

आयकर अपीलिय अधीकरण, न्यायपीठ – “C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
 (समक्ष) Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T(SS).A. No. 31/Kol/2020

Assessment Year: 2014-15

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I.T(SS).A. No. 33/Kol/2020

Assessment Year: 2016-17

I Q City Foundation (PAN: AAAAI8207J)	Vs.	Assistant Commissioner of Income- tax, Central Circle-3(2), Kolkata
Appellant		Respondent

Date of Hearing (Virtual)	03.09.2020
Date of Pronouncement	16.10.2020
For the Appellant	Shri S. K. Tulsiyan, Advocate
For the Respondent	Shri Vijay Shankar, CIT

ORDER

Per Shri A.T.Varkey, JM

Both these appeals filed by the assessee against the separate orders of Ld. CIT(A)-21, Kolkata dated 15.11.2019 for A Ys. 2014-15 and 2016-17. Both these appeals are time barred by two days and condonation petitions have been filed. After perusing the same, we condone the delay and admit the appeals for hearing.

2. First we take up IT(SS)A No. 31/Kol/2020. At the outset, the Ld. AR of the assessee Shri S. K. Tulsiyan does not press ground no. 9 of the appeal, so it is dismissed. Ground Nos. 10 and 11 are general in nature and do not require any adjudication.

3. Ground Nos. 1 to 8 raised by the assessee are as under:

“1. That the Impugned assessment Order passed by the Ld. A.O. u/s.153 of the Income Tax Act, 1961 for the concerned assessment year is bereft of jurisdiction for not being based on any such incriminating material found during the course of the search conducted at the premises of the "searched person" i.e., Mani Group on 22.06.2016.

2. That the Ld. A.O. has erred in making and the Ld. CIT(A) has erred in upholding the impugned additions when no such incriminating material qua the concerned assessment year has been found during the course of the search conducted at the premises of the "searched person" i.e., Mani Group on 22.06.2016 to warrant any such addition u/s 153C of the Income Tax Act, 1961.

3. *That the Impugned Order passed u/s. 143(3)/153C of the Income Tax Act, 1961 is void ab initio and against the settled law decided by Hon'ble Supreme Court in the case of Sinhgad Technical Education Society(2017) 397 ITR 344 (SC).*

4. *That, without prejudice to the above grounds, the Ld. A.O. and the Ld. C.I.T.(A) have erred in sustaining the impugned addition of Rs.50,00,000/- as a bogus donation incomplete ignorance of the documents evidencing the valid donation of Rs.50,00,000/- received from Parthiba Holding Pvt. Ltd. after observing all legal norms as incriminating in nature when the said donation was duly recorded in the audited books of accounts.*

5. *That, the Ld. A.O. has erred in making and the Ld. C.I.T.(A) have erred in sustaining the impugned addition of Rs.50,00,000/- on the allegation that the same is a bogus donation received from M/s Parthiba Holdings Pvt. Ltd. by placing reliance only on the uncorroborated third party statement of C.K. Ladia u/s 131 dt.23.09.2016 that was recorded behind the back of the appellant during the course of a third party survey conducted at the business premises of M/s Parthiba Holdings on 23.06.2016.*

6. *That, the Ld. A.O. has erred in making and the Ld. C.I.T.(A) has erred in sustaining the impugned addition of Rs.50 lakhs on the allegation that the same is a bogus donation when in fact, the donor has confirmed such donation by account payee cheque, against which appropriate receipts were issued and which have been duly recorded for in the books of the Appellant and where no cogent evidence, except the alleged third party statement of C. K. Ladia U/S 131 dt.23.09.2016 exists to support the allegation that cash was returned back against the donation made.*

8. *That, the Ld. C.I.T.(A) has further erred in having linked the amount disclosed under the Income Disclosure Scheme, 2016 surrendered by M/s Parthiba Holding Pvt. Ltd. with the donation of Rs.50,00,000/- received by the Appellant from M.s Parthiba Holdings Pvt. Ltd. purely on suspicion and surmises, where no such logical linkage can be established to show that Mr. C.K.Ladia has disclosed the alleged sum of Rs.50,00,000/- in his IDS."*

4. From a perusal of the ground nos. 1 to 3 it reveals that the assessee has raised legal issue of jurisdiction of AO to assess the assessee u/s. 153C of the Act. The legal challenge is against the action of the AO inter-alia to validly usurp jurisdiction u/s. 153C of the Income-tax Act, 1961 (hereinafter referred to as the "Act") without satisfying the mandatory condition precedent prescribed by Section 153C of the Act i.e. the AO has not recorded a valid satisfaction note before assumption of jurisdiction u/s 153 C of the Act. In other words, the AO has issued notice u/s. 153C of the Act against the assessee foundation which was not subjected to search u/s. 132 of the Act, by invoking special provision of assessment u/s. 153C of the Act without satisfying the requirement of law as stipulated u/s. 153C of the Act, so according to assessee the action of AO is ab-initio void. Without prejudice to the above legal challenge, the second challenge (ground nos. 4 to 6) are against the action of the AO to have made the addition of Rs.50 lakhs without any incriminating material seized from the third party premises where search was conducted on 22.06.2016 and for having erroneously relied upon the statement of Shri C. K. Ladia recorded u/s. 131 of the Act

which was admittedly recorded behind the back of the assessee during survey dated 23.09.2016 u/s. 133A of the Act and that too without furnishing a copy of the statement to the assessee before framing of reassessment and relying upon the same for making the addition without affording opportunity to the assessee to cross examine Shri Ladia. The third challenge (ground no. 8, there is no ground no 7, wrongly numbered) is against the action of Ld. CIT(A) to have erroneously assumed that M/s. Parthiba Holding Pvt. Ltd. (donor of donation of Rs. 50 lacs) has disclosed the amount donated to assessee (Rs.50 lakhs) under the Income Disclosure Scheme 2016 (IDS Scheme 2016). Thus, from the aforesaid discussion, we note that the assessee foundation by preferring the aforesaid grounds of appeal has challenged the action of addition of Rs.50 lakhs on merit as well as on legal grounds. So, we are inclined to first adjudicate the legal issue because if it is valid then it goes to the root of the appeal [*since it challenges the jurisdiction of Assessing Officer to invoke jurisdiction and issue notice u/s 153C of the Act against the assessee foundation*]. It has to be kept in mind that the special provision for proceedings u/s. 153C of the Act is an off-shoot of section 153A of the Act which gets triggered only when search u/s. 132 of the Act is carried out by the department against an assessee. So, in order to adjudicate the legal issue let us examine both the provisions (Section 153A & 153C), as it stood on the date of search on Mani Group i.e. 22.06.2016. It is to be taken note that even though we are considering the appeal for A.Y. 2014-15, since the search happened at Mani Group premises on 22.06.2016, the amendment made by Parliament as per Finance Act 2015 w.e.f. 01.06.2016 needs to be also considered. The relevant provisions of section 153A and 153C of the Act are reproduced below:

I. Assessment in case of search or requisition.

153A. [(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

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

the assessment year relevant to the previous year in which such search is conducted or requisition is made [and for the relevant assessment year or years] :

Provided that the Assessing Officer shall assess or reassess the total **income** in respect of each assessment year falling within such six assessment years [and for the relevant assessment year or years] :

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years [and for the relevant assessment year or years] referred to in this [sub-section] pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate :

II. Assessment in case of any other persons

153C. (1) Notwithstanding anything contained in [section 139](#), [section 147](#), [section 148](#), [section 149](#), [section 151](#) and [section 153](#), where the Assessing Officer is satisfied that,—

- (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or
- (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in [section 153A](#), then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of [section 153A](#), if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of [section 153A](#):

Provided that in case of such other person, the reference to the date of initiation of the search under [section 132](#) or making of requisition under [section 132A](#) in the second proviso to sub-section (1) of [section 153A](#) shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of [section 153A](#) except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under [section 132](#) or requisition is made under [section 132A](#) and in respect of such assessment year—

- (a) no return of income has been furnished by such other person and no notice under sub-section (1) of [section 142](#) has been issued to him, or

- (b) *a return of income has been furnished by such other person but no notice under sub-section (2) of [section 143](#) has been served and limitation of serving the notice under sub-section (2) of [section 143](#) has expired, or*
- (c) *assessment or reassessment, if any, has been made,*
before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in [section 153A](#).

5. We note that Section 153A/153C of the Act was introduced by Finance Act, 2003 w.e.f. 1.6.2003. It replaced the provisions relating to block assessment contained in Chapter XIVB and introduced the new procedure for making assessment u/s. 153 of the Act, which is now a part of Chapter XIV of the Act, "Procedure for Assessment" and contains provisions from section 139 - 158A of the Act. The sub-heading of Section 153A of the Act is "Assessment in case of Search or requisition" which is a special provision for assessment in case of an assessee against whom search u/s. 132 or requisition under section 132A of the Act is carried out by the department; Section 153B of the Act prescribes the time limit for completion of assessment under section 153A and 153C of the Act; Section 153C of the Act bears the heading "Assessment of income of any other person" is a special provision in respect of assessment of income of "any other person" (third party) against whom no search u/s. 132 or requisition u/s. 132A of the Act was carried out provided certain condition precedents are satisfied as envisaged under section 153C of the Act; and section 153D of the Act is the provision regarding approvals if necessary for assessment in case of search or requisition. As earlier noted, section 153A of the Act is a special provision for assessment of an assessee in case of search or requisition in accordance to section 132 or 132A of the Act after the 31st day of May, 2003; and section 153C of the Act is a special provision for assessment of income of '*any other person*' means a third party who is not searched by the department will be assessed u/s. 153A of the Act, *provided the AO is satisfied that -*

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

6. So, from a reading of section 153A of the Act we note that where a search u/s. 132 of the Act or requisition under section 132A of the Act is made after the 31st day of May, 2003, the jurisdictional AO of the searched person gets power to issue notice to the searched person requiring him to furnish within such period as may be specified in the notice, return of income in respect of each assessment order falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. However, during the search u/s. 132 or requisition under section 132A of the Act *if it is found that any third party's money, bullion, jewellery or other valuable articles or things seized or requisitioned belongs to or any books of account or documents seized or requisitioned pertains to or any information contained therein relates to "other than the person" searched u/s. 153A of the Act, [i.e a third party in this case the 'assessee' foundation]*, then *the AO of the searched person has to record his satisfaction* that the money, bullion, jewellery or other valuable articles or things seized or requisitioned belongs to the other person (third party, the assessee foundation in this case) or any books of account or documents seized or requisitioned pertains to the other persons (third party, the assessee in this case) or any information contained therein relates to the other person (third party, the assessee in this case), then the AO of the searched person has to prepare a satisfaction note that during the search u/s. 132 of the Act of a person (Mani Group in this case), the search team has found/un-earthed money, bullion, jewellery or valuable articles or things, which were seized and the AO has found that among the such seized material, certain specific valuable article or thing belongs to a third party (other person as referred in section 153C of the Act who was not searched and in this case, the assessee) or books of account or documents seized contained information, pertained or relates to that of the other person (third party in this case the assessee), and for recording such a satisfaction note the AO of the searched person has to segregate the seized material of the other person (third party in this case the assessee) from that of the searched person (Mani Group); and then the AO of the searched person should examine the seized material and should be able to satisfy himself that the segregated seized assets belong to the third party (in this case that of the assessee) or books/documents/information, pertains or relates to the third party (in this case the assessee who was not covered by the search u/s. 132 of the Act) and thereafter prepare the "Satisfaction Note" and then he has to hand over the seized materials, which

belongs/pertains/relates to the third party to the AO having jurisdiction over such other person (third party assessee in this case), then only the AO of such other person (third party, the assessee in this case) gets jurisdiction u/s. 153C of the Act to assess the income of other person (third party) as per section 153A of the Act. The rationale behind this exercise discussed (supra) will be explained (infra). And since it is a special provision against an assessee who has not been searched by the department, the safe-guard stipulated by the provisions contained in section 153A & 153C has to be scrupulously followed.

7. According to us, the aforesaid exercise which has been discussed has to be carried out by the AO of the searched person and the condition precedent as discussed are *sine qua non* before the AO of the other person (third party) gets jurisdiction u/s. 153C of the Act to issue notice u/s. 153C of the Act to the third party. However, it has to be taken note that an additional requirement/satisfaction of AO has been brought in Finance Act, 2014 w.e.f. 01.10.2014 which is an additional conditional precedent inserted by the Parliament which also need to be complied before the AO of the other persons (third party, the assessee in this case) before he issues notice to assess or reassess income of such “other persons”. By this amendment in section 153C of the Act, the following part of the earlier provision/section has been substituted (pre-amendment) which reads “*and that Assessing Office shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A*”. And this part of Section 153C was substituted by insertion by the Finance (No.2) Act, 2014 with the following amendment w.e.f 01.10.2014 which reads “and that assessing officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person”. [Emphasis given by us]

8. Thus, we note that by the aforesaid amendment brought in section 153C of the Act, the Parliament has stipulated another condition-precedent before the Assessing Officer of the third party, (i.e, the assessee in this case) can resort to issue notice u/s 153C read with

153A of the Act only when he (AO) is satisfied from a perusal of the books of account or documents or assets seized or requisitioned *have a bearing in the determination of the total income of the such other person (third party, the assessee in this case) then he should proceed as per sec. 153C(2) of the Act* and assess or reassess the total income of such other person, (the assessee in this case) in the manner provided in section 153A of the Act. So in this case before us, since the AO of the searched person as well as that of the other/third party/assessee foundation are the same, he/AO of assessee can issue notice u/s 153C of the Act only after satisfaction of this condition precedent also in addition to the requirement of Satisfaction of searched person of AO as discussed supra. [Emphasis given by us]

9. The rationale behind the exercise to be carried out by the AO as discussed in Para 6 (supra) is because, the special provision for persons who are subjected to search u/s. 132 of the Act, would be triggered only against the searched party u/s. 153A of the Act and if any valuables of a third party is found in the searched premises which belongs or books/documents pertain/relate to a third party is found, then third party's assessment for six years would be subject to assessment/re-assessment as per section 153C of the Act, so the safeguards prescribed by the statute has to be scrupulously followed. Therefore, it has to be kept in mind that satisfaction of AO before proceeding against a person like assessee foundation which has not been searched cannot be done in a casual manner. The satisfaction of Assessing Officer should be based upon cogent material. The reason for it is that section 132(4A)(i) of the Act clearly stipulates that when inter alia any 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 (the searched person). The presumption as to asset, books of accounts, etc. is governed by section 292C(1)(i) of the Act belong or belongs to the person from whom said assets/documents were found during the course of search u/s. 132 or survey u/s. 133A of the Act. In other words, whenever an asset/ document is found from a person who is being searched, the normal presumption is that the said asset/document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or 'satisfaction' that the asset/document in fact belongs/pertains/relates to somebody else (third party like assessee in this case). There must be some cogent material available which was unearthed during search with the Assessing

Officer before he/she arrives at the satisfaction that the seized asset/document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of 'satisfaction' and the same interpretation has been given by various courts. [refer 55 [2019] taxmann.com 202 (Gujarat) PCIT v. Himanshu Chandulal Patel (Para 20, 21)].

10. It is noted from the scheme of the Act u/s. 153A of the Act, the Assessing Officer gets jurisdiction to assess six assessment years prior to the previous year on which search is conducted. The assessment under section 153A of the Act can be broadly divided in two categories, one is in respect of "completed assessment" *on the date of search* by the AO already made under section 143(3)/147/153A/153C and will also cover those years which period of notice u/s. 143(2) of the Act has expired and only processing of return u/s. 143(1) of the Act has been made. The second category "Pending Assessment" is related to the years for which the assessments *are pending before the AO on the date of search* meaning notices have been issued by the AO u/s. 143(2)/ 148 have been issued. *For determining the abated/unabated assessment the date of search is significant* since as per second proviso to Section 153A of the Act, if any, assessment year falling within the period of six assessment years of an assessee who has been subjected to search are pending before the AO on the date of search, then the assessment for those years need to be treated as **abated** and the AO is at liberty to frame assessment or reassessment. In other words, it is open to the AO to complete the assessment by verifying the contents of the original return as well as the income unearthed out of the incriminating material/documents seized from search conducted on the assessee. However, on the date of search, assessment years are not pending before the AO [i.e. in case where the searched assessee's assessments are completed u/s. 143(3) or 148 or 153A/153C of the Act or if the mandatory scrutiny assessment notices u/s. 143(2) of the Act has become time barred], then those assessment years to be treated as **un-abated assessment** and by virtue of second proviso to section 153A(1) of the Act, assessment u/s. 153A or 153C has to be *essentially based on the documents unearthed during the course of search and seizure operations*. Then, the assessment under section 153A and under section 153C of the Act can be made only by considering the incriminating material found/unearthed during search. For this proposition we rely on the judgment of

Hon'ble Delhi High Court in the case of *CIT vs. Kabul Chawla in ITA 707/2014 dated 28.08.2015* wherein it has held as under:

“Summary of the legal position

37. On a conspectus of [Section 153A\(1\)](#) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

- i. Once a search takes place under [Section 132](#) of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*
- ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*
- iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".*
- iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."*
- v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*
- vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under [Section 153A](#) merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*
- vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."*

11. And it is noted that the department preferred an S.L.P against the aforesaid order, which has been dismissed by the Hon'ble Supreme Court. However, when it comes to assessment of third party u/s. 153C of the Act [like assessee in this case], the concept of unabated /abated assessment are mutatis mutandis. However, only difference is when the assessment/reassessment has to be made invoking section 153C of the Act, then even

though assessment /reassessment has to be carried out u/s. 153A of the Act, however, by virtue of the first proviso to section 153C by operation of law reference *to the date of initiation of the search u/s. 132 of the Act* or making of requisition u/s. 132A of the Act in the second proviso to sub-section (1) of section 153A shall be considered as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the AO having jurisdiction over such other person. For this, we rely on the decision of the Hon'ble Delhi High Court in the case of CIT Vs. RRJ Securities Ltd. (2015) 62 taxmann. Com 391 (Delhi), wherein the Hon'ble Delhi High Court held as under:

"1. As discussed hereinbefore, once the AO of the searched person is satisfied that the seized assets/documents belong to another person and the said assets/documents have been transferred to the AO of such other person, the proceedings for assessment/reassessment of income of the other person has to proceed in accordance with provisions of Section 153A of the Act. Section 153A requires that where a search has been initiated under Section 132 of the Act, the AO is required to issue notice requiring the noticee to furnish returns of income in respect of six assessment years relevant to the six previous years preceding the previous year in which the search is conducted. As discussed hereinbefore, by virtue of second proviso to Section 153A, the assessment/reassessment pending on the date of initiation of search abate. In the context of proceedings under Section 153C of the Act, the reference to the date of initiation of the search in the second proviso to Section 153A has to be construed as the date on which the AO receives the documents or assets from the AO of the searched person. Thus, by virtue of second proviso to Section 153A of the Act as it applies to proceedings under Section 153C of the Act, the assessment/reassessment pending on the date on which the assets/documents are received by the AO would abate. In respect of such assessments which have abated, the AO would have the jurisdiction to proceed and make an assessment. However, in respect of concluded assessments, the AO would assume jurisdiction to reassess provided that the assets/documents received by the AO represent or indicate any undisclosed income or possibility of any income that may have remained undisclosed in the relevant assessment years. This Court in CIT v. Kabul Chawla [2015] 61 taxmann.com 412 (Delhi) has held that completed assessments could only be interfered with by the AO on the basis of any incriminating material unearthed during the course of the search or requisition of the documents. In absence of any incriminating material, the AO does not have any jurisdiction to interfere in concluded assessments. This Court had summarized the legal position in respect of Section 153A of the Act as under:—

'37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

- i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*
- ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*
- iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each*

of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

- iv Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."*
- v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*
- vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*
- vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.'*

22. The aforesaid principles would be equally applicable to proceedings initiated under Section 153C of the Act as Section 153C(1) of the Act expressly provides that once the AO has received "money, bullion, jewellery or other valuable articles or thing or books of account or documents seized" from the AO of the searched person, he would proceed to assess or reassess the income of the person to whom such assets/books belong in accordance with Section 153A of the Act.

23. In the present case, the Assessee had claimed that the assessments for the concerned assessment years were not pending on the date of recording of satisfaction by the AO and, therefore, would not abate by virtue of the second proviso to Section 153A of the Act. Further, the period of six years would also have to be reckoned with respect to the date of recording of satisfaction note – that is, 8th September, 2010 – and not the date of search. (Emphasis supplied)."

12. So as noted in this case before us, the date of 'satisfaction note' prepared by the AO u/s 153C of the Act is 03.09.2018, and even though the search has been conducted in respect of Mani Group (searched person) on 22.06.2016 (AY 2017-18) by virtue of first proviso to section 153C of the Act, the satisfaction note the AO has recorded for satisfying himself that "the other persons" (third party i.e. the assessee in this case) assets/documents belongs/pertains to the other persons (third party) was made on 03.09.2018 (AY 2019-20) and this date has to be reckoned for the purpose of assessment u/s. 153A for determining the total income for six assessment years preceding the AY 2019-20. In this assessment year i.e.

AY 2014-15, we note that scrutiny assessment of this assessee was completed for AY 2014-15 on 31.12.2016 under section 143(3) of the Act and so the assessment for AY 2014-15 is a completed assessment and not pending before the AO on the date when the satisfaction note was prepared by the Assessing Officer i.e. 03.09.2018 as per the first proviso of section 153C of the Act. In this factual background, as per the settled principle of law when the assessment for the assessment year is not pending before the AO on the date of Satisfaction Note i.e. 03.09.2018, then the assessment year i.e. AY 2014-15 needs to be treated as non-abated / non-pending assessment and then any addition/disallowance u/s. 153C read with sec. 153A/143(3) of the Act can be made only on the basis of incriminating material unearthed during search qua the assessee (third party) qua the assessment year as held by the Hon'ble Jurisdictional High Court in the case of CIT Vs. Veeraprabhu Marketing Ltd. (2016) 73 taxman.com (Cal) as under:

"1. The subject matter of challenge is a judgment and order dated December 28, 2007 by which the learned Income Tax Appellate Tribunal, "E" Bench, Kolkata, in CIT v. Veerprabhu Marketing Ltd. ITA Nos.2172 and 2174/Kol/2006, pertaining to the assessment years 1998-99 and 1999-2000, and I.T.(SS) A. Nos.61-63/Kol/2007, pertaining to the assessment years 2001-02, 2002-03 and 2003-04, allowed the appeals preferred by the assessee.

The aggrieved revenue has come up in appeal.

.....

2. Mr. Jain, learned Advocate appearing for the assessee, submitted as follows:

(a) The assessment under section 153C read with section 153A read with section 144 of the Income Tax Act was altogether without jurisdiction because such assessment was made for all the five years on the basis of survey conducted under section 133A of the Income Tax Act. He submitted that the power under section 153C read with section 153A cannot be exercised on the basis of any discovery made during survey under section 133A.

(b) His next submission was that in any event, during the survey, no incriminating material was found which may have led the revenue to exercise power under section 153C read with section 153A.

4. He contended that even when assessment is made on the basis of a search under section 132 or a requisition made under section 132A, the power can only be resorted to provided any incriminating material is found. Existence of incriminating material is necessary before exercising power under the aforesaid sections. He, in support of his submission, relied upon the words "have a bearing on the determination of the total income of such other person". If the search or requisition did not unearth any incriminating material, the search or requisition was futile and can have no bearing on the determination of the total income of such other person. There shall thus be no occasion for exercise of power under section 153C. He, however, added that the portion which he relied upon from section 153C is of a recent origin which was not there in the statute at the relevant point of time and has been introduced with effect from 1st June, 2015. He however contended that Karnataka High Court is of the opinion that even without these expressions 'incriminating material' was the sine qua non for exercise of power under section 153C read with section 153A.

5. He relied upon the following views expressed in paragraph 50 of the judgment in the case of CIT v. IBC Knowledge Park (P.) Ltd. [\[2016\] 69 taxmann.com 108 \(Kar.\)](#):-

"Materials such as books of account, documents or valuable assets found during a search should belong to a third party which would lead to an inference of undisclosed income of such third party. Such an inference should be recorded by the Assessing Officer having jurisdiction over the searched persons and communicated to the Assessing Officer having jurisdiction over such third party along with the seized documents and other incriminating materials on the basis of which the Assessing Officer having jurisdiction over such third party would issue notice under Section 153C. On receipt of the aforesaid material, the Assessing Officer having jurisdiction over such third party would proceed against the said third party. Thus, where no material belonging to a third party is found during a search, but only an inference of an undisclosed income is drawn during the course of enquiry, during search or during post-search enquiry, Section 153C would have no application. Thus, the detection of incriminating material leading to an inference of undisclosed income is a sine qua non for invocation of Section 153C of the Act."

.....

7. With respect to the second submission advanced by Mr. Jain, we called upon Mr. Nizamuddin in vain to show us the incriminating material, if any, found either during the search or during the requisition or even during the survey which is or may be relatable to the assessee. Mr. Nizamuddin as unable to show that any such incriminating material was unearthed at any of the three stages pertaining to the assessee.

8. We are in agreement with the views expressed by the Karnataka High Court that incriminating material is a pre-requisite before power could have been exercised under section 153C read with section 153A.

9. In the case before us, the assessing officer has made disallowances of the expenditure, which were already disclosed, for one reason or the other. But such disallowances were not contemplated by the provisions contained under section 153C read with section 153A. The disallowances made by the assessing officer were upheld by the CIT(A) but the learned Tribunal deleted those disallowances.

10. We find no infirmity in the aforesaid act of the learned Tribunal. The appeal is, therefore, dismissed."(emphasis supplied)

13. In the light of the aforesaid discussion and case laws let us examine the legal issue raised before us. In order to test the validity of the jurisdiction of AO to legally usurp the jurisdiction u/s. 153C against a third party who has not been searched as well as to test whether Assessing Officer satisfied the condition-precedent before issue of notice u/s. 153A read with Section 153C of the Act, we need to examine the 'satisfaction note'. We have to examine the 'Satisfaction Note' recorded by the AO dated 03.09.2018 which is reproduced as under:

*"A search and seizure operation was conducted at the business premises of "Mani Group" of assessee as well as residence of director's at Kolkata on 22.06.2016 and subsequent date. During search and seizure operation, **incriminating documents in pg. No. 1 to 50 of a bunch of loose sheets with ID Mark MSL/3. Page No. 51 to 56 & 62 to 63 of a bunch of loose sheets***

with ID Mark MSL/4 Page No. 01,04,17 to 36 of a bunch of loose sheets with ID Mark MSL/5 were found and seized from office premises of Mani Square, 9th Floor, IT Chamber, EM Bye Pass, 164/1, Maniktala Main Road, Kolkata-700 054 as on 22.06.2016 and subsequent dates. The abovementioned pages of seized documents are pertaining to M/s. IQ City Foundation.

I am satisfied that this a fit case for initiating proceedings u/s. 153C/153A of the IT Act, 1961. Accordingly, proceedings u/s. 153C/153A of the IT Act, 1961 is hereby initiated by issuance of notice u/s. 153C/153A of the IT Act, 1961,[Emphasis given by us]

14. It has to be kept in mind that when the challenge is to the validity of the satisfaction note which the AO has recorded to assume jurisdiction, we have to examine the satisfaction recorded as it is. There are case laws which throws light in the context of examining the legal validity of Satisfaction recorded by the AO while re-opening the assessment u/s. 147 of the Act. It is settled law that *reasons as recorded for reopening the reassessment are to be examined on a 'stand-alone' basis*. Neither any thing can be added to the reasons so recorded nor any thing can be deleted from the reasons so recorded. The Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. (2004) 268 ITR 332 wherein their Lordships have, inter alia, held “*it is needless to mention that the reasons are required to be read as they were recorded by the AO. No substitution or deletion is permissible. No addition can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded by him. He has to speak through the reasons.*” Their Lordships added that “*the reason recorded should be self explanatory and should not keep the assessee guessing for reasons. Reasons provided the link between the conclusion and the evidence.....*”. Therefore, reasons are to be examined only on the basis of reasons as recorded by the AO. This analogy/ratio decidendi of the Hon'ble High court is applicable to the ‘Satisfaction-Note’ prepared by the AO when he recorded his satisfaction note in respect of a third person (assessee in this case) against whom he/AO proposed to invoke the special provision and issue notice under section 153C of the Act. For that the AO of the searched person (Mani Group in this case) is duty bound to record his satisfaction that during search conducted on those persons, the third party (assessee's) assets which belongs to it (assessee) or documents pertained/relates to the third party/ other person/assessee as envisaged in section 153C of the Act was seized and therefore need to be proceeded against the said

party(assessee in this case). The Satisfaction Note spelling out these facts are *sine qua non* for usurping the jurisdiction u/s. 153C of the Act and an additional condition precedent is required to be satisfied by the AO of the assessee w.e.f. 01.10.2014 which has been discussed (supra) by virtue of Finance Act, 2014, (refer para 8 supra) which is required to be satisfied before the AO of the assessee issue notice u/s. 153C of the Act i.e. these assets/documents seized from the searched person have a bearing on the determination of the total income of the assessee (third party, the assessee in this case) . [Emphasis given by us] To sum up the facts as we noted in this case, even though the search was carried out on the Mani Group on 22.06.2016, the AO has recorded his satisfaction note to proceed against the other person (third party) i.e. the assessee on 03.09.2018 when he prepared the satisfaction note and concluded that it is a fit case to proceed against the assessee by issuing notice u/s. 153C of the Act. As discussed (supra) by virtue of the first proviso to section 153C of the Act AY 2014-15 which is under consideration of ours, we have already noted that on 30.12.2016 the assessment in respect of AY 2014-15 should be treated as completed and so is not pending before the AO and, *therefore, it is non-abated assessment and therefore without the aid of incriminating material qua the assessee qua the AY 2014-15, no addition/disallowance can be made by the AO.* So we have to examine the materials pointed out by the AO in his satisfaction note dated 03.09.2018 (supra) which are discussed below with the help of chart, which will give clarity as to whether there was any incriminating material seized during search in Mani Group against the assessee foundation qua the AY 2014-15. We will discuss each document seized during search which according to AO is incriminating against the Assessee qua AY 2014-15 and qua AY 2016-17. And against each such document, we will give our finding of fact whether these documents can be termed as incriminating material against the Assessee qua AY 2014-15 and qua AY 2016-17.

Sr. No.	Document Seized	Our finding of fact on the assessee's explanation in respect of the document seized.
1	ID Marked MSL/3 (a copy of which are attached herewith at Annexure I of the P.B	We note that these materials are described in the Panchnama dt. 23.06.2016 (a copy of which are found placed at Annexure L of the Paper Book at Pgs. 105-109(U) which is seen as 'A contribution /

	at Pgs 109A(V)45)	donation receipt book of M/s SPS Synergy Foundation (now the assessee) with pre-printed serial no. 01 to 50'. The Appellant's explanation in this regard, is that the said seized material is in fact nothing but counter foils of the money receipts issued to the donors for the FY 2013-2014 (A Y 2014-2015) - all of which form part of the books of accounts of the Appellant for the said FY. In order to substantiate/corroborate this fact, the Ld. AR drew our attention to the documents below: 1. The ledger copies of the Appellant Society for the period between 19.12.2013 to 28.03.2014 (copies of which are found placed at Annexure W of the Paper Book at Pgs.117- 119). 2. Bank statements of the Appellant evidencing the receipt of the said donations from the various parties during the said period (copies of which are attached herewith at Annexure 0 of the Paper Book at Pgs. 120-137). 3. We have carefully examined the ID-MSL/3, and we find that this is the contribution/donation receipt book of assessee for the AY 2014-15 and this material is counterfoils of the money receipts issued to the donors and the all of which form part of the books of account of the assessee for AY 2014-15 and cannot be called as a new discovery of material during search and so cannot be termed as incriminating material.
2	ID Marked MSL/4 (copy of which are	We note that these materials are described in the Panchnama dt. 23.06.2016 as 'A

	attached herewith at Annexure L of the P.B at Pgs 109A(46)-109A(78)	contribution / donation receipt book of M/s SPS Synergy Foundation with pre pre-printed serial no. 51 to 100'. The Appellant's explanation in this regard, is that the said seized material is in fact nothing but a) counter foils receipts issued to the donors against the donation money received, and b) unused money receipts along with counter foil - for the FY 2013-2014 (AY 2014-2015) - all of which form part of the books of accounts of the Assessee for the said FY. In order to substantiate/corroborate this fact, the Ld. AR drew our attention to the documents below: 1. Ledger Copies for the period between 29.03.2014 to 31.03.2014 (copies of which are attached herewith at Annexure P of the P.B. 2. Bank statement of the appellant evidencing the receipt of the said donations from the various parties during the said period (copies of which are attached herewith at Annexure Q of the P.B at Pgs 139-140. 3. We have carefully examined the ID-MSL/A, and we find that this is the contribution/donation receipt book of assessee foundation for the AY 2014-15 and this material is counterfoils of the money receipts issued to the donors and the all of which form part of the books of account of the assessee for AY 2014-15 and cannot be called as a new discovery during search and so cannot be termed as incriminating material.
3.	ID Marked MSL/5	We note that these materials are described in the

	(copies of which are attached herewith at Annexure L of the P.B at pgs 109A(79)-109A(111))	Panchnama dt. 23.06.2016 as 'A contribution donation receipt book of assessee with pre pre-printed serial no. 01 to 50'. The Appellant's explanation in this regard, is that the said seized material is in fact nothing but a) counter foils receipts issued to the donors against the donation money received, and b) unused money receipts along with counter foil - for the FY 2014-2015 (AY 2015- 2016) - all of which form part of the books of accounts of the Assessee for the said FY. In order to substantiate/corroborate this fact, the Ld. AR drew our attention to the documents below: 1. Ledger Copies for the period between 28.07.2014 to 31.03.2015 (copies of which are attached herewith at Annexure R of the Paper Book at Pgs.141-144). 2. Bank statements of the Appellant evidencing the receipt of the said donations from the various parties during the said period. (copies of which are attached herewith at Annexure S of the Paper Book at Pgs.145-169). 3. We have carefully examined the ID-MSL/5, and we find that this is the contribution/donation receipt book of assessee foundation for the AY 2014-15 and this material is counterfoils of the money receipts issued to the donors and the all of which form part of the books of account of the assessee for AY 2014-15 and cannot be called as a new discovery of material during search and so cannot be termed as incriminating material.
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15. From a perusal of the aforesaid finding of fact it can be seen that these documents are in no way related to AY 2016-17 and so it cannot be termed as incriminating material for AY 2016-17[we will discuss in detail (infra) about AY 2016-17]. Further from the perusal of the aforesaid chart, wherein we have discussed about each seized material (ID MSL-3/4/5) which according to AO was of incriminating nature qua the assessee qua AY 2014-15 and we have given our finding of fact based on corroborative material/evidence mentioned therein; and so from the aforesaid finding, it is clear that the assessee has received donation from several entities, which fact has been duly recorded in its books of account and, these are counterfoils of receipts issued to the donors. Therefore, these seized materials marked ID MSL 3/4/5 cannot be termed as incriminating materials and therefore the assertion of AO in the 'Satisfaction Note' that these are incriminating material qua the assessee foundation qua AY 2014-15, does not have any legal basis/evidence/material, so the finding of fact by AO in this respect in the satisfaction note is perverse and so erroneous. Since there was no incriminating material against the assessee which has been unearthed/seized during the search conducted on 22.06.2016 from the premises of Mani Group, the satisfaction note prepared by the AO does not satisfy the requirement of law as stipulated u/s. 153C of the Act and since the legal requirement has not been met in the "satisfaction note" recorded by the AO, the very assumption of the jurisdiction for AY 2014-15 is bad in the eyes of law as held by the Hon'ble Supreme Court in the case of CIT Vs. Singhad Technical Education Society 397 ITR 344 (SC) and, therefore, it is to be quashed. We note that the Hon'ble Apex Court in the case of Singhad Technical Education Society has passed the judgment with specific reference to the invocation of jurisdiction u/s. 153C, and while doing so their Lordship has upheld the decision of the Hon'ble Bombay High Court in CIT Vs. Singhad Technical Education Society (2015) 63 taxmann. Com 14/235 Taxman 163 (Bom) wherein the Hon'ble Supreme Court has held that unless and until the AO can establish document-wise (or asset wise) correlation between what has been seized from the 'Searched person' – and - how the same is incriminating in nature qua each of the assessment years in question for which jurisdiction u/s. 153C is sought to be invoked for the 'other Person' – then the notice issued under section 153C to the assessee qua the said assessment year would be without the satisfying the jurisdictional fact required to invoke section 153C of the Act.

We draw the attention in this regard to the following excerpts of the decision of the Hon'ble Supreme court in Singhad Technical Education (supra), wherein their Lordship took note of the Hon'ble High Court's findings while confirming Tribunals view which is as under:-

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

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

And the aforesaid finding of Hon'ble High Court has been affirmed by the Hon'ble Supreme Court by observing as under:

18. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid,

having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.

19. We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy.” (Emphasis supplied)

16. Thus we find that there was no incriminating material against the assessee which has been unearthed/seized during the search conducted on 22.06.2016 from the premises of Mani Group, therefore the satisfaction note prepared by the AO does not satisfy the requirement of law as stipulated u/s. 153C of the Act. And since the AO failed to record the requisite satisfaction in terms of section 153C of the Act as discussed in para 14 & 15 and issued notice under section 153C of the Act without satisfying the condition precedent as discussed in para 8 (supra), the very assumption of the jurisdiction for AY 2014-15 is bad in the eyes of law as held by the Hon'ble Supreme Court in the case of CIT Vs. Singhad Technical Education Society 397 ITR 344 (SC) and, therefore, it needs to be quashed.

17. Before we part, we would like to deal with the arguments raised by the Ld. CIT, DR Shri Vijay Shankar mainly on the merits of the addition and also touching upon the 'Satisfaction Note' by mainly stressing on the statement of Shri Ladia. According to Ld. CIT, DR, the AO has made the addition of Rs. 50 lakhs in this AY 2014-15, which need to be appreciated in the back ground of seizure of Rs. 40 lacs from the premises which was searched of Mani Group on 22.06.2016 wherein Shri Sanjay Jhunjhunwala has made a statement on 23.06.2016, which was recorded u/s. 132(4) of the Act wherein he admitted that the said cash (Rs. 40 lakhs) belongs to M/s. I Q City Foundation (the assessee in this case). It was submitted by the Ld. DR that the seizure of cash belonging to the assessee was the reason for AO to ask for the list of the donors who gave donation to the assessee foundation. According to the Ld. DR, after receiving the list of donors, the AO conducted survey on one of the Donor's premise i.e M/s. Pratibha Holding Pvt. Ltd. (M/s. PHPL)

which entity had donated the so called donation of Rs.50 lacs to the assessee for the AY 2014-15. According to Ld. CIT DR, in the survey u/s. 133A of the Act, the statement of Shri Chandra Kant Ladia, Director of M/s. PHPL was recorded on oath u/s. 131 of the Act wherein he admitted that M/s. PHPL had donated Rs. 50 lakhs to M/s. SPS Synergy Foundation (now assessee foundation) and in lieu of the donation given, cash was received back from them. It was pointed out by the Ld. D.R that the donor (M/s. PHPL) had admitted of doing this in order to reduce its tax liability. According to Ld. D.R, based on this discovery of relevant fact, and the material seized during the search ID- MSL 3/4/5, the AO had prepared the 'satisfaction note' and then issued notice dated 03.09.2019 to assessee u/s. 153C of the Act and pursuant to the same the assessee filed return of total income at Nil (ROI dated 01.10.2018). Thus, according to Ld. CIT DR, the Assessing Officer after due process of law framed the assessment in which he reproduced the statement of Shri Ladia of M/s. PHPL which was recorded during survey u/s. 131 of the Act, then the AO concluded that the donation of Rs. 50 lacs received by the assessee is bogus donation. According to Ld. CIT, DR even though the assessee has shown in its books of account the amount of Rs. 50 lacs from M/s. PHPL through banking channel, this admission made by Shri Ladia of M/s PHPL during survey which was recorded u/s. 131 of the Act belies the claim of assessee. According to Ld. CIT, DR even though the seizure of cash (Rs. 40 lakhs) was on 22.06.2016 which is pertinent to AY 2017-18 still it can be inferred in the light of survey statement of the donor recorded u/s 131 of the Act of Shri Ladia of M/s PHPL that assessee is indulging in taking accommodation entry and the seizure of cash should be appreciated in this context and, therefore, the AO had rightly made the addition and, therefore, the AO's action is justified. And the Ld. CITDR also contended that M/s PHPL has declared their unaccounted money for the assessment year under consideration to the tune of Rs. 25 lacs in income disclosure scheme (IDS-2016) and remitted Rs. 12 lacs which fact has been taken note by the Ld. CIT(A) while confirming the order of the AO, so he does not want us to interfere with the order of Ld CIT(A).

18. Per contra, the Ld. AR of the assessee Shri S. K. Tulsiyan vehemently opposing the submission of the Ld. CIT DR contended that there is no merit in the contention of Ld. CIT DR and it was pointed out by the Ld. AR that Rs. 40 lacs seized on 22.06.2016 pertained to

the AY 2017-18 and the assessee during the scrutiny proceedings for A.Y. 2017-18 has been able to prove to the satisfaction of the AO the source of the amount seized and thereafter no addition on account of seizure of Rs. 40 lakhs was made against the assessee for A.Y. 2017-18. Moreover, according to the Ld. AR, the assessee runs a prestigious educational institution and needs to apply the fund/donation for development & construction and for purchase of several materials which at times requires cash to be withdrawn from the bank for payment; and even though the donations were received by assessee through bank account/RTGS, still the assessee at times have to withdraw the money for application of the fund. And it was also brought to our knowledge that the assessee also collects fees in cash as well as on line for services rendered by it as well as the assessee receives remittance of tuition fees from students either in cash or online. So, according to Ld.AR, since the cash seized on 22.06.2016 is not incriminating against the assessee for AY 2017-18, so he wondered as to how it (Rs. 40 lakhs cash) can be termed as incriminating in nature for AY 2014-15. And since Rs. 40 lakhs seized does not pertain to AY 2014-15 which is under consideration before us, this seizure of Rs. 40 lakhs found during search on 22.06.2016 cannot by any stretch of imagination be linked to this A.Y. (AY 2014-15) and be termed as incriminating material qua against the assessee for AY 2014-15.

19. The Ld. AR also contended that in any case, the statement of Shri Ladia of M/s. PHPL cannot be relied upon by the AO since the same was recorded behind the back of assessee; And a copy of which was not furnished to the assessee despite asking for it till the reassessment order u/s. 153A/153C/143(3) was framed on 31.12.2018; And the assessee was not provided an opportunity to cross-examine Shri Ladia, so the statement of Shri Ladia cannot be relied upon by the AO to draw adverse inference against the assessee and relied on the Hon'ble Supreme Court's decision in Andaman Timber Industries vs.CCE Vs. Andaman Timber Industries 127 DTR 241 (SC)./(Civil Appeal No. 4228 of 2006, order dated Sept., 02, 2015). And according to Ld. AR, the statement of Shri Ladia recorded during survey u/s. 133A of the Act does not have any evidentiary value as held by the Hon'ble Supreme Court in Khader khan & Sons (352 ITR 480 (SC)) and therefore, according to Ld. AR, the statement of Shri Ladia of M/s. PHPL cannot be the basis to draw

any adverse view against the assessee; and the Ld AR also pointed out that survey team could not have recorded the statement of Shri Ladia u/s 131 of the Act, without satisfying the requirement of law as stipulated in sub section (6) of section 133A of the Act, so the statement of Shri Ladia is null and void and therefore the Ld. AR contended that based on the so-called statement of Shri Ladia which is bad in the eyes of law and fragile for violation of Natural Justice cannot be the basis to conclude that the donation received from M/s.PHPL in AY 2014-15 as bogus. And it was also pointed out by the Ld. AR that it can be taken note from a perusal of the 'Satisfaction Note' prepared by the Assessing Officer u/s 153C against the assessee that there is no whisper of Assessing Officer about any survey of M/s PHPL and about the statement of Shri Ladia against the assessee. So according to Ld. A.R , the ld. CIT D.R is making out a new case, which according to him, he cannot do so in the second appellate stage. However, the ld. A.R. submitted that for argument sake, even if it is taken as that the Assessing Officer had in his mind about the statement of Shri Ladia of M/s PHPL, then also it cannot be relied upon by the Assessing Officer to draw adverse inference against the assessee for all the legal infirmities pointed out above. Therefore, according to Ld. AR, the Ld. CIT DR's contentions are devoid of merits and are based on surmises and conjectures and therefore, since the AO erroneously made the addition on illegal presumptions and since there was no incriminating material found against the assessee qua this AY 2014-15 in the unabated assessment for AY 2014-15, no additions could have been made and so the actions of AO to issue notice u/s 153C of the Act was wholly without jurisdiction and, therefore, the contention of Ld. CIT DR needs to be rejected.

20. The ld. A.R countering the arguments of the ld. CITDR that ld. CIT(A) has taken note of the fact that the donor M/s PHPL has remitted Rs. 12 lacs as tax for undisclosed income of Rs. 25 lacs for the AY 2014-15, and this fact was also a factor in confirming the order of the AO, according to Ld AR was devoid of any merit. According to ld. A.R., this fact of M/s PHPL offering the undisclosed income by utilizing the Income Declaration Scheme, 2016 (in short IDS, 2016) was not taken note by the AO while preparing satisfaction note on 03.09.2018 and has not made a whisper about the same while framing the assessment order u/s 153A / 153C / 143(3) dated 31.01.2018. According to Ld. A.R.,

this fact of the donor M/s PHPL disclosing their undisclosed income through IDS Scheme, 2016 came to light during the remand proceedings when the Ld CIT(A) called for the remand report from the AO. It was pointed out by the ld. A.R. that perusal of page 8 and 9 of the ld. CIT(A)'s impugned order will reveal that M/s PHPL has declared Rs. 71.25 lacs. for AY 2013-14 to 2015-16 and has declared only Rs. 25 lacs in AY 2014-15 which goes on to show that there is *per-se* contradiction in the statement given by Shri Ladia that during the survey on 23.09.2016 that the assessee has given back Rs. 50 lacs to it. According to Ld. A.R if there was ring of truth in the statement of Shri Ladia , M/s PHPL should have declared Rs. 50 lacs as it's undisclosed income for AY 2014-15. So, this fact itself shows that the statement of Shri Ladia for M/s PHPL is un-true and so cannot be incriminating at all. According to Ld. A.R., the fact that M/s PHPL has undisclosed income which is disclosed in the IDS-2016 to the tune of Rs. 71.25 lacs shows that it had enough money to give donation to assessee and therefore, this only shows that M/s PHPL has donated Rs.50 lacs to the assessee through banking channel for which the assessee has given receipt and shown in the regular books of account and therefore, the seized material (ID MSL 3 / 4/ 5) cannot be incriminating material at all qua the assessee qua AY 2014-15. Therefore the Ld AR contents that submission of Ld DR that the action of M/s PHPL disclosing undisclosed income of Rs 25 lakhs in IDS-2016 does not in any manner affect the merits of addition and is devoid of merits.

21. After giving our careful consideration to the rival contentions, we note from a perusal of the re-assessment order that the Assessing Officer for the year under consideration i.e. AY 2014-15 has passed the order u/s 143(3) / 153C of the Act by order dated 31.12.2018 wherein he has discussed about the search action u/s 132 of the Act conducted on 22.06.2016 at the premises of Mani Group and has observed that cash of Rs. 40 lakhs belonging to assessee foundation was seized. Thereafter the Assessing Officer discusses about the donation that the assessee had received during this A.Y .2014-15 at page 5 of his order, wherein he notes that assessee foundation received Rs. 7,70,12,000/- this year and in order to verify the veracity of the donation, he conducted a survey u/s 133A of the Act on 23.09.2016 at M/s PHPL which has donated Rs. 50 lakhs to assessee foundation. According to AO, during the survey u/s. 133A of the Act the statement of Shri Chandra Kant Ladia

was recorded on oath u/s 131 of the Act, [which has been reproduced by the Assessing Officer in the order] and he noted that though Shri Ladia has admitted to have given donation to assessee foundation, he added that it has been given back to it in cash. So the Assessing Officer concluded that the donation was bogus and made the addition of Rs. 50 lakhs. So when the merit of this addition is adjudicated, we have to keep in mind that assessment year under consideration i.e. A.Y. 2014-15 was a completed assessment by framing scrutiny assessment u/s 143(3) on 31.12.2016, so when the satisfaction note was prepared by the Assessing Officer u/s. 153C against the assessee on 03.09.2018 the assessment for AY 2014-15 was not pending before the AO, so AY 2014-15 is an unabated assessment. So according to settled position of law any addition ought to have been made by the AO only on the basis of incriminating material as held by the Hon'ble Supreme Court in Singhal Technical Education (supra) and by the jurisdictional High Court in Veeraprabhu Marketing Ltd. (supra). And we have already while adjudicating the legal issue (supra) raised before us had considered the legal validity of "Satisfaction Note" on a standalone basis for enabling the AO to usurp the of jurisdiction u/s 153C of the Act, in the light of the ratio decidendi of the Hon'ble High Court of Bombay in Hindusthan Lever Ltd. (supra) and have held that the seized documents (ID MSL-3/4/5) pertaining to assessee qua this assessment year which was alleged by the AO in the "Satisfaction Note" as incriminating material was erroneous and that it cannot be termed as incriminating material and consequently we held that action of AO is ab initio void.

22. However, as observed before for completeness we have considered the contention of the Ld. CITDR that the donation of Rs. 50 lakhs given by M/s PHPL to assessee for AY 2014-15 was bogus in the light of the statement of Shri Ladia recorded on oath u/s 131 during the survey conducted on 23.09.2016 on u/s 133A of the Act. According to him, the cash of Rs. 40 lakhs seized during search on the Mani group on 22.06.2016 (AY 2017-18) should be linked with the survey statement recorded u/s. 131 of the Act of Shri Ladia of M/s PHPL, which we are afraid we cannot, for various reasons which we will discuss (infra). We note that firstly Assessing Officer has not made any addition in respect of the seized cash of Rs. 40 lakhs for the assessment year i.e. A.Y. 2017-18, since assessee was able to convince/satisfy the Assessing Officer about the cash seized which was duly recorded in its

regular books and since the AO was satisfied no adverse view was taken by Assessing Officer in respect of seized cash of Rs. 40 lakhs for AY 2017-18. Moreover, we note that assessee is running an educational institution and though it received donation through banking channel, it requires cash expenditure for running of the institution, therefore the cash seized has not been adversely objected to by the Assessing Officer. So, according to us the seizure of cash from assessee in AY 2017-18 cannot be an adverse fact to draw adverse inference against the assessee for this AY 2014-15 because the seized cash lost its incriminating character, once the assessee was able to prove to the satisfaction of AO the source of receiving it. So, we find merit in the contention of Ld. AR that when the AO has not drawn any adverse inference about the seized cash (Rs. 40 lakhs) in the year of seizure, then it cannot be termed as incriminating for AY 2014-15. So, this contention of Ld. CIT D.R cannot be countenanced. Coming next to the contention of Ld. CIT DR that the statement of Shri Ladia of M/s PHPL recorded u/s. 131 during survey that donation was made in lieu of cash justifies addition of Rs. 50 lakhs, we have given our thoughtful consideration and we are of the opinion that following facts are necessary to be taken into consideration for appreciating this contention.

(a) We note that there is no mention about survey at M/s PHPL and the statement of Shri Ladia found place in the 'satisfaction note' prepared by the AO on 03.09.2018; and after the issue of notice u/s. 153C of the Act against the assessee, the Assessing Officer for the first time by notice dated 10.10.2018 brought to the notice of assessee that survey u/s 133A of the Act was carried out at M/s PHPL on 23.09.2016 and that the director Shri Ladia had made an admission of receiving back in cash the donation they gave to assessee.

(b) Pursuant to the notice of AO dated 10.10.2018, it is noted that the assessee/appellant filed its response to the Notice u/s. 143(2) vide Letter dt. 03.12.2018, a copy of which is found placed at a pg. 90-93 of the paper book and the assessee also filed another response dt. 07.12.2018 to the Notice u/s. 142(1), a copy of which is found placed at Pgs. 102-103 of the paper book, wherein it is noted that the assessee/appellant asserted and reiterated that the donation of Rs. 50 lakhs received from M/s. Pratibha Holdings (M/s. PHPL) in FY 2013-2014 was through proper banking channel and form part of its regular books of accounts and has already been disclosed to the Income-tax authorities and that the scrutiny assessment for AY 2014-15 u/s. 143(3) of the Act was completed by AO way back in 31-12-2016. We also note that assessee categorically denied the allegation of AO that donation of Rs. 50 lakhs from M/s. PHPL had been made in lieu of cash payment and contended that the seized materials were not in the nature of incriminating materials

as alleged/suggested in the AO's "Satisfaction Note"(dated 03.09.2018). It is also noted that assessee/appellant requested the AO to give a copy of the statement of Shri Chandra Kant Ladia recorded u/s. 131 dated 23.09.2016 [during survey u/s. 133A of the Act].

(c) However, we note that the AO framed the re-assessment on 31.12.2018 against the assessee foundation u/s. 153C read with section 143(3) of the Act without discussing the averments/assertions/explanation and evidences provided by the assessee/appellant to show / prove that all the donations/ receipts found during search has been duly accounted for in its regular books of account. We note that the Assessing Officer did not give a copy of the statement of Shri Ladia despite the assessee asking for a copy of it before passing the re-assessment order on 31.12.2018. We note that this fact of not furnishing a copy of Shri Ladia's statement to assessee has been conceded by the AO in his remand report submitted to Ld. CIT(A).

23. So, we find that Assessing Officer has passed the re-assessment order u/s. 153A/ 153C / 143(3) dated 31.12.2018 without providing the copy of the statement of Shri Chandra Kant Ladia and we find that Assessing Officer by solely relying on the uncorroborated statement of Shri Chandra Kant Ladia recorded u/s. 131 of the Act on 23.09.2016 [(taken in the course of the survey conducted u/s. 133A at the office premises of M/s. Pratibha Holdings (M/s. PHPL) on 23-09-2016)] and without giving an opportunity to assessee to cross examine Shri Ladia, the AO has framed the reassessment u/s. 153A read with section 153C/143(3) of the Act which is per- se bad in law *inter alia* for violation of Natural Justice.

24. According to us, the Assessing Officer before framing the reassessment order dated 31.12.2018 was bound to give a copy of the statement of Shri Ladia, which was recorded during survey and which was admittedly recorded behind the assessee's back. The Assessing Officer ought not to have kept the assessee in the dark by not furnishing the statement of Shri Ladia and should have been fair enough to give an opportunity to assessee to meet the allegation if any against the assessee which according to AO, have been discovered during survey. And further, the AO should have provided an opportunity to assessee to cross examine Shri Ladia to test the veracity of the statement of Shri Ladia, which was not done by AO before framing the reassessment order dated 31.12.2018. Therefore, there is per-se violation of Natural Justice and so the non furnishing of statement of Shri Ladia to the assessee before framing of reassessment order dated 31.12.2018 and not

giving an opportunity to assessee to cross examine Shri Ladia vitiates the action of Assessing Officer to rely upon the statement of Shri Ladia to draw adverse inference against the assessee in respect of donation of Rs. 50 lakhs. For this finding of ours, we rely on the ratio of the decision of the Hon'ble Supreme Court in Andaman Timber Industries vs. CCE (2015) 62 taxmann.com 3/52 GST 355(SC), wherein that case the addition was made against the assessee (Andaman Timber Industries) by the AO by relying on the statement of two witnesses namely Sri Sreeram Tekriwal and Sri Laxmidas Panchmati. Even though the assessee pleaded for cross-examination of these two witnesses, the AO did not give opportunity to the assessee and when the action of the AO was confirmed by the appellate authorities, the Hon'ble Supreme Court examined the omission on the part of the AO not providing opportunity to assessee to cross examine of two witnesses and held that it was a serious flaw and since the statements of those witnesses were made the basis of the impugned order this omission on the part of AO makes the order nullity inasmuch as it amounted to violation of Principles of natural justice. The Hon'ble Supreme Court has held as under:-

5. We have heard Mr. Kavin Gulati, learned senior counsel appearing for the assessee, and Mr. K. Radhakrishnan, learned senior counsel who appeared for the Revenue.

6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guesswork as to for what purposes the appellant

wanted to cross-examine those dealers and what extraction the appellant wanted from them.

7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price-list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price-list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal 0.2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

8. In view of the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show-Cause Notice.

9. We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal. No costs. [Emphasis given by us]

25. Moreover, we note that the Survey team has resorted to record the statement of Shri Ladia of M/s. PHPL u/s. 131 of the Act, during the survey conducted at their premises on 23.09.2016 u/s. 133A of the Act. During survey of a premises u/s. 133A of the Act, the Income Tax Authority may record the statement under as per sub-clause (iii) of sub-section (3) of section 133A of the Act. However, he could have resorted to recording of statement on oath u/s. 131 only if he satisfies the condition precedent under sub-section (6) of section 133A of the Act. Relevant provisions of section 133A of the Act are as under:

“[Power of survey.

133A. (1) Notwithstanding anything contained in any other provision of this Act, an income-tax authority may enter—

- (a) any place within the limits of the area assigned to him, or
- (b) any place occupied by any person in respect of whom he exercises jurisdiction, [or]
- [(c) any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place,]

at which a business or profession is carried on, whether such place be the principal place or not of such business or profession, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession—

- (i) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place,
- (ii) to afford him the necessary facility to check or verify the cash, stock or other valuable article or thing which may be found therein, and
- (iii) to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act.

Explanation.—For the purposes of this sub-section, a place where a business or profession is carried on shall also include any other place, whether any business or profession is carried on therein or not, in which the person carrying on the business or profession states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession are or is kept.

(2) An income-tax authority may enter any place of business or profession referred to in sub-section (1) only during the hours at which such place is open for the conduct of business or profession and, in the case of any other place, only after sunrise and before sunset.

[(2A) Without prejudice to the provisions of sub-section (1), an income-tax authority acting under this sub-section may for the purpose of verifying that tax has been deducted or collected at source in accordance with the provisions under sub-heading B of Chapter XVII or under sub-heading BB of Chapter XVII, as the case may be, enter, after sunrise and before sunset, any office, or any other place where business or profession is carried on, within the limits of the area assigned to him, or any place in respect of which he is authorised for the purposes of this section by such income-tax authority who is assigned the area within which such place is situated, where books of account or documents are kept and require the deductor or the collector or any other person who may at that time and place be attending in any manner to such work,—

- (i) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place, and
- (ii) to furnish such information as he may require in relation to such matter.]

(3) An income-tax authority acting under this section may,—

- (i) if he so deems necessary, place marks of identification on the books of account or other documents inspected by him and make or cause to be made extracts or copies therefrom,
- [(ia) impound and retain in his custody for such period as he thinks fit any books of account or other documents inspected by him:

Provided that such income-tax authority shall not—

- (a) impound any books of account or other documents except after recording his reasons for so doing; or
- [(b) retain in his custody any such books of account or other documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General or the Principal Commissioner or the Commissioner or the Principal Director or the Director therefor, as the case may be,]]
- (ii) make an inventory of any cash, stock or other valuable article or thing checked or verified by him,
- (iii) record the statement of any person which may be useful for, or relevant to, any proceeding under this Act :**

[Provided that no action under clause (ia) or clause (ii) shall be taken by an income-tax authority acting under sub-section (2A).]

(4) An income-tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, [***] any cash, stock or other valuable article or thing.

(5) Where, having regard to the nature and scale of expenditure incurred by an assessee, in connection with any function, ceremony or event, the income-tax authority is of the opinion that it is necessary or expedient so to do, he may, at any time after such function, ceremony or event, require the assessee by whom such expenditure has been incurred or any person who, in the opinion of the income-tax authority, is likely to possess information as respects the expenditure incurred, to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act and may have the statements of the assessee or any other person recorded and any statement so recorded may thereafter be used in evidence in any proceeding under this Act.

(6) If a person under this section is required to afford facility to the income-tax authority to inspect books of account or other documents or to check or verify any cash, stock or other valuable article or thing or to furnish any information or to have his statement recorded either refuses or evades to do so, the income-tax authority shall have all the powers under [sub-section (1) of section 131] for enforcing compliance with the requirement made :

[**Provided** that no action under sub-section (1) shall be taken by an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Joint Director or the Joint Commissioner, as the case may be.]

Explanation.—In this section,—

- [(a) "income-tax authority" means a [*Principal Commissioner or*] Commissioner, a Joint Commissioner, a [*Principal Director or*] Director, a Joint Director, an Assistant Director or a Deputy Director or an Assessing Officer, or a Tax Recovery Officer, and for the purposes of clause (i) of sub-section (1), clause (i) of sub-section (3) and sub-section (5), includes an Inspector of Income-tax;]
- (b) "proceeding" means any proceeding under this Act in respect of any year which may be pending on the date on which the powers under this section are exercised or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.] **[Emphasis given by us]**

26. From a perusal of the above provision reveals that the survey team while carrying out a survey u/s. 133A of the Act can record statement as per sub-clause (iii) of sub-section (3) of section 133A of the Act. And can resort to record statement u/s. 131 of the Act only if sub-section (6) of section 133A of the Act is satisfied. And so we have to examine whether section 133A(6) of the Act has been satisfied or not. We note from a perusal of the statement recorded of Shri Ladia that it was recorded during survey of the premises of M/s. PHPL u/s. 133A of the Act on 23.09.2016. Further we note that the Income Tax Authority/survey team has not made any mention/observation before recording the statement of Shri Ladia that during survey u/s. 133A, that the assessee(Shri Ladia) refused or evaded from furnishing any information or had satisfied the condition precedent as required under sub-section (6) of section 133A of the Act for resorting to recording of

statement of Shri Ladia on oath u/s. 131 of the Act. So the statement of Shri Ladia recorded u/s. 131 of the Act during survey of M/s. PHPL is without jurisdiction and so null in the eyes of law. For that, we rely on the decision of Hon'ble Punjab & Haryana High Court in *Gheru Lal Bal Chand Vs. ITO* (1982) 137 ITR 190 (P&H) wherein it has been held as under:

"3. The learned counsel for the petitioner has argued that the ITO, A-Ward, wrongly issued notices (Annexures P1 to P4) and wrongly passed the order (Annexure P5) during the process of survey under section 133A. This contention of the learned counsel for the petitioner must prevail. Under sub-section (1) of section 133A, the ITO was competent to enter the business premises of the petitioner and further to inspect the books of account or other documents as he may require. It is admitted that the ITO did enter the business premises of the petitioner and whatever books of account and other documents he wanted to examine were made available to him. Under sub-section (3) of section 133A, the ITO could place marks of identification of the books of account, or other documents inspected by him, or could make inventory of any cash, stock or other valuable article or thing checked or verified by him, or record the statement of any person which may be useful for, or relevant to any proceedings under the Act. It is again admitted that the petitioner caused no impediment for the ITO to exercise power under subsection (3) of section 133A.

4. Sub-sections (4) and (6) of section 133A read:

"(4) An income-tax authority acting under this section shall, on no account, remove or cause to be removed from the place wherein he has entered, any books of account or other documents or any cash, stock or other valuable article or thing."

"(6) If a person under this section is required to afford facility to the income-tax authority to inspect books of account or other documents or check or verify any cash, stock or other valuable article or thing or to furnish any information or to have his statement recorded either refuses or evades to do so, the income-tax authority shall have all the powers under sub-sections (1) and (2) of section 131 for enforcing compliance with the requirement made."

It is clear that the ITO is debarred from removing the books of account or other documents, etc., from the business premises of the assessee under sub-section (4) during the survey under section 133A. The ITO can, however, resort to powers under sub-sections (1) and (2) of section 131, in case the assessee refuses or evades to co-operate in terms of sub-section (6) of section 133A. It is undisputed that the petitioner neither refused nor evaded to co-operate on 11-4-1978. Under these circumstances, the ITO had no jurisdiction to resort to powers under sub-sections (1) and (2) of section 131 while surveying the accounts of the petitioner under section 133 A on 11-4-1978. It is obvious that the ITO issued notices (Annexures P1 to P4) under section 131 to the petitioner in excess of the jurisdiction vested in him. These notices are, consequently, liable to be quashed.

It is also noted that the Hon'ble High Court of Madhya Pradesh in the case of *CIT vs. Nendram Ahuja* (290 ITR 453) framed the question of law as under:-

(3) Whether the Income-tax Appellate Tribunal was justified in holding that reference to the DVO under section 131(1)(d) can be made only during the pendency of assessment proceedings and neither earlier nor subsequent?

Thereafter, the Hon'ble High Court has answered the aforesaid question of law as under:-

In regard to the assessment year 1990-91, the Assessing Officer found that the assessee and his brother Rewa Chand Ahuja had disclosed the cost of construction of a building owned by them along with one Deepchand as Rs. 8,00,000, of which Rs. 4,40,000 was shown as contributed by the assessee and his brother Rewachand and the balance of Rs. 3,60,000 by the other co-owner Deepchand. The Assessing Officer referred the matter to the Departmental Valuation Officer (the DVO) on November 29, 1989, who estimated the cost of construction of the portion owned by the assessee and his brother Rewachand at Rs. 6,51,000. The difference in cost of construction, namely, Rs. 2,11,000 was held to be unexplained investment. As a consequence, Rs. 1,05,500 being 50 per cent, of Rs. 2,11,000 was added to the assessee's income under section 69 of the Act and the remaining Rs. 1,05,500 was added to the income of Rewachand Ahuja.

On appeal, the Commissioner of Income-tax (Appeals) reduced the addition to Rs. 81,000. Both the assessee and the Revenue challenged the order of the Commissioner of Income-tax (Appeals) before the Tribunal. The Tribunal found that the reference to the DVO was made by issue of a commission under section 131(l)(d) of the Act on November 29, 1989, whereas the return of income for the said year was filed on January 31, 1991; and that the notice under section 143(2) for initiation of assessment proceedings was issued on November 30, 1992. Thus, no proceeding relating to the assessment year 1990-91 was pending as on November 29, 1989, when the reference was made to the DVO. The Tribunal was of the view that a commission under section 131(l)(d) of the Act could be issued only during the pendency of the assessment proceeding and that reference by the Assessing Officer to the DVO on November 29, 1989, being long prior to the initiation of the assessment proceeding, was not valid. Consequently, the Tribunal held that the valuation report of DVO should be ignored. As the assessee had produced the valuation report from a Government approved valuer showing the entire cost of construction as Rs. 8,50,000, the Tribunal directed the Assessing Officer to adopt the cost of construction of the entire commercial complex at Rs. 8,50,000 and make corresponding addition in the hands of the assessee.

The Revenue does not dispute that the Assessing Officer had issued a commission to the DVO under section 131(l)(d) of the Act to value the premises on November 29, 1989, long prior to the commencement of assessment proceedings relating to the assessment year 1990-91. Section 131(l) of the Act provides that the Assessing Officer shall have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the matters enumerated including issue of commission. What is significant is use of the words "when trying a suit". A court can issue a commission only during the pendency of the suit. As the powers vested in the Assessing Officer are the same powers as are vested in a court, it follows that the Assessing Officer can issue a commission only if a proceeding is pending before him.

The Bombay High Court in Jamnadas Madhavji and Co. v. J. B. Panchal, ITO [\[1986\] 162 ITR 331](#) held that (pages 336 and 337)

"It will be noticed that the officers mentioned in section 131(l) of the Income-tax Act, 1961, viz., the Income-tax Officer... Commissioner are conferred with the same powers as are vested in a court under the CPC, 1908, when trying a suit. The CPC confers upon the court powers, for the exercise whereof, existence of a suit or a proceeding is a sine qua non. Pari materia, therefore, power in respect of matters mentioned in sub-section (1) of section 131, viz., (a) discovery and inspection; (b) enforcing the attendance of any person and examining him on oath; (c) compelling the production of books of account and other documents; and (d) issuing commissions, can be exercised only if a proceeding is pending before the concerned officer and not otherwise. For the exercise of such power, existence or pendency of a proceeding is, therefore, a must... The Taxation Laws (Amendment) Act, 1975, introduced sub-section (1A) in section 131. Under this sub-section, if the Assistant Director of Inspection has reason to suspect that any income has been concealed...then, for any enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) of section 131, 'notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority'.

Absence of this non obstante clause in section 131(l) is significant. Reading section 131(l) and section 131 (1A) together, it is obvious that whereas an officer mentioned in sub-section (1) can

exercise powers thereunder only if a proceeding is pending before him, the officer mentioned in section 131 (1A), viz., the Assistant Director of Inspection, can exercise such powers notwithstanding that no proceedings are pending before him or before any other officer ...

Also relevant to the context is the form of the summons under section 131(1) which commences with the words: 'whereas your attendance is required in connection with the proceedings under the Income-tax Act in your case'.... The form also assumes and presupposes the existence of a pending proceeding before the concerned officer. Further, Explanation 2 to section 132 of the Act also indicates that but for its artificial and extended definition of the word 'proceeding', proceeding would mean one actually pending and not one completed and concluded."

In Rina Sen v. CIT [1999] 235 ITR 219 the Patna High Court held as follows (placitum) (headnote):

"The existence of a pending proceeding is a condition precedent and sine qua non for the exercise of power under section 131(1) of the Income-tax Act, 1961. The words 'notwithstanding that no proceeding with respect to such person or class of persons are pending' occurring in sub-section (1A) of section 131 leave no room for doubt that while the authorities specified under section 131 (1A) of the Act are empowered to take action if there is 'reason to suspect' that any income has been concealed or is likely to be concealed by any person or class of persons even though no proceeding with respect to such person or class of persons is pending before him or any other income-tax authority, the authorities specified in section 131(1) of the Act can do so only if a proceeding is pending before them. The proceeding within the meaning of section 131(1) of the Act must, therefore, be an independent proceeding pending from before and it is only in connection with that proceeding that commission can be issued."

We respectfully agree with the above observations. In this case, as no proceeding in regard to the assessment year 1990-91 was pending before him on November 29, 1989, obviously he could not have issued the commission under section 131(1)(d). The third question is answered accordingly in the affirmative.

27. Thus, we note that the statement recorded of Shri Ladia u/s. 131 of the Act during search conducted u/s. 133A without satisfying the condition precedent as envisaged in sub-section (6) of section 133A was without jurisdiction and consequently non-est in the eyes of law. Therefore relying on the decision of the Hon'ble Punjab & Haryana High Court in Gheru Lal Bal Chand Vs. ITO (1982) 137 ITR 190 (P&H) and the decision of the Hon'ble M.P. High Court in the case of CIT Vs. Nendram Ahuja 290 ITR 453(MP) the statement of Shri Ladia cannot be taken into consideration for drawing adverse inferences against the assessee. Moreover, as we have noted earlier the statement of Shri Ladia recorded during the survey u/s. 133A admittedly under oath, [when not sanctioned by law to take statement on oath during survey] cannot have evidentiary value as held by the Hon'ble Supreme Court in the case of Kader Khan (supra). Thus, looking from any angle the statement of Shri Ladia of M/s. PHPL recorded behind the back of the assessee and without being tested on the touch stone of cross examination, the veracity/correctness/truthfulness of the statement not being verified, cannot be the basis for drawing adverse inference against the assessee and

in any case, we have held that the testimony of Shri Ladia, is null in the eyes of law cannot be the basis for drawing adverse inference against the assessee in respect of donation of Rs. 50lakhs of M/s PHPL. And once Shri Ladia's statement is removed or if the statement of Shri Ladia was discredited by the assessee during cross-examination, then there was no other material with the Revenue on the basis of which the Assessing Officer could have justified his action of addition of Rs. 50 lakhs. Since the AO's re-assessment order u/s. 153A/153C/143(3) of the Act dated 31-12-2018 was based only on the uncorroborated and not cross examined statement of Shri Ladia, therefore, the addition made against the assessee is untenable. It has to be noted that though the provisions of Indian Evidence Act are not strictly applicable to the proceedings under the Income-tax Act, but the broad principles of law of evidence do apply to such proceedings. Further an entry in the books of account maintained in the regular course of business is relevant for the purpose of considering the nature and impact of a transaction as envisaged in section 34 of the Indian Evidence Act. Here in this case for AY 2014-15, the counter foils of receipt book (donation) was found from the premises during search of Mani Group, which was seized (ID-MSL 3/4/5) which have been duly recorded in the books of account of the assessee and all the donations were duly disclosed to the income tax authorities and donations came through banking channel. We note that the assessee has discharged the initial onus in proving the transaction as well as source of it. We also note that after the search conducted on the premise of Mani Group on 22-06-2016, the AO has noted that the assessee has received an amount of Rs.7,70,12,000/- in this assessment year. In order to verify the veracity of the claim of receiving the donation, the AO carried out the survey at the premises of M/s. PHPL on 23-09-2016 and then has recorded the statement of Shri Ladia, wherein according to the AO, Shri Ladia had admitted in giving the donation in lieu of cash. We note that this action of the AO to conduct the survey was on 23-09-2016 and the re-assessment order u/s. 153A/153C/143(3) was on 31-12-2018, which means there was more than 2 years and 3 months in between the survey date of M/s. PHEPL and the re-assessment order of the AO. In case if the AO suspected that the assessee was indulging in collecting bogus donation, he could have verified the veracity of those donations given by other donors, who have donated more than Rs.7 crores other than M/s. PHPL, which the AO for reasons best known to him has not bothered to do. And without doing any such exercise,

we note that the AO has drawn an adverse finding against the assessee in respect of the donation of Rs. 50 lakhs from M/s PHPL as bogus donation based only on the statement of Shri Ladia, which for the various legal infirmities pointed out (supra) is a nullity as per the decision of the Hon'ble Supreme Court in the case of Andaman Timbers and other case laws discussed. We are of the view that the statement of Shri Ladia cannot be the basis for drawing adverse inference against the assessee and therefore, no addition could have been made against the assessee only on the said statement. So, when we remove this statement, and we note that there was no incriminating material which were unearthed during search qua the assessee/appellant foundation qua AY 2014-15, which would conclusively show that Rs. 50 lakhs was transferred from one side to another, we find the contention raised by the Ld. CIT DR are devoid of merits on this contention and so is rejected.

28. Lastly coming to the contention of Ld. CIT, DR that the Ld. CIT(A) has taken note of the fact that M/s PHPL has availed the IDS Scheme, 2016 and has declared its undisclosed income of Rs. 25 lacs for AY 2014-15 and this fact corroborates the statements of Shri Ladia of M/s PHPL, cannot be accepted by us for the following reasons. We note from a perusal of 'Satisfaction Note' dated 03.09.2018 [supra] for invoking jurisdiction u/s 153C against the assessee foundation, there is no whisper about M/s PHPL availing the IDS, 2016. And from a perusal of the reassessment order u/s 153A / 153C / 143(3) of the Act dated 31.12.2018, we also note that there was no mention about the fact that M/s PHPL has availed IDS Scheme, 2016. We note for the first time this fact M/s PHPL availing the IDS Scheme, 2016 came to light when the Ld. CIT(A) called for the remand report from AO on the objections raised by the assessee before the Ld. CIT(A). Since the original scrutiny assessment u/s 143(3) of the Act for AY 2014-15 in the case of assessee foundation was framed on 31.12.2016, therefore, the assessment was not pending before AO on the date when 'Satisfaction Note' was prepared, so as per the settled position of law, the AO ought to have discussed in the 'Satisfaction note' the jurisdictional facts i.e. incriminating materials qua the assessee qua AY 2014-15, for invoking section 153C jurisdiction. However as we have noted earlier there is no whisper about M/s PHPL opting for IDS Scheme, 2016 and according to us, the Ld. CIT(A) while adjudicating the legal issue of the validity of the satisfaction note prepared by the AO to invoke 153C against the assessee

foundation, cannot resort to post mortem and resurrect a bad satisfaction note because Assessing Officer could not have usurped the jurisdiction u/s 153C without preparing a valid Satisfaction Note and therefore Assessing Officer's action to invoke the jurisdiction u/s 153C of the Act in respect of AY 2014-15 was ab-initio void and therefore the ld. CIT(A) cannot correct a jurisdictional issue and therefore this action of ld. CIT(A) was itself untenable in the eyes of law. Be that as it may be, we note that even if for argument's sake, the ld. CITDR's contention regarding M/s PHPL opting for IDS Scheme, 2016 is considered we find force in the argument of ld. A.R that Shri Ladia's statement during the survey on 23.09.2016 that M/s PHPL has received back the donated amount of Rs. 50 lacs from the assessee foundation does not corroborate with their subsequent action of only disclosing an amount of Rs. 25 lacs for AY 2014-15 during the IDS Scheme, 2016. We note that for AY 2013-14 to 2016-17 M/s PHPL has disclosed in IDS Scheme, 2016, a total of Rs. 71.25 lacs which fact goes on to show that M/s PHPL had enough money in its kitty to give donation to assessee foundation. Therefore, the action of M/s PHPL declaring Rs. 25 lacs as undisclosed income for AY 2014-15 cannot be considered to justify the action of ld. CIT(A) in confirming the addition of Rs. 50 lacs as against the assessee foundation. Thus we find the contentions raised by the Ld. CIT DR are devoid of merits and so it is rejected and therefore on merits also the assessee succeeds. However, since we allow the legal issue raised by the assessee, we hold that the action of AO to invoke section 153C of the Act was without jurisdiction and, therefore, the impugned action of AO to issue notice u/s. 153C of the Act is null in the eyes of law and therefore ab-initio void and so it is quashed.

Coming to AY 2016-17

29. The Ld. AR of the assessee foundation/appellant has brought to our notice that the Ld. CIT(A) in his impugned order dated 15.11.2019 has partly allowed the appeal preferred by the assessee foundation by granting full reliefs on merits (subject to verification of the AO). It has been brought to our notice that assessee before the Ld. CIT(A) had raised similar legal issue wherein it challenged the jurisdiction of AO to invoke section 153C of

the Act against the assessee for AY 2016-17 on the ground that there was no incriminating material unearthed from the premises of the searched person (Mani Group) which belongs to/pertains to/relates to appellant/assessee (third party) which in turn had a bearing on the determination of the total income of the assessee qua AY 2016-17 and therefore the usurpation of jurisdiction by AO u/s. 153C read with Section 153A of the Act was bad in law. It was brought to our notice that the time limit for issuance of notice u/s. 143(2) of the Act for AY 2016-17 had expired before the date of preparation of the satisfaction note dated 03.09.2018. Therefore, according to the assessee/appellant the assessment in respect of AY 2016-17 was not pending before the AO on the date of satisfaction note i.e. 03.09.2018 and, therefore, as per the settled position of law on the issue as laid by the Hon'ble Supreme Court in Singhal Education (supra) and Veerprabhu (supra) by Hon'ble Calcutta High Court, the Assessing Officer could not have usurped the jurisdiction for AY 2016-17 without spelling out the incriminating materials qua the assessee qua the AY 2016-17. Since the Satisfaction Note (supra) have not spelled out any material from which it could be inferred that there was any incriminating materials against the assessee/appellant in respect of AY 2016-17, the Assessing Officer ought not to have invoked section 153C of the Act and not issued notice u/s. 153C of the Act. According to Ld. AR, a perusal of the 'satisfaction note' of the AO dated 03.09.2018 and the chart at para 14 (supra) would reveal that there was no incriminating material against the assessee for AY 2016-17 and we have made a finding of fact at para 15 in this respect that there was no incriminating material against the assessee for AY 2016-17, consequently the AO could not have validly usurped the jurisdiction to assess the assessee/appellant foundation invoking the power u/s. 153C of the Act and framed assessment u/s. 153A read with sec. 143(3) of the Act. In this respect, we have already discussed in details (supra) the legal provision governing section 153C and sec. 153A of the Act and, therefore, for the sake of brevity it is not again repeated. The only question that needs to be looked into is whether the satisfaction note [which we have already reproduced (supra)] that was prepared by the AO u/s. 153C of the Act satisfies the requirement of law for assumption of jurisdiction u/s. 153C of the Act against the third party which is the assessee foundation in this case for AY 2016-17. We note from the perusal of the satisfaction note (supra) dated 03.09.2018, the AO mentions about ID mark MSL-3, ID mark MSL-4 and ID mark MSL-5 which were seized from the search conducted u/s. 132 of

the Act on 22.06.2016 at Mani Group. We note that MSL 3 (pages 1 to 50), MSL 4 (pages 51 to 56 & 62-63) and MSL 5 (pages 1, 4, 17 to 36) are the counterfoils which are in the nature of donation receipts issued by the assessee society (formerly known as M/s. SPS Synergy Foundation for FY 2013-14 (AY 2014-15) and FY 2014-15 (AY 2015-16). Thus, we note that these materials referred by the AO in the 'Satisfaction Note' are not incriminating in nature as the said donations are made through account payee cheques/RTGS and forms a part of regular books of accounts of the appellant/assessee foundation for earlier years and most importantly not in respect of the relevant assessment years (AY 2016-17) in question. Thus, we find that the seized material i.e. ID mark MSL 3, 4 and 5 which are attached at paper book pages 105 to 109A (111) does not pertain to the AY 2016-17. Since these facts were discussed in detail in the chart (supra) when we were adjudicating the issue of jurisdiction vis-a-vis the satisfaction note prepared by the AO dated 03.09.2018 (for AY 2014-15) which will dispel any doubt that there was no incriminating material against the assessee foundation for AY 2016-17 which was seized from the Mani Group while carrying out the search. Since there was no incriminating material qua the assessee foundation qua the AY 2016-17 [which was the third party assessee] when department searched Mani Group and since from the date of satisfaction note dated 03.09.2018 the assessment for AY 2016-17 was a completed assessment and not pending before the AO, so, as per the second proviso to section 153C of the Act the assessment in respect of AY 2016-17 is a completed assessment and therefore, without the aid of any incriminating material against the assessee qua AY 2016-17 which were unearthed from the search conducted on the searched person, the AO could not have usurped jurisdiction without spelling out the same in his 'satisfaction note' as to whether the material found pertains/relates to/belongs to the assessee and has a bearing on the determination of the total income of the assessee foundation qua the AY 2016-17. From a perusal of the satisfaction note dated 03.09.2018, we note that the AO failed to record the requisite satisfaction in terms of section 153C of the Act and since the fundamental requirement of assuming jurisdiction has not been satisfied, we hold that the assumption of jurisdiction itself is bad in law and, therefore, the impugned action of AO to issue notice u/s. 153C of the Act is null in the eyes of law and so it is quashed.

30. In the result, the appeals of the assessee are allowed for both the years (AY 2014-15 and AY 2016-17).

Order is pronounced in the open court on 16th October, 2020.

Sd/-

(J. Sudhakar Reddy)
Accountant Member

Sd/-

(A. T. Varkey)
Judicial Member

Dated: 16th October, 2020

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – I Q City Foundation, Mani Square, 9th Floor, I T Chamber, EM Bypass, 164/1, Maniktala Main Road, Kolkata-700 054.
2. Respondent – ACIT, Central Circle-3(2), Kolkata
3. The CIT(A) –21, Kolkata (sent through e-mail)
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

/True Copy,

By order,

Assistant Registrar