

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G', NEW DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.4809/Del/2014
Assessment Year 2010-2011

The ACIT, Central Circle-25, Room No.331, ARA Centre, Jhandewalan Extn., New Delhi.	vs.	Ms. Surbhi Sen Jindal, R/o.B 10, Sector-36, Gautam Budh Nagar, Noida 201 301 (U.P.). PAN ADGPJ0889F
Appellant		Respondent

C.O.No 177/Del./2017
Arising out of

ITA.No.4809/Del/2014 - Assessment Year 2010-2011

Ms. Surbhi Sen Jindal, R/o.B-10, Sector 36, Gautam Budh Nagar, Noida - 201 301 (U.P.). PAN ADGPJ0889F	vs.	The ACIT, Central Circle-25, Room No.331, ARA Centre, Jhandewalan Extn., New Delhi.
Cross-Objector		Respondent

Revenue by :	Shri S.S. Rana, CIT-D.R.
Assessee by:	Shri Kapil Goel, C.A.

Date of Hearing :	16.10.2018
Date of Pronouncement :	01.11.2018

ORDER

PER BHAVNESH SAINI, JM

The Departmental Appeal as well as Cross-Objection by Assessee are directed against the Order of the Ld. CIT(A)-1, New Delhi, Dated 03.06.2014, for the A.Y. 2010-2011.

2. Briefly the facts of the case are that search and seizure operation under section 132 of the I.T Act, 1961, were carried-out in the cases of M/s. Bright Professional Pvt. Ltd. and M/s. Bright Star Air Travels Pvt. Ltd. on 25.11.2010. The search was concluded on 26.11.2010. M/s Bright Professional Pvt. Ltd. have made certain payments to the assessee in cash. Therefore, the Investigation Wing suggested that this case needs to be centralized along with the group cases. Verification of seized material Page Nos. 110, 111 & 112 of Annexure A-22 reveal that it is an agreement for “Faculty Engagement Agreement” entered into by the assessee and M/s Bright Professional Pvt. Ltd. This agreement has been signed by the assessee as a Faculty Member and signed by Shri Sanjeev

Kumar Gupta and Syed Rashid Masood, the directors of M/s Bright Professional Pvt. Ltd. This documents was also signed by the witness Shri Sovinder Bhati. Notice u/s. 153C was issued on 09.01.2013 after recording reasons thereof to file return of income by within 15 days of service of this notice. The assessee raised certain objections, however, ultimately filed return of income u/s. 153C under protest. The A.O. after giving opportunity of being heard and considering the material on record, computed the income of assessee at Rs.1,41,83,140/- by making certain additions in the assessment order under section 143(3) r.w.s. 153C of the I.T. Act, 1961, on dated 22.03.2013.

3. The assessee challenged the additions as well as legality of the jurisdiction assumed under section 153C of the I.T. Act before the Ld. CIT(A). The submissions of the assessee are noted in the impugned order in which the assessee briefly objected to the assumption of jurisdiction under section 153C of the I.T. Act and the additions on merit. It was noted that no

document belonging to the assessee was seized and that there were inadequate material to lead to the conclusion of tax evasion against the assessee. No proper opportunity have been given to the assessee and that objections of the assessee were not disposed of properly. The Ld. CIT(A), however, rejected the contention of assessee and noted that there was a reasonable cause for the Revenue to initiate proceedings under section 153C of the I.T. Act to verify the transactions, ascertain the actual facts and ensure whether due taxes had been paid. Therefore, it cannot be concluded that the proceedings under section 153C of the I.T. Act were without jurisdiction and invalid. The Ld. CIT(A) also held that the issue of invalidity of the proceedings under section 153C of the I.T. Act are not legally tenable. If the assessee was aggrieved with the legality of the proceedings, the correct remedy was to approach the jurisdictional High Court in an appropriate writ for quashing the proceedings. The Ld. CIT(A), therefore, held that proceedings under section 153C of the I.T. Act are in accordance with Law. As regards the addition on merit, the Ld.

CIT(A) deleted some of the additions on merit and allowed the appeal of assessee partly.

4. The Revenue is in appeal on the following grounds:
1. *The order of the CIT(A) is not correct in law and facts.*
 2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.24,618/- made by Assessing Officer on account of 'car expenses and depreciation'.*
 3. *On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.1,15,914/- made by Assessing Officer on account of office expenses and salary.*
 4. *On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.86,67,300/- made by Assessing Officer on account of unaccounted receipt of professional/faculty free from M/s Bright Professional Pvt. Ltd.”*

5. The assessee in the Cross-Objections has raised the following grounds :

“1. That on the facts and in the circumstances of the case and in law, the notice issued u/s 153C, is bad in law, without jurisdiction and also the impugned orders passed on the foundation of such notice and consequential order passed by the Ld. CITA are liable to be quashed.

1.1. That on the facts and in the circumstances of the case and in law, the proceedings initiated u/s 153C and consequential orders are liable to be struck down for want of fulfillment of mandatory jurisdictional conditions, stipulated u/s 153C of the act.

1.2. That on the facts and in the circumstances of the case and in law, the document which is edifice of impugned orders passed by Ld. AO and Ld. CITA by no standard of reasoning can be said to be

“belonging to appellant herein” within the meaning of section 153C of the act.

- 1.3. That on the facts and in the circumstances of the case and in law, proceeding initiated u/s 153C and all consequential actions are liable to be declared as nullity because of absence of requisite satisfaction note(s) to be drawn respectively by Assessing Officer of raided person and AO of other person (Assessee).*
- 2. That Ld. CITA erred in not deleting all the additions which are unconnected to, (a). Satisfaction note, (b). Seized Material once it is found that seized document/material as referred in assessment order has no basis and addition on the basis of stated seized material is deleted.*
- 3. That Ld. CITA erred in not deleting all the additions which are unconnected to, (a). Satisfaction note, (b). Seized Material, as it is not permitted to make denovo assessment u/s 153C, which is to be*

confined to incriminating material, seized during search, duly referred in satisfaction note.”

5.1. Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has filed copy of the satisfaction note recorded for initiating the proceedings under section 153C of the I.T. Act, Dated 09.01.2013. The same reads as under :

“SATISFACTION NOTE FOR TAKING UP THE CASE OF SMT. SURBHI SEN JINDAL (SURBHI BANSAL) U/S 153C OF THE I.T. ACT, 1961 A.Y. 2005-06 TO 2010-11.

A search and seizure action u/s 132(1) of the I. T. Act, 1961 was conducted on 25.11.2010 in the case of M/s Bright Professional Pvt. Ltd., M/s Bright Star Air Travels Pvt. Ltd., Shri Sanjeeva Kumar Gupta and Shri Syed Rashid Masood, Both Directors of the Group Companies at the premises 1/53, Lalita Park, Laxmi Nagar, Delhi. As a consequence of the search and seizure action on the

above premises, some papers/documents/faculty engagement agreement between Smt. Surbhi Sen Jindal (Surbhi Bansal), r/o B-10, Sector-36, Noida, Gautam Budh Nagar – 201301 with M/s Bright Professional Pvt. Ltd. were seized and marked as Annexure-A-22. Further it has been noticed that during the course of examination of seized material contained in Annexure A-29 and A-30, it was noted that huge payments have been made to Smt. Surbhi Sen Jindal (Surbhi Bansal)

Thus, action u/s 153C is called for in the case of Smt. Surbhi Sen Jindal (Surbhi Bansal).

In view of the above report and seized material mentioned above, I am satisfied that the above documents belong to Smt. Surbhi Sen Jindal (Surbhi Bansal) and thus, the case of the assessee is being taken up for assessment u/s 153C of the Income Tax Act, 1961.

Notice u/s 153C r.w. section 153A of the I. T. Act, 1961 are, therefore, issued to the assessee for the Asst, years 2005-06, 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11.

*Sd/-B.S. Rawat
DCIT, CC-25, New Delhi.
Date 09.01.2013.”*

5.2. Learned Counsel for the Assessee also referred to the objection filed before the A.O challenging the legality of the assessment under section 153C of the I.T. Act which is disposed of by the A.O. vide Order Dated 14.02.2013, copies of which, is filed at pages 11 and 12 of the paper book. Learned Counsel for the Assessee referring the same submitted that the assessee in the objection to the legality of the assessment under section 153C of the I.T. Act submitted before the A.O. that *prima facie* it is clear from the tone and tenor of the aforesaid satisfaction note that same has been recorded on the file of the assessee only as the same is not recorded in the file

of the searched person. Therefore, condition precedent for invoking jurisdiction under section 153C of the Act are not satisfied. It was also explained that satisfaction note is full of subjectivity and vagueness and it is not clear which documents particularly the A.O. is referring to for assuming jurisdiction under section 153C of the Act out of the stated Faculty Engagement Agreement. It was also explained that jurisdiction under section 153C of the Act is bad in law in the present case. The Faculty Engagement Agreement is Dated 07.10.2010 which is fully explained. Learned Counsel for the Assessee by referring to the same Order of the A.O. submitted that A.O. instead of deciding the above objections of the assessee in proper perspective has held that provisions of Section 153C are *ipso facto* attracted and it is automatic that the assessments covered under all the years falling within the mandate of provisions of Section 153C(1) r.w.s. 153A(i) get attracted in the case of the assessee. There is no legal requirement that initiation of proceedings should only be with

respect to such years in respect of which there is some material. Learned Counsel for the Assessee also submitted that A.O. noted that recording of satisfaction so as to show existence of undisclosed income is not a pre-requisite under the provision of Section 153C which are distinguishable from the provisions of Section 158BD of the Act which related to block assessment. Learned Counsel for the Assessee, therefore, submitted that since no satisfaction have been recorded in the case of the person searched for initiating proceedings under section 153C of the I.T. Act, therefore, conditions of Section 153C of the I.T. Act, are not satisfied. The issue is covered by the Order of the ITAT, Delhi Bench in the case of ACIT, Central Circle-9, New Delhi vs. M/s. Victory Accommodations Pvt. Ltd., Delhi in ITA.No.6238/Del./2014 for the A.Y. 2008-2009, Dated 27.06.2018. He has, therefore, submitted that assessment order is *void abinitio* and is liable to be quashed.

6. On the other hand, Ld. D.R. relied upon the Orders

of the authorities below and relied upon the decision of Hon'ble Delhi High Court in the case of PCIT vs. Sheetal International Pvt Ltd 2017-TIQL-1355-DEL, in which it was held as under :

“Proceedings u/s 153C cannot be invalidated, merely because the AO of the searched who was also that of the Assessee, did not record a separate satisfaction note.”

6.1. The Ld. D.R. further relied upon the decision of Hon'ble Delhi High Court in the case of PCIT vs. Super Malls Pvt. Ltd., (2017) 393 ITR 557 (Del.), in which it was held as under :

“Where Assessing Officer had issued satisfaction note under section 153C after satisfying himself with contents of documents seized, Tribunal could not declare it as invalid on hyper technical ground of incorrect terminology used in said note. Satisfaction

note recorded u/s 153C in respect of the assessee, being the third party, could not be said to be invalid on a hyper technical ground by interpreting the expression "belonging to" too literally."

7. We have considered the rival submissions. According to Section 153C of the I.T. Act, the action under section 153C can be taken in respect of any other person, other than the person searched, if the A.O. of the searched person is satisfied that any money, bullion, jewellery, or other valuable article or thing or books of account seized or requisitioned belongs or belonged to a person other than the person searched under section 153A. In such circumstances, the Assessing Officer shall hand over to the Assessing Officer of such other person money, jewellery, bullion or other valuable article or thing or books of account or documents, and thereafter, the Assessing Officer of such other person shall proceed against the said person to assess or re-assess his income in accordance with the provisions of Section 153A

of the I.T. Act, 1961. Therefore, recording of satisfaction by the Assessing Officer of the person searched is a condition precedent for initiating action under section 153C of the I.T. Act. An identical issue have been considered and decided by ITAT, Delhi, D-Bench in the case of ACIT, Central Circle-9, New Delhi vs. M/s. Victory Accommodations Pvt. Ltd., Delhi in ITA.No.6238/Del./2014 for the A.Y. 2008-2009, Dated 27.06.2018, in which in paras 6 to 7 it was held as under :

“6. We have considered the rival submissions. According to Section 153C of the I.T. Act, action under section 153C can be taken in respect of any other person than the person searched, if the A.O. of the searched person is satisfied that any money, bullion, jewellery, or other valuable article or thing or books of account seized or requisitioned belongs or belonged to a person other than the person searched under section 153A. In such circumstances, the Assessing Officer shall hand over to the Assessing Officer of such other person money,

jewellery, bullion or other valuable article or thing or books of account or document, and thereafter, the Assessing Officer of such other person shall proceed against the said person to assess or re-assess his income in accordance with the provisions of Section 153A of the I.T. Act, 1961. Therefore, recording of satisfaction by the Assessing Officer of the person searched is a condition precedent for initiating action under section 153C of the I.T. Act. The Hon'ble Supreme Court in the case of Manish Maheshwari vs. ACIT (2007) 289 ITR 341 (SC) in para-11 held as under:

“Condition precedent for invoking a block assessment is that a search has been conducted under [Section 132](#), or documents or assets have been requisitioned under [Section 132A](#). The said provision would apply in the case of any person in respect of whom search has been carried out under [Section 132A](#) or documents or assets have been requisitioned under [Section 132A](#). [Section 158BD](#), however, provides for taking recourse to a block assessment in terms

of [Section 158BC](#) in respect of any other person, the conditions precedents where for are : (i) Satisfaction must be recorded by the Assessing Officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under [Section 132](#) of the Act; (ii) The books of account or other documents or assets seized or requisitioned had been handed over to the Assessing Officer having jurisdiction over such other person; and (iii) The Assessing Officer has proceeded under [Section 158BC](#) against such other person.

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.”

6.1. *It was further held by the Hon'ble Supreme Court in para-16 in the case of Manish Maheshwari (supra) as under :*

“Law in this regard is clear and explicit. The only question which arises for our consideration is as to whether the notice dated 06.02.1996 satisfies the requirements of [Section 158BD](#) of the Act. The said notice does not record any satisfaction on the part of the Assessing Officer. Documents and other assets recovered during search had not been handed over to the Assessing Officer having jurisdiction in the matter.”

6.2. *It was further held in para-22 by the Apex Court in the case of Manish Maheshwari (supra) as under:*

“As the Assessing Officer has not recorded his satisfaction, which is mandatory; nor has he transferred the case to the Assessing Officer having jurisdiction over the matter, we are of the opinion that the impugned judgments of the High Court cannot be sustained, which are set aside accordingly. The appeals are allowed. However, in the

facts and circumstances of the case, there shall be no order as to costs."

6.3. *The CBDT vide Circular No.24/2015 dated 31st December, 2015 issued the following directions :*

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

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

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

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

(b) in the course of the assessment proceedings under section 158BC of the Act; or

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

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

4. The guidelines of the Hon'ble Supreme Court as referred to in para 2 above, with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that even if the AO

of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above 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."

6.4. *The Hon'ble Bombay High Court in the case of CIT vs. Singhad Technical Education Society (2015) 378 ITR 84 (Bom.) held as under :*

"In terms of section 153C of the Income-tax Act, 1961, the Assessing Officer should be satisfied that any money, bullion, jewellery or other valuable articles or thing or books of account or documents seized or requisitioned belong or belongs to a person other than the person referred to in section 153A of the Act and he can hand over

the seized documents to the Assessing Officer having jurisdiction over that person.

The assessee was an educational institution since the assessment year 1994-95. A search and seizure operation was carried out and certain loose papers were seized from the president of the assessee. Simultaneously a survey action was conducted on the assessee. On the basis of loose papers found with and seized from the president the Assessing Officer issued a notice under section 153C on the assessee and assessed the income. The Tribunal set aside the assessments. On appeals to the High Court:

Held, dismissing the appeals, that the reasons assigned by the Assessing Officer in the satisfaction note were silent about the assessment year in which specific incriminating information or unaccounted or undisclosed hidden information was discovered or seized by the Revenue from the assessee. In the circumstances, the general satisfaction and as recorded in the note was not enough. There was absolutely nothing to indicate as to in which educational courses, the education was imparted and institution wise, whether the admissions were granted

to the technical courses merit-wise or on the basis of marks obtained in XII standard HSC exam. Whether any fee structure was approved and cash component was, therefore, collected over and above the sanctioned fees were matters which ought to have been gone into and there could, not be a general or vague satisfaction. The Tribunal was justified in setting aside the assessments.”

6.5. *The Hon’ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society (2017) 397 ITR 344 (SC) held as under :*

“Held, dismissing the appeals, (i) that the Tribunal permitted the assessee to raise the additional ground on the ground that it was a jurisdictional issue taken up on the basis of facts already on record, that under section 153C of the Act, incriminating material which was seized had to pertain to the assessment years in question, and that the documents which were seized did not establish any correlation, document-wise, with these four assessment years.

The Tribunal found that the material disclosed in the satisfaction note belonged to assessment year 2004-05 or thereafter. The Tribunal rightly permitted this additional ground to be raised and correctly dealt with the ground on the merits as well. The High Court was right in affirming this view of the Tribunal.

Decision of the Bombay High Court in CIT v. Sinhgad Technical Education Society [2015] 378 ITR 84 (Bom) affirmed.

(ii) That the assessment order passed by the Assessing Officer covered eight assessment years. For six assessment years the assessment was under section 153C of the Act. The assessment order was set aside only in respect of four of those assessment years and on a technical ground. The objection pertaining to the four assessment years in question did not relate to the other tax assessment years,

namely, 2004-05 and 2005-06. Nor did this decision have a bearing in respect of assessment for assessment year 1999-2000 or assessment year 2006-07. The necessary consequence would be that the conclusions of the Assessing Officer in his assessment order regarding the activities of the trust not being genuine and not carried out in accordance with the trust deed or cancellation of registration, denial of benefits of sections 11 and 12 would not be affected by this judgment.”

6.6. *The Hon ble Madras High Court in the case of CIT vs. Late J. Chandrasekhar (HUF) (2011) 338 ITR 61 (Mad.) held as under :*

“On the search conducted in the case of A and group on November 25, 2003, material pertaining to "on-money" payment paid to the assessee in respect of property purchased from the assessee were seized. Based on that,

the Assessing Officer issued notice under section 153C of the Income-tax Act, 1961, and reworked the capital gains. The Commissioner (Appeals) and the Tribunal held that the notice under section 153C was not valid. On appeal to the High Court:

Held, dismissing the appeals, that the Assessing Officer did not have the benefit of the seized material while issuing the notice under section 153C. In the light of the fact that the Revenue did not produce any material to show that the materials were available at the hands of the Assessing Officer at the time of issuing notice, the Tribunal rightly came to the conclusion that the assumption of jurisdiction under section 153C was not valid."

6.7. *The ITAT, Agra Bench in the case of ACIT, Circle-I, Gwalior vs. Global Estate (2013) 142 ITD 740 (Agra) held as under :*

- The assessee had a case for quashing of proceedings under section 153C. No material is produced to prove that the Assessing Officer in the case of person searched was satisfied that any money, bullion, jewellery or other valuable article or things or books of account or documents seized or requisitioned belongs to or belong to a person other than the person referred to in section 153A.
- No material is produced before to show if any satisfaction was recorded by the Assessing Officer in that case that the material belongs to any person other than the person with respect to whom search was made under section 132. Department did not produce any material to show if any such satisfaction as required under section 153C was recorded by the Assessing

Officer in the case of person searched. No material is produced in reference to above requirement.

- No material is also produced before to show that books of account or documents or assets seized had been handed over to the Assessing Officer having jurisdiction over such other person. In the absence of any adequate material produced by the department contention of the assessee was justified that in this case, the Assessing Officer had not recorded any satisfaction that any seized document or material belongs to any person other person searched.
- Since the revenue is in appeal, therefore, burden was upon them to prove that necessary ingredients of section 153C have been complied with in this case before invoking jurisdiction under section 153C.

- It is added further here that the Assessing Officer has not referred to any seized document or material in the assessment orders on the basis of which, additions on merit have been made. Therefore, the conditions of section 153C as noted above are also not satisfied in this case. Therefore, there is no infirmity in the order of the Commissioner (Appeals) in quashing the proceedings under section 153C.”

6.8. *The ITAT, Delhi Bench, in the case of assessee for A.Ys. 2009-2010 and 2010-2011 in the matter of Victory Accommodation Pvt. Ltd., vs. ACIT, Central Circle-09, New Delhi 2017 (5) TMI 1050-ITAT-Delhi (supra), on identical facts held as under :*

“Assessment framed u/s 153C - absence of satisfaction note - Held that:- From the plain reading of the Circular No. 24/2015 dated 31.12.2015 issued by the Central Board of Direct Taxes, it is crystal clear that even if the

AO of the searched person and of the other person is one and the same then he is required to record his satisfaction in the case of searched person.

In the present case, it is an admitted fact that the AO of the searched person has not recorded any satisfaction rather the satisfaction is recorded by the AO of the other person i.e. the assessee which is evident from the satisfaction note, copy of which is placed at page no. 21 of the assessee's paper book. Therefore, the assessment framed in the hands of the assessee was not valid. Moreover, from the observation of the AO in the satisfaction note also it is crystal clear that no incriminating material was found, the addition was made only on the basis of the copy of balance sheet, profit and loss account and schedule of advances against supplies pertaining to the assessee, those

documents were already in the knowledge of the department as the same were furnished alongwith the regular return of income. Therefore, those documents by no stretch of imagination can be said to be incriminating as those were made out of the regular books of accounts of the assessee and the return of income was filed on the basis of those documents only. - Decided in favour of assessee."

6.9. *The Hon'ble jurisdictional Delhi High Court in the case of Pr. CIT vs. Index Securities Private Limited, Vidya Shankar Investment Private Limited 2017 (9) TMI 585 (Del.) (HC)(supra) observed that "the two seized documents referred to in the satisfaction note in the case of each assessee are the trial balance and balance-sheet for a period of 05 months in 2010. In the first place, they do not relate to the assessment years for which the assessments were reopened in the case of*

both assessee's. Secondly, they cannot be said to be incriminating". Consequently, it was found that "even the second essential requirement for assumption of jurisdiction under section 153C of the I.T. Act, was not met in the case of the two assessee's".

7. *Considering the facts of the case in the light of submissions made by both the parties and finding of fact arrived by the Ld. CIT(A), we do not find any merit in the Departmental Appeal. The Ld. CIT(A) called for the assessment record of the assessee-company and found that A.O. has recorded the satisfaction note in the file of the assessee- company which is reproduced above in which the A.O. has referred to the seized paper i.e., balance sheet and P & L A/c of the assessee-company ending 31.03.2010. The notice was issued on the same day when satisfaction note was recorded by the A.O. of the assessee i.e., other person.*

The same A.O. who recorded satisfaction in the case of assessee passed assessment order under section 143(3)/153C of the I.T. Act. The Ld. CIT(A) also called for the assessment record of the person searched Shri Pramod Goel and it was found that no such satisfaction have been recorded in the case of the person searched relating to the assessee-company. It is, therefore, clear that no satisfaction note as required by Law have been recorded in the case of the person searched i.e., Shri Pramod Goel so as to initiate proceedings against the assessee-company under section 153C of the I.T. Act. It may also be noted here that initially the A.O. proceeded against the assessee-company under section 153A of the I.T. Act, on the premise that search was conducted against the assessee-company under section 132 of the I.T. Act, therefore, he has issued notice under section 153A of the I.T. Act against the assessee-company. When it was found later on, that no search have been conducted in the case of assessee-company, therefore,

notice under section 153A was withdrawn. The A.O. of the assessee later on recorded satisfaction note under section 153C of the I.T. Act, which is not valid in Law. The A.O. of the assessee referred to balance sheet of the assessee-company for other year, therefore, the same cannot be considered to be incriminating in nature against the assessee-company as it is part of Department record and in public domain. Therefore, it is clear from the above facts that the condition precedent for issuing notice under section 153C are not satisfied in this case because no satisfaction have been recorded under section 153C in the case of the person searched and no incriminating material was seized pertaining to assessment year under appeal. Even during the course of survey, no incriminating material was found against the assessee-company because the same were regarding purchase of shares of the group companies and ultimately, A.O. made the addition based on books of account that the share application money have not

been explained by assessee-company. Such material found in survey is not relatable to the material found during the course of search in the case of the person searched because the balance-sheet does not belong to assessment year under appeal. Therefore, there is no incriminating material found during the course of search against the assessee-company so as to record any satisfaction note against the assessee-company. Thus, there is no reason to believe that A.O. of the searched person would have recorded any satisfaction note that any money, bullion, jewellery, or other valuable article or thing or books of account seized or requisitioned belongs or belonged to a person other than the person searched under section 153A. Therefore, conditions of Section 153C of the I.T. Act are not satisfied in this case. The issue is covered against the Revenue by Judgment of the Hon'ble Supreme Court in the case of CIT vs. Sinhgad Technical Education Society (supra) and Order of the Tribunal in the case of

assessee-company for A.Ys. 2009-2010 and 2010-2011 (supra). The decisions relied upon by the Ld. D.R. are, therefore, not applicable to the facts and circumstances of the case as the same are clearly distinguishable. We, therefore, do not find any infirmity in the order of the Ld. CIT(A) in holding that initiation of proceedings under section 153C of the I.T. Act are improper and bad in law. No interference is called for Ground Nos. 1 and 2 of the appeal of the Revenue are accordingly dismissed.”

8. It is an admitted fact that search under section 132 of the I.T. Act was conducted in the cases of Bright Professional Pvt. Ltd. and Bright Star Air Travels Pvt. Ltd. M/s Bright Professional Pvt. Ltd. have made certain payments to the assessee and a Faculty Engagement Agreement was found to have been entered into between the Assessee and the person searched i.e., M/s Bright Professional Pvt. Ltd., on the basis of which, proceedings under section 153C were initiated

on 09.01.2013. Notice under section 153C was also issued on the same day on 09.01.2013. Copy of the satisfaction note recorded in the case of assessee on 09.01.2013 under section 153C is reproduced above. It is clear from the above satisfaction note that it is recorded in the case of the assessee by the A.O. DCIT, CC-25, New Delhi, who have also framed assessment in the case of the assessee. The satisfaction note clearly revealed that satisfaction note have been recorded by the A.O. of the assessee and not by the A.O. of the searched person i.e., M/s Bright Professional Pvt. Ltd. The assessee filed objections to the initiation of proceedings under section 153C of the I.T. Act, in which, assessee specifically raised the point that satisfaction note have not been recorded in the case of the searched person, therefore, conditions of Section 153C are not satisfied in this case. Therefore, assumption of jurisdiction under section 153C is bad in law. The assessee also explained in the objection that the solitary seized document provided to the assessee is Faculty Engagement Agreement Dated 07.10.2010 as is referred to in the assessment order, which

according to the assessee is fully explainable. The A.O. however, did not decide these objections specifically and on irrelevant reasons rejected the claim of assessee. Therefore, on the basis of which, it is clear that no satisfaction have been recorded in the case of the person searched and the seized document i.e., Faculty Engagement Agreement Dated 07.10.2010 would not be relevant to assessment year under appeal i.e., 2010-2011 as the same may relevant to the subsequent assessment year 2011-2012. These facts makes it clear that no satisfaction have been recorded in the case of the person searched relating to the assessee. It is, therefore, clear that no satisfaction note is required by Law have been recorded in the case of the person searched i.e., M/s Bright Professional Pvt. Ltd., so as to initiate the proceedings against the assessee under section 153C of the I.T. Act, 1961. The document referred to in the assessment order and satisfaction note and Order of the A.O. Dated 14.02.2013 rejecting the objections of the assessee, clearly reveals that Faculty Engagement Agreement may not relate to the assessment year

under appeal. Therefore, the condition precedent for issuing notice under section 153C are not satisfied in this case because no satisfaction have been recorded under section 153C in the case of the person searched and no incriminating material was seized pertaining to assessment year under appeal. Since the conditions of Section 153C of the I.T. Act are not satisfied in the present case, therefore, assumption of jurisdiction by the A.O. to issue notice under section 153C is *void abinitio* and bad in law and vitiate the entire assessment proceedings under section 153C of the I.T. Act. The decisions relied upon by the Ld. D.R would not apply to the facts and circumstances of the case. The issue is covered in favour of the assessee by Order of ITAT, Delhi Bench in the case of ACIT, Central Circle-9, New Delhi vs. M/s. Victory Accommodations Pvt. Ltd., Delhi (supra). In this view of the matter, we set aside the Orders of the authorities below and quash the initiation of re-assessment proceedings under section 153C of the I.T. Act. Resultantly, all additions stands deleted.

9. In the result, cross objection of the Assessee is allowed.

10. Since the assessment order have been quashed, therefore, the grounds raised in the Departmental Appeal are left with academic discussion and need no adjudication.

10. In the result, appeal of the Department is dismissed.

11. To sum-up, Cross-Objections of the Assessee is allowed and Departmental Appeal is dismissed.

Order pronounced in the open court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER
Delhi, Dated 01st November, 2018

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

VBP/-
Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.