IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' NEW DELHI

BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
AND
SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER

ITA No. 4200/Del/2012 to 4202/Del/2012
Assessment Year: 2006-07, 2007-08, 2008-09

ITA No. 4197/Del/2012 to 4199/Del/2012
Assessment Year: 2003-04, 2004-05, 2005-06

Asstt.Commissioner of Income Tax, Central Circle 21, New Delhi.	vs	Inlay Marketing Pvt. Ltd., 6111, Block No. 7, Dev Nagar, Karol Bagh, New Delhi. (PAN: AAACI0477N)

C.O. NO. 380, 381, 382, 383, 384, 385/Del/2012,
(IN ITA No. 4197, 4198, 4199, 4200, 4201, 4202, /Del/2012)
Asstt.Year: 2003-04 to 2008-09

Inlay Marketing Pvt. Ltd., New Delhi. (Appellant)	vs	ACIT, Central Circle 21, New Delhi. (Respondent)

Appellant by: Shri Sunil Bajpai, Sr. DR
Respondent by: Shri Kapil Goyal, Advocate

O R D E R

PER BENCH

These appeals filed by the revenue and COs filed by the assessee have been preferred against the order of the CIT(A)-II, New Delhi dated 17.5.2012 in Appeal No. 504, 505, 503, 506, 507 and 508/10-11 for AYs 2003-04 to 2008-09 respectively. Since all above captioned appeals and

COs have arisen from one order of CIT(A)-II Delhi, we have clubbed them together and are adjudicating them by this consolidated order.

2. Briefly stated the facts giving rise to these appeals and COs are that a search and seizure operation under Section 132 of the Act was carried out in the cases of Shri B.K. Dhingra, Smt. Poonam Dhingra and M/s Madhusudan Buildcon (P) Ltd. on 20.10.2008 and during the course of search at their residential premises at F-6/5, Vasant Vihar, New Delhi, certain documents belonging to the assessee were seized. On the basis of documents so found belonging to the assessee company, proceedings were initiated in the cases of the assessee company under Section 153C r/w section 153A of the Act. Initially the case of the assessee company was centralized with ACIT, Central Circle 17 under Section 127 of the Act vide order of CIT(A)-Dehradun-IV, New Delhi dated 14.12.2009.

3. A notice under Section 153Cof the Act was issued to the assessee company to file return for AY 2003-04 to 2008-09 within 15 days of the service of notices. In response to the notice under Section 153C of the Act, the assessee filed a return for six assessment years as required by the Assessing Officer on 8.9.2010.

4. Subsequently, the cases were transferred to Central Circle-21 vide order dated 19.10.2010 passed under Section 127 of the Act. The Assessing

Officer rejected the legal contentions of the assessee and made additions pertaining to unexplained purchases under Section 69C of the Act and expenses disallowed as per discussion in the respective assessment orders.

5. The assessee preferred an appeal before the CIT(A) which was partly dismissed on legal contentions of the assessee but at the same time, the CIT(A) partly allowed the appeal on merits deleting the additions made by the Assessing Officer. Now, the aggrieved revenue is before this Tribunal against the part relief granted by the CIT(A) deleting the additions made under the assessment order passed under Section 143(3) r/w section 153C of the Act in all six AYs. The assessee has also preferred COs challenging the conclusion of the CIT(A) in not holding that the notice issued under Section 153C of the Act and assessment order passed under Section 153C/143(3) of the Act are illegal, bad in law and without jurisdiction.

COs of the assessee

6. At the outset, both the parties requested that the COs of the assessee being legal grounds may be adjudicated first, hence, we are first taking up COs of the assessee for adjudication.

7. Although the assessee has taken as many as seven COs, similarly worded in all six cases but except main CO No. 1, other COs are argumentative and supportive to the main CO No.1 which reads as under:-

"1. That in view of the facts and circumstances of the case and in law the CIT(A) has erred in not holding that the notice issued u/ 153C and the assessment order passed u/s 153C/143(3) are illegal, bad in law, without jurisdiction and barred by time limitation."

8. We have heard rival arguments of both the parties and carefully perused the relevant material placed before us on record.

9. Ld. Counsel of the assessee submitted that the documents found during the search proceedings as referred to in the satisfaction note, recorded by the AO of the assessee (the person other than the person searched), do not belong to assessee as the same were part of working papers of the CA Shri B.K. Dhingra in whose office the search was conducted on 20.10.2008. Ld. Counsel for the assessee further submitted that admittedly, as recorded in the satisfaction note, no seized document related to the relevant assessment year was found and the seized papers referred in the said satisfaction note were duly reflected in the regular books of accounts of the assessee and, therefore, no incriminating material was found. It was also submitted on behalf of the assessee that the assessment has been framed in non-confirmation with statutory provisions of Section 143(3) r/w section 153C of the Act, therefore, the CIT(A) erred on facts and law in upholding and confirming the action of the Assessing Officer.

10. Ld. Counsel of the assessee vehemently contended that the CIT(A) has erred in facts and on law in upholding the validity of assessment order, particularly when the assessment has been made without complying with law and additions made are illegal, bad in law and without jurisdiction. On behalf of the assessee, it was also submitted that the CIT(A) was not justified and erred in not considering the fact that the assessment proceedings for all six AYs under appeal were not pending on the date of recording of satisfaction under Section 153C of the Act (on 5.7.2010) and accordingly, the same did not abate for the purpose of initiation of proceedings under Section 153C of the Act and as such the reassessment being bad in law, illegal and without jurisdiction deserves to be quashed.

11. For above submissions and contentions, the assessee has relied on following decisions of Hon'ble High Courts and the Tribunal:-

i) Manish Maheshwari vs ACIT (2007) 289 ITR 341(SC)

ii) Pepsico India Holdings Pvt. Ltd. Vs ACIT (2014) 367 ITR 673 (Delhi)

iii) CIT vs Calcutta Knitwear (2014) 362 ITR 673(SC)

iv) CIT vs Rao Subba Rao (HUF) in ITA No. 254/2014 dated 15.04.2014 (Hon'ble A.P. High Court)

v) CIT vs Gopi Apartment in ITA 60/2014 dated 1.5.2014 (Hon'ble High Court of Allahabad)

vi) DSL Properties (P) Ltd. Vs DCIT in ITA No. 1344/D/2012 dated 22.3.2013 (ITAT Delhi 'B' Bench) 60 SOT 88

vii) V.K. Fiscal Services Ltd. vs DCIT in ITA No. 5460 to 5465/Del/2012 dated 27.11.2013 (ITAT 'H' Bench Delhi)

12. Replying to the above, ld. DR contended that there is no need to record satisfaction under Section 153C of the Act by the Assessing Officer

of the person searched and there is no need to record a specific satisfaction note as satisfaction can be inferred from other records and orders of the department. Ld. DR further pointed out that it is necessary for the person objecting to the validity of the notices to demonstrate prejudice suffered by him, otherwise validity of the notice under Section 153C of the Act cannot be held illegal, bad in law and without jurisdiction. Ld. DR also contended that the technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice, therefore, on the basis of small and curable technicalities and irregularities, entire proceedings conducted by the revenue cannot be held illegal or without jurisdiction. To support above contentions and submissions, the ld. DR has placed reliance on following decisions of Hon'ble Supreme Court, Hon'ble High Courts and the Tribunal:-

(i) State Bank of Patiala & Others vs S.K. Sharma (1996) AIR 1669 (Hon'ble Supreme Court)

(ii) K.M. Mehboob vs DCIT (2012) TIOL-642-HC-Kerala-IT (Hon'ble Kerala High Court)

(iii) CIT vs Panchjanyam Management 333 ITR 281 (Kerala) Hon'ble Kerala High Court

(iv) Shirish Madhukar Dalvi vs ACIT (2006) 287 ITR 242 (Hon'ble Bombay High Court)

(v) Subhan Javed vs ACIT (2010) 122 ITD 307 (Bangalore) ITAT Bangalore Bench 'B'

13. On careful consideration of above rival contentions of both the sides and on careful perusal of the relevant material on record, and inter alia, ratio of the above mentioned decisions as relied by both the parties, at the outset, we observe following admitted and undisputed facts as noticed by us:-

a) original search and seizure operation under Section 132 of the Act was carried out in the cases of Shri B.K. Dhingra, Poonam Dhingra and M/s Madhusudan Buildcon (P) Ltd. on 20.10.2008.

b) DCIT, CC-17, New Delhi recorded satisfaction note for issuing notice under Section 153C of the Act to the assessee on 5.7.2010 and notice under Section 153C of the Act was issued to the assessee on 6.7.2010.

c) In response to the notice under Section 153C of the Act, the assessee filed returns on 8.9.2010 for all six AYs.

14. At the time of recording satisfaction note on 5.7.2010 and issuing notices under Section 153C of the Act on 06.7.2010, the Assessing Officer of the person searched i.e. Shri B.K. Dhingra and others and the Assessing Officer of the person other than searched i.e. appellant/assessee company in

the present cases was the same authority i.e. the assessing officer of the person searched and person other than searched were the same.

15. The main contention of the ld. Counsel of the assessee stress upon the factum that as per RTI reply dated 10.6.2013 by the Assessing Officer of the person searched admitted that no satisfaction note for other entities including assessee has been recorded as per assessment records of the searched entities and it is apparent from the assessment records of the searched entities that the required satisfaction note under Section 153C of the Act was not recorded by the Assessing Officer of the searched persons/entities. The RTI replies dated 10.6.2013 are being enclosed as Annexure A, B & C along with this order.

16. On behalf of the revenue, ld. DR replied that when the Assessing Officer of the persons searched and the Assessing Officer of the person other than the persons searched are the same, then there is no need of recording satisfaction in the records of persons searched for initiation of proceedings under Section 153C of the Act. On careful perusal of decision of Hon'ble Kerala High Court in the case of CIT vs Panchajayanam Management (supra) and K.M. Mehboob vs DCIT (supra), we observe that in the case of K.M. Mehboob (supra) as relied by the ld. DR, their lordships considered the ratio of the decision of Hon'ble Supreme Court in the

case of Manish Maheshwari vs ACIT 289 ITR 341 (Hon'ble Supreme Court) and its own decision i.e. decision of Hon'ble Kerala High Court in the case of CIT vs Panchajayanam Management (supra) and held as under:-

> *"5. The remaining question to be considered is appellant's challenge against the assessments completed for the six assessment years from 2003-04 to 2008-09 under Section 153C read with Section 153A(1) on the ground that the Assessing Officer who conducted search on the assessee at Mangalore under Section 132 has not recorded the satisfaction as required under Section 153C before transferring the files to the Assessing Officer of the appellant to make assessments on the appellant under Section 153C read with Section 153A of the Act. While learned counsel for the appellant has relied on the decision of the Supreme Court in Manish Maheshwari v. Asst. Commissioner of Income Tax and Another, reported in 289 ITR 341, learned Standing Counsel for the Revenue has relied on the Division Bench decision of this Court in Commissioner of Income Tax v. Panchajanyam Management Agencies and Services, reported in 333 ITR 281 (Ker). We do not think there is any need to go to both these decisions because even though Section 153C is analogous to the previous provisions of Section 153BD, there is complete deviation in the new provision in as much as while Section 158BD provided for transfer of file only when the Assessing Officer who conducted the search or who called for books of accounts was satisfied that the undisclosed income found therefrom belongs to any person other than the searched assessee who has to be assessed under Section 158BD read with Section 158BC, under Section 153C of the Act for transferring the material or evidence collected in search to the Assessing Officer 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 Section 158BD for transferring a file under Section 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 Assessing Officer 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 case of the other assessee after transfer of the file to his Assessing Officer. 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 Assessing Officer, who conducted the search and who obtained materials and evidence about the income of the Appellant rightly transferred the files to the Assessing Officer of the appellant at Kozhikode, who has jurisdiction to assess him, and it is only on receipt of such files and materials from the Assessing Officer from Mangalore, the appellant's assessments were taken up and completed under Section 153C read with Section 153A of the Act. We, therefore, do not find any merit in the contention of the appellant's counsel that satisfaction was not recorded by the Assessing Officer at Mangalore before transferring the

materials and seized records to the appellant's Assessing Officer. In our view, if appellant'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 Assessing Officer at Mangalore holding that goods seized or materials recovered really belong to him justifying assessment, the appellant will forfeit his right to raise same objection before his Assessing Officer who has to consider the relevance of the documents, accounts or other materials received from the Assessing Officer at Mangalore. The scope of Section 153C is such that assessment has to be strictly made only by the Assessing Officer 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 Assessing Officer after hearing the assessee to consider such materials or evidence for assessment. So much so, we do not think any enquiry or hearing or adjudication is contemplated by the Assessing Officer, who conducted the search of an assessee in which evidence or materials belonging to another assessee is obtained for transferring the file to the Assessing Officer before whom such other assessee is to be assessed. Even though transfer as contemplated under Section 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 Assessing Officer that the opinion of the Assessing Officer 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 Assessing

Officer who searched an assessee and recovered materials pertaining to another assessee, and the Assessing Officer who takes up assessment under Section 153C against the latter will 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. We therefore do not find any merit in the contention of the appellant's counsel that satisfaction is required to be recorded by the Assessing Officer, who conducted the search before transferring materials or articles of things found belonging to another assessee."

17. The ratio laid down by Hon'ble High Court in the case of CIT vs Panchjanyam Management (supra) agencies is that non-recording of reasons and non-communication of the same by the Assessing Officer while issuing notice under Section 158BC of the Act will not invalidate assessment completed under Section 158BD r/w 158BC of the Act. Their lordships, in this case, went on to hold that the issuance of notice under Section 158BD r/w section 158BC is a sufficient for initiation of assessment which is in that case admittedly done and the assessee had filed return in Form 2B in terms of the said notice. Speaking for Hon'ble Kerala High Court, their lordships also held that by virtue of operation of section 142 of the Act, every assessee assessed under Section 158BC and 158BD gets an opportunity to file objections and validity of assessment is not affected by the reasons of Assessing Officer's failure to record satisfaction under Section 158BD

which is only for the purpose of transferring the file and once the file is transferred, the transferring officer becomes functus officio and the jurisdiction for all purposes is transferred to the officer to whom file is transferred and who has jurisdiction to assess the assessee about whom the details were obtained in the course of search of another assessee i.e. person searched. We also note that the case of Panchjanyam Management Agencies (supra) is not related to section 153A and 153C of the Act.

18. In the case of K.M. Mehboob vs DCIT (supra), Hon'ble High Court of Kerala held that the satisfaction note is required to be recorded by the Assessing Officer who conducted the search before transferring the material or articles or things found during the search belonging to another assessee. The same view was also recorded by ITAT Bangalore Bench 'B' in the case of Subhan Javed vs ACIT (supra).

19. Returning to the facts of the present case, we observe that the CIT(A) has dismissed the legal contention and grounds of the assessee with following observations and conclusion:-

> *"8. I have considered the assessment order, written submissions, remand report and rejoinder to the remand report filed by the AR as well as the facts of the case and the position of law. It is noted that in Grounds of Appeal No.1, 2, 3 & 5 the appellant has raised the issue that proceedings u/s 153C initiated in its case on the satisfaction note not based on any incriminating material is bad in law as also the fact that initiation of*

proceedings u/s 153C should be in respect of such years- in which there is some material. That therefore even on these grounds the assessment order is bad in law. In this connection the appellant has, placed reliance on the decisions in cases of VJM VIMAWAL (2009) 124 TTJ 508 (UR) Ahmedabad, Saraya Industries Ltd., 3061TR 189(2008) Delhi etc. I have gone through the satisfaction note of the .4.0 dated 05.07.2010. It is seen that the AO has noted as under:

"Documents at pages 77 to 161 of Annexure A-24, seized by party R-2 from the premises at F-615, Vasant Vihar, New Delhi during the course of search conducted u/s 132 of the I. T. Act, 1961 on' 20.10.2008 in the case of Sh. B. K. Dhingra Smt. Poonam Dhingra, M/s Madhusudan Buildcon Pvt. Ltd. have been belong to M/s Inlay Marketing Pvt. Ltd., 8-340, Hari Nagar, New Delhi which has not been covered u/s 132 of the I. T. Act, 1961. Accordingly, in terms of provisions of section 153C of the Act notices u/s 153C are hereby issued for the A. Y. 2003-04 to 2008-09 in the case of M/s Inlay Marketing Pvt. Ltd. The foresaid case was centralized in central circle -17, New Delhi vide orders dated 14/Dec/09 of CIT-IV, New Delhi."

9. It is also observed from the plain and literal interpretation of the provision of section 153C that once a document is found to be belonging to a person other than the person referred to in section 153A the provisions of section 153C are ipso facto attracted and it is automatic that the assessments covered under all the years falling within the mandate of proviso of section 153C(1) and read with 153A(1) get attracted. Moreover, there is no legal requirement that initiation of proceedings should only be with respect to such years in respect of which there is some material. Now coming to the issue that the satisfaction note should contain some satisfaction on the part of the AO leading to undisclosed income on the basis of the seized material. In this regard also I have considered the facts of the case and in my

considered opinion recording of satisfaction so as to show existence of undisclosed income is not a prerequisite under the provision of see 153C which are distinguishable from the provisions of see 15880 of the Act which is also related to block assessments. The literal meaning of sec 153C that once documents are handed over to the AO of the other person, which incidentally is the same AO, the provision of sec 153A are made applicable and therefore even if such documents etc. are recorded or disclosed to the department by such other person, the assessment may have to be framed for all relevant assessment years. The requirement of the sec. 153C with reference to satisfaction seems to be only the prima facie satisfaction and not a conclusive satisfaction. Thus the AO must be prima facie satisfied that the documents etc. belong to the other person than the person searched. In the present case such satisfaction has been stated to have been recorded and I have nothing to doubt the action of the AO in this respect as is being made out by the appellant. Now coming back to the issue of limitation raised by the appellant in the above said grounds of Appeal no. 1, 2, 3 & 5 it has been argued that while search has taken place in the group case in October 2008 but the documents are deemed to be handed over to the AO of the appellant on 05th July 2010, the date on which the notice u/s 153C has been issued in the appellant's case. That six years which can be assessed u/s 153C shall have to be construed from the date on which the books of account or documents are handed over by the AO of the main party subjected to the search to the AO of the other person (the applicant in this case). That accordingly the six years which can be assessed u/s 153C in applicant's case are A.Y 2005-06 to 2010-11. The above view is clear on reading the proviso to sec 153C(1) r. w. s. 153A(1) of the I T Act. In this connection reliance is also placed in the ratio of decision in the case of VJM Vimawal vs ACIT 124 TTJ 508(UR). Accordingly the initiation of the proceedings for AY. 03-04(and the other respective A.Y's as the case may be) which has been made on 05.07.2010 is barred by

limitation, and therefore the assessment order passed u/s 153C is held as a nullity. This plea however is fundamentally flawed in view of the basis of the fact that in case of this appellant the AO who was to hand over the seized material is also the AO of the appellant, who was to take over the seized material Therefore, the issue of handing over, and taking over the seized material is obviated, The plea taken regarding the date of search and subsequent date of handing over of seized material is also obviated as both the sides are manned by the same AO. Further the AO has provided the Copy of the 'satisfaction note' when asked by the appellant company. I do not find any merit in the grounds of the appeals nor any infirmity in the notice issued or the order passed u/s 153A/153C in this case on account of grounds no 1, 2, 3 & 5 taken by the appellant. These grounds are therefore dismissed."

20. We further observe that in the cases of DSL Properties (P) Ltd. (supra), the ITAT Delhi held that even if the Assessing Officer of the persons searched and the Assessing Officer of the such other person other than searched is the same, then the Assessing Officer has to first record the satisfaction in the file of the person searched, thereafter, such note along with the seized document/books of accounts is to be placed in the file of such other person and in absence of such exercise, initiation of proceedings under Section 153C of the Act itself are invalid.

21. In view of factual matrix of the present case, we are of the considered view that there is no need to go with conflicting decisions on the legal issue as though section 153C of the Act is analogous to the earlier provisions of

section 158BD of the Act but there is a complete deviation in the newly inserted provision of section 153C of the Act inasmuch as while section 158BD of the Act stipulates that for transfer of file only when the Assessing Officer who conducted the search or who called for books of accounts was satisfied that the undisclosed income found therefrom belongs to any person other than the person searched who has to be assessed under Section 158BD r/w section 158BC of the Act. While under Section 153C of the Act for transferring the material or evidence collected during course of search to the Assessing Officer of assessee other than the person searched, what is required is that the money, bullion, jewellery or other valuable article or thing or books of accounts or documents seized in the course of search of an assessee belonged to or related to a person other than the person searched. In simpler words unlike section 158BD of the Act for transferring a file under Section 153C of the Act, there is no need to examine whether the material, documents, books of accounts or other evidence seized during the course of search of an assessee represents or disclosed undisclosed income of another assessee.

22. In the decision of the Hon'ble Supreme Court in the cases of Calcutta Knitwears (supra), the ratio laid down in the case reads thus:-

> *"38. Having said that, let us revert to discussion of Section 158BD of the Act. The said provision is a machinery*

provision and inserted in the statute book for the purpose of carrying out assessments of a person other than the searched person under Sections 132 or 132A of the Act. Under Section 158BD of the Act, if an officer is satisfied that there exists any undisclosed income which may belong to a other person other than the searched person under Sections 132 or 132A of the Act, after recording such satisfaction, may transmit the records/documents/chits/papers etc to the assessing officer having jurisdiction over such other person. After receipt of the aforesaid satisfaction and upon examination of the said other documents relating to such other person, the jurisdictional assessing officer may proceed to issue a notice for the purpose of completion of the assessments under Section 158BD of the Act, the other provisions of XIV-B shall apply.

39. The opening words of Section 158BD of the Act are that the assessing officer must be satisfied that "undisclosed income" belongs to any other person other than the person with respect to whom a search was made under Section 132 of the Act or a requisition of books were made under Section 132A of the Act and thereafter, transmit the records for assessment of such other person. Therefore, the short question that falls for our consideration and decision is at what stage of the proceedings should the satisfaction note be prepared by the assessing officer: whether at the time of initiating proceedings under Section 158BC for the completion of the assessments of the searched person under Section 132 and 132A of the Act or during the course of the assessment proceedings under Section 158BC of the Act or after completion of the proceedings under Section 158BC of the Act."

23. We further note that the Hon'ble Jurisdictional High Court of Delhi in the case of Pepsico India Holdings Pvt. Ltd. Vs ACIT (supra) after considering its own decision in the case of Pepsi Foods Pvt. Ltd. Vs ACIT

WP(C) No. 415/2014 dated 07.08.2014 and the provisions of section 153C, 132(4A)(i) and 292 C(1)(i), it has been held thus:-

> *"Before we examine these writ petitions in detail it would be pertinent to point out that recently in the case of Pepsi Foods Pvt. Ltd. Vs. Assistant Commissioner of Income Tax, WP (C) No.415/2014 and other connected matters, this court had occasion to examine the very provisions which are under consideration in the matters before us. In the judgement delivered on 07.08.2014 in the case of Pepsi Foods Pvt. Ltd. (supra), after examining the provisions of Sections 153C, 132(4A)(i) & 292C(1)(i) of the said Act, this Court had observed 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 searched 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".

xxxx xxxx xxxx xxxx xxxx

"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."

24. The coordinate bench of the Tribunal in the case of DSL Properties (P) Ltd. Vs DCIT in operative paras 15, 18 and 21 (supra) has held thus:-

"Held
Action u/s 153C can be taken in respect of any other person than person searched if AO of person searched is satisfied that

any money, bullion, jewellery or other valuable article or thing or books of account or documents belong to person other than person searched. Therefore, recording of satisfaction by AO of person searched that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized belong to person other than person searched is a sine qua non for initiating action u/s 153C. In S. 158BD, AO of person searched is to be satisfied that any undisclosed income belong to any person other than person searched, while, in case of S. 153C, AO of person searched is to be satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents belong to person other than person searched. Perusal of satisfaction note shows that paper does not indicate in whose case this satisfaction was recorded and who is officer recording satisfaction. Neither name of assessee of AO was mentioned and no seal of AO was there. AO recorded satisfaction in case of such other person which does not satisfy condition of assuming jurisdiction u/s, 153C. Moreover, no original satisfaction note is available on record. Photocopy of satisfaction note produced before us does not bear name of any assessee, name of AO or any seal of AO. Therefore, satisfaction note cannot be said to be valid satisfaction note within meaning of S. 153C. Likewise, AO issued notice u/s 153C for AY 2004-05 which is clearly barred by limitation. Therefore, issue of notice u/s 153C issued by Revenue cannot be sustained on both counts, i.e., it is legally not valid as conditions laid down u/s. 153C has not been fulfilled and it is barred by limitation. Therefore, notice issued u/s 15and consequently, assessment completed in pursuance to such notice, is also quashed. Appeal allowed."

25. Even if the decisions of Hon'ble Supreme Court in the cases of Manish Mahehswari (supra), Calcutta Knitwears (supra), decision of Hon'ble High Court of Delhi in the case of Pepsico Holdings Pvt. Ltd. (supra) and decision of ITAT Delhi in the case of DSL Properties (supra) are

not there then also in close juxtaposition to facts of the present case as per RTI reply by the department dated 10.6.2013(Paper Book No. 3of the assessee at pages 13, 14 & 15), it has been stated and answered to the present assessee i.e. person other than person searched, the AO of the person searched has admitted that no satisfaction note is available in their record/files concerning person other than the present case.

26. The satisfaction note available on Paper Book No. 2of the assessee at page 51 clearly reveals *ex facie* that the same has been recorded by the AO in the capacity of AO of the person other than person searched., meaning thereby assessee of the instant appeals. In these circumstances, it can safely be held that no valid satisfaction was recorded by the AO of person searched so as to fulfill requirement of valid assumption of jurisdiction u/s 153C of the Act which is *sine qua non* for validly assumed jurisdiction u/s 153A of the Act.

27. Replying to the specific query of the Bench, ld. DR found himself unable to submit the outcome of the assessment, proceedings for AY 2009-10 relevant to previous 2008-09, pertaining to which alleged cheque book as termed as incriminating material by the department, was related. In this situation, we can safely presume that no regular assessment order has been passed till date for the AY 2009-10 to which only seized material i.e. cheque

book pertains to. Ld. DR has also not disputed the fact submitted by the assessee that the details of cheque book were duly reflected in the return of the assessee for AY 2009-10. Therefore, if the AO of the person other than person searched might have gone through the return of the assessee for AY 2009-10, which was admittedly filed on 30.09.2009, then he could have drawn a proper conclusion about further action of the proceedings for AY 2009-10 but this exercise was not conducted prior to issuance of notice u/s 153C of the Act, on 6.7.2010, hence, the initiation of proceedings and assumption of jurisdiction u/s 153C of the Act gets vitiated on account of non-recording of required satisfaction by the AO of the person searched and non application of mind by the AO of the person other than the person searched.

28. Relying on the decisions of ITAT, Delhi in the case of DSL Properties Ltd. (supra) and V.K. Fiscal Services Pvt. Ltd. (supra), ld. Counsel of the assessee has also advanced another legal contention that the assessment for AY 2003-04 and AY 2004-05 is time barred as per provisions of section 153(1) of the Act which stipulated that the Assessing Officer can issue the notice u/s 153A of the Act for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted and for the purpose of section 153C of the Act for the six

assessment years immediately preceding the assessment year relevant to the previous year in which the document or material is handed over.

29. Replying to the above, ld. DR pointed out the observations and conclusions of the CIT(A) at page 79-80 of the impugned order and submitted that in this case, the Assessing Officer who did not hand over the seized material is also the Assessing Officer of the appellant i.e. person other than searched person, who was to take over seized material, therefore, the issue of handing over and taking over the seized material is obviated. The DR further contended that when the date of search and subsequent date of handing over of seized material is obviated because both the AOs of person searched and person other than the person searched was conducted by the same Assessing Officer. The DR further contended that in this situation, date of search is relevant for calculating limitation period for the cases of the person other than the person searched.

30. On careful consideration of above submissions, we observed that in the recent decision of ITAT 'E' Bench Mumbai in the case of SKS Ispat and Power Limited vs DCIT in ITA No. 8746/M/2010 and other appeals the order dated 7.5.2014, we observe that the issue of limitation prescribed under Section 153(1) of the Act has been decided by following the decision of ITAT, Delhi 'H' Bench in the case of V.K. Fiscal Services Pvt. Ltd. vs

DCIT (supra) in favour of the assessee with following observations and conclusions:-

> *"15. We also find that the CIT(A) made a reference to the incriminating material, which yielded disclosure of some undisclosed income. But, on perusal of the documents, we find that the CIT(A) entered into an error zone and the disclosure is only Rs 5 crores in this case and the same relates to the lands deals. In principle this disclosure has nothing do with the impugned additions u/s 68 or 14A of the Act. In the instant case, specific to the assessee, no incriminating material with the details was referred either in the assessment order or in the order of the CIT (A) for making the impugned additions. As per the cited judgment in the case of Jai Steels Ltd, supra, the assessment u/s 153A is only for reiteration rather than making any additions in a routine manner without the strength of the incriminating materials. Similar view was taken up by the ITAT, Delhi "H" Bench, in the case of V.K. Fiscal Services P Ltd vs. DCIT vide ITA Nos.5460 to 5465/Del/2012 (www.itatonline.org). In this regard, para 13 from the said order of the ITAT Delhi Bench (supra) is relevant and the same reads as under:*
>
> *"13. Applying the above case laws to the facts of the case, we have to necessarily quash the assessment proceedings for AY 2004-2005, 2005-06, 2007-08, 2008-09 on the following grounds.*
>
> *(a) No books of accounts belonging to the assessee were found and seized in the premises of the other person. What was found was in the hard disk was only a confirmation of account that an attached annexures. Such documents cannot be said to be books of accounts or documents belonging to the assessee.*
>
> *(b) The Revenue has not produced the record of the searched person to demonstrate that satisfaction was*

recorded during the course of assessment proceedings in the case of M/s. Global Reality Ventures P. Ltd. On the date of recording of satisfaction, first notice u/s 153(c) was issued. There is no indication whatsoever, that the assessment proceedings in the case of Global Reality Ventures P. Ltd were in progress or not, at the point of time and that the AO during the course of that proceedings recorded this satisfaction. The procedure contemplated under the Act was not followed.

(c) The satisfaction is recorded on 23rd July, 2010. The relevant AY would be 2011-12. The six preceding AYs relevant to this AY would be 2005-06 / 2006-07 / 2007-08 / 2008-09 / 2010-11. Thus, the notice issued u/s 153"C" for the AY 2004-05 is clearly barred by limitation.

(d) Even otherwise, as there is no incriminating material found during the course of search, the AO should have dropped the proceedings initiated u/s 153"C" of the Act.

(e) As there is no dispute that no assessment or reassessment has abated in this case for the reason, that the date of search, the date of search which in the case on hand would be 25.3.2010, by virtue of First Proviso to section 153"C", i.e., the date of passing an order u/s 127 transferring the cases of the assessee to the present Assessing Officer no assessment or reassessment was pending. When no assessment has abated, the question of making any addition or making disallowance which are not based on only material found during the search is bad in law."

31. In view of above decision and as per letter and spirit of section 153(1) of the Act, we are inclined to hold that since in this case satisfaction was recorded on 5.7.2010 and notice under Section 153C was issued on

6.7.2010, the only conclusion that can be drawn is that the Assessing Officer of such other person other than searched has taken over the possession of the seized document on 5.7.2010. Accordingly, as per section 153A(1) of the Act, the Assessing Officer can issue a notice under Section 153A of the Act for the previous year in which the search is conducted and the purpose of section 153C of the Act on the date on which the document is handed over to the Assessing Officer of the person other than the searched person for six AYs immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition or handing over of document or material is made. In the case in hand, the relevant date of handing over may easily be inferred from satisfaction note i.e. 5.7.2010 and, thus, relevant previous year is 2010-11 and obviously the assessment year would be AY 2011-12. Six preceding previous years and relevant assessment year would be as under:-

"Previous Year	*Assessment Year*
1.4.2009 to 31.3.2010	*2010-11*
1.4.2008 to 31.3.2009	*2009-10*
1.4.2007 to 31.3.2008	*2008-09*
1.4.2006 to 31.3.2007	*2007-08*
1.4.2005 to 31.3.2006	*2006-07*
1.4.2004 to 31.3.2005	*2005-06*

32. In view of above, we are inclined to hold that the Assessing Officer has issued notice under Section 153C of the Act dated 5.7.2010 for AY

2003-04 and 2004-05 on 6.7.2010 which is clearly barred by limitation. Therefore, the issue of notice under Section 153C of the Act by the revenue cannot be sustained because it is legally not valid as the conditions laid down for valid assumption of jurisdiction u/s 153C of the Act have not been fulfilled and the same is barred by limitation for AY 2003-04 and 2004-05. In view of above discussion, we quash the notice issued under Section 153C of the Act and consequently, the assessment completed in pursuance to such notice are also quashed for AY 2003-04 and 2004-05 as the same are barred by limitation and also not initiated properly without having valid assumption of jurisdiction as required u/s 153C of the Act.

33. Ld. Counsel of the assessee has also pointed out that as per revenue, the only document which was found during the search and seizure operation on Shri B.K. Dhingra and others is a cheque book which pertains to AY 2009-10 for which no assessment was made under Section 143(3) of the Act as the transactions reflected from the said cheque book were duly recorded in the books of accounts of the assessee of the relevant financial year/previous year, therefore nothing incriminating was found during the search which could impeach the assessee's book results. Ld. Counsel of the assessee further contended that the revenue has not proved the basis of the findings of the CIT(A) as no material was brought on record by the revenue

to justify their case which was based only on wild allegations leveled on the basis of conjectures, surmises and hearsay without any conclusive and corroborative evidence which cannot take the place of incriminating material against the assessee.

34. Ld. DR replied that cheque book seized during the search and seizure operation conducted on Shri B.K. Dhingra and others on 20.10.2008 is undisputedly and admittedly belongs to the appellant i.e. person other than person searched and it is not obligatory on the part of Assessing Officer of the person searched to verify and to draw a conclusive finding that document which was cheque book in the present case is an incriminating material or not. The DR further contended that this is the business of the Assessing Officer of the person other than the person searched who will have full jurisdiction to appreciate evidentiary value of the books of accounts or material or goods received from the other Assessing Officer and to proceed to make assessment in his own way.

35. On careful consideration of above contentions, we are of the view that although the Assessing Officer of the person searched is not required to go into detail and to adjudicate the issue as to whether the money, bullion, jewellery, document etc. seized during the course of search operation which were found to belong to other person other than the person searched are

incriminating material or not but at the same time, there must be prima facie observation by the AO of the person searched in the form of satisfaction note that on the date when the handing over of such material or evidence to the AO of the person other than the person searched was being conducted the material should be related to the period as per provisions of section 153A(1)(b) of the Act, meaning thereby the material being transferred to the Assessing Officer having jurisdiction under Section 153C of the Act should pertain to the period to the previous year in which the document or material is handed over, six assessment years immediately preceding the assessment year relevant to the previous year in which the document or material is handed over.

36. However, admittedly, the only document which was found related to the present appellant assessee was cheque book related to the assessment year 2009-10 and the ld. DR has not disputed the fact that the same was duly recorded in the books of accounts of the assessee and, therefore, by any stretch of imagination, the said cheque book cannot be said to be an incriminating material. But the Assessing Officer of the present assessee i. e the person other than the person searched has not examined and rather ignored above important fact before issuing notice u/s 153C of the Act.

37. We also find it appropriate to mention that it must not be lost sight of that section 153C of the Act and 158BD of the Act are draconian in nature when accounts of the person or entity other than the person searched are reopened automatically and revenue gets authority to assessee or reassess assessment of six assessment years preceding previous year in which seized material or evidence belonged to the person other than the person searched is handed over to the Assessing Officer of that other person. Therefore, it is always advisable to the revenue authorities that the proceedings under Section 153C of the Act should not be initiated and conducted in a casual manner and the motive of statutory provision clearly stipulates that the Assessing Officer should make himself satisfied prior to initiation of proceedings under Section 153C of the Act.

38. However, the Assessing Officer recorded satisfaction and issued notice under Section 153C of the Act from AY 2003-04 to 2008-09 but on the date of recording of satisfaction i.e. 5.7.2010 the relevant previous year is 2010-11 and the cheque book which belonged to FY 2008-09 was certainly related to AY 2009-10 which cannot be said out of ambit of the block of relevant six assessment years.

39. The ld. DR has also placed reliance on the decision of Hon'ble High Court of Delhi in the case of Filatex India Ltd. Vs CIT 2014-TIOL-1325-

HC-DEL. But on vigilant and careful reading of this decision, we respectfully reach to a conclusion that benefit of the ratio of this case is not available for the Revenue in the extant case as facts are clearly distinguishable to the present case as the case of Filatex (supra) is related to the proceedings u/s 153A of the Act and not to the proceedings u/s 153C of the Act and not to the proceedings u/s 153C of the Act and it is a well accepted proposition that the later provision is narrower in comparison to former provision and furthermore there was sufficient incriminating material found during the course of search in the case of Filatex (supra) whereas in the instant case, there was no incriminating material found or unearthed for any of the assessment year covered u/s 153C of the Act. We may also add that in the present case, only a cheque book, as alleged by the department as incriminating material, was found and the ld. DR has not disputed the factum that the details of said cheque book was duly reflected in the return of income of the relevant assessment year. On this point also and in totality of the factual matrix of the instant case, we reach to a conclusion that the assessment, disallowances and additions made by the AO on regular issues are *ex facie* not sustainable in the absence of incriminating material.

40. The last legal contention raised by the ld. counsel of the assessee is that as per RTI reply dated 10.6.2013 by the Assessing Officer of the

searched person, no satisfaction note in the case or person or entity searched was recorded which is also apparent from the cursory look on the available satisfaction note being recorded by the Assessing Officer of the assessee. Ld. DR replied that as the Assessing Officer of the person searched and Assessing Officer of the person other than searched was the same, then there was no occasion of taking over or handing over of material or evidence and when the satisfaction can be easily inferred from the records and note sheet entries, then there is no need to record satisfaction in the record of person searched. The DR pointed out that it is necessary for the person objecting the validity of the Assessing Officer to demonstrate prejudice suffered by it and merely technicalities and irregularities which do not occasion or cause failure of justice are not allowed to defeat the ends of justice. To support above contention, ld. DR has relied on the decision of Hon'ble Bombay High Court in the case of Shirish Delvi vs ACIT (supra) and decision of Hon'ble Supreme Court in the case of State Bank of Patiala vs S.K. Sharma (supra).

41. We observe that ld. DR has placed paper book on 12.6.2014 wherein we find a letter of ACIT (CC-21) New Delhi addressed to the Principal Officer of the appellant assessee wherein following facts have been mentioned:-

"On the basis of the documents seized from the possession of a person covered u/s 132 of the I.T.Act which clearly belonged to you and after recording satisfaction for the same, notice u/s 153C were issued by your then AO, the ACIT, Central Circle-17, New Delhi. Ass the ACIT Central Circle-17, New Delhi was assessing the persons covered under a warrant u/s 132, there was no need to transfer the books of accounts/documents to any other officer. Thereafter jurisdiction over your case has been vested with the undersigned by virtue of order u/s 127 dated 19.10.2010 passed by the CIT(Central)-II, New Delhi.

2.2 It is informed that you are interpreting the first proviso of section 153C(1) wrongly while claiming that the six previous assessment years are to be calculated w.r.t. the date of making a reference u/s 153C. For your kind information section 153C(1) directs that the proceedings u/s 153C shall take place in accordance with the provisions of section 153A, the first proviso to section 153C(1) relates to determining the number of pending assessments proceedings which shall abate after issuing notice u/s 153C. The number of assessment years covered u/s 153C are the same, as per the provisions of section 153A only.

3. Accordingly, the assessment proceedings have been initiated for AYs 2003-04 to 2008-09 as per provisions of the Act. As regards to your contention that assessment u/s 153C cannot be equated to regular and normal assessments and need to be based on incriminating and seized documents, your attention is invited to the decision of ITAT in the case of Shyam Lata Kaushik vs ACIT (2008) 4 DTR (Del:G) ITAT G Bench & Shivnath Rai Harnarain India (Pvt.) Ltd. vs DCIT (2009) 117 ITD 74 whereas it has been held that there is no requirement for an assessment made u/s 153A to be based on any material seized in the course of search. There is nothing contained in section 153A which depicts that addition u/s 153A can be made only on the basis of documents/material found or

seized during the course of search. As such your objections to the proceedings initiated u/s 153C have been considered and as there are no merits in the same, they are rejected."

42. In this letter, the ACIT has mentioned that as the ACIT, Central Circle 21/17, New Delhi was assessing the person covered u/s 132 of the Act and the notice under Section 153C of the Act was also issued by the same Assessing Officer, then there was no need to transfer the books of accounts/documents to any other officer. In this letter, the ACIT has also mentioned that thereafter jurisdiction over the case of the present appellant assessee has been vested with the ACIT, CC-21 by virtue of order under Section 127 dated 19.10.2010 passed by CIT, Central-II, New Delhi. At the cost of repetition, we find it appropriate to elaborate our findings that as we have already observed that as per recent decisions of Hon'ble Jurisdictional High Court of Delhi in the case of Pepsico Holdings Pvt. Ltd. (supra) and Pepsi Foods (supra) and decision of ITAT Delhi in the case of DSL Properties (supra), we clearly note that recording of satisfaction by the AO of the person searched is *sine qua non*.

43. In the present case, we have already held that the AO of the person searched had not recorded any satisfaction note. The AO of the person other than person searched recorded satisfaction which does not satisfy the

conditions of validly assuming jurisdiction u/s 153C of the Act. Therefore, assumption of jurisdiction was not valid and bad in law. Likewise, AO issued notice u/s 153C of the Act for AY 2003-04 and 2004-05 which is clearly barred by limitation as per date of issuance of notice on 6.7.2010. Accordingly, sole legal cross objection of the assessee is found to be acceptable and the same is hereby allowed. Under these facts, circumstances and in view of above conclusion drawn by us, we quash notice u/s 153C of Act for all six assessment years under consideration in these appeals and consequently the assessment completed in pursuance to such notices is also quashed. Accordingly, cross objection of the assessee in all six cases is allowed.

Appeals of the Revenue

44. From careful perusal of the grounds taken by the revenue in all six appeals, we observe that except quantum of amount, the basis, facts and contentions raised in all six appeals are similar. For the sake of clarity and transparency, the grounds raised by the revenue in these appeals read as under:-

> *"1. That the CIT(A) erred in law and on facts of the case in deleting the addition made by the AO on account of unexplained purchase u/s 69C of the Income Tax Act, 1961.*
>
> *2. That the CIT(A) erred in law and on facts of the case in not confirming the AO's observation that the entire*

sales of the assessee represented its income from undisclosed sources.

3. That the CIT(A) erred in law and on facts of the case in deleting the addition made by the AO by way of disallowance of 100% of expenditure and depreciation claimed by the assessee.

4. That the CIT(A) erred in law and on facts of the case in holding that statements of various persons without having been confronted to the assessee have no evidentiary value."

Ground No.1

45. Apropos ground no.1, we observe that the CIT(A) has granted relief for the assessee with following observations and findings:-

"22. I have considered the assessment order, written submissions, remand report and rejoinder to the remand report filed by the AR as well as the facts of the case and the position of law. In my considered opinion I agree with the appellant that section 69C would apply only when there is some expenditure for which the appellant is not in a position to explain the source of the same and in the present case the fact that the whole of the purchases of various amounts respectively involved in each of the assessment years in question have been duly accounted for by the appellant in its books of accounts has not been challenged or questioned and more particularly when the books of accounts have not been rejected by the f7.0, no question of disallowance of purchases u/s 69C arises. The judgement in the case of CIT Vs M/s Radhika Creation ITA No. 692/2009 by Hon'ble Delhi High Court is applicable to the present facts of the case as all the purchases are accounted in the regular books, the source is obviously explained. The provisions of sec .69C are not applicable as

there was no unaccounted expenditure. It is also an admitted fact that complete books of accounts were also produced before the AO and the same were examined. No defect was pointed out. Thus, the same stood accepted by the AO. It is settled law, that books of account maintained in the normal course of business are evidence under the 'Evidence Act' and Income Tax Act. It is admitted fact that the books of account were produced before the Sales Tax officer ward 101, New Delhi during the assessment proceeding under the Delhi Sales Tax Act. No adverse remark has been made in the Sales Tax Assessment order. When opening stock stood accepted and the sales also stood accepted as income, there is no rationale of not accepting the purchase as expenditure. The same is against the principles of accountancy. In view of the above, the additions made as per details hereunder made by the AO in each of the six assessment years i.e. for the A.Y. 2003-04 to A.Y. 2008-09, involved in this ground on account of purchases u/s 69C are deleted.

S.No.	A.Y	Amount (Rs.)
1.	2003-04	25,95,575/-
2.	2004-05	32,45,450/-
3.	2005-06	36,60,320/-
4.	2006-05	37.15.230/-
5.	2007-08	37,12,568/-
6.	2008-09	1,29,508/-

The grounds, are therefore allowed in favour of the appellant company."

46. Ld. DR submitted that the CIT(A) erred in deleting the additions made by the Assessing Officer on account of unexplained purchases under Section 69C of the Act. Ld. Counsel of the assessee replied that when the books of accounts maintained by the assessee in the normal course of business reflects amount of purchases made by the assessee during the relevant financial year

and during the assessment proceedings, no defect was pointed out by the Assessing Officer, then an inference may be drawn that the same stood accepted by the Assessing Officer. The counsel of the assessee also submitted that when the purchases stood accepted by the Assessing Officer and no adverse remarks has been made in the sales tax assessment order, then additions under Section 69C of the Act are not sustainable.

47. On careful consideration of above rival submissions of both the parties and careful perusal of the observations and findings of the CIT(A), we observe that admittedly the assessee produced complete books of accounts before the Assessing Officer and the same were examined during the course of assessment proceedings and no defect, infirmity or ambiguity was found or pointed out by the Assessing Officer. We also observe that the revenue has not disputed the point that no adverse remark has been made in the sales tax assessment order with regard to the purchases mentioned by the assessee. We further observe that when opening stock of the assessee in the beginning of the year and the sales also stood accepted, then there is no cause for not accepting the amount of purchases. Accordingly, we are inclined to hold that the Assessing Officer made addition on wrong premises which was rightly corrected by the CIT(A) deleting the impugned additions.

We are unable to see any valid reason to interfere with the same, hence, ground no. 1 of the revenue is dismissed.

Ground no. 2

48. Apropos ground no.2 of the revenue, from the impugned order we observe that the CIT(A) deleted the addition made by the Assessing Officer pertaining to the amount of sales with following findings and conclusions:-

> *"26. I have considered the assessment order, written submissions, remand report and rejoinder to the remand report filed by the AR as well as the facts of the case and the position of law. I have observed that as all the sales have been recorded in the books of accounts the same including sales and purchase vouchers and stock registers maintained on day to day basis were produced before the AO which was duly examined by .him. No negative observation was confronted to the appellant. Complete names and addresses of the parties to whom goods were sold were available with the AO. Most of the customers were assessed to income tax. The part of sales were made against the opening stock and the purchases made during the year and the sales are nothing but the conversion of the stock and the profit from the same has already been taxed No evidence has been brought on record by the AO which indicate that the sale proceeds represent income from undisclosed sources on the basis of conjectures & surmises. The appellant is assessed with Sales Tax department under the Delhi Sales Tax Act. Sales and purchases stood accepted by the Sales Tax Department. There is no negative observation in the Sales Tax Assessment order. Moreover, the AO has got confirmed the transaction of sales made to N.K. Textiles by issuing notice u/s 133(6) of the I.T. Act. Onus was on the AD to make enquiries if he was not satisfied. In the connection I have gone through the views of Hon'ble Madras High Court in*

the case of CIT vs Anandha Metal Corpn. (2006) 152 Taxman 300 (MAD).

Held

"If that be so unless and until the competent authority under the sale tax Act differs or varies with the closing stock of the assessee, the return accepted by the commercial Tax department under the TNGST Act, is, in our opinion, binding on the income tax authorities and the Assessing officer, therefore, has no power to scrutinize the return submitted by the respondent/assessee to the commercial Tax Department under the provisions of the TNGST Act and as accepted by the said authorities unless otherwise it is varied or modified by the authorities under the TNGST Act, therefore the Assessing officer does not have any jurisdiction to go beyond tile value of the closing stock declared by the respondent-assessee and accepted by the Commercial Tax Department."

In the above aid case "Apollo Tyres Ltd. Vs CIT (2002) 255 ITR 273 (Supreme Court) is followed. The' above said judgment of Hon'ble Madras High Court has been followed by Hon'ble Delhi High Court, in the case of HARBIR SIGH in appeal no 608/2009 dt 19.01.2011. In view of the facts of the case as summarized above , In my considered opinion and by placing reliance on the judgment of E Land International Pvt. Ltd. Vs. DCIT by the Hon'ble Delhi Tribunal, ITO vs. Surana Traders (2005) 93 TT J Mumbai 875 and CIT vs Anandha Metal Corpn.. (2006) 152 Taxman 300 (MAD) and considering the totality of the facts and circumstances of the case I hold that AD was not justified in making an observation that the sales represent income from undisclosed sources on the basis of conjecture & surmises. In view of this position the ground of appeal no 10 raised by the appellant is allowed."

49. Ld. DR supporting the assessment order submitted that the Assessing Officer made addition by disallowing entire sales which was income of the assessee form undisclosed sources. Ld. DR further contended that the CIT(A) deleted the addition without any basis by taking a hyper technical approach. Ld. DR, therefore, submitted that the impugned order may be set aside by restoring that of the Assessing Officer.

50. Ld. AR contended that when the revenue has accepted the amount of opening stock and the purchases made by the assessee during the year, then the sales cannot be doubted. The AR further contended that the Assessing Officer was not justified in observing that the entire sales of the assessee represented its income from undisclosed sources. The AR supported the impugned order and submitted that the Assessing Officer made addition without any justified and cogent reason which was rightly deleted by the CIT(A).

51. On careful consideration of impugned order in the light of contention and submissions of both the parties, we observe that since from the earlier part of this order, we have upheld the deletion of additions made by the Assessing Officer on account of rejection of purchases made by the assessee during the year, therefore, when a major part of the sales were made against the opening stock and the purchases made during the year, then the sales is

nothing but the conversion of stock into liquidity and that too when the profit earned from this purchase and sales activities has been already offered to tax, then it cannot be inferred that the sale proceeds represent income from undisclosed sales of the assessee. In this situation, we can easily infer that the Assessing Officer made additions on the basis of conjectures and surmises which was rightly deleted by the CIT(A). We have no reason to interfere with the findings of the CIT(A) in the impugned order in this regard. Accordingly, ground no. 2 of the revenue being devoid of merits is dismissed.

Ground no. 3

52. From the impugned order, we observe that the CIT(A) granted relief for the assessee by deleting addition made by the Assessing Officer by way of 100% disallowance of expenditure and depreciation claimed by the assessee with following observations and findings:

> *"31. I have considered the assessment order, written submissions, remand report and rejoinder to the remand report filed by the AR as well as the facts of the case and the position of law. It is observed that during the search proceedings no material has been found which justifies the disallowance of the expenses. Moreover, books of accounts are duly audited under the Companies Act. There is no negative observation in the auditor's report. Books of accounts were produced before the AO and the same were examined by him. No deficiency has been pointed out in the books of accounts. It is further submitted that the assessment of the assessee company for the A.Y. 2002-03*

has already been completed, wherein no disallowance of expenses was made. In view of the above, in my considered opinion there is no substance in lump sum disallowance of the expenses in each of the respective assessment years, details as under :-

S.No.	A.Y.	Amount
1.	2003-04	3,64,548/-
2.	2004-05	4,12,658/-
3.	2005-06	4,56,968/-
4.	2006-07	4,48,230/-
5.	2007-08	4,72,934/-
6.	2008-09	5,05,706/-

Accordingly the AO is directed to delete the addition for the A.Y. 2003-04 to 2008-09, details hereinabove made on this account. Regarding allowance of depreciation the AO is, directed to allow the same as per Income Tax Act /Rules. This ground is therefore allowed in favour of the appellant company."

53. Ld. DR submitted that when the expense claimed by the assessee company in the P&L account were unverifiable from the records and bills and vouchers, then the Assessing Officer had no option but to disallow entire amount of claimed expenses and depreciation.. Ld. DR submitted that the impugned order may be set aside by restoring that of the Assessing Officer.

54. Replying to the above contention of the ld. DR, ld. Counsel of the assessee submitted that when the books of accounts of the assessee company are duly audited under the provisions of the Companies Act and there is no negative observation in the auditor's report, then the claim of expenses and

depreciation cannot be doubted. Ld. Counsel for the assessee also pointed out that the entire books of accounts were produced before the Assessing Officer and the same were examined by him and no deficiency or defect has been pointed out by the Assessing Officer in the audited books of accounts of the assessee, then no disallowance of expenses claimed could be made. Ld. AR supporting the impugned order submitted that the CIT(A) was not justified in granting relief for the assessee.

55. From bare reading of the impugned order, we observe that the CIT(A) has granted relief for the assessee by relying on the books of accounts which were duly audited and there was no negative comment in the audit report. The DR has not disputed the fact that the audited books of accounts were examined by the Assessing Officer and no defect or deficiency was found by the Assessing Officer. In this situation, we are in agreement with the findings of the CIT(A) that lump sum disallowance of expenses is not sustainable and we hold that the CIT(A) rightly deleted the addition and the CIT(A) was also justified in directing the Assessing Officer to allow the depreciation for the assessee as per provisions of the Act and Income Tax Rules 1962. Accordingly, we uphold the conclusion and findings recorded by the CIT(A) and consequently ground no. 3 of the revenue is also dismissed.

Ground No.4

56. Apropos ground no.4 of the revenue, ld. DR submitted that the CIT(A) has erred in law and on facts in holding that the statements of the various persons without having been confronted to the assessee have no evidentiary value. Ld. Counsel for the assessee submitted that if the authorities below are considering and accepting the statements or evidence against the assesse for making any disallowance or addition on the back of the assessee, then the same is not sustainable as same statement or evidence cannot be used against the assessee without having been confronted to the assessee.

57. On consideration of above contentions and submissions and perusal of the impugned order of the CIT(A), we note that the CIT(A) has decided the issue as under:-

> *"It has also been observed that Sh. Darshan Singh and Sh.D. Bhattacharya, whose statement is being relied upon do not appear to have any connection with the appellant co. which has been established by the AO. Keeping in view the facts of the case and keeping in view the rulings of the jurisdictional High court of Delhi in the case of SMC Share Broker Ltd. and Sh. Ashwani Gupta and that of Supreme Court, in case of Kishan Chand Chella Ram 125 ITR 713, I hold that the statements of various persons without being confronted to the appellant co. have no evidenciary value. Further, they don't have any connection with the appellant co. Therefore, the AO is precluded from relying on the same while framing assessment in the case of the appellant co. Thus the appellant company succeeds on these grounds also."*

58. In view of above and under peculiar factum of the instant case, we note that the CIT(A) has rightly held that the statement of various persons recorded on the back of the assessee cannot be used against the assessee without having been confronted to the assessee and the impugned statement recorded on the back of the assessee have no evidenciary value. Hence, ground no. 4 of the Revenue is also dismissed.

59. To sum up, sole legal ground/cross objection of the assessee in all six cross objection cases of the assessee are hereby allowed. Ground no.1 to 4 of the revenue in all above captioned six appeals are dismissed. In the result, cross objection of the assessee in all six cases are allowed and all six appeals of the revenue on all four similar grounds are dismissed.

Order pronounced in the open court on 14.11.2014.

Sd/-	Sd/-
(S.V. MEHROTRA) ACCOUNTANT MEMBER	(CHANDRAMOHAN GARG) JUDICIAL MEMBER

Dt. 14th NOVEMBER, 2014
'GS'

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By Order

Asstt. Registrar