INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI

BEFORE SHR AMIT SHUKLA, JUDICIAL MEMBER
A N D
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA Nos. 286 & 287/Del/2015
(Assessment Years: 2010-11 & 2011-12)

DCIT, Central Circle – 31, New Delhi.	Vs.	M/s. Madhvilata Granite (India) Pvt. Ltd., 11–12, Ambika Mills Compound, Senapati Bapat Marg, Mahalaxmi, Mumbai – 400 013 **PAN: AAECM9923F**
(Appellant)		Respondent)

Assessee by :	Shri Rakesh Joshi, C.A.;
Department by :	Ms. Pramita M. Biswas [CIT] – DR;
Date of Hearing	8/04/2021
Date of pronouncement	11/05/2021

O R D E R

PER AMIT SHUKLA, J.M. :

The aforesaid appeals have been filed by the revenue against consolidated order of dated 29.09.2014, passed by Ld. CIT (Appeals)-XXXIII, New Delhi, for the quantum of assessment passed u/s 153C/153A for the Assessment Years 2010-11 & 2011-12. In the grounds of appeal, the revenue has challenged deletion of addition of

Rs. 99,84,26,936 in the AY 2010-11; and Rs.45,57,85,000/- in the AY 2011-12 made u/s 68 on account of share capital and premium.

2. The assessee also filed following ground to support decision of Ld CIT(A) under rule 27 of the ITAT Rules, before Hon'ble ITAT: -

> ***"On the facts and circumstances of the case as well as in Law, the Learned Assessing Officer has erred in making the additions in assessment order Passed u/s.143(3) r.w.s 153A of the Income Tax Act, 1961, which is not an abated assessment, without any incriminating documents were found during the course of search. "***

3. Since the grounds raised by the respondent assessee under rule 27 of the ITAT Rules is purely a legal issue arising out facts already on record and specific finding of Ld. CIT(A), therefore same is admitted and are being taken for adjudication first. The facts in brief are that, M/s Madhvilata Granite (India) Ltd was having its registered office at Plot No. 11-12, Ambika Mills Compound, Senapati Bapat Marg, Mahalaxmi, Mumbai (Maharashtra)-400013, which was incorporated under the Companies Act, 1956 on 19.08.1991. During the relevant period, it has shown interest income earned on FDRs. It was constructing a Hotel at Noida and the said hotel project was yet to complete. On **22.11.2011**, the Investigation Wing of the Income Tax Department conducted Search & Seizure operations u/s 132 of the Income Tax Act, 1961 on different concerns and persons of Gurinder Jit Singh Group. In the said search operations, the case of **M/s Aakriti Hotels Pvt. Ltd**., 30, Community Centre, Saket, New Delhi was also covered under search u/s 132. On the basis of certain documents allegedly belonging to the assessee company

to have been seized in the said search operations, proceedings u/s 153C were initiated in the case of the appellant company and assessments of 6 assessment years were reopened.

3.1 The Dy.CIT, Central Circle-23, New Delhi initiated assessment proceedings u/s 153C, nearly 22 months after the date of search, i.e., 22.11.2011 and sent notices u/s 153C dated 20.09.2013 for filing of return of income for both the assessment years after recording the 'satisfaction'. In response to notice u/s 153C, return of income was filed on 30.12.2013 with the ACIT, Central Circle-19, New Delhi. In the meantime, the CIT (Central)-III, New Delhi had transferred the case to the ACIT, Central Circle-19, New Delhi vide his order u/s 127 of the Act dated 12.11.2013. So, the assessments in the case of the appellant company have been completed by the ACIT, Central Circle-19, New Delhi. Ld. Assessing Officer, upon receipt of case on transfer from the ACIT, Central Circle-23, New Delhi, resumed the assessment proceedings and completed the assessment on 30.03.2014 after making the aforesaid additions made u/s 68 of Rs. 99,84,26,936 in the AY 2010-11; and Rs.45,57,85,000/- in the AY 2011-12 on account of share capital and premium. These additions have been made, based on entries of inventories of shares as given in balance sheet already on record, rather than any incriminating or seized documents or anything mentioned in the satisfaction note.

4. In first appeal, Ld CIT (A) has deleted the said additions on merits, on the ground that the assessee has satisfactorily explained the identity, genuineness and creditworthiness of the parties and AO has failed to make any further enquiry in the case. The assessee also took ground

before the Ld CIT (A) that the addition is otherwise not sustainable as the same is made without any incriminating document found during the course of search and both the year are unabated assessment years. However, Ld CIT (A) relying on the decision of Hon'ble Delhi High Court in case of **Shri Anil Bhatia** held that AO have authority to assess income of last six years U/s 153C r.w.s 153A of the Act and rejected this legal contention of the Assessee. Relevant finding of Ld CIT (A) is given on page 17 & 18 of his order, which is reproduced hereunder:-

"Second argument is that in the case of closed assessment, no addition can be made without /seized document and relied on various judicial pronouncements. I have perused the assessment order. The appellant has filed following submission before the Assessing Officer on seized documents:-

Page	***Documents Seized***	***Explanation***
Annx-A9 Page 44-46	*Extract of Signed Balance Sheet of Madhvilata Granite (India) Limited for the financial year ended as on 31.03.2010*	*The same is copy of audited balance sheet as on 31.03.2010 submitted with your honour.*
Annx-A9-Page 50-52	*Correspondence vis e-mail between Madhvilata Granite (India) Limited Branch office and corporate office, discussion for finalization of balance sheet*	*General Correspondence only for finalization balance sheet.*

Annx A9-Page 60-63	*Cancelled cheques in possession of Accountant of Madhvilata Granite (India) Limited*	*Cheque at page no. 60 , 61 and 63 issued to parties and cancelled due to expiry date. Further, wrt cheque at page 62 relates to refund of share application money received but not issued and shown in cu liability of balance sheet of assessee company of AY. 2012-13*
Annx-A-10, Page 48-53	*Master Date information as available on MCA site like date of incorporation, Registered office Address, Authorised share capital etc of Jaguar, Madhvilata and Group companies.*	*The same is detail of companies also available at MCA site.*

A perusal of the above reveals that Annexure A-9 page 44-46 contains balance sheet of the appellant company. Additions are made on account of share capital. Therefore, the additions are relatable to seized document. I rely on the decision of hon'ble Delhi High Court in the case of Sh. Anil Bhatia in ITA 1626, 1632, 1998, 2006, 2019 & 2020 of 2010 dated 7.08.2012 that the jurisdiction of assessing officer u/s 153A is to assess total income for the year and not restricted to seized material. Where it has been held that even if for one assessment year, there are seized documents, the relatable to addition, the assessing officer can be made addition for all assessment years covered u/s 153A. Accordingly, on jurisdictional ground, the grounds of appeal are dismissed for both the assessment years. "

5. On merits the findings of Ld. CIT (A) are as under:-

" I have considered all the basis of addition and arguments of Ld. AR. During the assessment proceedings, the appellant has submitted evidences such as confirmation of purchase of invest, ITR of purchasing companies, PAN card of purchasing companies and other documents to prove the genuineness of sale transactions investor. All these purchasers are company incorporated with under Companies Act, except M/s. S. S. Securities. The appellant has given current address of these share holder companies.

The Ld. Assessing Officer has given the findings that first notice u/s 133(6) was returned back. Subsequently, new address of purchasing companies was given by the appellant and fresh notice was issued. Some of them filed the reply. The assessing officer has not commented in which case, there was no compliance. I have perused the records. There are replies from these purchasing companies on their letter head bearing addresses. It could be ascertained from the order sheet or records that in the case of any purchasing company's reply was not received to whom the notice u/s 133(6) was issued at new address except in the case of M/s. S. S. Securities. In any case, the assessing officer has not confronted to the appellant during the assessment proceedings that even on current address, any purchase company has not replied. Therefore, such sweeping mark of the assessing officer does not prove that in some cases, the reply was not received except in specific case of M/s. S. S. Securities.

In case of finding of the investigation wing of Pune, the assessing officer has not mentioned in the assessment order, the address on which enquiry was conducted & the contents of the enquiry report. Further, I have perused the order sheet of assessment proceedings, the assessing officer has not given an opportunity to explain the findings of the investigation wing that the share holder companies were not found at even old address. Even investigation wing, Pune's report was apparently not confronted to the appellant and is not part of the order. Under these circumstances, in my view no adverse inference can be drawn against the appellant of such enquiries.

Once these purchase companies have complied with requirement of notice u/s 133(6), the assessing officer was not required to ask the appellant to produce directors of the purchase companies unless some defects were pointed out in the details filed by the appellant or reply received

independently from purchasing companies. Ld. assessing officer instead of making enquiry on the current address of shareholder given by the appellant to find identity of such shareholder & documents submitted by the shareholder in response to notice u/s 133(6), asked to produce directors of these shareholder companies. In my view, once the appellant has filed all documents in support of share capital and new address of the share holder companies, onus was lying on the assessing officer to disprove the same. Without disproving these evidences onus will not shift back to the appellant. Under these circumstances, even the decision of Hon'ble High Court of Delhi in the case of N.R. Portfolio Pvt. Ltd., will not help the case, as in that case, the assessing officer has made enquiry to disprove apparently the evidences filed by the assessee, then the decision was given that the onus was shifted back on the assessee to produce directors.

The above findings are applicable in all purchasers of the investment of the appellant except M/s. S. S. Securities which has not replied the notice u/s 133(6). M/s. S. S. Securities is claimed as share broker by the appellant and the appellant has not produced even the bill for the sale of investment. Therefore, in the case of M/s. S. S. Securities, in my view, the appellant has not proved the sale transaction.

In present facts & circumstances of the case, the decision relied by the Ld. AR namely the decision of hon'ble Supreme Court in the case of Steller Finance Ltd and decision of jurisdictional High Court in the case of Nipuan Auto (P) Ltd cited Supra appears to be more applicable that the appellant has discharged onus cast upon it u/s 68 to prove the share capital. Considering entire facts & circumstances of the case, in my view the appellant has discharged its onus to prove the genuineness of sale of securities except in the case of M/s. S. S. Securities. Accordingly, I delete the addition made u/s 68 in respect of share capital added for both the assessment years except Rs. 10,00,000 received from M/s. S. S. Securities. These grounds of appeal are partly allowed for A.Y. 2010-11 and allowed for A.Y. 2009-10.

6. Fourth ground of appeal for A.Y. 2009-10 is alternative ground. As I have given the relief on substantive ground. I am not adjudicating the alternative grounds.

7. Fourth ground of appeal for A.Y. 2010-11 is against invoking two provisions inserted in section 68 of I.T. Act by the Assessing Officer, when these provisions were inserted w.e.f. 01.04.2013.

I have perused the assessment order. The Ld. Assessing Officer has quoted these two provisos in section 68 of I.T. Act. During the appellate proceedings, Ld. AR argued that these provisions are inserted w.e.f. 1.4.2013 i.e. A.Y. 2013-14.

I have perused the provision to section 68. First proviso to section 68 for onus on a company other public company has been widened w.e.f 1.4.2013 and, therefore, this proviso is not applicable to the impugned assessment year being earlier assessment years. "

6. Being aggrieved by the decision of Ld CIT (A), the revenue filed appeal before this ITAT. The assessee also filed the aforesaid ground (supra) to support the decision of Ld CIT (A) under rule 27 of the ITAT Rules, and as stated above, since the said ground relate to jurisdiction of the Assessing Officer to assess the income u/s 153A/153C; hence the same is being taken first before hearing the department appeal.

7. We have heard both the parties at length on this issue and have also perused the finding of CIT (A) and material placed on record. We will first take up the issue, whether cases falling under section 153C, the period of six years have to be reckoned from the date of recording of satisfaction note or from the date of search carried out in a case of a person provided in Section 153A. This precise issue has been dealt by the Hon'ble Delhi High Court in the case of **CIT vs. RRJ Securities Ltd.** as reported in **380 ITR 612** in the context of Section 153C of the Act, wherein it was laid down as under:

"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.

24. As discussed hereinbefore, in terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings by virtue of Section 153C(1) of the Act would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. In this case, it would be the date of the recordings of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment years 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recordings of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years prior to the assessment year relevant to the previous year in which the search was conducted. If this interpretation as canvassed by the Revenue is accepted, it would mean that whereas in case of a person searched, assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be

reopened would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to the AO would be subsequent to the date of the search. This, in our view, would be contrary to the scheme of Section 153C (1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one searched) as the date of the search on the Assessee. The rationale appears to be that whereas in the case of a searched person the AO of the searched person assumes possession of seized assets/documents on search of the Assessee; the seized assets/documents belonging to a person other than a searched person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee's income for that year."

This principle was further reiterated in the case of **ARN Infrastructure India Ltd. v. ACIT** as reported in **394 ITR 569,** wherein it has been held as under:

"12. The decision in RRJ Securities Ltd. (supra) is categorical that under / Section 153C of the Act, the period of six years as regards the person

other than the searched person would commence only from the year in which the satisfaction not is prepared by the AO of the searched person and a notice is issued pursuant thereto. ***The date of the Satisfaction Note is 21st July, 2014 and the notice under Section 153C of the Act was issued on 23rd July, 2014. The previous six AYs would therefore be from AY 2009-10 to AY 2014-15.*** *This would therefore not include AYs 2007-08 and 2008-09."*

9. Here in this case, in view of above judicial precedence, it cannot be disputed that both the Assessment years, i.e., A Y 2010-11 & 2011-12 were non-abated assessment year as per second *proviso* to section 153A of the Act, which is clear from the following chart summarizing the various events:-

Sl. No.	**Particulars**	**A Y 2010-11**	**A Y 2011-12**
1	Search on Akriti Hotel P Ltd	22/11/2011	22/11/2011
2	Notice Issued U/s 153C	22/09/2013	22/09/2013
3	Deemed date of search as per *proviso* to section 153C(1) as date of satisfaction has not been mentioned.	22/09/2013	22/09/2013
4	Return filed U/s 139	14/10/2010	30/09/2011
5	Last Date of issue Notice U/s 143(2)	30/09/2011	30/09/2012
6.	Assessment Completed U/s 143(1)	07/03/2011	08/02/2012

10. From the above chart it is clear that notice u/s 143(2) of the Act could have been served upon the assessee till 30.09.2011 & 30.09.2012 for AY 2010-11 & 2011-12 respectively as per the law prevailing on the said date, however, no such notice was given. Since no assessment was made thereafter u/s 143(3)/144 of the Act within the time allowed for the same, therefore, the assessment completed u/s 143(1) had become final assessment. At the time of issuance of notice and taking up the proceedings u/s 153C, the assessments for these two assessment years did not abate as per *second proviso* to Section 153A. In case of unabated assessments, legally speaking, no addition could be made, which is not based on any incriminating material found and seized during the course of search in the case of a concluded assessment as per series of judgments of Jurisdictional High Court, lead case being of **CIT Vs. Kabul Chawla, reported in 380 ITR 573 (Delhi)**.

11. Further, to substantiate the fact that date of search as per proviso to section 153C (1) in this case is 22.09.2013, it has been brought on record by the assessee after taking inspection of the assessment records and also as per order sheet noting obtained from the Assessing Officer, first noting is from 20/09/2013 for assuming jurisdiction U/s 153C of the Act. Nowhere the date of recording of satisfaction has been provided nor has it been brought on record that satisfaction was recorded prior to the year 2012 and notice u/s 153C was issued in September 2013. Thus, the date of issuance of notice has to be reckoned as date of initiation in this case. Extract of the order sheet notings for A Y 2010-11 & 2011-12 (scan copy) as placed on record before is reproduced as under:-

M/s Madhavilata Granite India Ltd. A.Y. 2010-11

20/09/2013	A search action u/s 132 of the I.T.Act was carried out in the case of M/s Aakriti Hotels Pvt Ltd. at Community Centre, Saket, New Delhi on 22/11/11. During the course of search; documents belonging to M/s Madhavilata Granite India Ltd i.e. the assesse company was found and seized. Therefore a satisfaction note was recorded in this case by the then AO ACIT CC-23, New Delhi. Accordingly a notice u/s 153C r.w.s 153A of the I.T.Act was issued by him on 20/09/2013 requiring the assesse to furnish a return of income within 15 days of receipt of the notice.
30/12/2013	Assessee files return of income in response to notice u/s 153C of the I.T Act, 1961 declaring income of Rs. 56,98,580/-.
02/01/2014	Notice u/s 143(2), 142(1) of the I.T Act, 1961 with a questionnaire are issued. Hearing is fixed on 08/01/2014.

1

M/s Madhvilata Granite India Ltd
AY 2011-12

20/9/13 A seard action u/s 132 of the Act was carried out in the case of M/s Aakriti Hotels Pvt Ltd at Community Centre, Saket New Delhi on 22/11/11. During the course of seard, documents belonging to M/s Madhvilata Granite India Ltd were found and seized. Therefore, a satisfaction note was recarded by the AO i.e. ACIT CC-23, New Delhi that the documents belonged to the assesse. The AO i.e. ACIT-CC-23, being the also the AO of the assesse recarded a satisfaction in the assesse's case for initiating proceedings u/s 153C r.w.s 153A of the Act and a notice u/s 153A r.w.s 153C was issued asking the assesse to file return of income within 15 days of receipt of the notice.

30/12/13 Assesse files return of income declaring income of Rs 2,91,69,999/-.

12. From the above order sheet it is very clear that the deemed date of search as per *proviso* to 153C (1) is 20/09/2013 and accordingly, on that date both the assessment years are unabated as per second proviso to section 153A of the Act.

13. During the course of search which is an admitted fact that, no incriminating documents relating to impugned addition made on account of share capital or share premium was found. Details of documents belonging to assessee found during the course of search are listed on page 17 of Ld CIT (A) order as incorporated above. Assessee also filed copies of these documents which are on page 423-437 of the paper book. These documents are in the nature of audited balance sheet and email exchanged for finalization of accounts and there is no connection of these documents with the addition made by the AO. Such documents cannot be held to be incriminating to come to even prima facie satisfaction that some undisclosed income is to be assessed especially in case of unabated assessment years. Therefore, in view of settled position of law which are mentioned herein after in succeeding paras, no addition can be made in the assessment order passed U/s 153C of the Act.

14. Ld CIT-D.R. during the course of hearing referred page 253-258 of paper book filed by dept. which is letter written to Investigation wing, Thane, Maharashtra and stated that the same shows there is post search enquiry on the issue involved. In this regard it has been clarified by the Ld. Counsel that the said enquiry was not done during post search proceeding but during the course of assessment proceedings by the Assessing Officer himself. Further in the entire assessment order there is no reference of any seized documents given by the Assessing Officer nor

any incriminating information or material regarding share capital received from various parties. Therefore, the contention of Ld. CIT-D.R. has been found to be incorrect. Rather, we find the contention of the Ld. Counsel to be correct on face of record and from the impugned orders. In fact, Ld CIT(A) has not accepted the contention of the assessee on the plea that **Hon'ble Delhi High Court in case of Shri Anil Bhatia (211 Taxman 453)(Delhi)** held that the jurisdiction of assessing officer U/s 153A is to assessee total income for the year and not restricted to seized material. Nowhere he has found or held that the impugned addition is based on any incriminating material found during search. This judgement has been heavily relied upon by the Ld. CIT DR also who has read the relevant portion of the judgment before us.

15. In our opinion, Ld CIT (A) has wrongly interpreted the decision of Hon'ble Delhi High Court in case of Shri, Anil Bhatia (supra). In this case in para 23 the Hon'ble Court itself have clarified this aspect in the following manner:-

> ***"23. We are not concerned with a case where no incriminating material was found during the search conducted under Section 132 of the Act. We, therefore, express no opinion as to whether Section 153A can be invoked even in such a situation. That question is therefore left open."***

Thus, from the above finding it is clear that the their Lordships in the above decision has not adjudicated the issue when no incriminating document found during the course of search.

16. Further, Ld. CIT (A) mentioned that in the seized material is in the form of audited balance sheet of the assessee found and the addition is related to share capital which is part of balance sheet. Hence addition relates to seized material. At any stretch of imagination, audited balance sheet cannot be termed as incriminating document so as to draw adverse inference of any undisclosed income as they are already disclosed in the return of income and are already part of earlier assessment as they have been duly disclosed in the balance sheet filed along with the return of income which assessments have attained finality. Once the addition has been made without any incriminating documents or material especially for unabated assessments, then in view of principle laid down by the Hon'ble Delhi High Court in case of **CIT Vs. Kabul Chawla, reported in 380 ITR 573 (Delhi)** such additions cannot be roped in the assessments made u/s 153A. It has held that completed assessments can be interfered with by the AO while making the assessment under Section 153A 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. In the case of assessee the balance sheet was part of return filed by the assessee, hence it cannot be said the same was not available with AO in original assessment and the same can be no way termed as incriminating document unearthed during the course of search. Hence contention of Ld CIT (A) cannot be accepted in view the decision of jurisdictional High Court.

17. Further, Hon'ble Supreme Court in case of **CIT Vs. Sinhgad Technical Education Society (397 ITR 344) (SC)** wherein exactly

similar legal/technical ground was taken for the first time before the ITAT. Further, the Hon'ble Apex Court upheld the order of the Tribunal that addition cannot be made for the assessment years for which there are no incriminating documents found during the course of search in the assessments framed u/s 153C. The Hon'ble Court upheld the order of the Tribunal in the following manner:-

16) In these appeals, qua the aforesaid four Assessment Years, the assessment is quashed by the ITAT (which order is upheld by the High Court) on the sole ground that notice under Section 153C of the Act was legally unsustainable. The events recorded above further disclose that the issue pertaining to validity of notice under Section 153C of the Act was raised for the first time before the Tribunal and the Tribunal permitted the assessee to raise this additional ground and while dealing with the same on merits, accepted the contention of the assessee.

17) First objection of the learned Solicitor General was that it was improper on the part of the ITAT to allow this ground to be raised, when the assessee had not objected to the jurisdiction under Section 153C of the Act before the AO. Therefore, in the first instance, it needs to be determined as to whether ITAT was right in permitting the assessee to raise this ground for the first time before it, as an additional ground.

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 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.

The sequitur of the judgment which can be culled out is that, seized incriminating material has to pertain to the assessment year in question and have co-relation, document-wise, with the assessment year. This requirement u/s 153C is essential and becomes a jurisdictional fact. It is an essential condition precedent that any money, bullion or jewellery or other valuable articles or thing or books of accounts or documents seized or requisitioned should belong to a person other than the person referred to in S. 153A. This judgment of the Hon'ble Supreme Court clearly clinches the issue in favour of the assessee in this case.

18. Recently, Hon'ble Delhi High Court in case of **PCIT Vs. Allied Perfumes P Ltd. (2021) 431 ITR 237 (Delhi)** held as under:-

> ***"13. Upon reading of the aforesaid extracted portion of the impugned order, it is clearly discernable that the ITAT has given a finding of fact that the assessments make no reference to the seized material or any other material for the years under consideration, that was found during the course of search, in the case of the assessee. Mr. Maratha is also unable to point out any incriminating material related to the assessee which could justify the action of the Revenue. Merely because a satisfaction note has been recorded, cannot lead us to reach to this conclusion, especially when the Revenue has not laid any foundation to support their contention. In the factual background as explained above, the assumption of jurisdiction under section 153C cannot be sustained in view of the decision of this Court in the case of Kabul Chawla (supra)"***

19. Thus, considering the facts and circumstances of the case and the aforesaid binding judicial pronouncements, we hold that the additions made in the order passed U/s 143(3) r.w.s. 153C, for the captioned assessment years which are unabated assessments, cannot be made, because same are beyond the scope of assessments u/s 153C/ 153A as the same are without any incriminating documents found during search. Hence on legal grounds the impugned additions are deleted.

20. In the result Revenue's appeals are dismissed.

Order pronounced in the open court on 11/05/2021.

Sd/-	**Sd/-**
(PRASHANT MAHARISHI)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated : 11/05/2021.

MEHTA

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	11.05.2021
Date on which the typed draft is placed before the dictating member	11.05.2021
Date on which the typed draft is placed before the other member	11.05.2021
Date on which the approved draft comes to the Sr. PS/ PS	11.05.2021
Date on which the fair order is placed before the dictating member for pronouncement	11.05.2021
Date on which the fair order comes back to the Sr. PS/ PS	11.05.2021
Date on which the final order is uploaded on the website of ITAT	11.05.2021
date on which the file goes to the Bench Clerk	11.05.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	