

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.As. No.8045/DEL/2019
Assessment Year 2015-16

Modtech Industries, A-81, FF, Road No.2, Mahipalpur Extn., New Delhi.	v.	DCIT, Central Circle-2, New Delhi.
TAN/PAN: AANFM2659J		
(Appellant)		(Respondent)

ITA No.8046/DEL/2019
Assessment Years 2015-16

Dorset India Pvt. Ltd. A-81, FF, Road No.2, Mahipalpur Extn., New Delhi.	v.	DCIT, Central Circle-3, New Delhi.
TAN/PAN: AADC8022B		
(Appellant)		(Respondent)

ITA No.8783/DEL/2019
Assessment Years 2015-16

DCIT, Central Circle-3, New Delhi.	v.	Modtech Industries, A-81, FF, Road No.2, Mahipalpur Extn., New Delhi.
TAN/PAN: AAACD3494N		
(Appellant)		(Respondent)

Appellant by:	Shri Salil Aggarwal, Sr. Adv. Shri Shailesh Gupta, Adv. Shri Madhur Aggarwal, Adv.		
Respondent by:	Shri J.K. Mishra, CIT-DR		
Date of hearing:	29	09	2021
Date of pronouncement:	13	10	2021

ORDER**PER AMIT SHUKLA, J.M.**

The aforesaid appeals have been filed by the above two appellant assesseees, namely i) M/s Dorset India Pvt. Ltd. and ii) M/s Modtech Industries; both the against order consolidated order dated 21.08.2019, passed by learned CIT (Appeals)-XXIII for the quantum of assessment passed u/s 153C/153A for the Assessment Year 2015-16.

2. Before we deal upon the grounds raised in the appeal, it is pertinent to note brief background of the case as culled out from the records. A search and seizure operation under section 132(1) of the Income Tax Act was carried out in Dorset group and Rajesh Bansal group of cases on 06/12/2016. The ABOVE assessee's were not subjected to search, however, notice u/s 153A dated 13.12.2017 of the Income Tax Act was issued to the assessee's, which were subsequently dropped; and then notice under section 153C of the Act dated 25.09.2018 was issued after recording a satisfaction note in the case of assessee's.

3. That during the course of hearing both Assessee and Revenue agreed on the fact that all the three captioned appeals involve consideration of common issues and it was further, agreed by both the parties that M/s Dorset India Pvt. Ltd (DIPL) may be taken as lead matter, since learned CIT (A)

has sustained the additions in the hands of DIPL on substantive basis, against which assessee is in appeal and has deleted the addition so made by learned AO in the hands of M/s Modtech Industries, against which both Revenue and Assessee are in appeal.

4. We have also gone through the materials available on record and find that the issues involved in all the appeals are common and identical and in view of the aforesaid submissions of the Counsel of the assessee and learned CIT DR on behalf of Revenue, we therefore for the sake of convenience proceed to dispose of both the appeals by a consolidated order but for the sake of reference refer to the facts for A.Y. 2015-16 in the case of M/s Dorset India Pvt. Ltd. in ITA No. 8046/Del/2019 as lead matter, wherein, the addition has been sustained by learned CIT (A) on substantive basis.

5. The assessee has raised following grounds of appeal in the case of M/s Dorset India Pvt. Ltd:-

1. "The order passed by the learned Commissioner of Income tax (A) in confirming the addition on substantive basis of s. 1,75,51,80,914/- is arbitrary, against law and facts on record.

2. On the facts and circumstances of the case and in law the assumption of jurisdiction u/s 153C in the absence of incriminating material and in the absence of document belonging to appellant found during the course of search

has wrongly been assumed, hence the impugned assessment order passed u/s 153C r.w.s. 153A is illegal and unsustainable in law.

3. On the facts and circumstances of the case and in law the assumption of jurisdiction u/s 153C r.w.s. 153A without handing over the documents seized during the course of search to the learned Assessing Officer of the appellant and framing of assessment without issue of notice u/s 143(2) is illegal and unsustainable in law.

4. On the facts and circumstances of the case and in law the impugned order passed u/s 153C r.w.s. 153A of the Income Tax Act on the basis of borrowed satisfaction and without providing the reason to appellant which leads to satisfaction of the learned Assessing Officer that too without taking prior approval u/s 153D of the Income Tax Act is bad in law and hence liable to be quashed.

5. On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (A) erred in confirming the addition by reducing the goodwill created on account of amalgamation of Rs. 1,75,52,16,915/- while working out the networth u/s 50B of the Income Tax Act is illegal and is in complete disregard to the amalgamation order passed by Hon'ble Delhi High Court and is contrary to the facts on record, simply on the basis that the judgment of Hon'ble Delhi High Court is dated 05.05.2015 ignoring this vital aspect that the amalgamation is w.e.f. 01.04.2014 and

hence, the order is on the basis of suspicion, surmise and conjecture and shows complete lack of application of mind.

6. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”

6. During the course of hearing Ld. Counsel for the Appellant, Sh. Salil Aggarwal, Senior Advocate, though took up all the grounds of appeal raised in memo of appeal, however he heavily stressed upon the issue raised in Ground No. 2 as incorporated above by the assessee – appellant, which is purely a legal ground and goes to the root of the validity of assessment and addition made in the impugned assessment order. Therefore, the same is being taken up first. In support of the aforesaid ground and in addition to the oral arguments, the learned counsel for the assessee – appellant furnished brief written synopsis, which is being extracted here below for the sake of brevity and completeness of records:

“Facts in brief and legal synopsis with regards to ground no. 2 to 4 taken before Hon’ble Tribunal

1. At the outset, it is most humbly submitted that the captioned appeals involve considerations of common issues. However, for the sake of brevity and completeness, M/s Dorset India Pvt. Ltd (DIPL) may be taken as lead matter,

since learned CIT (A) has sustained the additions in the hands of DIPL on substantive basis (for which assessee is in appeal on both legal and merits) and has deleted the addition so made by learned AO in the hands of M/s Modtech Industries (for which assessee is in appeal for legal issue and Revenue is in appeal for merits).

2. The chronological sequence of events in the case of M/s Dorset India Pvt. Ltd. (DIPL) leading up to the instant matter, is as under:

Sr. No.	Particulars	Date
i)	Date of search u/s 132 of the Act on Dorset group of cases but not on assessee.	06.12.2016
ii)	Date of notice u/s 153A wrongly issued in the case of assessee, which was subsequently dropped on 27.07.2018.	13.12.2017
iii)	Satisfaction Note Recorded on (at pages 367 to 370 of PB – I).	24.09.2018
iv)	Notice under section 153C issued on	25.09.2018
v)	Date of filing of original return of income at Rs. 6, 11, 52, 690/- (the said return of income was final on the date of recording of satisfaction note and also on the date of search)	08.02.2016
vi)	Date of filing of Return of Income under section 153A of the Act.	10.01.2018

vii)	Assessment u/s 153C r.w.s. 153A of the Act	
	<i>Date of order</i>	<i>30.12.2018</i>
	<i>Income assessed: Rs. 156 crores on substantive basis in the case of M/s Modtech Industries and protective in the case of DIPL. Rs. 34 crores on substantive basis in DIPL with regards to consideration received by Mars India Pvt. Ltd. Rs. 177.48 crores on substantive basis in DIPL with regards to Capital Gain on Slump Sale.</i>	
v)	Order of CIT(A)	
	<i>Date of order</i>	<i>21.08.2019</i>
	<i>Findings</i>	<i>Partly Allowed</i>

2.1 It is further, submitted that the original return of income by M/s DIPL was filed on 08/02/2016 declaring income of Rs 6, 11, 52, 690/- (**kindly see pages 247 to 293 of the PB - I**). The appellant also filed form no 3CEA dated 03/02/2016 (i.e. the audit report relating to capital gain on slump sale) at the time of filling of original return of income (**kindly see pages 253 to 255 of PB - I**).

2.2 That search and seizure operation under section 132(1) of the Income Tax Act was carried out in Dorset group and

*Rajesh Bansal group of cases on 06/12/2016. It is most humbly submitted that the assessee company was not subjected to search and thus, no panchanama was drawn in the name of the appellant. However, notice u/s 153A dated 13.12.2017 of the Income Tax Act was issued to the assessee, which was subsequently dropped and then notice under section 153C of the Act dated 25.09.2018 was issued after recording a satisfaction note in the case of assessee – appellant **(kindly see pages 365 and 368 of PB - I)**.*

2.3 *At this juncture, it is most humbly submitted that the satisfaction note was recorded on 24.09.2018 by the learned AO in order to initiate the proceedings under section 153C of the Act against the assessee – appellant **(copy of satisfaction note is at pages 367 to 370 of PB - I)**.*

2.4 *The documents found during the course of search which forms part of satisfaction note is being summarized and discussed as under :-*

a) *Annexure A – 1 Page nos. 7 to 32, 33 to 34 and 45 to 74 **(kindly see page 367 of PB – I)**, Annexure A – 2 page no. 1 to 5 **(kindly see page 368 of PB – I)**, Annexure A – 2 page nos. 7 to 9, 17 to 22, 23 to 27, 47 to 87 **(kindly see page 369 of PB – I)**, Annexure A – 3 page nos. 1 to 10 **(page no. 369 of PB – I)**, no reference of the said documents has been made in the assessment order nor any addition on the basis of these documents have been made in the assessment order passed under section 153C of the Act. Thus, with reference to the aforesaid documents, since*

no additions have been made by learned AO, as such, it is submitted that the same have not held to be incriminating, even by the learned AO himself in the impugned order of assessment.

b) Page no. 7 to 35 of Annexure A – 2, found from OBC Bank Locker of Sh. Rajesh Kumar Bansal and Smt. Rekha Bansal being copy of Hon'ble High Court order dated 05.05.2015 in the matter of amalgamation between M/s Mars India Pvt. Ltd. (MIPL) with M/s Dorset India Pvt. Ltd. (DIPL) **(said document is enclosed at pages 116 to 145 of PB – I).**

c) Page no 39-51 of Annexure Ad) Page nos. 53 and 54 of Annexure A-2 (-2 (locker at OBC) being copy of Business Transfer Agreement (BTA) dated 01.04.2014 between M/s Modtech Industries and M/s Mars Industries Pvt. Ltd. **(kindly see pages 431 to 442 of PB - II).**

Locker at OBC) being copy of MOU made on 01.09.2014 in reference to the purchase price consideration of the BTA executed between M/s Dorset Kaba Security Systems Pvt. Ltd. and M/s Mars Industries Pvt. Ltd., and between M/s Dorset Kaba Security Systems Pvt. Ltd. and M/s Dorset India Pvt. Ltd. in pursuance to BTA dated 11.06.2014 **(kindly see page 26 to 27 of this synopsis).**

e) Page no 51 to 94 of Annexure A-1 (locker at ICICI Bank) Copy of Business Transfer Agreement (BTA) dated 11.06.2014 between M/s Dorset India Pvt. Ltd. and M/s

Dorset Kaba Security Pvt. Ltd (kindly see pages 443 to 529 of PB - II).

f) **Page no 95 to 155 of Annexure A-1** (locker at ICICI Bank) Copy of Business Transfer Agreement (BTA) dated 11.06.2014 between M/s Mars Industries Pvt. Ltd. and M/s Dorset Kaba Security Pvt. Ltd **(kindly see pages 530 to 651 of PB - II).**

g) **Page no 91 to 101 of Annexure A-3** (locker at ICICI) Copies of disclosure letters dated 11.06.2014 addressed to M/s Dorset Kaba Security Systems Pvt. Ltd. by (1) M/s Mars Industries Pvt. Ltd. (2) M/s Modtech Industries and (3) Dorset India Pvt. Ltd. In terms of the Business Transfer Agreement dated 11.06.2014 executed amongst these entities **(kindly see pages 54 to 66, 67 to 71 and 72 to 80 of PB - I).**

2.5 From the perusal of the above it may be observed that i) Business Transfer agreement dated 01/04/2014, ii) Business Transfer agreement dated 11/06/2014 and iii) High Court order dated 05.05.2015 regarding amalgamation were found during the course of search and forms part satisfaction note.

It is further submitted that the documents mentioned in the satisfaction note being i) page no 52 regarding copy of MOU made on 01.09.2014 and ii) Page no 91 to 101 being copies of disclosure letters dated 11.06.2014, merely records the details of transactions as per the BTA dated 11.06.2014. Thus, BTA dated 11.06.2014 and 01.04.2013 are basic

documents, which have duly been disclosed in the returns of income prior to recording of satisfaction note.

2.6 That before adverting to the arguments with regards to documents being disclosed/ reflected in the books of accounts and duly disclosed prior to recording of satisfaction note or even on the date of search, the assessee – appellant would seek to submit the chronological sequence of events, which led to the entering of the said agreements between the assessee – appellant and various companies/entities of Dorset Group:

- a) That Kaba Holding AG (a Non resident company based in Switzerland) was an existing shareholder of Dorset Kaba Security Systems Pvt Ltd (DKSSPL).*
- b) That shareholding of Kaba Holding AG in Dorset Kaba Security Systems Pvt Ltd prior to 01/04/2014 was 49 %.*
- c) The said Kaba Holding AG wanted to increase its holding in Dorset Kaba Security Systems Pvt Ltd from 49% to 74 % and as such invested a sum of Rs 198 crore in Dorset Kaba Security Systems Pvt Ltd for allotment of such shares.*
- d) That the amount so received of Rs 198 crore from KABA Holdings AG was used by DKSSPL to acquire the business undertakings (hardware businesses) of M/s Dorset India Pvt Ltd., M/s Mars Industries Pvt. Ltd and M/s Modtech Industries.*
- e) In this regard, the net worth of the undertaking of Dorset India Pvt Ltd., Mars Industries Pvt. Ltd and Modtech*

Industries and sale consideration (the details in respect of which is given in para no 6 of show cause notice dated 16/11/2018 at pages 109 to 112 of PB – I) is being given below :-

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Net worth (Rs)		
Sale consideration		

156 crore	i) Modtech Industries	5,79,66,838
34 crore	ii) Mars Industries P Ltd	15,31,41,379
4.29	iii) Dorset India P Ltd	5,19,88,719

		26,30,96,935

f) *From the perusal of the above it may be observed that assets of Modtech Industries of Rs 5.79 crore have been transferred for the sum of Rs 156 crore, assets of Mars Industries P Ltd of Rs 15.31 crore have been acquired for Rs 34 crore and assets of Dorset India Pvt Ltd of Rs. 5.19 crore have been acquired for Rs 4.29 crore.*

g) *All the concerns being Modtech Industries, Mars Industries, and Dorset India Pvt Ltd, belong to same group and are engaged in the same business.*

i) *The details of turnover of Modtech Industries, Mars Industries, and Dorset India Pvt Ltd during A Y 2015-16 (independently) is given below :-*

a) Modtech Industries	5,53,76,680
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b)	<i>Mars Industries P Ltd</i>	11,82,35,360
c)	<i>Dorset India P Ltd</i>	27,04,00,279

Total Turnover as per the Audited Rs. 44,40,12,319

- k) From the perusal of the aforesaid facts, as discussed above, it may be observed that the intention of Dorset Kaba Security Systems Pvt Ltd was to acquire all the businesses from Dorset group for sum of Rs 198 crore and the bifurcation of the amounts between Modtech Industries, Mars Industries, and Dorset India Pvt Ltd was only the appropriation. As it will be absurd to say that value of assets of Rs 15.31 crore have been taken over for Rs 34 crore (Mars Industries Pvt Ltd), and the value of assets of Rs 5 crore have been taken over for Rs 156 crore (Modtech Industries).
- l) As such, the value prescribed of Rs 198 crore was the value of total business acquired and that is why, the real intent of entering into separate BTA's with Modtech Industries, Mars India Pvt. Ltd., and Dorset India Pvt Ltd dated 11/06/2014 was to bind all the parties and to perform act's in accordance with the agreements, as entering into agreement only with Dorset India Pvt Ltd may not have been binding on Modtech Industries and Mars Industries.
- m) In view of the above, amount received from Dorset Kaba Security Systems Pvt Ltd was offered to tax in the hands of

Dorset India Pvt Ltd., as hardware business of Modtech Industries was actually acquired by Mars Industries Pvt. Ltd. as per the Business Transfer Agreement dated 01.04.2014. Further, M/s Mars Industries Pvt. Ltd. was amalgamated into Dorset India Pvt. Ltd. as per the order of Hon'ble Delhi High Court dated 05.05.2015 with effect from 01.04.2014.

2.7 That in view of the aforesaid background and facts, it is most humbly submitted that all the Business Transfer Agreement dated 01/04/2014 and Business Transfer agreements dated 11/06/2014 and also the order of Hon'ble High Court of Delhi dated 05.05.2015 regarding amalgamation, further MOU's and disclosure letters found and seized during the course of search forms part of books of accounts of the assessee company and original return of income have been filed duly incorporating the effect of said transactions and thus, it is most humbly submitted that the documents so seized and made part of satisfaction note are not incriminating documents and the same is also analyzed as below:-

i) **Copy of Business Transfer Agreement (BTA) dated 01.04.2014 between M/s Modtech Industries and M/s Mars Industries Pvt. Ltd.**

It is most humbly submitted that the business transfer agreement dated 01/04/2014 (**enclosed at page nos. 431 to 442 of PB - II**) is part of books of accounts of M/s

*Modtech Industries and is not an incriminating material, as on the basis of the said business transfer agreement dated 1/04/2014 the original return of income u/s 139(1) of the Income Tax Act have been filed by Modtech Industries and the capital gain on slump sale on the basis of said agreement have been shown in the original return of income so filed **(kindly see pages 1 to 2 and 25 of PB - I)**. That further, M/s Modtech Industries has also e filed form no 3CEA (i.e. audit report relating to capital gain on slump sale) disclosing the fact of said transfer of business **(kindly see page 5 of PB - I)**.*

In view of the above, it is most humbly submitted that the business transfer agreement dated 01/04/2014 forms part of books of accounts of M/s Modtech Industries and on the basis of BTA dated 01/04/2014 the original return of income have been filed by the appellant, duly disclosing the effect of the said agreement prior to the recording of satisfaction note or even the date of search, as such, the same cannot be termed as “incriminating material”.

- ii) **Copy of Business Transfer Agreement (BTA) dated 11/06/2014 between M/s between M/s Mars Industries Pvt. Ltd. and M/s Dorset Kaba Security Systems Pvt. Ltd. and also between M/s Dorset India Pvt. Ltd. and M/s Dorset Kaba Security Systems Pvt. Ltd.**

The business transfer agreements dated 11/06/2014 entered between all the aforesaid 4 entities is part of books

of accounts of M/d DIPL and is not incriminating material and the said fact have also been admitted by the learned Assessing officer in the point no 6 of show cause notice dated 16/11/2018 issued during the course of assessment proceeding (**kindly see pages 109 to 112 of PB - I, relevant pages 110 to 111**).

From the perusal of the above it may be observed that on the basis of business transfer agreement dated 11/06/2014 the original return of income have been filed by Dorset India Pvt. Ltd., as M/s Modtech Industries was taken over by M/s Mars India Pvt. Ltd. and further, M/s Mars India Pvt. Ltd. was amalgamated in M/s Dorset India Pvt. Ltd. and as such, the due disclosures were made by M/s Dorset India Pvt. Ltd. The capital gains on slump sale on the basis of said agreements have been shown in the original return of income so filed by M/s Dorset India Pvt. Ltd. (**kindly see pages 247, 248 to 249, 278, 280, 326 of PB - I**). Dorset India Pvt. Ltd also e filed form no 3CEA (audit report relating to capital gain on slump sale) before Income Tax department and the said form no 3CEA is with reference to slump sale on the basis of Business transfer agreements dated 11/06/2014 (**kindly see pages 253 and 255 of PB - I**). The said fact of amalgamation and business transfer was also disclosed in the balance sheet by M/s DIPL including Goodwill arising as a result of Merger of M/s Mars India Pvt. Ltd. (**kindly see pages 305, 315, 318 and 324 of PB - I**).

That further, in para no 6 of the assessment order passed u/s 153C of the Income Tax Act the learned Assessing officer also admitted that agreement dated 11/06/2014 is not an incriminating material, as he recorded as below:

"Para 6 From the above facts, it is crystal clear that BTA dated 11/06/2014 is the actual and genuine agreement which have been performed by both the parties in its true sense"

As such, it is most humbly submitted that the business transfer agreements dated 11/06/2014 are not incriminating in nature, as the said agreements are duly disclosed and its effects duly reflected in the return of income filed prior to recording of satisfaction note or even the date of search.

Similarly, it is submitted that Page nos. 53 and 54 of Annexure A-2 (locker at ICICI) being copy of MOU made on 01.09.2014 and disclosure letters in reference to the purchase price consideration of the BTA executed between M/s Dorset Kaba Security Systems Pvt. Ltd. and M/s Mars Industries Pvt. Ltd., and between M/s Dorset Kaba Security Systems Pvt. Ltd. and M/s Dorset India Pvt. Ltd. in pursuance to BTA dated 11.06.2014, is nothing but recording the mutual consent of both the parties to BTA's to give effect to the said agreement and is submitted, that it is a document in relation to BTA's, the effect of which has been, as submitted above, duly disclosed in the books of

accounts and original returns of income filed by assessee company.

iii) Page no. 7 to 35 of Annexure A – 2, found from ICICI Bank Locker of Sh. Rajesh Kumar Bansal and Smt. Rekha Bansal being copy of Hon'ble High Court order dated 05.05.2015 in the matter of amalgamation between M/s Mars India Pvt. Ltd. (MIPL) with M/s Dorset India Pvt. Ltd. (DIPL)

It is pertinent to point out here that petition for amalgamation of Mars Industries (P) Limited with Dorset India (P) Limited filed before the Hon'ble High Court on 19-11-2014 i.e. the petition for amalgamation of Mars Industries (P) Limited with Dorset India (P) Limited was filed much prior to the date of search and that is how, the same was also seized during the course of search (said document is at page 116 to 145 of PB – I).

The said fact of amalgamation and its effect in books of accounts, along with the return of income was duly disclosed prior to search proceedings (kindly see pages 246 305, 315, 318 and 324 of PB – I).

In view of the above, it is most humbly submitted that the amalgamation order by Hon'ble High Court forms part of books of accounts of M/s DIPL and the original return of income have been filed by the appellant, duly disclosing the effect of the said agreement prior to the recording of

satisfaction note or even the date of search and as such, the same cannot be termed as “incriminating material”.

iv) **Retirement cum constitution deed dated 28.09.2014 with regards to M/s Modtech Industries (actual date is 20/09/2014 as per the document found during search)**

The retirement cum constitution deed dated 20/09/2014 (deed dated 20/09/2014 is enclosed and forms part of paper book at page no 49 to 53 of PB – I) is part of books of accounts and is not the incriminating material. From the perusal of the said deed dated 20/09/2014 it may be observed that during the year there was change in partnership structure. The appellant Modtech Industries was the partnership firm constituting Shri Ashok Bansal, Shri Rajesh Kumar Bansal and Shri Ashok Minda. As per the Retirement cum constitution deed there was change in constitution of the firm and Shri Ashok Bansal retired from the firm.

In this regard we would like to draw your kind attention to Audited Balance sheet of the appellant for F Y 2014-15 as per which the said deed have been followed in the preparation of the Balance sheet (the Audited Balance sheet for F Y 2014-15 of Modtech Industries is enclosed and forms part of paper book at **page no 294 to 300 of PB - I**).

As such it is established beyond doubt that retirement cum constitution deed dated 20/09/2014 has no financial bearing and is thus, not incriminating material.

From the perusal of aforesaid facts and documents so referred in the satisfaction note, it may be observed that no incriminating material have been found during the course of search.

2.8 *In view of the satisfaction note dated 24.09.2018 and documents, so referred therein, it may be pertinent to note that the **satisfaction note dated 24/09/2018 does not even mention the existence of any "undisclosed income" belonging to the assessee company.** Thus, the very basis for formation of belief about existence of undisclosed income is absent in the impugned matters. Therefore, the invocation of jurisdiction is vitiated in law and the assessment is void-ab-initio.*

2.9 *It is further submitted that the aforesaid arguments were also taken before learned AO vide reply dated 26.12.2018 (**kindly see pages 244 to 245 of PB – I**). However, the learned AO had not adversely commented with regards to the same in **order of assessment dated 30.12.2018**. However, the learned AO while issuing the show cause notice dated 16.11.2018 issued during the course of proceedings and after recording complete facts, recorded that “However, on perusal of tax computation it is seen that capital gains has been worked out be deducting the net worth of the business undertaking (which includes huge value of Goodwill) from the sales consideration”. Thus, it is submitted that even the learned AO admitted the fact that the said documents so forming part of satisfaction note*

have been disclosed and return of income incorporating the effect of the same had been filed prior to the date of recording of satisfaction note.

2.10 Further, it is submitted that the said arguments were specifically taken before learned CIT (A) wherein, judgments of Hon'ble **Delhi High Court in the case of Pr. CIT Central-2 Vs. Index Securities Pvt. Ltd. 86 Taxmann.com 84 (Delhi), CIT Vs. RRJ Securities Ltd. reported in 380 ITR 612, and by the Supreme Court in the case of CIT Vs. Sinhgad Technical Education Society reported in 397 ITR 344**, were cited before learned CIT (A) (**kindly see page 8 to 9 of CIT (A)'s order**). However, the learned CIT (A) vide order dated 21.08.2019 dismissed the said ground so raised by the assessee company (**kindly see pages 89 to 93 of CIT (A) order**). However while dismissing the said appeal, the learned CIT (A) has recorded a finding that "Therefore, if such document have been used to make entry in books of accounts and the ROI is filed before the date of search, it does not necessarily mean that the material under consideration is not "incriminating". It is not in doubt that the AO has stated that the documents under consideration (which pertained to, and also, information contained therein related to the appellant) had a bearing on the total income of the appellant". It is here submitted that the said finding so recorded by learned CIT (A), is against the proposition of law so laid down by Hon'ble Apex Court and Hon'ble High

Court of Delhi, as was also cited before learned CIT (A). As it has been held in the case laws as is also cited below, that “the scope of assessment and addition in 153A/ 153C proceedings is restricted to the incriminating material i.e. material depicting undisclosed income during the course of search or recording of satisfaction note”, as such, the finding of learned CIT (A) that even if a document is recorded in books of accounts and return of income the same can be “incriminating”, if it has a bearing on total income, is contrary to the judicial discipline as laid down by Hon’ble Apex Court and Hon’ble jurisdictional high court. In support of the aforesaid arguments and proposition, reliance is placed on the following judgments:

a) Judgment of the Supreme Court of India in the case of CIT vs Singhad Technical Education Society reported in 397 ITR 344.

“18. *The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that*

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

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

b) Judgment of the High Court of Delhi in the case of CIT vs. Kabul Chawla reported in 380 ITR 573.

“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:*

iv. ough 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 *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.*

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."*

c) *Judgment of High Court of Delhi in the case of CIT vs RRJ Securities Ltd. reported in 380 ITR 612*

“37. *As expressly indicated under Section 153C of the Act the assessment or reassessment of income of a person other than a searched person would proceed in accordance with the provisions of Section 153A of the Act. The concluded assessments cannot be interfered with under Section 153A of the Act unless the incriminating material belonging to the Assessee has been seized.*

38. *As indicated above, in the present case, the documents seized had no relevance or bearing on the income of the Assessee for the relevant assessment years and could not possibly reflect any undisclosed income. This being the undisputed position, no investigation was necessary. Thus, the provisions of section 153C, which are to enable an investigation in respect of the seized asset, could not be resorted to; the AO had no jurisdiction to*

make the reassessment under Section 153C of the Act.”

- d) Judgment of High Court of Delhi in the case of PCIT vs Jaypee Financial Services Ltd. reported in 280 Taxman 147.*
- e) Judgment of the High Court of Delhi in the case of PCIT Meeta Gutgutia reported in 395 ITR 526.*
- f) Order of ITAT Delhi in the case of ACIT vs Moon Beverages Ltd. in ITA No. 115 to 118/Del/2018.*
- g) Order of ITAT Delhi in the case of DCIT vs Sundaram IT Parks Pvt. Ltd. in ITA No. 5166/Del/2018.*
- h) Order of ITAT Delhi in the case of ACIT vs M/s Five Vision Planners Pvt. Ltd. in ITA No. 4460/Del/2014.*
- i) Judgment of High Court of Delhi in the case of PCIT vs M/s Dreamcity Buildwell Pvt. Ltd. in ITA No. 1152/2017.*
- j) Order of ITAT Delhi M/s TDI Infrastructure Ltd. vs DCIT in ITA No. 5580, 4409, 4410 and 5072/Del/2012.*
- k) Order of ITAT Delhi ACIT vs Realtech Construction Pvt. Ltd. (ITAT Delhi) in ITA No. 6569/Del/2016.*

2.11 It is further submitted that the findings so recorded by learned CIT (A) rather supports the case of assessee company, as it is an admitted fact now, that the documents so seized and recorded in satisfaction note were duly recorded in books of accounts on the basis of which return

of income was filed by the assessee and thus, cannot be termed as “incriminating”, as no undisclosed income was unearthed or could be inferred with respect to the seized documents.

2.12 From the perusal of the above, it may be observed that during the course of search no incriminating material has been found during the course of search. In the satisfaction note also it has nowhere been alleged that the documents mentioned above are incriminating material and as such, reopening of assessment in this case is without jurisdiction and passing of order u/s 153C of the Income Tax Act is also bad in law.

2.13 That the aforesaid arguments are equally applicable to the case of M/s Modtech Industries, as similar satisfaction note has been recorded by learned AO (**kindly see pages 91 to 93 of PB – I**) and the documents so mentioned therein, have been duly disclosed and reflected in the return of income filed prior to the recording of satisfaction note or even the date of search.

2.14 In view of the aforesaid, it is most humbly submitted that additions so made in the assessment order so passed under section 153C of the Income Tax Act is not based on any incriminating material and as such, the same is beyond the scope of assessment so made under section 153C of the Act

and thus, the additions so made and sustained by learned CIT (A) be deleted as the same are beyond the scope of assessment under section 153C of the Act.”

7. The learned Senior Counsel for the assessee during the course of hearing argued that since the satisfaction note was recorded on 24.09.2018 and notice under section 153C of the Act was issued on 25.09.2018, as such, the assessment proceedings were final in respect of the return of income filed on 08.02.2016 for the relevant assessment year namely 2015-16 on the date of recording of such satisfaction note. He further, argued that 153C proceedings can only be initiated if the documents seized are incriminating in nature i.e. documents seized during the course of search and recorded in the satisfaction note should depict undisclosed income, whereas, in the case of assessee, all the documents which form part of satisfaction note were duly recorded and disclosed in the return of income filed prior to recording of satisfaction note or even the date of search. In support of the aforesaid arguments, the learned counsel placed reliance on following judgments:

- i) Judgment of the Supreme Court of India in the case of CIT vs Singhad Technical Education Society reported in 397 ITR 344.

- ii) Judgment of Hon'ble High Court of Delhi in the case of PCIT vs Param Dairy Ltd. in ITA No. 37/2021.
- iii) Judgment of the High Court of Delhi in the case of CIT vs. Kabul Chawla reported in 380 ITR 573.
- iv) Judgment of High Court of Delhi in the case of PCIT vs Jaypee Financial Services Ltd. reported in 280 Taxman 147.
- v) Judgment of the High Court of Delhi in the case of PCIT Meeta Gutgutia reported in 395 ITR 526.
- vi) Order of ITAT Delhi in the case of ACIT vs Moon Beverages Ltd. in ITA No. 115 to 118/Del/2018.
- vii) Order of ITAT Delhi in the case of DCIT vs Sundaram IT Parks Pvt. Ltd. in ITA No. 5166/Del/2018.
- viii) Order of ITAT Delhi in the case of ACIT vs M/s Five Vision Planners Pvt. Ltd. in ITA No. 4460/Del/2014.
- ix) Judgment of High Court of Delhi in the case of PCIT vs M/s Dreamcity Buildwell Pvt. Ltd. in ITA No. 1152/2017.
- x) Order of ITAT Delhi M/s TDI Infrastructure Ltd. vs DCIT in ITA No. 5580, 4409, 4410 and 5072/Del/2012.
- xi) Order of ITAT Delhi ACIT vs Realtech Construction Pvt. Ltd. (ITAT Delhi) in ITA No. 6569/Del/2016.
- xii) Judgment of High Court of Delhi in the case of CIT vs RRJ Securities Ltd reported in 380 ITR 612

8. He further, submitted that that the said aforesaid legal argument was specifically taken before learned CIT (A), wherein, judgments of Hon'ble **Delhi High Court in the case of Pr. CIT Central-2 Vs. Index Securities Pvt. Ltd. 86 Taxmann.com 84 (Delhi), CIT Vs. RRJ Securities Ltd. reported in 380 ITR 612, and by the Supreme Court in the case of CIT Vs. Sinhgad Technical Education Society reported in 397 ITR 344**, were cited before learned CIT (A),

which even finds mention at pages 8 and 32 of learned CIT (A) order. However, the learned CIT (A) vide order dated 21.08.2019 dismissed the said ground so raised by the assessee company at **pages 89 to 93 of CIT (A) order**, wherein, while dismissing the said appeal, the learned CIT (A) has recorded a finding that *“Therefore, if such document have been used to make entry in books of accounts and the ROI is filed before the date of search, it does not necessarily mean that the material under consideration is not “incriminating”. It is not in doubt that the AO has stated that the documents under consideration (which pertained to, and also, information contained therein related to the appellant) had a bearing on the total income of the appellant”* It was further submitted that the said finding so recorded by learned CIT (A), is against the settled proposition of law so laid down by Hon’ble Apex Court and Hon’ble High Court of Delhi, as was also cited before learned CIT (A). As it has been held in by various judicial authorities that *“the scope of assessment and addition in 153A/ 153C proceedings is restricted to the incriminating material i.e. material depicting undisclosed income unearthed during the course of search or recording of satisfaction note”*, as such, the finding of learned CIT (A) that even if a document is recorded in books of accounts and on the strength of which return of income has been filed, the same can be termed *“incriminating”*, if it has a bearing on total income, is contrary to the settled proposition as laid down by Hon’ble Apex Court and Hon’ble jurisdictional high court. He further, argued that

the aforesaid arguments were also taken before learned AO vide reply dated 26.12.2018 **(at 244 to 245 of PB – I)**. However, the learned AO had not adversely commented with regards to the same in **order of assessment dated 30.12.2018**. It was further submitted by the learned counsel that the AO while issuing the show cause notice dated 16.11.2018 issued during the course of proceedings and after recording complete facts, recorded that *“However, on perusal of tax computation it is seen that capita gains has been worked out be deducting the net worth of the business undertaking (which includes huge value of Goodwill) from the sales consideration”*. Thus, even the learned AO admitted the fact that the said documents so forming part of satisfaction note have been disclosed and return of income incorporating the effect of the same had been filed prior to the date of recording of satisfaction note.

9. That Ld. CIT DR Sh. J.K. Mishra, placed heavy reliance on the order of AO and CIT (A) and argued that the documents so recorded in the satisfaction note had a bearing on total income of the assessee and thus, the same can be termed as incriminating. The learned CIT DR further, placed reliance on the judgment of Hon’ble High Court of Delhi in the case of SSP Aviation vs DCIT reported in 346 ITR 177.

10. That the learned counsel of the assessee in rejoinder submitted that the reliance placed by learned CIT DR on the judgment of Hon’ble High Court of Delhi in the case of SSP Aviation vs DCIT reported in 346 ITR 177, rather supports the

case of the assessee and further, the same case has been duly considered by Hon'ble jurisdictional high court in subsequent judgments i.e. CIT vs RRJ Securities Ltd reported in 380 ITR 612, as well as by Hon'ble Apex Court in the case of CIT vs Singhad Educational Society reported on 397 ITR 344 and further, the learned CIT DR has not been able to place reliance on any document/ material on record which can be termed as "incriminating" in nature, forming part of satisfaction note. Further, it was argued by learned counsel of the assessee that the learned CIT DR cannot improve the orders so passed by learned AO and CIT (A), as they themselves, in the impugned orders so passed have not disputed the fact that all the documents which forms part of satisfaction note are duly disclosed and recorded in the books of accounts along with the returns of income so filed by the assessee and was also final prior to the recording of satisfaction note and were also final even prior to the date the search.

11. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as material placed on record. The core issue which has been argued before us is;

- Whether the documents so referred in the satisfaction note are in nature of incriminating documents, which can lead to an inference that any

undisclosed income has escaped assessment or there is any element of undisclosed income so as to be roped in assessment under section 153C for the assessment year which is unabated i.e. final.

12. For the sake of ready reference the satisfaction note of the Assessing Officer for acquiring jurisdiction u/s 153C in the case of M/s Dorset India Pvt. Ltd. reads as under:

“Satisfaction recorded for initiation of proceedings under section 153C of the I.T.Act,1961, in the case of M/s Dorset India Pvt. Ltd., on the basis of separate satisfaction note recorded in the case of Sh. Rajesh Kumar Bansal and Smt. Rekha Bansal, with regard to the documents seized from their Locker No. 1537, Oriental Bank of Commerce, Hauz Khas, Delhi, as also, in the case of Sh. Takshay Bansal with regard to documents seized from his Locker No. 1945R 1810247 with the ICICI Bank, Defence Colony, Delhi and the said documents pertaining to, as also, information contained therein relating to Mis Dorset India Pvt. Ltd. and Mis Mars Industries Pvt. Ltd. (already amalgamated with Mis Dorset India Pvt. Ltd.).

I have already recorded my satisfaction w.r.t. documents seized in the case of Sh. Rajesh Kumar Bansal and Smt. Rekha Bansal, during search and seizure u/s 132 of the LT. Act, 1961, conducted on 13.01.2017, of their Locker No. 1537, Oriental Bank of Commerce, Hauz Khas, Delhi, and the said documents pertaining to, as also, information contained therein relating to M/s Dorset Industries Pvt. Ltd. and M/s Mars Industries Pvt. Ltd. (already amalgamated with M/s Dorset Indian Pvt. Ltd.)
Relevant part of the said satisfaction note is reproduced below:-

" ...Perusal of the documents seized from the Locker no 1537, Oriental Bank of Commerce, Hauz Khas, Delhi, shows that out of the seized documents, documents from pages- 7 to 32,33 to 44, 45 to 74 of Annexure A-1 and pages 1 to 5, 7 to 35, 39 to 51, 53 & 54 of Annexure A-2 of the said seized Annexures- pertain to, as also, information contained therein relate to M/s Dorset India Pvt. Ltd. and Mis Mars Industries Pvt. Ltd. {a/ready amalgamated with M/s Dorset India Pvt. Ltd!.

Particulars of documents pertaining to Mis Dorset India Pvt Ltd. & Mis Mars Industries Pvt Ltd as per Annexure A-1

Page Numbers	Brief/particulars of the document
7 to 32	Copy of lease deed dated 01.08.2014 between Mis Mars Industries Pvt, ltd.(Lessor) and Mis Dorset Kaba Security Systems Pvt.Ltd. with respect to the property situated at Village Bhora Kalan, Tehsil/-pataudi, Gurgaon, Haryana.
33 to 44	Copy of valuation report dated 05.03.2011 in respect of Property Khasra No.756 situated at Bino/a Industrial Area, Tehsil-Farikh Nagar, Gurgaon, Haryana belonging to Ms Mars Industries Pvt.Ltd.
45 to 74	Copy of sale deed dated 26.09.2004 in respect of Property situated at Village Bhora Kalan, Tehsil-Farukh Nagar, Gurgaon, Haryana, executed by Milt International Land Development Pvt.Ltd. in favour of Mis Mars Industries Pvt. \ Ltd. for a consideration of Rs.98,00,000/-

Particulars of documents pertaining to M/s Dorset India Pvt Ltd & M/s Mars Industries Pvt. Ltd. as per Annexure A-2

<i>Page Numbers</i>	<i>Brief particulars of the do_cument</i>
<i>1 to5</i>	<i>Copy of lease deed dated 01.09.2014 in respect of Property situated at Binola Industrial Area, Village Bhora Kalan, Gurgoon, Haryana, between Mis Mars Industries Pvt.Ltd (Lessor) and Mis EAU Bathing Solutions Pvt.Ltd. (Lessee)}</i>
<i>7 to 35</i>	<i>Copy of Hon'hie High Court of Delhi's order dated 05.05.2015 in the matter of Amalgamation of Mis Mars Industries Pvt.Ltd. with Mis Dorset India Pvt.Ltd.</i>
<i>39 to 51</i>	<i>Copy of Business Transfer Agreement (BTA) dated 01.04.2014 between Mis Modtech,Industries and Mis Mars Industries Pvt.Ltd.</i>
<i>53</i>	<i>Copy of MOU made on 01.09.2014 in reference to the purchase price consideration of the BTA executed between Mis Dorset Ka/, a Security Systems Pvt Ltd. and Mis Mars Industries Pvt.Ltd</i>
<i>54</i>	<i>Copy of MOU made on 01.09.2014 in reference to the purchase price consideration of the BTA executed between Mis Dorset Kaba Security Systems Pvt.Ltd and Mis Dorset India Pvt. Ltd</i>

In view of the aforesaid, separate satisfaction note is being recorded for initiation of proceedings under section 153C of the I.TAct, 1961, in the case of M/s Dorset India Pvt. Ltd.

I have also already recorded my satisfaction w.r.t. documents seized in the case of Sh. Takshay Bansal, during search and seizure u/s 132 of the l.T.Act, 1961, conducted on 13.01.2017, of his Locker No. 1945R 1810247 with the ICICI Bank, Defence Colony, Delhi, and the said documents pertaining to, as also, information contained therein relating to M/s Dorset India Pvt. Ltd. and M/s Mars Industries Pvt. Ltd. (already amalgamated

with M/s Dorset India Pvt. Ltd.). Relevant part of the said satisfaction note is reproduced below-

"...Perusal of the documents seized from the Locker No. 1945R 1810247 with the ICICI Bank, Defence Colony, Delhi shows th at out of the seized documents, dOc ments from pages-51 to 94, 95 to 1 55 of Annexure A-1, pages 7 to 9, 17 to 22, 23 to 27, 47 to 87 of Annexure A-2 and pages 1 to 10, 91 to 101 of Annexure A-3, of the said seized Annexures pertain to, as also, infonnation contained therein relate to Mis Dorset India pvt, Ltd. and M/s Mars Industries Pvt. Ltd. (already amalgamated with Mis Dorset India Pvt. Ltd).

Particulars of documents pertaining to Mis Dorset India Pvt. td. & M/s Mars Industries Pvt. Ltd. as per Annexure A-1

Page Numbers	Brief particulars of the document
51-94	Copy of Business Transfer Agreement (BTA) dated 11.06.2014 between M/s Dorset India Pvt. Ltd. & M/s Dorset Kaba Security Systems Pvt Ltd.
95-155	Copy of Business Transfer Agreement (BTA) dated 11.06.2014 between M/s Mars Industries Pvt. Ltd. & M/s Dorset Kaba Security Systems Pvt. Ltd.

Particulars of documents pertaining to M/s Dorset India Pvt. Ltd. & M/s Mars Industries Pvt. Ltd. as per Annexure- A-2

Page Numbers	Brief particulars of the document
7-9	Copy of cost Sharing Agreement dated 10.05.2007 between M/s Dorset Kaba Security Systems Pvt. Ltd. and M/s Mars Industries Pvt.

	<i>Ltd.</i>
17-22	<i>Copy of Trade Mark & License Agreement dated 10.05.2007 between Mis Mars Industries Pvt.Ltd. & Mis Dorset Kaba Security Systems Pvt.Ltd. .</i>
23-27	<i>Copy of Component Supply Agreement dated 10.05.2007 between Mis Mars Industries Pvt.Ltd. (Supplier) & Mis Dorset Kaba Security Systems Pvt.Ltd. (Buyer)</i>
47-87	<i>Copy of Share Subscription & Shareholders Agreement dated 15.12.2006 between Mis K.aba Holding AG and Mis Delhi Homes Pvt.Ltd. & Indian Shareholders.</i>

Particulars of documents pertaining to Mis Dorset India Pvt. Ltd. & Mis Mars Industries.Pvt. Ltd. as per Annexure- A-3

<i>Page Numbers</i>	<i>Brief particulars of the document</i>
1-10	<i>Copy of Amended & Restated Trade Mark License Dated 31.07.2014 executed amongst Mis Dorset Kaba Security Systems Pvt.Ltd. and Mis Mars Industries Pvt Ltd.</i>
91-101	<i>Copies of disclosure letters dated 1 1.06.2014 addressed to Mis Dorset Kaba Security Systems Pvt.utd. by (1) Mis Mars Industries Pvt.Ltd., (2) Mis Modtech Industries and (3) Mis Dorset India Pvt.Ltd. in terms of the Business Transfer Agreements dated 1 1.06.2014 executed amongst these entities.</i>

In view of the aforesaid, separate satisfaction note is being recorded for initiation of proceedings under section 1

53C of the I.T.Act,1961, in the case of M/s Dorset India Pvt. Ltd.

Perusal of the documents seized, as mentioned in the satisfaction recorded in the case of Sh.Rajesh Kumar Bansal and Smt. Rekha Bansal, as also, in the case of Sh, Takshay Bansal and referred to in this satisfaction note in the preceding paras, clearly show that contents of the said documents have a bearing on the determination of total income of M/s Dorset India Pvt. Ltd. including that of M/s Mars Industries Pvt. Ltd. (already amalgamated with M/s Dorset India Pvt. Ltd.) In view of the facts of the case and provisions of section 153C read with section 153A. I am satisfied that notices u/s 153C are required to be issued for the assessment years A.Ys 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 in the case of M/s Dorset India Pvt. Ltd.

Accordingly, Notice u/s 153C of the LT. Act, 1961 is being issued in the case of of M/s Dorset India Pvt. Ltd. for the assessment years 2011-12, 2012- 13, 2013-14, 2014-15, 2015-16 and 2016-17 for determination of total income of M/s Dorset India Pvt. Ltd. including that of M/s Mars Industries Pvt Ltd. (already amalgamated with M/s Dorset India Pvt Ltd.) for the said assessment years.”

13. It is an admitted fact that the aforesaid documents so referred in the satisfaction note are the only documents which form the basis and edifice for acquiring jurisdiction under section 153C of the Act and there are no other documents which were found and seized. Before adverting to the documents so referred in the satisfaction note and our analysis with regards to the same thereafter, it would be worthwhile to note that it is now a well settled proposition of law that seized documents must be incriminating and must relate to assessment year whose assessment are sought to be

reopened u/s.153C. This principle has been settled by the Hon'ble Supreme Court in the case of Singhad Technical Education Society (397 ITR 344) and various judgments of jurisdictional high court along with order of this Tribunal. At this juncture, we would like to refer to decisions of the aforesaid proposition as under:

i) CIT vs Singhad Educational Society (SC) reported in 397 ITR 344.

18. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment

Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.

ii) CIT vs RRJ Securities Ltd. (Delhi HC) reported in 380 ITR 612.

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

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

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

iii) PCIT vs Param Dairy Ltd. (Delhi HC) in ITA No. 37/2021.

5. We have considered the aforesaid contentions and are of the view that no substantial question of law arises, as the matter is squarely covered by *Kabul Chawla supra*,

which has been correctly applied to the facts of the case by the ITAT. The ITAT, in the impugned order has held that in the audited report filed by the assessee along with the report, cash book, ledger, bank book etc. were mentioned; that the respondent assessee was maintaining books on TALLY Accounting Software which was seized during the search and was being treated as incriminating material; however, regular books of account of the assessee, by no stretch of imagination could be treated as incriminating material to form basis of framing assessment under Section 153A read with Section 143(3) of the Act. It was further held that assessment for the Assessment Years 2008-2009 and 2009-2010 were completed under Section 143(3) vide orders dated 28th July, 2010 and 31st May, 2011 respectively and audited books of account were thoroughly examined and details of purchase of milk must have been scrutinized as it was part of audited financial statement of accounts; as per Kabul Chawla supra, completed assessments can be interfered only on the basis of some incriminating material unearth during the search.

iv) **ACIT vs Vision Town Planners Pvt. Ltd. (Delhi ITAT) in ITA No. 4460/Del/2014.**

24. Thus, we hold that the concluded assessment cannot be interfered unless there is incriminating material discovered from the seized documents

belonging to the assessee, and no additions can be made where the assessments are framed u/s.153C for unabated year. The seized documents must at least clearly point out that there is some undisclosed income, which here in this case, even for the sake of repetition, it is reiterated that none of the documents are in the nature of incriminating material so as to warrant any additions.

v) **ACIT vs Realtech Construction Pvt. Ltd. (ITAT Delhi) in ITA No. 6569/Del/2016.**

16. The sequitur of the judgment of Hon'ble Jurisdictional High Court in the case of RRJ Securities Pvt. Ltd. (supra) and Index Securities Pvt. Ltd. (supra) are that, if the documents belonging to the assessee are found from the possession of a person search u/s.132, that does not ipso facto mean that, concluded assessment of the assessee are necessarily to be reopened u/s.153C. If the documents seized have no relevance or bearing on any income of the assessee for the relevant Assessment Year which could not possibly reflect any undisclosed income, then provision of Section 153C cannot be resorted too. Here, in this case, the seized documents as noted above and also noted by the Ld. CIT(A) is not incriminating at all and has no correlation with any undisclosed income of the assessee

and accordingly based on such documents the jurisdiction u/s.153C could not have been initiated.

14. Thus, in view of our aforesaid discussion and also in view of aforesaid judgments, we hold that the concluded assessments cannot be interfered unless there is incriminating material discovered from the seized documents belonging or pertaining to the assessee, and further, no additions can be made where the assessments are framed u/s.153C for unabated year i.e. where no assessment is pending. The seized documents must at least clearly point out that there is some undisclosed income, which here in this case, as is discussed below are not in the nature of incriminating material so as to warrant any addition.

15. In view of our above discussion, the documents so seized and referred in the satisfaction note are being discussed and analyzed as under:

- a) Annexure A – 1 Page nos. 7 to 32, 33 to 34 and 45 to 74, Annexure A – 2 page no. 1 to 5, Annexure A – 2 page nos. 7 to 9, 17 to 22, 23 to 27, 47 to 87, Annexure A – 3 page nos. 1 to 10.

Our Analysis: We find that no reference of the said documents has been made in the assessment order nor any addition on the basis of these documents in the assessment order passed under section 153C of the Act.

Thus, with reference to the aforesaid documents, since no additions have been made by learned AO, we find that the same are not incriminating in nature.

- **Page no. 7 to 35 of Annexure A – 2**, found from OBC Bank Locker of Sh. Rajesh Kumar Bansal and Smt. Rekha Bansal being copy of Hon'ble High Court order dated 05.05.2015 in the matter of amalgamation between M/s Mars India Pvt. Ltd. (MIPL) with M/s Dorset India Pvt. Ltd. (DIPL) **(said document is at pages 116 to 145 of PB – I).**

Our Analysis: We have gone through the aforesaid document so seized by Revenue and we have noticed that the aforesaid seized document is nothing but order of Hon'ble High Court of Delhi dated 05.05.2015 with regards to amalgamation of Mars Industries (P) Limited with Dorset India (P) Limited, which order is much prior to the date of search and that is how, the same was also seized during the course of search **(said document is at page 116 to 145 of PB – I).**

We have gone through the paper book so filed by the assessee and we have found that the fact of amalgamation and its effect in books of accounts, along with the return of income was duly disclosed prior to search proceedings. The relevant pages of paper book in the case of M/s Dorset India Pvt. Ltd. are page nos. **246, 305, 315, 318 and 324 of PB – I.**

Thus, in view of the above we hold that the amalgamation order by Hon'ble High Court forms part of books of accounts of M/s DIPL and the original return of income have been filed by the appellant, duly disclosing the effect of the said agreement prior to the recording of satisfaction note or even the date of search and as such, the same cannot be treated as "incriminating material".

b) Page no 39-51 of Annexure A-2 (locker at OBC) being copy of Business Transfer Agreement (BTA) dated 01.04.2014 between M/s Modtech Industries and M/s Mars Industries Pvt. Ltd. **(kindly see pages 431 to 442 of PB - II).**

Our Analysis: The said document so seized by Revenue, is a business transfer agreement dated 01/04/2014 and is **at page nos. 431 to 442 of PB - II.** We have also noticed that, M/s Modtech Industries has filed its return of income on 20.02.2016 duly incorporating the effect of the said document **at pages 1 to 2 and 25 of PB - I.** Further, we have also noticed that M/s Modtech Industries has also e filed form no 3CEA (i.e. audit report relating to capital gain on slump sale) disclosing the fact of said transfer of business **at page 5 of PB - I).**

In view of the above, we have no hesitation in holding that the business transfer agreement dated 01/04/2014 forms part of books of accounts of M/s Modtech Industries and on the basis of BTA dated 01/04/2014 the original return of income have been filed by the appellant, duly disclosing the

effect of the said agreement prior to the recording of satisfaction note or even the date of search, as such, the same cannot be termed as “incriminating material”.

c) Page no 95 to 155 of Annexure A-1 (locker at ICICI Bank) Copy of Business Transfer Agreement (BTA) dated 11.06.2014 between M/s Mars Industries Pvt. Ltd. and M/s Dorset Kaba Security Pvt. Ltd **(at pages 530 to 651 of PB - II).**

Page nos. 53 and 54 of Annexure A-2 (locker at OBC) being copy of MOU made on 01.09.2014 in reference to the purchase price consideration of the BTA executed between M/s Dorset Kaba Security Systems Pvt. Ltd. and M/s Mars Industries Pvt. Ltd., and between M/s Dorset Kaba Security Systems Pvt. Ltd. and M/s Dorset India Pvt. Ltd. in pursuance to BTA dated 11.06.2014 **(at pages 26 to 27 of this synopsis)**

Page no 51 to 94 of Annexure A-1 (locker at ICICI Bank) Copy of Business Transfer Agreement (BTA) dated 11.06.2014 between M/s Dorset India Pvt. Ltd. and M/s Dorset Kaba Security Pvt. Ltd **(at pages 443 to 529 of PB - II).**

Page no 91 to 101 of Annexure A-3 (locker at ICICI) Copies of disclosure letters dated 11.06.2014 addressed to M/s Dorset Kaba Security Systems Pvt. Ltd. by (1) M/s Mars Industries Pvt. Ltd. (2) M/s Modtech Industries and (3) Dorset India Pvt. Ltd. In terms of the Business Transfer Agreement dated 11.06.2014 executed amongst these

entities **(at pages 54 to 66, 67 to 71 and 72 to 80 of PB - I)**.

Our Analysis: On perusal of the aforesaid business transfer agreements, we have noticed that on the basis of business transfer agreement dated 11/06/2014 the original return of income have been filed by Dorset India Pvt. Ltd., as M/s Modtech Industries was taken over by M/s Mars India Pvt. Ltd. and further, M/s Mars India Pvt. Ltd. was amalgamated in M/s Dorset India Pvt. Ltd. and the said disclosures were made by M/s Dorset India Pvt. Ltd in its financial statements.

The capital gains on slump sale on the basis of aforesaid agreements have been shown in the original return of income so filed by M/s Dorset India Pvt. Ltd. **(at pages 247, 248 to 249, 278, 280, 326 of PB - I)**. Dorset India Pvt. Ltd also e filed form no 3CEA (audit report relating to capital gain on slump sale) before Income Tax department and the said form no 3CEA is with reference to slump sale on the basis of Business transfer agreements dated 11/06/2014 **(at pages 253 and 255 of PB - I)**. The said fact of amalgamation and business transfer was also disclosed in the balance sheet by M/s DIPL including Goodwill arising as a result of Merger of M/s Mars India Pvt. Ltd. **(at pages 305, 315, 318 and 324 of PB - I)**.

Similarly, we have noticed that Page nos. 53 and 54 of Annexure A-2 (locker at ICICI) being copy of MOU made on

01.09.2014 and disclosure letters in reference to the purchase price consideration of the BTA executed between M/s Dorset Kaba Security Systems Pvt. Ltd. and M/s Mars Industries Pvt. Ltd., and between M/s Dorset Kaba Security Systems Pvt. Ltd. and M/s Dorset India Pvt. Ltd. in pursuance to BTA dated 11.06.2014, is nothing but recording the mutual consent of both the parties to BTA's to give effect to the said agreement and these documents are in relation to BTA's, the effect of which has been, as noticed above, had been duly taken in the books of accounts and original return of income filed by assessee company.

Thus, here again, we have no hesitation in holding that the four business transfer agreements dated 11/06/2014 forming part of satisfaction note are not incriminating in nature, as the said agreements are duly disclosed and its financial implication duly reflected in the return of income filed prior to recording of satisfaction note and also even prior to the date of search.

16. In so far as the submissions made by Id. CIT-DR, regarding seized documents having bearing on total income becoming incriminating documents automatically, we are not impressed with the arguments of Ld CIT DR, as the same goes contrary to the judgments of jurisdictional high court and Hon'ble Apex Court. And further, with reference to the order of assessment or even going by the order of learned CIT (A), the learned CIT DR was not able to point out any single document which was not disclosed by assessee prior to

recording of satisfaction note and neither the judgments so relied by counsel of assessee were rebutted or contradicted by learned CIT DR. That further, we also find that the reliance placed on the judgment of SSP Aviation vs DCIT reported in 346 ITR 177 is also misplaced on facts, as after considering the said judgment Hon'ble High Court of Delhi in a subsequent judgment in the case of CIT vs RRJ Securities Ltd reported in 380 ITR 612 has held as under:

“34. In *SSP Aviation Ltd. (supra)*, this Court had noted the difference between the provisions of Section 158BD of the Act and the provisions of Section 153C. Whereas Section 158BD referred to the satisfaction of an AO with regard to any "undisclosed income" belonging to a person other than the searched person, Section 153C(1) of the Act in contrast referred merely to the AO being satisfied that assets/documents seized during a search belonged to a person other than one searched. It is, thus, clear that it was not necessary for the AO, at the stage of recording the satisfaction under Section 153C to come to a conclusion that seized assets which belong to another person represent any undisclosed income. If the AO of a searched person is satisfied that an asset/documents seized belong to another person, he has a duty to forward the documents or the valuable assets seized to the AO of the person concerned; apart from doing so, the AO can do nothing more.

35. The AO of the person other than the one searched also, is not, at the stage of issuing notice under Section 153C/153A of the Act, required to conclude that the assets/documents handed over to him by the AO of the searched person represent or indicate any undisclosed income of the Assessee under his jurisdiction. As explained in *SSP Aviation Ltd. (supra)*, Section 153C only

enables the AO of a person other than the one searched, to investigate into the documents seized and/or the assets seized and ascertain that the same do not reflect any undisclosed income of the Assessee (i.e a person other than the one searched) for the relevant assessment years. If the seized money, bullion, jewellery or other valuable article or thing seized as handed over to the AO of the Assessee, are duly disclosed and reflected in the returns filed by the Assessee, no further interference would be called for. Similarly, if the books of accounts/documents seized do not reflect any undisclosed income, the assessments already made cannot be interfered with. Merely because valuable articles and/or documents belonging to the Assessee have been seized and handed over to the AO of the Assessee would not necessarily require the AO to reopen the concluded assessments and reassess the income of the Assessee.

36. The decision in SSP Aviation Ltd. (supra) cannot be understood to mean that the AO has the jurisdiction to make a reassessment in every case, where seized assets or documents are handed over to the AO. The question whether the documents/assets seized could possibly reflect any undisclosed income has to be considered by the AO after examining the seized assets/documents handed over to him. It is only in cases where the seized documents/assets could possibly reflect any undisclosed income of the Assessee for the relevant assessment years, that further enquiry would be warranted in respect of those years. Whilst, it is not necessary for the AO to be satisfied that the assets/documents seized during search of another person reflect undisclosed income of an Assessee before commencing an enquiry under Section 153C of the Act, it would be impermissible for him to commence such enquiry if it is apparent that the documents/assets in question have no bearing on the income of the Assessee for the relevant assessment years.

37. As expressly indicated under Section 153C of the Act the assessment or reassessment of income of a person other than a searched person would proceed in accordance with the provisions of Section 153A of the Act. The concluded assessments cannot be interfered with under Section 153A of the Act unless the incriminating material belonging to the Assessee has been seized.

38. As indicated above, in the present case, the documents seized had no relevance or bearing on the income of the Assessee for the relevant assessment years and could not possibly reflect any undisclosed income. This being the undisputed position, no investigation was necessary. Thus, the provisions of section 153C, which are to enable an investigation in respect of the seized asset, could not be resorted to; the AO had no jurisdiction to make the reassessment under Section 153C of the Act.”

17. We have also gone through the order of assessment and also the order of learned CIT (A) in the impugned matters and find that nowhere, the documents so referred in the satisfaction note have been alleged to have been not disclosed in the returns of income filed prior to recording of satisfaction note, rather, on reading the order of learned CIT (A) we find that, he has rather accepted the fact that documents so referred in satisfaction note are duly disclosed in the returns of income. The relevant finding of CIT (A) is extracted as under:

“Para 9.9 Certainly, the action of recording satisfaction at the time of initiation of

proceedings u/s 153C, is not a judicial exercise where the defense of the other party (the appellant) is called for and considered. Naturally, it is bound to have inherent subjectivity. Therefore, if such documents have been used to make entry in books of accounts and the ROI is filed before the date of search, it does not necessarily mean that the material under consideration is not “incriminating”.

18. That we also find that even during the assessment proceedings, the learned AO issued show cause notice dated 16.11.2018, wherein, after discussing the documents seized and reply filed by the assessee, he recorded that “*However, on perusal of tax computation it is seen that capital gains has been worked out by deducting the net worth of business undertaking (which includes huge value of Goodwill) from the sales consideration*”. Thus, we find that even the learned AO has not been able to point out as to which of the documents seized and referred in the satisfaction note is “incriminating”, as there should be some unearthing of undisclosed income from the documents seized, which is absent in the impugned matter. The said findings so recorded by learned AO and CIT (A) have not been rebutted by learned CIT DR by bringing any material to the

contrary on record.

19. In view of our observations and findings given hereinabove, we have no hesitation to hold that firstly, none of the documents mentioned in the satisfaction note are incriminating in nature out of which any inference can be drawn as to any undisclosed income, relating to assessee-company for the Assessment Year 2015-16 and; since, the impugned assessment year was not pending, as the assessment stood completed prior to the date of initiation of proceedings u/s 153C of the Act, therefore, we hold that without any incriminating material, concluded assessments cannot be tinkered with and no addition can be made without there being any incriminating material for the impugned assessment year.

20. Accordingly, we hold that the additions made by the Assessing Officer are beyond the scope of Section 153C r.w.s. 153A.

21. In the result, since the assessment order is set aside on legal issue, therefore, there is no need to decide the additions on merits which are left with academic discussion only. Accordingly, appeal of the assessee is allowed of the Assessee in ITA No. 8046/Del/2019 is allowed.

22. That further, cross – appeals in the case of M/s Modtech Industries in ITA Nos. 8045/Del/2019 and 8783/Del/2019 are also allowed in view of the findings so recorded in the

case of M/s Dorset India Pvt. Ltd., as similar documents have been recorded in the satisfaction note of M/s Modtech Industries and the orders so passed by learned AO and CIT (A) are same and identical. We also find that all the documents so referred in the satisfaction note have also been duly disclosed prior to recording of satisfaction note either in the books of M/s Modtech Industries or in the books of M/s Dorset India Pvt. Ltd. As such, the addition so made by learned AO though deleted by learned CIT (A) is not based on any “incriminating material” and thus, is beyond the scope of assessment under section 153C r.w.s. 153A of the Act. In the result, Since the assessment order is set aside on legal issue, therefore, there is no need to decide the additions on merits which are left with academic discussion only. Accordingly, appeal of the assessee in ITA No. 8045/Del/2019 is allowed and that of the Revenue in ITA No. 8783/Del/2019 is dismissed.

Order pronounced in the open Court on 13th October, 2021.

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

DATED: 13th October, 2021

PKK:

Sd/-

**[AMIT SHUKLA]
JUDICIAL MEMBER**