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ASSISTANT COMMISSIONER OF INCOME TAX vs. VISION TOWN PLANNERS PVT. LTD.

IN THE ITAT DELHI BENCH 'C'

AMIT SHUKLA, JM & PRASHANT MAHARISHI, AM.

ITA No. 4460/DEL/2014

Aug 13, 2021

(2021) 62 CCH 0420 DelTrib

Legislation Referred to

Section 153C, 158BD

Case pertains to

Asst. Year 2010-2011

Cases Referred to

*Manish Maheshwari vs ACIT & Another (2007) 289 ITR 341
Supermall Pvt. Ltd (423 ITR 281)*

NTPC Ltd. vs. CIT as reported in (1998) 229 ITR 383 (SC)

Pepsico India Holding P Ltd Vs. PCIT (370 ITR 295) (Delhi)

Sinhgad Technical Education Society (397 ITR 344)

ARN Infrastructure India Ltd. (394 ITR 569)(Delhi)

CIT Vs. Kabul Chawla (380 ITR 573)(Delhi)

NRA Iron & steel P Ltd (412 ITR 611)

Sinhgad Technical Education Society (397 ITR 344)

CIT Vs. Kabul Chawla (380 ITR 573)(Delhi)

Counsel appeared:

Rakesh Joshi, Adv. for the Appellant.: Sunita Singh, CIT-D.R for the Respondent

AMIT SHUKLA, JM.

1. The aforesaid appeal has been filed by the Revenue against the impugned order dated 26.03.2014, passed by Ld. CIT(A)-XXXIH, New Delhi for the quantum of assessment passed u/s.153C for the Assessment Year 2010-11. In the grounds of appeal, the Revenue has raised the following grounds:-

"1. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in quashing the assessment which is wrong and is bad in law.

2. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in law and on facts in holding that no satisfaction has been recorded in the case of the person searched.

3. On the facts and in the circumstances of the case, the CIT(A) has erred in law and on facts in relying on the decision in the case of Manish Maheshwari vs ACIT & Another (2007) 289 ITR 341 whereas the facts in the relied case was that no satisfaction at all was recorded..

4. The order of the CIT(A) is erroneous and is not tenable on facts and in law.

5. The appellant craves leave to add, alter or amend any/ all of the grounds of appeal before or during the course of the hearing of the appeal."

2. Before us, the respondent-assessee has also filed grounds under Rule 27(1) of ITAT Rules by raising following grounds for adjudication:-

1) "On the facts and circumstances of the case as well as in Law, the Learned Assessing Office as well as Ld CIT(A) has erred in not appreciating the facts that there is no jurisdiction U/ 153C as there was no books, documents or valuables, cash, jewellery, bullion etc belonging to the assessee were seized from any person searched under section 132 of the I.T. Act.

2) On the facts and circumstances of the case as well as in Law, the Learned Assessing Office as well as Ld CIT(A) has erred in not appreciating the facts that the addition is not sustainable in a non- abated assessment year without any incriminating document found during the course of search."

3. The facts in brief qua the legal issue raised by the parties are that the assessee company was incorporated on 20.03.2009 to carry out the business of Real Estate Development. It had filed its return of income u/s. 139(1) on 12.10.2010 declaring loss of Rs. (-) 97,880/-. A search and seizure action was carried out on various premises of BPTP Group and associate persons on 07.12.2010 which was concluded on 05.02.2011. The assessee company was subsidiary of BPTP International Trade Centre Ltd. up to 30th April, 2010 and thereafter, was taken over by new management of Gurinder Jeet Singh Group. As culled out from the records certain documents related to the assessee company was found during the course of search. On receipt of document from the AO of searched person, the AO of Assessee Company recorded satisfaction on 27/07/2012; however, no satisfaction was recorded by the AO of the searched person. Accordingly, notice U/s 153C was issued on 27/07/2012 in response to which return of Income filed on 15/10/2012 declaring loss of Rs. 97,880/-. As per proviso to section 153C, date of search has to be reckoned from 27/07/2012, that is, date of recording of the satisfaction, accordingly the impugned assessment year cannot be treated as an abated assessment year as per 2nd proviso to section 153A of the Act.

4. Ld. Assessing Officer observed that during the year Assessee Company which was a subsidiary of BPTP International Trade Centre Ltd. had received 10,000 shares and certain share application money letters were found from the residence of Shri N.K. Jain, who was a Company Secretary of BPTP Group and was also subjected to search and seizure. The share application money was received with the premium of Rs. 50 per share from four entities namely,

a) Sunny Cast & Forge Ltd.

b) Adfin Capital Services India Pvt. Ltd.

c) Euro Asia Mercantile Pvt. Ltd.

d) Karishma Industries Ltd.

During the year the share application money received was Rs.374 crore. Ld. Assessing Officer thereafter after detailed discussion had made the addition of the entire share application money along with premium of Rs. 374 crore u/s. 68 and also added amount of Rs.11.22 crore as alleged commission @ 3%. Accordingly, the income was determined at Rs.385,21,02,120/- vide order dated 28.03.2013 passed u/s.153C.

5. Before the Ld. CIT (A) the assessee took a legal plea that, since there is no satisfaction recorded by the AO of the person searched, i.e., Shri N K Jain, therefore, the order passed U/s 153C is null and void. Reliance was placed on the decision of Hon'ble Delhi ITAT in case of DSL Properties P Ltd. ITA No 1344/Del/2012 dated 22/03/2013. Ld CIT (A) after verifying the assessment and after recording his finding at page 12 para 3.4 of his order quashed the assessment order passed U/s 153C as without jurisdiction. In sum and substance, the reasoning of Ld. CIT (A) was that, firstly, satisfaction note for initiation of proceedings u/s.153C was not recorded in the case of the person searched u/s.132, as seized documents claiming to belonging appellant was found from the premises of Shri N.K. Jain and not from BPTP Group; and secondly, seized document claimed to be belonging to the assessee does not belong to it. Accordingly, he quashed entire proceedings after observing as under:-

"I have concluded that the satisfaction note is not recorded in the file of the assessee searched u/s.132 and documents claimed to be owned by the appellant was transferred the file of the appellant. Therefore, the jurisdiction assumed u/s.153C in the case of the appellant is not in accordance with the findings of Hon'ble ITAT in the case of DSL properties (P) Ltd. cited supra. Therefore, it is concluded that the jurisdiction u/s.153C is not assumed properly and in accordance with law as per the decision of Hon'ble ITAT cited supra. Accordingly, the assessment order passed u/s.153C for both the assessment years are hereby quashed."

6. Before us, the Ld. counsel submitted that the CBDT vide Circular No. 24/2015 dated 31.12.2015 had clarified that even if the Assessing Officer of the searched and the "other person" is one and the same then also he is required to record his satisfaction. The relevant Circular No.24/2015 is reproduced hereunder:

CIRCULAR NO. 24/2015

F.No.279/Misc./140 /2015/ITJ New Delhi, 31st December, 2015

Subject: Recording of satisfaction note under section 158BD/153C of the Act - reg.-

The issue of recording of satisfaction for the purposes of section 158BD/ 153C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of M/s Calcutta Knitwears in its detailed judgment in Civil Appeal No.3958 of 2014 dated 12.3.2014(available in NJRS at 2014-LL-0312-51) has laid down that for the purpose of Section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person u/ s 158BD. The Hon'ble Court held that "the satisfaction note could be prepared at any of the following stages:

(a) at the time of or along with the initiation of proceedings against the searched person under

section 158BC of the Act; or (b) in the course of the assessment proceedings under section 158BC of the Act; or (c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person."

3. Several High Courts have held that the provisions of section 153C of the Act are substantially similar/pari-materia to the provisions of section 158BD of the Act and therefore, the above guidelines of the Hon'ble SC, apply to proceedings u/s 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.

4. The guidelines of the Hon'ble Supreme Court as referred to in para 2 above, with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgement. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD /153C should be withdrawn/ not pressed if it does not meet the guidelines laid down by the Apex Court.

7. Thus, he submitted that the CBDT circular makes it very clear that even if the Assessing Officer of the search person and "other person" is the same, then in that situation also, Assessing Officer has to record two separate satisfactions and accordingly the order of the Id. CIT (A) is correct in the light of the CBDT Circular.

8. However, at the time of hearing it was pointed out to the Ld. counsel of the assessee as well as to the Id. CIT-DR that now there is decision of the Hon'ble Apex in case of Supermall Pvt. Ltd (423 ITR 281) wherein the Hon'ble Apex Court held that if AO of both searched person and other person is same, then one satisfaction note is in due compliance of the requirement of section 153C. In the case of assessee, it has been admitted by the Ld Counsel for the assessee that AO is same for the searched persons and assessee and even if satisfaction has been recorded by AO of assessee, then also it meets the requirement of law. Thus, this issue is covered against the assessee by the decision of Apex Court. Accordingly, the ground on which Id. CIT (A) has given his decision does not hold ground in the light of the judgment of Hon'ble Supreme Court.

9. Now in so far as the grounds raised by the assessee under Rule 27 as incorporated above, we find that the same are purely legal ground raising the very jurisdiction of the Assessing Officer u/s.153C, which is purely borne out from the assessment order as well as material placed on record and does not require any investigation of facts, therefore in view of the judgment of Hon'ble Supreme Court in the case of NTPC Ltd. vs. CIT as reported in (1998) 229 ITR 383 (SC). The grounds raised are admitted for adjudication.

10. Before us, Id. counsel has provided the copy of 'satisfaction' note and the documents relating to the assessee company by which jurisdiction has been acquired u/s.153C. He submitted that, it was only these documents which were forwarded to the Assessing Officer of the assessee upon which jurisdiction has been assumed u/s 153C. These documents were found from two premises, one from A-36 New Krishna Park, Tilak Nagar, Delhi which is the premises of Shri N K Jain, Company Secretary of BPTP Group and ex-director of the assessee Company; and another from 5th Floor, DCM Building 16, Barakhamba Road, New Delhi, which is office of BPTP Group. As per reply filed by AO before CIT(A) as mentioned in para 1 page 10 of CIT(A) order, the proceeding u/s 153C was initiated on the assessee company based on satisfaction recorded in case of Shri N K Jain, who was searched U/s 132 of the Act. From this reply of the AO it is very clear that only documents found from the

premises of Shri N K Jain which are listed as Annexure A-1 to A-5 can be relied upon for the purpose of assessment U/s 153C of the Act, however in the satisfaction note provided by the AO, the documents found from the office premises of the BPTP group were also referred as Annexure 7. Though these documents are in the nature of Trial Balance and ledger accounts of the assessee company, which are duly recorded in the books of the assessee, however the same cannot be considered for the purpose of 153C jurisdiction as there is no finding from the AO of BPTP group about the documents belonging to the assessee company, which is first and foremost requirement for assuming jurisdiction U/s 153C of the Act.

11. The core issue which has been argued before us is;

> *Whether the document found from possession of Shri N.K. Jain belongs to the assessee company or not; and*

> *Whether these are in nature of incriminating documents which can lead to any inference that any undisclosed income has escaped assessment or there is any element of undisclosed income so as to be roped in assessment under section 153C for the assessment year which is unabated.*

12. For the sake of ready reference, 'Satisfaction' of Assessing Officer and the documents found from the premises of Shri N.K. Company Secretary of BPTP Group are incorporated hereunder:-

"A search and seizure operation was carried at the business premises as well as the residential premises of BPTP group of cases on 07.12.2010 and was finally concluded on 05.02.2011. During the course of search and seizure operation at the various premises of BPTP group of cases following documents belonging to M/s. Vision Town Planners Pvt. Ltd. were found and seized.

PREMISE: A-36, NEW KRISHNA PARK, TILAK NAGAR, DELHI (PARTY R-3)

ANNEXURE A-1:

Page No.	Description
59-62	Copy of shares certificates of M/s Vision Town Planners Pvt, Ltd issued on 27/04/2010 in the names of M/s Ad-Fin Capital Services India Private Ltd, M/s Euro Asia. Mercantile Private Ltd. M/s Sunny Cast and Forge Ltd and M/s Karishma Industries Ltd and duly. signed by its Directors and Secretary/Authorized Signatory
ANNEXURE A-2:	
Page No.	Description
1-14	Memorandum and Article of association of M/s Vision Town Planners Pvt. Ltd and copy of certificate of incorporation dated 20/03/2009.

15-16	Copies of the resolutions passed in the Board of Meeting of M/s Vision Town Planners Pvt. Ltd on 15/04/2010 and duly signed by its Director Shri N.K. Jain
17-18	Copy of notice dated 20/03/2010 given to the, members for Extraordinary General Meeting along with explanatory notes.
23-24	Form No. 5, Notice of consolidation, division etc or increase in share capital or increase in number of numbers- filed with ROC by M/s Vision Town Planners Pvt Ltd along with receipt of fees filed with ROC.
25-67	Copy of register/Of members, register of share/debenture transfer, register of share holders/debenture holders, register of share application and allotment, register of Director's shareholding of shares and debentures, register of Directors, Managing Directors, Manager, secretary etc of M/s Vision Town Planners Pvt. Ltd for the FY 2008-09. 2009-10 etc
68-74	Copy of shares transfer forms of M/s Vision Town Planners Pvt Ltd with approval date of 30.04.2010 thereby transferring shares from Ramprasad, Jalaj Singh, Digvijay Yadav, Nirbhay Kumar Jain, Sudhanshu Tripathi, Sunil Kumar Jindal and BPTP International Trade Centre Ltd to Shri Ashok Kumar Jain The share transfer forms are duly signed by the transferors and the witness (Garima Grover in all the cases) but not by the transferee
75	List of allottees of equity shares of M/s Vision Town Planners Pvt Ltd as on 27.04.2010
76-80	Form No. 2 Return of allotment of M/s Vision Town Planners Pvt Ltd in respect of allotment of shares on 27.04.2010 along with copy of receipt of fees filed with ROC.
81-93, 130-142	Copy of shares certificates of M/s Vision Town Planners Pvt Ltd transferred from Ramprasad Jalal Singh Digvijay Yadav, Nirbhay Kumar Jain SudhanshuTripathi Sunil Kumar Jindal and BPTP International Trade Centre Ltd in the name of Ashok Kumar Jain on 30.04.2010
94	Form No 22A, Consent of share holders for shorter notice- dated 20.04.2010 issued to the Board of Directors of M/s Vision Town Planners Pvt Ltd by BPTP International Trade Centre Ltd
95-115	Form No. 23 Registration of resolution and agreements dated 26.04.2010 along with extracts of Annual General Meeting, explanatory statement and copy of Article of Association of M/s Vision Town Planners Pvt Ltd duly

	signed by Shri Shri N K Jain as chairman along with copy of receipt of fees filed with ROC.
116-129	Copies of extracts of minutes of meeting of board of directors of M/s Vision Town Planners Pvt Ltd on various dates in the months of March 2010 and April 2010 for the increase in the authorized capital and amendment in the Articles of Association to take on record the receipt of remaining funds from Sunny Cast and Forge Ltd allotment of 15666666 equity shares of the company to M/s Ad Fin Capital Services India Pvt Ltd and transfer of 50000/- equity shares from BPTP International Trade Centre Ltd along with its nominees to Ashok Kumar Jain duly signed by Shri N K Jain as Chairman.
143-172,188	Copies of extracts of minutes of meeting of board of directors of M/s Vision Town Planners Pvt. Ltd on various dates during the period February 2010 to July 2010 and duly signed by its director Nirbhay Kumar Jain, A B Chaturvedi etc.
173-180	Form No.32- Particulars of appointment of Managing Directors, Director, Manager and Secretary and the change among them or consent of candidate to act as a Managing Director or director or manager or secretary of a company and/or undertaking to take and pay for qualification shares of M/s Vision Town Planners Pvt Ltd submitted by Shri Kabul Chawla along with con of receipt of fees filed with ROC.
181-187	Copy of Shares transfer forms of M/s Vision Town Planners Pvt. Ltd with approval date of 30/04/2010 thereby transferring shares from Ramprasad, Jalaj Singh, Digvijayl Yadav, Nirbhay Kumar Jain, SudhanshuTripathi, Sunil Kumar Jindal and BPTP International Trade Centre Ltd to Shri Ashok Kumar Jain. The share transfer forms are duly signed by the transferors, the witness (Garima Grover in all the cases) and the transferee.
189-199	Copy of duly signed Auditor report, balance sheet, P & L account and other schedules forming part of the final accounts as on 31/3/2010 of M/s Vision Town Planners Pvt. Ltd
200-202-205	Copy of the minutes of the meeting of the board of M/s Vision Town Planners Pvt.Ltd in the months of May 2009, February 2010, July 2010 and May 2010.
201	Original letter signed by the director Shri NK Jain of M/s Vision Town Planners Private Ltd thereby giving details of share holdings of M/s Vision Town Planners Pvt Ltd as on 02/12/2009.

ANNEXURE A-3:

Page No.	Description
1-12	Memorandum and Article of association of M/s Vision Town Planners Pvt. Ltd. And copy of certificate of incorporation dated 20/03/2009 duly signed by the director Shri NK Jain
13-20	Form No.22B- Form of return to be filed with-the Registrar of M/s Vision Town Planners Pvt. Ltd along with receipt of payment of challan to ROC
22-39	Copies of cheques of ABN Amro bank dated 20/03/2009 for Rs.50,000/- each, issued by Digvijay Yadav and NK Jain to M/s Vision Town Planners Private Ltd
23	Receipt of payment of the learned to ROC for inspection of public documents of M/s Vision Town Planners Pvt Ltd..
25-28	Form No. 32- Particulars of appointment of Managing Directors, Director, Manager and Secretary and the change among them or consent of candidate to act as a Managing Director or director or manager or secretary of a company and/or undertaking to take and pay for qualification shares of M/s Vision Town Planners Pvt Ltd. submitted by Shri Digvijay Yadav
29-31	Form No. 18 — Notice of situation or change of situation of registered office of M/s Vision Town Planners Pvt. Ltd along with receipt of fees filed with ROC
32-37	Form No. 1A- Application form for availability or change of name, incorporating a new company in the name of Vision Town Planner Pvt. Ltd by ShDigvijay Yadav along with receipt of fees of Rs 5001. filed with ROC
38,44,129	Extracts of meeting held on 21/03/2009 and 28/03/2009 of MA Vision Town Planners Pvt. Ltd and duly sighed by its directors NK Jain and Digvijay Yadav
40-130	Letters dated 24/03/2009 and 28/03/2009 of Digvijay Yadav addressed to the Board of Directors of M/s Vision Town Planners Private Ltd regarding resignation from the Board of Directors
41-42	Letters dated 24/03/2009 to the Registrar of the Company from Kabul

	Chawla and SudhanshuTripathi given their consent to act as Promoter Directors of the proposed company M/s Vision Town Planners Pvt. Ltd.
43	Letter dated 30/03/2009 addressed to the ROC. Kanpur with the request for issuance : of Holding- Subsidiary Certificate duly signed by the director of Mis Vision Town Planners Pvt Ltd-Shri NK Jain.
45-54,58-59	Copies of form I and II of M/s Vision Town Planners Pvt. Ltd regarding beneficial 58-59interest held by M/s BPTP International Trade Centre Ltd in the names of various persons-Sunil Kumar Jindal, Sudhanshu Tripathi, Jalaj Singh, Ramprasad, Digvijay Yadav etc.
55-57	Statement of the preliminary expenses of M/s Vision Town Planners Pvt. Ltd along with details of bills raised by Bansal, Manish and Co.
60-67,78-85	Form No.22B- Form of return to be filed with the Registrar of M/s Vision Town Planners Pvt. Ltd along with receipt of payment of challan to ROC.
68-77	Form No. 23ACA-Forin for filing of Profit and Loss account and other documents with the Registrar, of -M/s Vision Town Planners Pvt Ltd along with notice dated 23/05/2009 and Directors' Report dated 31/3/2009.
86-93	Form No.-20B- Form for filing annual return by a company having share capital with the Registrar of M/s Vision Town Planners Pvt. Ltd along with receipt of payment of challan to ROC.
94-103	Auditor's report, balance sheet and P & L account and other schedules forming part of the final accounts as on 31/3/2009 of M/s Vision Town Planners Pvt. Ltd please signed by the auditor Sanjay Batra and the directors of the company- Sudhanshu Tripathi and NK Jain.
104-108, 131-136	Form No. 32- Particulars of appointment of Managing Directors, Director. Manager and Secretary and the change among them or consent of candidate to act as a Managing Director or director or manager or secretary of a company and/or undertaking to. take and pay for qualification shares of Vision Town Planners Pvt Ltd submitted by Shri Kabul Chawla.
110-114	Form No. 2 - Return of allotment of M/s Vision Town Planners Private Ltd along with receipt of payment of challan to ROC.
115-122	Form No. 5 -Notice of consolidation, division etc or increase in share capital or increase in number of number- of M/s Vision Town Planners Private Ltd along with copy of the ordinary resolution dated 30/10/2009 of

	the company along with receipt of payment of challan to ROC.
123-127	Copy of Board Resolution dated 01/09/2009 of M/s Karishma Industries Ltd for subscribing for equity shares of M/s Vision Town Planners Private Ltd and duly signed by its Director Naresh Kumar Gupta along with letter dated 17/09/2009 of M/s Karishma Industries; Ltd addressed to the Board of Directors of M/s Vision Town Planners Private Ltd, for subscribing to the equity shares of Rs.10 each at a premium of Rs.50 each of M/s Vision Town Planners Pvt Ltd and duly signed by its director Naresh Kumar Gupta and directors of M/s Vision Town Planners Private Ltd and M/s BPTP International Trade Centre Ltd.
138-142	Copy of Board Resolution dated 01/08/2009 of M/s Ad-Fin Capital Services India Pvt.Ltd for subscribing for equity shares of M/s Vision Town Planners Private Ltd and duly signed by its Director Niranjan along with letter dated 13/08/2009 of M/s Ad-Fin Capital Services India Pvt. Ltd addressed to the Board of Directors of M/s Vision Town Planners Private Ltd, for subscribing to the equity -shares of Rs.10 each at a premium of Rs.50 each of M/s Vision Town Planners Pvt Ltd and duly signed by its director Niranjan Kumar Sharma and directors of M/s Vision Town Planners Private Ltd and M/s BPTP International Trade Centre Ltd.
143-147	Copy of Board Resolution dated 01/10/2009 of M/s Sunny Cast & Forge Ltd for,subscribing for equity shares of M/s Vision Town Planners Private Ltd and duly signed by its Director Prem Kumar Mehto along with letter dated 29/10/2009 of M/s Sunny Cast & Forge Ltd addressed to the Board of Directors of M/s Vision Town Planners Private Ltd, for subscribing -to the equity shares of Rs. 10 each at a premium of Rs.50 each of M/s Vision Town Planners Pvt Ltd and duly signed by its director Prem Kumar Mehto and directors of M/s Vision Town Planners Pvt Ltd and M/s BPTP International Trade Centre Ltd.
148-152	Copy of Board Resolution dated 01/09/2009 of M/s Euro Asia Mercantile Pvt. Ltd for subscribing for equity shares of M/s Vision Town Planners Private Ltd and duly signed by its Director Naresh Kumar Gupta along with letter dated 05/09/2009 of M/s Euro Asia Mercantile Pvt. Ltd addressed to the Board of Directors of M/s Vision Town Planners Private Ltd, for subscribing to the equity shares of Rs.10 each at a premium of Rs.50 each of M/s Vision Town Planners Pvt Ltd and duly signed by its director Naresh Kumar Gupta and directors of M/s Vision Town Planners Private Ltd and M/s BPTP International Trade Centre Ltd.
153-171	Copy of the minute book of meeting of Board of Directors of M/s Vision Town Planners Pvt. Ltd on various dates duly signed by the Chairman Shri NK Jain and copy of minutes of meeting of the Board of Directors of M/s Vision Town Planners Pvt. Ltd.

ANNEXURE A-5:

14	Original undated letter of M/s Ad-Fin Capital Services India Pvt. Ltd and duly signed by its director Niranjana Kumar Sharma, addressed to the Board of Directors of M/s Vision Town Planners Private Ltd, thereby giving its approval for increase of the capitalisation of Vision Town Planners Private Ltd.
15-19	Copy of Board Resolution dated 01/08/2009 of M/s Ad-Fin Capital Services India Pvt. Ltd for subscribing for equity shares of M/s Vision Town Planners Private Ltd and duly signed by its Director Nirahjan along with letter dated 13/08/2009 of M/s Ad-Fin Capital Services India Pvt. Ltd addressed to the Board of Directors of M/s Vision Town Planners Private Ltd, for subscribing to the equity shares of Rs.10 each at a premium of Rs.50 each of M/s Vision Town Planners Pvt Ltd and duly signed by its director Niranjana Kumar Sharma and directors of M/s Vision Town Planners Private Ltd and M/s BPTP International Trade Centre Ltd.
20	Original undated letter of M/s Euro Asia Mercantile Pvt. Ltd and duly signed by its director Naresh Kumar Gupta, addressed to the Board of Directors of M/s Vision Town Planners Private Ltd, thereby giving its approval for increase of the capitalisation of Vision Town Planners Private Ltd.
21-25	Copy of Board Resolution dated 01/09/2009 of M/s Euro Asia Mercantile Pvt. Ltd for subscribing for equity shares of M/s Vision Town Planners Private Ltd and duly signed by its Director & Naresh Kumar Gupta along with letter dated 05/09/2009 of M/s Euro Asia Mercantile Pvt. Ltd addressed to the Board of Directors of M/s Vision Town Planners Private Ltd, for subscribing to the equity, shares of Rs.10 each at a premium of Rs,50 each of M/s Vision Town Planners Pvt Ltd and duly signed by its director Naresh Kumar Gupta and directors of M/s Vision Town Planners Private Ltd and M/s BPTP International Trade Centre Ltd.
26	Original undated letter of M/s Karishma Industries Ltd and duly signed by its director Naresh Kumar Gupta, addressed to the Board of Directors of M/s Vision Town Planners Private Ltd, thereby giving its approval for increase of the capitalisation of Vision Town Planners Private Ltd
27-31	Copy of Board Resolution dated 01/09/2009 of M/s Karishma Industries Ltd for subscribing for equity shares of M/s Vision Town Planners Private Ltd and duly signed by its Director Naresh Kumar Gupta along with letter dated 17/09/2009 of M/s Karishma Industries Ltd addressed to the Board of Directors of M/s Vision Town Planners Private Ltd, for subscribing to the

	equity shares of Rs.10 each at a premium I of Rs.50 each of M/s Vision Town Planners Pvt Ltd and duly signed by its director Naresh Kumar Gupta and directors of M/s Vision Town Planners Private Ltd and M/s BPTP International Trade Centre Ltd.
32	Original undated letter of M/s Sunny Cast & Forge Ltd and duly signed by its director Prem Kumar Mehto, addressed to the Board of Directors of M/s Vision Town Planners Private Ltd, thereby giving its approval for increase of the capitalisation of Vision Town Planners Private Ltd.
33-37	Copy of Board Resolution dated 01/10/2009 of M/s Sunny Cast & Forge Ltd for subscribing for equity shares of M/s Vision Town Planners Private. Ltd and duly signed by its Director Prem Kumar Mehto along with letter dated 29/10/2009 of M/s Sunny Cast & Forge Ltd addressed to the Board of Directors of M/s Vision Town Planners Private Ltd, for subscribing to the equity Shares of Rs. 10 each at a premium of Rs.50 each of M/s Vision Town Planners Pvt Ltd and duly signed by its director Prem Kumar Mehto and directors of M/s Vision Town Planners Private Ltd and M/s BPTP International Trade Centre Ltd.

PREMISE: 5TH Floor, DCM BUILDING, 16, BARAKHAMBA ROAD, NEW DELHI (PARTY 0-5)

PARTY-0.5, ANNEXURE A-7:

Page No.	Description
199-217	Ledger accounts of M/s BPTP International Trade Cejjtre Ltd, M/s Ad-Fin Capital Services India Private Limited, M/s Euro Asia Mercantile Private Ltd, M/s Karishma Industries Ltd and M/s Sunny Cast and Forge Ltd for the period from 01/04/2009 to 31/03/2011 in the books of M/s Vision Town Planners Pvt. Ltd.
217	Ledger account of summary of bank accounts of M/s. Vision Town Planners Pvt. Ltd. for the period 01/04/2009 to 05/03/2010.
218	Trial Balance of M/s. Vision Town Planners Pvt. Ltd for the period from 01/04/2009 to 05/03/2010.

In view of above, it is established beyond, doubt that many books of accounts or documents seized during the course of search and seizure action on BPTP group of cases belong to M/s Vision Town Planners Pvt. Ltd i.e. the assessee company and hence prerequisite condition to initiate proceedings u/s 153C of the Income Tax Act, 1961, is fulfilled. Therefore, I am satisfied that case of M/s Vision Town Planners Pvt Ltd is a fit case for initiation of proceedings u/s 153C of the Income Tax Act, 1961. Accordingly, notices u/s 153C r/w 153A of the Income Tax Act, 1961 are issued for AY 2005-06 to 2010-11, in the case of M/s Vision Town Planners Pvt Ltd i.e. the assessee company.

(Dr. Anjula Jain)

Dy. Commissioner of Income Tax,

Central Circle-23, New Delhi."

13. It is an admitted fact that these are the only documents which were the basis and edifice for acquiring jurisdiction u/s.153C and there are no other documents which were found and seized. Before us, the ld. counsel submitted that from the bare perusal of all these documents it may be noted that Shri N K Jain who was the Company Secretary by profession was in possession of these Company law related documents of the assessee company in his professional capacity and accordingly these documents relate to him and not to the assessee company. Most of these documents are available in public domain and anybody by paying a nominal fee for inspection can download all these documents from the website of Ministry of Corporate Affairs (MCA). Most of these documents are copies of original. Further Section 132(4A)(i) clearly stipulates that when inter alia any document is found from the possession or control of any person in the course of a search, then it is presumed that such document belongs to such person. It is similarly provided in Section 292C (1)(i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or "satisfaction" that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of "satisfaction". From plain reading of the satisfaction being recorded in this case there is no such reason discussed by the AO that the documents found from Shri N K Jain belongs to the assessee company. In fact, there are no documents on record to indicate any disclaimer by Shri N K Jain about these documents.

14. In this regard reliance was placed on the decision of Hon'ble Delhi High Court in case of:- i) Pepsico India Holding P Ltd Vs. PCIT (370 ITR 295) (Delhi); and ii) CIT Vs. RRJ Securities Ltd. (62 Taxmann.com 391). He submitted that the facts of the assessee company are quite similar to these cases and the finding of jurisdictional high Court is squarely applicable in this case as well. Since the document does not belong to the assessee company, proceedings u/s 153C cannot be initiated against the assessee company. Therefore, the assessment is without jurisdiction and null and void ab-initio.

15. In the second ground raised u/r 27, the assessee contends that the documents found are not in the nature of incriminating documents. These were all legal documents in compliance with the Company law provisions. None of the documents indicate any undisclosed income or expenses. In such case even if notice U/s 153C is issued, no addition can be made as the impugned assessment year is not an abated assessment year. Even documents found from the premises of BPTP group marked as annexure A-7 in the satisfaction note, are also in the nature of ledger accounts and Trial Balance from the audited books of the assessee company. Nowhere in the assessment order, has Assessing Officer referred these documents while making huge additions. The seized documents must be incriminating and must relate

to the assessment years whose assessments are sought to be reopened. He submitted that now the decision of the Supreme Court in *Sinhgad Technical Education Society* (397 ITR 344) settles the issue and holds this to be an essential requirement. He also strongly relied upon the judgment of Hon'ble Jurisdictional High Court in cases of *ARN Infrastructure India Ltd.* (394 ITR 569)(Delhi), *PCIT Vs Index Securities Pvt. Ltd.* (86 Taxmann.com 84)(Delhi)

16. Ld. Counsel further submitted that, as expressly indicated under section 153C the assessment or reassessment of income of a person other than a searched person would proceed in accordance with the provisions of section 153A. The concluded assessments cannot be interfered with under section 153A unless the incriminating material belonging to the assessee has been seized. This contention also get supported from the decision of Hon'ble Delhi High Court in case of *CIT Vs. Kabul Chawla* (380 ITR 573)(Delhi).

17. On the other hand, Ld CIT DR contented that all the documents found from the premises of Shri N K Jain in fact belongs to the assessee company and therefore, the AO has rightly invoked jurisdiction U/s 153C of the Act. Regarding incriminating documents, Ld CIT DR stated that the AO has given full finding and co-related the addition based on seized material found from the premises of S K Jain brothers, who are hawala operator. Therefore, it cannot be said that addition is not based on seized material. She also relied upon the decision of *NRA Iron & steel P Ltd* (412 ITR 611) and justified the addition made U/s 68 of the Act. She further contended that the word unabated does not find any place in the Act. As per Ld CIT DR, the impugned assessment was only processed U/s 143(1) of the Act hence cannot be treated as completed assessment as no assessment took place for this year.

18. We have heard the rival contentions and also perused the material referred to before us at the time of hearing on the legal issue raised before us. As per the records, the so called documents found stated to be relating to the assessee company were not found from any of the premises of BPTP Group except for Annexure 7, albeit from one of the premises of Shri N.K. Jain who was the Company Secretary of BPTP Group and also ex-director of the assessee company. From the perusal of the description of the documents as mentioned in Annexure A1 to Annexure A5 as mentioned above, all these documents are related to company law requirements, i.e., share certificates, memorandum of association, copy of resolution passed by Board Meeting of the assessee company, copy of notice given to the members for EGM along with explanatory notice, copy of the register of Members, register of share/debenture, transfer register of share application and allotment, etc, copy of share transfer forms, return of allotment, list of allottees, consent of shareholders, form no.22A, form no. 23, copy of extract of minutes, signed audited reports and balance sheet, profit and loss account, receipt of payment to ROC for inspection of public documents of the assessee company, form no. 32, appointment of Management and Directors and Secretaries, etc. and various other forms and letters, addressed to ROC. All these documents were found from Shri N.K. Jain in his professional capacity as he was the Company Secretary of the assessee company. None of these documents can be remotely inferred as incriminating which can remotely deduce that there is any element of undisclosed income or any income which has escaped assessment. Most of these documents are available in public domain and easily accessible to all which can be downloaded from website of Ministry of Corporate Affairs. In so far as documents mentioned in Annexure A-7 these are the ledger account of BPTP International Centre and other company in the books of Vision Town Planner Pvt. Ltd. from the period of 1.09.2005 to 31.3.2011 and ledger account, summary of bank account of the assessee as well as balance. In so far as all the documents mentioned in Annexure A1 to A5 as incorporated above nothing can be said to be belonging to the assessee except for one document mentioned in Annexure A7, i.e., ledger account that at best can be said to belong to assessee.

19. On scrutiny of documents and the nature of documents which are the basis for acquiring the jurisdiction and recording of 'satisfaction' u/s.153C, if analysed deeply, it cannot lead to a satisfaction that these documents belong to the assessee or it is capable of drawing any inference that there is any element of undisclosed income which can be held as incriminating. At best it may be reckoned as

pertaining to Assessee Company. If the documents were found from the possession of Shri N.K. Jain, then presumption is that the documents belonged to the said persons from whose possession the same was found. There has to be some prima facie reason and cogent material that the seized documents does not belong to the searched person but to someone else. Any statutory record or Company Law requirement documents are found from the possession of the professional of the company that does not mean it is a document belonging to the assessee company which can extrapolate to as incriminating. Had there been any document found from searched person indicating that assessee company has arranged some bogus entry or rotated some undisclosed income or any such similar transaction and that document belong to the assessee, then of course Assessing Officer can reach to his satisfaction that undisclosed income for that assessment year needs to be assessed for the assessment years falling within 6 years of section 153C. Nowhere it has been brought on record that there is any statement or disclaimer by Shri N.K. Jain that these documents does not belong to him or pertain to him or based on these documents any adverse inference can be drawn that there is an element of any undisclosed income belonging to or pertained to the assessee.

20.1 Precisely on similar kind of facts, Hon'ble Delhi High Court in the case of Pepsico India Pvt. Ltd. vs. PCIT (supra) has observed as under:

"The finding of photocopies in the possession of a searched person does not necessarily mean and imply that they 'belong' to the person who holds the originals. Possession of documents, and possession of photocopies of documents are two separate things. While the Jaipuria Group may be the owner of the photocopies of the documents, it is quite possible that the originals may be owned by some other person. Unless it is established that the documents in question, whether they be photocopies or originals, do not belong to the searched person, the question of invoking section 153C does not arise.

The Assessing Officers should not confuse the expression 'belongs to' with the expressions 'relates to' or 'refers to'. A registered sale deed, for example, 'belongs to' the purchaser of the property although it obviously 'relates to' or 'refers to' the vendor. In this example if the purchaser's, premises are searched and the registered sale deed is seized, it cannot be said that it 'belongs to' the vendor just because his name is mentioned in the document. In the converse case if the vendor's premises are searched and a copy of the sale deed is seized, it cannot be said that the said copy 'belongs to' the purchaser just because it refers to him and he (the purchaser) holds the original sale deed. In this light, it is obvious that none of the three sets of documents - copies of preference shares, unsigned leaves of cheque books and the copy of the supply and loan agreement - can be said to 'belong to' the petitioner."

20.2 Similarly, in the case of CIT vs. RRJ Securities Ltd. (supra), Hon'ble Jurisdictional High Court has observed as under:

"It was contended on behalf of the revenue that the hard disk contained data pertaining to the assessee and, therefore, it was rightly held that the hard disc belong to the assessee. Concededly, this contention would not be sustainable in view of the principles laid down with regard to the interpretation of the words 'belongs to' in section 153C of the Act. The hard disk was recovered from the computer belonging to 'B' which contained soft copies of working papers and balance sheet pertaining to the assessee for its income tax filing. It has been contended that 'B' is a Chartered Accountant and had the data pertaining to the assessee in his professional capacity. Merely because such data pertained to the assessee who claims to be a client of 'B' the hard disk could not be stated to belong to the assessee. It is not disputed that the said hard disk also did not contain any incriminating material as the data on the hard disc only supported the return filed by the assessee. This apart, as the hard disc did not belong to the assessee, proceedings under section 153C could not be initiated on the basis of the said disk."

21. The aforesaid judgment is quite akin to the present case also, because the nature of document found from Sri N.K. Jain who was professional as well as Company Secretary of the assessee was found to be possessing the documents which most of them are otherwise available in public domain, cannot be held that these documents belong to the assessee capable of inferring any undisclosed income. At least these documents should indicate element of income from any undisclosed source of funds.

22. Since AY 2010-11 is not an abated assessment, i.e., the assessment for Assessment Year 2010-11 had attained finality at the time of recording of the satisfaction, therefore, one has to see, whether these documents are in the nature of incriminating documents in order to warrant any addition on account of undisclosed income. The document which has been referred in the satisfaction note of the seized documents are all legal document in compliance with the company law and professional documents and as stated above, these documents does not indicate any undisclosed income or expenses. Even the ledger account and bank statement as mentioned in Annexure A-7 are duly disclosed in the audited accounts and nowhere is it indicating any undisclosed income not disclosed in the books of the assessee company or audited accounts. There is not a single document mentioned right from the Annexure A1 to Annexure A7 to point out that the share application money received by four companies were either non genuine or bogus or there is any material that these all are in the nature of accommodation entry.

23. Apart from that, one very important fact to be noted here is that nowhere in the assessment order the Assessing Officer has referred to these documents while making the additions u/s. 68 nor there is any adverse inference on any of these documents. In fact none of these documents are the basis for making the addition, rather, even the four letters which has been mentioned in the assessment order, i.e., letter written by the share applicants dated 29.10.2009, 13.08.2009, 5.9.2009 and 17.09.2009 though has not been mentioned in any of the seized Annexures are only referring to subscription of share application money by the subscribers to share capital. At one place at page 7, the Id. Assessing Officer has mentioned that Annexure A1 to A5 of party R-3 seized from the resident of Shri N.K. Jain reveal the modus operandi of financing for acquisition of property seven acres of Vision Town Pvt. Ltd., is far from correct, because the nature of documents mentioned in the Annexure A1 to A7 which have been incorporated above and also part of the satisfaction recorded, nowhere there is any reference of any such modus operandi of financing. If the Assessing Officer has made this allegation the he was required to specify such documents and bring out categorically that there was some document/s found from possession of N.K. Jain which remotely also indicated such modus operandi of financing of share application money or any entry provider was involved. In that case certainly Assessing Officer would have been justified in acquiring jurisdiction u/s 153C. Reference of some other search not related to the assessee in case of S.K. Jain will not justify any addition here. All these observations in the assessment order are not flowing either from the satisfaction note or from the seized documents. It is a well settled law that seized documents must be incriminating and must relate to assessment year whose assessment are sought to be reopened u/s.153C. This principle has been settled by the Hon'ble Supreme Court in the case of *Sinhgad Technical Education Society* (397 ITR 344) settles the issue and holds this to be an essential requirement. We also refer to the decision of Hon'ble Delhi High Court in case of *CIT Vs. RRJ Securities Ltd.* (62 Taxmann.com 391), wherein the Hon'ble High Court held as under:

"Section 153 C only enables the Assessing Officer of a person other than the one searched,, to investigate into the documents seized and/ or the assets seized and ascertain that the same do not reflect any undisclosed income of the assessee (i.e., a person other than the one searched) for the relevant assessment years. If the seized money, bullion, jewellery or other valuable article or thing seized as handed over to the Assessing Officer of the assessee, are duly disclosed and reflected in the returns filed by the assessee, no further interference would be called for. Similarly, if the books of account/ documents seized do not reflect any undisclosed income, the assessments already made cannot be interfered with Merely because valuable

articles and/or documents belonging to the assessee have been seized and handed over to the Assessing Officer of the assessee would not necessarily require the Assessing Officer to reopen the concluded assessments and reassess the income of the assessee.

The question whether the documents/ assets seized could possibly reflect any undisclosed income has to be considered by the Assessing Officer after examining the seized assets/documents handed over to him. It is only in cases where the seized documents/assets could possibly reflect any undisclosed income of the assessee for the relevant assessment years, that further enquiry would be warranted in respect of those years. Whilst, it is not necessary for the Assessing Officer to be satisfied that the assets/ documents seized during search of another person reflect undisclosed income of an assessee before commencing an enquiry under section 153C, it would be impermissible for him to commence such enquiry if it is apparent that the documents/assets in question have no bearing on the income of the assessee for the relevant assessment years."

24. Thus, we hold that the concluded assessment cannot be interfered unless there is incriminating material discovered from the seized documents belonging to the assessee, and no additions can be made where the assessments are framed u/s.153C for unabated year. The seized documents must at least clearly point out that there is some undisclosed income, which here in this case, even for the sake of repetition, it is reiterated that none of the documents are in the nature of incriminating material so as to warrant any additions.

25. In so far as the submissions made by Id. CIT-DR that the documents belongs to Assessee Company is contrary to the decision of jurisdictional High Court as referred to above. Secondly, regarding incriminating documents, Ld CIT DR could not rebut that in the assessment order, AO has not linked any of the documents found from the searched premises of BPTP group. However, she contended that AO has linked the addition with the documents found during the search action on S.K. Jain Brothers. At the outset, the documents found from S.K. Jain is neither the basis of satisfaction u/s 153C nor any material or information relating to the assessee company was found from the possession of searched person. It is relevant to note here that the proceeding U/s 153C has been initiated on the basis of search action on BPTP group and not on the basis of S K Jain Brothers. Therefore, the AO has to first justify the basis to investigate the issue of share capital based on documents found from BPTP group and if there is some indication of any undisclosed income based on the documents found from BPTP group then he/she can rely on the search finding of the other group. As held by the Hon'ble Delhi High Court in case of CIT Vs. RRJ Securities Ltd. (62 Taxmann.com 391) that the question whether the documents/assets seized could possibly reflect any undisclosed income has to be considered by the Assessing Officer after examining the seized assets/documents handed over to him. It is only in cases where the seized documents/assets could possibly reflect any undisclosed income of the assessee for the relevant assessment years, that further enquiry would be warranted in respect of those years. Whilst, it is not necessary for the Assessing Officer to be satisfied that the assets/documents seized during search of another person reflect undisclosed income of an assessee before commencing an enquiry under section 153C, it would be impermissible for him to commence such enquiry if it is apparent that the documents/assets in question have no bearing on the income of the assessee for the relevant assessment year. Ld CIT Dr failed to appreciate the fact that the verification of documents found from the premises of S K Jain brothers is part of further investigation on the matter which cannot be achieved without satisfying the condition that the seized material is in the nature of incriminating documents or not.

26. Regarding completed assessment for unabated assessment year, we are unable to agree to the proposition of Ld. CIT DR that only if assessment completed U/s 143(3) can only be treated as completed assessment. The language used in second proviso to section 153A refers that the pending assessment shall abate. Here the pending means the assessment year for which notice U/s 143(2) or 148 issued but assessment not completed. Therefore, the years for which no such notices issued within the

time period allowed, the assessment will be treated as completed assessment. This position clearly laid down by the Hon'ble Delhi High Court in case of CIT Vs. Kabul Chawla (380 ITR 573)(Delhi), wherein it was held as under:

"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."

27. As far as reliance on decision of Supreme Court in case of NRA Iron and Steel P Ltd. is concerned, the applicability of this decision is on merits/ quantum addition u/s 68 of the Act and not on the legal ground raised by the assessee company, hence the same is irrelevant while adjudicating legal issues.

28. In view of our observation and finding given hereinabove, we hold that firstly, none of the documents mentioned in the satisfaction note from Annexure A-1 to A-7 are incriminating in nature which can infer any undisclosed income relating to assessee-company for the Assessment Year 2010-11 nor there is any document which indicates that there is any bogus transaction regarding share application money received by the assessee during the year; secondly, the additions made by the

Assessing Officer in the impugned assessment year has no reference to any seized document or material as mentioned in the satisfaction note which is the basis for acquiring jurisdiction u/s.153C and; lastly, the impugned assessment year was not pending as the assessment stood completed before the date of initiation of proceedings u/s.153C, therefore, without any incriminating material, no new addition can be made in the impugned assessment year. Accordingly, the additions made by the Assessing Officer are beyond the scope of Section 153C r.w.s. 153A.

29. In the result, the grounds raised by the assessee in Petition under Rule 27 are allowed and Revenue's appeal is dismissed for the reasons given above.

Above decision was announced on conclusion of Virtual Hearing in the presence of both the parties on 13/08/2021.

Customized Notes

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