

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A', NEW DELHI)**

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

I.T.A. No.5437 to 5442 /Del/2013

Assessment years : 2003-04 to 2008-09

DCIT, CC-21,
New Delhi

Vs. M/s. Aakash Arogya Mindir P.Ltd.,
WZ-13, Gali No.18, Krishna Park,
Tilak Nagar, New Delhi-110 018

C.O. No.77-82/Del/2014

(Assessment Years 2003-04 to 2008-09)

M/s. Aakash Arogya Mindir P.Ltd.,
WZ-13, Gali No.18, Krishna Park,
Tilak Nagar, New Delhi-110 018

Vs. DCIT, CC-12,
New Delhi

GIR / PAN:AADCA4121A

(Appellant)

(Respondent)

Appellant by : Ms. Anuradha Misra, CIT DR

Respondent by : Shri Kapil Goel, Adv.

ORDER

PER BENCH:

These are 6 appeals filed by the Revenue against separate orders of Ld. CIT(A) all dated 23.07.2013. The assessee has also filed cross objection to the appeals filed by the Revenue wherein it has raised legal issue regarding initiation of proceedings as being bad in law and without jurisdiction. The assessee has also taken various grounds of cross objections against various observations of Ld. CIT(A). These appeals and cross objections were heard together and therefore, for the sake of convenience, a single and consolidated order is being passed. Earlier, cross objections were heard on 09.09.2014 however at the conclusion of hearing, Ld. D.R. had

mentioned that she had written to A.O. for certain clarifications with regard to satisfaction note u/s 153C, which had not yet been received, therefore she wanted some time to file the same as and when the same are received. Therefore, before dictating the order, it was considered appropriate to refile the matter, therefore, the same was refiled and was finally heard on 26.09.2014.

2. At the outset, Ld. A.R. invited our attention to 1st ground of C.O. and argued that since assessee had raised legal ground for initiation of proceedings of assessment u/s 153C these should be first disposed off before hearing the matter on merits. Ld. A.R. invited our attention to paper book pages 34 to 38 and submitted that these are copies of letters obtained by assessee under RTI from various files of assessees whose premises were searched and action was initiated u/s 153A of the Act. It was submitted that from the letters obtained from the files of persons searched, it clearly emerges that no satisfaction note relating to other entities was available in the files of searched persons. In these circumstances, it was submitted that Hon'ble High Court in the case of DSL Properties Pvt. Ltd. 33 Taxman.com 420 and Hon'ble Delhi Tribunal in the case of Pepsi Foods Pvt. Ltd. Vs. ACIT in I.T.A. No. 575 & 576 has clearly held that recording of satisfaction is a pre requirement which is needed to be recorded by the A.O. of searched person and is required to be kept in the files of searched person before taking action u/s 153C in the case of other entities. Ld. A.R. further submitted that even if A.O. is same in the case of searched person and that of other person even then separate satisfaction note is required to be recorded in both cases. In this respect, our attention was invited to facts of DSL Properties (P) Ltd.

Ld. A.R. submitted that it is an admitted fact that satisfaction note was not recorded by the A.O. of searched person. Ld. A.R. in view of various judgements tried to explain the provisions of Section 153C along with section 153A and it was submitted that first of all, the A.O. of searched person has to record satisfaction that some documents belong to other persons and then hand over the same to A.O. of such persons who again will record his satisfaction. It was submitted that first satisfaction by A.O. of searched persons has not been done in these cases and therefore, the assessment proceedings itself were not legal and the assessment orders itself needs to be quashed.

3. Ld. D.R. on the other hand submitted that there is no need to record a separate satisfaction note and satisfaction can be inferred from records/order and in this respect, reliance was placed on the following case laws:

- i) K M Mehboob vs DCIT 76 DTR (Ker) 449
- ii) CITVs Panchianyam Management 333 ITR 281
- iii) Subham Javed Vs ACIT 122 ITD 307

3.1 It was further submitted that there was no need to record satisfaction when both cases were with the same A.O. and it was submitted that in the present case, the A.O. in both the cases happened to be the same and therefore, it was argued that no separate satisfaction was required to be made and the argument taken by Ld. A.R. is hyper technical. It was submitted that technicalities and irregularities should not come in the way of administering justice to any party. Reliance in this respect was placed in the case of State Bank of Patiala Vs S K Sharma (1996) AIR 1669. Without prejudice the Ld. D.R. filed a copy of letter dated 09.09.2014 written by the A.O. in which he had claimed to have enclosed satisfaction note recorded by the A.O. of such

other persons Without prejudice to the above, Ld. D.R. further argued that assessee had not taken such legal grounds before Ld. CIT(A) and, therefore the assessee should not be allowed to take up such a stand at this stage.

4. Ld. A.R. in his rejoinder submitted that such ground was taken before Ld . CIT(A) also who had summarily dismissed this ground and in this respect, our attention was invited to paper book page 25 where a copy of written submissions before Ld . CIT(A) were placed. Our specific attention was invited to para 4-5 of such written submissions and commenting upon satisfaction note produced by Ld. D.R., the Ld. A.R. submitted that this satisfaction note as produced by Ld. D.R. relates to the satisfaction note recorded by A.O. of other person therefore, his contention that no satisfaction note was recorded by A.O. of searched persons with regard to other persons is correct. He submitted that the case law relied upon by him squarely covers the facts and circumstances of the present appeals.

5. We have heard rival parties and have gone through the material placed on record. The argument of Ld. D.R. that no such ground of not recording satisfaction was taken before, Ld. CIT(A) does not hold any force as from the copy of submissions before Ld. CIT(A) placed at paper book page 25, we find that assessee had raised this legal ground before Ld. CIT(A) information obtained by Ld. A.R. from A.O. of searched persons as placed at paper book pages 34-38 clearly mentions that the satisfaction note with respect to other entities was not available/recorded by A.O. of searched person and further on the direction of Ld. D.R., A.O., Central Circle -17, written to Ld. D.R. vide letter dated 09.09.2014 wherein he had mentioned to have enclosed satisfaction note recorded by the A.O. of such other person.

The copy of satisfaction note attached with the letter clearly suggests that the satisfaction note enclosed with the letter was prepared by A.O. of other entities who had assumed jurisdiction by invoking provisions of Section 153C. The satisfaction note reads as under:

“In the case of Sh. B. K. Dhingra, Smt. Poonam Dhingra, M/s Madhusudan Buildcon Pvt. Ltd. M/s Mayank Traders Pvt. Ltd. and M/s Horizon Pvt. Ltd. M/s Mirage Homes Ltd., M/s Mirage Infocom (P) ltd., M/s Mirage Investments (P) Ltd. M/s Mirage Management & Training (P) Ltd, M/s D.M. Infotech (P) Ltd, M/s Esteem Buildwell (P) Ltd, M/s Hamilton Technology (I) (P) ltd, M/s Apex Buildwell (P) Ltd, M/s Bodhi Properties (P) Ltd, M/s Jaguar Leasing (P) Ltd, M/s Madhusudan Cons.(P) ltd, M/s Madhusudan Fiber Goods (P) Ltd, M/s Madhusudan Garments (P) ltd, M/s Madhusudan Impotech (P) Ltd, M/s S. S. Con Build Pvt. Ltd, M/s Thapar Homes Ltd. (Thapar Buildwell Ltd.), M/s Weather Bys Construction (P) Ltd. M/s. Newera Sainatry Wares (P) Ltd search & seizure took place u/s 132 on 20.10.2008. The undersigned is the jurisdictional AO of these cases. During the course of search & seizure documents/papers pages 45 to 61 of Annexure A-29 seized by Party R-2, Annexure - SO, 51, 52 and 103 seized by Party 04 and Annexure A-15 seized by party 01, are found to belong to M/s Akash Arogya Mandir Pvt. ltd., 192-C, J & K Pocket, Dilshad Garden, New Delhi. I have examined the above mentioned documents/papers and provision of section 153C is invokeable in this case. As the undersigned is also the jurisdictional AO of M/s Akash Arogya Mandir Pvt. ltd., 192-C, J & K Pocket, Dilshad Garden, New Delhi, this satisfaction note is placed in the file before issuing notice u/s 153C.”

5.1 The fact that this satisfaction note is a satisfaction note recorded by A.O. of other entities also becomes verifiable from the fact that assessee under RTI Act had obtained information regarding the fact that satisfaction note in respect of other entities was not found in the files of A.O. of searched persons as is evident from paper book pages 34 to 38.

6. In such circumstances, Hon'ble Delhi High Court in the case of Pepsi Foods P. Ltd. Vs ACIT has held as under:

“ 6. On a plain reading of Section 153C, it is evident that the Assessing Officer of the searched person must be "satisfied" that inter alia any document seized or requisitioned "belongs to" a person other than the searched person. It is only then that the Assessing Officer of the search person can handover such document to the Assessing Officer having jurisdiction over such other person (other than the searched person).

Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or re-assess his income in accordance with the provisions of Section 153A. Therefore, before a notice under Section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is - after such satisfaction is arrived at - that the document is handed over to the Assessing Officer of the person to whom the said document "belongs". In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to examine the provisions of presumptions as indicated above. Section 132(4A)(i) clearly stipulates that when inter alia any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in Section 292C(1)(i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or "satisfaction" that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of "satisfaction".

7. *This would be the appropriate stage to consider the decisions referred to by the learned counsel for the Revenue. The decision referred to in Kamleshbhai Dharamshibhai Patel (supra) is of no relevance insofar as the present case is concerned. In that case certain documents were said to have belonged to the petitioners therein but a plea had been taken that as the land, in relation to which the documents were, no longer belonged to the petitioners therefore the said documents could not be regarded as belonging to the petitioners. That is an entirely different situation and the facts of that case are clearly distinguishable from the facts of the present case. Insofar as the decision of the Allahabad High Court in Classic Enterprises (supra) is concerned, we are, with respect, unable to agree with the observations that as the proceedings are at the very initial stage the "satisfaction" is neither required to be firm or conclusive. We say so because we are of the view that this conclusion of the Allahabad High Court is premised on a consideration of the provisions of Section 158BD of the said Act which are entirely different from Section 153C. Under Section 158BD the Assessing Officer's satisfaction is with regard to 'undisclosed income' belonging to a person other than the searched person. It is obvious that such satisfaction under Section 158BD by its very nature has to be prima facie and tentative. The same methodology cannot be imported into Section 153C where, in our view, the Assessing Officer is required to arrive at a conclusive satisfaction that the document belongs to a person other than the searched person because such Assessing Officer has to rebut the normal presumptions which are suggested by the statute under Sections 132(4A)(i) and 292C(1)(i) of the said Act. Therefore, the decision of the Allahabad High Court in the case of Classic Enterprises (supra) would not come to the aid of the Revenue.*

8. *Insofar as the decision in the SSP Aviation Ltd. (supra) is concerned we do not find anything therein which militates against the view that we are taking. In fact the very distinction between Section 153C and 158BD (although Section 158BD is not mentioned) is indicated by the following observations of the Division Bench in SSP Aviation Ltd. (supra):-*

"It needs to be appreciated that the satisfaction that is required to be reached by the Assessing Officer having jurisdiction over

the searched person is that the valuable article or books of account or documents seized during the search belong to a person other than the searched person. There is no requirement In section 153C(1) that the Assessing Officer should also be satisfied that such valuable articles or books of account or documents belonging to the other person must be shown to show to conclusively reflect or disclose any undisclosed income."

9. *It is only in this context that the Division Bench was of the view that the issuance of the 153C notice was only first step in the process of enquiry. 10. The only thing that remains to be examined now is the satisfaction note itself. The satisfaction note dated 02.08.2013 is in respect of the assessment years 2006-07 to 2011-12 and the same reads as under.-*

"M/s Pepsi Foods Pvt. Ltd. A Y 2006-07 to 11-12 02.08.2013 Satisfaction Note for issue of Notice u/s 153C of Income Tax Act, 1961 in the case of M/s Pepsi Foods Pvt. Ltd, for the Assessment Years 2006-07 to 2011-12.

Satisfaction Note:

A search and seizure operation u/s 132(1) of the I.T. Act was carried out at the various premises of M/s Jaipuria Group on 27.03.2012. The group is also into various other business viz. Raymond Retail franchisee, real estate and construction, fast foods, mining, education, ayurvedic products, information technology and medical services. One of the major allegations against the Jaipuria Group is that the assessee group in order to reduce its taxable profit indulged in enhancing the cost of raw material purchased. On examination of the accounts of various concerns, it is noticed that raw material are procured from fixed vendors. Since bulk purchases are made, rates should have been lower. However raw material are being procured on a high rates resulting in lower taxable income. The bottler shall buy all units of concentrate required for the manufacture f the beverage from PFL (Pepsi Foods Ltd.), or a manufacturer approved in writing by PFL (Pepsi Foods Ltd.) at a price and in accordance with the terms and conditions established by the seller. Being the sole supplier of concentrate to Jaipuria Group, Pepsi Foods Pvt. Ltd. is closely

associated to Jaipuria Gr. During the post search investigation, summons were issued to M/s Pepsi Foods Pvt. Ltd. to furnish certain details. The complete details were not furnished. The following documents were also found and seized during the course of search and seizure action u/s 132(I) of T.T. Act, 1961 belonging to (PFL)' M/s Pepsi Foods Pvt. Ltd. (PAN:AAACP 1557E) over which the jurisdiction lies with the' undersigned:

<i>Ay/Ann./Page No.</i>	<i>Description of Annexure</i>
<i>C-4/A-2177</i>	<i>This page contains summary of PFL Claims as on 29-1/-2011 (Claims up to 31 II 0/20 II)</i>
<i>C-41 A-4118-20</i>	<i>These pages contain a detail of D VAT impact (April' 10- June' 10) Vs PFL Support report and MRP Plan.</i>
<i>C-4/A-4/21-23</i>	<i>These pages contain a details of discount per CIS PDL VS PFL.</i>
<i>C-4/A-4/27</i>	<i>These pages contain a details of status of PFL claims.</i>
<i>C-4/A-S/S4</i>	<i>This page contains details of concentrate stock summary as on 31.12.2010.</i>
<i>C-4/A-5/99</i>	<i>This page contains a summary of PFL claims as on 8/9/2011. Claims upto 31/8/20 II.</i>
<i>C-4/A-S/100</i>	<i>This page contains a detail of PFL Support year 2011</i>

Accordingly, section 153C of the LT. Act, 1961 is applicable to M/s Pepsi Foods Pvt. Ltd. which state that "where an Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong or belongs to a person other than the person referred to in section 153A, then the books of account, or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and issue such other person

notice and assess or reassess income of such other person in accordance with the provisions of section 153A."

In view of facts narrated above, I am satisfied that the case of M/s Pepsi Foods Pvt. Ltd. is a fit case for issue of notice u/s 153C of the I.T. Act, 1961. Notice u/s 153C dated 02.08.2013 is issued' requiring the assessee to file return of income for the A.Y. 2006-07 to 2011-12.

(Pukini Lokho)

*Asstt. Commissioner of Income Tax,
Central Circle-I2, New Delhi"*

11. It is evident from the above satisfaction note that apart from saying that the documents belonged to the petitioner and that the Assessing Officer is satisfied that it is a fit case for issuance of a notice under Section 153C, there is nothing which would indicate as to how the presumptions which are to be normally raised as indicated above, have been rebutted by the Assessing Officer. Mere use or mention of the word "satisfaction" or the words "I am satisfied" in the order or the note would not meet the requirement of the concept of satisfaction as used in Section 153C of the said Act. The satisfaction note itself must display the reasons or basis for the conclusion that the Assessing Officer of the searched person is satisfied that the seized documents belong to a person other than the searched person. We are afraid, that going through the contents of the satisfaction note, we are unable to discern any "satisfaction" of the kind required under Section 153C of the said Act.

12. This being the position the very first step prior to the issuance of a notice under Section 153C of the said Act has not been fulfilled. Inasmuch as this condition precedent has not been met, the notices under Section 153C are liable to be quashed. It is ordered accordingly. The writ petitions are allowed as above. There shall be no order as to costs."

7. The Ld. A.R. had also invited our attention to a decision of Hon'ble Tribunal in the case of M/s. DSL Properties (P) Ltd and had submitted that

in that case as in the present cases, the A.O. of searched person and that of persons covered u/s 153C were same and the Tribunal had held that in spite of A.O. being same, separate satisfactions has to be recorded. The relevant findings of Tribunal are reproduced below:

“HELD

•From a reading of section 153C(1) it is evident that action under section 153C can be taken in respect of any other person than the person searched if the Assessing Officer of the person searched is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents belong to a person other than the person searched. In such circumstances, he shall hand over to the Assessing Officer of such other person money, bullion, jewellery or other valuable article or thing or books if account or documents. Thereafter the Assessing Officer of such other person shall proceed against the said person to assess or reassess his income in accordance with the provisions of section 153A Therefore, recording of satisfaction by the Assessing Officer of the person searched that any money bullion, jewellery or other valuable article or thing or books of account or documents seized belong to the person other than the person searched as well as handing over of books of account, other documents of assets seized to Assessing Officer of such other person is a sine qua non for initiating action under section 153C. [Paras 9 and 12]

• From a perusal of the satisfaction note recorded under section 153C, it is evident that this note does not indicate in whose case this satisfaction was recorded and who is the officer recording the satisfaction. In the satisfaction note the Assessing Officer has mentioned the name of various assesseees, who have been covered for search and seizure action under section 132(1). Now during the search of whose premises it was found is not mentioned. The last line of the satisfaction note reads: I am satisfied that the above documents belong to the assessee and thus its case is being taken up for assessment under section 153C. A plain reading of the above sentence indicates that it is recorded by the Assessing Officer, who is taking

action under section 153C. Thus it seems that the satisfaction note is recorded by the Assessing Officer of the assessee. This inference is fortified from the fact that on the very same date, i.e., 21-6-2010 the notice under section 153C is issued by the- same person. The revenue also stated that the satisfaction was recorded by the ACIT, Circle 8, who issued notice under section 153C read with section 153A.

However, it tried to justify the action of the ACIT on the ground that after the order under section 127 by the Commissioner, Delhi-IV, the jurisdiction of the person searched as well as the assessee both were centralized with the ACIT, Circle 8. It also stated that since the Assessing Officer of both the persons was the same, there was no question of handing over and taking over of the documents. The Bench does not agree with this view of the revenue. If the Assessing Officer is assessing the person searched as well as other person whose assets, books of account or documents were found at the time of search, then also, first while making the assessment in the case of the person searched, he has to record the satisfaction that the money, bullion, jewellery or other valuable article or thing or books of account or documents belong to the person other than the person searched. Then the copy of this satisfaction note is to be placed in the file of such other person and the relevant document should also be transferred from the file of person searched to the file of such other person. Thereafter in the capacity of the Assessing Officer of such other person, he has to issue the notice under section 153C read with section 153A. The Assessing Officer of the person searched and such other person may be the same, but these are two different assesseees and, therefore, the Assessing Officer has to carry out the dual exercise, first as the Assessing Officer of the person searched, in which he has to record the satisfaction during the course of assessment proceedings of the person searched. After recording such satisfaction note in the file of the person searched, the same is to be placed in the file of such other person. Then in his capacity as the Assessing Officer of such other person, he should take cognizance of such satisfaction note and thereafter issue notice under section 153C. In the instant case this exercise of recording the satisfaction during the assessment proceedings of the person searched has not been carried out. On the other hand, the Assessing Officer recorded the

satisfaction in the case of such other person which does not satisfy the condition of assuming jurisdiction under section 153C. Therefore, the above satisfaction note cannot be said to be a valid satisfaction note within the meaning of section 153C.”

7.1 We observe that on the basis of replies obtained by assessee under RTI and on the basis of reply of A.O. Central Circle-21, to Ld. D.R. the satisfaction note dated 10.09.2010 is the satisfaction note prepared by A.O. of the other persons. This fact is further fortified from the fact that on the same day of recording satisfaction on 10.09.2010, the A.O. had raised notices u/s 153C of the Act as placed in paper book Page-I.

8. Therefore, following the above precedents relied upon by Ld. A.R., we hold that satisfaction was to be first recorded by A.O. of searched person, which in the present cases has not been done. The facts and circumstances of the present appeals are similar to the case laws relied upon by Ld. A.R.

9. The case law of CITVs Panchajanyam Management, 333 ITSR 281 relied upon by Ld. D.R. relates to provisions of Section 158BD and, therefore, is not applicable as in that case, provisions of Section 158BD were applicable and Hon'ble Delhi High Court in the case of Pepsi Foods P. Ltd. as noted in our order has distinguished the provisions of Section 158BD and 153C.

10. The case law of Dr. K M Mehboob Vs DCIT deals with the necessity of recording of satisfaction note by A.O. of searched persons and Hon'ble Kerala High Court has decided the issue in favour of revenue by holding as under:

“Held: Under s. 153C for transferring the material or evidence collected in search to the AO of an assessee other than the searched

assessee, what is required to be satisfied is that the money, bullion, jewellery or other valuable article or thing or books of account or documents seized in the course of search of an assessee belong to or relate to a person other than the searched assessee. In other words, unlike under s. 158BD for transferring a file under s. 153C, there is no need to examine whether the books of accounts or other evidence or materials seized in the course of search of an assessee represents or proves undisclosed income of another assessee. On the other hand, for transferring the file to the AO of such other assessee, all what is required to be considered is whether the materials or books of accounts or evidence recovered relates to another assessee, which may or may not lead to an assessment in the ease of the other assessee after transfer of the file to his AO. This is only an internal arrangement to be made between two Departmental Officers and in this regard the only fact that needs to be verified is whether the assessee whose books of accounts or materials are recovered in the course of search of any other assessee, is a regular assessee before another officer, and if so, to transfer the file to such other officer for his consideration and for passing orders, whether assessment or penalty or such other order permissible under the Act by that officer. Admittedly, in this case, the AO, who conducted the search and who obtained materials and evidence about the income of the assessee rightly transferred the files to the AO of the appellant at Kozhikode, who has jurisdiction to assess him, and it is only on receipt of such files and materials from the AO from Mangalore, the assessee's assessments were taken up and completed under s. 153C r/w s. 153A. Therefore, there is no merit in the contention of the assessee's counsel that satisfaction was not recorded by the AO at Mangalore before transferring the materials and seized records to the assessee's AO. If assessee's argument is accepted he could be placed in a worse position, because if his objections were considered and overruled while transferring the file by the AO at Mangalore holding that goods seized or materials recovered really belong to him justifying assessment, the assessee will forfeit his right to raise same objection before his AO who has to consider the relevance of the documents, accounts or other materials received from the AO at Mangalore. The scope of s. 153C is such that assessment has to be strictly made only by the AO before whom the assessee is regularly assessed because it

is that officer who is familiar with the transactions, income and regular assessment of the assessee for the preceding years and based on the same to consider the relevance of materials or documents received from another AO after hearing the assessee to consider such materials or evidence for assessment. So much so, no enquiry or hearing or adjudication is contemplated by the AO, who conducted the search of an assessee in which evidence or materials belonging to another assessee is obtained for transferring the file to the AO before whom such other assessee is to be assessed. Even though transfer as contemplated under s 153C has to be made by the officer who conducted the search and who recovered books of accounts, materials or articles in the course of search of an assessee other than searched assessee, still it is open to such assessee to establish before his AO that the opinion of the AO transferring the materials or evidence or books of accounts or goods seized is wrong and that those do not belong to him. In other words, the transfer of recovered books of accounts, evidence or materials is only a procedural formality to be complied with by the AO who searched an assessee and recovered materials pertaining to another assessee, and the AO who takes up assessment under s. 153C against the latter we have full jurisdiction to appreciate evidentiary value of the books of accounts or materials or goods received from the other officer and proceed to make assessment in his own way. Therefore there is, no merit in the contention of the assessee's counsel that satisfaction is required to be recorded by the AO, who conducted the search before transferring materials or articles or things found belonging; to another assessee.- Dr. K.M. Mehaboob vs. Dy. CIT & Anr. (2012) -76 DTR (Ker) 90 affirmed.”

11. Therefore, there are conflicting views of Hon'ble Delhi High Court and Hon'ble Kerala High Court. The assessee falls into the jurisdiction of Hon'ble Delhi High Court in view of the case law of Pepsi Foods (P) Ltd., therefore, we held that recording of satisfaction by A.O. of searched persons is a necessary pre condition for initiation of proceedings u/s 153C which has

not been done in the present appeals. Therefore, we quash the assessment proceedings being illegal.

12. In view of the above, ground No.1 of cross objections are allowed and in view of the fact that ground No.1 of cross objection has been decided in favour of assessee, therefore, other grounds of C.O. and revenue's appeals have become infructuous and hence, dismissed. The appeals and cross objections are disposed off in the manner stated above.

13. Order pronounced in the open court on 28-11-2014.

Sd/-

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

(T.S. KAPOOR)
ACCOUNTANT MEMBER

Date: 28-11-2014

Sp

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknaya Bhawan, Khan Market, New Delhi.

True copy.

By Order (ITAT, New Delhi).