered and the assessment that may be ultimately made. All the above discussed judgments thus reinforce the requirement of incriminating material having an ineradicable link to the estimation of income for a particular AY in as much as it reinforces our view that notice u/s 153C can be validly issued only when the AO records his objective satisfaction that he has incriminating material pertaining to or relating to the 'other person' for the relevant AYs and which may be concerned with their disclosed and undisclosed income. Absent any material qua the *'other person'* that may either cast a doubt on the estimation of total income for a particular year or years, the AO would not be justified in invoking its powers conferred by Section 153C of the Act. It would only be consequent to such satisfaction being reached that a notice u/s 153C of the Act would be liable to be issued.

33. It also has to be kept in mind that, when the challenge is to the validity of the satisfaction note basis which the AO has usurped

jurisdiction u/s 153C of the Act, we have to examine the satisfaction recorded by the AO as it stands and no new words can be imported or read into his 'satisfaction note' nor can the Revenue now supplement or improve upon the satisfaction note. For this, we draw strength from the jurisprudence available in the context of examination of the reasons recorded / satisfaction drawn by the AO for re-opening the assessment u/s. 147 of the Act. It is settled law that reasons as recorded for reopening the reassessment are to be examined on a 'stand-alone' basis. Neither anything can be added to the reasons so recorded nor anything be deleted from the reasons so recorded. The Hon'ble Bombay High Court in the case of **Hindustan Lever Ltd. v. R.B. Wadkar [2004] 137 Taxman 479/268 ITR 332** inter alia, held "*it is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No addition can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded by him. He has to speak through the reasons."* Their Lordships added that *"the reason recorded should be self explanatory and should not keep the assessee guessing for reasons. Reasons provided the link between the conclusion and the evidence….."*. It is a settled law that the reasons recorded cannot evolve or be allowed to grow with age and ingenuity. The reasons which are recorded cannot be supplemented by

affidavits. If the reasons are allowed to be added, subtracted or deleted, then by the time the matter reaches the Court/Tribunal, the Assessing Officer would be allowed to change his reasons to believe escapement of income. The Hon'ble Supreme Court in **New Delhi Television Ltd. (NDTV), v. DCIT [2020] 116 taxmann.com 151(SC)** has held that the Assessing Officer is not allowed to alter his reasons, which must be considered only based on their recordings. In our considered view, this ratio decidendi of the Hon'ble Supreme Court is applicable with equal force to the satisfaction note prepared by the AO for assuming jurisdiction to issue notice under section 153C of the Act.

34. Having regard to the above laid down well settled legal principles, we now revert back to the facts involved in the case before us. As noted earlier, search action was conducted upon M/s Binny Limited on 09.11.2017 and in connection & subsequent thereto, the AO issued notice(s) under Section 153C of the Act dated 08.02.2021 requiring the assessee to submit his return of income for AYs 2014-15 to 2018-19. It is noted that, the issuance of the notice was preceded by a satisfaction note drawn up by the AO and since the same would have a material bearing on the legal challenge raised before us, the same is reproduced herein below:

"**08/02/21** - In connection with search and seizure operation u/s 132 of the I.T. Act, 1961 was initiated in the case of M/s. KLP Projects Pvt. Ltd. On 09.11.2017, the premises of M/s. Binny Ltd at No. 1, Cook's Road, Perambur, Chennai was also covered on 09.11.2017 by executing warrant of authorization u/s 132 of the I.T. Act. Premises of Shri A. Nandagopal, Managing Director and Shri M. Nandagopal, Executing Chairman of M/s. Binny Ltd were also covered by executing warrant of authorization u/s 132 of the I.T. Act, 1961 on 09.11.2017. During the course of search and seizure operation, certain incriminating books / documents and electronic devices were found and seized from the premises of Binny Ltd as well as from the premises of A. Nandagopal and M. Nandagopal.

Shri M.Nandagopal (PAN-AADPN2678L), residing at No 6, 6th street, Rutland Gate road, Chennai-06 is the Executive Chairman of M/s.Binny Ltd and M/s M/s.Mohan Breweries and Distilleries Ltd (MBDL, in short). He holds nearly 45% shares in Binny Ltd and nearly 71% shares in MBDL. His son Shri Arvind Nandagopal (PAN- AAFPA6259G), also living in the same address is the Managing Director of both the companies. He holds nearly 4% shares in Binny Ltd and nearly 8.7% shares in MBDL.

A search and seizure operation u/s 132 of the I.T. Act, 1961 was initiated in the case of M/s.KLP Projects Private Ltd and others on 09.11.2017 during which the premises of M/s Binny Ltd at No 1, Cook's road, Perambur, Chennai was also covered. During the course of search & seizure operation, certain incriminating books/documents and electronic devices were found and seized.

M/s Binny Limited received an amount of Rs 490 crores (inclusive of Rs 120 crores on-money received in cash) from M/s KLP Projects Private Ltd and others (formerly known as M/s Landmark Barracks Projects Pvt. Ltd towards sale of its land in Barracks road, Perambur, Chennai. The agreement for the deal was signed on 17.10.2013 and the funds were received during the period FY 2013-14 to FY 2016-17. Further, Binny Ltd entered into Joint Venture agreement with SPR group on26.06.2015for developing its another land parcel at Cook's road, Chennai and towards this it received an amount of Rs 250 crores as security deposit.

During the course of search in the premises of Binny Ltd, its books of accounts maintained in Tally server was imaged and seized vide ANN/AA/AEPL/ED/S. On perusal of the seized books of accounts, it was seen that the funds received from M/s KLP Projects Private Ltd and SPR group were immediately advanced to various concerns as tabulated below and the same were accounted as 'textile advance'

S.No	Company Name	Rs. (In crores)
1	Nurture Traders Private Limited	41.18
2	Premium Steel and Alloys Private Limited	15.00
3	Parshvi Global Interlinks Private Limited	41.15
4	Modest Imperia Trading Private Limited	14.99
5	Glintz Ventures Private Limited	19.00
6	Mass International	56.02

7	Sunbright Designers Private Limited	25.22
	Total	212.56

Investigations during the course of search revealed that none of the concerns existed /functioned from the given addresses. Even the Directors of the above concerns were not available in the given addresses. Further during the course of search no supporting documents were found for any movement of goods. This established the fact that none of the above concerns had any real business and there was no actual movement of any goods.

When the facts were confronted with Shri Arvind Nandagopal, MD of M/s Binny Limited, he, in his sworn statement given on 07.03.2018, has admitted that the advances made by both Binny Ltd and MBDL are bogus advances which was used to generated unaccounted cash. The relevant portion of his sworn statement is reproduced below.

> **Q.No.4** During the course of post-search investigation, it has been found that the above mentioned companies are shell-companies and they did not do any business at all. Please explain what is the reason for payments made to these companies.
>
> **Ans.** In order to meet unaccounted expenses related to M/s. Binny Limited, We were forced to generate unaccounted cash from the business. I confirm that the Unaccounted cash was generated through the following companies :-

S.No.	Company Name	Rs. (In Crores)
1	Nurture Traders P Limited	41.18
2	Premium Steel and Alloys P Ltd	15.00
3	Parslivi Global Interlinks **P** Ltd	41.15
4	Modest Imperia Trading **P** Ltd	14.99
5	Sunbright Designers P Ltd	25.22
6	Mass International	13.18
Total		150.72

Further in the case of M/s. Mass International, the amount shown as transferred in the books of M/s. Binny Limited is Rs.56.02 crores. However, out of the amount, only Rs.13.18 crores was received back as unaccounted cash and the balance amount of Rs.42.85 crores was actually transferred to our sister company M/s. Mohan Breweries & Distilleries Limited but debited to M/s. Mass International. Ledger copies of M/s. Mass International and" Advance to MBDL (Others)" are submitted.

M/s. Glintz Ventures Private Limited, after receiving Rs.19 crores from M/s. Binny Limited, have transferred back to our sister company M/s.Mohan Breweries & Distilleries Limited. These payments were made as advances. Ledger copies are submitted in separate sheets."

Q. No. 5. As stated by you in your reply to previous question, M/s. Binny Limited have incurred unaccounted cash expenses of Rs.150.72 Crores which has been booked as "Trade Advance" in the books of M/s. Binny Limited. Your attention is drawn to Section 37(1) of the Income Tax Act, 1961. As per the Section, unaccounted cash expenses incurred in the business is to be disallowed. Please offer your comment.

Ans. M/s. Binny Limited have given trade advances which has been used to generate unaccounted cash, out of the money / income accounted for which full tax has already been paid. Now, we need to take legal experts advice on the treatment of the expenses in the books of accounts.

Q.No. 6.Who facilitated generation of cash through these shell companies?

Ans. The transactions were facilitated by Shri Bhawarlal Jain, Director of M/s Sanklecha Infr Projects Pvt. Ltd. and Shri Manish Parmar of M/s. KLP Projects Pvt. Ltd. I have transferred the money from m/s. Binny Limited to various companies as per his instruction and received the cash back as per our agreement after deducting his commission.

Q.No. 7. What was the commission allowed to the facilitator for their service?

Ans. We paid commission @ 1% and the commission amount works out to Rs. 1.72 Crores.

Shri Bhawarlal Jain, who facilitated these transactions was also covered during search action and he also in his sworn statement dated 07.03.2018 that unaccounted cash was generated through bogus advances. The relevant portion of his sworn statement is reproduced below:-

"Q.No.3 In his sworn statement, Shri Aravind Nandgopal, M.D. of M/s. Binny Limited has stated that M/s. Binny Limited have given loans to the following companies of yours and your brother Shri Maneesh Parmar and received the cash back.

S.No.	Company Name	Rs. (In Crores)
1	Nurture Traders P Limited	41.18
2	Premium Steel and Alloys P Ltd	15.00
3	Parshvi Global Interlinks P Ltd	41.15
4	Modest Imperia Trading P Ltd	14.99
5	Sunbright Designers Pvt Ltd	25.22
6	Mass International	13.18
	Total	150.72

What do you want to say about this?

Ans. Yes sir. I agree that during the F.Y. 2016-17, the companies shown at Serial Numbers 1 to 5 above, have received loans through banking channel from M/s. Binny Limited to the tune of Rs.137.54 crores which was paid back to M/s. KLP Projects Private Limited as unsecured loans and cash generated from M/s. KLP Projects Private Limited was paid back to M/s. Binny Limited.

For this arrangement, we have not received any commission. As far as company shown at serial number 6 is concerned, an amount of Rs.13.18 crores was converted into cash through market company and was paid back to M/s. Binny Limited for which I received commission @ 0.5% which works out to Rs.6.59 lakhs and I offer the same for taxation for the Asst Year 2017-18.

Further, the director / share holder of M/s Sun bright Designers Private Limited Shri Shanmugavelu was confronted with the above facts and he has also confirmed the above fund routing and cash generation. The relevant portion of statement taken from Shri Shanmugavelu is given below for ready reference:-

"Q.No.8 Did you enter into any business transaction with Shri Maneesh Parmar and/or with Shri Aravind Nandagopal?

Ans. During the year 2014-15, our company was facing severe financial crisis and I had been frequenting the bank servicing the loan. There, once Shri Maneesh Parmar approached me with a proposal. As per his proposal, crores of rupees would be sent to my bank account at regular intervals and I had to transfer the amount the very same day to the bank accounts of the companies that he would point out and for this service, I would get around 0.1% of the transacted amount, as my commission and I could deduct the commission amount and pass the balance amount to the bank accounts pointed out by him. As our company was dire need of cash, I readily agreed to this proposal. Thus, I had entered into banking transactions with him.

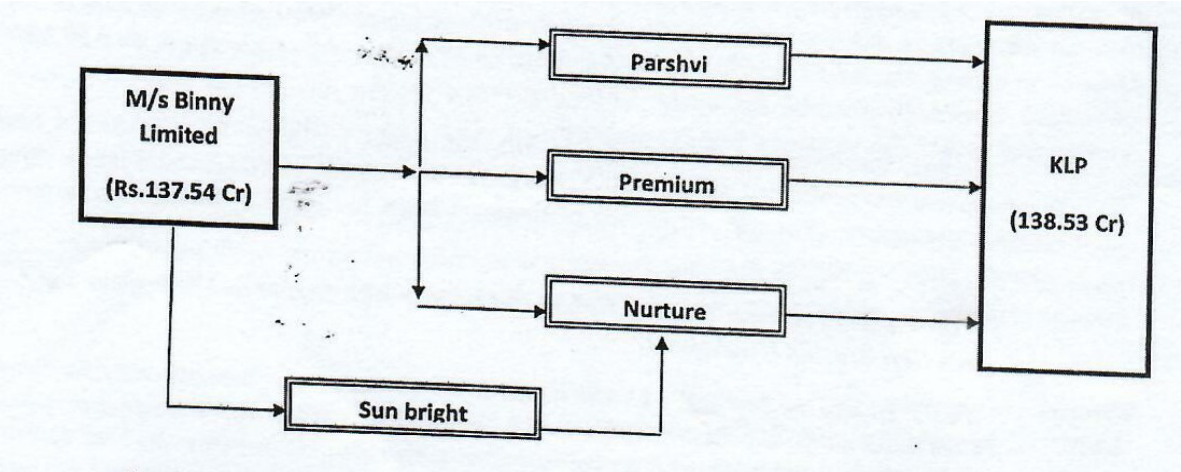
After this discussion, Shri Maneesh Parmar took me to the office of M/s. Binny Limited at Cooks Road, Perambur, Chennal and introduced me to the M.D. of the company Shri Aravind Nandagopal. After a brief meeting, I left their office. From then on, from sth December 2014 to 11th December 2014, six times cash was sent to my company M/s. Sun Bright Designers Private Limited's bank account No.909020039586056 maintained with Axis Bank and every time the amount was transferred into our company's bank account, Shri Krishnamurthy, CFO of M/s. Binny Limited used to call me over phone and inform me about the cash being transferred into our company's above mentioned bank account and request me to transfer the amount, after deducting my commission, to the Current Bank Account of M/s. Nurture Traders Private Limited maintained with State Bank of India (No.33786616000). Accordingly, 1, being the authorized signatory of my company's bank account, transfer the amount to that account through RTGS. Thus, during these six days, our company received totally around Rs.40,65,12,705 from M/s. Binny Limited and then we transferred Rs. 40,24,87,820/- to M/s. Nuture Traders Private Limited and the balance amount of Rs.40,24,879/- was commission received by my company.

For documentation, we raised Fabric Sales Invoice against the amount received from M/s. Binny Limited and against payment to M/s. Nurture Traders Private Limited, we received the Fabric Purchase Invoice."

Further during the post search proceedings various efforts to identify the directors of these shell companies, Shri Dinesh Kumar, Shri Manoj Kumar, Shri Ajit Kumar Ojha proved in vain. Shri Bhawarlal Jain in his sworn statement dated 07.03.2018, has admitted that it was he who had operated these shell companies by obtaining the KYC details of the above mentioned persons and the directors are only name lenders for the purpose of KYC. The relevant portion of his statement figuring in reply to Q.no6, is reproduced below:-

"I have tried, in the past, to trace them but all my efforts went in vain. Further, I submit that they were only name lenders and the affairs of the companies were managed by me only. "

It is clear from the above facts that M/s Binny Limited transferred funds to M/s KLP Projects Private Limited through various shell companies and M/s KLP Projects Private Limited, which was generating unaccounted cash by way of on-money received from customers, paid equivalent amount in cash to the promoters of M/s Binny Limited. The fund flow scheme is depicted below:-



In addition to the above, part of the funds received by Binny Ltd from KLP Projects P Ltd and SPR group was transferred to its group concern M/s. MBDL and here also the same strategy was adopted. On receipt of money, MBDL immediately transferred significant part of the funds to various concerns as tabulated below:-

Sr.No.	Company Name	Rs.(in Crores)
1	M/s.Vetri Solutions	17,23,75,000
2	M/s. Superior Sales Corporation	3,50,00,000
3	M/s.Saheli Exports Private Limited	5,40,000
4	M/s.Padilite Traders	2,82,00,000
5	M/s.Global Imoex	I,40,00,000
6	M/s.Premium Steels and Alloys Private Limited	3,52,84,794
7	M/s.Millenium Corporation	6,I1,50,850
8	M/s.GI Exim Private Limited	2,33,I1,369
9	M/s.Parmar Shelters and Infra Private Limited	25,55,43,369
Total		62,54,05,382

Here also enquiries revealed that none of the concerns existed/functioned from the given addresses. Even the Directors of the above concerns were not available in the given addresses.

When the above facts were confronted with Shri Aravind Nandagopal, he similarly accepted in his sworn statement dated 07.03.2018 that they were bogus advances made for the purpose of generating unaccounted cash. The relevant portion of his sworn statement is reproduced below:-

Q.No. 8. Similaly, in the case of M/s Mohan Breweries and Distilleries Limited also, there is an outflow of Rs.62,54,05,382/- to various companies as shown below:

SI.No.	Company Name	Rs. (in Crores)
1	M/s.Vetri Solutions	17,23,75,000
2	M/s. Superior Sales Corporation	3,50,00,000
3	M/s.Saheli Exports Private Limited	5,40,000
4	M/s.Padilite Traders	2,82,00,000
5	M/s.Global Imoex	1,40,00,000
6	M/s.Premium Steels and Alloys Private Limited	3,52,84,794
7	M/s.Millenium Corporation	611,50,850
8	M/s.GI Exim Private Limited	2,33,11,369
9	M/s.Parmar Shelters and Infra Private Limited	25,55,43,369
Total		62,54,05,382

What is the basis for transfer of such amount to the above mentioned companies?

Ans. Sir, I confirm that I have made the above payments from m/s. Mohan Breweries and Distilleries Limited to various companies to the tune of Rs.62,54,05,382/-Excepting the companies M/s. GI Exim Private Limited and M/s. Parmar Shelters and Infra Private Limited, payments totaling Rs.34,65,50,644/- were made to generate unaccounted cash to meet out the incidental expenses incurred for running the liquor business.

From the above facts it is firmly established that the Principal officers of Binny Ltd and MBDL namely Shri M.Nandagopal and Shri Aravind Nandagopal have generated unaccounted cash totaling to Rs 185.37 crores (150.72+34.65) by extended bogus advances to various shell companies. However when asked about documentary evidences relating to the utilization of these unaccounted ca.'n. Shri Arvind Nandagopal, MD of the company stated in response to Q.10 of his sworn statement recorded on 07.03.2018, that:

> "...In the case of M/s Binny Limited, major incidental expenses were spent for land approval cost paid to the various agencies. Further expenses were incurred in vacating the labourers in Binny Land located in Perambur Barracks Road, Chennai. The company does not maintain any ledger or account for such cash payments."

Similarly, he didn't give any documentary proof for his claim pertaining to MBDL

It is proved beyond doubt that the Principal officers of Binny Ltd and MBDL have generated unaccounted cash and hence the onus is on them to substantiate with documentary/supporting evidence of how the same was spent. However they have failed to discharge their onus and hence the entire unaccounted cash generated amounting to Rs.185.37Crores should be assessed substantively in the hands of the key persons i.e. Shri Arvind Nandagopal, Managing Director and Shri M. Nandagopal, Executive Chairman (in proportion to their shareholding) under the head 'Other Income' and protectively in hands of the companies vis M/s Binny Limited and MBDL. The unaccounted cash received shall the taxed in the respective years in which such bogus advances were made.

I am satisfied that the seized documents (Electronic Device) pertains and information contained therein relates to M/s Binny Ltd and the transaction has tax implication in the hands of Shri A. Nandagopal, Managing Partner of M/s Binny Ltd.

As per the provision of section 153C, where the Assessing Officer is satisfied that:-

- Any money, bullion, jewellery or other valuable article or things, seized or requisitioned belongs to; or

- Any books of account or documents seized or requisitioned, pertains or pertain to, on any information contained therein, relates to,

A person other than the person referred to in section 153A, then the books of account, documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person.

Further, as per the amendment made by the Finance Act, 2017 with effect from 01.04.2017 to the section 153C of the I.T. Act, in the case of a person other than the person refer to in section 153A, Assessing Officer shall proceed against each such other person and issue notice and assess or re-assess the income of the other person in according with the provision of section 153A for Six Asst. Years immediately preceding the Asst. Year relevant to the previous year in which search is conducted or requisition is made and for the relevant Asst. Year or Years referred to in sub section 1 of section 153A.

The seized documents received from the ACIT, Central Circle 2(1), are carefully perused. On perusal of the seized material received, I am satisfied that the documents seized pertains to and the information contented there in relates to Shri A. Nandagopal, which have a bearing on the determination of total income of Shri A. Nandagopal and as per the amendment made by the Finance Act, 2017 with effect from 01.04.2017 to the section 153C of the I.T. Act, notice u/s 153C to be issued in the case of the assessee Shri A. Nandagopal for the A.Y. 2014-15.

In view of the facts stated above, notice u/s. 153C is to be issued for the A.Y. 2014-15."

35. Having perused the above 'satisfaction note', it is observed that, the Revenue has referred to books of accounts marked as Annexure -

ANN/AA/AEPL/ED/S seized from the premises of searched person, which in their view, related or pertained to the assessee and contained information which had a bearing on his total income. The legal challenge raised by the assessee is that, the aforesaid seized material which had been referred to by the AO to justify the assumption of jurisdiction under Section 153C of the Act in the case of the assessee, neither related nor pertained to the assessee and therefore the 'satisfaction note' recorded by the AO and the consequent issue of notice u/s 153C of the Act stood vitiated in law. From the material placed before us, it is observed that, a search was conducted upon M/s KLP Projects Pvt. Ltd. on 09.11.2017 wherein it was gathered that the said company had entered into an agreement for sale to acquire land parcels from M/s Binny Limited on 17.10.2013. Consequently, a search was also conducted upon M/s Binny Limited on the same date and it was found that the consideration paid through banking channel was recorded in their regular books of accounts. It was further observed that, M/s Binny Limited had also entered into another joint venture with M/s SPR Group, pursuant to which it was in receipt of security deposit of Rs.250 crores. It was the regular books of accounts of M/s Binny Limited which had been seized by the Investigating Authorities, and was marked as Annexure - ANN/AA/AEPL/ED/S. Later on, the Investigating Officer gathered from these books of accounts that, M/s

Binny Limited and MBDL had inter alia paid sums to seven (7) entities by way of advance for purchase of fabrics, which was suspected to be bogus. Based on post search enquiries, which we shall discuss in the later paragraphs, the AO was of the view that, the assessee had received back cash in lieu of the bogus advances given by M/s Binny Limited and MBDL, which was to be brought to tax in his hands. Hence, the first document which is to be examined is the impugned seized material i.e. 'books of accounts' of M/s Binny Limited maintained in the tally software, and whether it can be regarded as material which related or pertained to the assessee having bearing on his total income, for the AO to have validly assumed jurisdiction u/s 153C of the Act.

36. As rightly pointed out by the Ld. AR Shri Ramakrishnan, we find that the impugned seized material constitutes the regular books of accounts of M/s Binny Limited and does not contain any information which relates or pertains to the assessee. It is observed that, the transaction involving advances given by M/s Binny Limited and MBDL were between these two companies and seven (7) entities conducted through banking channel and the regular books of accounts referred to in the 'satisfaction note' was the ledgers of these seven parties. The entries in these ledgers /books of accounts are noted to be relating/pertaining to these seven (7) parties. It is noted that, these regular books of accounts neither make

any reference to the assessee, nor of any transaction entered into by the assessee, which could go on to justify the assumption of jurisdiction by the AO under Section 153C of the Act.

37. It is observed that though the Ld. CIT(A) acknowledged that the AO later on himself had not mentioned or referred to this impugned seized material in the assessment order, but he was of the view that, the said material which contained information of trade advances relates to the assessee. We however are unable to countenance this view expressed by the Ld. CIT(A). As noted above, the impugned seized material constituted regular books of accounts of M/s Binny Limited and the concerned ledgers were the record of their transactions involving payment of advances through banking channels to seven entities. Clearly, the said material could not be said to 'relate' to the assessee-individual. We find the reliance placed by the Ld. CIT(A) on the decision of the Hon'ble Supreme Court in the case of **CIT v. Mukundray K Shah (160 Taxman 276)**, to justify that the regular books of accounts of M/s Binny Limited can be treated as incriminating material which related / pertained to the assessee, to be factually distinguishable. The decided case involved a short question of application of Section 2(22)(e) of the Act in the hands of the shareholder of a closely held company, which had advanced sums to concerns in which the assessee was substantially interested. We do not

see any relevance of this judgment to decide the question of validity of assumption of jurisdiction u/s 153C of the Act before us.

38. We are conscious of the provisions of Section 153C of the Act, as was originally introduced by the Finance Act 2003, which prescribed a stronger safeguard for persons who had not been searched viz., the seized material forming the basis of the satisfaction note must 'belong' to the 'other person'. It was judicially held that, where any seized document of the searched person simply 'pertains to' or 'relates to' the 'other person' but does not 'belong' to the latter, it would not be sufficient to assume jurisdiction u/s.153C of the Act. It was with effect from 01.06.2015 that, the provisions of Section 153C of the Act was amended and it was prescribed that, even if the seized material of the searched person or the information contained therein 'related to' or 'pertained to' the 'other person' which had a bearing on his total income, the AO could invoke jurisdiction u/s.153C of the Act. The essential jurisdictional requirement which continued to remain for assumption of jurisdiction u/s 153C of the Act, that the relevant seized material of the searched person must 'relate to' or 'pertain to' the 'other person' viz., the assessee. The existence of this jurisdictional fact is of vital importance. One cannot overlook the same or deal with its existence in a casual manner. It is imperative for the AO to speak through his 'satisfaction note' and identify

the specific material which was seized from the premise of the *'searched person'*, which according to him not only pertains to or relates to the *'other person'* viz., the assessee, but also has a bearing on his total income. As held earlier, the contents of the satisfaction note are to be examined on a stand-alone basis and no new words can be imported into the same nor can the Revenue seek to amplify their reasons later on. It is noted that in the impugned satisfaction note, there is a bald reference to the books of accounts maintained by M/s Binny Limited in the tally software which was imaged and seized vide. ANN/AA/AEPL/ED/S, and the AO observes that it was seen from these books of accounts that the funds received from M/s KLP Projects Pvt. Ltd. & M/s SPR Group were immediately advanced to various concerns by M/s Binny Limited. It is prima facie evident that, the AO has not made out any case as to how he was satisfied that these 'books of accounts' related or pertained to the assessee or contained any information which 'related to' or 'pertained to' the assessee. Rather, the AO himself notes that the books of accounts revealed that funds were advanced by M/s Binny Limited to several concerns. In our considered view therefore, the impugned material i.e. ANN/AA/AEPL/ED/S which was taken to be the material relating/ pertaining to the assessee by the AO / Ld. CIT(A) was factually misplaced and unjustified.

39. In support of our above view, we gainfully rely on the decision of the Hon'ble Bombay High Court in the case of **CIT v. Lavanya Land (P) Ltd (supra)** against which SLP has been dismissed by the Hon'ble Supreme Court. In the decided case also, the seized documents relied upon by the AO to assume jurisdiction u/s 153C of the Act were not in name of assessee and therefore it was held that no action could have been undertaken against the assessee under section 153C of the Act, more particularly when the alleged amounts inferred from the seized documents were not supported by any actual cash passing hands. The relevant excerpts from the judgment of the Hon'ble High Court are as under:-

> "20. The Tribunal noted the grounds of Appeal. It also noted the facts pertaining to the search and seizure action under Section 132 and the statement of Dilip Dherai. The Tribunal noted the fact that the entire land acquisition was looked after by Central Leadership Team of which Mr. Dilip Dherai, Mr. Anand Jain, Mr. Sanjay Punkhia and Mr. Ajit Warthy are key members. The Tribunal also referred to the seized documents. The Tribunal then referred to the order passed by the Commissioner of Income Tax (Appeals). Then the Tribunal noted the arguments of both sides. These arguments were noted in great details. Then, the Tribunal, in paragraph 18 and 19, held as under :
>
> "18. Thus it is clear that before issuing notice u/s. 153C, the primary condition has to be fulfilled and which is that the money, bullion, documents etc., seized should belong to such other person. If this condition is not satisfied, no proceedings could be taken u/s. 153C of the Act. The seized documents marked as page 1 & 2 or our order do not belong to the assessee but were seized from the residential premises of Shri Dilip Dherai. It is not the case of the Revenue that the impugned documents are in the handwriting of the assessee. At this stage, it would be fair to the Revenue that it cannot be in the handwriting of the assessee since the assessee is a legal person, so to

> extend our observation, the seized documents are not even in the handwriting of any person related with the assessee because Shri Dilip Dherai is neither a Director nor a shareholder/member nor even an employee of the assessee company. We may mention at this stage that the provisions of the Indian Evidence Act are not strictly applicable to the proceedings under the Income Tax Act, but the broad principles of law of evidence do apply to such proceedings. Further an entry in the books of account maintained in the regular course of business is relevant for the purpose of considering the nature and impact of a transaction, but noting on slip of papers or loose sheet of papers are required to be supported/ corroborated by other evidence. There is also a distinction between loose papers found from the possession of assessee and similar documents found from a third person. In the present case, impugned documents were not found from the possession of the assessee but was found from the possession of a third person i.e. Shri Dilip Dherai. Mere mention of the names of the villages where the companies may have purchased lands would not give any basis to assume/presume/surmise that the name of the companies are mentioned in the impugned documents. The very foundation of Sec. 153C has been shaken by not fulfilling the condition precedent for the issue of notice. It is the say of the Ld DR that in the present case there is no need for recording of the satisfaction. If this plea of the DR is accepted then the legislative intent of inserting sec. 153C in the Act would get defeated because the AO will get unstoppable powers to reopen assessments for 6 year in the case of the ' Other Person ' without recording any basis [satisfaction] for his action. Therefore this plea of the Ld DR cannot be accepted.
>
> 19. Considering the entire facts and circumstances in the light of the impugned seized documents, we have no hesitation to hold that action taken u/s. 153C of the Act is bad in law."

40. At this point, we also gainfully refer to the decision of the Hon'ble Delhi High Court in the case of **CIT v. Index Securities Pvt. Ltd. (supra)** wherein it was held that, where the documents seized comprised of regular books of accounts of the assessee, it cannot be regarded as incriminating material found in the course of search. The relevant findings relied upon by us in this regard are as follows:-

> "31. As regards the second jurisdictional requirement viz., that the seized documents must be incriminating and must relate to the AYs whose assessments are sought to be reopened, the decision of the Supreme Court in Sinhgad Technical Education Society (supra) settles the issue and holds this to be an essential requirement. The decisions of this Court in RRJ Securities and ARN Infrastructure India Ltd. v. Asstt. CIT [2017] 394 ITR 569/81 taxmann.com 260 (Delhi) also hold that in order to justify the assumption of jurisdiction under Section 153 C of the Act the documents seized must be incriminating and must relate to each of the AYs whose assessments are sought to be reopened. Since the satisfaction note forms the basis for initiating the proceedings under Section 153 C of the Act, it is futile for Mr Manchanda to contend that this requirement need not be met for initiation of the proceedings but only during the subsequent assessment.
>
> 32. In the present case, the two seized documents referred to in the Satisfaction Note in the case of each Assessee are the trial balance and balance sheet for a period of five months in 2010. In the first place, they do not relate to the AYs for which the assessments were reopened in the case of both assessees. Secondly, they cannot be said to be incriminating. Even for the AY to which they related, i.e. AY 2011-12, the AO finalised the assessment at the returned income qua each Assessee without making any additions on the basis of those documents. Consequently even the second essential requirement for assumption of jurisdiction under Section 153 C of the Act was not met in the case of the two Assessees."

41. In the present case also, the impugned material referred to in the *'satisfaction note'* was the regular books of accounts of M/s.Binny Limited viz., ANN/AA/AEPL/ED/S which not only did not relate or pertain to the assessee but also could not be regarded as incriminating in nature for the AO to have assumed valid jurisdiction to reopen unabated assessment(s) for AYs 2014-15 to 2018-19 u/s 153C of the Act. Further, as noted earlier, the AO himself did not refer to or relied upon the aforesaid material to justify the addition(s) made by him, which further

corroborates the assessee's case that the regular books of accounts of M/s Binny Limited were not incriminating in nature.

42. For the above reasons therefore, we find that there was no 'books of accounts' or 'documents' which related/pertained to the assessee in as much as the impugned material viz., ANN/AA/AEPL/ED/S did not constitute incriminating material found in the course of search at the premises of M/s Binny Limited and in that view of the matter the jurisdiction assumed by the AO u/s 153C of the Act is found to be vitiated in law.

43. It is noted that the AO's primary reliance in his 'satisfaction note' to justify the invocation of jurisdiction u/s 153C of the Act were the statements of third parties viz., Shri Bhawarlal Jain and Shri Shanmugavelu, which were recorded in the course of post search enquiries u/s 131 of the Act. The preliminary objection raised by the Ld. AR in this regard was that, a *'statement'* recorded in the course of post-search enquiries cannot be construed as *'books of accounts'* or *'documents'* seized from the premises of the *'searched person'* (M/s Binny Limited, in this case) which related/pertained to the *'other person'* (assessee, in this case), basis which the AO could have assumed jurisdiction u/s 153C of the Act. For this, the Ld. AR relied on decision of the Hon'ble ITAT Mumbai, in the case of **DCIT v. National Standard**

India Ltd. (85 taxmann.com 87). In the decided case, the search was conducted upon Lodha Group in the course of which the key searched person, Shri Lodha, in his statement recorded u/s 132(4) of the Act had disclosed additional income on account of on-monies received from sale of flats, which he later on also offered before the Settlement Commission and provided the details thereof. Relying on the statement given u/s 132(4) of the Act by the *'searched person'*, the AO of the assessee had invoked jurisdiction u/s 153C of the Act to bring to tax the on-monies allegedly paid by him upon purchase of flat(s). Before this Tribunal, the assessee had inter alia contended that, a *'statement'* cannot be regarded as *'books of accounts'* or *'documents'* seized in the course of search, as referred to in Section 153C of the Act and therefore objected to the validity of jurisdiction assumed by the AO u/s 153C of the Act. Upholding this contention of the assessee, the Tribunal is noted to have held as under:-

> **12.** We further find ourselves to be in agreement with the ld. A.R that the 'Statement' of *Sh. Abhinandan Lodha* (*supra*) recorded under Sec. 132(4) in the course of search and seizure proceedings conducted in the case of *Lodha group* (*supra*) cannot be construed as a 'seized document', therefore, the reliance placed by the A.O on the same to justify the validity of jurisdiction assumed under Sec. 153C in the hands of the assessee company, cannot be accepted. We are further of the considered view that even otherwise as the disclosure of additional income of Rs. 110.25 lacs made by *Sh. Abhinandan Lodha* (*supra*) in his statement recorded under Sec. 132(4), in the hands of the assessee company is relatable to A.Y. 2011-12, and does not pertain to any of the years in respect of which jurisdiction had been assumed by the A.O

> under 153C in the case of the assessee company, therefore, the same on the said count also shall in no way go to confer validity to the assumption of jurisdiction by the A.O under Sec. 153C.
>
> **13.** We thus in light of our aforesaid observations are of the considered view that the A.O had clearly traversed beyond the scope of his jurisdiction u/s. 153C and therein proceeded with and framed assessment u/s. 153A r.w.s. 153C/143(3) in the hands of the assessee company. We thus finding no infirmity in the order of the CIT (A), therefore, uphold the same and dismiss the appeal of the revenue.

44. The Ld. AR further pointed out that, these statements also do not contain any material or averment which in any manner incriminates the assessee in his personal capacity. According to him therefore, even if these statements are taken at its face value, there is nothing contained therein which relates or pertains to the assessee. The Ld. AR additionally pointed out to us that, Shri Jain was neither a director/shareholder of M/s Binny Limited nor was he a director or shareholders of the seven entities, to whom the advances were given and he therefore argued that it was improper to rely on the averments made by such a third person (Shri Jain, in this case) who had no role or official capacity in the payer or the payee(s), and treat his statement as valid incriminating material qua the assessee. He also assailed the AO's action of relying on the statement of third parties, without examining the same on the touchstones of cross-examination.

45. Having gone through the contents of the satisfaction note, we note that the AO had relied upon the statement of Shri Bhawarlal Jain recorded

u/s 131 of the Act, as he had admitted to have facilitated the transactions involving advancement of sums by M/s Binny Limited to these seven entities, which according to Shri Jain, was bogus and resulted in generation of unaccounted cash. For the sake of convenience, it is considered fit to reproduce the relevant portion of his statement in this regard.

> "Q.No.3 In his sworn statement, Shri Aravind Nandgopal, M.D. of M/s. Binny Limited has stated that M/s. Binny Limited have given loans to the following companies of yours and your brother Shri Maneesh Parmar and received the cash back.
>
> | S.No. | Company Name | Rs.(In Crores) |
> |---|---|---|
> | 1 | Nurture Traders P Limited | 41.18 |
> | 2 | Premium Steel and Alloys P Ltd | 15.00 |
> | 3 | Parshvi Global Interlinks P Ltd | 41.15 |
> | 4 | Modest Imperia Trading P Ltd | 14.99 |
> | 5 | Sunbright Designers P Ltd | 25.22 |
> | 6 | Mass International | 13.18 |
> | Total | | 150.72 |
>
> What do you want to say about this?
>
> Ans. Yes sir. I agree that during the F.Y. 2016-17, the companies shown at Serial Numbers 1 to 5 above, have received loans through banking channel from M/s Binny Limited to the tune of Rs. 137.54 crores which was paid back to M/s. KLP Projects Private Limited as unsecured loans and cash generated from M/s. KLP Projects Private Limited was paid back to M/s. Binny Limited. For this arrangement, we have not received any commission. As far as company shown at serial number 6 is concerned, an amount of Rs.13.18 crores was converted into cash through market company and was paid back to M/s. Binny Limited for which I received commission @ 0.5% which works out to Rs.6.59 lakhs and I offer the same for taxation for the Asst Year 2017-18."

46. Perusal of the above shows that, the Investigating Officer had pointed out that, M/s Binny Limited had given loans to various concerns, which according to him, had been received back in cash, and therefore he sought views of Shri Bhawarlal Jain on the same. It is observed by us that Shri Bhawarlal Jain was very categorical in his answer that, the purported cash generated from the advances given by M/s Binny Limited was paid back by M/s.KLP Projects Pvt. Ltd. and as well as other companies in cash to M/s Binny Limited (not the assessee). The Ld. AR has rightly pointed out that, the name of the assessee does not feature anywhere in the answer given by Shri Bhawarlal Jain in his sworn statement. We find that Shri Bhawarlal Jain has not stated that the purported cash generated in lieu of the advances paid by M/s Binny Limited was handed over to the assessee or diverted to the assessee in his personal capacity. There is merit in the submission of the assessee that the contents of this statement, taken at its face value, does not relate or pertain to the assessee nor any information contained therein has any bearing on the total income of the assessee. This aspect is of particular importance, for the reason that, as discussed above, the seized material i.e. ANN/AA/AEPL/ED/S also did not contain any information which indicated that the alleged cash generated through these purported bogus advances was received back by the assessee. Rather, we observe that, the AO had

arrived at his satisfaction qua the assessee on his own subjective notions and surmises, which neither emanated from the above statement nor was backed by any seized material (as already discussed above) found in the course of search. We thus agree with the Ld. AR that, the statement of Shri Bhawarlal Jain on its own did not contain any material whatsoever on the basis of which any prudent person instructed in law would have reached the conclusion that the advances paid by M/s Binny Limited was received back in cash by the assessee in his personal capacity and utilized for his personal benefit. In our considered view therefore, the AO's reliance on this statement for invoking jurisdiction u/s 153C of the Act was unjustified.

47. We now turn our attention to the statement of Shri Shanmugavelu, who was the director of M/s Sun Bright Designers Pvt. Ltd., one of the recipients of the advances, which was also recorded u/s 131 of the Act. The relevant portion of his statement relied upon by the AO (as reproduced in the satisfaction note) reads as under:-

> "Q.No.8 Did you enter into any business transaction with Shri Maneesh Parmar and/or with Shri Aravind Nandagopal?
>
> Ans. During the year 2014-15, our company was facing severe financial crisis and I had been frequenting the bank servicing the loan. There, once Shri Maneesh Parmar approached me with a proposal. As per his proposal, crores of rupees would be sent to my bank account at regular intervals and I had to transfer the amount the very same day to the bank accounts of the companies that he would point out and for this

service, I would get around 0.1% of the transacted amount, as my commission and I could deduct the commission amount and pass the balance amount to the bank accounts pointed out by him. As our company was dire need of cash. I readily agreed to this proposal. Thus, 1 had entered into banking transactions with him.

After this discussion, Shri Maneesh Parmar took me to the office of M/s. Binny Limited at Cooks Road, Perambur. Chennai and introduced me to the M.D. of the company Shri Aravind Nandagopal. After a brief meeting. I left their office. From then on, from 5th December 2014 to 11 December 2014, six times cash was sent to my company M/s. Sun Bright Designers Private Limited's bank account No. 909020039586056 maintained with Axis Bank and every time the amount was transferred into our company's bank account, Shri Krishnamurthy, CFO of M/s. Binny Limited used to call me over phone and inform me about the cash being transferred into our company's above mentioned bank account and request me to transfer the amount, after deducting my commission, to the Current Bank Account of M/s. Nurture Traders Private Limited maintained with State Bank of India (No.33786616000). Accordingly, I. being the authorised signatory of my company's bank account, transfer the amount to that account through RTGS. Thus, during these six days, our company received totally around Rs.40,65,12,705 from M/s. Binny Limited and then we transferred Rs. 40,24,87,820/- to M/s. Nuture Traders Private Limited and the balance amount of Rs. 40,24,879/- was commission received by my company.

For documentation, we raised Fabric Sales Invoice against the amount received from M/s. Binny Limited and against payment to M/s. Nurture Traders Private Limited, we received the Fabric Purchase Invoice."

48. The Ld. AR pointed out that his answer(s) also did not contain any material or information which suggested generation of cash in lieu of advances or that the advances received by his company was paid back in cash to assessee. The Ld. AR pointed out that, Shri Shanmugavelu in fact had nowhere admitted to have paid cash in lieu of advances received from M/s Binny Limited. Rather, his version was that, he was instructed to receive payments through banking channel from M/s Binny Limited and

thereafter he would make payments to other companies also through banking channel. Shri Shanmugavelu is found to have explained that the advances received from M/s Binny Limited was transferred to another company, M/s Nuture Traders Pvt. Ltd. and a small portion out of the total sum was retained by them as commission. The Ld. AR thus claimed that, the recipient of the advance(s) themselves had nowhere admitted to have paid back any cash to M/s Binny Limited. He therefore argued that, the satisfaction arrived at by the AO that, the cash was generated through these advances, which was received back by the assessee in its personal capacity, was divorced from the facts / averments as made by Shri Shanmugavelu in his sworn statement recorded u/s 131 of the Act.

49. Having considered the above, there is merit in the assessee's submission that the above discussed statement(s) did not contain anything which incriminated or related to the assessee-individual basis which one could have validly inferred that the assessee had received unaccounted cash in lieu of alleged bogus advances given by M/s Binny Limited. Firstly, Shri Jain had named the company and not the assessee-individual to whom the alleged cash was paid back. Secondly, Shri Shanmugavelu (recipient of advances) had never admitted to have paid back cash to anyone, rather he had admitted to have paid ahead the advance received through banking channel. Hence, we find that these

statements could not be said to be pertaining/relating to the assessee and as a corollary there was no reason for the assessee to seek cross-examination of these persons, who had never incriminated the assessee in his personal capacity. However, if the AO still intended to rely on such statement(s), which was recorded at the back of the assessee, then, in our considered view, it was incumbent upon the AO to first afford the assessee an opportunity to cross-examine these person(s) before admitting their statement(s) as valid evidence against the assessee, which we find was not done. Therefore in our considered view, the reliance placed by the AO on such unreliable third party statement(s), which was not even subjected for cross-examination, to implicate the assessee of wrong-doing and thereby assume jurisdiction to assess/re-assess his income u/s 153C of the Act, stood vitiated in law. For this finding of ours, we rely on the ratio laid down in the decision of the Hon'ble Supreme Court in the case of **Andaman Timber Industries Ltd v. CCE (supra)**, which reads as under:

> "According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected."

50. Our view is also supported by the decision of Hon'ble jurisdictional Madras High Court in the case of **Vetrivel Minerals v. ACIT (supra)** wherein the Court had observed as under:-

> "22. On the next issue of refusal of cross-examination of the persons whose statements were recorded during the time of search under section 132(4) of the Income Tax Act, it is trite law that the person against whom a statement is used, should be given opportunity to counter and contest the same. I am unable to accept the contention of the learned Senior Counsel that since the statements recorded were of persons who were employees of the assessee and therefore the assessee cannot seek for cross-examination of them. The basic principles of jurisprudence governing the law of evidence can in no way interfered and could not be by the Income Tax Act provisions and neither the authorities functioning under the Income Tax Act has any discretion in such matters. The Supreme Court in the judgment Kishan Chand Chellaram 125 ITR 713 at page 720 which is also followed in the judgments cited by the petitioner in the case of Roger Enterprises (P) Ltd. (supra) and in the case of Brij Bhushan Singhal (supra), held as follows:-
>
> > "It is true that the proceedings under the Income Tax Act law are not governed by the strict rules of evidence and therefore, it may be said that even without calling the Manager of the bank in evidence to prove this letter, it could be taken into account as evidence. But before the Income Tax authorities could rely upon it, they were bound to produce it before the assessee so that the assessee could controvert the statements contained in it by asking for the opportunity to cross-examine the Manager of the bank with reference to the statement made by him. ...."
>
> 23. The counsel for the petitioners also placed the recent judgment of the Supreme Court in the case of ICDS Ltd. v. CIT 2020 10 SCC 529, wherein, the Apex Court has remanded back the matter on account of the assessee being deprived of cross-examination. Therefore, the respondent either should not have relied on the statements recorded under section 132(4) or in case, if they want to rely on the same, they should not have denied the opportunity to the petitioners when they demanded of cross-examining the persons who gave the statement. When the department has taken a stand that there are two groups which were searched by a single warrant and that the companies of one group should not be given to another, as rightly pointed out by the

> learned counsel for the petitioners, the Assessing Officer should not have discussed the statement of the other group for framing the assessment of the petitioners. This completely vitiates the entire assessment proceedings."

51. Overall therefore, we are of the view that, as the above third party statements were not recorded in the course of search but in post search enquiries, it would be imprudent to regard these statements as any books of accounts or documents or materiel found in the course of search, which pertained or related to the assessee, for the purposes of invoking Section 153C of the Act. Moreover, as held earlier, there is nothing contained in these statements which implicated the assessee in any manner or had any bearing on his total income and that apart, the assessee had no opportunity to cross-examine these witnesses. In our considered view therefore, the statement(s) of these third parties viz., Shri Jain and Shri Shanmugavelu (which were recorded much later to the date of search) cannot be regarded as incriminating material unearthed in the course of search in as much as it also did not contain any information which pertained/related to the assessee or had a bearing on his total income. Hence, the Ld. AR has rightly contended that these statements shall in no way go to confer validity to the assumption of jurisdiction by the AO under Section 153C of the Act to assess/re-assess the income of the assessee.

52. It is further observed that, the AO in his satisfaction note had also relied on the statement of the assessee himself, which was recorded in post search enquiry u/s 131 of the Act on 07.03.2018. The relevant portion(s) of assessee's statement which has been extracted by the AO in his satisfaction note, is as under:-

> "Q.No.4 During the course of post-search investigation, it has been found that the above mentioned companies are shell-companies and they did not do any business at all. Please explain what is the reason for payments made to these companies.
>
> Ans. In order to meet unaccounted expenses related to M/s. Binny Limited, we were forced to generate unaccounted cash from the business. I confirm that the Unaccounted cash was generated through the following companies:-

S.No.	Company Name	Rs.(In Crores)
1	Nurture Traders P Limited	41.18
2	Premium Steel and Alloys P Ltd	15.00
3	Parshvi Global Interlinks P Ltd	41.15
4	Modest Imperia Trading P Ltd	14.99
5	Sunbright Designers P Ltd	25.22
6	Mass International	13.18
Total		150.72

> Further, in the case of M/s. Mass International, the amount shown as transferred in the books of M/s. Binny Limited is Rs.56.02 crores. However, out of the amount, only Rs. 13.18 crores was received back as unaccounted cash and the balance amount of Rs.42.85 crores was actually transferred to our sister company M/s. Mohan Breweries & Distilleries Limited but debited to M/s. Mass International. Ledger copies of M/s. Mast International and Advance to MBDL (Others)" are submitted.
>
> M/s. Glintz Ventures Private Limited, after receiving Rs. 19 crores from M/s Binny Limited, have transferred back to our sister company M/s.Mohan Breweries & Distilleries Limited. These payments were made as advances. Ledger copies are submitted in separate sheets. "

Q. No. 5. As stated by you in your reply to previous question, Mis. Binny Limited have incurred unaccounted cash expenses of Rs. 150,72 Crores which has been booked as "Trade Advance" in the books of M/s. Binny Limited. Your attention is drawn to Section 37(1) of the Income Tax Act. 1961. As per the Section, unaccounted cash expenses incurred in the business is to be disallowed. Please offer your comment.

Ans. M/s. Binny Limited have given trade advances which has been used to generate unaccounted cash, out of the money/income accounted for which full tax has already been paid. Now, we need to take legal experts advice on the treatment of the expenses in the books of accounts.

Q.No. 6. Who facilitated generation of cash through these shell companies?

Ans. The transactions were facilitated by Shri Bhawarlal Jain, Director of M/s Sanklecha Infra Projects Pvt. Ltd. and Shri Manish Parmar of M/s. KLP Projects Pvt. Ltd. I have transferred the money from M/s. Binny Limited to various companies as per his instruction and received the cash back as per our agreement after deducting his commission.

Q.No. 7. What was the commission allowed to the facilitator for their service?

Ans. We paid commission @ 1% and the commission amount works out to Rs. 1.72 Crores."

53. The Ld. AR first invited our attention to the specific answers given by the assessee to the questions put to him by the Investigating Officer. It is observed by us that the assessee, in the capacity of the Managing Director of M/s Binny Limited, had admitted to have paid advances to the concerns in question to generate unaccounted cash for the business of M/s Binny Limited in order to meet its requirement of cash expenses. When further enquired regarding the details of utilization of the cash by the company, the assessee is noted to have stated that the cash was spent for land approval cost, vacating the occupiers on the land etc.

whose details were not maintained by the company. The Ld. AR has rightly pointed out that, when the assessee himself was interrogated in the post search enquiries, he had never admitted to have received back cash in his own personal capacity or that he utilized the cash for his personal benefit. Recapitulating the entire background facts, the Ld. AR reminded us that, neither did the seized material i.e. ANN/AA/AEPL/ED/S suggested that M/s Binny Limited had paid advances to receive back cash for the personal benefit of the assessee and his father, nor the statements of the third parties viz., Shri Jain and Shri Shanmugavelu, in any manner indicated that they had paid back in cash to the assessee in his personal capacity and even the statement of the assessee showed that, he had not admitted to have received any cash in lieu of alleged bogus advances for his personal gains. According to him therefore, there was no material whatsoever in the possession of the AO basis which he could have objectively inferred that the contents/information therein related or pertained to the assessee or suggested that the assessee had received any personal benefit outside the books, thereby having a bearing on the determination of his total income, to invoke jurisdiction u/s 153C of the Act.

54. It was also brought to our notice that, the above answers were not given by the assessee in his statement u/s 132(4) of the Act but it was

recorded u/s 131 of the Act. There is merit in the Ld. AR's plea that, the evidentiary value of the statement of the assessee recorded u/s 131 of the Act cannot be equated with a statement which is recorded u/s 132(4) of the Act and it stands on a lower pedestal than the statement recorded u/s 132(4) of the Act, as the statutory presumption available u/s 132(4) is not applicable to a statement u/s 131 of the Act. Under section 131 of the Act, an income tax authority is empowered to examine any person on oath. Section 131 of the Act confers power to the income tax authority to record the statement in the course of proceedings before them. The power vested u/s. 131(1) is only to make enquiries and investigation and is not meant to obtain voluntary disclosure or surrender of concealed income. The Ld. AR thus contended that, this statement of the assessee recorded u/s 131 of the Act alone cannot be said to carry evidentiary value, unless it was backed by independent corroborative evidence. The Ld. AR pointed out that, there was no material or evidence found in the course of search, which corroborated the statement of the assessee. He also showed that even the Investigating authorities also did not find any co-relatable quantum of any cash or unaccounted asset or unexplained expenses which would have justified the fanciful theory made out by the AO. According to him therefore, addition was permissible solely based on assessee's statement recorded u/s 131 of the Act in post search enquiries

in as much as it could not be regarded as incriminating material found in the course of search.

55. Having perused the statement of the assessee on a stand-alone basis, we find that there is prima facie merit in the submissions of the assessee that, there is nothing contained therein which suggests that the assessee had admitted to have received back cash in lieu of bogus advances made by M/s Binny Limited. It is settled in law that that suspicion however strong it may be, cannot take the place of proof or evidence as held by the Supreme Court in **Uma Charan Shaw & Bros. v. CIT (37 ITR 271)**. Any addition(s) to income must be based on cogent, credible, and corroborated evidence. We find that, the case made out by the AO in the satisfaction note was actually based on his own subjective notion which did not emanate from any material seized in the course of search from the premises of M/s Binny Limited. Even the statements of third parties and the assessee's statement, which were recorded in post search enquiries, did not implicate the assessee in any manner. Accordingly, as there was no tangible & independent material containing information which related/pertained to the assessee found from the premises of the searched person, M/s Binny Limited, having a bearing on the total income of the assessee, in our view, the condition precedent to usurp jurisdiction u/s 153C of the Act was not met by the AO.

56. According to us, the statement of the assessee recorded u/s. 131 of the Act could have been said to be valid and be used for the purposes of any regular assessment, only if it was supported by corroborative material, which as held above, was absent in the present case. The Ld. AR had cited before us several judgments wherein it has been consistently held that, the statements recorded u/s 132(4) of the Act do not by themselves constitute incriminating material found in the course of search for the AO to assume jurisdiction to disturb unabated assessments of the assessee, unless they are backed by some corroborative evidence. Some of the relevant decisions taken note of by us are as follows:-

(a) **CIT v. Harjeev Aggarwal (290 CTR 263) (Del HC)**

> "19 In view of the settled legal position, the first and foremost issue to be addressed is whether a statement recorded under Section 132(4) of the Act would by itself be sufficient to assess the income, as disclosed by the Assessee in its statement, under the Provisions of Chapter XIV -B of the Act.
>
> 20. In our view, a plain reading of Section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The works evidence found as a result of search" would not taken within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the explanation to Section 132(4) of the Act. However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the Assessing Officer to make a block assessment merely because any admission was made by the Assessee during search operation."

(b) **PCIT v. Best Infrastructure (India) Pvt. Ltd. (ITA No. 13 of 2017) (Del HC)**

> **"38.** Fifthly, statements recorded under Section 132 (4) of the Act of the Act do not by themselves constitute incriminating material as has been explained by this Court in *Harjeev Aggarwal* (*supra*). Lastly, as already pointed out hereinbefore, the facts in the present case are different from the facts in *Smt. Dayawanti Gupta* (*supra*) where the admission by the Assessees themselves on critical aspects, of failure to maintain accounts and admission that the seized documents reflected transactions of unaccounted sales and purchases, is non-existent in the present case. In the said case, there was a factual finding to the effect that the Assessees were habitual offenders, indulging in clandestine operations whereas there is nothing in the present case, whatsoever, to suggest that any statement made by Mr. Anu Aggarwal or Mr. Harjeet Singh contained any such admission."

(c) **PCIT v. Anand Kumar Jain (HUF) (ITA No. 23 of 2021) (Del HC)**

> "7. The preliminary question under consideration before us is whether a statement under Section 132(4) constitutes incriminating material for carrying out assessment under S. 153(A) of the Act. A reading of the impugned order reveals that the statement of Mr. Jindal recorded under Section 132(4) forms the foundation of the assessment carried out under Section 153A of the Act. That statement alone cannot justify the additions made by the AO. Even if we accept the argument of the Revenue that the failure to cross-examine the witness did not prejudice the assessee, yet, we discern from the record that apart from the statement of Mr. Jindal, Revenue has failed to produce any corroborative material to justify the additions. On the contrary we also note that during the course of the search, in the statement made by the assessee, he denied having known Mr. Jindal. Since there was insufficient material to support the additions, the ITAT deleted the same. This finding of fact, based on evidence calls for no interference, as we cannot re-appreciate evidence while exercising jurisdiction under section 260A of the Act."

(d) **Saveetha Institute of Medical & Technical Sciences v. ACIT (25 taxmann.com 138) (ITAT Chennai)**

"8. The Assessing Officer has opined that the capitation fees so collected cannot tantamount to voluntary contribution or subscriptions to the corpus of the society but are in the nature of donations and capitation fees. However, this addition has been deleted by the learned Commissioner of Income-tax (Appeals) by observing that no such addition can be made solely on the basis of statements recorded under section 132(4) of the Act and there being no related evidence having been found during search showing receipt of such donations. He has also found that no one has really accepted having received donation/capitation fees as has been alleged by the Assessing Officer.

9. ……..There being no incriminating evidence regarding receipt of capitation fees, particularly when no document was put to Dr. B. Muthukumaran regarding charging of capitation fees, such a statement cannot be made a basis for making such a huge addition. His statement was rather denied by the managing trustee/president. Shri T.A. Varadarajan, finance manager also denied the statement of Dr. B. Muthukumaran. In any other case, even one goes by this statement, this would not make any meaningful sense. Dr. B. Muthukumaran has stated that the money had been handed over to one Shri Saravanan, accounts officer, but Shri Saravanan was never enquired by the Department. The statement of Dr. N.M. Veeraiyan, who is the president/ management trustee of the trust, never accepted having receipt of capitation fees or donation and he had rejected and denied the statement of Dr. B. Muthukumaran. Statement of Dr. N.M. Veeraiyan was recorded under section 131 on November 9, 2007, in which he has stated that whatever was received from the students was reflected in the books of account. This statement confirms the contention of the assessee that some well wishers were giving donations which were duly received and reflected in the books of account. In fact, the statement of Dr. N.M. Veeraiyan was recorded under section 131 on November 9, 2007 which has also been made a basis for this addition. He was not examined under section 132(4) of the Act. A statement made under section 131 cannot be equated with a statement recorded under section 132(4) of the Act. A statement recorded under section 132(4) is a valid and relevant piece of evidence but a statement recorded under section 131 is not so relevant. Nevertheless, even a statement recorded under section 132(4) cannot be made a sole basis for any such addition unless corroborated by seized material. If any admission is made in a statement recorded under section 132(4), this can be used with reference to any piece of evidence found during the course of search. In this case, as we have stated above, no such piece of evidence or to say any incriminating evidence was either found or seized. What was found was a note giving the break-up of number of students who were admitted under different quotas in various courses. In our well

considered view, this addition could not have been made at all in the hands of the assessee-trust on the basis of such evidence. Recording of some questions after verification could be viewed as an involuntary statement, extracted from the deponent. In any case, a possibility of such inference is always there. With regard to such statement, the Central Board of Direct Taxes has issued instructions vide Circular No. 286/2/2003-IT, wherein it has been directed that search party shall not obtain confessions. So, the admission made under section 132(4) by the concerned officer cannot be treated even as a valid piece of evidence. There being no incriminating document having been found or seized during search and the statement also being abstruse, the addition in question has no legs to stand on. Had there been a valid statement, even then, solely on the basis thereof, addition could not have been made. This is a well settled principle of law by now and there are umpteen decisions in support of this view."

(e) **DCIT v. VVD & Sons (P) Ltd. (158 taxmann.com 395) (ITAT Chennai)**

"8.5 The addition made by the Assessing Officer was merely on the basis of statement and is not corroborated by any documentary evidence. It is not denying the fact that statement was on oath and can be used as evidence. However, mere statement cannot be the basis of addition. Without credible evidence, the Department cannot make addition purely based on the confessions made during search/survey operation as envisaged by the CBDT *vide* instruction F.N. 286/2/2003 dated 10-3-2003 and reiterated by the Board *vide* its letter dated 18-12-2014."

57. Having regard to the ratio decidendi laid down in the above decisions (supra), we find that the case of the assessee stands on a better footing. The assessee is not the 'searched person' but is the 'other person' in the facts before us. In the above judgments, when the statement recorded u/s 132(4) of the Act (which stands on a higher pedestal than a statement u/s 131 of the Act) cannot be solely relied upon to justify an addition in the hands of the 'searched person', nor can

be treated as an incriminating material found in the course of search, then as a corollary a statement recorded u/s 131 of the Act, in the course of post-search enquiries of a 'searched person' could not have been used as an incriminating material qua 'other person'. Hence, in our considered view the assessee's statement recorded u/s 131 of the Act, which evidently was not backed by any independent material or evidence, cannot be regarded as incriminating material found in the course of search conducted at the premises of M/s Binny Limited to justify invocation of jurisdiction u/s 153C of the Act in the unabated assessments of the assessee for AYs 2014-15 to 2018-19.

58. It is observed that the satisfaction drawn by the AO against the assessee was based on suspicion alone. The AO observed that the assessee had failed to provide the details of the expenses incurred by M/s Binny Limited, and therefore he assumed that the cash would have been retained by the assessee for his personal benefit. We however are unable to countenance the AO's satisfaction as it is not based on any tangible evidence. The aforesaid assumption made by the AO was a pure guess work. The assessee is found to have explained in his statement that the cash expenses by its very nature is not evidenced by supporting material or details and it is wholly illogical to demand evidences for the same. For this, the Ld. AR relied on the decision of this Tribunal in the case of **Prime**

Developers v. DCIT (ITA NO. 175/Mum/2010) which has since been upheld by Hon'ble Bombay High Court wherein it was held as under:-

> "42. Scope of Reasonable Expenditure: Assessee needs to expend in order to earn income/profit and it is basic and universal principle in any business. This principle applies to both accounted and unaccounted profits. In a case of unaccounted profits, due to its very nature of unaccounting, normally, the parties do not maintain evidences and therefore, evidencing such unaccounted evidences is impossibility. Probably, for this reason, the courts have taken conscious view that it is for the assessing authority to quantify reasonable expenditure considering the facts of the case and industry. Legally speaking, the judgments are uniform in asserting that entire sale proceeds should not be added as income. Hon'ble High court of Ahmadabad ruled in the case of Panna Corporation that the " assessee ought to have spent reasonable amount for the purpose of receiving such gross profit' (para 14 of Tax Appeal No 325 of 2000 dt. 16.6.2012). Further, Hon'ble High Court OF Madhya Pradesh held in the case of President Industries 258 ITR 654 that ' entire sale proceeds of the assessee should not be added in his income'. Further, from the judgment in case of Panna Corporation (supra), it is settled proposition that there is no need for the assessee to demonstrate the genuineness of the claim of unaccounted expenditure in the cases of this kind. The underlined logic is that the unaccounted expenditure is always unevidenced and never maintained. Therefore, transferring onus on to the assessee in matters of this kind is not approved. Ex consequenti, it is for the AO allow necessarily reasonable deduction towards such unaccounted expenditure without demanding evidences, considering the nature of industry and also evidences relating to extents of net profits earned by the assessee. Considering the above legal position on the matter, we are of the clear-cut opinion, the AO's conclusions on this issue are certainly erroneous. In principle, we uphold the views of the CIT(A) in this regard. Therefore, relevant grounds raised in the revenue's appeals are dismissed."

59. Having regard to the above, the statement given by the assessee citing his inability to provide the details of cash expenses incurred by M/s Binny Limited cannot be said to be improbable. Be that as it may, the AO's theory that, in absence of details of expenses, it has to be presumed

that the fruits of the alleged cash so generated was enjoyed by the assessee and his father, was nothing but a fanciful notion san any supporting material or evidence.

60. To further disprove the above notion harbored by the AO, the Ld. AR submitted that even the statement given by the assessee viz., the impugned advances given by M/s Binny Limited was bogus and was meant to generate cash, was rebuttable on facts and therefore, it was unsafe to rely solely on such statement sans any corroborative material with the AO to record valid satisfaction in terms of Section 153C of the Act, the Ld. AR had placed before us the order which was passed by SEBI in the matters of M/s Binny Limited wherein the company itself had claimed that these advances were subsisting and that it was received or would be received back in due course. Though the SEBI was of the view that the company was guilty of impropriety but they acknowledged that the impugned advances given to third parties had been assigned to MBDL which was lying outstanding in the books of accounts of M/s Binny Limited and the latter was directed to bring back the said amount back from them. Before the SEBI, M/s Binny Limited had claimed that the dues had been satisfied by MBDL by transferring equivalent value of immovable properties to them, which however was rejected by SEBI. It is observed that, in the interim order passed by SAT dated 26.11.2024, M/s Binny

Limited reiterated their claim that MBDL had transferred lands/properties in satisfaction of the receivables/advances and therefore the impugned advances had been received back by the company. Taking note of this submission, SAT is noted to have stayed SEBI's order for a period of three months and required M/s Binny Limited to produce the purported title documents for evaluation before the SEBI. According to the Ld. AR, these orders of SEBI/SAT showed that at no given point of time did M/s Binny Limited had claimed that these advances were bogus or no longer subsisting, and even the authorities had not treated these advances as non-existent, but rather directed M/s Binny Limited to ensure that the advances which were subsisting in the books are brought back by the company. The Ld. AR placed before us the details furnished by M/s Binny Limited before SAT to show that the impugned advances had been realized by them later on. According to the assessee therefore these contemporaneous facts shows that, the assessee's statement was rebuttable on facts and hence unreliable.

61. Though we have already held that the assessee's statement recorded u/s 131 of the Act cannot be construed as incriminating material found in the course of search for the AO to have assumed jurisdiction u/s 153C of the Act, but having taken note of the above orders which are found to be available in public domain, there is merit in the Ld. AR's

submissions that, it was unsafe to draw satisfaction based on the assessee's statement recorded u/s 131 of the Act as it was unreliable being contrary to the facts. In that view of the matter, as the statement of the assessee was not corroborated by any independent evidence but was rather rebuttable, the AO's reliance on the same to justify usurpation of jurisdiction u/s 153C of the Act was fundamentally flawed.

62. The Ld. AR had also pointed out that, there was no document-wise or assessment year-wise correlation whatsoever done by the AO basis which he arrived at his opinion that 50% of the trade advances represented alleged income of the assessee and therefore on this score also, he claimed that, the satisfaction note stood vitiated in law. He further submitted that, M/s.Binny Limited is a publicly listed company and it is not a closely held one and therefore according to him, it was imprudent for the AO to assume that the assets of a publicly listed company were being fully controlled and utilized by two individuals viz., the assessee and his father, particularly when the AO had not even made out a case for lifting the corporate veil. He also pointed out that M/s Binny Limited was governed and managed by a full-fledged Board of Directors and there was nothing brought on record by the AO to show that the entire Board acted solely at the behest of the assessee or his father or for that matter only two directors i.e. the assessee and his father controlled

the affairs of M/s.Binny Limited basis which they were being regarded as the sole beneficiaries of the alleged cash generated. He also pointed out that the assessee only had a shareholding of 4% in M/s Binny Limited and thus there was no rationale to the AO's assumption that 50% of the trade advances was attributable to the assessee alone. In so far as assessee's father is concerned, it is observed that though he held 45% of the shares of M/s Binny Limited, but at the same time, he had nowhere admitted that the advances given by the company were bogus. The Ld.AR took us through his statement which was recorded u/s 132(4) of the Act in the course of search, which was placed at Pages 1 to 6 of Paper Book. It is observed that the assessee's father had confirmed the transactions with M/s KLP Projects Pvt Ltd & SPR Group and had inter alia only admitted to undisclosed income qua M/s Binny Limited of Rs.120 crores upon sale of land which statement also is noted to have been retracted. The assessee's father had also furnished the details of utilization of monies received upon sale of land through banking channel. It is seen that the assessee's father had nowhere stated that, the advances given by M/s Binny Limited was bogus or that it was received back in cash. We agree with the Ld. AR that this statement recorded u/s 132(4) was a valid piece of evidence and stood at a higher pedestal than the assessee's statement taken u/s 131 of the Act. However the statement of assessee's father is noted to have

been conspicuously avoided by the AO while recording his satisfaction u/s 153C of the Act. Having regard to the foregoing, it is observed that the AO had failed to establish any co-relation either document-wise or on facts for arriving at his opinion that 50% of the impugned advances pertained to the assessee. Hence, in absence of existence of this jurisdictional fact, as held by the Hon'ble Supreme Court in the case of **CIT v. Sinhgad Technical Education Society (supra),** the AO's assumption of jurisdiction u/s 153C stood vitiated in law.

63. Overall therefore, for the above reasons, we allow the legal issue raised by the assessee, and hold that the action of AO to invoke section 153C of the Act was without jurisdiction as neither was there any material found in the course of search which related/pertained to the assessee nor was there any incriminating material unearthed having a bearing on the total income of the assessee. Therefore, the impugned action of AO to issue notice u/s. 153C of the Act is null in the eyes of law and therefore ab-initio void and so the assessment order impugned before us is quashed.

64. As we have already held the usurpation of jurisdiction u/s 153C of the Act to be invalid for failure to satisfy the condition precedent laid down therein and quashed the assessment order impugned before us, the grounds agitated against the merits of the addition(s) have been rendered

academic in nature. Before parting, we consider it fit to take on record that the assessee had filed an application in terms of Rule 29 placing before us additional evidences to assail the merits of the addition(s) made by the AO. Since the impugned assessment order passed u/s 153C/143(3) of the Act has been held to be legally invalid for the reasons set out above, the additional evidences furnished by the assessee have not been looked into by us. Hence, the grounds raised against the merits of the addition(s) are not being separately adjudicated upon and is left open.

65. Our above decision rendered in ITA No.2270/Chny/2024 for AY 2014-15 shall apply mutatis mutandis to the other appeals in ITA Nos.2271-2274/Chny/2024 for AYs 2015-16 to 2018-19. Accordingly the legal ground raised in these appeals are allowed and the assessment order(s) are held to be vitiated in law due to invalid usurpation of jurisdiction by the AO u/s 153C of the Act.

66. In the result, all appeals filed by the assessee are allowed.

Order pronounced on the 07th day of November, 2025, in Chennai.

Sd/-	**Sd/-**
(एस. आर. रघुनाथा)	**(एबी टी. वर्की)**
(S.R.RAGHUNATHA)	**(ABY T. VARKEY)**
लेखा सदस्य**/ACCOUNTANT MEMBER**	न्यायिक सदस्य**/JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 07th November, 2025.
TLN

आदेश की प्रतिलिपि अग्रेषित**/Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF