

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

**BEFORE SH. AMIT SHUKLA, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos.3980 & 3981/ Del/ 2017
Assessment Years: 2007-08 & 2011-12

M/ s. Commitment Mortality Vision Education Society, C/ o- Kapil Goel, Adv., F- 26/ 124, Rohini, New Delhi	Vs.	ACIT, CC-6, New Delhi
PAN :AAAAC1679A		
(Appellant)		(Respondent)

Appellant by	Sh. Kapil Goel, Adv.
Respondent by	Sh. Rachna Singh, CIT(DR)

Date of hearing	28.05.2018
Date of pronouncement	29.06.2018

ORDER

PER O.P. KANT, A.M.:

These two appeals by the assessee are directed against two separate orders, both dated 31/03/2017 passed by the Ld. Commissioner of Income-tax (Appeals)-25, Delhi [in short the Ld. CIT(A)] for assessment year 2007-08 and 2011-12 respectively. In these appeals common grounds have been raised in similar set of facts and circumstances, and therefore, both these appeals were heard together and disposed of by way of this consolidated order for the sake of convenience and brevity.

2. The grounds of appeal raised in ITA No. 3980/ Del/ 2017 for assessment year 2007-08 are reproduced as under:

Jurisdictional Ground: Proceedings u/s 153C are void ab initio.

1. That as per proviso to section 153C, 6 years have to be reckoned from date of recording of satisfaction note i.e. 10.03.2014 which falls in F.Y. 2013-14 i.e. A.Y. 2014-15 accordingly preceding six years i.e. A.Y. 2008-09 to 2013-14 can only be assessed u/s 153C and present assessment framed u/s 153C for A. Y. 2007-08 is time barred, illegal, void-ab-initio and requires to be declared as nullity.
2. That as per documents described in beginning of the order (Para 2) which are purportedly seized from search operation on another person, same as replied to AO during assessment are duly disclosed and do not give rise to any undisclosed income duly objected before AO (reply dated 11/12/2014 disposed on 16/12/2014), and sans any undisclosed income emanating out of seized documents which is further fortified from final order where none of the addition has any semblance with seized documents, accordingly, notice issued u/s 153C, order passed u/s 153C and Id CIT-A order all becomes bad in law and requires to be quashed.
3. That purported satisfaction note recorded on 25/03/2014 is not valid in eyes of law as same does not meet the mandatory criteria stipulated u/s 153C of the Act;
4. That notice issued u/s 153C, order passed u/s 153C and subsequent order passed by Ld CIT-A are all bad in law for want of jurisdiction and requires to be quashed.

On Merits

5. That without appreciating mandatory jurisdictional requirement of presence of incriminating material, addition is made by the Ld AO in assessment order which is mechanically confirmed by CIT-A without adverting to inundated binding jurisprudence available on the subject, which addition without having any linkage with search based "incriminating" material, requires to be deleted in limine.
6. That Id. CIT-A made manifest error of law and facts in sustaining the addition made by Ld AO in impugned order

which suffers from serious debility and is not in accordance with law and is arbitrary, invalid and unsustainable in eyes of law.

7. *That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal.*

2.1 The grounds of appeal raised in ITA No. 3981/ Del/ 2017 for assessment year 2011-12 are reproduced as under:

Jurisdictional Ground: Proceedings u/s 153C are void ab initio

1. *That as per documents described in beginning of the order (Para 2) which are purportedly seized from search operation on another person, same as replied to AO during assessment are duly disclosed and do not give rise to any undisclosed income duly objected before AO (reply dated 11/12/2014 disposed on 16/12/2014), and sans any undisclosed income emanating out of seized documents which is further fortified from final order where none of the addition has any semblance with seized documents, accordingly, notice issued u/s 153C, order passed u/s 153C and Id CIT-A order all becomes bad in law and requires to be quashed.*
2. *That purported satisfaction note recorded on 25/03/2014 is not valid in eyes of law as same does not meet the mandatory criteria stipulated u/s 153C of*
3. *That notice issued u/s 153C, order passed u/s 153C and subsequent order passed by Ld CIT-A are all bad in law for want of jurisdiction and requires to be quashed.*

On Merits

4. *That without appreciating categorical reply of assessee where it is plainly denied that the assessee is not in effective receipt of any amount from Fiijee group which stand was taken before Id CIT-A also as noted in impugned order, the confirmation of addition of Rs 23,59,65,731/- is arbitrary and invalid being bereft of legally sustainable grounds.*
5. *That without appreciating mandatory jurisdictional requirement of presence of incriminating material, addition is*

made by the Ld AO in assessment order which is mechanically confirmed by CIT-A without adverting to inundated binding jurisprudence available on the subject, which addition without having any linkage with search based “incriminating” material, requires to be deleted in limine.

6. *That Id CIT-A made manifest error of law and facts in sustaining the addition made by Ld AO in impugned order which suffers from serious debility and is not in accordance with law and is arbitrary, invalid and unsustainable in eyes of law.*
7. *That the appellant craves leave to add add/alter any/all grounds of appeal before or at the time of hearing of the appeal*

3. Briefly stated facts of the case are that a search and seizure action under section 132 of the Income-tax Act, 1961 (in short the Act) was carried out in the case of Investigation Wing of Income-tax Department, New Delhi on 17/12/2012 and simultaneously, a survey under section 133A of the Act was carried out by the Investigation Wing of the Income Tax Department at the premises of the assessee trust/ society situated at 2D, MIG flats, Gulabi Bagh, Delhi. In the search action at the premises of the have been seized. The Assessing Officer in the case of JEE Ltd. recorded his satisfaction that those relevant documents belonged to the assessee. Consequently, the Assessing Officer initiated proceedings u/ s 153C of the Act and issued notice under section 153A read with section 153C of the Act on 25/03/2014 asking the assessee to file the return of income for assessment year 2007-08. For assessment year 2011-12, also similar proceedings u/ s 153C

were initiated and a notice under section 153A read with Section 153C of the Act was issued on 25/ 03/ 2014. The assessee did not comply with the said notices and therefore, the Assessing Officer issued notices under section 142(1) of the Act on 12/ 08/ 2014, requesting to the assessee to comply the notice under section 153A read with Section 153C of the Act. On 20/ 08/ 2014, the assessee sought for extension for filing the return of income. The assessee did not comply and, therefore, the Assessing Officer again issued notices under section 142(1) of the Act on three more occasions i.e. 22/ 08/ 2014; 07/ 10/ 2014 and 12/ 11/ 2014 requesting the assessee to file the return of income. Finally on 08/ 12/ 2014 i.e., after a lapse of more than 7 months, the assessee filed return of income for both the assessment years involved. Along with the returns, the assessee also filed revised balance sheet and revised income and expenditure account. Notices under section 143(2) of the Act were issued in both assessment years on 12/ 12/ 2014. The objections raised by the assessee against proceeding under section 153C of the Act were disposed of by the Assessing Officer and communicated to the assessee in writing vide letter dated 16/ 12/ 2014. All the documents seized from the premises of the Group had also been already provided to the assessee. The assessee did not comply with the queries of the Assessing Officer and repeatedly raised objections against the proceedings under section 153C of the Act and sought adjournment on one or other pretext.

3.1 The Assessing Officer brought to the knowledge of the assessee that the statement of Sri Aseem Gupta, Controller of the assessee society, wherein he admitted that a bank account was

opened and operated in nara bank in the name of the assessee by the directors of roup . Sh. Aseem Gupta further admitted that the assessee trust (society) was used as a conduit for rotating certain funds of the roup . Sh. Aseem Gupta further admitted that in lieu of making the trust (society) available for rotating the funds by the roup , he was allotted statutory audit work of the four concerns of the FIITJEE Group and he received Rs.60,000 as audit fee from these concerns. In view of these facts, the Assessing Officer observed that sanctity of the objective of the society was thoroughly violated for personal benefit by Sri Aseem Gupta as it was done against the consideration in the form of statutory audit of assessee as given to him. The Assessing Officer also observed that the amount received as donation from the promoters of roup was not used for charitable activities and thus there was misuse in the application of the income of the society. In assessment year 2011-12, the Assessing Officer has brought on record complete planning of the donation from the assessee to the JEE Group , which was made by the JEE authorities. The said planning includes draft letters of correspondence between the assessee and FIITJEE as well as donors. In the assessment order for the AY: 2011-12, the Assessing Officer has noted that a sum of Rs.23,59,65,731/- was received as donation for charitable purposes and instead of applying the same for charitable activities, the assessee passed on the entire sum to FIITJEE Group , which resulted in direct benefit to that company.

3.2 The Assessing Officer concluded that the assessee society/ trust has not shown any evidence that the said company

i.e. JEE , carried out charitable activities during the year under consideration and, hence, assessee society was held to have contravened the provisions relating to application of income for charitable purpose and accordingly, the benefit under section 11 and section 12 of the Act was denied to the assessee and the assessee society was assessed as in association of persons (AOP) as provided under section 167 of the Act.

3.4 In assessment year 2007-08, the expenses of Rs.2,56,132/ - claimed under the income and expenditure statement have been accordingly disallowed and the total income has been assessed at Rs.2,57,620/ - vide order dated 23/ 03/ 2015.

3.5 Similarly, in assessment year 2011-12, the Assessing Officer disallowed amount of donation paid of Rs.23,59,65,731/ - and assessed the total income at Rs.23,59,56,850/ - vide order dated 23/ 03/ 2015.

3.6 Aggrieved, the assessee filed appeal before the Ld. CIT(A) in both these assessment years and challenged the assessment both on the legality in assuming jurisdiction as well as on merit. In both the assessment years, the Ld. CIT(A) rejected the appeal of the assessee, holding that the assessee had been unable to justify any of the grounds of the appeal. The relevant finding of the Ld. CIT(A) in assessment year 2007-08 is reproduced as under:

“8.5 Reply dated 27.02.2017 was submitted by the Appellate which is reproduced above in Para 7.2. It is seen that the Appellant has adopted evasive tactics and has not given the complete information/details etc. Thereafter, several opportunities were given to the Appellant but it could not justify the Grounds of Appeal raised by it. A perusal of the entire facts of the case, particularly with

reference to the appeal of the appellant for AY 2011-12, show that the Appellant has been involved in the receipts and payments on its own behalf and on behalf of M/s. FIITJEE Ltd. and the Directors and other persons associated with the FIITJEE Group. The appellant was provided repeated opportunities to come out with the full facts of the case, but the Appellant kept on giving evasive replies.

8.6 It is thus seen that many discrepancies and differences were pointed out to the Appellant and opportunities were given for it to explain the case, through various Order Sheet entries and opportunities in the appellate proceedings. However, the Appellant has not come out with clean hands even at this stage. Though it was repeatedly claimed by the Appellant that the FIITJEE Group was controlling the Bank Account and the unexplained transactions, but the appellant did not give complete evidence against M/s. FIITJEE Ltd., and despite repeated opportunities did not specify the particular individuals of the FIITJEE Group who were involved in making the transactions through the Bank Accounts of the Appellant.

8.7 The Appellant has claimed various expenses towards claimed charitable activities and towards Administrative expenses for the year under consideration. The Ld. Assessing Officer has made additions to the Income after giving proper and repeated opportunities to the Appellant.

8.8 The Appellant has been unable to justify any of the Grounds of appeal and hence, these are rejected. The Appellant was unable to show that any relief was due and hence no relief can be granted to the Appellant.”

3.7 Similarly, in assessment year 2011-12, the relevant finding of the Ld. CIT(A) are reproduced as under:

“8.13 A perusal of the entire facts of the case show that the Appellant has been involved in the receipts and payments on its own behalf and on behalf of M/s FIITJEE Ltd. and the Directors and other persons associated with the FIITJEE Group. The Appellant was provided repeated opportunities to come out with the full facts of the case, but the appellant kept on giving evasive replies.

8.14 It is seen that the Appellant was involved in the design to defraud the Revenue, and now when the scheme has been exposed, has sought to claim that the Appellant itself had no control over the matters. It is seen that the Bank Account belonged to the Appellant, but it was claimed by the Appellant that the Bank Account was operated by persons of the FIITJEE Group. The Appellant was required to specify the exact persons involved and to explain as to how the FIITJEE Group was carrying out the transactions from the Bank Account of the Appellant. The Appellant was also required to support the claims with full details and evidences. However, the Appellant kept on stating that the FIITJEE Group was having full control over the transactions through the Bank Account of the Appellant, but did not submit complete evidence against the FIITJEE Group.

8.15 It is observed that when confronted with the mismatch and discrepancies, it was claimed by the Appellant that they cannot explain any discrepancy or difference, "as transactions were routed by officials of FIITJEE Group. You are requested to ask the reason of the same from FIITJEE Group." The Appellant further stated in the Written Submissions dated 06.03.17 that:

“In support of our claim, that bank account was operated by FIITJEE group. We want to submit that, cheques for routing the transaction were filled and deposited by them and we did not have any control over there.”

8.16 Again, in the Written Submissions dated 23.03.17, it was again submitted by the Appellant that “the claimed documents were not signed by us, reply this question, and would be best answered by FIITJEE only.

8.17 It is thus seen that many discrepancies and differences were pointed out to the Appellant and opportunities were given for it to explain the case, through various Order Sheet entries and opportunities in the appellate proceedings. However, the Appellant has not come out with clean hands even at this stage. Though it was repeatedly claimed by the Appellant that the FIITJEE Group was controlling the Bank Account and the Unexplained transactions, but the Appellant did not give complete evidence against M/s FIITJEE Ltd., and despite repeated opportunities did not specify the particular individuals of the FIITJEE Group who were involved in making the transactions through the Bank Accounts of the Appellant.

8.18 It is clear that the case of M/s FIITJEE Ltd. shall have to be examined to determine their exact role in the transactions through the Bank Account of the Appellant and to bring to Tax the Undisclosed Income therein. It is also seen that M/s FIITJEE Ltd. and individuals of this Group are the ultimate beneficiaries of the transactions through the Appellant Concern. Hence, such receipts in FY 09-10 (relevant to AY 10-11), FY 10-11 (relevant to A.Y. 11-12) and in F.Y. 13-14 (relevant to A.Y. 14-15) will have to be brought to Tax.

8.19 In the instant case, the Appellant has been unable to justify any of the Grounds of appeal and hence these are rejected. The Appellant was unable to show that any relief was due and hence no relief can be granted to the Appellant.”

3.8 Aggrieved with the finding of the Ld. CIT(A), the assessee is in appeal before the Tribunal raising the grounds challenging the jurisdiction assumed for making assessment made under section 153C of the Act as well as merit of the addition.

ITA No.3980/Del/2017 for AY: 2007-08

4. First we take of the appeal for assessment year 2007-08. In ground No. 1, the assessee has raised the issue that as per proviso to section 153C of the Act, six years have to be reckoned from the date of recording of satisfaction note, i.e., 10/ 03/ 2014, which falls in assessment year, 2014-15, and thus accordingly preceding assessment years i.e. assessment year 2008-09 to assessment year 2013-14, can only be assessed under section 153C of the Act and the present assessment year i.e. 2007-08 cannot be assessed under section 153C of the Act and, thus, making assessment under section 153C of the Act by the Assessing Officer, is *void-ab-initio* and requires to be declared as nullity.

4.1 The Ld. counsel filed a paper book containing pages 1 to 170 and in support of the ground raised, he referred to the judgment dated 17/ 08/ 2017 of the Hon _____ gh Court in the case of Sarwar Agency Private Limited (ITA No. 422/ 2017), available on page 62 to 66 of the paper book.

4.2 The Ld. counsel submitted that section 153C(1) of the Act has been amended by way of Finance Act, 2017 w.e.f. 01/ 04/ 2017, for specifying that the assessment years preceding the assessment year relevant to the previous year in which search is conducted, are to be assessed under provisions of section 153C of the Act. The Ld. counsel submitted that this amendment has been held by the Hon _____ judgment in the case of Sarwar Agency Private Limited (supra) as prospective in nature and not applicable in the year under consideration.

4.2.1 According to the Ld. counsel prior to the amendment to section 153C(1) mentioned above, the six assessment years to be

assessed under section 153C of the Act, are the 6 assessment years preceding the assessment year in which the satisfaction note for initiating proceeding under section 153C is recorded or books of account or other documents belonging to the assessee have been handed over to the Assessing Officer, as held by the Hon Delhi High Court in the case of Commissioner of Income-tax - 7 Vs. RRJ securities Ltd(2016) 380 ITR 612 (Del).

4.3 On the other hand, the Ld. DR submitted that provisions of the Act have not been appreciated properly in the case of RRJ Securities Ltd. (supra). According to her, the Hon relied on the proviso below section 153C(1) for considering the 6 assessment years for making assessment under section 153C of the Act, whereas the said proviso is with reference to second proviso to subsection 153A(1) of the Act i.e. for the purpose of abatement of the assessment.

4.3.1 According to her, even prior to introduction of amendment by way of Finance Act, 2017 to section 153C(1) of the Act, the 6 assessment years for assessment under section 153C of the Act is to be taken as referred to in sub-section 1 of section 153A of the Act, i.e. the 6 assessment years preceding the assessment year corresponding to the previous year in which, search has taken place. She submitted that objective of the scheme of assessments/ reassessment under 153A or 153C of the Act is to assess the income of the assessee in view of the evidences found during the course of search action and if period of 6 assessment years for assessment/ reassessment is taken on the basis of date of satisfaction note recorded or date of documents, books of accounts received by the Assessing Officer of the other person, then part of

a period for which documents are found will get excluded and a part of the period from the date of the search action to the date of the document received by the Assessing Officer of the other person, for which no evidences could be available in search, will get included. According to her, this interpretation would defeat the purpose for which the section 153A/ 153C have been introduced.

4.3.2 In view of the submission, she stated that notice under section 153C of the Act has been issued validly.

4.4 We have heard the rival submissions and perused the relevant material on record. The issue in dispute in the instant case is that which 6 assessment years are to be assessed under section 153C of the Act.

4.4.1 As far as section 153A of the Act is concerned, the 6 assessment years, which have to be assessed or reassessed, are the 6 assessment years, preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, as specified in clause (b) of subsection (1) of section 153A of the Act, which is reproduced as under:

“Assessment in case of search or requisition.

153A. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

- (a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years² [and for the relevant assessment year or years] referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;*

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made²[and for the relevant assessment year or years] :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years²[and for the relevant assessment year or years] :

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years²[and for the relevant assessment year or years] referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:”

(emphasis supplied extenrnally)

4.4.2 Prior to the amendment by way of Finance Act, 2017, the 6 assessment years to be assessed/ reassessed under the section 153C of the Act are to be taken as referred in subsection (1) of the section 153A of the Act. For ready reference, the section 153C is reproduced as under:

“Assessment of income of any other person.

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,—*

- (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*
- (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,*

*a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person **[for six assessment years immediately preceding the assessment year relevant to the***

previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153A :

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

(Bold portion inserted by way of Finance Act, 2017)

4.4.3 The proviso, below the section 153C of the Act is in relation to second proviso below the subsection (1) of section 153A of the Act. The said second proviso below section 153A of the Act is for deciding which assessment or reassessment shall abate. In the case of 153A of the Act, the assessments, if pending on the date of the intimation of the search under section 132 of the Act, gets abated. But in the case of 153C proceedings, the Assessing Officer having jurisdiction over the other person, get the information for assessing/ reassessing the case only after recording satisfaction by the Assessing Officer of the search person and handing over of the relevant documents, books of accounts etc. to the Assessing Officer having jurisdiction over such other person, and therefore, the assessments which are pending on the date of the relevant documents received by the Assessing Officer get abet. Before us, the Ld. DR has submitted that this proviso of section 153C is not for deciding the six assessment years for assessment or reassessment for the purpose of section 153C of the Act.

4.4.4 However, we note that, the legislature has inserted an amendment to section 153C of the Act, specifying the six assessment years to be assessed, by way of Finance Act, 2017

w.e.f. 01/04/2017. This amendment has been held by the Hon Delhi High Court in the case of Sarwar Agency Private Limited (supra) as prospective. The relevant part of the decision of the Hon _____ d as under:

“11. Mr. Ashok Manchanda, Ld. Senior Standing counsel for the Appellant, sought to pursue this Court to reconsider its view in RRJ Securities (supra). The court declines to do so for more than one reason. First, for reasons best known to it, the Revenue has not challenged the decision of this Court in RRJ Securities (supra) in the Supreme Court. The said decision has been consistently followed by the authorities under this Court as well as by this Court. Thirdly, the recent amendment to Section 153C(1) of the Act states for the first time that for both the searched person and the other person the period of reassessment would be six AYs preceding the year of search. The said amendment is prospective.”

4.4.5 In respect of the period prior to the above amendment, the Hon _____ Securities Ltd.(supra), after noticing the decision in SSP aviation Ltd. Vs. DCIT (2012) 346 ITR 177, has held as under:

“21. As discussed hereinbefore, once the AO of the searched person is satisfied that the seized assets/documents belong to another person and the said assets/documents have been transferred to the AO of such other person, the proceedings for assessment/reassessment of income of the other person has to proceed in accordance with provisions of Section 153A of the Act. Section 153A requires that where a search has been initiated under Section 132 of the Act, the AO is required to issue notice requiring the noticee to furnish returns of income in respect of six assessment years relevant to the six previous years preceding the previous year in which the search is conducted. As discussed hereinbefore, by virtue of second proviso to Section 153A, the assessment/reassessment pending on

the date of initiation of search abate. In the context of proceedings under Section 153C of the Act, the reference to the date of initiation of the search in the second proviso to Section 153A has to be construed as the date on which the AO receives the documents or assets from the AO of the searched person. Thus, by virtue of second proviso to Section 153A of the Act as it applies to proceedings under Section 153C of the Act, the assessment/reassessment pending on the date on which the assets/documents are received by the AO would abate. In respect of such assessments which have abated, the AO would have the jurisdiction to proceed and make an assessment. However, in respect of concluded assessments, the AO would assume jurisdiction to reassess provided that the assets/documents received by the AO represent or indicate any undisclosed income or possibility of any income that may have remained undisclosed in the relevant assessment years.....

24. As discussed hereinbefore, in terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee."

4.4.6 The decision of RRJ Securities Ltd. has been followed by the Hon gh Court in the case of Sarwar Agency Private Limited(supra). Thus following the decision of the Hon High Court in the case of RRJ Securities Ltd (supra), the six assessment years in the case of the assessee, for which

assessment/ reassessment could be made under section 153C of the Act are to be calculated to the date of handing over of assets or documents to the Assessing Officer of the assessee.

4.4.7 In the instant case, the satisfaction under section 153C of the Act has been recorded by the Assessing Officer of the searched person on 25/ 03/ 2014. A copy of the relevant satisfaction note has been placed by the assessee on pages 15 and 16 of the paper book. The Assessing Officer of the assessee has received the documents subsequent to recording of dissatisfaction and thus, even we can take this date of recording satisfaction under section 153C of the Act as the date when the Assessing Officer of the assessee received the documents from the Assessing Officer of the search person. Since this date i.e. 25/ 3/ 2014 falls in assessment year 2014-15, the six assessment years preceding the assessment year 2014-15, are assessment year 2008-09 to assessment year 2013-14. Since the assessment year involved before us is 2007-08, it is beyond the six assessment years which could be assessed/ reassessed under section 153C of the Act. Thus, in our opinion the assessment proceeding under section 153C of the Act in assessment year in question, is without jurisdiction and beyond the purview of the said provision. Accordingly, we quash the assessment proceeding under section 153C of the Act in the instant assessment year. The ground no. 1 of the appeal is accordingly allowed.

5. Since we have already quashed the assessment proceeding, we are not adjudicating the other issues raised by the assessee in its grounds.

6. In the result, the appeal for assessment year 2007-08 is allowed.

ITA No.3981/Del/2017 for AY: 2011-12

7. Now, we take of appeal for assessment year 2011-12. The ground No. 1 to 3 relates to proceedings under section 153C challenged on jurisdictional grounds. In round No. 1, the assessee has raised the issue that the documents seized from the search operation on another person do not give rise to any undisclosed income and none of the addition has been made based on these documents. In ground No. 2, the assessee has raised that the satisfaction under section 153C recorded on 25/03/2014 does not meet the criteria stipulated under section 153C of the Act.

8. Addressing the grounds, the Ld. counsel submitted that documents found in the course of the search operation on the premises of the FIITJEE Group, have been alleged to be as belonging to the assessee. He submitted that all these documents are available in public domain and came in possession of the FIITJEE Group during normal business transactions with the assessee, and thus these documents cannot be said to be belonging to the assessee. He submitted that one of the prime condition for invoking section 153C of the Act in the case of the other person is that the documents or other assets found during the course of the search action, should belong to such other person. If documents are merely related to the assessee, no action under section 153C of the Act could be initiated in the case of the assessee.

8.1 The Ld. counsel further submitted that the Assessing Officer of the searched person has not given a specific finding as how the relevant material belonged to the assessee and in absence of such a finding, the assessment is vitiated. According to him, the condition of recording satisfaction is analogous to recording reasons under section 148 of the Act and therefore the Assessing Officer was required to give reasons as how the said material belonged to the assessee. In support of his contention, he relied on the decision of the Hon

18/04/2018 in the case of Principal Commissioner of Income Tax Delhi-18 vs. M/s NS software in ITA No. 791/2017.

8.1.1 The Ld. counsel, further argued that for a moment, even if it is presumed that the documents belong to the assessee, but the same are not in the nature of incriminating documents and are documents maintained in regular course of the business transactions. The Ld. counsel submitted that all the documents mentioned in the satisfaction note have been replied to be adequately recorded/ explained/ accounting books of accounts and no undisclosed income is emanating out of the same and no addition has been made on the basis of said documents in the assessment order. The Ld. counsel referred to the documents found and their explanation reproduced by the Ld. CIT(A) in the impugned order. In support of the contention that for a valid jurisdiction under section 153C of the Act, the document or material belonged to the other person should be incriminating and must relate to the assessment years, whose assessment are sought to be reopened, the Ld. counsel relied on the decision dated 04/09/2017 of the Hon

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Securities Ltd. (ITA 566/ 2017), wherein the Hon _____ in the case of Commissioner of Income Tax-III, Pune Vs. Singhad Technical Education Society (2017) 84 taxmann.com 290 (SC).

8.1.2 The Ld. counsel further relied on the decision of the Tribunal dated 11/08/2017 in the case of Saldi Chits Private Limited in ITA No.6697 to 6697/ Del/ 2013 and submitted that cheque book found belonging to the persons are not incriminating in nature.

8.2 On the other hand, the Ld. DR referred to the list of document reproduced by the Assessing Officer in the assessment order and referred to the statement of Aseem Kumar Gupta, controller of the assessee society/ trust, recorded on 24/ 12/ 2012, in response to summons issued under section 131 of the Act, which is available on page 95 to 105 of the appeal set. According to the Ld. DR copy of bank account opening form whether it is original or photocopy, it always belongs to the assessee as it is neither a document which is required to be given to other person in ordinary course of business transaction nor it is a public document. The Id. DR referred to the statement of Sh. Aseem Gupta, wherein he admitted that Sh. Rajesh Sharma (CA) and Sh. DK Goel, Chairman and MD of FIITJEE Ltd. wanted to use name of the assessee for rotating the certain funds and for which Mr. Gupta agreed in lieu of promise of providing certain statutory audit of some of the concerns. Mr. Aseem Gupta further stated that account opening form of Canara bank was also sent to him for signature and then blank cheque-book was also given for signature, which he gave them back after signature.

8.2.1 In view of the above statements, the Ld. DR submitted that not only the documents belong to the assessee but in corroboration with the statement of Sh. Aseem Gupta, same are incriminating in nature. She submitted that the benefit under section 11 and 12 of the Act has been denied to the assessee in view of the conclusion based on these documents, and thus the contention of the Ld. counsel that no addition has been made on the basis of the seized document is misleading and not correct. In support of her contention she relied on the following judicial pronouncement:

- 1. Decision of Hon'ble Delhi High Court in the case of Principal Commissioner of Income Tax Vs. Super Malls Private Limited (ITA No. 449 of 2016)*
- 2. Decision of Hon'ble Gujarat High Court in the case of Kamleshbhai Dharamshibhai Patel Vs CIT (2013) 31 taxmann.com 50 (Gujrat).*
- 3. Decision of Hon'ble Delhi High Court in the case of SSP Aviation Ltd. Vs DCIT 20 taxmann.com 214.*

8.2.2 She distinguished the decision of the Hon High Court in the case of NS Software (supra) stating that in said case satisfaction was recorded in very casual manner without giving detail of contents of the seized document, whereas in the present case, documents have been properly specified as belonging to the assessee. She submitted that the documents in question are incriminating qua the assessment year under consideration and therefore the requirement provided in the case of Singhad Technical Education Society (supra) are also fulfilled.

8.3 We have heard the rival submissions and perused the relevant material on record including the cases relied upon by both the parties. In the instant case, whether the satisfaction recorded under section 153C of the Act meets the criteria of jurisdictional requirement, following three issues arise in before us:

- (i) Whether the documents on the basis of which satisfaction under section 153C has been recorded, belongs to the assessee?
- (ii) Whether the documents on the basis of which satisfaction under section 150C has been recorded are incriminating in nature in respect of the assessment year involved.
- (iii) Whether there is a requirement under section 153C of the Act to record as how the documents belong to the assessee.

8.3.1 Regarding the requirement that documents should belong to the person, other than the person searched, the section 153C of the Act, in existence during the relevant period is reproduced as under:

“153C 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 asset 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.

8.3.2 Thus, it is one of the prerequisite for recording satisfaction under section 153C of the Act that the money, bullion etc. or the books of accounts or documents seized belongs to third party, other than the searched person.

8.3.3 The meaning and scope of the term belong explained by the Hon

India Holding Private Limited Vs ACIT (2015), 371 ITR 295 as under:

"14. In view of this phrase, it is necessary that before the provisions of Section 153C of the said Act can be invoked, the Assessing Officer of the searched person must be satisfied that the seized material (which includes documents) does not belong to the person referred to in Section 153A (i.e., the searched person). In the Satisfaction Note, which is the subject matter of these writ petitions, there is nothing therein to indicate that the seized documents do not belong to the Jaipuria Group. This is even apart from the fact that, as we have noted above, there is no disclaimer on the part of the Jaipuria Group insofar as these documents are concerned.

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

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

8.3.4 In the instant case, before we examine whether the documents found and seized from the premises of M/ s. FIIT JEE and recorded in satisfaction note under section 153C of the Act belongs to the assessee, it is relevant to reproduce the details of said documents and the explanation of the assessee in respect of those documents. The Ld. CIT(A) in the impugned order has reproduced the submission of the assessee, which we are extracting relevant part as under:

Sl. No.	Documents	Explanation of the assessee
1.	Copy of letter dated 13 / 09/ 2010 by the assessee to the Canara bank, Hauz Khas for issue of the cheque-book	Documents belong to the Canara bank, Hauz Khas and only related to/ refers to the assessee
2.	Copy of minutes of general body meeting of the assessee held on 10/ 09/ 2010 regarding maintaining and operation of bank account	Documents belongs to the Canara bank, Hauz Khas and only related to/ refers to the assessee

3.	List of present members of the society and the signatures.	Documents belongs to the Canara bank, Hauz Khaus and only related to/ refers to the assessee
4.	Copy of PAN Card of the assessee	It is public document and can be found from the place of any person with whom recorded transaction as taken place, thus not belong to the assessee and later refers related to the assessee.
4.	Copy of rule and regulation of the assessee society	These are public documents and can be available with any person of public at large.
5.	Copy of memorandum of Association of the assessee society	These are public documents and can be available with any person of public at large.
6.	Copy of resolution to the effect that account shall be opened with Canara bank Hauz Khas	These are public documents and can be available with any person of public at large.
7.	Copy of certificate of registration with register of societies	These are public documents and can be available with any person of public at large.
9.	Copy of account opening form submitted to Canara bank, Hauz Khas	Documents belongs to the Canara bank, Hauz Khaus and only related to/ refers to the assessee
10.	Copy of draft MoUs of the assessee with FIITJEE LTD.	Unsigned draft letter , not belonging to the assessee.
11.	Copies of draft letters addressed to FIITJEE Ltd regarding the scheme of scholarship to be given to them.	Unsigned draft letter , not belonging to the assessee

8.3.5 From the copy of letter of request for issuing cheque book or copy of account opening form submitted to the Canara bank Hauz Khas, the only possibility that these documents could belong either to the assessee or to Canara bank. If original letter addressed to the bank, is duly submitted to the bank, then it belongs to the bank, however, the said original letter till it is not submitted to the bank, it belongs to the assessee. If a copy of the original letter on which acknowledgement is received from the bank, then it would belong to the assessee, as it would be the copy marked for the assessee. In this case, Sh. Aseem Gupta, controller of the assessee society has admitted that how the above documents travelled to the premises of the FIITJEE Ltd . He was summoned under section 131 of the Act and his statement was recorded on 24/12/2012 in continuation with the process of search proceedings at the premises of FIITJEE Ltd and survey proceeding at the premises of the assessee. In response to questions raised regarding opening of bank accounts of the assessee society in Canara bank (i.e. question no. 9), he stated that his friend Sh. Rajesh Gupta CA introduced him to Sh. DK Goel, Chairman of FIITJEE Ltd. and they wanted to use the assessee society for rotating the funds and in that regard the bank account opening forms and other documents of the assessee society landed at the premises of the FIITJEE Ltd . The relevant questions made to Sh. Aseem Gupta and his replies are reproduced as under:

“Q.8. Please state about the activities of these trust/society since their formation till today.

Ans. There are no activities in these trusts since their formation till today.

Q 9. I am showing you the photocopies of the account opening form of M/s. CMV Education Society & M/s. Sad Bhawan Trust used for opening of bank account in Canara Bank, Hauz Khas, Delhi. Please state, do you have opened this account? If yes, also explain the nature of transaction in these accounts?

Ans:- In regards to opening of bank account of M/s. Sadbhawana and M/s. CMV in Canara Bank, Hauz Khas, Delhi, I would like to state that my friend Sh. Rajesh Gupta, CA, introduced me to Sh. D.K. Goel, Chairman & M.D. of M/s. Fiitjee Ltd. and Sh. Rajesh Sharma, Executive Director (Finance), M/s. Fiitjee Ltd. They wanted to use the name of my entities M/s. EMV and M/s. Sadbhawana Trust for rotating their certain funds. I agreed to their offer as they promised me to give Statutory Audit of some of their concern. Later on, Sh. Rajesh Sharma send me account opening form of Canara Bank, Hauz Khas, New Delhi to my office for signature. After my signature the opened bank account of M/s CMV and M/s. Sadbhawana in the said bank. He send me the blank cheque books for my signature which was signed by me. How the cheques were used or what amount was mentioned on them, I was never informed. M/s. Fiitzee Ltd. was having complete control over these accounts thereafter Sh. Rajesh Sharma prepared the P & L account and Balance Sheet in his office for the F.Y. 20010-11 for M/s. CMV and M/s. Sadbhawana and send the same to me alongwith bank statements in August, 2011. Thereafter, I prepared books of account and got accounts of these trust and society audited from my friend Sh. Ravi Gupta, CA. Till the date of receipt of P&L account and balance sheet, I was not aware about the nature of the transaction made in the bank account of these trust/society. As incentive, I was allotted statutory audit of their following account:

- 1. M/s. Tetrahedron Education Academy Society, 5-9-14D, Sahara Manji, Saifabad, Hyderabad -500004*
- 2. M/s. Srikara Educational Society, H. No. 8-3-167/D/15, 1st Floor, Kalyan Nagar, Hyderabad -500038.*

3. *M/s. Emanuel Education Society, H. No. 47-7-47, IV Lane, Dwarkanagar, Opp.- Nehru Bazar, Vishakhapatnam.*
4. *M/s. Vijetha Educational Society, H. No. 232, Shanti Plaza, KPHB Colony, Kulkatpally, Hyderabad.*

I have received Rs.60,000/- as audit fee for these concerns.

Q. 10. Was there any agreement between you as trustee and member of M/s. Sadbhawna and M/s. CMV Education Society respectively and M/s. Fiitjee Ltd. or its promoter members made?

Ans.: An agreement was signed by me as trustee/member of M/s Sadbhawna and M/s. CMV Education Society with M/s Fiitjee Ltd. This was prepared by M/s. Fiitjee Ltd. and was sent to me by Sh. Rajesh Sharma for my signature. It was regarding providing scholarship to needy students. The purpose of the said agreement was not apprehended by me at that time because I was not aware how transactions were rotated through my trust/society.

Q.11 Please state, do you have received any amount for any purpose or was likely to receive for any purpose in these trusts/societies from M/s Fiitjee Ltd. during the F.Y. 2009-10 or its promoter members, namely, Lata Goel, K K Goel, D.K. Goel, Monika Goel & Kanti Goel?

Ans. I have not received any money for any purpose and was also likely to not receive/receivable during the F.Y. 2009-10 from M/s. Fiitjee Ltd. or its promoters the name of which mentioned in question..

Q.12 Pl. state whether the said trust/society have given or have to give any amount for any purpose to M/s. Fiitjee Ltd. during the F.Y. 2009-10?

Ans.: There were not any transactions made or accrued with M/s. Fiitjee Ltd. by the said trust, namely, M/s. Sadbhawna and M/s. CMV Education society when the agreement was made between trust/society and M/s Fiitjee Ltd.?

I have signed the agreement at the time of signing the account opening form but what date they have put on it, I am not aware.

Q. 13 Pl. state whether you have made any agreement or likely to mad any agreement for receiving back donations which you have given M/s. Fiitjee Ltd. from the said trust/society.

Ans:- I have not made any such agreement for receiving back donation from M/s Fiitjee Ltd. on behalf of these trust/society. For any reason either violation of any contents of agreement or else nor I am likely to made such agreement in future.”

8.3.6 We note that the statement of Shri Aseem Gupta, has not been retracted and as far as the facts of the case available on record, the assessee has not challenged truth of the statements of Sh. Aseem Gupta.

8.3.7 It is evident from the above statement, how the copies of bank account opening form and other documents of the assessee society travelled to the premises of the FIITJEE Ltd, and thus there is no doubt as these documents belong to the assessee. The assessee contended that these documents belongs to the Canara bank, however, the assessee has not discharged his onus to prove the said contention. These documents are also not with the

Accordingly, we reject the contention of the assessee raised in this regard and hold that the documents mentioned in the satisfaction note under section 153C of the Act recorded by the Assessing Officer of the searched the person belong to the assessee.

8.4 The second issue, which has been raised by the Ld. counsel of the assessee that these documents are not incriminating in nature.

8.4.1 We have observed the statement of Sri Aseem Gupta, a part of which has been already reproduced above. It is evident from the statement that these documents are part of the fund rotating exercise from the assessee to M/ s FIITJEE Ltd. The Controller of the society himself has admitted in response to question No. 8 that there was no activities in the trust. He has also admitted the fact that duly signed cheque books of the said Canara bank account was given by him to the authorities of the FIITJEE Ltd. The authorities of the FIITJEE Ltd. were having complete control over the funds available in the said bank account. Sh. Aseem kumar Gupta admitted of having ignorance of what kind of activities were carried using the name of the assessee. Sh Aseem Gupta has admitted that for providing the name of the assessee for rotating the funds of M/ s FIITJEE, he was given work of statutory audit of few concerns of FIITJEE group.

8.4.2 Thus, when we see these documents mentioned in the satisfaction note in corroboration with the statement of Sri Assem Gupta, we do not have any hesitation in accepting that these are the documents of incriminating nature raising the doubts on the claim of the charitable activity of the assessee society. Since the bank accounts of the Canara bank has been operated and utilized by the FIITJEE Group during the year under consideration also and thus these documents including bank account opening form and other documents like memorandum of understanding etc pertain to the year under consideration. The copy of letter dated 13/09/2010 by the assessee to the Canara bank for issuing cheque book and Copy of minutes of general body meeting held on 10/09/2010 certainly pertain to the year under consideration i.e.

previous year 2010-11 corresponding to the assessment year 2011-12.

8.4.3 In view of the above, we hold that the documents mentioned in the satisfaction note are incriminating qua the assessment year in consideration before us.

8.5 The third issue raised by the Ld. Counsel that the Assessing Officer is required to record the satisfaction note under section 153C of the Act as how the documents mentioned therein belong to the other person.

8.5.1 We have heard the arguments of the Ld. Counsel on this issue. According to the Ld. counsel, in the satisfaction note under section 153C of the Act, the Assessing Officer of the searched person should record how the documents not belong to the searched person and same belong to the other person. The Ld. counsel in support of the above proposition has relied on the decision of the Hon i High Court in the case of NS Software (supra). In the case of NS Software (supra) the satisfaction note recorded has been reproduced by the Hon 20 of the decision, which is extracted as under:

“23.07.2010

A search and operation was conducted on Raj Darbar Group of cases on 31.07.2008. During the court of search and operation at the premises of:

(i) Party A-20, Residence Cum office of Narendera Kumar Aggarwal, 1st & 2nd Floor, 7, Western Avenue, Maharani Bagh, New Delhi.

Various papers were found and seized belonging to M/s N.S. Software Pvt. Ltd. the annexure are marked as under:

Party A-20

Annexure A-26, Hard Disk containing Books of Accounts of M/s. N.S. Software Pvt. Ltd.

Thus the Proceedings u/s 253C r.w.s. 153A of the Income Tax Act, 1961 are being initiated in the above case.”

8.5.2 In respect of the above satisfaction note in the case of NS Software (supra), the Tribunal observed that the Assessing Officer did not indicate how vaguely referred documents in the satisfaction note were found to be belonging to the assessee within the meaning of section 153C of the Act. The Tribunal further observed that there was no recording/ reference about the contents of these documents allegedly pertaining to the assessee and even in the assessment order, no such mention had been made.

8.5.3 The Hon

Tribunal and observed that the Ld. Assessing Officer has not explained steps taken by him to determine that the seized material belong to the assessee firm. The Hon

that the satisfaction note has been prepared in the standard mechanical format and it does not provide any details about the books of accounts which allegedly belong to the assessee firm. In view of the above observation, the Hon

that the failure of the Assessing Officer to record a specific satisfaction and how the recovered material belong to the assessee in the note that preceded the notice issued under it,, vitiates the assessment.

8.5.4 In the instant case, the satisfaction note recorded by the Ld. Assessing Officer of the searched person, is available on page 15 and 16 of the paper book. The relevant extract of the same is reproduced as under:

“During the course of search and seizure operation u/s 132 conducted on 17.12.2012 on M/s. FIITJEE Limited and its promoter Shri Dinesh Kumar Goel.

From premises no FIITJEE Ftouse,29A, Kalu Sarai, Sarvpriya Vihar, New Delhi-16 documents marked as Annexure A-1 to A-8 A-01 & A-02 were found and seized & from premises no. FIITJEE Limited 7/2. Vashistht House Begumpur, Kalu Sarai, Delhi documents marked as Annexure A-1 to A-35 were found and seized.

It is seen that the above seized material contains following documents belonging to M/s. CMV Educational Society –

1 Annexure A-4, of party F02:-“

Pages no 19 to 24, contain pagers of bank account of CMV Education Society.

Page no 27 contains copy of PAN No AAAAC1679A of CMV Educational Society

Page no 36-39 contains Moa of CMV Educational Society

Page No. 40 Contains Certify True Extracts From the Board Meeting Of CMV Educational Society Held on 23.06.2010.

Page NO 41 To 44 papers related to CMV Educational Society

Page no 45 contain ledger account of CMV Educational Society in the books of FIITJEE 01.09.2010 to 02.10.10.

2 Annexure A-20, Party F02 pages 42 to 48 contain draft MOU between society and FIITJEE Limited.

In view of the above, I am satisfied that documents seized belongs to a person other than the person searched under section 132 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), 1961.

Hence, the proceeding u/s. 153C of the IT Act, 1961 is initiated in the case of M/s CMV Education Society.”

8.5.6 It is evident that in the above satisfaction note relevant to the instant case the Assessing Officer of the searched person has recorded detail of each document and what the said document contains. The nature of the document is also clear in the satisfaction note recorded. Whereas in the case of NS software (supra) , the Assessing Officer has merely mentioned that various papers belonging to the said assessee were found and seized. The Assessing Officer in said case only mentioned annexure number and contents of which were not mentioned.

8.5.7 In view of the above, in our opinion, the facts of the case of NS Software (supra) are distinguishable and thus, the ratio of the said decision of the Hon over the facts of the instant case. Accordingly, we reject the contention of the Ld. counsel on this issue.

8.5.8 In view of the aforesaid discussions, we are of the opinion that the proceedings under section 153C of the Act have been validly initiated in the case of the assessee. The grounds No. 1 to 3 of the appeal challenging the validity of the proceedings under section 153C of the Act are accordingly dismissed.

9. In ground No.4, the assessee has challenged the addition denying the stand taken by the Ld. CIT(A) that the assessee is not in effective receipt of any amount from FIITJEE Group .

9.1 The Ld. counsel submitted that source of the money in the hands of the assessee is from the promoters of the Group and thus addition if any should be made in the hands of the promoters of that group rather than in the hands of the assessee.

9.2 The Ld. DR, on the other hand, relied on the order of the lower authorities and submitted that the donations received by the assessee have not been applied for the object of the charitable purpose of the assessee society and same have been used for furtherance of the business of the FIITJEE group and therefore the action of the Assessing Officer in denying the application of the funds in terms of section 11 and 12 of the Act, is justified.

9.3 We have heard the rival submission and perused the relevant material on record. The Assessing Officer has examined the claim of application of income by the assessee as under:

“5. The assessee has obtained registration u/s 12A of the I.T. Act, 1961. However, for this the assessee has to conform to the conditions prescribed there for. The Assessing Officer is required to examine the claim of exemption/s 11 and 12 of the Act for any contravention of the relevant provisions. The assessee is required to satisfy that about the genuineness of the activities promised or claimed to be carried out in each financial year to claim the exemption. Nowhere in its replies has the assessee Society shown evidence that the said company carried out any charitable activities during the year under consideration. Hence the assessee Society is held to have contravened the provisions relating to application of income by charitable societies and therefore the benefit of sec. 11 and 12 is denied to the assessee. The amount paid to FIITJEE Ltd is treated as its income being not utilized for the charitable purposes. Accordingly, the Society is assessed as an AOP and taxed as provided u/s provisions of sec 167B of the IT Act 1961.

6. As per Income & Expenditure statement filed along with Original Return of Income, contribution received have been shown at Rs. 23,59,65,731/-. Donations paid have been shown at Rs. 23,59,65,731/-. No other expenses have been debited on account of Charitable activities?”

9.4 Before us, the Ld. counsel has failed to explain as how the funds have been utilized for charitable purpose. In the instant case by way of collusion between the FIITJEE Group and the assessee, the funds have been given the group entities in the name of disbursement of scholarship etc. This collusion is evident from the statement of Sh. Aseem Gupta as how the cheque books of the assessee society were controlled by the authorities of the FIITJEE group. By way of providing scholarship to the meritorious students, the FIITJEE group has served its business purposes of attracting the students to various courses run by them. Thus in our opinion, the funds of the assessee society have not been utilised for the charitable purposes. We, accordingly, uphold the finding of the lower authorities in denying the exemption under section 11 and 12 of the Act. The ground No. 4 of the appeal is accordingly dismissed.

10. In ground No. 5, the assessee has challenged the jurisdictional requirement of presence of incriminating material. The ground of jurisdictional requirement of presence of incriminating material has already been adjudicated by us in grounds No. 1 to 3 of the appeal and, therefore, we are not separately adjudicating the ground No. 5 of the appeal and it is dismissed accordingly.

11. In ground No. 6, the assessee has raised the general issue that the CIT(A) has made manifest error of law and facts in sustaining the addition, which is not in accordance with law. No

specific arguments in respect of this ground has been raised before us, accordingly this ground is dismissed as infructuous.

12. In the result, the appeal of the assessee for assessment year 2011-12 is dismissed.

13. To sum up, the appeal of the assessee for assessment year 2007-08 is allowed, whereas appeal of the assessee for assessment year 2011-12 is dismissed.

The decision is pronounced in the open court on 29th June, 2018.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 29th June, 2018.

RK/ -(D.T.D.)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi