

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"L" Bench, Mumbai**

**Before Shri B. Ramakotaiah, Accountant Member and  
Shri Amit Shukla, Judicial Member**

**ITA Nos.8133, 8137,8138,8136, 8135 & 8132/Mum/2010**  
(Assessment years: 2002-03 to 2007-08)

Ingram Micro (India) Exports  
Private Limited, Singapore C/o  
Deloitte Haskins & Sells, CA,  
Tower-3, 27<sup>th</sup>-32<sup>nd</sup> Floor India  
bulls Finance Centre,  
Elphinstone Mill Compound,  
Senapati Bapat Marg,  
Elphinstone(W)  
Mumbai 400013

**(Appellant)**

Vs. Dy. Director of Income Tax  
(I.T)-3(1) Scindia House,  
Ballard Estate, Narottamdas  
Morarjee Road,  
Mumbai 400038

**(Respondent)**

Assessee by: Shri J.D. Mistri, Shri Nishant  
Thakker, & Shri K.K. Ved  
Department by: Shri Nerender Kumar, DR

Date of Hearing: 19/12/2012  
Date of Pronouncement: 21/12/2012

**ORDER**

**Per Bench.**

These six appeals are by assessee, a foreign company registered in Singapore against whom proceedings under section 153C were initiated and orders under section 144C(13) r.w.s. 143(3) were passed vide the orders dated 18.10.2010. As the said orders were covered by the proceedings of the DRP under section 144C(5), assessee preferred the present appeals before the ITAT questioning the various issues. In all the orders the issues are similar, therefore, for the sake of record the grounds raised in assessment year 2002-03 are extracted for this purpose:

*1:0 Re.: Holding that the Appellant has a Permanent Establishment ("PE") in India:*

*1:1 The Assessing Officer has erred in holding that the Appellant has a Permanent Establishment ("PE") in India through which it carries out its sales in India.*

*1 : 2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, it has no PE in India and the stand taken by the Assessing Officer in this regard is erroneous, misconceived and not in accordance with law.*

*1 : 3 The Appellant submits that the Assessing Officer has erred in arriving at various unwarranted and erroneous conclusions unsupported by any relevant material to hold that the Appellant had a PE in India. Further he also failed to consider the contrary material and evidence adduced by the Appellant.*

*1: 4 The Appellant submits that the Assessing Officer be directed to recompute its total income accordingly.*

*Without prejudice to the foregoing:*

*2:0 Re.: Attribution of profits:*

*2 : 1 The Assessing Officer has erred in attributing the profits made by the Appellant.*

*2 : 2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject and in particular considering the functions carried out by Ingram Micro India Ltd. it is apparent that the said Ingram Micro India Ltd. has been remunerated on an appropriate basis through the incentive mechanism and hence no further attribution of income is called for.*

*2 : 3 The Appellant submits that the Assessing Officer be directed to delete the addition so made by him and to recompute its total income accordingly.*

*Without prejudice to the foregoing:*

*3:0 Re.: Estimation of business income taxable in India:*

*3 : 1 The Assessing Officer has erred in holding that 90% of the business income earned by the Appellant is attributable to its Indian PE.*

3 : 2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject 90% of its business income cannot be attributed to the Indian PE and said to be its profits taxable in India and the stand taken by the Assessing Officer in respect thereof is erroneous, misconceived and illegal.

3 : 3 The Appellant submits that the Assessing Officer be directed to recompute its total income accordingly.

4:0 Re. : Non-consideration for details placed on record:

4 : 1 The Assessing Officer has erred in not considering all the details placed on record by the Appellant and in passing an order in violation of the principles of natural justice.

5:0 Re.: Levy of interest u/s. 234A and 234B of the Income-tax Act, 1961:

5 : 1 The Assessing Officer has erred in levying interest u/s. 234A and 234B of the Income- tax Act, 1961 on the Appellant.

5 : 2 The Appellant submits that considering the facts and circumstances of its case and in the particular the fact that the Appellant is a non-resident as also the law prevailing on the subject, no interest u/s. 234A and 234B of the Income-tax Act, 1961 should be levied on it.

5 : 3 The Appellant submits that the Assessing Officer be directed to delete the interest levied on it.

6:0 Re.: General:

6: 1 Each of the above grounds of appeal is without prejudice to the other

6 : 2 The Appellant craves leave to add, alter, amend, substitute and I or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.

2. Consequent to raising of substantial demands, assessee preferred stay applications and vide the orders dated 21.01.2011, stay was granted for a period of 180 days i.e. till 20<sup>th</sup> July, 2011

and the case was originally posted on 06.04.2011. As the matters involved were of international transactions, the cases were transferred to 'L' Bench and on 20.04.2011 the learned Counsel for assessee submitted that assessee had sought inspection of records and the copies of certain documents which AO has not allowed so far. Therefore, the case was adjourned to 30.06.2011 with a direction to the learned DR to produce the relevant assessment records in order to expedite the disposal of these stay granted appeals. Subsequently due to various reasons the cases were not heard either because the DR sought adjournment or because the Bench was not functioning. Accordingly assessee's stay was extended periodically by the orders dated 05.08.2011, 10.02.2012 and further order dated 07.09.2012. The stay of demand granted in these cases will expire on 31.12.2012.

3. In the course of appeal proceedings as the inspection was not permitted by AO, as submitted by the learned Counsel, vide letter dated 19.04.2011 assessee raised additional grounds on the validity of the orders passed under section 153C of the IT Act 1961 as under:-

*“1.0 Re: Validity of order passed under section 153C of the Income Tax Act, 1961:*

*1.1 AO has erred in passing the impugned assessment order under section 144C(13) r.w.s. 153C r.w.s. 143(3) without complying with the mandatory provisions of section 153C.*

*1.2 The appellant submits that the considering the facts and circumstances of its case and the law prevailing on the subject the impugned assessment order has been passed without complying with the mandatory provisions of section 153C of the Income Tax Act, 1961 and hence the same is void ab-initio.*

*1.3 The proceedings under section 153C and the assessment order passed under section 144C (13) r.w.s. 153C r.w.s. 143(3) are bad in law in as much as no satisfaction as contemplated under section 153C of the*

*Income Tax Act, 1961 has been recorded prior to initiation of proceedings under section 153C.*

*1.4. The appellant submits that the impugned assessment order be held to be bad in law and struck down”.*

4. There is a direction from the Bench to produce the relevant assessment records vide entry dated 20.04.2011 and consequent to this, the learned DR has written letters to AOs and copies were filed explaining that the required documents were not submitted by the AO concerned. The learned CIT (DR) sought adjournments, originally to 25.04.2012 for complying with the directions of the Bench and the case was adjourned to 11.06.2012. He further sought adjournment in writing as the relevant records were not submitted by AO and the case was adjourned further to 02.08.2012. Again the learned CIT (DR) sought adjournment on the reason that the DDIT concerned was requested to comply with the said direction and also has deputed his Inspector for collecting the requisite material and the matter was being pursued with the DCIT (CC) (OSD) Central Range-7, Mumbai to locate the requisite documents. On his request the case was adjourned to 02.08.2012. This letter of adjournment request was accompanied by a letter from DDIT(IT)3(1) dated 31/07/2012 intimating the position that the efforts made by the said Officer with other Officers for procurement of the relevant documents. Subsequently, the case came up for hearing on 03.09.2012, 06.11.2012 and 06.12.2012. On 06.12.2012 the Bench finally gave a last opportunity with a direction to the learned CIT (DR) to produce the assessment records and the correspondence between AOs if any, so that assessee's contention that there is no satisfaction recorded before initiating the proceedings under section 153C can be verified. It was further noted that since these are stay granted matters, which was extended four times so far, no further adjournment in this case would be granted and the parties were informed accordingly.

Therefore, the case was taken up on 19.12.2012 on which date the learned CIT (DR) furnished the correspondence addressed by the Asstt. Director (IT) (Invest.) Unit 7(2) Mumbai to Additional DR (IT) International Taxation Range-3 Mumbai and a letter by DDIT(IT)3(1) dated 13.12.2012. After placing the above two correspondence on record, the learned CIT (DR) submitted that the original record with reference to satisfaction note is not made available to his office so far and on the basis of the letter addressed by the Asstt. Director of Income Tax (Invest.), ACIT (OSD)-2 Central Range Mumbai would have recorded satisfaction for the purpose of initiating proceedings under section 153C and therefore, since the record was not available at the moment, it was the submission that the matters can be set aside to AO to furnish the satisfaction to assessee and then complete the assessment if required, as this issue was not raised by either before AO or before the DRP and have been raised for the first time before the ITAT as an additional ground.

5. The learned Counsel submitted that this matter being adjourned from 20.04.2011 and referred to various order sheet notings recorded and opportunities were given to the Revenue for furnishing the necessary documents to satisfy that the satisfaction was recorded before initiating proceedings under section 153C and submitted that since assessee has got the stay extended for the last two years which is expiring on 31.12.2012, it was prayed that no further opportunity should be given and assessee's preliminary objection on the jurisdiction itself can be decided in view of the judgment of the Hon'ble Supreme Court in the case of Manish Maheshwari vs. ACIT, 289 ITR 341 (SC) which in turn was followed by the Coordinate Bench in the case of P. Satyanarayana vs. ACIT, Central Chennai reported as 50 SOT 168 Chennai (URO)/20 Taxmann.com 56, Chennai. He also placed on record the judgment of the Hon'ble High Court of Delhi in the case of SSP Aviation Ltd

vs. DCIT 20 Taxmann.com 214 (Del) for the proposition that in view of the provisions of section 153C satisfaction that required to be reached by AO having jurisdiction over searched persons is that valuable article of books of account or documents seized during the search belongs to a person other than searched persons and it is not necessary that the documents so seized must reflect undisclosed income. He also placed Coordinate Bench decision in the case of M/s Apex Time P. Ltd vs. DCIT in ITSS(A) No.34/Mum/2008 for the block period from 09.09.1996 to 09.01.2010 dated 30.03.2011 wherein on similar facts the ITAT quashed the block assessment order following the judgment of the Hon'ble Supreme Court in the case of Manish Maheshwari vs. ACIT, 289 ITR 341 (SC).

6. We have considered the rival submissions and examined the record as placed before us. The preliminary issue raised by assessee by way of additional ground is with reference to the validity of the proceedings under section 153C. The issue arose on the following facts. A search & seizure action under section 132(1) of the Act was carried out in the case of Ingram Micro India Pvt. Ltd/M/s Tech. Pacific (India) Ltd at their business premises at Gate No.1A, Godrej Industries Complex, Pirojshah Nagar, Vikhroli (E) Mumbai 400079 on 06/07.09.2007. The basic allegation against the group was that Ingram Micro India Exports Pte Ltd/Tech Pacific India (Exports) Pte Ltd Singapore based company is not paying any Income Tax in India though it is having a permanent establishment in India though Ingram Micron India Limited/Tech Pacific India Ltd. It was communicated from the Investigating Wing that the proceedings are required to be initiated in this case to bring to tax the profits of Ingram Micro India Exports Pte Ltd/Tech Pacific India (Exports) Pte. Ltd.

7. A notices under section 153C dated 18.11.2008 were issued in the case of Ingram Micro India Exports (P) Ltd for assessment years 2002-03 to 2007-08 and stated to be duly served upon assessee. In response assessee filed returns of income on 12.12.2008 declaring total income at Nil and in the notes to the return of income, it was stated that return of income is being filed in protest and in response to the notice under section 153C as assessee does not have a PE in India as defined in Article 5 of the DTAA and accordingly profits arising to its from its Indian operations will not be liable to tax in India under Article 7 of the DTAA with Singapore. The further facts recorded by AO in page 2 of the order as under:

M/s Ingram Micro India Pvt. Ltd and M/s Tech Pacific (India) Ltd are into the business of trading in computer peripherals and software to customers in India and abroad. TPIL had a wholly owned subsidiary by name and style of Tech Pacific (India) Exports Pte Ltd (TPIEPL) registered at Singapore. In November 2004, the company known as Ingram Micro, USA has acquired all the shares of Tech Pacific, one of the Asia Pacific's largest Technology Distributors for 730 million Australian Dollars. After this take over, TPIEPL came to be known as M/s Ingram Micro India Exports Pte. Ltd (IMIEPL).

A. The set up of the Ingram group of companies is as under:

(i) M/s Ingram Micro India Exports Pte Ltd formerly Tech Pacific (India) Exports Pte. Ltd is a Singapore based company and is a wholly owned subsidiary of Ingram Micro India Pvt. Ltd having its registered office at Bangalore.

(ii) M/s Ingram Micro India Pvt. Ltd is substantially (87.60%) owned by M/s Ingram Micro Asia Ltd, a Mauritius based



company, which in turn is substantially (99.98%) owned by M/s. Ingram Micro Inc., a California based company.

B. The set of Tech Pacific group of companies is as under:

(i) Tech Pacific (India) Exports Pte. Ltd is a Singapore based company and is a wholly owned subsidiary of M/s Tech Pacific (India) Ltd, a Mumbai based company, having 12.40% shareholding in Ingram Micro India Pvt. Ltd, a Bangalore based company.

(ii). Tech Pacific (India) Ltd is wholly owned by Tech pacific Mauritius Ltd., a company registered in British Virginia Island.

(iii) Tech Pacific Mauritius Ltd is wholly owned by M/s Tech Pacific Asia Ltd, a company registered in British Virginia Island.

(iv) Tech Pacific Asia Ltd is wholly owned by M/s Tech Pac. Holdings, a Bermuda based company.

After the acquisition of the Tech. Pac. Holdings' shares by Ingram Micro Inc. in Nov. 2004, TPIEPL has come to be known as IMIEPL.

For the calendar years 2001 to 2002 Tech Pacific (India) Ltd was known as Godrej Pacific Technology”.

8. In the course of search, certain documents, email correspondence etc., were seized by the Department and after analysis of the same, AO came to the conclusion that assessee had a permanent establishment in India and accordingly on the basis of the seized documents arrived at the incomes in the respective assessment years and proposed a draft assessment order. Assessee objected to the draft assessment order before the DRP-I and DRP-I vide direction dated 29.09.2010 affirmed the stand of AO that there

is a permanent establishment and also computation of income. However, vide Para 6 of the order, instead of assessing the 100% income of assessee as attributable to PE in India, the DRP directed that 90% of the income to be assessed as attributable to PE in India, whereas the balance 10% can be treated as activities related to Singapore. Consequent to the directions of the DRP, AO assessed the incomes in the respective assessment years as under:

<u>Assessment year</u>	<u>Amount (₹.)</u>
2002-03	49,67,123
2003-04	1,50,21,580
2004-05	3,73,20,602
2005-06	5,77,74,172
2006-07	7,20,90,268
2007-08	8,12,33,549

9. The additional ground raised by assessee being a legal ground goes to the root of the matter. As briefly stated, it seems AO did not allow the inspection of the record to assessee/Counsel and accordingly they have raised an additional ground about the validity of the proceedings under section 153C in the absence of any satisfaction being recorded by the Officer who was assessing the searched party. There is no dispute on the fact that assessee was not searched and the search has been conducted in the case of Ingram Micro India (P) Ltd/Tech Pacific India Ltd at their business premises in Mumbai. Therefore, as per the provisions of section 153A and 153C, proceedings can only be initiated only after AO comes to a satisfaction that the seized material pertains to other persons other than the searched party and consequently AO also comes to the conclusion that proceedings are required to be initiated in the other parties case. Nowhere in the assessment order there is any recording of the fact that there was satisfaction recorded by AO assessing Ingram Micro India (P) Ltd. In fact after assessee has raised an additional ground, the Department was specifically asked to produce the relevant correspondence between

AOs and the satisfaction note recorded for initiating proceedings and in fact the entire record of the assessments have been to directed to be produced to examine the contentions raised by assessee that there is no satisfaction recorded. As stated earlier, this Bench has directed the DR to furnish the necessary records as early as 28.04.2011 followed by repeated directions and as the last opportunity on 06.12.2012. The DR was directed to produce the assessment record and the correspondence between AOs and it was further stated that since the stay was extended four times, no further extension will be granted. In spite of the above and also on the basis of the correspondence placed by the DRs on record, it seems that no serious efforts were made by the Revenue to furnish the relevant satisfaction note recorded by AO nor the relevant records were submitted as directed by the Bench. Despite repeated efforts and requests for adjournment by the DR for furnishing the record, the record has not been sent by the officers or any satisfaction has been placed on record. Since more than 20 months have passed from the time the first direction was given to the Revenue and since three different CIT (DRs) have followed up the matter with the concerned AOs, we are of the opinion that there is no satisfaction recorded while initiating the proceedings under section 153C either by AO who assessed the searched party or even by AO who completed the assessment in assessee's case.

10. Since assessee is not searched party, it is necessary to record a satisfaction under the provisions of section 153C. The provisions of section 153C are as under:

**“153C.** [(1)] *Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then*

*the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A :]*

**Provided** *that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to <sup>91</sup>[sub-section (1) of] section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :*

**Provided further** *that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated.*

*(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—*

*(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or*

*(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or*

*(c) assessment or reassessment, if any, has been made,*

*before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.]”*

This provision is *pari materia* with the provisions of section 158BD (in the block assessment procedure).

11. The Hon'ble Supreme Court in the case of Manish Maheshwari (supra) analyzed the provisions of section 158 BD r.w.s. 158BC and decided 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 precedent wherefor 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; (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 Chapter XIV-B are applied in relation to any person, other than the person whose premises had been searched under section 132 or whose documents and other assets had been requisitioned under section 132A.*

*A taxing statute, as is well-known, must be construed strictly. Law in this regard is clear and explicit. The notice in question issued under section 158BD did 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.*

*No proceeding under section 158BC had been initiated. There was, thus, a patent non-application of mind. A prescribed form had been utilized. Even the status of the assessee had not been specified. It had only been mentioned that the search was conducted in the month of November, 1995. No other information had been furnished. The provisions contained in Chapter XIV-B are drastic in nature. It has draconian consequences. Such a proceeding can be initiated only if a raid is conducted. When the provisions are attracted, legal presumptions are raised against the assessee. The burden shifts on the assessee. Audited accounts for a period of ten years may have to be reopened.*

*Since the Assessing Officer had not recorded its satisfaction, which is mandatory and the Assessing Officer also had not transferred the case to the Assessing Officer having jurisdiction over the matter, the impugned judgments of the High Court could not be sustained.*

12. Coordinate Bench of the ITAT in the case of P. Satyanarayana vs. ACIT Chennai (supra) has considered the notice issued under section 153C as invalid if no satisfaction was recorded as to whom seized material belongs. It was held as under:

*“FACTS. A search and seizure operation on residential and business premises of assessee's father was carried out. On the basis of the seized material found in the course of the search, notice under section 153C, read with section 153A, was issued to the assessee. In response thereto, the assessee filed its return and assessment was completed. The assessee contended that the Assessing Officer had not recorded any satisfaction either in case of searched person or in case of the assessee and, therefore, impugned notice was invalid and consequential assessment was to be annulled.*

*On appeal:*

*HELD*

*A perusal of the order sheet recording itself clearly shows that the Assessing Officer when he made the recording, was categorical in his view that the reasons recorded is no pre-condition for action under section 153C and the points noted are for the sake of ready reference and appropriate action. Once the Assessing Officer himself has accepted that the recording of reasons is not a pre-condition for action under section 153C and has accepted that the points are noted for the sake of ready reference and appropriate action, obviously cannot be treated as reasons recorded. A reading of the provisions of section 153C clearly shows that it is in pari materia with the provisions of section 158BD. While interpreting the provisions of section 158BD in the case of Manish Maheshwari v. Asstt. CIT [2007] 289 ITR 341 / 159 Taxman 258 (SC), more specifically the satisfaction of the Assessing Officer, the Supreme Court has categorically held that the satisfaction is to be recorded. Admittedly, the Assessing Officer in the instant case is the same as that of father of assessee also. The revenue has not been able to show any recording of satisfaction either in the case of searched person or in the case of the assessee and, consequently, in view of the principles laid down by the Supreme Court in the above case, the notice issued under section 153C read with section 153A is liable to be held as invalid. Thus, the consequential assessment passed under section 153C, read with section 153A are annulled on account of the invalidity of the notice under section 153C read with section 153A”.*

13. In the case of M/s Apex Time Pvt. Ltd vs. DCIT in ITSS(A) No.34/Mum/2008, dated 30.03.2011 the ITAT ‘A’ Bench considered the provisions of section 158BD, and has decided as under:

*5. The learned counsel for the assessee, Mr. M.P. Makhija, submitted that there was no satisfaction recorded by the AO, who completed the block assessment of Nandokya Group of cases, that undisclosed income belonging to the assessee has been found during the course of search and hence the notice u/s 158BD was bad in law.*

*6. This Bench, in view of the rival contentions on the issue as to whether a satisfaction note has been*

recorded or not, on 8-9-2009, directed the learned DR to produce the assessment records. Similar directions were given on 10-11-2009. Thereafter the learned DR had sought adjournment on 18-01-2010. On 26-10-2010 the directions were once again repeated by the Bench. On 13-01-2011 the learned DR sought adjournment on the ground that the records are not available. Today before us the learned DR Mr. P.K. Das, filed a set of correspondence, wherein the DR has requested the concern AO as well as the concern CIT vide letter dated 26<sup>th</sup> Oct., 2010 and 8<sup>th</sup> March, 2011 to furnish the satisfaction note recorded by the AO, and also to submit the assessment record as directed by the Bench. He submitted that despite these repeated efforts, the record has not been sent by the concerned authorities. He prayed for more time.

7. Mr. M.P. Makhija, the learned A.R. submitted that adverse inference should be taken and the Bench should decide the case in his favour as more than 1½ years has elapsed since directions were given to the Revenue and no records are produced till date.

8. After hearing rival contentions, we agree with the submissions of Mr. M.P. Makhija that no useful purpose would be served by adjourning the matter once again, to give further time to the Revenue, for producing the records, as more than 1 ½ year has elapsed since the date of issual of directions. Hence adverse inference is taken and ground No.2 of the assessee that no satisfaction was recorded by the AO who completed the block assessment of Nandokya group of cases, appears to be factually correct. Thus we quash the block assessment order by applying the judgment of the Hon'ble Supreme Court in the case of Manish Maheshwari 289 ITR 341 wherein it is held that (i) Satisfaction must be recorded by the Assessing Officer that undisclosed income belong to any person, other than the person with respect of whom search was made u/s 132 of the Act, and (ii) the books of account or the documents or assets seized or requisitioned had to be handed over to the AO having jurisdiction over such other persons”.



14. The Hon'ble High Court of Delhi in the case of SSP Aviation Ltd. vs. DCIT 20 Taxmann.com 214 (Del.) dated 29.03.2012 held as under:

*“In view of provisions of section 153C, satisfaction that is required to be reached by Assessing Officer having jurisdiction over searched person is that valuable article or books of account or documents seized during search belong to a person other than searched person and, it is not necessary that documents so seized must reflect any undisclosed income”.*

15. Respectfully following the judicial precedents on the issue as discussed above, we are of the opinion that there is no satisfaction recorded by AO before initiating proceedings under section 153C. In spite of giving sufficiently adequate time to the Revenue for production of the necessary records and considering the fact that AO refused to allow inspection to assessee as recorded by the bench on 20.04.2011, we have no option than to take an adverse view that no satisfaction was recorded by AO before issuance of notice under section 153C. The Revenue has not been able to show any satisfaction recorded either in the case of searched person or in the case of assessee and consequently in view of the principles laid down by the Hon'ble Supreme Court in the case of Manish Maheshwari vs. ACIT (Supra), a notice issued under section 153C r.w.s. 153A is liable to be held as invalid. Thus, the consequential assessments passed under section 153C r.w.s. 144C are annulled on account of the invalidity of the notices under section 153C. Assessee's additional grounds are accordingly allowed in all the impugned assessment years. Since assessee's additional ground is allowed on the preliminary issue of jurisdiction, there is no need for adjudicating the issues on merit in any of the assessment years. Accordingly, the other grounds raised are considered academic and hence, not adjudicated.

16. All the impugned assessment orders passed in these respective assessment years by AO are hereby annulled.

17. In the result, appeals filed by assessee are allowed.

Order pronounced in the open court on 21<sup>st</sup> December, 2012.

Sd/-  
**(Amit Shukla)**  
**Judicial Member**

Sd/-  
**(B. Ramakotaiah)**  
**Accountant Member**

Mumbai, dated 21<sup>st</sup> December, 2012.

Vnodan/sps

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The concerned CIT(A)*
4. *The concerned CIT*
5. *The DR, "L " Bench, ITAT, Mumbai*

By Order

Assistant Registrar  
Income Tax Appellate Tribunal,  
Mumbai Benches, MUMBAI