IN THE INCOME TAX APPELLATE TRIBUNAL, AGRA BENCH, AGRA

BEFORE: SHRI BHAVNESH SAINI, JUDICIAL MEMBER AND SHRI A.L. GEHLOT, ACCOUNTANT MEMBER

ITA Nos. 144 to 149/Agra/2011 Asstt. Year: 2003-04 to 2008-09

A.C.I.T., Circle-1, vs. M/s. Global Estate,

Gwalior. Krishna Kunj,

Gandhi Road, Gwalior. (PAN: AAFFG6931R)

(Appellant) (Respondent)

Appellant by : Shri Waseem Arshad, Sr. D.R.

Respondent by : S/Sri Rajendra Sharma & Manuj Sharma, Adv.

Date of hearing : 20.11.2012 Date of pronouncement of order : 30.11.2012

ORDER

Per Bhavnesh Saini, J.M.:

This order shall dispose of all the above departmental appeals filed against different orders of the ld. CIT(A), Gwalior.

2. We have heard the ld. representatives of both the parties, perused the findings of the authorities below and considered the material on record. All the departmental appeals are decided as under:

ITA No. 144/Agra/2011 (A.Y. 2003-04):

- 3. This departmental appeal is filed against the order of ld. CIT(A), Gwalior dated 08.02.2011 for the assessment year 2003-04.
- 4. On ground No.1, the Revenue challenged the order of the ld. CIT(A) in quashing the assessment proceedings u/s. 153C of the IT Act. The brief facts of the case are that search & seizure operations have been conducted on 22.06.07 at the business and residential premises of Shri P.C. Wadhwa and his family members. The assessee firm has been constituted during the year under consideration vide partnership deed dtd. 04.04.2002 with two partners viz. Smt. Neeru Wadhwa and Smt. Honey Arora having 50% share each. Smt. Neeru Wadhwa is the daughter-inlaw of Shri P.C. Wadhwa. Subsequently, Shri rohit Wadhwa and Shri Sanjay Arora have also been brought into partnership vide amended deed dtd. 01.04.2005. Shri Rohit Wadhwa is son of Shri P.C. Wadhwa and husband of Smt. Neeru Wadhwa. Therefore, the premises of the two partners of the assessee firm have also been searched during the course of operations on 22.06.07. A.O. has also issued notice u/s 153A on 05.03.09 requiring the assessee to file its return on or before 20.03.09. The same has been received by the assessee on 16.03.09. In response, return declaring income of Rs. 15,841/- has been filed on 21.05.09. The assessee has attended before the A.O. on 21.10.09 in response to information called u/s.

142(1)/143(2) in connection with proceedings u/s 153A. Vide letter dtd. 26.10.09, the assessee has informed the A.O. that no search warrant in the name of M/s. Global Estate has been served on it and, therefore, consequential assessment proceedings u/s 153A are without jurisdiction and illegal. Return u/s. 153 has been filed under protest. Subsequently, A.O. has issued notice dated. 29.10.09 u/s. 153C requiring the assessee to file its return on or before 06.11.09. The said notice has been received by Smt. Neeru Wadhwa on 30.10.09. Vide letter dated. 06.11.09, the assessee has requested the A.O. to communicate the reasons which have resulted in satisfaction for issue of notice u/s 153C. The assessee has further requested to give reasonable and adequate time after communication of reasons, so that objections against the notice u/s 153C be filed by it and accordingly disposed off by the A.O. Vide order sheet entry of the same date, i.e. 06.11.09, when assessee's A.R. has attended before the A.O. requiring reasons for issue of notice, the A.O. has mentioned that there is no provision in the Act which provides that reasons recorded u/s 153C are to be communicated to the assessee. Hence reasons recorded are not communicated to the appellant and its letter requesting for reasons is accordingly disposed off and placed on record. The assessee has been given further opportunity to file return u/s 153C by 09.11.09. Vide letter dated. 09.11.09, the assessee has again reiterated its earlier submissions for communication of reasons by placing reliance on various judgments. A.O. has adjourned the date to 16.11.09.

However, vide letter dated. 09.11.09, A.O. has issued questionnaire calling for information u/s 142(1)/143(2) in connection with proceedings u/s 153C fixing the case for 16.11.09. In response, the assessee has submitted vide letter dated 16.11.09 that return filed earlier u/s 153A be treated as return filed under protest u/s 153C. The assessee has also requested for time to furnish details. Subsequently, the assessee has attended through it's A.R. and Shri Rohit Wadhwa from time to time resulting in assessment order being passed on 30.12.09 on total income to Rs. 40,35,560/-, as mentioned above after getting approval of JCIT, Range-I vide letter dated. 20.12.2009.

5. The assessee challenged the validity of the assessment proceedings u/s. 153C of the IT Act before the ld. CIT(A) because, there was no search warrant issued in the name of assessee firm and that no reasons were communicated to the assessee for issue of notice u/s. 153C of the IT Act. It was contended that during the course of search, no valuable items, account books or documents, much less, incriminating material was found against the assessee. The additions are made without reference to any incriminating material. No reasons have been indicated to the assessee as to why the proceedings u/s. 153C have been initiated against the assessee because the assessment u/s. 153C needs to be made on the basis of hidden assets/unaccounted money/incriminating material unearthed during the search.

Therefore, the proceedings u/s. 153C are not valid in the case of assessee. The assessee relied upon some decisions of different benches of Tribunal in support of his contentions and it was, therefore, prayed that the assessment made u/s. 153C may be declared bad in law.

- 6. The ld. CIT(A), considering the submissions of the assessee and perusal of the record and material on record, found that the AO has nowhere recorded any satisfaction before issue of notice u/s. 153C of the IT Act and relying upon several decisions, held that the assessment made accordingly cannot be sustained in law and decided this issue in favour of the assessee and cancelled the assessment u/s. 153C of the IT Act. The findings of the ld. CIT(A) in para 3.1 and 3.2 of the appellate order are reproduced as under:
 - "3.1 Appellant's submissions on this ground have been considered carefully. Assessment records alongwith appraisal report and copy of panchnama have also been perused. No authorization is found issued in the name of the appellant firm, i.e. M/s. Global Estate on the date of search operations. The appellant firm is situated at the same number of premise i.e. Krishna Kunj, Gandhi Road, Gwalior in respect of which search has taken place for P.C. Wadhwa and his family members. In the absence of any authorization in the name of the appellant firm, no valid proceedings u/s 153A could be initiated by the A.O. As per the appellant, its offices are located t a different and hired premises which have been unauthorizedly searched. Though the A.O. has issued notice u/s 153C subsequently, but this fact cannot make the proceedings earlier initiated u/s 153A, by any means, valid. Further, on perusal of records, it is seen that the A.O. has nowhere

recorded any satisfaction even before the issue of notice u/s 153C. As a consequence of search operations carried in respect of other business entities and family members of Shri P.C. Wadhwa, the A.O. had earlier initiated proceedings u/s 153A and information called u/s 142(1)/143(2) vide letter dtd. 23.09.09 which are found illegal and invalid in absence of any warrant of authorization issued and carried on in the name of the appellant firm. Also, as per provisions of Section 153C, the concerned A.O. having jurisdiction shall proceed against such other person and issue notice in accordance with the procedure laid there under. Provisions of section 153C(1) are almost similar and akin to that of Sec. 158BD applicable to searches conducted upto 31.05.2003. No such satisfaction has been recorded by the A.O. before issue of notice u/s. 153C.

3.2 It has been held by Hon'ble Delhi High Court in case of Janki Exports International Vs. UOI (2005) 278 ITR 296 (Del) and in Amity Hotels Pvt. Ltd. Vs. CIT (2005) 272 ITR 75 (Del) that where there is no evidence of satisfaction of A.O. regarding suppression of income, notice u/s 158Bd is held to be not valid. Hon'ble Delhi High Court has further observed in this regard, while making reference to decision of Hon'ble Apex Court in case of GKN Driveshafts (India) Ltd. Vs. ITO (2003) 259 ITR 19SC, as under:-

"We find that Sec. 158BD is somewhat analogous to Sec. 147 in so far as the procedure that is required to be followed. Sec. 147 contemplates that if the Assessing Officer has reasons to believe that there is escapement of income, then notice can be issued u/s 148 of the Act. So far as section 158BD of the Act is concerned, the A.O. has to be satisfied that there is undisclosed income. Upon such satisfaction, the A.O. is required to forward the relevant documents, papers etc. to the A.O. who is required to asses the person in respect of whom the undisclosed income has been discovered. Once this is done, we feel that the person who is to be proceeded against under section 158BD and then Sec. 158BC, must be informed about the satisfaction of the A.O. which has been recorded and he must be given a reasonable opportunity to object to the same. Satisfaction can be arrived on some material. That material would provide the reasonable satisfaction. In the case of GKN Driveshafts (India) Ltd. Vs. ITO (2003) 259 ITR 19, the

Supreme Court, while considering the provisions of section 148, pointed out as under:

"However, we clarify that when a notice u/s 148 of the Income tax Act is issued, the proper course of action for the notice is to file a return and if he so desires, to seek reasons for issuing notices. The A.O. is bound to furnish reason within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the A.O. is bound to dispose of the same by passing a speaking order".

Using the same parity of reasoning, we direct the A.O. to supply the reasons recorded for arriving at satisfaction to the petitioner within a reasonable time upon the petitioner filling a return as required by the impugned notice. On receipts of the same, the petitioner would be entitled to file objections to the issuance of the notice and the A.O. shall dispose of the same by passing a speaking order."

Same view has also been reiterated by Hon'ble Supreme Court in the case of Manish Maheshwari Vs. ACIT & Another (2007) 289 ITR 341 (SC). In that case, premises of a director of a company (Indore Construction (P) Ltd. And his wife were searched u/s 132 & a block assessment u/s. 158BD had to be done in relation to the company. According to the Court, conditions precedent for invoking the provisions of Sec. 158BD are required to be satisfied before the provisions of assessment are applied in relation to any person other than the person whose premises had been searched or requisition made u/s 132A. And conditions precedent whereof are: (i) satisfaction must be recorded by the Assessing Officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 of the Act; (ii) the books of account or other documents or assets seized or requisitioned had been handed over to the Assessing Officer having jurisdiction over such other person; and (iii) the Assessing Officer has proceeded under section 158BC against such other person.

In the appellant's case initial proceedings u/s 153A have been initiated which have been subsequently changed to section 153C. There is thus, a patent non-application of mind by the A.O. When the provisions of search and consequential assessment are attracted,

legal presumptions are raised against the assessee. The burden shifts on the assessee and these provisions have draconian consequences. As the A.O. has not recorded his satisfaction, which is mandatory, as held by Hon'ble Supreme Court in Manish Maheshwari case (mentioned supra), assessment made in consequence thereof cannot be sustained."

- 7. The ld. DR relied upon the order of the AO and submitted that there is no provision in the Act, which provides that the reasons should be recorded u/s. 153C or the same should be communicated to the assessee. He has relied upon the decision in the case of Digvijay Chemicals, 248 ITR 381 (Alld.). The ld. DR submitted that in the search proceedings, the assessee has given ambiguous statements. Therefore, the proceedings were validly initiated u/s. 153C of the IT Act.
- 8. On the other hand, the ld. Counsel for the assessee reiterated the submissions made before the authorities below and submitted that no satisfaction was recorded by the AO before proceeding u/s. 153C of the IT Act against the assessee. The assessee requested the AO to give reasons for issue of notice u/s. 153C of the IT Act, but the same were not communicated to the assessee. No material was found during the course of search to indicate that any money, bullion, jewellery, books of account or other documents belong to the assessee. No incriminating material has been discussed in the assessment order to satisfy the requirement of section 153C

of the IT Act and the additions have been made merely on presumption. Even no satisfaction as required u/s. 153C has been communicated to the Tribunal during the course of proceedings. He has relied upon following decisions:

(i). Decision of ITAT, Ahmedabad Bench in the case of ACIT vs. Gambhir Silk Mills, 6 ITR 376, in which it was held as under:

Held, that when the search was conducted t the premises of S, no mount of money, bullion, jewellery or other valuable article or thing or books of account or documents seized, belonged to the assessee. Nothing was handed over to the Assessing Officer having jurisdiction over the assessee. No such valuable article or thing or any books of account or documents had been referred even in the assessment order for framing assessment under section 153C of the Act. Since for all these years, the returns were originally filed and processed and since no additional material was found pertaining to the assessee which was held to be belonging to the assessee, the Assessing Officer could not assume jurisdiction for framing assessment under section 153C read with section 153 of the Act. The assessments made for all these years were to be cancelled."

(ii). Decision of ITAT Ahmedabad Bench in the case of Meghmani Organics Ltd. vs. DCIT, 6 ITR 360, in which it was held as under:

"Record maintained by a person for his own purpose though referable to the assessee cannot be said to be belonging to the assessee within the meaning of s. 153C; Further, where none of the assessments are pending on the date of action under s. 153C, such assessments do not abate." (iii). Decision of ITAT, Pune Bench in the case of ACIT vs. SRJ Peety Steels (P) Ltd., 137 TTJ 627, in which it was held as under:

"When nothing incriminating was found in the course of search relating to any of the asst. yrs. 2000-01 to 2005-06, the assessments for such years could not be disturbed; further, consumption of the electricity for the manufacture of mild steel ingots/billets depends on various factors and the AO did not attempt to establish a direct nexus between the production and electricity consumed and therefore, no addition was called for; however, for asst. yr. 2006-07, based on evidence found during search, addition of Rs.75,05,116 was sustained and benefit of telescoping was provided, which did not call for any interference."

(iv). Decision of Madras High Court in the case of CIT vs. Late J. Chandrasekar (HUF), 338 ITR 61, in which it was held as under:

"AO did not have the benefit of seized materials while issuing notice under s. 153C, there was no valid assumption of jurisdiction in the proceedings."

(v). Decision of Hon'ble Supreme Court in the case of Manish Maheshwari vs. ACIT, 289 ITR 341, in which it was held as under:

"AO having neither recorded the satisfaction that undisclosed income belongs to any person, other than the person searched nor handed over the books of account, documents, etc. to the AO having jurisdiction over the matter, the impugned proceedings under s. 158BD cannot be sustained."

(vi). Decision of Hon'ble Delhi High Court in the case of Amity Hotels (P)

Ltd. & Ors. Vs. CIT, 272 ITR 75, in which it was held as under:

"It is necessary for the AO to record his satisfaction for taking action under s. 158BD against any person other than one covered by s. 132 or s. 132A; action cannot be taken for mere further investigation."

9. We have considered the rival submissions and the material available on record. Section 153A, 153B and 153C of the IT Act provides:-

"Assessment in case of search or requisition.

153A Notwithstanding anything contained in <u>section 139</u>, <u>section 147</u>, <u>section 148</u>, <u>section 149</u>, <u>section 151</u> and <u>section 153</u>, in the case of a person where a search is initiated under <u>section 132</u> or books of account, other documents or any assets are requisitioned under <u>section 132A</u> after the 31st day of May, 2003, the Assessing Officer shall—

- (a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;
- (b) 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 or requisition is made:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this section pending on the date of initiation of the search under <u>section 132</u> or making of requisition under <u>section 132A</u>, as the case may be, shall abate.

Explanation.—For the removal of doubts, it is hereby declared that,—

- (i) save as otherwise provided in this section, <u>section 153B</u> and <u>section 153C</u>, all other provisions of this Act shall apply to the assessment made under this section;
- (ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.
- **153B.** (1) Notwithstanding anything contained in <u>section 153</u>, the Assessing Officer shall make an order of assessment or reassessment,—
- (a) in respect of each assessment year falling within six assessment years referred to in clause (b) of <u>section 153A</u>, within a period of two years from the end of the financial year in which the last of the authorisations for search under <u>section 132</u> or for requisition under <u>section 132A</u> was executed;
- (b) in respect of the assessment year relevant to the previous year in which search is conducted under <u>section 132</u> or requisition is made under <u>section 132A</u>, within a period of two years from the end of the financial year in which the last of the authorisations for search under <u>section 132</u> or for requisition under <u>section 132A</u> was executed:

[Provided that in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (a) or clause (b) of this subsection or one year from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having Provided further that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2004 or any subsequent financial year,—

- (i) the provisions of clause (a) or clause (b) of this sub-section shall have effect as if for the words "two years" the words "twentyone months" had been substituted;
- (ii) the period of limitation for making the assessment or reassessment in case of other person referred to in <u>section 153C</u>, shall be the period of twenty-one months from the end of the financial year in which the last of the authorisations for search under <u>section 132</u> or for requisition under <u>section 132A</u> was executed or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under <u>section 153C</u> to the Assessing Officer having jurisdiction over such other person, whichever is later:]

[Provided also that in case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2005 or any subsequent financial year and during the course of the proceedings for the assessment or reassessment of total income, a reference under sub-section (1) of section 92CA—

- (i) was made before the 1st day of June, 2007 but an order under sub-section (3) of <u>section 92CA</u> has not been made before such date; or
- (ii) is made on or after the 1st day of June, 2007, the provisions of clause (a) or clause (b) of this sub-section shall, notwithstanding anything contained in clause (i) of the second proviso, have effect as if for the words "two years", the words "thirty three months" had been substituted:

Provided also that in case where the last of the authorisations for search under <u>section 132</u> or for requisition under <u>section 132A</u> was executed during the financial year commencing on the 1st day of April, 2005 or any subsequent financial year and during the course of the proceedings for the assessment or reassessment of total income in case of other person referred to in <u>section 153C</u>, a reference under sub-section (1) of <u>section 92CA</u>—

- (i) was made before the 1st day of June, 2007 but an order under sub-section (3) of <u>section 92CA</u> has not been made before such date; or
- (ii) is made on or after the 1st day of June, 2007,

the period of limitation for making the assessment or reassessment in case of such other person shall, notwithstanding anything contained in clause (ii) of the second proviso, be the period of thirty-three months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or twenty-one months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.]

Explanation.—In computing the period of limitation for the purposes of this section,—

- (i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or
- (ii) the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under subsection (2A) of <u>section 142</u> and ending on the day on which the assessee is required to furnish a report of such audit under that subsection; or
- (iii) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee of being reheard under the proviso to section 129; or
- (iv) in a case where an application made before the Settlement Commission under <u>section 245C</u> is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which such application is made and ending with the date on which the order under sub-section (1) of <u>section 245D</u> is received by the Commissioner under sub-section (2) of that section, $\frac{55}{2}$ [or]
- [(v) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of <u>section 245Q</u> and ending with the date on which the order rejecting the application is received by the Commissioner under subsection (3) of <u>section 245R</u>, or
- (vi) the period commencing from the date on which an application is made before the Authority for Advance Rulings under sub-section (1) of <u>section 245Q</u> and ending with the date on which the advance ruling pronounced by it is received by the Commissioner under sub-section (7) of <u>section 245R</u>,]

shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in clause (a) or clause (b) of this section* available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

- (2) The authorisation referred to in clause (a) and clause (b) of subsection (1) shall be deemed to have been executed,—
- (a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued;
- (b) in the case of requisition under <u>section 132A</u>, on the actual receipt of the books of account or other documents or assets by the Authorised Officer.

153C. (1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A:

[Provided that in case of such other person, the reference to the date of initiation of the search under <u>section 132</u> or making of requisition under <u>section 132A</u> in the second proviso to <u>section 153A</u> shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been

received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under <u>section 132</u> or requisition is made under <u>section 132A</u> and in respect of such assessment year—

- (a) no return of income has been furnished by such other person and no notice under sub-section (1) of <u>section 142</u> has been issued to him, or
- (b) a return of income has been furnished by such other person but no notice under sub-section (2) of <u>section 143</u> has been served and limitation of serving the notice under sub-section (2) of <u>section 143</u> has expired, or
- (c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A."]
- 9.1 Hon'ble Supreme Court in the case of Manish Maheshwari vs. ACIT and others, 289 ITR 341 considering the earlier provisions of section 158BD of the IT Act (analogous to sec.153C of IT Act) held that -

"The condition precedent for invoking a block assessment is that a search has been conducted under section 132, or documents or assets have been requisitioned under section 132A, the said provision would apply in the case of any person in respect of whom search has been carried out under section 132A or documents or assets have been requisitioned under section 132A. Section 158BD, however, provides for taking recourse to a block assessment in terms of section 158BC in respect of any other person, the conditions precedent wherefor are: (i) satisfaction must be recorded by the Assessing Officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 of the Act; (ii) the books of account or other documents or assets seized or requisitioned had been handed over to the Assessing Officer having

jurisdiction over such other person; and (iii) the Assessing Officer has proceeded under section 158BC against such other person.

The conditions precedent for invoking the provisions of section 158BD, thus, are required to be satisfied before the provisions of the said Chapter are applied in relation to any person other than the person whose premises had been searched or whose documents and other assets had been requisitioned under section 132A of the Act.

It was further held –

"Law in this regard is clear and explicit. The only question which arises for our consideration is as to whether the notice dated February 6, 1996, satisfies the requirements of section 158BD of the Act. The said notice does not record any satisfaction on the part of the Assessing Officer. Documents and other assets recovered during search had not been handed over to the Assessing Officer having jurisdiction in the matter."

It was also held that –

" As the Assessing Officer has not recorded his satisfaction, which is mandatory; nor has he transferred the case to the Assessing Officer having jurisdiction over the matter, we are of the opinion that the impugned judgments of the High Court cannot be sustained, which are set aside accordingly. The appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs."

9.2 Hon'ble Madras High Court in the case of CIT v. G.K. Senniappan; 284 ITR 220 held –

"The assessee was engaged in the business of chit fund and real estate. In a search conducted against a third person it was found that the assessee had utilized undisclosed income for making contributions to certain unregistered chits conducted by the said person. Thereafter, a survey was conducted in the business premises of the assessee which indicated certain real estate transactions carried on by the assessee and profits derived thereon had not been disclosed to the Department. The Assessing Officer included under section 158BB the undisclosed income found during the survey made under section 133A. The Commissioner (Appeals) excluded that portion which had been included based on the material found during the

survey on the premises that in respect of block assessment under section 158BB material collected during the survey under section 133A could not be taken into consideration. This was confirmed by the Tribunal. On appeal contending that the material gathered in the course of survey under section 133A could also be regarded as a material for the purpose of block assessment under section 158BB:

Held accordingly, dismissing the appeal, that the Commissioner (Appeals) and the Tribunal having decided the issue in accordance with the statutory provisions, it required no interference."

9.3. Sec. 153A of the IT Act starts with the word "notwithstanding anything contained", it is non-obstante clause. For applicability of above provision, the initiation of search is necessary. Once a warrant of authorization or requisition is issued and search is conducted and panchnama is drawn, the assessments for the all the relevant years would get reopened irrespective of whether any incriminating material is found or not in relation to a particular AY. In other words, even if the material found shows the concealment in only one year, all the completed assessments falling in the period of six AYs preceding the year of search will get reopen. There was an identical provision contained in Chapter XIV-B of the Act, which provides that where after 30th June, 1995, a search is initiated u/s 132 or books accounts etc. are requisitioned u/s 132A, the AO shall proceed to assess undisclosed income in accordance with provisions of Chapter XIV-B for making assessment for block period but in the block assessments, the question of assessing an undisclosed income in relation to any AY was restricted to the incriminating

material on undisclosed assets discovered during the course of search and seizure or in the post search inquiry the material was relatable to such evidence discovered in search. The income assessed in the regular assessments was not to be considered in the block assessments. However, in the present provisions u/s 153A, there is no such provision provided in the Act. Once warrant of authorization is issued and the search is conducted and panchnama is drawn, the assessments for all the seven years including the current year have to be completed u/s 153A, 153B and 153C. Even the assessments which are completed before the date of search shall get reopened and those assessments where the proceedings are pending at the time of search shall abate. The AO, therefore, shall assess or reassess such income for all these years.

- 9.4 Sec. 153C of the IT Act however provides for taking recourse to a assessment of income of any other person other than the person searched and the conditions precedent for invoking such provisions against such other person are:
 - 1. The search or requisition must have taken place in case of any person.
 - 2. Where the AO is **satisfied** that any money, bullion, jwellery or other valuable articles or other things or books of accounts or **documents**

- **seized** or requisitions **belongs or belong to a person** other than the person referred to in sec. 153A.
- 3. The books accounts or **documents or assets seized** or requisitioned shall be handed over to the AO having jurisdiction over such other person.
- 4. The AO has proceeded u/s 153C against such other person.
- 9.5 As is noted above, there are certain distinguished features in earlier provisions of law in Chapter XIV-B contained u/s sec. 158BA, 158BB and 158BC as compared to sec. 153A but the provisions contained u/s 158BD are more or less similar to provisions contained in sec. 153C of the IT Act except "undisclosed income" which is mentioned in sec. 158BD, however, in sec. 153C, it is mentioned any money, bullion, jwellery or other valuable articles or things or books accounts or documents seized or requisitions. The conditions precedent for invoking provisions u/s 158BD as is held by Hon'ble Supreme Court in the case of Manish Maheshwari (supra) are therefore same as are provided u/s 153C of the IT Act. It is admitted fact that no search warrant was executed in the case of the present assessee u/s 132(1) of the IT Act, therefore, provisions of sec. 153A were not applicable. The AO has, therefore, proceeded against the assessee u/s 153C of the IT Act. This view is further strengthened by the judgment of Hon'ble Gujrat High

Court in the case of Vijaybhai N. Chandrani vs. ACIT, 333 ITR 436 in which it was held as under:

"Section 153A, 153B and 153C of the Income-tax Act, 1961, lay down a scheme for assessment in case of search and requisition. Section 153C which is similarly worded to section 158BD of the Act, provides that where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A he shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person. However, there is a distinction between the two provisions inasmuch as under section 153C notice can be issued only where the money, bullion, jewellery or other valuation article or thing or books of account or documents seized or requisitioned belong to such other person, whereas under section 158BD if the Assessing Officer was satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or assets were requisitioned under section 132A, he could proceed against such other person under section 158BC. Thus a condition precedent for issuing notice under section 153C and assessing or reassessing income of such other person, is that the money, bullion, jewellery or other valuable articles or thing or books of account or documents seized or requisitioned should belong to such person. If the requirement is not satisfied, recourse cannot be had to the provisions of section 153C.

Held, allowing the petition, that admittedly, the three loose papers recovered during the search proceedings did not belong to the petitioner. It was not the case of the Revenue that the three documents were in the handwriting of the petitioner. In the circumstances, when the condition precedent for issuance of notice was not fulfilled action taken under section 153C of the Act stood vitiated."

9.6 Considering the facts recorded above in the light of the above provisions and decisions, we find that assessee had a case for quashing of proceedings u/s 153C of

the IT Act. No material is produced before us to prove that the AO in the case of person searched was satisfied that any money, bullion, jwellery or other valuable articles or things or books accounts or documents seized or requisitioned belongs to or belong to a person other than the person referred to in sec. 153A. No material is produced before us to show if any satisfaction was recorded by the AO in that case that the seized material belongs to any person other than the person with respect to whom search was made u/s 132 of the Act. Ld. DR did not produce any material before us to show if any such satisfaction as required u/s 153C was recorded by the AO in the case of person searched. No material is produced in reference to above requirement. No material is also produced before us to show that books accounts or documents or assets seized had been handed over to the AO having jurisdiction over such other person. In the absence of any adequate material produced by ld. DR, we find the contention of ld. counsel for assessee was justified that in this case, the AO has not recorded any satisfaction that any seized document or material belongs to any person other than the person searched. Since the revenue is in appeal, therefore, burden was upon them to prove that necessary ingredients of sec. 153C have been complied with in this case before invoking jurisdiction u/s 153C of the IT Act. We may also add here that the AO has not referred to any seized document or material in the assessment orders on the basis of which, additions on merit have been made. Therefore, the conditions of sec. 153C as noted

above are also not satisfied in this case. We, therefore, do not find any infirmity in the order of the ld. CIT(A) in quashing the proceedings u/s 153C of the IT Act.

- 9.7 Considering the above discussion, it is clear that the ld. CIT(A) on perusal of the record found that the AO has nowhere recorded any satisfaction as required u/s. 153C of the IT Act. Due to the same reason, the same was not communicated to the assessee. The issue is, therefore, squarely covered by the judgments noted above and therefore, the decision in the case of Digvijay Chemicals (supra) cannot be given preference. We, therefore, do not find any infirmity in the order of the ld. CIT(A) in quashing the assessment order u/s. 153C of the IT Act. In the result, ground No. 1 of departmental appeal fails and is dismissed. Since we have confirmed the quashing of proceedings u/s. 153C of the IT Act, therefore, all additions made in the assessment order would stand deleted. However, we find that similar issues are coming up in the subsequent assessment years, therefore, we find it appropriate to discuss the issues on merits briefly in this order in one of the appeals only.
- 10. On ground No. 2 & 3, the Revenue challenged the order of ld. CIT(A) in quashing the assessment order for want of issue of statutory notice u/s. 143(2) of the IT Act before completion of the assessment proceedings. The ld. CIT(A)

following the order of the Tribunal and the decision of Supreme Court in the case of Hotel Blue Moon, 321 ITR 362, cancelled the assessment order on another reason also that no notice u/s. 143(2) has been issued in the case of the assessee. The ld. Counsel for the assessee at the outset conceded that the issue is now squarely covered against the assessee by the decision of Hon'ble Delhi High Court in the case of Ashok Chaddha vs. ITO, 337 ITR 399, in which Hon'ble Delhi High Court considering the decision of Hon'ble Supreme Court in the case of Hotel Blue Moon (supra), held as under:

"A search under section 132(1) of the Act was carried out in the residential premises of the assessee as well as his bank locker. In the course of search, cash and jewellery were found at the residence and jewellery was found in the locker. In response to a notice under section 153A, the assessee filed a return declaring a total income of Rs.90,080. Two questionnaires were issued to the assessee which were duly complied with by him. After hearing the assessee, the total income was computed at Rs.23,31,760/-. The assessee preferred an appeal before the Commissioner (Appeals). An additional ground taken before the Commissioner (Appeals) was that since the issuance of a notice under section 143(2) is a mandatory requirement, the assessment was bad in law and void ab initio and required to be cancelled. The Commissioner (Appeals) did not agree with the contention of the assessee and upheld the assessment as framed by the Assessing Officer. Another ground taken before the Commissioner (Appeals) was against the addition of Rs.10 lakhs under section 69A of the Act in the hands of the assessee in respect of cash seized from an employee of the assessee. The assessee contended that the amount belonged to his nephew S, who had sent the money for a property transaction. To support this contention, he filed a copy of a recovery suit filed by S. The Commissioner (Appeals) did not accept the explanation. This order was upheld by the Tribunal. On appeal to the High Court:

Held, dismissing the appeal, that (i) no specific notice was required under section 143(2) of the Act when the notice as required under section 153A(1)(a) of the Act was already given. In addition, the two questionnaires issued to the assessee were sufficient so as to give notice to the assessee, asking him to attend the office of the Assessing Officer in person or through a representative duly authorized in writing or produce or cause to be produced at the given time any documents, accounts, and any other evidence on which he may rely in support of the return filed by him."

- 10.1 In view of the submissions of the ld. Counsel for the assessee that the issue is covered against the assessee by the judgment of Hon'ble Delhi High Court in the case of Ashok Chaddha (supra), this issue is decided in favour of the Revenue. Grund Nos. 2 & 3 of departmental appeal are allowed.
- 11. On merits, the Revenue has raised further six grounds of appeal. On ground No. 1, the Revenue challenged the deletion of addition of Rs.3,45,000/- on account of unexplained capital introduced in the assessee firm by the partners. The ld. CIT(A) found that both the partners, Smt. Honey Arora and Smt. Neeru Wadhwa introduced capital in the assessee firm and both are assessed to tax and have proved the fact of capital introduction. Therefore, the issue is covered by the judgments of Hon'ble Allahabad High Court in the case of Jaiswal Motor Finance, 141 ITR 706 and in the case of Sundar Lal Jain vs. CIT, 117 ITR 316 and the decision of M.P. High Court in the case of Metachem Industries, 245 ITR 160.

However, the ld. DR relied upon the decision of ITAT, Hyderabad Bench in the case of Paras Collins Distilleries vs. ITO, 130 ITD 114 on the proposition that addition could be made in the case of the firm on introduction of capital. However, in view of the decision of jurisdictional High Court above, the decision of the Tribunal cannot be given preference. Accordingly, this ground of Revenue is dismissed.

12. On ground No.2, the Revenue challenged the deletion of addition of Rs.17,17,005/- on account of concealed work in progress. The assessee maintained complete details of work in progress. The AO has made the addition on the basis of total work carried out by the assessee firm in three years, from which average monthly work in progress has been computed. The ld. CIT(A) discussed this issue in detail and found that the assessee maintained complete details of work in progress and that when the addition is made in assessment year under appeal, the benefit should have been given in the next assessment year 2004-05 which is not given in the case of the assessee. The ld. CIT(A) was satisfied with the complete details filed by the assessee and, therefore, held that the addition is made on surmises and presumption and cannot be sustained. In view of these findings of ld. CIT(A), we do not find any infirmity in the order of ld. CIT(A) in deleting the addition.

- 13. On ground No. 3, the Revenue challenged the deletion of addition of Rs.14,37,693/- on account of disallowance of expenses by rejecting book results u/s. 145(3) of the IT Act. The AO disallowed 60% of the expenses. The ld. CIT(A) found that the assessee had made purchase of 90% through cheques which are reflected in the bank statement also and addition is made by relying upon the observations of ADIT(Inv.). The addition was accordingly deleted. In view of these findings of ld. CIT(A) and in absence of any contrary material on record, we do not find any justification to interfere with the order of the ld. CIT(A). This ground is, accordingly, dismissed.
- 14. On ground No. 4, the Revenue challenged the deletion of addition of Rs.3,51,020/- on account of difference in market price and sale. It was found that the land is owned by the Society, Sanatan Grah Nirman and the assessee only acted as construction agency and has not made any sales. Therefore, the addition is deleted. No interference is called for on this issue. Thus, this ground is also dismissed.
- 15. On ground No. 5, the Revenue challenged the deletion of addition of Rs.1,70,000/- on account of current liabilities. This addition was made in respect of

Shri Arun Rathi by treating the amount as shown short under the head "current liabilities". It was contended that the sale has been made on 11.04.2003, which pertains to the assessment year 2004-05. In assessment year under appeal, i.e., 2003-04, only Rs.30,000/- has been received in advance whereas full amount of Rs.2,00,000/- has been received and credited during the assessment year 2004-05. The ld. CIT(A) on examination of the documents accepted the contention of the assessee and deleted the addition. This ground of appeal of Revenue has, thus, no merit and is dismissed.

16. Ground No.6 is general in nature for enhancing the assessment which is without any basis and further when the assessment u/s. 153C has been quashed, there is no question of enhancement of current liabilities. This ground is also dismissed. We may note here that these additions on merits have not been discussed in detail in view of the quashing of assessment proceedings itself u/s. 153C of the IT Act and resultantly, all these additions would stand deleted in law.

In view of the above, the departmental appeal fails and is dismissed.

ITA No. 145 to 148/Agra/2011 (A.Yrs. 2004-05 to 2007-08):

17. All these appeals by the Revenue are directed against different orders of ld. CIT(A), Gwalior dated 15.02.2011 and 16.02.2011.

- 18. In all these departmental appeals, similarly, assessments u/s. 153C have been framed by the AO which were challenged before the ld. CIT(A) and the ld. CIT(A) following the order of assessment year 2003-04, quashed the assessment proceedings u/s. 153C of the IT Act.
- 19. The Revenue on ground No.1 in all the appeals challenged the order of ld. CIT(A) in canceling the assessment order u/s. 153C of the IT Act. It is admitted by the ld. Representatives of both the parties that the issue is same as in the assessment year 2003-04. Therefore, following the reasons for decision for the assessment year 2003-04 above, we confirm the order of the ld. CIT(A) in canceling the assessment orders u/s. 153C of the IT Act. In the result, ground No. 1 of departmental appeals are dismissed.
- 20. On rest of the grounds, substantial issues are same, i.e., non-issuance of notice u/s. 143(2) which has already been decided in favour of the Revenue, but the additions on the some issue on merits are different. As noted above, they need not to be decided on merits because the assessment orders u/s. 153C have already been quashed. In view of this, when the assessment orders u/s. 153C of the IT Act

have been quashed, the additions on merits would be deemed to be deleted.

Therefore, the departmental appeals have no merits and are accordingly dismissed.

ITA No. 149/Agra/2011 (A.Y. 2008-09:

21. This departmental appeal is filed against the order of ld. CIT(A), Gwalior dated 17.02.2011 for the assessment year 2008-09. In this case, regular assessment u/s. 143(3) has been passed. On ground No. 1, the Revenue challenged the order of the ld. CIT(A) in deleting the addition of Rs.77,75,000/- on account of unexplained capital. In this year also, capital was introduced by the partners namely, Smt. Neeru Wadhwa and Smt. Honey Arora. The assessee contended that the partners have brought capital from their capital account and investment has been reflected in their capital account. Therefore, the issue is covered by the decision of Hon'ble M.P. High Court in the case of Metachem Industries, 245 ITR 160. The ld. CIT(A) accepted the contention of the assessee because the partners are regularly assessed to tax and reflected their investment in firm in their balance sheet and return of income. Therefore, the issue would be covered by the decisions of Hon'ble Allahabad High Court in the case of Jaiswal Motor Finance (supra) and Sunder Lal Jain (supra) and the decision of Hon'ble M.P. Highi Court in the case of Metachem Industries (supra). The addition was, accordingly deleted. This issue is same as is considered in the assessment year 2003-04. Therefore, we do not find any infirmity

in the order of the ld. CIT(A) in deleting the addition, following the decision of the jurisdictional High Court. Ground No. 1 of the departmental appeal is, accordingly, dismissed.

- 22. On ground No.2, the revenue challenged the deletion of addition of Rs.40,73,504/- on account of disallowance of expenses. The said addition is made on the basis of findings given in assessment year 2003-04 and the AO disallowed 60% of the expenses. The ld. CIT(A) considering the details and perusal of the material on record found that the AO has not brought anything on record against the assessee or a single defect in the books of account of the assessee. Therefore, the addition was deleted by following the order in preceding assessment years. In preceding assessment years, we have dismissed the departmental appeals and particularly for assessment year 2003-04 on similar issue, as nothing adverse was found against the assessee. Ground No. 2 of appeal of the revenue is, accordingly, dismissed.
- 23. On ground No.3, the Revenue challenged the deletion of addition of Rs.3,65,000/- on account of difference in market price and sale price of property. The ld. CIT(A) following his order for the assessment year 2003-04, deleted the addition, in which we have confirmed the order of the ld. CIT(A). Following the

order for assessment year 2003-04, we dismiss this ground of appeal of the Revenue.

On ground No. 4, the Revenue challenged the deletion of addition of 24. Rs.54,289/- on account of unconfirmed unsecured loan. The addition was made in respect Sheetal Bhadoria for the reason that no documents relating to genuineness of the transaction or copy of account has been furnished by the assessee. It was submitted before the ld. CIT(A) that the confirmation was filed before the AO and further, the balance of Sheetal Bhadoria is old and only carried forward in the assessment year under appeal. The ld. CIT(A) accepted the contention of the assessee because the opening balance as on 01.04.2007 (PB-44) was Rs.5,56,880/-, which is closing balance of the last year. During the year under consideration, only quarterly interest of Rs.54,289/- was credited in the books of account along with confirmation. The addition was, accordingly, deleted. On consideration of the above facts and confirmation account (PB-44), we do not find any justification to interfere with the order of the ld. CIT(A) in deleting the addition. Ground No. 4 fails and is dismissed.

25. On ground No. 5, the Revenue challenged the deletion of addition of Rs.12,05,000/- on account of unconfirmed advances. These advances pertain to following:

(i).	Aditya Education Society	Rs.7,00,000/-
(ii).	Dilip Rajpuriya	Rs.1,25,000/-
(iii).	Shivendra Jain	Rs.3,80,000/-
		Rs.12,05,000/-

26. It was submitted that in the case of Aditya Education Society, Rs.5,00,000/was the old balance and Rs.2,00,000/- was received through banking channel, which is shown in the balance sheet and account of the party (PB-45). In the case of Dilip Rajpuriya, the amount was received through cheque for booking of the flat. Possession of the flat was not taken (PB-50). In the case of Shri Sivendra Jain, Rs.1,50,000/- was old balance and Rs.2,30,000/- was received in assessment year under appeal through cheque. Possession of flat was not taken because construction was not complete. Copy of account and confirmation filed (PB-52). The ld. CIT(A) accepted the contention of the assessee and deleted the addition. Considering the explanation of the assessee in the light of material on record, it is clear that substantial amount was old balances and rest of the amounts were received through banking channel for booking of flats, which is also confirmed by the parties. Therefore, the ld. CIT(A) rightly deleted the addition. Ground No. 5 fails and is dismissed.

On ground No.6, the Revenue challenged the deletion of addition of 27. Rs.25,72,557/- on account of difference in work in progress. The assessee submitted complete details before the ld. CIT(A), which were examined and found correct. No defects have been pointed out in the maintenance of books of account. The assessee gave complete details project-wise and satisfied that there is no discrepancy at all. The formula adopted by the AO was not justified on average basis. The AO adopted the average-wise formula considering the cost of earlier years. The ld. CIT(A) noted that nothing adverse material was found against the assessee during the search and the AO has proceeded to make addition on the same line as have been made in earlier years relating to search cases. The ld. CIT(A) found that the method of the AO is incorrect because the closing stock/work in progress is to be valued at cost or market price whichever is lower. The assessee maintained the same at cost as per books of account, therefore, the addition was deleted. It is the same issue, which is considered in the assessment year 2003-04. Therefore, we do not find any merit in the departmental appeal on this issue. We may note here that it appears that the AO on the basis of the assessments made in the proceedings u/s. 153C has considered all these issues on the same basis and made the substantial additions against the assessee. Since nothing was found against the assessee incriminating in nature, therefore, there was no reason to sustain the addition. Further, when the assessments u/s. 153C have already been

Sd/-

Judicial Member

cancelled, therefore, on the same line when additions have been made in the regular assessment, we do not find any justification to interfere with the order of the ld. CIT(A) and the ld. CIT(A) on proper appreciation of facts and material on record rightly deleted all these additions. In the result, the departmental appeal fails and is dismissed.

In the result, all the departmental appeals are dismissed. 28.

Order pronounced in the open court.

Sd/-(A.L. GEHLOT) (BHAVNESH SAINI) Accountant Member

*aks/-

Copy of the order forwarded to:

- **Appellant** 1.
- 2. Respondent
- By order 3. CIT(A), concerned
- CIT, concerned 4.
- 5. DR, ITAT, Agra
- Guard file Sr. Private Secretary 6.

True copy