

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH 'B', PUNE**

**BEFORE SHRI I.C. SUDHIR AND
SHRI D. KARUNAKARA RAO**

ITA Nos. 114 to 117/PN/10 (AYs 2000-01 to 2003-04)

Sinhgad Technical Education Society **Appellant**
S. No. 44/A Vadgaon (BK)
Off Sinhgad Road,
Pune – 411041
PAN No. AABTS3300Q

Vs.

ACIT, **Respondent**
Central Circle 2(2),
Pune

Appellant by : Shri S. N Doshi
Respondent by : Shri A. S Singh, CIT DR

ORDER

Per D. Karunakara Rao AM

These are four appeals filed by the assessee against the commonly dated but different orders of the CIT(A)-II, Pune. The grounds of appeal are more or less the same in these appeals and the additional ground raised by the assessee is common for all the four appeals. Therefore, all these appeals are clubbed. For the sake of convenience, the appeal for the AY 2000-01 is taken up and it is against the order of the CIT(A)-II, Pune dated 24/12/2009. Thus, the grounds in the appeal for the AY 2000-01 and the common additional ground raised by the assessee during the proceedings AY before us are as under:-

"Ground No. 1(a)

On the facts and in the circumstances of the case the order of CIT(A) is bad in law and invalid as he has not issued the mandatory notice as required by Sec. 251(2) of the Income Tax Act 1961, in order to enhance the assessment thereby making the appellant liable on the grounds different from those not considered by the Assessing Officer.

Ground No. 1(b)

On the facts and in the circumstances of the case and without prejudice to the above ground no. 1 the order of CIT(A) is bad in law and invalid as he has decided the appeal by considering the issues which are not mentioned in the assessment order- Ref CIT vs Shapurji Palloji Mistri 44 ITR 891(SC).

Ground No. 2(c)

On the facts and in the circumstances of the case and without prejudice to the above ground no. 1 the learned CIT(A) has erred in not appreciating the established legal position that his power of enhancement is restricted to the subject matter of assessment which has been considered expressly or by clear implication by the Assessing Officer. Refer CIT vs. Raj Bahadur Hardutroi Motilal Chamarla – 66 ITR 443 (SC).

Ground No. 2

On the facts and in the circumstances of the case and without prejudice to Ground No. 1 the CIT(A) has erred in treating the acquisition of shares in cooperative bank for Rs. 49,750/- as in contravention of provision of section 13(1)(d)(i) of the Income Tax Act, 1961 disregarding the fact that this acquisition of share is neither the investment nor the deposit made out of the funds of the institution and such acquisition was necessary being a pre-condition for availing the loan from the said co-operative bank.

Ground No.3

On the facts and in the circumstances of the case and without prejudice to ground no. 1 to 3 the CIT(A) has erred sustaining the disallowances of Rs. 15,130/- u/s. 40A(3) and treating the revenue expenditure as capital expenditure.

Ground No. 4.

On the facts and in the circumstances of the case and without prejudice to Ground No.1 to 3 the CIT(A) has erred in treating the donations received towards trust corpus as revenue income. Denial of exemption u/s. 11 cannot change the basic and true nature of the receipt.

Ground No. 5

On the facts and in the circumstances of the case and without prejudice to the ground No. 1 to 3 the CIT(A) has erred in sustaining the addition of Rs. 4,43,012/- proposed and made by the special auditors by invoking the provisions of section 36(1)(va) of the Act on account of delay in payment of employees share of provident fund rws section 2(24).

Ground No. 6

On the facts and in the circumstances of the case and without prejudice to the ground No. 1 to 3 the CIT(A) has erred in sustaining that the disallowance of Rs. 51,505/- made on account of prior period expenditure disregarding the contention that these expenses materialized in the context of their liability in the year under consideration only.

Ground No. 7

On the facts and in the circumstances of the case and without prejudice to the Ground No. 1 to 3 the CIT(A) has erred in sustaining the disallowance of Rs. 50,000/- on account of donations paid.”

**Additional Ground of appeal -
ITA NO 114 TO 117 FOR AY 2000-01 TO 2003-04**

"On the facts and in the circumstances of the case, the order of the Assessing Officer passed under Section 143(3) r.w.s. 153C is bad in law in as much as he has failed to record and inform the necessary satisfaction as well as failed to provide the certificate true copies of the documents searched and seized in an action taken under section 132 on Shri M.N. Navale.

This ground is legal and goes to the root of the issue involved and therefore, appellant prays that this additional ground may kindly be admitted and disposed off on merit"

2. Briefly stated relevant facts of the case are that the assessee is an Educational Institution registered under Bombay Public Trust Act, 1950 & Societies Registration Act, 1860. It was also registered U/s 12A(a) of the Income Tax Act, 1961 since the A.Y. 1994-95. The search and seizure operation U/s. 132 was carried out in the case of Shri M.N. Navale on 20/07/05. Shri M.N. Navale is the President of the assessee Educational Society. In the course of search operation, the search party found and seized certain loose papers. Simultaneously, the survey action was conducted on the Institute. However, on the basis of the loose papers Bundle A-2 found with and seized from Shri M.N. Navale and the CIT issued the **show Cause** Notice stating that in view of the findings in the search operation, he had reason to believe that the notings in the said loose papers are in respect of Capitation Fees/ Donations and therefore, CIT proposed that the registration of the institution was to be **cancelled** on both the limbs namely the activity of the trust are not genuine and that these are not being carried on in accordance with the object of the trust. After hearing the assessee, the CIT cancelled the registration U/s. 12AA(3). This order of the CIT was challenged before the Honourble Income Tax Appellate Tribunal and the same was reversed on technical grounds ie the registration granted u/s 12A cannot be cancelled u/s 12AA(3) of the Act.

3. Coming to the search assessment proceedings of the Society, the AO issued the notice u/s. 153C of the Act after **recording the reasons** and the assessee filed the return claiming the exemption U/s. 11 of the Act. In the course of Assessment Proceedings, the Assessing Officer made the reference for special

Audit U/s. 142(2A) of the Act. In due course, the Special Auditor completed the audit. However, there is an allegation by the assessee that the Special Auditor conducted the audit totally in contrast to the terms and references made by the Assessing Officer for conducting the special audit. The Assessing Officer on the basis of the order of cancellation of registration held that the assessee has to be treated as AOP and it would not be entitled to the claim of exemption U/s. 11 of the Act. Assessing Officer assessed the income at Rs. 246,13,935/- as computed by Special Auditor.

4. Aggrieved with the above order of the AO, the assessee filed an appeal before the CIT(A) and made various submissions. CIT (A) allowed the appeal of the assessee partly. Aggrieved with the said decision of the CIT(A), the assessee filed the present appeal before us and made various submissions. Further, Ld Counsel raised an **additional ground** as narrated above and argued stating that the same is legal in nature and there is no need for any investigation in to the matter for deciding the same by the Tribunal. Some of them are extracted from the written submission of the assessee and the same are as under.

"1. In the paper book filed by the Department Representative on 31/08/2010, it is found that the satisfaction note is made on 18/4/2007. It is however not clear as to the Ward/ Circle of the Assessing Officer who has recorded this note. The satisfaction note has to be made by the Assessing Officer of the searched person i.e. Mr. M.N. Navale. On the date of search, Assessing Officer of M.N. Navale was ward 1(3) and of the appellant was circle -6, Pune.

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2. Even though on 18/4/2007, when the **satisfaction note** is made and the Assessing Officer was one and the same both for Mr. M.N. Navale and the appellant, it is necessary to have the mention, in the satisfaction note as to who is the Assessing Officer i.e., the Ward/Circle. It is the ward/circle which gets the jurisdiction and not an individual who governs or administers the said ward/ circle.

3. This satisfaction note has not been provided to the appellant at any time in the course of assessment proceedings or thereafter till 31/8/2010 on which date the paper book is filed by the Department.

It is necessary for the Assessing Officer of the appellant to inform about the satisfaction so recorded as well as to provide the copies of the seized documents and the appellant must be given a reasonable opportunity to object to the same. Refer: Janki International 278 ITR 296.

This view is taken by Delhi High Court in the case of Janki International vs. UOI. Although it is k158Bd and 158BC, nonetheless natural justice demands that the assessee who is proceeded u/s. 153C must be provided

with the copy of the satisfaction note as well as the certified copy of the document seized. (See Page No. 29)

Neither in the notice u/s. 153C, there is any mention about the satisfaction of the Assessing Officer. In the absence of such a satisfaction the assessment completed on the basis of such notice would be invalid. In this notice **there is no mention of the specific papers etc**, only the general statement is made. Neither the notice is enclosed with the satisfaction note.

4. As per the Satisfaction note it is clear that both the satisfaction note and notice u/s. 153C are dated 18/4/2007.

5. It is also not known as to the date on which this document **belonging** to the appellant were received by the Assessing Officer of the appellant. Search on 20/07/2005 on which date, Assessing Officer of searched person was ITO, Ward 1(3) and that of the appellant was ITO, Circle 6.

As the satisfaction note is made on 18/04/2007 and assuming the said date as the date of receiving the documents alleged to be belonging to the appellant the Assessing Officer of the appellant can issue the notice for six preceding assessment years. As the documents are received on 18/04/2007 relevant to the A.Y 2008-09, the Assessing Officer of the appellant **can issue notices u/s. 153C for the A.Y's 2002-03 to 2007-08.**

In the case of the appellant notices u/s. 153C are issued for A.Y **2000-01** to 2001-02 which is **not permissible**, refer the judgement of Allahabad bench in the case of Vijay Vimawal vs. ACIT 124 TTJ 508. Copy enclosed. (See Page 31 of the paper Book – Ahamadabad Bench).

The **assessment of A.Y 2003-04** has been completed u/s. 143(3) on 30/03/2006. Hence on the date relevant documents were received by the Assessing Officer i.e. 18/04/2007, this assessment was **not pending** and made u/s. 153(c) therefore is invalid.

6. The assessment has been made u/s. 153C r.w.s 143(3). In fact the assessment should have been made u/s. 153C r.w.s. 153A.

7. **Neither the documents** mentioned in the said satisfaction note stated to be belonging to the appellant have been provided to the appellant with due certification thereon.

8. In para 2 of the satisfaction note it is stated that as per panchanama dated 22/7/2005 the various pages mentioned at serial no.'s 1 to 9 belong to the appellant. We explain the nature of these pages as under:-

a. Pages No. 11 to 15 mentioned at Serial No. 1 to 5, the contents are in respect of the payments made by Shri M.N. Navale for purchase of certain property from one Shree Amir Mohidin Sheikh by issuing cheques from his personal bank account with Central Bank of India, STES Extension Counter. However Shri M.N. Navale has obtained the acknowledgment erroneously by using the printed management vouchers

of STES. The fact however remains that these papers do not relate to the appellant. (See page No. 7 to 19 of this paper book)

b. Page No. 45 mentioned at Serial No. 6 is the copy of the letter dated 23/06/2001 written by the appellant's college of Pharmacy to the Directorate of Technical Education, Mumbai. The contents do not suggest even remotely that there could be any hidden income. The Fixed Deposit mentioned in the said letter are duly accounted in the regular books of accounts of the appellant. (See Page No. 20)

c. Page No. 35 mentioned at Serial No. 7 is a piece of paper bearing dated 25/06/2005 and it shows certain figures. It is a dumb paper and does not convey anything. (See Page No.21).

d. Page No. 50 mentioned at Serial No. 8 show the details of staff arrangements made by the appellant and explaining the admission process for the F.Y 2003-04. (See Page No. 22)

e. Page No. 54 mentioned at serial No. 8 is an extract of G.R. Dated 5/09/2003 issued by government of Maharashtra showing the names of new colleges of appellant for which permissions are granted. (See Page No. 23).

f. Pages No. 58 to 60 mentioned at serial No. 9 show the expenditure incurred by Shri M.N. Navale who hosted the party in Hotel Aurora on 29/08/2004 and the amount mentioned therein of Rs. 55811.94 is paid in cash by Shri M.N. Navale and the same has been debited to his Capital Account in his return of income (See Page No. 24 to 26)

None of these pages suggest prima-facie belief of hidden income. **These papers relate to F.Y. 2004-05** that too of Shri M.N. Navale and **none of these papers therefore are related to Financial Years 1999-00 to 2002-03 i.e. (AY. 2000-01 to 2003-04)**. Therefore on the basis of these documents pertaining to the F.Y. 2005-06 by any standard, there could be any suggestion that even prima-facie there is some hidden income in the Assessment Years 2000-01 to 2003-04, warranting issue of notice u/s. 153C. Therefore the Assessing Officer should not have proceeded mechanically in issuing the notices u/s. 153C.

9. **Nothing is seized pertaining to A.Y 2000-01 to 2003-04 obviously there is no question of recording satisfaction note** and forwarding those Seized materials to the assessing Office of the appellant.

In absence of any seizure of any asset, documents etc proceeding cannot be initiated against the appellant u/s. 153C(1) rws 153A refer P. Srinivas Naik vs. ACIT – 114 TTJ 856 – Bangalore. (See Page No. 53).

10. Though the section 153C only requires the satisfaction to the effect that documents etc., **seized belong to the connected person** nonetheless it is necessary that seizure or requisition must be of such a character as to persuade the Assessing Officer to even reopen the closed assessments. Refer Delhi High Court judgement in the case of Saraya Ind. Ltd., vs. UOI – 216 CTR 257. Also refer the Supreme Court judgement in

the case Mahesh Maheshwari 289 ITR 341 where the Apex Court has held that fiscal law should be constructed strictly. (See page No. 40 and 44)

The term "**belong**" implies something more than a casual connection and it involves the notion of continuity involving intimate connection over a period of time. Refer Bangalore ITAT Bench judgement in the case of P Shrinawas Naik Vs. Asst. CIT 114 TTJ 856. (See Page No. 53).

11. **Mere passing of the seized material by the Assessing Officer of the searched person does not amount to recording of requisite satisfaction** and proceeding u/s. 153C(1) in such a case will be treated as **without jurisdiction**. Refer Nauvik Investment and Commercial Enterprise Ltd. Vs. DCIT- 5 DTR 479 – Delhi High Court. Copy enclosed (See page No. 58).

12. The issue of notice u/s. 153C(1) in the **absence of the requirement of prima-facie belief** that there could be some hidden income it would not be within the predominant object of assessing the undisclosed income for which section 153A and 153C are brought on statute.

13. It is true that section 153C(1) provides that on receiving the requisite satisfaction from the Assessing Officer, the Assessing Officer of the connected person "shall" proceed against the connected person for making the assessment or reassessment u/s. 153A. The word "shall" is indicative of enabling the Assessing Officer with the power to proceed against the connected person and that word is not indicative of a mandatory duty.

Submitted that the word "shall" should be interpreted as only directory. There is a logic to make this proposition. It is because certain documents belonging to the connected person are found with the searched person and if the Assessing Officer finds that the transactions mentioned in the seized material have already been duly disclosed by the connected person or duly recorded in the books of accounts regularly maintained, in that case it would be incorrect or unfair for the Assessing Officer to proceed against the connected person causing unnecessary inconvenience and trouble.

14. It is a known fact that in the course of search while effecting the seizure, the search officials need not have to find out whether the valuable document etc, belonging to the connected person are duly disclosed by him or otherwise and naturally these documents, valuables, etc., are also seized. Therefore mere act of seizure does not by itself lay the foundation for the reasonable prima-facie belief that there is some undisclosed income. The seizure must be of such a character as to persuade the Assessing Officer to even reopen the completed assessment – Sarya Industries vs. UOI – 216 CTR 25/306 ITR 189, (See page No. 40).

The tax law will be interpreted reasonable and inconsonance with justice, adopting a purposive approach to effectuate the legislative intention. Refer CIT Vs. Gwalior Rayon Silk Mfg. Co. Ltd.- Supreme Court – 196 ITR 149 and CIT Vs. Dodsall Ltd., - Bombay High Court – 218 CTR 430. (See Page No. 67 to 75 and Page No. 76 to 78).

The object behind section 153A and section 153C is undisputedly to being to tax undisclosed income and therefore where the Assessing Officer of the connected person is satisfied that the seized materials received by him does not prima-facie indicate the existence of undisclosed income he need not subject the connected person to needless inconvenience by initiating an action u/s. 153C rws 153A.

Such an action of the Assessing Officer would be contrary to the principle of natural justice and has been so held by the Supreme Court in several cases. Refer the judgement of Supreme Court in Sahara India (Firm) vs CIT 216 CTR 303. On the same analogy it will be logical and fair on the part of the Assessing Officer of the connected person to at least get himself satisfied that the transaction noted in the document are of such a nature suggesting non disclosure of income and for that purpose such Assessing Officer may call the connected person and ensure that whether those transactions are infact disclosed and accounted in the regular books of accounts or otherwise."

5. On the other hand, Ld. DR for the Revenue argued stating that there exists the seizure of the various documents belonging to Sinhgad Technical Education Society (STES) from the premises of Mr Navale and those documents undoubtedly belong to the assessee and in such circumstances, requirement of the law as mentioned in section 153C of the Act are met and therefore, the A.O validly assumed jurisdiction u/s. 153C of the Income Tax Act. Further, as per the DR, there is no need for seizure of '*any money, bullion, jewellery or other valuable articles or thing or books of account or documents*' with assessment year specificity. Ld DR is of the view that mere seizure of '*any money, bullion, jewellery or other valuable articles or thing or books of account or documents*' belong to the person covered u/s 153C of the Act is sufficient for the AO to assume jurisdiction in respect of all the six years as per the proviso to section 153A of the Act and there is requirement of the law that there must exist seizure of any of the list mentioned above belonging to all six years before assuming jurisdiction u/s 153C of the Act. Further, Ld DR relied on the order of this bench in the case of Kumar & Company vide ITA no. 1020/PN/08 and others for the A.Y's 2001-02 to 2003-04 dated 02-02-2010 for the proposition that the AO rightly assumed jurisdiction and he read out the contents of para 24 of some of the findings of the Tribunal.

6. During the time for rebuttal, Ld. Counsel relied on another order of the Tribunal in the case Kumar & Company vide ITA No. 463/PN/08 for the A.Y 2000-01 dated 02-02-2010 and read out para 25 of the said order for the

proposition that the A.O cannot assume jurisdiction u/s. 153C unless the documents seized belong to the assessee must not only be a speaking one but also the prima facie incriminating one and the such incriminating material should pertain to the six assessment year attempted to be disturbed by issue of notice u/s. 153C of the Act. As per Ld counsel, the provisions of sec. 153C cannot be invoked automatically in respect of the six A.Y's, unless there exists incriminating documents for all the six A.Ys and the provision of section 153C cannot be invoked based on the routine information or already accounted information disclosed to the department. Further, it is mentioned that unless some seized papers are available with incriminating document, settled and completed assessment should not be disturbed routinely and automatically merely for the reasons of the first proviso to sec. 153A of the Income Tax Act. Further, he reiterated the argument that considering the fact that the documents are received by the AO on 18/4/2007 relevant to the A.Y 2008-09, the Assessing Officer of the appellant can issue notices u/s. 153C for the A.Y's 2002-03 to 2007-08 and the issue of notices u/s. 153C for A.Y 2000-01 to 2001-02 is not permissible as held in the judgment of Allahabad bench in the case of Vijay Vimawal vs. ACIT 124 TTJ 508. Further he reiterated that the assessment of A.Y 2003-04 was completed u/s. 143(3) on 30/03/2006. Hence on the date relevant documents were received by the Assessing Officer i.e. 18/04/2007, this assessment was not pending and made u/s. 153(c) therefore, the notice is invalid. Further also he summed up stating that the reasons recorded and the incriminating papers relate to the AY 2005-06 and none of these papers therefore are related to Financial Years 1999-00 to 2002-03 i.e. (AY. 2000-01 to 2003-04) and therefore, the notices issued in respect of the **AYs upto 2003-04 should be quashed.**

7. We have heard the parties and perused the orders of the revenue. Further, we have gone through the voluminous paper books, written submissions, plenty of citations filed by both the parties to advance their respective arguments. On consideration of the original grounds and the additional grounds, we find it relevant to consider the additional ground first as it relates to the legal issue and it goes into the root of the matter. It questions the validity of the notice issued issued u/s 153C of the Act for all the four AYs under consideration. The relevant discussion is given in the following paragraphs of this order.

8. Additional Ground: Invalid Notices U/s 153C: In this regard, we have perused the reasons recorded by the AO of the assessee. We find that there exists the reasons for issue of notice u/s 153C of the Act and it is an undisputed fact. We also find that they are common reasons for all six AYs including the four AYs under consideration. The Counsel for the assessee argued vehemently that AO issued notices u/s 153C simply relying on the contents of section 153A(1)(b) of the Act and also its first proviso ignoring various settled legal propositions ie the concluded assessments, which fall in the bunch of six AY, should not be disturbed unless there exists incriminating material relevant for the said AYs or concluded assessments and such incriminating material should be of that nature it should not be a dumb documents. In this regard, the stand of the revenue is that the express provisions are clear on the proposition that the AO 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..'* (first proviso). Considering the contrary stands of the parties, without going into the merits of the additions, we have decided to adjudicate the legal issue ie additional ground and it involves the study the details of the reasons recorded by the AO based on which the AO issued the impugned notices u/s 153C of the Act for the impugned four AYs. For this purpose, we have extracted the relevant portion of the reasons and the same read as follows.

9. *"Satisfaction Note for proceedings u/s 153C of the I T Act, 1961 in the case of M/s Sinhgad Technical Educational Society (STES), Pune....."*

- "1) page 11 – this is voucher of Sinhgad Technical Education Society (STES) dt. 17-01-**2004 for cheque** payment of Rs. 2.80 lacs to Amir Moiddin Shaikh.
- 2) page 12 – this is voucher of STES dt. NIL for cheque payment of Rs. 1 lacs to Amir Moiddin Shaikh.
- 3) page no. 13- this is voucher of STES Dt. 30.01.2005 for cheque payment of Rs. 2 lacs to Shaikh Amir Shaikh.
- 4) page no. 14- this is voucher of STES dt. 27.09.2004 for cash payment of Rs. 1 lacs to Shaki Amir Shaikh
- 5) page no. 15- this is voucher of STES dt. NIL for cheque payment of Rs. 50,000/- to Shaikh Amir Shaikh.
- 6) page no. 45- this is an office copy of letter dt. 23.06.2007 written to director of DTE, Mumbai by Sinhgad College of Pharmacy, owned by STES.

Bundle no. A-2

7) *page no. 35- there are the balances available to various institute of STES on or before 25.06.2005.*

Bundle no. A-4

8) *page no. 50 & 54 – these pages contains the details of staff arrangements made by the STES college of Engineering for admission process for F.Y. 2003-04.*

9) *page no. 58 to 60- these pages contain the details of expenses incurred by STES.”*

10. From the above, it is demonstrated by the Ld Counsel that the items at sl no 1 to 5 above belongs to the AY 2004-05 or thereafter. Referring to the rest of the items at sl. 6 to 9 above, the Counsel mentioned the said documents seized are either recorded in the books of account or involves cheque transactions. Thus, he **summed** up stating that the documents in question are neither the incriminating ones nor unaccounted transactions of the assessee and nor they relate to the impugned four AYs. In such circumstances, the AO not only assumed jurisdiction invalidly but also erred in disturbing the settled and completed assessments. Accordingly, AO should not assume jurisdiction in respect of such AYs in the absence of any incriminating information or transactions specific to any of the impugned four AYs ie 2000-01 to 2003-04. The contrary argument from the side of the revenue is that the overall approach in matters of concealment by the group assesses and all the discoveries of the search on Mr Navale and it concerns, have to be taken into account while forming the satisfaction within the meaning of section 153C of the act. Considering the divergent views of the parties, we have examined the said satisfaction note very closely and found that the impugned reasons mentioned by the AO are silent in so far as any AY-Specific-Incriminating-Information (ASII) or others ie unaccounted or undisclosed or hidden information to the revenue by the assessee. In our opinion, the impugned satisfaction note is very general one for six years. It is surprising to note that the AO has narrated some information against the Mr Navale HUF, which is not relevant for the present assessee. In the process, the AO totally missed the requirements of the law ie only the AY with the pending assessments and the AY with the AY specific incriminating documents/ transactions or seized asset should only be reopened under the provisions of the first proviso to section 153A of the Act and not otherwise.

11. In this regard, we have perused various legal propositions. First, we have perused the decision of this Tribunal in the case of Kumar Company for the AY

2000-01 (supra) and para 26 of the M/s. Kumar and Company vide ITA No. 463/PN/08 for the A.Y 2000-01 and the same reads as follows:-

25. Thus, we find that the seized documents belong to the assessee by way of limited ownership and they are not dumb documents as advocated by the Ld Counsel for the reason mentioned above. However, they are not found to be **incriminating documents for the AY 2000-01**.

The document may not be a dumb document and therefore a speaking one, but they must be the document with prima facie incriminating information too. Such incriminating nature of the seized document is an essential factor for switching on the proceeding u/s 153C. In other words, the **document seized must not only be a 'speaking one' but also be prima facie 'incriminating one'** for igniting the proceedings u/s 153C. Unlike other AYs, there is nothing made out by the AO what is called incriminating for the current AY under consideration. When the impugned documents merely contains the notings of entries, which are already found place in the books of accounts or subjected to scrutiny of the AO in the past in regular assessment u/s 143(3) of the Act, such document cannot be said to be containing the incriminating information. What is the point in disturbing the settled assessment when the revenue does not have incriminating information for an AY and the information what is available is only routine one and when the AO merely makes an addition in the assessment u/s 153C based on change of opinion and when such additions are likely to be deleted in view of the settled nature of the issues? Income Tax provisions are not merely for the issue of notice u/s 153C but it is essentially for taxing the income of the person. What is point in issuing notice u/s 153C on flimsy grounds and finally tax nothing? Such proceedings only creates avoidable nuisance both to the over-burdened taxman and the much hazzled taxpayers. In the instant case, provisions of section 153C are invoked merely to apply the provisions of section 45(4) in this year, the issue which was already examined and concluded as inapplicable to the facts of the case. Such issue of notice is unwarranted and such reopening of the assessment for the AY 2000-01 is **uncalled for**.

26. Therefore, the proceedings initiated u/s 153C is not valid in view of the decision in the case of LMJ International (supra). Under these circumstances, we are of the opinion, the AO has invalidly issued the notice u/s 153C for the AY 2000-01 **on the wrong presumption that AO can assume jurisdiction in respect all the six AYs automatically even with out any incriminating documents in respect of the concluded issues too**. Accordingly, the relevant grounds of the assessee are allowed.

12. From the above, it is our finding that the reasons recorded by the AO as extracted above do not contain anything incriminating for the AYs upto 2003-04. It is the settled position of the law based on the decision of the Tribunal in the case of LMJ International (supra) that the issue of notice under the provisions of the first proviso to section 153A(1) of the Act is not automatic and there is need

for AY-Specific Incriminating Information (ASII) in the possession of the AO to be the fountain head for springing satisfaction to him that there exists some income or asset to be assessed in the hands of any other person, who are referred to in section 153C of the Act. Reason for this kind of interpretation was already given in para 25 and 26 of our order in the case of Kumar Company for the AY 2000-01. In this regard, we posed question to ourselves if it is fair to reopen the assessment which is already concluded without any reason or logic thereby encroach on the rights of the tax payers? Should the AO be given unfettered or arbitrary powers to issue notice for the six AYs specified in the first proviso to section 153A(1) of the Act when the impugned assessments for the said six AYs are otherwise reached finality after due process of law. In our opinion, the answer is negative and it is in favour of the assessee. In any case, DR has not brought anything on record to demonstrate that the decisions given by the Tribunal in the case of LMJ International (supra) and M/s Kumar Company (supra) are not to be followed in this case. Our perusal of another order of the Tribunal in the case of M/s Kumar Company for the AY 2201 to 2003-04 vide ITA No 1020,1250,1021,1251,1022 & 1252/PN/2008, relied upon by the Ld DR is found distinguishable in so far as the **existence of the incriminating document** for the relevant AY is concerned. Whereas, in the instant case, first of all, there is no mention of any document in the said reasons relatable to the impugned four years and the incriminating nature of the same is out of question. Therefore, reliance of the DR on the said case is misplaced.

13. Further, we have examined various other judicial propositions mentioned by the Ld Counsel and some of them are reproduced as under.

1) Anil Kumar Bhatia & Ors. (2010) 1 ITR (Trib) 484 (Del)
Conclusion:-

*"In respect of an assessment under s. 153A, where processing returns under s. 143(1)(a) stood completed in respect of returns filed in due course before search and **no material is found in search** thereafter, no addition can be made."*

2) Suncity Alloys (P) Ltd. (2009) 124 TTJ (Jd) 674

Conclusion:- *"Assessments or reassessments made pursuant to notice under s. 153A are not de novo assessment and therefore no new claim of deduction or allowance can be made by assessee where admittedly the regular assessments are shown as completed assessments on the date of initiation of action under s. 132."*

3) Meghmani Organics Ltd. (2010) 129 TTJ (Ahd) 255

Conclusion:- *"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.**"*

4) LMJ International Ltd. (2008) 119 TTJ (Kol) 214

Conclusion:- *"Where **nothing incriminating is found in the course of search relating to any assessment years, the assessments for such years cannot be distributed;** items of regular assessment cannot be added back in the proceedings under s. 153C when no incriminating documents were found in respect of the disallowed amounts in the search proceedings."*

5) Kailash Auto Finance Ltd. (2009) 32 SOT 80 (Luck)

Conclusion:- *"A notice under s. 148(1) can be issued even where notice under s. 143(2) has been pending and not closed. By processing the return and by issuing acknowledgment as token of accepting the return, the proceedings initiated by filing the return are terminated and no proceedings, therefore, remain pending."*

6) R.M.L. Mehrotra (2010) 320 ITR 403

Conclusion:- *"Undisclosed income of the block period has to be determined on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the A.O and relatable to such evidence; AO cannot compute the income on the basis of best judgement."*

14. From the above, it is evident that the where nothing AY and assessee specific incriminating "*money, jewellery or other valuable article or thing or books of account or documents*", the assessments for assessee years cannot be distributed. Further, the concluded assessments should not be disturbed merely for making routine additions, which could have been otherwise done in the regular assessment and of course, the pending assessments fall under exceptions. As stated by the Ld Counsel point no 9 of his note reproduced above, "nothing is seized pertaining to A.Y 2000-01 to 2003-04 obviously there is no question of recording satisfaction note. On this reasoning itself, we find that the assessee has to succeed. Therefore, we do not examine the other arguments of the counsel. Otherwise, the counsel argued that the reopening of the assessment for the AY 2000-01 to 2001-02 is impermissible in view of the judgment of Allahabad bench in the case of Vijay Vimawal vs. ACIT 124 TTJ 508.

Further, he also argued that the assessment of A.Y 2003-04 was actually completed u/s. 143(3) on 30/03/2006 ie prior to receipt of the impugned documents by the Assessing Officer on 18/04/2007, this assessment was not pending. Attending to these arguments of the counsel is superfluous and merely an academic exercise as we have upheld the applicability of the decision of the Tribunal in the case of LMJ International Ltd (supra) for the proposition that the *"where nothing incriminating is found in the course of search relating to any assessment years, the assessments for such years cannot be distributed"* and other local decision cited above. Accordingly, the additional ground raised by the assessee for all the four appeals under consideration are allowed and in favour of the assessee.

15. As the additional ground for all the four years are allowed in favour of the assessee, we are of the considered opinion the adjudication of the grounds relating to the merits of the additions is merely an academic exercise. Therefore, the relevant grounds in all the four appeals are dismissed as academic.

16. In the result, all four appeals of the assessee are **allowed**.

Order is pronounced in the open court on 28th January 2011.

Sd/-

(I.C. SUDHIR)
JUDICIAL MEMBER

Sd/-

(D.KARUNAKARA RAO)
ACCOUNTANT MEMBER

Pune dated the 28th January, 2011.

R

Copy of the order is forwarded to :

1. Assessee
2. ACIT, Central Circle 2(2), Pune
3. CIT(A)-II, Pune
4. CIT(Central), Pune
5. D.R. ITAT 'B' Bench

By order

Assistant Registrar
I.T.A.T Pune

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**BEFORE SHRI I.C. SUDHIR, JUDICIAL MEMBER AND
SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER**

<u>S. No</u>	<u>ITA No</u>	<u>Asstt.year</u>
1.	917/PN/2010	2000-01
2.	918/PN/2010	2001-02
3.	919/PN/2010	2002-03
4.	920/PN/2010	2003-04
5.	921/PN/2010	2004-05
6.	922/PN/2010	2005-06

Bharati Vidyapeeth,
Bharati Vidyapeeth Bhawan,
Lal Bahadur Shastri Rod,
Navi Peth, Pune 411 030
PAN AAATB 1836D

.. Appellant

Vs.

Asstt. Commissioner of Income-tax
Cen. Cir. 2(2), Pune

.. Respondent

AND

<u>S. No</u>	<u>ITA No</u>	<u>Asstt.year</u>
1.	1028/PN/2010	2000-01
2.	1029/PN/2010	2001-02
3.	1030/PN/2010	2002-03
4.	1031/PN/2010	2003-04
5.	1032/PN/2010	2004-05
6.	1033/PN/2010	2005-06

Asstt. Commissioner of Income-tax
Cen. Cir. 2(2), Pune

.. Appellant

Vs.

Bharati Vidyapeeth,
Pune 411 030

.. Respondent

Assessee by : S/Shri Sunil Pathak & Nikhil Pathak
Department by : Shri A. S. Singh

ORDER

Per D. Karunakara Rao, A.M:

There are 12 appeals under consideration and they involve cross appeals. Considering the fact that the common issues are involved, all these appeals of the assessee as well as Revenue are consolidated and they are heard together. Further, they are being disposed of by this consolidated order for the sake of

convenience. Grounds are mostly common and therefore, the grounds for the AY 2000-01 are narrated here for reference purposes.

2. *The following grounds are taken without prejudice to each other –
On facts and in law,*

1. *The Id CIT(A) erred in not appreciating that the notice issued u/s 153C was not valid and therefore, the assessment made u/s 153C r.w.s. 153A was null and void.*
2. *The Id CIT(A) erred in holding that the reference for special audit u/s 142(2A) was valid and the assessment made consequent thereto was valid in law.*
3. *The Id CIT(A) erred in holding that the appellant trust was not entitled to the exemption u/s 11 and the income was taxable in the hands of the appellant.*
4. *The Id CIT(A) erred in holding that the activities of the assessee trust were covered under the provisions of section 10(23C) and accordingly, the claim of exemption of the assessee could be entertained only u/s 10(23C)(vi) and not u/s 11-13.*
5. *The Id CIT(A) erred in holding that the assessee trust has violated the provisions of section 13(1)(d) by investing the funds in the modes other than those prescribed in section 11(5) and hence, the exemption u/s 11 was not allowable.*
6. *The Id CIT(A) erred in holding that the assessee trust has violated the provisions of section 13(1)(c).*
7. *The Id CIT(A) erred in holding that the assessee trust was charging some capitation fee for admissions to the students without appreciating the correct facts of the case.*
8. *The Id CIT(A) erred in holding that the cash and the loose papers found with Shri Shinde belonged to the appellant and not to Shri Shinde and that the appellant had received the capitation fee as per these papers.*
9. *The Id CIT(A) erred in confirming the following additions to the total income in the hands of the assessee –*
 - i. *Disallowance u/s 40A(3) – Rs 8,920/-*
 - ii. *Liabilities written back Rs 33,90,406/-*
 - iii. *Disallowance of certain expenditure of Rs 13,21,222/- on the ground that it is a capital expenditure.*
10. *The Id CIT(A) erred in not setting off the excess deficit in the hands of the appellant trust till AY 1998-99 against the income of the appellant for this year.*
11. *The Id CIT(A) erred in holding that the donations received against the issue of coupons were on account of the capitation fee charged for admissions and they were not the corpus donations.*
12. *The Id CIT(A) erred in holding that the donations received specifically by cheques as corpus donations also constituted income of the appellant.*
13. *The Id CIT(A) erred in denying the deduction u/s 80L to the appellant.*
14. *The appellant requests for reduction in the interest charged u/s 234A/B/C.*

3. Relevant facts of the case are that the search and seizure operation u/s 132 of the Act was conducted on 20.7.2005 in the case of Shri Ramchandra

Dada Shinde (RD Shinde) at his **office** premises at Bharati Vidyapeeth, Bharati Vidya Bhavan, Pune as well as at his **residence** at "Ashirwad" Bharati Nagar, Paud Road, Kothrud. Shri Ramchandra Dada Shinde is the employee of Bharati Vidyapeeth, Pune in the capacity of Accounts Officer. He looks after the accounts of various trusts of Bharati Group including the present case i.e. Bharati Vidyapeeth. Search resulted in seizure of several documents relating to donations/capitation fee charged by Bharati Vidyapeeth. The search assessments u/s 153A were taken up in the name of Sri R D Shinde. The case was assigned to this circle by the CIT (C), Pune vide jurisdictional order dated 26.4.2006u/s 127 of the I.T. Act, 1961. Subsequently, after recording the reasons as required, the notices u/s 153C were issued to the assessee for the block period consisting of A.Y 2000-01 to 2005-06 on 30.3.2007 in response to which the returns were filed on 25.7.2007. Copy of the satisfaction note was provided to the assessee. The assessee, vide another letter dated 24.7.2008 has raised objections to notice u/s 153C, for assessment years 2000-01 to assessment years 2005-06. The objections relating to notice under section 153C are not acceptable the AO and the reasons in this regard are discussed in the following paragraphs. Copy of the satisfaction note as provided to the assessee vide letter No PN/DCIT/CC2(2)153CC/07-08/334 on 10.10.2007 are discussed in the subsequent paragraphs of this order. In the light of the above note supplied to the assessee, the assessee raised various objections to the issuance of the notices u/s 153C of the Act for A.Y 2000-01 to 2005-06, vide letter Ref. No: BV/CO/2008-09, dated 24.7.08. The same as extracted by the CIT(A) is reproduced as below.

"In this case, Your Honour has issued us notice u/s 153C in pursuance of the search on Shri R. D. Shinde. Your Honour has given us the satisfaction note wherein your Honour has referred to the documents relating to the assessee found with Shri R.D. Shinde. Accordingly, your Honour is of the opinion that since various documents seized from Shri R. D. Shinde pertain to the assessee, the notice u/s 153C is valid. The assessee submits that there is no justification for issue of notice u/s 153C. In view of provisions of section 153C where any money, bullion, jewellery or valuable article or thing or books of accounts or documents seized belong to a person other than the person referred to section in 153A, then notice u/s 153C can be issued to the person whose books of accounts, etc. are seized. The assessee submits that the documents found with Shri Shinde which are mentioned in your reasons are not incriminating documents but they are the documents for the transactions which are duly accounted by the assessee trust in its books and therefore, there was no reason to issue notice to the assessee u/s 153C. The assessee contends that where regular documents which are accounted and can be verified are seized, then no notice u/s 153C can be issued. No incriminating material was found pertaining to the assessee during the search on Shri Shinde. Hence,

we submit that the notice issued u/s 153C is not valid at all since no incriminating evidence has been found pertaining to the assessee. Accordingly, we request your Honour to kindly drop the proceedings initiated u/s 153C and oblige.

2. Your Honour has further stated that the seized books of accounts indicate donations received in cash. However, we submit that the dept. has not sized any books of accounts pertaining to the assessee trust at the time search on Shri Shinde. Therefore, there is no question of any seizure and the fact that the assessee has received donations in cash is on the basis of the post search enquiries. Therefore, the notice issued on this ground is totally invalid.

3. Lastly, your Honour has also referred to the statement of Shri R. D. Shinde wherein as per your Honour he has stated that Rs 2 Crs. received on account of consultancy fee from students has been deposited in the building and equipment fund of the various trusts of Bharati Vidyapeeth group. We fail to understand as to how your Honour can issue notice u/s 153C on the basis of this statement of Shri R. D Shinde. First of all, Shri R.D. Shinde has not categorically accepted that Rs. 2 Crs is deposited in the building and equipment funds. He has in his statement later on accepted that Rs 2 crs is his income. Thus, when he has accepted the income, there is no reason to tax the same in some other case. Further, in his statement, Shri Shinde has merely mentioned that Rs 2 crs might have been deposited in the funds of the various trusts of the Bharati Vidyapeeth Group. First of all, he has not stated in clear terms that the amount is deposited and he has only raised an apprehension. Secondly, he has not mentioned that the name of the trust in which the amount is deposited. There are number of charitable trusts whose documents are founded with him. Accordingly, the notice issued to the assessee is purely on presumption and surmises and hence, we submit that the notice u/s153C is not justified and therefore, the proceedings initiated may kindly be dropped.

*We hope the explanation submitted by us are the genuine reasons to enable you to **drop the proceedings** initiated in our case for the above years."*

4. Thus, it is the case of the assessee that no material pertaining to the assessee was found and seized and if anything was seized the same is **not incriminating**. During the assessment proceedings, AO found that there are various documents seized and came to the conclusion that the seizure of documents is enough for issue of the notice u/s 153C of the Act and incrimination of the same is not needed as per the said provisions. Further, as per AO, the relationship between the persons searched i.e. Shri R.D. Shinde and the assessee is very well established and there is no dispute about this. There is also no dispute about the fact that the premises searched i.e. cabin of Shri R.D. Shinde is situated on 8th floor of Bharati Vidyapeeth Bhavan. While raising the objections to the jurisdiction u/s 153C, the assessee states that everything found in the material is accounted for in the books. Firstly, the assessee never explained the seized material satisfactorily. Because the seized material shows

evidences, going against the case of the assessee, the assessee invariably and conveniently ignored the vital contents of the seized material. Secondly, it is for the assessee to demonstrate whether the notings in the seized material are in agreement with the entries in the books. AO analysed the seized the papers in a coordinated manner and analysed the details of collection from students, as recorded in the seized slips, enclosed as Annexure I to the order, and numerous instances and came to the conclusion that the seized material belongs to the assessee and throws light on the fact of collection of donations/capitation fee, over and above regular fee. Further, the AO invoked the provisions of section 142(2A) of the Act and the books of accounts were referred to the special auditors. The crucial point is that the material seized belonged to the assessee and the satisfaction note is crystal clear about the same. It is further clear that number of documents found and seized relate to admissions in various courses, pertaining to the institutes, run by Bharati Vidyapeeth, and charging of donations/capitation fee, over and above the regular fee. In view of this, the objections raised by the assessee, against jurisdiction u/s 153C, are not acceptable. Accordingly, the AO rejected the objections against the issue of notices u/s 153C of the Act for these AYs.

5. The AO thereafter in para 2.44 to 2.52 of the assessment order analysed the facts of the case in the light of the objections raised by the assessee and tried to establish that the objections are not valid and the facts and documents available are adequate for the AO to initiate proceedings u/s 153C. Further, the AO is of the opinion that mere existence of seized material belonging to the assessee is sufficient to assume jurisdiction in respect of all the six years as per the provisions of the Act and he can reopen the concluded assessments even without the existence of the AY specific incriminating seized documents. He is of the opinion mere the close connection between the persons searched and the assessee is adequate assume jurisdiction u/s 153C of the Act. He has also quoted the notings from loose paper seized vide bundle no. 2 of panchnama dated 21.7.2005, wherein figures of huge collections in lakhs are noted, all of which was made the basis of admission for capitation fee of more than 9 crores in A.Y 2006-07. Satisfaction itself was claimed to be sufficient and speaking to establish the validity of the proceeding initiated u/s 153C. The defence of the assessee that the money and documents seized belonged to Shri Shinde as he has owned them up and the appellant had no knowledge or complicity to the said affairs of collecting money for admissions, were held not acceptable in view of many

reasons including the facts that the assessee had close relations with Shri Shinde. To establish this, the AO has referred to facts and arguments which are already noted in para 5 of this order and are not being repeated again. The defence taken by the appellant to plead its ignorance or non involvement in the said collection of money for admission, on the ground that Shri Shinde has now been removed from service, was not accepted by the AO, on the ground that it has only been done as an after thought after realizing the requirement of their defence. AO has referred to facts and evidences which emerged after search and survey and which have been described in the factual matrix of the case in para 5. To avoid repetition detailed narration is not given again. On the accounted nature of the documents referred to in the satisfaction, it was stated by the AO that the assessee never co-operated in explaining each and every item found during search, in post search inquiries and whether a document is incriminating or not can only be found after making necessary verification or which first initiation u/s 153C was required. The AO further referred to the incriminating documents and huge cash seized, which according to him very clearly established the collection of the money in lieu of admissions in crores. In support of the same, reliance was placed on the statement of Shri Shinde. In view of all these discussions, the AO held the proceedings initiated u/s 153C as valid and correct. From the order of the AO, it is amply clear that the AO never find the necessity of going into the requirement of examining if there exists AY specific incriminating seized documents involving the assessee. He is of the bona fide belief that the he can assume jurisdiction in all respect of the six assessment years automatically without the existence of the AY specific incriminating documents. Aggrieved with the above, the assessee filed the present appeal with the issue relating to the validity of the notice.

CIT(A)'s order

6. During the first appeal proceeding, the assessee made various submissions vide letter dt. 16.2.2009. They are being quoted below for ready reference and proper appreciation:

"4.1- In this case, the Id AO had issued notice u/s 153C dated 30.3.2007 (page No. 55) in pursuance of the search on Shri R.D. Shinde. The Id AO has given us the satisfaction note (page No 56 to 59) wherein he has referred to the documents relating to the assessee found with Shri R.D. Shinde. The satisfaction note is reproduced by the Id AO on page 23 – 25 of asst. order. Accordingly, the Id AO is of the opinion that since various documents seized from Shri R.D. Shinde pertain to the assessee, the notice u/s 153C is valid. The assessee submits that there is no justification for issue of notice u/s

153C. Section 153C states that where any money, bullion, jewellery or valuable article or thing or books of accounts or documents seized belong to a person other than the person referred to section in 153A, then notice u/s 153C can be issued to the person whose books of accounts, etc. are seized. The assessee submits that the documents found with Shri Shinde which are mentioned in the satisfaction note recorded by the Id AO are not incriminating documents but they are the documents for the transactions which are duly accounted by the assessee trust in its books and therefore, there was no reason to issue notice to the assessee u/s 153C. The assessee contends that where regular documents which are accounted and can be verified are seized, then no notice u/s 153C can be issued. We had also given a chart explaining the papers submitted. No incriminating material was found pertaining to the assessee during the search on Shri Shinde. Hence, we submit that the notice issued u/s 153C is not valid at all since no incriminating evidence has been found pertaining to the assessee. Accordingly, we submit that the notice u/s 153C is not valid and therefore, the asstt. made by the Id AO in pursuance of the said notice is also invalid.

- 4.2 The Id AO has further stated that the seized books of accounts indicate donations received in cash. However, we submit that the dept. has not seized any books of accounts pertaining to the assessee trust at the time search on Shri Shinde. Therefore, there is no question of any seizure and the fact that the assessee has received donations in cash is on the basis of the post search enquiries. Therefore, the notice issued on this ground is totally invalid.
- 4.3 Lastly, the Id AO has also referred to the statement of Shri R.D. Shinde (refer page 60 to 62) wherein according to the AO, Shri Shinde has stated that Rs 2 Crs. received on account of consultancy fee from students has been deposited in the building and equipment fund of the various trusts of Bharati Vidyapeeth Group. We fail to understand as to how the Id AO can issue notice u/s 153C on the basis of his statement of Shri R.D. Shinde. First of all, Shri R.D. Shinde has not categorically stated that Rs 2 Crs. is deposited in the building and equipment funds. He has in his statement later on accepted that Rs 2 crs. is his income. Thus, when he has accepted the income, there is no reason to tax the same in some other case. Further, in his statement, Shri Shinde has merely mentioned that Rs 2 Crs. may be deposited in the funds of the various trusts of the Bharati Vidyapeeth Group. First of all, he has not stated in clear terms that the amount is deposited and he has only raised an apprehension. Secondly, he has not mentioned that the name of the trust in which the amount is deposited. There are number of charitable trusts whose documents are found with him. Accordingly, the notice issued to the assessee is purely on resumption and surmises and hence, we submit that the notice u/s 153C is not justified and therefore, the assessment made is grossly illegal and the same may kindly be held to be null and void.

7. The AO in his Remand Report dt 5.6.2009 for AY 2000-01 to 2006-07, made counter submissions on appellant's above submissions on the above issues. These are quoted below for proper appreciation:

"Provisions of section 153C are not applicable:

The assessee has challenged the jurisdiction u/s 153C on various grounds, the main being that **no incriminating documents** pertaining to the assessee were seized during the course of the search in the case of Shri R D Shinde. The objections raised by the assessee are the same as those which were raised during the assessment proceedings. These have been considered and rejected by the AO in para 2.40 on page 23 to para 2.52 on page 32. These are not repeated here. In view of the discussion in these paras, the assessee's objections deserve to be rejected.

Additions are made in respect of issues wherein no incriminating evidence has been found during search:

It is the assessee's contention that in an order passed u/s 153C, the additions that are to be made are only those which are based on incriminating documents found during the search. It is the assessee's contention that none of the additions made in its case are based on documents found during the course of the search.

The assessee's contentions are factually and legally incorrect. There is no stipulation in section 153C that in an assessment made under the said section, the income assessed should be based solely on incriminating documents found during the course of the search. That was the case in respect of the concealed income that was required to be computed under the earlier provisions in section 158BC. However, the said stipulation is not present in section 153A or 153C.

The contention is factually incorrect too as many of the additions made while completing the assessment have been based on the documents found during the course of the search. The documents had indicated that the assessee is charging huge donations, a part of which was introduced in the various funds in the guise of coupon donations. These have been brought to tax while completing the assessments u/s 153C."

8. The assessee in his rejoinder to the comments of AO in remand report, has made further submissions vide their letter dt 23.2.2010. The same is also quoted below for proper appreciation:

"9. The assessee had further objected to the jurisdiction u/s 153C. The Id AO has stated that this issue has been considered in the asst. order and in view of the reasons given, the same is to be rejected. The assessee submits that the notice u/s 153C was issued on the basis of search on Shri Shinde. The Id AO has stated that certain documents were found relating to the trust because of which notice u/s 153C was issued. It is submitted that **no incriminating document** was found during search and hence, the notice issued is not valid in law. It is submitted that a search action is a very severe action taken by the dept. and one cannot make roving enquiries. There has to be some incriminating material which is found as a result of search. **If the material found is accounted in the books, the assessee submits that one cannot resort to the provisions of**

section 153C. We have clarified that no incriminating material was found in the course of search on Shri Shinde pertaining to the assessee and hence, the notice issued u/s 153C is not valid. The assessee submits that notice u/s 153C can be issued only when some incriminating material is found. It is also to be noted that in the assts. u/s 153C r.w.s. 153A, additions can be made only on the basis of incriminating material which also indicates that the notice u/s 153C can be issued only if some incriminating material is found. In this context, the assessee relies upon the following decision wherein the court has held that in the absence of any incriminating evidence, no addition can be made in 153A assts.

- a. Shri Anil Kumar Bhatia v ACIT (ITA No 2660-2665/Del/09)
- b. **LMJ International** (119 TTJ 214 (Kol)
- c. Suncity Alloys P Ltd (124 TTJ 674 (Jodh)
- d. Shri Gangadhar D Kshirsagar (ITA No 1042 to 1048/Pn/08)

15) Finally, the Id AO has stated that the contention of the assessee that no addition can be made u/s 153C when no incriminating evidence is found is not justified. According to him, there is no requirement that u/s 153C, the income should be assessed solely on the basis of incriminating evidence found during search. Secondly, he has stated that certain additions are made on the basis of evidence found during search. The assessee submits that in the asst. u/s 153C r.w.s. 153A, the addition can be made only on the basis of incriminating evidence found during search. Since in this case, the Id AO has not pointed out the incriminating evidence found in the course of search, the assessee submits that the additions made are not justified. We have already clarified the legal position in our submissions. Secondly, the AO has only stated that certain additions are made on the basis of evidence found during search. He has not elaborated as to which incriminating evidence was found which has resulted in the addition. Thus, the assessee submits that no incriminating evidence was found and hence, the additions made by the Id AO are not justified at all."

9. At the end of the proceedings, the CIT(A) confirmed the validity of the issue of the notice u/s 153C of the Act in respect of the AYs under consideration as per the discussion given in paragraph 7.6.1 of the impugned order. For the sake of convenience, the same are reproduced as under.

7.6.1 I have carefully considered the submissions of the appellant and the AO and find that the objections of the appellant on the validity of s. 153C is hinged on many grounds. The first and the foremost is based on the denial of ownership of cash and documents found during search establishing the collection of money for granting admissions/consultation. As per AO they belong to appellant for granting admissions, whereas the appellant claims this to be belonging and relating to Mr Shinde for his consultancy. The incriminating documents and cash are being claimed by the AO to be belonging to the appellant on the basis of the discussions made in the assessment order, much of which has been narrated in para 5 of this order, whereas on the other hand, the appellant is denying the same and trying to make a case that those documents and cash belong to Mr Shinde and the appellant has no knowledge or complicity in that affair.

The appellant, in assumption of their stand being valid seem to be arguing in para 4.1 of their submissions that the proceeding u/s 153C can be held valid if any money, bullion, jewellery or valuable article or thing or books of accounts or documents seized belong to a person other than the person referred to in section 153A. In continuation to the same, the appellant in the rejoinder to the remand report has further asserted that no incriminating documents were found in their place and had further wondered as to which incriminating documents were found in their place and had further wondered as to which incriminating document the AO is referring to. I do not see any ambiguity in the reference of the AO to the incriminating documents. The incriminating evidences being referred to by the AO are undisputedly in respect of unaccounted cash of more than Rs 3 crores, documents seized suggesting collection of capitation fee/donations in lieu of admissions in crores and the admission of Shri Shinde that approximately Rs 2 crores each was collected in earlier two years and the nexus between such cash collection and cash deposits in the bank accounts relating to Imarat and other funds. The appellant is always in denial mode on the strength of statement of Shri Shinde saying that it represents his consultancy income, carried out clandestinely without the knowledge of the appellant trust. The strategy of the appellant, seem to be to repeat the same argument again and again that these evidences do not belong to them. I have dealt this issue in detail in para 5 to say why it should be held to be belonging to appellant and for capitation fees. Consistent denial of such strong evidences with total disregard to the arguments made by the AO cannot help the appellant in coming out of the implications that it entails. As this aspect has already been dealt in detail in para 5 of this order, where after evaluating all the evidences and arguments advanced by both the sides, it has been held that in the facts and the circumstances of the case and in law, it is established that the same belong to appellant and not Mr Shinde, this art of the argument of the appellant on the issue of validity of initiation of s. 153 is held invalid and is accordingly dismissed.

7.6.2 In addition to the above, the next objection of the appellant is apparently based on the argument that **the documents enlisted by the AO in the satisfaction are not incriminating** and therefore notice u/s 153C is not valid. It appears from the above argument that the appellant is not disputing the ownership of documents referred in satisfaction but are saying that those are art of the regular books of accounts or are accounted in the regular books of accounts, and therefore cannot be relied to initiate proceeding u/s 153C. On careful consideration, **I find that the word 'incriminating' is missing in s. 153C**, whose existence is being so strongly relied upon by the appellant. Furthermore, the AO's contention that a document is accounted or not can only be found after the verification, for which initiation of proceedings u/s 153C is required, appears quite logical and correct. I do not think that the AO can carry out necessary verification and inquiry unless the jurisdiction is assumed under either 153A or 153C or any such similar provision of Act. In view of the above, I do not find even this argument valid and acceptable and is therefore dismissed.

10. Thus, the CIT(A) is of the view that the expression 'incriminating' is not borne in the statute book and therefore, there is no need for supply of words

into the statute, which are not there in the legislation. Accordingly, the CIT(A) upheld the issue of the notices u/s 153C of the Act.

APPEAL PROCEEDINGS BEFORE THE ITAT:

11. Aggrieved with the above decision of the CIT(A) on the issue of the validity, the assessee filed the present appeal raising various issues where one of them relates to the validity of the finding of the AO/CIT(A) on the issue of assuming of jurisdiction in matters relating of the issue of notices u/s 153C of the Act summarily in respect all the six AYs without the existence of any **AYs specific seized documents and incriminating seized documents**. This issue goes into the root of the search assessments and therefore, we proceed to adjudicate it on priority.

12. Arguments of the Ld Counsel: On this issue of the validity of the notices u/s153C of the Act in respect of the AY under consideration, the Ld counsel argued stating that the notices issued u/s 153A of the Act are invalid for various reasons and they are: (i) the documents seized are neither unaccounted documents nor incriminating documents; (ii) the contents of the said documents are accounted in the regular books of accounts of the assessee; (iii) most of the documents seized relate to the current AY, which is not the subject matter of discussion for the AYs under consideration; (iv) there are none pertaining to many of the AYs; (v) only document relating to the AY 2005-06 is the ledger with the names of the students under the management quota, which are other undisputedly recorded in the concerned books of the assessee and there is no undisclosed about the said ledger. Referring to the names appearing in the said ledger (Inward Register), Ld counsel mentioned that these are obviously accounted names and there are not any unaccounted students which is an impossibility; (vi) this ledger does not contain any financial transactions; (vii) Ld counsel filed a copy of the order of the Tribunal of Pune Bench in the case of the Sinhgad Technical Educational Society (supra) and mentioned that where there is no material seized by the revenue relating to the assessee and where there is no incriminating documents, the assessment/concluded assessment must not be reopened or disturbed. Where there is seizure of any documents, the concluded assessment must not be reopened as long as such material is incriminating and there is prima facie opinion that some income is concealed by the assessee or escaped the said assessment.

13. **Revenue's Arguments:** On the other hand, Ld DR for the revenue relied on the orders of the AO and the CIT(A) on this issue of validity. Briefly, his arguments are that the provisions of the proviso to section 153A of the Act grants power to the AO for opening or reopening of the six assessments. As per the CIT-DR, as and when there is seized documents or others involving the other person, the third party, AO can assume jurisdiction in respect of all the six AYs of that third party and there is no requirement of the law that there should exist AY-specific and incriminating documents.

14. We have heard the parties and perused the orders of the revenue as well as the said order of the Tribunal relied upon by the assessee's counsel. It is a fact that there are various grounds raised in the appeals. The Core issue that is the root of the matter relates to the validity of the assessment and it is legal in nature. This issue has various shades as narrated by the Ld Counsel and they are: (i) whether the AO recorded the satisfaction in respect of all the six AYs under consideration. (ii) whether the said satisfaction is based on the material seized by the revenue in the search operation in the case of Sri Shinde. (iii) if the AO has really transferred the material pertaining to all the AYs? (iv) if the AO has come to the right conclusion that the said material is incriminating in nature; (v) if the list of documents mentioned in the satisfaction note are not largely related to the current AY? While there are none for some AYs and some seizure like the inward register are like dead wood with in transactions at all. (vi) if the AO can assume jurisdiction in respect of the AY where there is no seizure documents whatsoever and in respect of the AY, where there is only said deal wood type of documents with no financial transactions. There are many other issues relating to the merits of the additions. On understanding the issues, we find it is prudent to attend to the issue of the validity of the notice u/s 153C of the Act as travels to the root of the assessment. Therefore, we proceed to take up the legal issue relating to the validity of the assessment. In this regard, we find the need of examining the scope of the issue, the details of the seized documents found place in the satisfaction note, relevant commentary on such each and every documents etc. So far as the scope is concerned, we find that the same was examined in the cases of Kumar & Co and the Sinhgad Technical Education Society (supra) relied upon by the Ld Counsel for the assessee and the Tribunal of this Bench has come to the conclusion that the AO shall not possess unfettered powers of summarily opening or reopening the concluded assessments of all the six assessment years in respect of the third party mentioned in section

153A of the Act without having in possession the AY-specific incriminating documents. We proceed to import relevant portions of an unreported decision of the Tribunal of this bench in the case of Sinhgad Technical Education Society Vide ITA NO 114 to 117/pn/10.

15. Extraction of paragraphs **8 to 15** from the order of the Sinhgad Technical Education Society vide ITA NO 114 to 117/pn/10.

"8. Additional Ground: Invalid Notices U/s 153C: *In this regard, we have perused the reasons recorded by the AO of the assessee. We find that there exists the reasons for issue of notice u/s 153C of the Act and it is an undisputed fact. We also find that they are common reasons for all six AYs including the four AYs under consideration. The Counsel for the assessee argued vehemently that AO issued notices u/s 153C simply relying on the contents of section 153A(1)(b) of the Act and also its first proviso ignoring various settled legal propositions ie the concluded assessments, which fall in the bunch of six AY, should not be disturbed unless there exists incriminating material relevant for the said AYs or concluded assessments and such incriminating material should be of that nature it should not be a dumb documents. In this regard, the stand of the revenue is that the express provisions are clear on the proposition that the AO 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..' (first proviso). Considering the contrary stands of the parties, without going into the merits of the additions, we have decided to adjudicate the legal issue ie additional ground and it involves the study the details of the reasons recorded by the AO based on which the AO issued the impugned notices u/s 153C of the Act for the impugned four AYs. For this purpose, we have extracted the relevant portion of the reasons and the same read as follows.*

9. *"Satisfaction Note for proceedings u/s 153C of the I T Act, 1961 in the case of M/s Sinhgad Technical Educational Society (STES), Pune....."*

- "1) page 11 – this is voucher of Sinhgad Technical Education Society (STES) dt. 17-01-2004 for cheque payment of Rs. 2.80 lacs to Amir Moiddin Shaikh.*
- 2) page 12 – this is voucher of STES dt. NIL for cheque payment of Rs. 1 lacs to Amir Moiddin Shaikh.*
- 3) page no. 13- this is voucher of STES Dt. 30.01.2005 for cheque payment of Rs. 2 lacs to Shaikh Amir Shaikh.*
- 4) page no. 14- this is voucher of STES dt. 27.09.2004 for cash payment of Rs. 1 lacs to Shaki Amir Shaikh*
- 5) page no. 15- this is voucher of STES dt. NIL for cheque payment of Rs. 50,000/- to Shaikh Amir Shaikh.*
- 6) page no. 45- this is an office copy of letter dt. 23.06.2007 written to director of DTE, Mumbai by Sinhgad College of Pharmacy, owned by STES.*

Bundle no. A-2

- 7) page no. 35- there are the balances available to various institute of STES on or before 25.06.2005.

Bundle no. A-4

- 8) page no. 50 & 54 – these pages contains the details of staff arrangements made by the STES college of Engineering for admission process for F.Y. 2003-04.
- 9) page no. 58 to 60- these pages contain the details of expenses incurred by STES.”

10. From the above, it is demonstrated by the Ld Counsel that the items at sl no 1 to 5 above belongs to the AY 2004-05 or thereafter. Referring to the rest of the items at sl 6 to 9 above, the Counsel mentioned the said documents seized are either recorded in the books of account or involves cheque transactions. Thus, he **summed** up stating that the documents in question are neither the incriminating ones nor unaccounted transactions of the assessee and nor they relate to the impugned four AYs. In such circumstances, the AO not only assumed jurisdiction invalidly but also erred in disturbing the settled and completed assessments. Accordingly, AO should not assume jurisdiction in respect of such AYs in the absence of any incriminating information or transactions specific to any of the impugned four AYs ie 2000-01 to 2003-04. The contrary argument from the side of the revenue is that the overall approach in matters of concealment by the group assesses and all the discoveries of the search on Mr Navale and it concerns, have to be taken into account while forming the satisfaction within the meaning of section 153C of the act. Considering the divergent views of the parties, we have examined the said satisfaction note very closely and found that the impugned reasons mentioned by the AO are silent in so far as any AY-Specific-Incriminating-Information (ASII) or others ie unaccounted or undisclosed or hidden information to the revenue by the assessee. In our opinion, the impugned satisfaction note is very general one for six years. It is surprising to note that the AO has narrated some information against the Mr Navale HUF, which is not relevant for the present assessee. In the process, the AO totally missed the requirements of the law ie only the AY with the pending assessments and the AY with the AY specific incriminating documents/ transactions or seized asset should only be reopened under the provisions of the first proviso to section 153A of the Act and not otherwise.

11. In this regard, we have perused various legal propositions. First, we have perused the decision of this Tribunal in the case of Kumar Company for the AY 2000-01 (supra) and para 26 of the M/s. Kumar and Company vide ITA No. 463/PN/08 for the A.Y 2000-01 and the same reads as follows:-

25. Thus, we find that the seized documents belong to the assessee by way of limited ownership and they are not dumb documents as advocated by the Ld Counsel for the reason mentioned above. However, they are not found to be **incriminating documents for the AY 2000-01**.

The document may not be a dumb document and therefore a speaking one, but they must be the document with prima facie incriminating information too. Such incriminating nature of the seized document is an essential factor for switching on the proceeding u/s 153C. In other words, the **document seized must not only be a 'speaking one' but also be prima facie 'incriminating one'** for igniting the

*proceedings u/s 153C. Unlike other AYs, there is nothing made out by the AO what is called incriminating for the current AY under consideration. When the impugned documents merely contains the notings of entries, which are already found place in the books of accounts or subjected to scrutiny of the AO in the past in regular assessment u/s 143(3) of the Act, such document cannot be said to be containing the incriminating information. What is the point in disturbing the settled assessment when the revenue does not have incriminating information for an AY and the information what is available is only routine one and when the AO merely makes an addition in the assessment u/s 153C based on change of opinion and when such additions are likely to be deleted in view of the settled nature of the issues? Income Tax provisions are not merely for the issue of notice u/s 153C but it is essentially for taxing the income of the person. What is point in issuing notice u/s 153C on flimsy grounds and finally tax nothing? Such proceedings only creates avoidable nuisance both to the over-burdened taxman and the much hazzled taxpayers. In the instant case, provisions of section 153C are invoked merely to apply the provisions of section 45(4) in this year, the issue which was already examined and concluded as inapplicable to the facts of the case. Such issue of notice is unwarranted and such reopening of the assessment for the AY 2000-01 is **uncalled** for.*

26. *Therefore, the proceedings initiated u/s 153C is not valid in view of the decision in the case of LMJ International (supra). Under these circumstances, we are of the opinion, the AO has invalidly issued the notice u/s 153C for the AY 2000-01 **on the wrong presumption that AO can assume jurisdictional in respect all the six AYs automatically even with out any incriminating documents in respect of the concluded issues too.** Accordingly, the relevant grounds of the assessee are allowed.*

12. *From the above, it is our finding that the reasons recorded by the AO as extracted above do not contain anything incriminating for the AYs upto 2003-04. It is the settled position of the law based on the decision of the Tribunal in the case of LMJ International (supra) that the issue of notice under the provisions of the first proviso to section 153A(1) of the Act is not automatic and there is need for AY-Specific Incriminating Information (ASII) in the possession of the AO to be the fountain head for springing satisfaction to him that there exists some income or asset to be assessed in the hands of any other person, who are referred to in section 153C of the Act. Reason for this kind of interpretation was already given in para 25 and 26 of our order in the case of Kumar Company for the AY 2000-01. In this regard, we posed question to ourselves if it is fair to reopen the assessment which is already concluded without any reason or logic thereby encroach on the rights of the tax payers? Should the AO be given unfettered or arbitrary powers to issue notice for the six AYs specified in the first proviso to section 153A(1) of the Act when the impugned assessments for the said six AYs are otherwise reached finality after due process of law. In our opinion, the answer is negative and it is in favour of the assessee. In any case, DR has not brought anything on record to demonstrate that the decisions given by the Tribunal in the case of LMJ International (supra) and M/s Kumar Company (supra) are not to be followed in this case. Our perusal of another order of the Tribunal in the case of M/s Kumar Company for the AY 2201 to 2003-04 vide ITA No 1020,1250,1021,1251,1022 & 1252/PN/2008, relied upon by the Ld DR is found distinguishable in so far as the **existence of the incriminating***

document for the relevant AY is concerned. Whereas, in the instant case, first of all, there is no mention of any document in the said reasons relating to the impugned four years and the incriminating nature of the same is out of question. Therefore, reliance of the DR on the said case is misplaced.

13. Further, we have examined various other judicial propositions mentioned by the Ld Counsel and some of them are reproduced as under.

1) Anil Kumar Bhatia & Ors. (2010) 1 ITR (Trib) 484 (Del)

Conclusion:-

"In respect of an assessment under s. 153A, where processing returns under s. 143(1)(a) stood completed in respect of returns filed in due course before search and **no material is found in search** thereafter, no addition can be made."

2) Suncity Alloys (P) Ltd. (2009) 124 TTJ (Jd) 674

Conclusion:- "Assessments or reassessments made pursuant to notice under s. 153A are not de novo assessment and therefore no new claim of deduction or allowance can be made by assessee where admittedly the regular assessments are shown as completed assessments on the date of initiation of action under s. 132."

3) Meghmani Organics Ltd. (2010) 129 TTJ (Ahd) 255

Conclusion:- "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.**"

4) LMJ International Ltd. (2008) 119 TTJ (Kol) 214

Conclusion:- "Where **nothing incriminating is found in the course of search relating to any assessment years, the assessments for such years cannot be distributed;** items of regular assessment cannot be added back in the proceedings under s. 153C when no incriminating documents were found in respect of the disallowed amounts in the search proceedings."

5) Kailash Auto Finance Ltd. (2009) 32 SOT 80 (Luck)

Conclusion:- "A notice under s. 148(1) can be issued even where notice under s. 143(2) has been pending and not closed. By processing the return and by issuing acknowledgment as token of accepting the return, the proceedings initiated by filing the return are terminated and no proceedings, therefore, remain pending."

6) R.M.L. Mehrotra (2010) 320 ITR 403

Conclusion:- "Undisclosed income of the block period has to be determined on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the A.O and relating to such evidence; AO cannot compute the income on the basis of best judgement."

14. From the above, it is evident that the where nothing AY and assessee specific incriminating "money, jewellery or other valuable article or thing or books of account or documents", the assessments for assessee years cannot be distributed. Further, the concluded assessments should not be disturbed merely for making routine additions, which could have been otherwise done in the regular assessment and of course, the pending assessments fall under exceptions. As stated by the Ld Counsel point no 9 of his note reproduced above, "nothing is seized pertaining to A.Y 2000-01 to 2003-04 obviously there is no question of recording satisfaction note. On this reasoning itself, we find that the assessee has to succeed. Therefore, we do not examine the other arguments of the counsel. Otherwise, the counsel argued that the reopening of the assessment for the AY 2000-01 to 2001-02 is impermissible in view of the judgment of Allahabad bench in the case of Vijay Vimawal vs. ACIT 124 TTJ 508. Further, he also argued that the assessment of A.Y 2003-04 was actually completed u/s. 143(3) on 30/03/2006 ie prior to receipt of the impugned documents by the Assessing Officer on 18/04/2007, this assessment was not pending. Attending to these arguments of the counsel is superfluous and merely an academic exercise as we have upheld the applicability of the decision of the Tribunal in the case of LMJ International Ltd (supra) for the proposition that the "where nothing incriminating is found in the course of search relating to any assessment years, the assessments for such years cannot be distributed" and other local decision cited above. Accordingly, the additional ground raised by the assessee for all the four appeals under consideration are allowed and in favour of the assessee.

15. As the additional ground for all the four years are allowed in favour of the assessee, we are of the considered opinion the adjudication of the grounds relating to the merits of the additions is merely an academic exercise. Therefore, the relevant grounds in all the four appeals are dismissed as academic."

16. From the above, it is the decision of this bench of the Tribunal, taken relying on the decisions of the other benches of the Tribunal ie in the case of LMJ International Ltd (supra) that "where nothing incriminating is found in the course of search relating to any assessment year, the assessments for such years cannot be distributed. Thus, the assessments made by the AO u/s 153C of the Act without the existence of AY-specific incriminating documents are **invalid**.

17. Application of the above scope to the facts of this case: Now we shall take up the contents of the satisfaction note and examine if there are any documents seized involving the assessee and if they are incriminating with reference each of the six AYs of the assessee.

SATISFACTION NOTE FOR ISSUE OF NOTICE U/S 153C OF THE ACT

"The search action u/s 132 of the IT Act was carried in the case of Shri Ramchandra Dada Shinde, on 22.7.2005. The assessee was working as accounts officer in the Bharati Vidyapeeth Group of trusts,. During the search action the office cabin of the assessee situated at Bharati Vidya Bhavan, near Alka Talkies, Pune-30 was searched along with his residential premises.

During the search action books of accounts, documents and cash were found and seized. Total 3 bundles of loose paper were seized vide annexure A-1 of Panchnama dt 21.07.2005 and 18 loose paper bundles were seized vide annexure A-1 of the Panchnama dt. 22.7.2005.

The details of seized documents as per annexure A of Panchnama dated 22.7.2005, belonging to the assessee trust are as follows—

1. Panchnama dt. 22.7.2005

Bundle No. 2 :- Page No. 1 to 4 – Bills of M/s Lokmanya Auto Center in the name of Bharati Vidyapeeth.

Bundle A-2 :- Page No. 17 – Expenditure voucher of Bharati Vidyapeeth. An amount of Rs 1500/- given as advance to Shri V.G. Dubal for office work.

Bundle A-2:- Page No. 16 – Expenditure voucher. An amount of Rs 5500/- given to Shri Harale.

Bundle A-2:- Page No. 18 – Expenditure voucher. An amount of Rs 10,000/- given to someone, name not identified.

Bundle A-2:- Page No. 19 – Expenditure voucher. An amount of Rs 25,000/- given to same unidentified person.

Bundle A-2:- Page No. 21 to 22 – Details of payments made to Shri Rajiv Sathe, Architecture, payment made by Bharati Vidyapeeth, Pune.

Bundle A-2: Page No. 23 to 25 – Details of payments of Rs 25,000/- made by Bharati Vidyapeeth to Smt Aparna Deshpande.

Bundle A-2:- Page No. 42 to 46 – Details of payments made to M/s S.K. Granite by Bharati Vidyapeeth, Pune.

Bundle A-2:- Page No. 93 – Details of payment Rs 3,000/- made to Shri Rajendra Mohite by Bharati Vidyapeeth, Pune

Bundle No A-2 Page No 94 to 98:- Bills of diesel expenses of Bharati Vidyapeeth, Pune

Bundle No A-2 Page No 101 to 106 :- Expenditure details of Bharati Vidyapeeth, Pune

Bundle No. A-3:- Page No 35 to 48 – Car expenses bills of Bharati Vidyapeeth, Pune

Bundle No. A-4:- Pages 11 to 12 & 14 to 18 – Counter foils of cash deposits in Bharati Sah. Bank Ltd. total of Rs 21.20 lakhs.

Bundle No.A-4:-Page No. 20 to 25 – Details of labour payment made to M/s Valmiki Enterprises of Rs 1,06,400/- by Bharati Vidyapeeth.

Bundle No. A-4:- Page No 26 – Details of payment of Rs 10,000/- to Shri Amrale Rohidas Dyanoba as a advance for office work by Bharati Vidyapeeth.

Bundle No A-8 :- Page No. 6 to 27 – Details of payments made to Shri D.G. Kanase of Rs 22,000/-.

Bundle No. A-8:- Page No 28 to 30 – Details of payments made to Shri Rajiv Sathe of Rs 1,25,000/-.

Bundle No. A-8:- Page No. 31 to 32 - Details of expenditure incurred by B.V Medical College (B.V.M.C), Sangali,. Total Rs 6,34,479/-

Page No. 33 to 37 – List of teaching staff of B.V.M.C. Sangali.

Bundle No. A-9:- Page No. 45 – Counter foil of cash deposit in Bharati Sahakari Bank in Poona College of Pharmacy building fund A/c No. 69557 Rs 1,75,000/-.

Bundle No. A-9:- Page No. 50 – Expenditure voucher of Bharati Vidyapeeth Trust.

Bundle No. 15:- This is a long book maintained by assessee trust as a inward register maintained for applications received under management quota for admission in MDS course.

Bundle no. 16 – this is long book maintained by assessee trust as a inward register for receiving applications under management quota for admission in medical, dental, BHMS and BAMS course.

The provisions of section 153C of the IT Act 1961 reads as '...where the AO is satisfied that any money, bullion, jewellery or other valuable article or thing or books of accounts or documents seized or requisitioned belongs or belongs to person other than the person referred to in section 153A thenAO shall proceed against each such other person and issue such other notice and assessee or reassesses income of such other person in accordance with the provisions of section 153A...' Since in this case, the documents and registers belonging to assessee trust and quite a few of them were incriminating relating to donations for admissions have been seized, I am satisfied that notice u/s 153C of the I.T. Act should be issued.

Further Shri R.D Shinde in his statement recorded u/s 132(4) on 22.7.2005 stated that, the amount received of Rs 2,00,00,000/- on account of consultancy from the students have been deposited in the past to the building and equipment fund of the various trusts of the Bharati Vidyapeeth Group.

In the case of assessee trust, there is credit in trust fund a/c and development fund a/c as follows-

F.Y	Trust fund	Other earmarked funds	Addition to fund other than profit of trust
99-00	33316876	564254452	19874284+ 76969244
00-01	35490165	682339763	118035312
01-02	38514460	824900544	142560781
02-03	40544516	1004780076	179879532
03-04	40544516	1106890203	102110127

Examination of seized books of accounts of the assessee trust shows that the amount credited in various dates in the ledger account of dev fund and trust fund claimed to be receipts towards the corpus of the trusts has been received entirely in cash, and the donors has not been mentioned in the books of account in view of the above facts, I am satisfied that, the receipts on account of dev fund and trust fund credited in the books are not genuine. Since the receipt credited in the books of a/c not from the genuine source for the charitable purpose of the trust, apparently the income of assessee trusts is not liable for exemption u/s 11, 12, 13 of the IT Act 1961.

Therefore notices u/s 153C is hereby issued for the following A. Yrs:

A.Y

2000-01

2001-02

2002-03

2003-04

2004-05

2005-06

Date: 30.3.2007"

Assessing Officer

18. Thus, there are 23 different documents seized by the revenue and are found relevant to the assessee. AO relied on the said documents for getting satisfied for invoking the provisions of section 153C of the Act in respect of all the six AYs. We have examined the contents of pages 5 and 6 of the paper book filed before us as these tables explained the contents of the said 23 items of the documents vis a vis the relevant AYs. For the sake of completeness of this order, we proceed to scan the pages of the paper books and import the same as under.

000005

BHARATI VIDYAPEETH

Chart Explaining the papers referred by the A.O. in Satisfaction Note alongwith Notice up. 153C dated 30.03.2007

Sr No.	Bundle No.	Page No.	Particulars	Amount	Date	Relevant Asst. Year
1	A-2	101 to 106	These are the vouchers of Bharati Vidyapeeth for advance / honourarium to the various staff duly accounted for in the books	13,900.00	15.03.2005 to 02.06.2005	2006-07
2	A-2	94 to 98	These are the vouchers for diesel expenses incurred out of the office funds. The said expenditure is duly accounted for in the books of Bharati Vidyapeeth	8,355.00	28.05.2005 to 14.06.2005	2006-07
3	A-2	93	This is a voucher for advance in the name Mr. Rajendra Mohite given for expenses of the trust. This advance is duly accounted in the books	30,000.00	14.06.2005	2006-07
4	A-2	42 to 46	This is a voucher and supporting documents for construction work of Rajiv Gandhi Inst. Tech. Building in the name of S K Granite. This expenditure is duly accounted for in the Building A/c. of Rajiv Gandhi Inst. Tech. Building	218,516.00	08.04.2005	2006-07
5	A-2	23 to 24	These are the papers pertaining to the quotations of various wall paintings for Conference hall. This quotation is also accompanied with payment voucher of Rs. 25,000/- as per Pg. A-2 / 25 which is duly accounted for in the Books. This amount is paid out of office funds with Shri V G Dubal, an employee of Bharati Vidyapeeth.	25,000.00	10.07.2005	2006-07
6	A-2	21 to 22	This is a voucher and supporting documents for interior work of English Medium School Panchgani in the name of Rajeev Sathe Architect. This amount is paid out of office funds with Shri V G Dubal, an employee of Bharati Vidyapeeth. This expenditure is duly accounted for in the Books	39,650.00	11.07.2005	2006-07
7	A-2	19	This is an advance voucher for expenses of the trust out of office funds with Shri R D Shinde, an accountant of Bharati Vidyapeeth	26,000.00	---	---
8	A-2	18	This is an advance voucher for expenses of the trust out of office funds with Shri R D Shinde, an accountant of Bharati Vidyapeeth	10,000.00	---	---
9	A-2	17	This is a voucher for an advance given to Shri V G Dubal for expenses of the trust out of office funds with Shri R D Shinde, an accountant of Bharati Vidyapeeth	15,000.00	22.06.2005	2006-07
10	A-2	16	This is a voucher for an advance given to Shri Harale for expenses of the trust out of office funds with Shri V G Dubal, an employee of Bharati Vidyapeeth	5,500.00	---	---
11	A-2	1 to 4	These papers are belonging to Mr. H B Lad, a person from Kundal who came to visit to the trustee of Bharati Vidyapeeth. The vehicle brought by him was given for repairing by him and for reference, he has given the name of the trust. These papers are not actually related to the trust.	11,160.00	26.05.2005	2006-07
12	A-3	35 to 48	This is a voucher and supporting documents for diesel and maintenance expenses of car of Bharati Vidyapeeth. This amount is paid out of office funds with Shri V G Dubal. This expenditure is duly accounted for in the Books.	33,286.00	June 2005	2006-07
13	A-4	11 to 12 & 14 to 18	These are the deposit slips of bank for deposit of amount for the donation collected by volunteers on account of various college Building Fund and deposited in the respective Bharati Sahakari bank account. These receipts are duly accounted for in the respective Building A/cs.	2,120,000.00	28.05.2005	2006-07

BHARATI VIDYAPEETH

Chart Explaining the papers referred by the A.O. in Satisfaction Note alongwith Notice u/s. 153C dated 30.03.2007

Sr No.	Bundle No.	Page No.	Particulars	Amount	Date	Relevant Asst. Year
14	A-4	20 to 25	This is a payment voucher & supporting documents for an cleaning expenses to Walmiki Enterprises. The amount is paid out of office funds with Shri V G Dubal. These expenses are accounted for in the books.	106,400.00	01.06.2005 to 12.07.2005	2006-07
15	A-4	26	This is a voucher for an advance given to Shri Amrale for expenses of the trust out of office funds with Shri V G Dubal	10,000.00	16.06.2005	2006-07
16	A-8	6 to 27	This is a voucher & supporting Documents for an advance given to Shri D G Kanse for expenses of Hostel of the trust out of office funds with Shri V G Dubal	22,000.00	08.06.2005	2006-07
17	A-8	28 to 30	This is a voucher and supporting documents for interior work of office of BV Deemed University in the name of Rajeev Sathe Architect. This amount is paid out of office funds with Shri V G Dubal. This expenditure is duly accounted for in the Books.	125,000.00	12.07.2005	2006-07
18	A-8	31 & 32	This is an voucher for advance given to Shri H A Yadav out of office funds with Shri R D Shinde for Seminar of Medical Coucil arranged at Medical College, Sangli. Pg. No. 31 indicates total expenditure of Rs. 6,34,479/-, whereas Page No. 32 indicates that an amount of Rs. 3,00,000/- was paid to him as an advance for the said work. This amount of Rs. 3,00,000/- was paid is accounted for in the books.	634,479.00	17.06.2005	2006-07
19	A-8	33 to 37	These papers are related to the payment of honorarium paid to staff of Medical College, Sangli, on the occasion of arrangement of seminar by that College. The payment was made by Shri. H.A. Yadav out of the amounts given to him by BV Deemed University (Office).	273,000.00	12.06.2005	2006-07
20	A-9	45	This is a deposit slip of bank for deposit of amount for the donation collected by volunteers on account of Poona College of Pharmacy Building Fund and deposited in the respective Bharati Sahakari bank account. These receipts are duly accounted for in the respective Building A/c.	175,000.00	26.05.2005	2006-07
21	A-9	50	This is a voucher for stationery expenses of the trust out of office funds. This expenses are duly accounted in the books.	469.00	25.05.2005	2006-07
22	15	--	This is a Inward Register for applications received under Management Quota for admission in MDS course and no financial transaction is involved.	--	--	2006-07 2005-06
23	16	--	Inward Register for applications received under Management Quota for admission in Medical, Dental, BHMS & BAMS course and no financial transaction is involved.	--	--	2006-07

19. During the proceedings before, Ld Counsel mentioned that the above tables reflect the documents at sl no 7,8 & 10 of the table do not reflect any dates. In this regard, Ld Counsel mentioned that these three sets of documents relate to the vouchers for expenses/advances of the trust and in the absence of the specific dates, the same must be deemed relating to the current AY ie 2007-08 in view of the settled propositions in this regard. Referring to the items at sl no 22 ie the Inward Register, Ld counsel argued stating that the same contains list of the names of the applicants for admission in to MDS under management quota of the PG seats and the same names are accounted and it does not contain any financial transactions. Otherwise, rest of the items of the documents relate to the AY 2007-08, which is not under consideration of this composite order. We have considered the explanations of the Sri Pathak and undertook the

item-wise exercise of the items provided before us. On perusal of the same, we find the explanation of Ld counsel is in order and there is nothing to reject the same.

20. Conclusion: From the above it is clear that the AO issued notices u/s 153C simply relying on the contents of section 153A(1)(b) of the Act and also its first proviso ignoring various settled legal propositions ie the concluded assessments, which fall in the bunch of six AY, should not be disturbed unless there exists incriminating material relevant for each of the said AYs or concluded assessments and it should not be a case of dumb documents. The same is contrary to the stand of the revenue that the express provisions are clear on the proposition that the AO 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.’* (first proviso). The decision in the case of LMJ International Ltd. (2008) 119 TTJ (Kol) 214 is undisturbed as on date and it is relevant for the proposition that *“Where nothing incriminating is found in the course of search relating to any assessment years, the assessments for such years cannot be distributed; items of regular assessment cannot be added back in the proceedings under s. 153C when no incriminating documents were found in respect of the disallowed amounts in the search proceedings.”*

21. In the present case and in the present appeals, there are six AYs under consideration involving the cross appeals. Based on the existence of the seized documents, these six AYs can be categorized into two categories. (i) the AYs without seizure of any documents or any other seizures as referred to in the provisions of section 153C of the Act; and (ii) the AY with the seizure of some documents as referred to in the provisions of section 153C of the Act.

22. AYs 2000-01 to 2004-05: In connection with the AYs at sl no (i) above ie AYs 2000-01 to 2004-05, admittedly, there is no seizure of the documents as evident from the satisfaction note and the tables explained by the assessee. Considering the above scope of the provisions and legal propositions already adopted by this bench in the case of Sinhgad Technical Education Society (supra), we are of the opinion that the issuance of notices u/s 153C for the AYs 2000-01 to 2004-05, where there are no seized documents, is **invalid**.

23. AY 2005-06: In connection with the AYs at sl no (ii) above ie AYs 2005-06, admittedly, there is some seizure of the documents as evident from the satisfaction note and the tables explained by the assessee. Out of the 23 different items of documents seized as evident from the scanned tables imported in to this order, all except the item at sl no 22 relating to the *Inward Register for applications received under the Management quota for admission in MDS course relate to the year 2004-05 (AY 2005-06)*. Otherwise, rest of the 22 items of seizure documents relate to the current AY ie 2006-07, which is not under consideration of this order. Thus, the notice issued u/s 153C of the Act for the AY 2005-06 where there is seizure of only an 'inward register for applications received under the Management quota for admission in MDS course relate to the AY 2005-06" and there are no financial transactions of any kind, in our opinion, is **invalid**. We are convinced that the said ledger contains the mere names of the MDS applicants for admission under Management quota and there is no reference to any financial transactions, whatsoever. As such these names are already borne in the list of students. It is evident that the said ledger does not contain any whispers about the likely undisclosed income for the years under consideration. It is settled issue that the notice u/s 153C of the Act is not valid when the seized documents do not indicate any undisclosed income of the assessee under consideration and it so held by the Hon'ble High Court of Gujarat. Further, the reasoning given by us in the order in the case of *Sinhgad Technical Education Society (supra)* apply to the issue in these appeals *mutatis mutandis*. In other words, the views approved by this bench in the case of *Sinhgad Technical Education Society (supra)* and *Kumar Company (supra)* are affirmed by the said Judgment of the Gujarat High Court in the case of *Vijaybhai N Chandani 231CTR 474 (Guj)* and **mere appearance of names does not mean anything as section 153C of the Act** is intended for taxing the undisclosed income of the third party based on the material/others seized during the search action. As such, only the unaccounted and incriminating material or others listed in the said section are only seized during the search and the accounted documents should not be seized. Seizure of the documents is aimed at the unearthing of the unaccounted income of the assessee assessable u/s 153A or the other third parties subjected assessment u/s 153C of the Act. When the documents do not indicate any undisclosed income, the ledger in the instant case, what is the relevance of such document? Such ledger constitutes merely an accounted one with no financial implications. **Thus, the documents, the ledger in the instant case relevant for the AY 2005-06, with no financial implications can neither be considered incriminating nor be**

considered capable of springing satisfaction to any AO that there is scope of undisclosed income in respect of the third party assessable u/s 153C of the Act. Accordingly, the legal grounds raised in all these appeals of the assessee relating to the validity of the notice u/s 153C of the Act are allowed in favour of the assessee ***in respect of all the AYs*** under consideration. Further, we are of the considered opinion that the adjudication of the other grounds relating to the other legal and merit oriented issues is merely an academic exercise. Therefore, the relevant grounds in all the four appeals are **dismissed** as academic.

24. In the result the appeals of the assessee are **allowed**.

Six Revenue's Appeals

25. Further, regarding the appeals by the revenue, we find they have to be dismissed as we have held that the AO invalidly assumed jurisdiction u/s 153C of the Act and consequently relief granted to the assessee on the issue of the validity of the issuance of notices u/s 153C of the Act. Thus, all the grounds of the revenue in respect of the said AYs under consideration have to be **dismissed** a mere an academic exercise.

26. In the result the appeals of the revenue are **dismissed**.

Order pronounced in open Court on 28th April, 2011

Sd/-

**(I.C. SUDHIR)
JUDICIAL MEMBER**

Sd/-

**(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER**

Pune dated the 28th April, 2011

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Copy of the order is forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)-IV, Pune
4. The CIT. Cen, , Pune
5. The D.R. ITAT 'B' Bench
6. Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal