IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 31ST DAY OF MARCH, 2023

PRESENT

THE HON'BLE MR JUSTICE K.SOMASHEKAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

ITA No.705 OF 2018

BETWEEN:

1. THE PR. COMMISSIONER OF INCOME-TAX, CIT(A)
   CENTRAL CIRCLE, C. R. BUILDING
   QUEEN'S ROAD
   BENGALUR – 560 001.

2. THE DEPUTY COMMISSIONER OF INCOME-TAX
   CENTRAL CIRCLE, C. R. BUILDING
   QUEEN'S ROAD
   BENGALUR – 560 001.

…APPELLANTS

(BY SRI. ARAVIND .K .V- ADVOCATE)

AND:

SMT. G LAKSHMI ARUNA
NO.8, ASHOKNAGAR
HAVAMABAVI
SURUGUPPA ROAD
BELLARY – 583 101
PAN:AFJPA 5974P

…RESPONDENT

(BY SRI. MAYANK JAIN - ADVOCATE)

THIS ITA IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO: i)FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED IN THE APPEAL AND ALLOW THE APPEAL; ii) SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU IN M.P.NO.152/BANG/2016 (IN ITA NO.1457/BANG/2014) DATED 06.03.2018 FOR ASSESSMENT YEAR 2011-2012 VIDE ANNEXURE-D AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE – 1(3), BENGALURU; AND iii) SET ASIDE THE ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL IN ITA NO.1457/BANG/2014 DATED 18.10.2016 FOR ASSESSMENT YEAR 2011-12.

THIS ITA HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 22.02.2023, COMING ON FOR PRONOUNCEMENT OF JUDGMENT THIS DAY, **K.SOMASHEKAR, J.,** DELIVERED THE FOLLOWING:

J U D G M E N T

This appeal preferred by the Revenue is directed against the order passed by the Income Tax Appellate Tribunal, Bengaluru (for short "ITAT") in M.P.No.152/Bang/2016 (in ITA No.1457/Bang/2014) dated 06.03.2018 for assessment year 2011-2012 vide Annexure-D. The prayer sought for in this appeal is to set aside the said order by allowing the appeal and confirming the order of the Appellate Commissioner and thereby confirming the order passed by the Deputy Commissioner of Income Tax, Central Circle – 1(3), Bengaluru and with a further prayer seeking to set-aside the order passed by the Income Tax Appellate Tribunal in ITA No.1457/Bang/2014 dated 18.10.2016 for the assessment year 2011-12 vide Annexure-C.

2. Heard learned standing counsel Sri K.V.Aravind for appellant / revenue and the learned counsel Shri Mayank Jain for respondent/assessee. Perused the order passed by the Deputy commissioner of Income Tax Central Circle-1(3), Bangalore in respect of assessment order and the order passed by the Commissioner of Income Tax (Appeals)- VI, Bangalore dated 25.08.2014.

3.The factual matrix of this appeal are as under:

It is stated in the statement of fact that under Section 132 of the Income Tax Act, 1961 carried out in the case of Sri K.Raghuvacharyulu, Smt.Renuka.G and others on 25.10.2010 certain documents belonging to the assessee was found and seized. Consequently, based on the said evidence, the assessing officer of the searched person recorded the satisfaction note in the case of Gali Janardhan Reddy and issued notice under Section 153C for the assessment year 2005-2006 to 2010-2011 and notice under Section 143(3) for the assessment year 2011-2012. It is further stated that the assessment proceedings under Section 153C read with Section 144 of the Act were concluded for the assessment year 2005-06 to 2010-11 and under Section 144 read with Section 153D for the assessment year 2011-12 being the year of search vide orders dated 31.03.2013 determining assessed income of Rs.45,96,38,679/-. Aggrieved by the above order of the Assessing Officer, the assessee filed appeal before the Commissioner of Income Tax (Appeals)-11, Bangalore. Wherein the said authority passed consolidated order for the above assessment years confirmed the orders passed by the assessing

officer for the year under consideration and also search assessment orders for other assessment years. Aggrieved by the said order, the assessee filed an appeal before the Income Tax Appellate Tribunal. The Tribunal knocked down the assessment proceedings for all seven assessment years on the technical grounds raised by the assessee on validity of assessment order vide order in ITAT No.1451 to 1457 dated 18.10.2016. The Tribunal held that there is no satisfaction recorded by the assessing officer of the searched person (153A case) in the file of searched person. Therefore, the Tribunal held that mere recording of satisfaction in the file of the assessee would not suffice. The Tribunal quashed the assessment orders framed for all 7 assessment years by relying on the decision of Allahabad High Court in the cased of M/s.Gopi Apartments and the Hon'ble Apex Court in the case of M/s.Calcutta Knitwears. After taking into account the best remedial action, since the time was available to reopen the assessment for the year 2010-11, the proceedings were reopened by issuance of notice under Section 148 and subsequently, the assessment proceedings were concluded by passing an order of reassessment under Section 147 read with Section 144 by bringing to tax all the income which formed part of

total income under the original assessment order passed. However, it was noticed that though the assessment proceedings was initiated by issue of notice under Section 143(2), The Tribunal vide said order also knocked down the assessment proceedings completed under Section 144 read with Section 153D on similar ground that no satisfaction note was recorded by the assessing officer of the searched persons which is factually not applicable to the proceedings for the year under consideration.

4. Being aggrieved with the decision of the Tribunal, the Revenue filed a miscellaneous petition before the Tribunal for modification of its order to that extent being mistake apparent from the record. But the Tribunal dismissed the Revenue's contention by solely relying on the decision of **Delhi High Court in the case of M/s. RRJ Securities Ltd**. Hence, this appeal is preferred by the Revenue / Appellant among the grounds urged therein and seeking for intervention.

5. In view of the grounds urged in this appeal preferred by the Revenue the following substantial questions of law would arise for response to the same:

(i) Whether on the facts and circumstances of the case, the Tribunal is right in law in holding that the assessment year relevant to the financial year in which the satisfaction note is recorded under Section 153C of the Act will be taken as the year of search for the purposes of clause (a) and (b) of sub-section 1 of Section 153A by making reference to first proviso to sub-section 1 of Section 153C despite the fact that this first proviso to sub-section 153C refers to the second proviso to sub-section 1 of Section 153A specifically and hence, is not applicable at all to all the clauses (a) and (b) of sub-section 1 of Section 153A of the Act?

(ii) Whether on the facts and circumstances of the case, the Tribunal is right in law in setting aside assessment order passed for assessment year 2011-12 by holding that there is no satisfaction recorded by the assessing officer of the searched person (153A) in the file of the said person ignoring the intention of legislature and even when the assessing authority has passed assessment order after recording satisfaction as required under Section 153C of the Act?

(iii) Whether on the facts and in the circumstances of the case, the Tribunal is right in law in holding that order of assessment made for the Assessment Year 2011-12 is liable to be set-aside for non-compliance of conditions under Section 153C of the Act, when the assessment order is made under the normal provisions of the Act as the same was not falling within the period of 6 years being year of search as is referred to in Section 153A/153C of the Act?

6. It is in this contentious contentions made by learned standing counsel Sri K.V.Arvind who has taken us through the impugned order passed by the Appellate Tribunal whereby challenged under this appeal and wherein the Tribunal has erroneously given more credentiality in respect of the decision rendered by the Delhi High Court in which the Court has interpreted Section 153C beyond the scope of the statute leading to results that are not in harmony with the intention of the legislature. On this premise it requires the intervention of this Court, if not, it would cause miscarriage of justice.

7. It is further submitted that the decision of the Delhi High Court in the case of CIT vs. RRJ Securities Limited relied on by the

Tribunal, is not applicable to the present case since, it has not reached finality.

8. The second limb of the argument advanced by the learned standing counsel for the appellant is that the Tribunal erred in holding that the assessment year relevant to the financial year in which the satisfaction note is recorded under Section 153 C of the Act will taken as the year of search for the purpose of clause(a) and (b) of sub-section 1 of Section 153A by making reference to proviso to sub-section 1 of Section 153C despite the fact that the first proviso to sub-section 1 of Section 153C refers to second proviso to sub-section 1 of section 153A specifically and therefore, not applicable at all to all the clauses (a) and (b) of subsection 1 of Section 153A of the Act.

9. It is further contended that Tribunal erroneously set-aside the assessment order passed for the year assessment year 2011-12 holding that there is no satisfaction recorded by the assessing officer of the searched person (153A) in the file of the said person ignoring the intention of legislature and even when the assessing authority has passed assessment order after recording satisfaction as required under Section 153C of the Act. Therefore, the

appellant/Revenue in this matter raising all these grounds and also substantial questions of law relating to the order passed by the Tribunal. On all these premises the learned standing counsel for the appellant/revenue, emphatically submits to seek intervention of this court to avoid the miscarriage of justice to the Revenue being arraigned as appellant in this appeal.

10. It is further contended by counsel for the appellant keeping in view the notice under Section 142 (1) which was issued on 21.12.2012 calling for the return of income for assessment year 2011-2012. In response to the aforesaid notice, respondent/ assessee filed a letter dated 28.12.2012, which was received on 01.01.2013, in which the assessee has stated that CBI has seized all the relevant material, including the books of accounts, during September, 2011. Therefore, the assessee has expressed her inability to file the return of income. The assessee further states that she has not received any rent, interest, etc, as all her assets are placed under attachment by various authorities. These are all the observations made in the assessment order passed by the Deputy Commissioner of Income Tax Central Circle-1(3), Bangalore for the assessment year 2011-12. The assessee's

husband namely G. Janardhana Reddy is currently in judicial custody in connection with the cases filed by the CBI taking cognizance of the illegal mining activities carried out by him. This information was obtained from CBI, Hyderabad. The income relating to the assessee and her minor children as per the documents received from the CBI were reproduced. The annual income details for the year financial year 2010-11 is as under:

Particulars	Smt.Lakshmi Aruna (wife)	G.Brahmani (Daughter)	G.Kireeti (Son)
Salary Income	Nil	Nil	Nil
Rental Income	18,18,811	Nil	Nil
Income from Business (Unaudited)	45,96,38,679	Nil	Nil
Interest Income	2,42,26,434	9,90,386	6,33,782

11. The assessee was intimated, vide office letter dated 07.01.2013 to obtain copies of relevant material which are in possession of CBI or any other agency and prepare the return of income showing the correct income earned during the financial year 2010-11. Based upon this penalty proceedings under Section 271(1)(c) and 271F were initiated.

12. It is observed in paragraph 5.4 of the order dated 31.03.2013, that in the previous years, the assessee has opted to club the income of minor children with her income, as the TDS deducted from the Banks are in the name of assessee. Therefore, the income of minor children are clubbed with the income of assessee and assessment is concluded as under:

Income arrived as discussed above		
Income from salary		18,18,811
Income from business		45,96,38,679
Interest Income		
Smt.Lakshmi Aruna	2,42,26,434	
Ms.G.Bramhani (Minor daughter)	9,90,386	
Master G.Kireeti (Minor son)	6,33,782	2,58,50,602
Gross Total Income		48,73,08,092
Tax thereon		14,60,43,427
Add:Education Cess @ 3%	43,81,302	
Total tax		15,04,24,729
Less: TDS	28,20,543	
Balance Tax		14,76,04,186
Less: Advance Tax	7,50,00,000	
Balance Tax		7,26,04,186
Add: Interest u/s234A – 1,30,68,753 235B – 1,59,97,806	2,90,66,559	

Total Tax		10,16,70,745
Less: 140A paid	2,00,00,000	
Net Amount Payable		8,16,70,745

13. It is further contended by the standing counsel for the appellant, that against the order passed by the Deputy Commissioner of Income Tax, Central Circle 1(3), Bangalore dated 31.03.2013, further an appeal was preferred before the Commissioner of Income Tax (Appeals) – VI wherein the appellate order and ground of decision was passed. The assessments under Section 153C read with Section 144 of the IT Act for assessment years 2005-06 to 2010-11 and under Section 153D read with Section 144 for the assessment year 2011-12 were completed following search and seizure action under Section 132 of the IT Act carried out in the case of Sri Madhu, Smt.Renuka, Sri Raghavacharyulu and others on 25.10.2010. During the course of search proceedings, various documents belonging to the appellant were assessed as detailed in the assessment orders. These are all the provisions that has been appraised by the learned standing counsel Sri K.V.Arvind for the Revenue/appellant. It is stated that the proceedings initiated

under Section 153C are therefore in order and in accordance with law, and the same are upheld for all the assessment years involved. It was also indicated in a tabular form in the aforesaid order. The issues involved on merits were discussed and also assigning the reasons it is relating to principles of natural justice.

14. Further, at para No.7 of the order dated 25.08.2014 related to capital gains, it is stated as assessment of long term capital gains Rs.5,25,000/-, the Assessing Officer has brought on record that seized material marked as 'RB/1', found from the premises of Sri K.Raghavacharyulu was sale agreement dated 26.12.2005 for land at Sy.No.25A, Ganesh Nagar, measuring 4200 sq.ft as per which the appellant had sold the property in question and the capital gains earned thereon had not been declared for tax. Accordingly, a sum of Rs.5,25,000/- was brought to tax.

15. Further at paragraph 8 of the order relating to bogus transportation expenses claimed for the assessment years 2009-10 and 2010-11, the assessing officer has brought on record that the appellant has claimed transportation expenses for the years in question. The same was indicated in the below tabular form.

A.Y	Total Transportation Expenses claimed (Rs.)	Transport Expenses Disallowed (Rs.)
(I)	(II)	(III)
2009-10	28,76,23,325	9,95,82,217
2010-11	2,29,05,056	1,46,91,363

Of these, the Assessing Officer found that to the extent given in column 3 above, the appellant was unable to substantiate the said expense claimed before the Assessing Officer.

16. In respect of assessment of income of Rs.48,73,08,092/- for the assessment year 2011-12 the assessing officer has made an assessment of business income of the appellant for the assessment year in question of Rs.45,96,38,679/-. The assessed income included income from salary Rs.18,18,811/- and income from interest Rs.2,42,26,434/- of the appellant and of minor daughter Ms.G.Bramhani Rs.9,90,386/- and minor son Master G.Kireeti Rs.6,33,782/- clubbed as had been done by the appellant in earlier years. This is based on the information furnished by the CBI, Hyderabad, as

the appellant did not file her return of income in response to the notices issued. The appellant is in appeal against the said assessment. The claim of the appellant in appeal is that this income, if any, is share income from partnership firm and is not taxable. However, in absence of any further details or evidences furnished either before the assessing officer(who has provided sufficient opportunity) or during the course of appeal, the findings of the assessing officer and the inference drawn do not deserve any interference and therefore, the assessment made is in order and is upheld. In the result, the appeals for all the assessment years in question were dismissed. This order has been passed by the Commissioner of Income Tax (Appeals) – VI, Bangalore. The same is also appraised by the learned standing counsel Sri K.V.Aravind by referring to the aforesaid provision and also seeks for intervention of this Court, if not, there will be miscarriage of justice to the appellant / Revenue.

17. The Assessee namely Smt. G.Lakshmi Aruna preferred appeals against the combined order of CIT(A) – VI, Bangalore dated 25.08.2014 for the assessment years 2005-06 to 2011-12 before the Income Tax Appellate Tribunal, Bangalore Bench 'B',

Bangalore in ITA No.1451 to 1457 (Bang) 2014 (Assessment years 2005-06 to 2011-12). The assessee has objected to the validity of the assessment order passed under Section 153C read with Section 144 of the IT Act. In the appeal serious objection was raised with respect to initiation of proceedings under Section 153C of the I.T.Act by contending that no satisfaction was recorded by the assessing officer in the case of searched person that the incriminating material found during the course of search belongs to the assessee and therefore, the assessment completed under Section 153C of the Act is illegal. Even the written submissions were accepted on 07.09.2016. These written submissions of learned DR of the revenue submitted on 07.09.2016 were reproduced in the said order. In the said order certain reliances were referred to. The decision of the Hon'ble Supreme Court in the case of CIT vs. Calcutta Knitwears 43 taxmann.com 446 (SC), which is rendered in connection with search assessments under Chapter XIV – B (Sections 158B to 158BH) which are different provisions compared to assessments of the assessee which relate to the new search assessment procedure as contained under Sections 153A to 153C which are brought into statute w.e.f. 1.6.2003.

18. It was observed that the assessment of the person covered under provisions of Section 153A is the same as the officer of the person covered under provisions of Section 153C and, therefore, there is no issue of transmission of records. Copies of the assessment orders in the cases of Sri K.Raghavacharyalu and Smt.G.Renuka are enclosed to establish that the assessing officer i.e., Shivanand H.Kalakeri, had done the assessments in the case of the assessee. Even the assessing officer of the assessee has recorded satisfaction in the case of the assessee. The eventuality of an assessing officer of the person covered under provisions of Section 158BC being the same as the officer of the person covered under provisions of Section 158BD is not examined by the Hon'ble Court in the case of ***CIT vs. Calcutta Knitwears 43 taxmann.com 446 (SC)***. Therefore, in view of the fact that assessing officer of person covered under provisions of Section 153A being the same as the officer of the person covered under provisions of Section 153C and the assessing officer having recorded the satisfaction before issuing notice under Section 153C, sufficient compliance has been made by the assessing officer as required under the provisions of the statute.

19. The satisfaction note dated 14.12.2012 was reproduced by the Tribunal, in the said note, it is stated as, the search under Section 132 was conducted on 25.10.2010. Even in the impugned order passed by the ITAT dated 18.10.2016 by clubbing all the seven appeal matters. This contain instruments of partnership deed entered on 8.1.2006 between Sri B. Srinivas Reddy, Sri Parameshwara Reddy, Sri B.Sreeramulu, Sri G Karunakar Reddy, Sri Somashekar Reddy, Smt.G.Lakshmi Aruna in the name and style of Hotel Nagarjun. A search under Section 132 was also conducted on 25.10.2010 in the case of Smt.G.Renuka at 'Rishikesh'. Wherein it is indicated that these pages contain trial balance of Gali Janardhana Reddy for the financial year 2009-10. Accordingly, being satisfied that the documents and book account belonging to Gali Janardhana Reddy have been found and seized from the searched premises of Sri Raghavacharyulu and Smt.G.Renuka. Notice was issued under Section 153C of the Income Tax Act, 1961. These are all the contentions made by learned standing counsel Sri K.V.Arvind referring to the aforesaid provisions and also by urging various grounds. It is observed that before initiating proceedings under Section 158BD of the Act, the assessing officer who has initiated proceedings for completion of

the assessments under Section 158BC of the Act should be satisfied that there is an undisclosed income which has been traced out when a person was searched under Section 132 of the books of accounts were requisitioned under Section 132A of the Act. This is in contrast to the provisions of Sections 148 of the Act where recording of reasons in writing are sine qua non. Further, it is observed that under Section 158BD the existence of cogent and demonstrative material is germane to the assessing officers' satisfaction in concluding that the seized documents belong to a person other than the searched person is necessary for initiation of action under Section 158BD. It is further observed that the conditions precedent for invoking the provisions of Section 158BD, thus, are required to be satisfied before the provisions of the said chapter are applied in relation to any person other than the person whose premises had been searched or whose documents and other assets had been requisitioned under Section 132A of the Act. It was observed that the Tribunal has not only followed the judgment in the case of M/s.Gopi Apartment (Supra) but the Tribunal has also considered and followed the judgment of Hon'ble Apex Court reported in the case of Calcutta Knitwears (supra) and also in the case of Manish Maheshwari as reported in 289 ITR 341.

However, the ITAT has considered the grounds which are urged by the respondent/assessee and accordingly, the notice issued by the assessing officer under Section 153C of the IT Act was quashed and also quashed the assessment orders framed by the assessing officer under Section 153C read with Section 143(3) of the IT Act. In the line of the order rendered by the Tribunal in the case of the husband of the present assessee Gali Janardhan Reddy in ITA No.1444 to 1450/Bang/2014(supra), the issue having been decided in favour of the assessee it is held that the all seven assessment orders passed by the assessing officer under Section 153C read with section 144 were quashed vide order dated 18.10.2016. Further, it is also prayed to set aside the order passed by the ITAT, Bengaluru in MP No.152/Bang/2016 (in ITA No.1457/Bang/2014) dated 06.03.2018 for Assessment year 2011-12 as per Annexure-D and confirm the order of Appellate Commissioner confirming the order passed by the Deputy Commissioner of Income Tax Central Circle-1(3) Bengaluru. The said order has been challenged under this appeal by urging various ground seeking intervention, if not, there shall be miscarriage of justice as against appellant / Revenue. The substantial questions of law requires to be considered in a given

facts and circumstances of the case. Therefore, learned standing counsel Sri Arvind K.V. emphatically and also forcefully submitting that impugned orders as per Annexure-C and D may be set-aside.

20. Apart from the contentions, the learned standing counsel has also filed written submission contending that the search under Section 132 was conducted on 25.10.2010 in the case of Shri. K. Raghavacharyulu. Pursuant to the search, proceedings under section 153C of the Act wee initiated in the case of the assessee for the Assessment Year 2005-06 to 2010-11 after recording satisfaction required under section 153C of the Act. Hence, setting aside of the assessment for the Assessment Year 2011-12 on the ground that satisfaction under section 153C of the Act was not recorded by the Assessing officer of the searched person was mistake apparent on the record. Hence, Miscellaneous Petition was filed for seeking rectification of the above mistake and to consider the same on merits, hence, the miscellaneous petition came to be rejected by the tribunal by holding that period of 6 years has to be counted from the date of handing over of the books of accounts and not the date of search. Assessment Year 2011-12 would be within the period of

6 assessment years, hence conditions required under Section 153C of the Act are required to be satisfied.

21. It is further contended that Section 153A(1)(b) of the Act provides for assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such searches conducted requisition is made. The date of search relevant for the present case is 25.10.2011 and Assessment Year 2011-12 relevant to the financial year in which search was conducted is excluded for the purpose of computing six assessment years in terms of section 153A(1)(b) of the Act. The first proviso to Section 153A of the Act provides for assess or reassess the total income in respect of each assessment year falling within such six assessment years. The reference to "**such six assessment years"** is with reference to 6 assessment years referred to in section 153A(1)(b) of the Act. Second proviso to Section 153A of the Act provides for abatement of pending assessments as on the date of search. The effect of the second proviso is that any assessment pending as on the date of search with reference to 6 assessment years referred to in 153A(1)(b) of the Act would get abated.

22. He further contends that Section 153C of the Act provides for assessment in the case of other person and issue of notice and assess or reassess the income of the other person in accordance with the provisions of section 153A of the Act subject to conditions contemplated therein. First proviso to section 153C of the Act refers to second proviso of section 153A(1) of the Act for determination of abatement of assessments in the case of proceedings being initiated under section 153C of the Act. The date of search for the purpose of abatement referred to in section 153A of the Act is provided to be the date of receiving the books of account or documents or asset seized or requisitioned by the Assessing Officer having jurisdiction over such other person. The effect of the first proviso is that the assessment pending in respect of the six assessment years referred to in section 153A(1)(b) of the Act would get abated on the date of receipt of books of accounts or documents or asset seized by the Assessing Officer having jurisdiction over such other person. Therefore, on a combined reading of section 153A(1)(b), first and second proviso to section 153A of the Act, Section 153C and the first proviso to Section 153C of the Act would mandate that period of six assessment years for the purposes of section 153Aand 153C of

the Act is one and the same and would not alter in respect of both the provisions. The above understanding is further strengthened by the language of section 153C(1) of the Act wherein issue of notice and assess or reassess the income of the other person in accordance with the provisions of section 153A of the Act is provided. Even if the proceedings under section 153C of the Act are initiated, the procedure is contemplated under section 153A of the Act. In view of the above, period of six assessment years for the purpose of section 153A of the Act referred to in clause (b) to section 153A(1) of the Act would equally apply to section 153C of the Act.

23. Learned standing counsel for the appellant, would also contend that the above issue has been considered by the Delhi High Court in the case of **(2012) 20 taxmann.com214 Delhi SSP aviation Ltd vs. DCIT** wherein at para-14 held as under:-

> *"**14.** Now there can be a situation when during the search conducted on one person under Section 132, some documents or valuable assets or books of account belonging to some other person, in whose case the search is not conducted, may be found. In such case, the Assessing Officer has to first be satisfied under*

Section 153C, which provides for the assessment of income of any other person, i.e., any other person who is not covered by the search, that the books of account or other valuable article or document belongs to the other person (person other than the one searched). He shall hand over the valuable article or books of account or document to the Assessing Officer having jurisdiction over the other person. Thereafter, the Assessing Officer having jurisdiction over the other person has to proceed against him and issue notice to that person in order to assess or reassess the income of such other person in the manner contemplated by the provisions of section 153A. ***Now a question may arise as to the applicability of the second proviso to Section 153A in the case of the other person, in order to examine the question of pending proceedings which have to abate. In the case of the searched person, the date with reference to which the proceedings for assessment or reassessment of any assessment year within the period of the six assessment years shall abate, is the date of initiation of the search under Section 132 or the requisition under Section 132A. For instance, in the present case, with reference to the Puri Group of Companies, such date will be 5.1.2009. However, in the case of the other***

person, which in the present case is the petitioner herein, such date will be the date of receiving the books of account or documents or assets seized or requisition by the Assessing Officer having jurisdiction over such other person. In the case of the other person, the question of pendency and abatement of the proceedings of assessment or reassessment to the six assessment years will be examined with reference to such date."

24. He further contends that the reliance of the assessee on the judgment of the Delhi High Court in the case of RRJ securities Ltd is incorrect and the same has not dealt with the proposition canvassed above. The Delhi High Court has not considered the limited purpose of second proviso to section 153A and first proviso to section 153C of the Act, which mandates the point of abatement with respect to period of six assessment years referred to in section 153A(1)(b) of the Act. Further, the Delhi High Court has not considered the implication of reference made to section 153A of the Act in section 153C of the Act enabling issue of notice and assess or reassess the income of the other person in accordance with the provisions of section 153A of the Act. Further the Delhi High Court has not specifically held that the period of six assessment years would be difference for the purpose of section

153A and 153C of the Act. Assuming without admission if the contention of the assessee that period of six years has to be recorded with reference to the date of receiving the books of account or documents or asset seized or requisitioned by the Assessing Officer having jurisdiction over such other person, the same would amount to rewriting of section 153C of the Act which is specifically disapproved by Apex Court and various High Courts. If the contention of the assessee is to be analysed, that proceedings under section 153C of the Act can be initiated on the Assessing Officer being satisfied that any money, bullion, jeweler or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A of the Act, thus on reading the above provision it is clear that proceedings can be initiated under section 153C of the Act on the basis of the above material found in the searched premises belonging to the other person. Proceedings under section 153C of the Act would always be post search under section 132 of the Act in the case of the searched person. When the searched person is subjected to proceedings under section 153A of the Act with respect to 6 assessment years relevant to previous year in which search is

conducted, proceedings initiated under section 153C being on the basis of the material found belonging to the other person in the course of search, the period of six assessment years cannot be after the 6th assessment year of the searched person or period after the date of search. In any event in view of the specific language of section 153A and 153C of the Act, the period of proceedings under section 153A and 153C of the Act would not and shall not cover beyond the period excluding the financial year in which search is conducted. In other words the other person under section 153C of the Act cannot be placed in a worse/disadvantage position than the person subjected to search under section 132 of the Act and where the proceedings under Section 153A of the Act being initiated.

25. It is submitted that without prejudice to the above contentions, the issue of the period of six assessment years for the purposes of section 153C of the Act being the fresh ground raised by the assessee in the course of hearing of the Miscellaneous Petition, the same was outside the purview of Section 254(2) of the Act which could not have been entertained. Even if such a fresh ground is to be examined by the Tribunal, the

order dated 18.10.2016 requires to be recalled and the fresh ground has to be examined in the appeal on restoration. Consideration of the fresh ground in he application under section 254(2) of the Act that to especially in the application filed by the revenue would be beyond the jurisdiction of the Tribunal.

26. Learned counsel would further contend that the reasons assigned by the Tribunal in the common order dated 18.10.2016 for the Assessment year 2005-06 and 2006-07 would be incorrect and contrary to the stand taken by the assessee. The satisfaction recorded in terms of Section 153C of the Act as has been reproduced at para-6 of the order of ITAT dated 18.10.2016 would clearly indicate that the satisfaction was recorded for the Assessment year 2005-06 and 2010-11. While examining the correctness of the said satisfaction, the Tribunal has set aside the order of assessment for the Assessment year 2005-06 and 2010-11 for non-compliance of conditions contemplated under Section 153C of the Act. If the finding of the Tribunal in the order against Miscellaneous Petition is to be presumed to be correct, then the finding recorded in the main order dated 18.10.2016 is incorrect. This would substantiate the inconsistent stand / reasoning of the

Tribunal. On all these premises counsel for the appellant / revenue seeks to answer the substantial questions of law in favour of the revenue and consequently to set aside the order passed by the Tribunal and to remit the matter to the Tribunal for adjudication on merits.

27. In support of his contentions, learned standing counsel has facilitated the following reliances for consideration of the appeal:

1) (2014) 49 taxmann.com98(Kar) - Canara Housing Development Co. Vs. Deputy Commissioner of Income Tax, held as under

> *"18. A perusal of Section 153A shows that it starts with a non obstante clause relating to normal assessment procedure which is covered by Sections 139, 147, 148, 149, 151 and 153 in respect of searches made after 31.5.2003. These Sections, the applicability of which has been excluded, relate to returns, assessment and reassessment provisions. Prior to, the introduction of these three Sections, there was Chapter XIV-B of the Act which took care of the assessment to be made in cases of search and seizure. Such an assessment was popularly known as "block assessment" because the Chapter provided for a single assessment to be made in respect of a period of a block of ten assessment years prior to the assessment year in which the search was made. In*

addition to these ten assessment years, the broken period up to the date on which the search was conducted was also included in what was known as "block period". Though a single assessment order was to be passed, the undisclosed income was to be assessed in the different assessment years to which it related. But all this had to be made in a single assessment order. The block assessment so made was independent of and in addition to the normal assessment proceedings as clarified by the Explanation below Section 158BA(2). After the introduction of the group of Sections namely, 153A to 153C, the single block assessment concept was given a go-by. Under the new Section 153A, in a case where a search is initiated under Section 132 or requisition of books of account, documents or assets is made under Section 132A after 31.5.2003, the Assessing Officer is obliged to issue notices calling upon the searched person to furnish returns for the six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted or requisition was made. The other difference is that there is no broken period from the first day of April of the financial year in which the search took place or the requisition was made and ending with the date of search/requisition. Under Section 153A and the new scheme provided for, the AO is required to exercise the normal assessment powers in respect of the previous year in which the search took place.

19. Under the provisions of Section 153A, as we have already noticed, the Assessing Officer is bound to

issue notice to the assessee to furnish returns for each assessment year falling within the six assessment years immediately preceding the assessment year relevant to the previous year in which the search or requisition was made. Another significant feature of this Section is that the Assessing Officer is empowered to assess or reassess the "total income" of the aforesaid years. This is a significant departure from the earlier block assessment scheme in which the block assessment roped in only the undisclosed income and the regular assessment proceedings were preserved, resulting in multiple assessments. Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the "total income" of the six assessment years in question in separate assessment orders. This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax.

20. A question may arise as to how this is sought to be achieved where an assessment order had already been passed in respect of all or any of those six assessment years, either under Section 143(1)(a) or Section 143(3) of the Act. If such an order is already in existence, having obviously been passed prior to the initiation of the search/requisition, the Assessing Officer is empowered to reopen those proceedings and reassess the total income, taking note of the undisclosed income, if any, unearthed during the search. For this purpose, the fetters imposed upon the Assessing Officer by the strict

procedure to assume jurisdiction to reopen the assessment under Sections 147 and 148, have been removed by the non obstante clause with which sub section (1) of Section 153A opens. The time-limit within which the notice under Section 148 can be issued, as provided in Section 149 has also been made inapplicable by the non obstante clause. Section 151 which requires sanction to be obtained by the Assessing Officer by issue of notice to reopen the assessment under Section 148 has also been excluded in a case covered by Section 153A. The time-limit prescribed for completion of an assessment or reassessment by Section 153 has also been done away with in a case covered by Section 153A. With all the stops having been pulled out, the Assessing Officer under Section 153A has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters, if need be. Therefore, it is clear even if an assessment order is passed under Section 143(1) or 143(3) of the Act, the Assessing Officer is empowered to reopen those proceedings and reassess the total income taking note of the undisclosed income, if any, unearthed during the search. After such reopening of the assessment, the Assessing Officer is empowered to assess or reassess the "total income" of the aforesaid years. The condition precedent for application of Section 153A is there should be a search under Section 132. Initiation of proceedings under Section 153A is not dependent on any undisclosed income being unearthed during such search. The proviso to the aforesaid section

makes it clear the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. If any assessment proceedings are pending within the period of six assessment years referred to in the aforesaid sub-section on the date of initiation of the search under section 132, the said proceeding shall abate. If such proceedings are already concluded by the Assessing Officer by initiation of proceedings under Section 153A, the legal effect is the assessment proceedings and reassess the total, income, taking note of the undisclosed income, if any, unearthed during the search. He has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters, This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax. When once the proceedings are initiated under Section 153A of the Act, the legal effect is even in case where the assessment order is passed it stands reopened. In the eye of law there is no order of assessment. Re-opened means to deal with or begin with again. It means the Assessing Officer shall assess or reassess the total income of six assessment years. Once the assessment is reopened, the assessing authority can take note of the income disclosed in the earlier return, any undisclosed income found during search or and also any other income which is not disclosed in the earlier return or which is not unearthed during the search in

order to find out what is the "total income" of each year and then pass the assessment order. Therefore, the Commissioner by virtue of the power conferred under Section 263 of the Act gets no jurisdiction to initiate proceedings under the said provision because the condition precedent for initiating proceedings under Section 263 is any order passed under the Act by the Assessing Officer is erroneous insofar as it is prejudicial to the interest of the revenue. Once the order passed by the Assessing Officer gets reopened, there is no order which can be said to be erroneous insofar as it is prejudicial to the interest of the revenue which confers jurisdiction on the Commissioner to exercise the power of the jurisdiction.

2) (2016) 385 ITR 346 (Kar) - CIT VS. IBC Knowledge Park Pvt., Ltd ; *held as under:*

"46. 153C is relevant for the purposes of this case. Sub-section (1) of Section 153C begins with a non-obstante clause and it states that notwithstanding anything contained in Sections 139, 147, 148, 149, 151 and 153, where the Assessing Officer is satisfied that any valuable assets, seized or requisitioned, belongs to, or 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 valuable 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 valuable assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of Section 153A.

Sub-section (2) of Section 153C states that where books of account or documents or valuable 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 valuable assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue notice and assess or reassess total income of such other

person of such assessment year in the manner provided in Section 153A."

54. …2. Several High Courts have held that the provisions of section 153C of the Act are substantially similar/parimateria to the provisions of section 158BD of the Act and therefore, the above guidelines of the Hon'ble Supreme Court, apply to proceedings under section 153C of the Income-tax Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by Central Board of Direct Taxes.

3. 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 Assessing Officer 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.

4. 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 judgment. 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."

As per the aforesaid circular, at the time of or along with initiation of the proceedings, against the searched person or third party under section 153C or in the course of assessment proceedings under section 153C

of the Act or immediately after the assessment proceedings are completed under section 153C of the Act, recording of satisfaction is required.

55. If the observations made by the Tribunal are considered in this regard, it is noted by the Tribunal that it is not necessary that satisfaction should be recorded that documents or valuable assets found in the course of search showed undisclosed income. In view of the aforesaid discussion, we do not think that such can be the correct position of law.

56. Further, in the judgments referred to by the learned counsel for the Revenue, where incriminating material leading to undisclosed income of another assessee was detected in a search operation, in those cases, reopening of the concluded assessment have taken place. There has been no single decision cited by the learned counsel for the Revenue where the assumption of jurisdiction of the Assessing Officer is in the absence of any incriminating material or undisclosed income having been detected during the course of search leading to reopening of a concluded assessment. In the instant case, though documents belonging to the assessee were seized at the time of search operation, there was no incriminating material found leading to undisclosed income. Therefore, assessment of income of the assessee was unwarranted. Consequently, no satisfaction was recorded in the case of the assessee.

We answer the substantial question of law No. 2 by holding that the Tribunal was not correct in holding that the assessment under section 153C was valid despite there being no satisfaction recorded to the effect that the documents found during the search on June 17, 2008 were incriminating in nature and prima facie represented undisclosed income."

3) (2012) 346 ITR 177 (Delhi) - SSP Aviation Ltd., vs. DCIT; *held as under:*

"12. The ld. sr. standing counsel for the income tax department also stated that the petitioner has already filed appeals before the CIT(Appeals) and has availed of the alternative remedy.

13. Sections 153A to 153D are placed in Chapter XIV of the Act, which is titled "procedure for assessment". Section 153A provides for the assessment in case of search or requisition. This section applies to a person in whose case a search is initiated under Section 132 or books of account etc. are requisitioned under Section 132A. The procedure prescribed under Section 153A is that the Assessing Officer shall call upon the assessee who is searched to furnish returns of income for six assessment years immediately preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made. The assessee, on receipt of the notice from the Assessing Officer, shall furnish the returns of income and thereafter the Assessing Officer is empowered to assess or re-assess the

total income in respect of different assessment year falling within six assessment years. Now, a question may arise as to what would happen to the regular returns, if any, filed by the searched assessee for any of the six assessment years which are pending on the date on which the search was initiated. The answer is given by the second proviso to Section 153A, which says that if any of those returns is or are pending, the assessment or reassessment relating to those returns shall abate. The object obviously is to avoid multiplicity of assessment or reassessment proceedings in respect of the same assessment year or years. Once Section 153A is found to be applicable, there will be only one assessment in respect of each of the six assessment years immediately preceding the assessment year relevant to the previous year in which the search is conducted, in which the "total income" of the assessee will be assessed or reassessed. It should be remembered that only the pending assessment or reassessment proceedings in respect of any those six assessment years that will abate; in case the assessment or reassessment for any of those 6 years have already been completed as on the date of search then there is no question of any of them abating for the simple reason that what can abate is only what remains pending.

17. The judgment of this court in Saraya Industries Ltd. (supra) was relied upon by Mr. Bajpai, in support of his contention that the seizure of the document must be of such nature that even closed assessments for six years could be reopened and this requirement postulates that the provisions of Section 153C can be set in motion only if

there is a finding that the seized document or books of account or valuable article represents the undisclosed income of the other person. The said decision does not assist the petitioner. The section merely enables the revenue authorities to investigate into the contents of the document seized, which belongs to a person other than the person searched so that it can be ascertained whether the transaction or the income embedded in the document has been accounted for in the case of the appropriate person. It is aimed at ensuring that income does not escape assessment in the hands of any other person merely because he has not been searched under Section 132 of the Act. It is only a first step to the enquiry, which is to follow. The Assessing Officer who has reached the satisfaction that the document relates to a person other than the searched person can do nothing except to forward the document to the Assessing Officer having jurisdiction over the other person and thereafter it is for the Assessing Officer having jurisdiction over the other person to follow the procedure prescribed by Section 153A in an attempt to ensure that the income reflected by the document has been accounted for by such other person. If he is so satisfied after obtaining the returns from such other person for the six assessment years, the proceedings will have to be closed. If the returns filed by the other person for the period of six years does not show that the income reflected in the document has been accounted for, additions will be accordingly made after following the procedure prescribed by law and after giving

adequate opportunity of being heard to such other person. That, in sum and substance, is the position.

18. A reference to Section 158BD of the Act, which falls under the Chapter XIV-B, may be of some use. This section provided for assessment of the undisclosed income by any person other than the person searched under Section 132. It applies to search conducted prior to 31.05.2003. It provided as follows:

"Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and the provisions of this Chapter shall apply accordingly."

(underlining ours) It will be seen that whereas Section 158D refers to the satisfaction of the Assessing Officer that any "undisclosed income" belongs to any person other than the searched person, Section 153C(1) in contrast refers merely to the satisfaction of the Assessing Officer that the valuable article or books of account or document "belongs" to a person other than the searched person. The latter provision does not refer to any undisclosed income at all. The machinery provided in

Sections 153C read with 153A merely facilitates an enquiry regarding the existence or otherwise of undisclosed income in the hands of the person other than the searched person. The starting point of the enquiry is the seizure of the valuable article or books of account or document, which according to the satisfaction reached by the Assessing Officer, belongs to a person other than the searched person. It is necessary to notice the difference between the two provisions in order to deal with the contention put forward by the ld. counsel for the petitioner that the seizure itself is invalid or illegal on the ground that there could not have been any satisfaction before issuing the warrant of authorization under Section 132 of the Act that the petitioner had earned undisclosed income because the income reflected in the seized documents namely, the Collaboration Agreement dated 24.8.2006 and the Assignment Agreement dated 21.7.2006, had already been taken note of in the account books of the petitioner. This is a debatable issue as is apparent from the submission of the Revenue. They have submitted to the contrary. It cannot be said that the seizure of the documents was unwarranted or contrary to law. As noticed above, Revenue has highlighted that finalization and audit of accounts was after the date of the search. The accounts for the year ended 31.03.2009 now relied upon by the petitioner, were finalized after the search on 05.01.2009. Seizure has to judged in the perspective and the facts known and within the knowledge when it was made. On that date, the Revenue was not in a position to know whether any income from

the transaction had been discharged by the petitioner in its books of account for the year ended 31.03.2009. In the very nature of things, the warrant of authorization of the search under Section 132 could not have been issued on the footing that there was undisclosed income in the case of the petitioner simply because action under Section 132 was taken not against the petitioner, but against the Puri Group of Companies. Section 153C postulates that while conducting the search on the person in whose name the search warrant is issued under Section 132, some valuable article or books of account or document is seized, which does not belong to the searched person but is seen to belong to any other person, the procedure stated therein should be followed. Therefore, nothing is to be gained from saying that the pre-conditions mentioned in clauses (a), (b) and (c) of sub-section (1) to Section 132 have not been satisfied vis-à-vis the petitioner so as to confer legality upon the seizure of the documents in question. In our opinion, it is not necessary for the revenue authorities to have reasons to believe that the petitioner would not produce any books of account or document or that the petitioner is in possession of any money, bullion, jewellery or other valuable article or thing which it had not or will not disclose for the purpose of the assessment proceedings. The petitioner was not searched. Search was on a third person and validity of the seizure has to be examined with reference to the said person searched. At the time when the Assessing Officer having jurisdiction over the searched person reaches the satisfaction that the document belongs to a person other

than the searched person, it is not necessary for him to also reach a firm conclusion/ opinion that the document shows undisclosed income belonging to such other person. That is a matter for enquiry, which is to be conducted in the manner prescribed by Section 153C. The fact that the procedure envisaged by Section 153C is somewhat cumbersome and that the person other than the searched person is put to some inconvenience cannot be an argument to hold that the entire proceedings are bad in law.

4) (2014) 362 ITR 673(SC) - *Commissioner of Income Tax – III vs. Calcutta Knitwears held as under:*

20. Section 158B of the Act is the dictionary clause. It provides for the definition of "block period" and "undisclosed income". For the purpose of this case, a reference to the definition of the "undisclosed income" as provided for in Section 158B(b) is necessary and, therefore, it is noticed. The same reads as under:

> *"Undisclosed income" includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of*

this Act [or any expense, deduction or allowance claimed under this Act which is found to be false]".

22. Section 158BC speaks of procedure for assessment of a person searched under Section 132 of the Act or books of accounts, other documents or assets are requisitioned under section 132A. The limitation for the purpose of completion of the block assessments for the purpose of Section 158BC of the Act is as provided under Section 158BE(1)(a) of the Act, that is the time limit for completion of block assessment.

35. It is also trite that while interpreting a machinery provision, the courts would interpret a provision in such a way that it would give meaning to the charging provisions and that the machinery provisions are liberally construed by the courts. In Mahim Patram Private Ltd. v. Union of India (UOI) and Ors., (2007) 3 SCC 668 this Court has observed that:

"20. A taxing statute indisputably is to be strictly construed. [See J. Srinivasa Rao v. Govt. of Andhra Pradesh and Anr., 2006(13)SCALE 27]. It is, however, also well-settled that the machinery provisions for calculating the tax or the procedure for its calculation are to be construed by ordinary rule of construction. Whereas a liability has been imposed on a dealer by the charging section, it is well-settled that the court would construe the statute in such a manner so as to make the machinery workable.

21. In J. Srinivasa Rao (supra), this Court noticed the decisions of this Court in Gursahai Saigal v. Commissioner of Income-tax, Punjab, [1963] 1 ITR 48(SC) and Ispat Industries Ltd. v. Commissioner of Customs, Mumbai, 2006(202)ELT561(SC).In Gursahai Saigal (supra), the question which fell for consideration before this Court was construction of the machinery provisions vis-à-vis the charging provisions. Schedule appended to the Motor Vehicles Act is not machinery provision. It is a part of the charging provision. By giving a plain meaning to the Schedule appended to the Act, the machinery provision does not become unworkable. It did not prevent the clear intention of the legislature from being defeated. It can be given an appropriate meaning."

38. Having said that, let us revert to discussion of Section 158BD of the Act. The said provision is a machinery provision and inserted in the statute book for the purpose of carrying out assessments of a person other than the searched person under Sections 132 or 132A of the Act. Under Section 158BD of the Act, if an officer is satisfied that there exists any undisclosed income which may belong to a other person other than the searched person under Sections 132 or 132A of the Act, after recording such satisfaction, may transmit the records/documents/chits/papers etc to the assessing officer having jurisdiction over such other person. After receipt of the aforesaid satisfaction and upon examination of the said other documents relating to such other

person, the jurisdictional assessing officer may proceed to issue a notice for the purpose of completion of the assessments under Section 158BD of the Act, the other provisions of XIV-B shall apply.

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

5) ITA NO.322 / 2018 - PCIT VS. Delhi International Airport Pvt. Ltd., held that;

"29. Section 153C provides that where an Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account documents seized or requisitioned belong or belongs to a person other than the person referred to in Section 153A, then the books of account, or documents or

assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of Section 153A".

6) (2016) 380 ITR 612 (Delhi) - CIT vs. RRJ Securities Ltd., held as under:

"14. The proviso to Section 153C(1) of the Act expressly indicates that reference to the date of initiation of search for the purposes of second proviso to Section 153A shall be construed as a reference to the date on which valuable assets or documents are received by the AO of an Assessee (other than a searched person). Thus, by virtue of the second proviso to section 153A of the Act, the assessments/reassessments that were pending on the date of receiving such assets, books of accounts or documents would abate.

15. The controversy in this regard is no longer res integra. A Coordinate Bench of this Court in SSP Aviation Ltd. v. Deputy Commissioner of Income Tax: (2012) 346 ITR 177 has held that:

"in case of the searched person, the date with reference to which proceedings for assessment or reassessment of any assessment year within a period of six assessment years shall abate, is the date of initiation of search under Section 132 or requisition under Section 132A. However, in case of other person.. such date will

be the date of receiving the books of account or documents or assets seized or requisition by the Assessing Officer having jurisdiction over such other person. In the case of other person, the question of pendency and abatement of proceedings of assessment or reassessment to the six assessment years would have to be examined with reference to such date"

16. The CIT(A) sought to distinguish the present case by observing that in the facts of the present case, the AO of the searched person who has to handover the documents and the AO of the Assessee was one and the same person. In our view, this distinction is not relevant in the scheme of Section 153C of the Act and the CIT(A) erred in proceeding on the basis that the period of six years was to be reckoned from the end of the financial year preceding the financial year in which the search was conducted.

21. 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 Commissioner of Income Tax (Central)-III v. Kabul Chawla: ITA 707/2014, decided on 28th August, 2015 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."

"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 recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment year 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording 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".

7) (1992) 198 ITR 297 (SC) CIT vs. Sun Engineering Works (P.) Ltd held as under:

"37. The principle laid down by this Court in Jaganmohan Rao's case, therefore, is only to the extent that once an assessment is validly reopened by issuance

of notice under Section 22(2) of the 1922 Act (corresponding to Section 148 of the Act) the previous under assessment is set aside and the ITO has the jurisdiction and duty to levy tax on the entire income that had escaped assessment during the previous year. What is set aside is, thus, only the previous under assessment and not the original assessment proceedings. An order made in relation to the escaped turnover does not effect the operative force of the original assessment, particularly if it has acquired finality, and the original order retains both its character and identity. It is only in cases of "underassessment" based on Clauses (a) to (d) of Explanation (I) to Section 147, that the assessment of tax due has to be recomputed on the entire taxable income. The judgment in Jaganmohan Rao's case, therefore, cannot be read to imply as laying down that in the reassessment proceedings validly initiated, the assessee can seek reopening of the whole assessment and claim credit in respect of items finally concluded in the original assessment. The assessee cannot claim recompilation of the income or redoing of an assessment and be allowed a claim which he either failed to make or which was otherwise rejected at the time of original assessment which has since acquired finality. Of course, in the reassessment proceedings it is open to an assessee to show that the income alleged to have escaped assessment has in truth and in fact not escaped assessment but that the same had been shown under some inappropriate head in the original return, but to read the judgment in Jaganmohan Rao's case, as if laying

down that reassessment wipes out the original assessment and that reassessment is not only confined to "escaped assessment" or "under assessment" but to the entire assessment for the year and start the assessment proceeding de-novo giving right to an assessee to reagitate matters which he had lost during the original assessment proceeding, which had acquired finality, is not only erroneous but also against the phraseology of Section 147 of the Act and the object of reassessment proceedings. Such an interpretation would be reading that judgment totally out of context in which the questions arose for decision in that case. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In Madhav Rao Jiwaji Rao Scindia Bahadur and Ors. v. Union of India this Court cautioned:

It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court,

divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment".

28. These are all the contentions and various grounds taken by learned standing counsel Sri K.V.Arvind for appellant / Revenue by referring to the citations and submits that the aforesaid reliances are in conformity with the contentions taken in this appeal and are squarely applicable to the present case on hand the same may be considered and to set-aside the order passed by the Income Tax Appellate Tribunal, Bengaluru in M.P.No.152/Bang/2016 (in ITA No.1457/Bang/2014) dated 06.03.2018 for assessment year 2011-2012 vide Annexure-D and confirm the order of the Appellate Commissioner confirming the order passed by the Deputy Commissioner of Income Tax, Central Circle – 1(3), Bengaluru. Further, seeking to set-aside the order passed by the Income Tax Appellate Tribunal in ITA No.1451 - 1457/Bang/2014 dated 18.10.2016 for the assessment year 2011-12 vide Annexure-C.

29. On the contrary, learned counsel for respondent / assessee namely Mayank Jain, has taken various contentions relating to substantial questions of law which have been framed in this appeal. It is based upon the grounds urged by the appellant / revenue by referring to Section 153C read with Section 144 of the Act. Whereas he has filed written submission and also taken us through the said submission made therein. It is contended that the appeal has been preferred by the Department under Section 260A of the Income Tax Act (Act) seeking to challenge the order dated 06.03.2018 passed in MP No.152/BANG/2016 (in ITA No.1457/BANG/2014) passed by the ITAT, Bangalore Bench.

30. It is also contended that on 25.10.2010, a search u/s 132 of the Act was carried out in the case of Shri.K. Raghavacharyulu, Smt. G. Renuka & Ors. It is the case of the Department that certain incriminating materials were found during the course of search against the respondent – assessee and accordingly notices under Section 153C of the Act were issued to the respondent – assessee on 15.12.2012 for A.Y. 2005-06 to 2010-11 and u/s 143(2) for A.Y. 2011-12. The assessment proceedings were concluded vide orders dated 31.03.2013 for A.Y.

2005-06 to 2010-11 under Section 153C of the Act and the assessment order for A.Y. 2011-12 was passed under Section 144 read with Section 153D of the Act. The income of the respondent – assessee was assessed at Rs.98,01,82,062/-. Being aggrieved by the aforesaid assessment order, the respondent – assessee preferred an appeal before the Lt. Commissioner of Income Tax (Appeal)-11, Bangalore. The CIT (A) vide common order dated 25.08.2014 confirmed the additions for A.Y. 2005-06 to 2011-12. The respondent-assessee challenged the aforesaid order passed by the CIT(A) before the ITAT, Bangalore Bench in ITA Nos.1451-1457/BANG/2014. The ITAT vide order dated 18.10.2016 allowed the appeal and set aside the assessment orders for A.Y.2005-06 TO 2011-12. The Tribunal held that there is no satisfaction recorded by the Assessing Officer of the searched person which is mandatorily required for issuing notice u/s 153C of the Act. Thereafter, the Department filed MP No.149/BANG/2016 in ITA No.1450/BANG/2014 pertaining to A.Y. 2011-12 seeking rectification of order dated 18.10.2016 u/s 254(2) of the Act passed in ITA No.1450/BANG/2014 on the ground that the assessment proceedings for A.Y. 2011-12 were completed u/s 144

read with Section 153D of the Act. It was the case of the department that the assessment for A.Y. 2011-12, being the year of search could not have been quashed on the basis that satisfaction as required u/s 153C of the Act was not recorded by the AO of the searched person as A.Y. 2011-12 was the year of search. The ITAT vide impugned order dated 06.03.2018 dismissed the aforesaid MP No.149/BANG/2016 by relying upon the judgment of the Delhi High Court in the case of CIT vs. RRJ Securities Ltd., (2016) 380 ITR 612.

31. Whereas, it is further contended that the Department has challenged the aforesaid order passed by the ITAT before this Court u/s 260A of the Act. The objection raised by the counsel for the respondent that against an order passed in a miscellaneous petition, appeal u/s 260A of the Act was not maintainable without there being challenge to the main order passed in appeal by the ITAT, the department proceeded to amend the appeal to include the challenge to the order dated 18.10.2016 passed by the ITAT in ITA No.1457/BANG/2014.

32. With regard to the substantial questions of law, it is contended that the decision of the Tribunal dated 06.03.2018 is

squarely covered by the judgment of the Delhi High Court in the case of CIT vs. RRJ Securities Ltd. (supra). In the aforesaid judgment, it was held that the period of 6 years stipulated in Section 153C of the Act have to be construed with reference to the date of handing over the documents to the AO of the assessee and not the year of search. In the aforesaid judgment it was held as under:-

> *"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 recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment year 2003-04 and 2004-05 would be beyond the period of six*

assessment years as reckoned with reference to the date of recording 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."

33. Further it is contended that in the facts of the present case, the satisfaction note was recorded on 14.12.2012 and therefore, the 6 years previous to the year in which handing over of documents took place would be A.Y. 2007-08 to A.Y. 2012-13. Thus, the relevant A.Y.2011-12 would fall within the purview of Section 153C of the Act. It is submitted that the Tribunal while allowing the appeal in ITA No.1451-1457/BANG/2014 vide order dated 18.10.2016 had held that the satisfaction as mandatorily required u/s 153C of Act to be recorded by the AO of the searched person was absent in the facts of the present case. The ITAT proceeded to quash the assessments framed u/s 153C of the Act on account of lack of jurisdiction of the department to proceed against the respondent-assessee.

34. The second limb of the arguments advanced by the counsel for the respondent is that the orders passed by the ITAT

for A.Y. 2005-06 to 2010-11 i.e., ITA No.1451-1457/BANG/2014 were never challenged and the finding that the satisfaction note was absent and there was lack of jurisdiction u/s 153C of the Act, in the case of the respondent-assessee has attained finality. Further it is contended that the principal ground urged by the Department in the present appeal is that the case of CIT vs. RRJ Securities Ltd., relied upon by the ITAT in the impugned order dated 06.03.2018 has not attained finality as the same was challenged by the Department before the Hon'ble Supreme Court. It is contended that the aforesaid ground raised by the Department no longer survives as the Civil Appeal preferred by the department against the judgment of the Hon'ble Delhi High Court in CIT vs. RRJ Securities Ltd., was dismissed by the Hon'ble Supreme Court vide order dated 24.04.2018. Thus, it can be concluded that there is no judgment of any other High Court which has taken a contrary view to the ratio laid down in the case of CIT vs RRJ Securities. Furthermore, the Civil Appeal preferred by the department against the aforesaid judgment has been dismissed. Therefore, it is submitted that there is no error in law in the impugned order passed by the ITAT seeking intervention as there is no illegalities or error committed by the ITAT.

35. Further, it is contended that it is settled law that while construing penal statutes and taxation statutes, the Court has to apply strict rules of interpretation of Article 265 of the Constitution which prohibits the State from extracting tax from the citizen without authority of law. The natural corollary to the said provision is that State cannot burden the citizen without the authority of law and thus, taxation statutes has to be interpreted strictly. The Hon'ble Supreme Court in the case of Commissioner of **Customs v. Dilip Kumar & Co., (2018) 9 SCC 1** held that if there are two views possible in the matter of interpretation of a charging section, the one favorable to the assessee needs to be applied. Applying the aforesaid ratio in the fact of the present case, it is humbly submitted that the Delhi High Court in CIT vs. RRJ Securities have on a strict interpretation construed Section 153C of the Act and held that 6 years contemplated under sub Section 1 of Section 153C have to be reckoned from the date of handing over of documents to the AO of searched person and not the date of search. Thus, even otherwise the interpretation given by the High Court to Section 153C of the Act is in terms of the aforesaid law laid down by the Hon'ble Supreme Court.

36. It is further contended that as regards the issue of satisfaction raised in the main appeal i.e., ITA No.1457/BANG/2014, it is reiterated that the Department has not preferred any appeal before this Court u/s 260A of the Act challenging the finding of absence of satisfaction of AO of searched person in the case of the respondent-assessee. The Department having taken the aforesaid position cannot, at this stage, urge this Court to adjudicate upon the issue of validity of satisfaction note. Even otherwise, the requirement of recording of satisfaction note is clearly borne out of the provisions contained in Section 153C of the Act. The Hon'ble Supreme Court in the case of **CIT vs. Calcutta Knitwears, (2014) 6 SCC 444** has held that the recording of satisfaction note is pre-requisite and the same must be prepared by the AO before the transmits the record to the other AO who has jurisdiction over such other person. Several High Courts have held that the provisions of Section 153C of the Act are pari materia to the provisions of Section 158BD of the Act, which was the subject matter of interpretation before the Hon'ble Supreme Court in the case of CIT vs. Calcutta Knitwears(supra).

37. By referring to the decision of the Allahabad High Court in the case of CIT vs. Gopi Apartment, 2014 SCC OnLine All 16050 wherein it is held that recording of satisfaction before initiating proceedings is a sine qua non and must be recorded at the time of handing over of documents to the AO having jurisdiction over such other person. The initiation of proceedings against such other person is dependent upon the satisfaction being recorded and the same must be recorded before issuance of notice to such other person u/s 153C of the Act. It was further held that even in a case where AO of both the persons is the same and there is no requirement of physical handing over of documents, the recording of satisfaction is still a must as the same is the foundation upon which subsequent proceedings against the other person is initiated. In the aforesaid case of CIT vs. Gopi Apartment, the Allahabad High Court held as under:-

> *"(1) The first stage comprises of a search and seizure operation under Section 132 or proceeding under Section 132A against a person, who may be referred as 'the searched person'. Based on such search and seizure, assessment proceedings are initiated against the 'searched person' under Section 153A. At the time of initiation of such proceedings against the 'searched person' or during*

the assessment proceedings against him or even after the completion of the assessment proceedings against him, the Assessing Officer of such a 'searched person', may, if he is satisfied, that any money, document etc. belongs to a person other than the searched person, then such money, documents etc. are to be handed over to the Assessing Officer having jurisdiction over 'such other person'.

(2) The second stage commences from the recording of such satisfaction by the Assessing Officer of the 'searched person' followed by handing over of all the requisite documents etc. to the Assessing Officer of such 'other person', thereafter followed by issuance of the notice of the proceedings under Section 153C read with section 153A against such 'other person'.

The initiation of proceedings against 'such other person' are dependant upon a satisfaction being recorded. Such satisfaction may be during the search or at the time of initiation of assessment proceedings against the 'searched person', or even during the assessment proceedings against him or even after completion of the same, but before issuance of notice to the 'such other person' under Section 153C.

Even in a case, where the Assessing Officer of both the persons is the same and assuming that no handing over of documents is required, the recording of 'satisfaction' is a must, as, that is the foundation, upon which the subsequent proceedings against the 'other person' are initiated. The handing over of documents etc. in such a case may or may not be of much relevance but the

recording of satisfaction is still required and in fact it is mandatory".

38. It is contended that the Department has issued a Circular No.24/2015 dated 31.12.2015 with reference to the aforesaid issue of recording of satisfaction u/s 153C of the Act. In the said circular the officers are directed to withdraw all pending litigation with reference to recording of satisfaction note if it does not meet the guidelines laid down by the Hon'ble Supreme Court in the case of M/s Calcutta Knitwears (supra). It is humbly submitted that the circulars of the board are binding upon the Department in terms of the provisions contained in Section 119 of the Act. Learned counsel also contends that it is an admitted position that the satisfaction note was not recorded by the AO of the searched person and thus, the Tribunal correctly quashed the assessment on account of lack of jurisdiction to proceed against the respondent – assessee u/s 153C of the Act.

39. These are all the contentions made by counsel for respondent/assessee apart from the written submissions made. Therefore, it is prayed for dismissal of the appeal preferred by the appellant/Revenue on the premise that the grounds urged by the

appellant/revenue does not have any substance calling interference of this Court and the appeal being devoid of merits is liable to be dismissed.

40. In support of his contentions, learned counsel for the respondent has relied on the following decisions:

1) **2014 SCC OnLine All 16050: (2014) 365 ITR 411: (2014) 270 CTR 447**

Commissioner Of Income Tax vs M/S Gopi Apartment

"25. Thus, there are two stages:

(1) The first stage comprises of a search and seizure operation under Section 132 or proceeding under Section 132A against a person, who may be referred as 'the searched person'. Based on such search and seizure, assessment proceedings are initiated against the 'searched person' under Section 153A. At the time of initiation of such proceedings against the 'searched person' or during the assessment proceedings against him or even after the completion of the assessment proceedings against him, the Assessing Officer of such a 'searched person', may, if he is satisfied, that any money, document etc. belongs to a person other than the searched person, then such money, documents etc. are to be handed over to the Assessing Officer having jurisdiction over 'such other person'.

(2) The second stage commences from the recording of such satisfaction by the Assessing Officer of the 'searched person' followed by handing over of all the requisite documents etc. to the Assessing Officer of such 'other person', thereafter followed by issuance of the notice of the proceedings under Section 153C read with section 153A against such 'other person'.

26. The initiation of proceedings against 'such other person' are dependant upon a satisfaction being recorded. Such satisfaction may be during the search or at the time of initiation of assessment proceedings against the 'searched person', or even during the assessment proceedings against him or even after completion of the same, but before issuance of notice to the 'such other person' under Section 153C.

27. Even in a case, where the Assessing Officer of both the persons is the same and assuming that no handing over of documents is required, the recording of 'satisfaction' is a must, as, that is the foundation, upon which the subsequent proceedings against the 'other person' are initiated. The handing over of documents etc. in such a case may or may not be of much relevance but the recording of satisfaction is still required and in fact it is mandatory.

28. In this regard, the ratio of the judgment of the Supreme Court in the case of Commissioner of Income Tax-III Vs. M/s Calcutta Knitwears, Ludhiana (supra), as

noted above, clearly applies to the proceedings under Section 153C also.

29. The 'satisfaction' has to be in writing and can be gathered from the assessment order passed in respect of the 'searched person', if it is so mentioned/ recorded or from any other order, note or record maintained by the Assessing Officer of the 'searched person'. The word 'satisfaction' refers to the state of mind of the Assessing Officer of the person searched, which gets reflected in a tangible shape/ form, when it is reduced into writing. It is the conclusion drawn or the finding recorded on the foundation of the material available. In this regard, reference may be made to the pronouncements in the case of C.I.T. Vs. Radhey Shyam Bansal, (2011) 337 ITR 217 (Delhi) and the Division Bench judgment of this Court in the case of C.I.T. Vs. Classic Enterprises, (2013) 358 ITR 465 (All)".

2) (2014) 6 SCC 444 - *Commissioner of Income Tax – III vs. Calcutta Knitwears, Ludhiana*

"37. The Tribunal and the High Court are of the opinion that it could only be prepared by the assessing officer during the course of the assessment proceedings under Section 158BC of the Act and not after the completion of the said proceedings. The Courts below have relied upon the limitation period provided in Section 158BE(2)(b) of the Act in respect of the assessment proceedings initiated under Section 158BD, i.e., two years from the end of the

month in which the notice under Chapter XIV-B was served on such other person in respect of search initiated or books of account or other documents or any assets are requisitioned on or after 01.01.1997. We would examine whether the Tribunal or the High Court are justified in coming to the aforesaid conclusion.

41. We would certainly say that before initiating proceedings under Section 158BD of the Act, the assessing officer who has initiated proceedings for completion of the assessments under Section 158BC of the Act should be satisfied that there is an undisclosed income which has been traced out when a person was searched under Section 132 or the books of accounts were requisitioned under Section 132A of the Act. This is in contrast to the provisions of Section 148 of the Act where recording of reasons in writing are a sine qua non. Under Section 158BD the existence of cogent and demonstrative material is germane to the assessing officers' satisfaction in concluding that the seized documents belong to a person other than the searched person is necessary for initiation of action under Section 158BD. The bare reading of the provision indicates that the satisfaction note could be prepared by the assessing officer either at the time of initiating proceedings for completion of assessment of a searched person under Section 158BC of the Act or during the stage of the assessment proceedings. It does not mean that after completion of the assessment, the assessing officer cannot prepare the satisfaction note to the effect that

there exists income tax belonging to any person other than the searched person in respect of whom a search was made under Section 132 or requisition of books of accounts were made under Section 132A of the Act. The language of the provision is clear and unambiguous. The legislature has not imposed any embargo on the assessing officer in respect of the stage of proceedings during which the satisfaction is to be reached and recorded in respect of the person other than the searched person.

39. Further, Section 158BE(2)(b) only provides for the period of limitation for completion of block assessment under section 158BD in case of the person other than the searched person as two years from the end of the month in which the notice under this Chapter was served on such other person in respect of search carried on after 01.01.1997. The said section does neither provides for nor imposes any restrictions or conditions on the period of limitation for preparation the satisfaction note under Section 158BD and consequent issuance of notice to the other person".

3) (2018) 9 SCC 1 - Commissioner of Customs (Import), Mumbai vs. Dilip Kumar & Co., held as under:

Taxation – concession/exemption/ incentive/ rebate/ subsidy – exemption notification or exemption clause – strict interpretation of, and , burden of proving applicability of exemption – benefit of ambiguity in case of an exemption

notification or exemption clause – interpretation of, in favour the revenue/state, as exemptions from taxation have a tendency to increase the burden on the unexempted class of taxpayers – general principle that in case of ambiguity a taxing statute should be construed in favour of the assessee – inapplicability of, to an exempting provision – held, every taxing statute including, charging, computation and exemption clauses, at the threshold state should be interpreted strictly – further, though in case of assessee, but for an exemption notification or exemption clause the benefit of ambiguity must be strictly interpreted in favour of the revenue/state.

42. In the background of the contentions made by the learned Standing Counsel Shri Arvind K.V. for the appellants / Revenue and so also the learned counsel Shri Mayank Jain for the respondent / Assessee, it is to be seen that as on 25.10.2010, a search under Section 132 of the IT Act, 1961 was carried in the case of Sri. Raghavacharyulu, Smt. Renuka, and others. During the course of search proceedings, various documents belonging to the assessee were assessed and certain incriminating materials were found and seized during the course of search against the respondent / assessee. Consequently, the assessing officer of the searched person issued notice under Section 153C against the

assessee for the assessment years 2005-2006 to 2010-2011 and a notice under Section 143(3) for the assessment year 2011-2012. Therefore, keeping in view the aforesaid search and seizure which was carried under Section 132 of the IT Act, 1961 is concerned, it is relevant to refer to Section 153C of the IT Act, which reads thus:

> " 153C.Assessment of income of any other person.—2[(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 the 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.

(3) Nothing contained in this section shall apply in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of April, 2021."

43. These provisions have been referred for the purpose of consideration in the given facts of the case. Whereas the Assessment proceedings were concluded vide orders dated 31.03.2013 for the Assessment years 2005-06 to 2010-11 as under Section 153C of the IT Act. Further, Assessment proceedings for the Assessment Year 2011-12 were passed under Section 144 read with Section 153D of the Act. For better appreciation relating to the ingredients of the aforesaid provisions such as Section 144 of the IT Act read with Section 153-D of the IT Act, which reads thus:

"144. Best judgment assessment

(1) If any person-

(a) fails to make the return required under sub-section (1) of section 139] and has not made a return or a revised return under subsection (4) or sub- section (5) or an updated return under sub-section (8A) of that section, or

(b) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 or fails to

comply with a direction issued under sub- section (2A) of that section, or

(c) having made a return, fails to comply with all the terms of a notice issued under sub- section (2) of section 143,

the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment:

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment:

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section 142 has been issued prior to the making of an assessment under this section.

(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as

references to those provisions as for the time being in force and applicable to the relevant assessment year."

Section 153D of the Income Tax Act reads thus:

"153D. Prior approval necessary for assessment in cases of search or requisition.—

No order of assessment or reassessment shall be passed by an Assessing Officer below the rank of Joint Commissioner in respect of each assessment year referred to in clause (b) of sub-section (1) of section 153A or the assessment year referred to in clause (b) of sub-section (1) of section 153B, except with the prior approval of the Joint Commissioner:

Provided that nothing contained in this section shall apply where the assessment or reassessment order, as the case may be, is required to be passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner under sub-section (12) of section 144BA."

44. For understanding relating to the search which was carried out in the aforesaid case stated and also found during the course of search against the respondent / assessee, the income of the respondent / assessee was assessed at Rs.98,01,82,062/-. Aggrieved by the aforesaid Assessment order, the respondent / Assessee had preferred an appeal before the Commissioner of

Income Tax (Appeals)-VI, Bangalore. The CITA (A), vide another order dated 25.08.2014 had confirmed the additions for the Assessment year 2005-06 to 2011-12.

45. The respondent / Assessee had challenged the aforesaid order passed by the CIT (A) before the Income Tax Appellate Tribunal, Bangalore Bench, in ITA Nos.1451-1457/Bang/2014. Whereas the Income Tax Appellate Tribunal, vide order dated 18.10.2016 allowed the appeal and consequently set aside the Assessment order for the Assessment years 2005-06 to 2011-12. The Income Tax Appellate Tribunal held that there is no satisfaction recorded by the Assessing Officer of the searched person, which is mandatorily required for issuing a notice under Section 153-C of the Income Tax Act, 1961.

46. The learned counsel for the respondent / Assessee had emphatically submitted relating to the scope of Section 153-C of the IT Act, 1961 relating to the no satisfaction recorded by the Assessing Officer of the searched person, which is mandatorily required for issuing notice. Thereafter, the Department filed MP No.149/BANG/2016 in ITA No.1450/BANG/2014 pertaining to A.Y. 2011-12 seeking rectification of order dated 18.10.2016 u/s

254(2) of the Act on the ground that the assessment proceedings for A.Y. 2011-12 were completed u/s 144 read with Section 153D of the Act. The learned counsel has emphatically taken us through the scope of Section 144 read with Section 153-D of the IT Act, 1961 referred to supra for the purpose of consideration of the grounds urged in this appeal and so also the counter arguments advanced by the learned counsel for the respondent / assessee. It was the case of the Department that the assessment for A.Y. 2011-12, being the year of search could not have been quashed on the basis that satisfaction as required u/s 153C of the Act was not recorded by the AO of the searched person, as A.Y. 2011-12 was the year of search. The ITAT vide impugned order dated 06.03.2018 dismissed the aforesaid MP No.149/BANG/2016 by relying upon the judgment of the Delhi High Court in the case of CIT vs. RRJ Securities Ltd., (2016) 380 ITR 612.

47. The Income Tax Department had challenged the aforesaid order passed by the Income Tax Appellate Tribunal under Section 260-A of the IT Act. But it is relevant to note that, upon the objection raised by the counsel for the respondent that against an order passed in a miscellaneous petition, appeal under

Section 260-A of the IT Act was not maintainable without there being challenge to the main order passed in appeal by the Income Tax Appellate Tribunal, the Department proceeded to amend the appeal and also included the challenge to the order dated 18.10.2016 passed in ITA NO.1450/BANG/2016. In the aforesaid appeal, the Department proposed the substantial questions of law for its consideration. The Tribunal was right in law in holding that the assessment year relevant to the financial year in which satisfaction note is recorded under Section 153-C of the Act, will be taken as the year of search for the purposes of clause (a) and (b) of sub-section 1 of Section 153-A of the Act by making reference to the first proviso to sub-section (1) of Section 153-C despite the fact that this first proviso to sub-section (1) of Section 153-C refers to the second proviso to sub-section (1) of Section 153-A of the Act and hence is not applicable at all to the clauses (a) and (b) of sub-section (1) of Section 153A of the Act. Therefore, the Tribunal is right in law in holding that no satisfaction was recorded by the AO of the searched person and therefore, the notice issued by the AO under Section 153-C of the Act will be taken as the year of search for the purpose of clause (a) and (b) of sub-section (1) of Section 153-A of the Act.

48. Whereas the learned Standing Counsel Shri Arvind K.V. for the appellant / Revenue has taken us through the facts and circumstances of the case for which proceedings were initiated against the respondent / assessee. Therefore, the substantial questions of law which have been proposed requires to be responded to keeping in view the aforesaid provisions of the IT Act, 1961.

49. The Tribunal is right in law in setting aside the Assessment order passed for Assessment Year 2011-12 under the facts and circumstances of the case by holding that there is no satisfaction recorded by the Assessing Officer of the searched person insofar as Section 153-A in the file of the said person ignoring the intention of the Legislature and when the Assessing Authority has passed the Assessment Order after recording satisfaction under Section 153-C of the IT Act.

50. In the instant appeal, in the facts and circumstances of the case, the Tribunal is right in law in holding that the order of assessment made for the Assessment year 2011-12 is liable to be set aside for non-compliance of the conditions under Section 153-C of the Act, when the assessment is made under the normal

provisions of the Act as the same was not falling within six years of search as referred to under Section 153-A and 153-C of the Act. These are the substantial questions of law proposed by the Department wherein the appeal has been preferred by the appellant / revenue by challenging the order passed by the Income Tax Appellate Tribunal by urging various grounds.

51. In the given peculiar facts and circumstances of this matter and so also initiation of proceedings relating to certain incriminating materials found during the course of search against the respondent / assessee and consequence upon that, notice was issued under Section 153-C of the IT Act. Whereas the learned counsel for the respondent in this matter facilitated the judgment of CIT vs. RRJ Securities Ltd. (supra). In the aforesaid judgment, it was held that the period of 6 years stipulated in Section 153-C of the IT Act has to be construed with reference to the date of handing over the documents to the Assessing Officer of the assessee and not the year of search. The said reliance is squarely applicable to the present case on hand relating to initiation of proceedings in respect of certain incriminating materials which were found during the course of search of the

respondent / Assessee. Whereas the Revenue / appellant submits that the relevant six Assessment years would be the assessment years even prior to the assessment year relevant to the previous year in which search was conducted. If this interpretation is taken into consideration and if the argument canvassed by the revenue is accepted, it would mean that in case of a person searched, assessments in relation to six previous years preceding the year in which the search takes place can be re-opened. But in case of any other person who is not searched but its assets are seized from the searched person, the period for which the assessments could be re-opened would be much beyond the period of six years. This contention is made by the learned Standing counsel Shri Arvind K.V for the Revenue but the counter arguments have been advanced by the learned counsel Shri Mayank Jain for the respondent / Assessee.

52. The rationale appears to be that 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. Accepting the contention that the Assessments were completed under Section 153-C of the Act for the Assessment years 2005-06 to 2010-11 and the assessment proceedings were concluded vide order dated 31.03.2013, the assessment order for the Assessment year 2011-12 was passed under Section 144 read with Section 153-D of the Act. The same is canvassed by the learned counsel for the respondent / assessee.

53. In the facts of the present case, the satisfaction note was recorded on 14.12.2012 and therefore, the six years previous to the year in which handing over of documents took place would be of Assessment year 2007-08 to Assessment year 2012-13. Thus, the relevant assessment year 2011-12 would fall within the purview of Section 153-C of the Act. Accordingly, the Tribunal while allowing the appeal in ITA No.1451-1457/BANG/2014 vide order dated 18.10.2016, held that satisfaction is mandatorily

required under Section 153-C of the Act to be recorded by the Assessing Officer of the searched person in the facts and circumstances of the present case. The Income Tax Appellate Tribunal proceeded to quash the assessments under Section 153-C of the Act on account of lack of jurisdiction of the Department to proceed against Respondent / Assessee.

54. It is further contended that the order passed by the Income Tax Appellate Tribunal for the Assessment years 2005-06 to 2010-11 that is I.T.A.No.1451-1457/BANG/2014 were never challenged and the finding that the satisfaction note was absent and there was lack of jurisdiction under Section 153-C of the Act, in the case of the respondent / assessee, had attained finality. Therefore, this appeal which is filed challenging the impugned order by urging various grounds and framing substantial questions of law, cannot arise for response merely because substantial questions of law have been proposed by the appellant / Revenue.

55. It is further contended that it is settled law that while construing penal statutes and taxation statutes, the Court has to apply strict rules of interpretation and Article 226 of the Constitution prohibits the State from extracting tax from the

citizen without authority of law. The natural corollary to the said provision is that State cannot burden the citizen without the authority of law and thus, taxation statutes have to be interpreted strictly. The Hon'ble Supreme Court in the case of Commr. of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1 held that if there are two view possible in the matter of interpretation of a charging section, the one favorable to the assessee needs to be applied. Applying the aforesaid ratio to the facts of the present case, the Hon'ble Delhi High Court in CIT vs. RRJ Securities have on a strict interpretation construed Section 153C of the Act and held that 6 years contemplated under sub Section (1) of Section 153C has to be reckoned from the date of handing over of documents to the AO of searched person and not the date of search. Thus, even otherwise the interpretation given by the Hon'ble High Court to Section 153C of the Act is in terms of the aforesaid law laid down by the Hon'ble Supreme Court.

56. As regards the issue of satisfaction raised in the main appeal i.e., ITA No.1450/BANG/2016, it is reiterated that the Income Tax Department has not preferred any appeal before this Hon'ble Court u/s 260A of the Act challenging the finding of

absence of satisfaction of AO of searched person in the case of the respondent / assessee. The Department having taken the aforesaid position, cannot at this stage urge this Hon'ble Court to adjudicate upon the issue of validity of satisfaction note.

57. Even otherwise, the requirement of recording of satisfaction note is clearly borne out of the provisions contained in Section 153C of the Act. The Hon'ble Supreme Court in the case of CIT vs. Calcutta Knitwears, (2014) 6 SCC 444 has held that the recording of satisfaction note is pre-requisite and the same must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person. Several Hon'ble High Courts have held that the provisions of Section 153C of the Act are *pari materia* to the provisions of Section 158BD of the Act, which was the subject matter of interpretation before the Hon'ble Supreme in the case of CIT vs. Calcutta Knitwears(supra). The aforesaid reliance are squarely applicable to the present case on hand in the given facts and circumstances of the case wherein certain incriminating materials were found during the course of search against the respondent / Assessee as alleged.

58. Insofar as the case of *CIT vs. Gopi Apartment, 2014 SCC OnLine All 16050*, the Allahabad High Court has held that recording of satisfaction before initiating proceedings is a *sine qua non* and must be recorded at the time of handing over of documents to the AO having jurisdiction over such other person. The initiation of proceedings against such other person is dependent upon the satisfaction being recorded and the same must be recorded before issuance of notice to such other person u/s 153C of the Act. It was further held that even in a case where AO of both the persons is the same and there is no requirement of physical handing over of documents, the recording of satisfaction is still a must as the same is the foundation upon which subsequent proceedings against the other person is initiated. In the aforesaid case of CIT vs. Gopi Apartment, the Hon'ble Allahabad High Court held as under:-

> *"(1) The first stage comprises of a search and seizure operation under Section 132 or proceeding under Section 132A against a person, who may be referred as 'the searched person'. Based on such search and seizure, assessment proceedings are initiated against the 'searched person' under Section 153A. At the time of initiation of such proceedings against the 'searched person' or during the assessment proceedings against him*

or even after the completion of the assessment proceedings against him, the Assessing Officer of such a 'searched person', may, if he is satisfied, that any money, document etc. belongs to a person other than the searched person, then such money, documents etc. are to be handed over to the Assessing Officer having jurisdiction over 'such other person'.

(2) The second stage commences from the recording of such satisfaction by the Assessing Officer of the 'searched person' followed by handing over of all the requisite documents etc. to the Assessing Officer of such 'other person', thereafter followed by issuance of the notice of the proceedings under Section 153C read with section 153A against such 'other person'.

The initiation of proceedings against 'such other person' are dependant upon a satisfaction being recorded. Such satisfaction may be during the search or at the time of initiation of assessment proceedings against the 'searched person', or even during the assessment proceedings against him or even after completion of the same, but before issuance of notice to the 'such other person' under Section 153C.

Even in a case, where the Assessing Officer of both the persons is the same and assuming that no handing over of documents is required, the recording of 'satisfaction' is a must, as, that is the foundation, upon which the subsequent proceedings against the 'other person' are initiated. The handing over of documents etc.

in such a case may or may not be of much relevance but the recording of satisfaction is still required and in fact it is mandatory".

59. In the facts of the present case, it is an admitted position that the satisfaction note was not recorded by the Assessing Officer of the searched person and thus, the Income Tax Appellate Tribunal passed an order quashing the assessment on account of lack of jurisdiction to proceed against the respondent / assessee under Section 153-C of the Act. The said order does not suffer from any infirmities but the Tribunal has rightly quashed the assessment on account of lack of jurisdiction. These are the contentions that have been made by the learned counsel for the respondent / assessee. Therefore, the learned counsel for the respondent / assessee prays for dismissal of this appeal preferred by the appellant / Revenue.

60. Learned counsel for the respondent places reliance in the case of *Commissioner of Income Tax-III vs. Calcutta Knitwares, Ludhiana (2014) 6 SCC 444*, wherein it is held in the Headnotes A, B and C thus:

"A. Income Tax Act, 1961 – Ss. 158-BD and 158-BE(2)(b) – Initiation of proceedings against any other person other than searched person – stages at which satisfaction note may be prepared by AO as to undisclosed income to transmit documents to Jurisdictional AO to proceed under S.158-BD against any such person other than the searched person – Limitation period, if any

B. Income Tax Act, 1961 – Ss. 158-BD, 158-BC, 132, 132-A and Ch. XIV-B – Initiation of proceedings under S. 158-BD against person other than searched person as to existence of undisclosed income – Satisfaction of assessing officer (AO as to existence of undisclosed income belonging to person other than searched person – Requirement of documentary evidence for satisfaction—Held, cogent and demonstrative material is sine qua non to AO's satisfaction in concluding that seized documents belong to person other then searched person for initiation of action under Section 158-BD.

C. Interpretation of Statutes – Particular Statutes or provisions – Taxation laws – Strict interpretation – Held, where words of statute are absolutely clear and unambiguous, recourse cannot be had to principles of interpretation other than literal rule – Reiterated, a taxing statute should be strictly construed – Common sense approach, equity, logic, ethics and morality have no role to play – Nothing is to be read in, nothing is to be implied; one can only look fairly at the language used and

nothing more and nothing less – Interpretation of Statutes – Basic Rules – Literal or strict interpretation."

Hence, the Hon'ble Supreme Court had held that for the purpose of Section 158-BD of the Act, a satisfaction note is a *sine qua non* and must be prepared by the Assessing Officer before he transmits the records to the other Assessing Officer who has jurisdiction over such other person. The satisfaction note could be prepared at either of the following stages:

a) at the time of or along with the initiation of proceedings against the searched person under Section 158-BC of the Act;

b) along with the assessment proceedings under Section 158-BC of the Act; and

c) immediately after the assessment proceedings are completed under Section 158-BC of the Act of the searched person.

61. It is relevant to refer to Section 153-A relating to Assessment in the case of search or requisition. In the aforesaid provision, clause (1) states that, notwithstanding anything contained in Section 139, 147, 148, 149, 151 and 153 in the case

of a person where the search is initiated under Section 132 or Books of Account, other documents or any assets are requisitioned under Section 132-A after 31st Day of May 2003 but on or before 31.03.2021, the aforesaid provision provided that the Assessing Officer shall assess or re-assess 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 re-assessment if any relating to any assessment year falling within the period of six assessment year and for the relevant assessment year or years.

62. The Learned Standing counsel for the appellant / Revenue namely Shri Arvind K.V. has emphatically submitted and contended insofar as the aforesaid provision of Income Tax Act, 1961 as regards response to substantial questions of law.

63. Section 153-C of the IT Act, 1961 relates to assessment of income of any other person. 153-C (1): Notwithstanding anything contained in Sections 139, 147, 148, 149, 151 and 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.

64. Learned Standing Counsel for the appellant / Revenue had emphasized the 'other than' provision. 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 132-A in the second proviso to sub-section (1) of Section 153-A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisioned by the Assessing Officer having jurisdiction over such other person.

65. The aforesaid Standing counsel has contended by emphatically referring to the aforesaid provision of the IT Act, 1961 relating to response to the substantial questions of law which have been proposed challenging the order passed by the Income Tax Appellate Tribunal.

66. In the present case on hand, the Income Tax Appellate Tribunal had arrived at a conclusion in ITA No.1451-1457/2014. It is seen that the Tribunal has not only followed the judgment of the Allahabad High Court rendered in the case of M/s. Gopi Apartment supra, but the Tribunal has also considered and followed the judgment of the Apex Court reported in the case of Calcutta Knitwears (supra), and the judgment of the Hon'ble Apex Court in the case of Manish Maheshwari (289 ITR 341). In the facts and circumstances of the present case on hand relating to initiation of proceedings, has been discussed based upon the materials. No satisfaction was recorded by the Assessing Officer of the searched person because it is seen that the so-called satisfaction note prepared by the Assessing Officer in his capacity as Assessing Officer of the searched person, it could not be shown by the Revenue that any satisfaction note was prepared by him as the AO of the searched person. Therefore, it is to be accepted that no satisfaction was recorded by the AO of the searched persons and therefore, the order of the Tribunal and the judgments of the Allahabad High Court rendered in M/s. Gopi Apartment (supra) and of the judgment of the Hon'ble Apex Court rendered in the case of Calcutta Knitwears (supra) and Manish

Maheshwari (supra) are applicable to the given facts and circumstances of the case. These judgments were followed by the Income Tax Appellate Tribunal to hold that the notice issued by the AO under Section 153-C of the IT Act deserves to be quashed and accordingly had proceeded to quash the assessment orders framed by the Assessing Officer under Section 153-C read with Section 143(3) of the Income Tax Act. Accordingly, the additional ground was allowed in all the seven years. The said finding has been challenged in this appeal by urging various grounds by the appellant / Revenue. But the grounds proposed for framing substantial questions of law and referred to certain provisions of the IT Act which has been extracted supra, but the grounds urged for preferring an appeal by the appellant / Revenue do not have any substance even for contending that it requires for dwelling in detail to refer to each one of the substantial questions of law. The judgment rendered by the Tribunal does not suffer from any infirmity or absurdity to call for interference the said judgment and further no warranting circumstances arise. Consequently, these appeals deserve to be rejected.

In terms of the aforesaid reasons, we are of the opinion that this appeal require to be dismissed as being devoid of merits. Accordingly, we proceed to pass the following:

ORDER

The appeal preferred by the appellant / revenue in ITA No.705/2018 is hereby rejected. Consequently, the order passed by the Income Tax Appellate Tribunal, Bangalore, in MP No.152/BANG/2016 (in ITA No.1457/BANG/2014) dated 06.03.2018 for the Assessment Year 2011-12 vide Annexure-"D" and so also the order passed by the Income Tax Appellate Tribunal in ITA No.1457/BANG/2014 dated 18.10.2016 for assessment year 2011-12 vide Annexure- C are hereby confirmed.

Before parting with this judgment, this court places on record its deep appreciation for the able research and assistance rendered by its Research Assistant-cum-Law Clerk, Mr.Pranav.K.B.

Sd/-
JUDGE

Sd/-
JUDGE

DKB/KS