# IN THE INCOME TAX APPELLATE TRIBUNAL
# "A" BENCH : BANGALORE

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**
**AND SMT. BEENA PILLAI, JUDICIAL MEMBER**

| ITA Nos. 299 to 301/Bang/2018 |
|---|
| Assessment years : 2010-11 to 2012-13 |

| | | |
|---|---|---|
| The Assistant Commissioner of Income Tax,<br>Central Circle 2(3),<br>Bengaluru. | Vs. | M/s. Conc Shade Construction Pvt. Ltd.,<br>Soorya Farm, Helenahalli,<br>Chikkamagaluru.<br>**PAN: AAECC 0493L** |
| APPELLANT | | RESPONDENT |

| | | |
|---|---|---|
| Appellant by | : | Shri V. Chandrashekar, Advocate |
| Respondent by | : | Shri Sankar Ganesh K., Jt.CIT(DR)(ITAT), Bengaluru. |

| | | |
|---|---|---|
| Date of hearing | : | 09.02.2022 |
| Date of Pronouncement | : | 20.04.2022 |

## O R D E R

***Per Chandra Poojari, Accountant Member***

These three appeals are by the revenue against the separate orders dated 24.11.2017 of the CIT(Appeals)-11, Bangalore for the assessment years 2010-11 to 2012-13. All these appeals involve common issues, they were heard together and disposed of by this common order.

2. The common grounds of appeal by the revenue raised in ITA No.299/Bang/2018 for the AY 2010-11 are as follows, except change in figures:-

"1. *Whether on the facts and the circumstances of the case, the Ld. CIT(A) is correct in relying on the order of Karnataka High Court in the case of IBC Knowledge Park Pvt. Ltd. when the assessee has participated in the proceedings and had not challenged issue of notices as decided by Delhi High Court in the case of CIT Vs Safetag International Pvt. Ltd. in 332 ITR 622 and Hon'ble Apex Court in the case of Shri Vijyabhai N Chandrani in 357 ITR 713.*

2. *Whether on the facts and the circumstances of the case, the Ld. CIT(A) is correct in relying on the case of Singhad Technical Society case as the decision does not restrain the AO from making addition only on the incriminating material and it only refers that seized material should pertain to third person and terms it a condition precedent to initiate proceeding and not for finalization of assessment.*

3. *Whether on the facts and the circumstances of the case, the Ld. CIT(A) is correct in deleting the protective additions on account of undisclosed investment of Rs.1,10,93,254/- whereas Gujarat High Court in 140 ITR 517 settled that protective assessment should not be decided till substantive assessment reaches finality.*

4. *Whether on the facts and the circumstances of the case, the Ld. CIT(A) is correct in deleting the unexplained case deposit of Rs.40,12,909/ - whereas it remains unsubstantiated and without satisfactory explanation. Also, the case law Singhad Technical Education Society is distinguishable.*

5. *Only in AYs 2010-11 & 2011-12*

   *Whether on the facts and the circumstances of the case, the Ld. CIT(A) is correct in deleting the addition of undisclosed investment of Rs.54,66,483/- in office construction without appreciating the fact that this being protective addition ought to have sustain as substantive addition in case of H B Sudarshan has been deleted.*

6. *Whether on the facts and the circumstances of the case, the Ld. CIT(A) is correct in deleting the estimated profit of Rs.9,68,072/- /- without appreciating the fact that books were not produced and case law relied is distinguished.*

7. *Whether on the facts and the circumstances of the case, the Ld. CIT(A) is correct in accepting the ground of validity of digital*

*evidence based on VC Shukla case rendered in 1998 however, the same has been overridden by provision of Information Technology Act 2000 and Section 2(22AA) of the I.T. Act and Section 292C of the IT Act."*

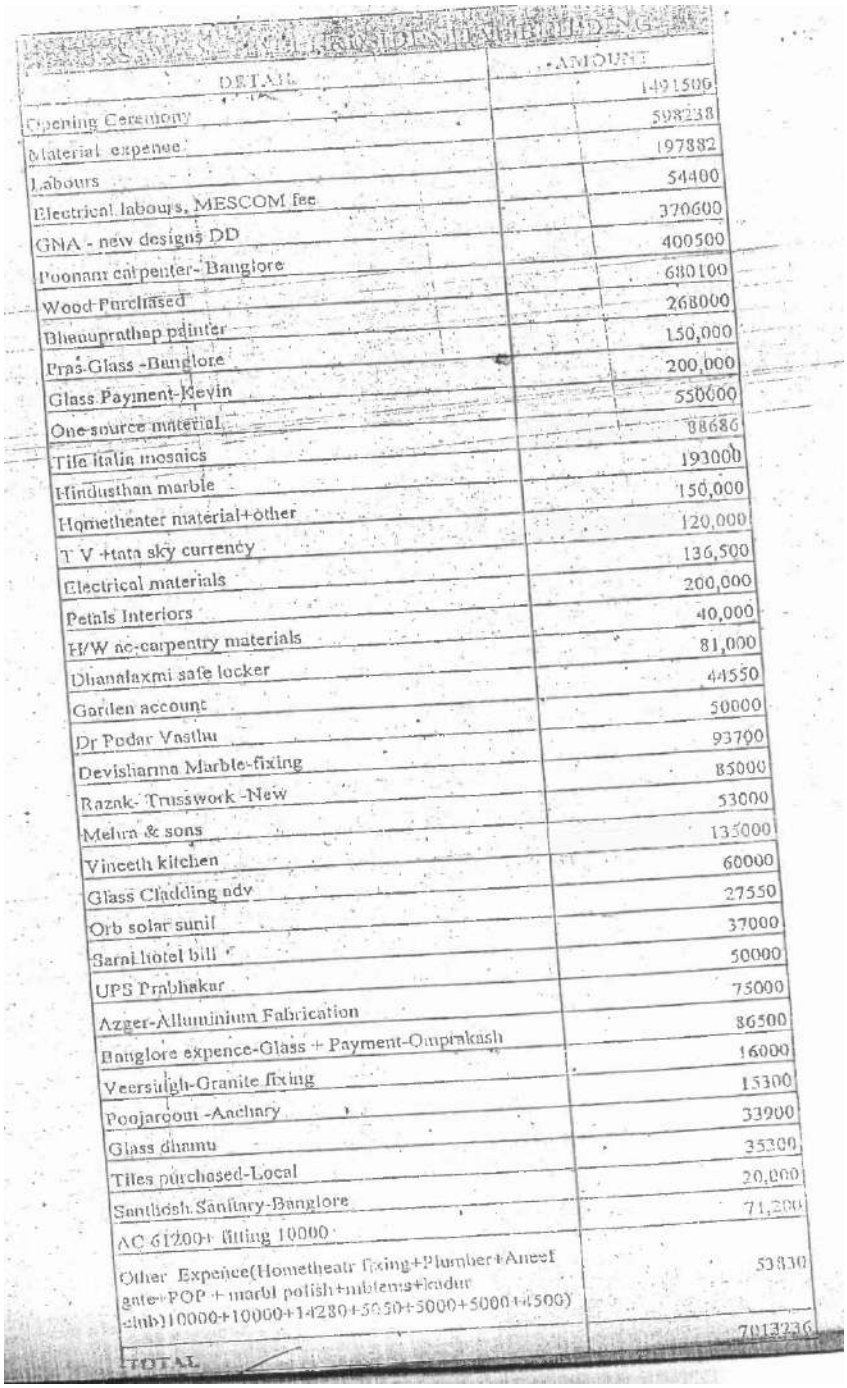
3. The first common ground in these appeals is regarding cancellation of assessment framed u/s. 153C of the Income-tax Act, 1961 [the Act] on the basis that there was no incriminating material to frame the assessment by placing reliance on the judgment of Supreme Court in the case of CIT vs Sinhgad Technical Education Society in Civil Appeal No.11080 of 2017, arising out of SLP (C) No.2527 of 2015.

4. The facts of the case are that there was a search u/s 132 of the Income Tax Act, 1961 was carried out in the case of one Sri. H.B.Sudarshan, who is the Managing Director of the Assessee Company, on 08.06.2012. Subsequently the Assessee Company's case was centralized with the office of the DCIT, Central Circle 2(3), Bangalore vide Centralization notification in F.NO. 52/Tech/CIT/Mys/2012-13 dated 07.12.2012. Consequent to the search in the case of Sri. H B Sudarshan notices u/s 153C r.w.s. 153A were issued on 15.09.2014 requiring the Assessee Company to file its return of income for the A Y 2010-11 to AY 2012-13.

5. A residential house at Basavanahalli belongs to Sh. C.T. Ravi. As per the statement of affairs of Sh. C.T. Ravi, the construction of the house started in A.Y 2010-11 and construction got completed in A.Y. 2012-13. There was a search u/s 132 conducted in the case of Sh. H.B. Sudarshan who is the relative of Sh. C.T. Ravi, Sh. H.B. Sudarshan and Smt. Pallavi Ravi (spouse of Sh. C.T. Ravi) are directors in the assessee company M/s Conc Shade Constructions P. Ltd. During search in the case of Sh. H.B. Sudarshan, digital

data from his computer was seized (Digital Data of Mac_h.b.sudarshan\Data of Mac_HBSudarshan\present Data\Excel File 1 (Version 1).xls\sheet main A/c) where investment of Rs. 3,26,05,531/- in a house in Basavanahalli was found. Further seized evidence suggested additional expenditure post construction related to house warming, certain other purchases etc. related to the house amounting to Rs.70,13,236/-. The seized evidences are reproduced below :

| SL NO | DETAILS | TOTAL AMOUNT |
|---|---|---|
| 1 | GROUND FLORE (OLD) | 2,223,395.00 |
| 2 | STEEL BILL | 1,111,312.00 |
| 3 | CEMENT BILL | 772,395.00 |
| 4 | SAND BILL | 397,650.00 |
| 5 | MATERIAL BILL | 370,082.50 |
| 6 | SHARANAPPA | 1,510,169.00 |
| 7 | LABOURS | 414,083.00 |
| 8 | POP WORK | 146,773.00 |
| 9 | TRUSS WORK-RAJU SINGH | 312,737.00 |
| 10 | STONE WORK-ASHOKE | 290,930.00 |
| 11 | MARBLE FIXING-DEVI SHARMA | 811,908.00 |
| 12 | PLUMBING WORK-MURTHUZA | 593,880.00 |
| 13 | ELECTRIC EXPENCES | 1,289,040.00 |
| 14 | CENTRING KUMARA | 149,424.00 |
| 15 | OTHER PAYMENTS | 169,400.00 |
| 16 | CARPENTARY & PLANING MACHINE | 1,898,747.00 |
| 17 | SS METALS & CARPENTARY MATERIALS | 6,827,956.00 |
| 18 | ASHRAY-ARCHITECT | 150,000.00 |
| 19 | DUBAI MATERIALS | 4,565,138.00 |
| 20 | OTHER MATERIALS | 8,113,878.00 |
| 21 | MISCELLANEOUS | 305491.00 |
| 22 | REMOTE GATE | 125443.00 |
| 23 | VEHICLE RENTS | 55700.00 |
| | **GRAND TOTAL** | **32605531.50** |



| DETAIL | AMOUNT |
|---|---|
| Opening Ceremony | 1491506 |
| Material expence | 598238 |
| Labours | 197882 |
| Electrical labours, MESCOM fee | 54400 |
| GNA - new designs DD | 370600 |
| Poonam carpenter- Banglore | 400500 |
| Wood Purchased | 680100 |
| Bhanuprathap painter | 268000 |
| Pras-Glass -Banglore | 150,000 |
| Glass Payment-Kevin | 200,000 |
| One-source material | 550000 |
| Tile italia mosaics | 88686 |
| Hindusthan marble | 193000 |
| Hometheater material+other | 150,000 |
| T V +tata sky currency | 120,000 |
| Electrical materials | 136,500 |
| Petals Interiors | 200,000 |
| H/W ac-carpentry materials | 40,000 |
| Dhanalaxmi safe locker | 81,000 |
| Garden account | 44550 |
| Dr Podar Vasthu | 50000 |
| Devisharma Marble-fixing | 93700 |
| Razak- Trusswork -New | 85000 |
| Mehra & sons | 53000 |
| Vineeth kitchen | 135000 |
| Glass Cladding adv | 60000 |
| Orb solar sunil | 27550 |
| Sarni hotel bill | 37000 |
| UPS Prabhakar | 50000 |
| Azger-Alluminium Fabrication | 75000 |
| Banglore expence-Glass + Payment-Omprakash | 86500 |
| Veersingh-Granite fixing | 16000 |
| Poojaroom -Anchary | 15300 |
| Glass dhanu | 33900 |
| Tiles purchased-Local | 35300 |
| Santhosh Sanitary-Banglore | 20,000 |
| AC 61200+ fitting 10000 | 71,200 |
| Other Expence(Hometheatr fixing+Plumber+Aneef gate+POP + marbl polish+mblems+kadur club)10000+10000+14280+5050+5000+5000+4500) | 53830 |
| TOTAL | 7013236 |

6. The seized digital data- Digital Data of Mac_h.b.sudarshan\Data of Mac_HBSudarshan\Data\File 1( Version 1).xls contains other excel sheets as well which provide

details of the various expenses like steel, cement, labour etc mentioned in the main sheet. This proves that detailed recording of investment in the Basavanahalli house is there in the computer of Sh.H.B.Sudarshan. The main sheet is titled as- "Conc Shade Construction Pvt. Ltd." which means the construction has been carried out by M/s Conc Shade Constructions P.Ltd only. As per the digital data- Digital Data of Mac_h.b.sudarshan\Data of Mac_HBSudarshan\present Data\Excel, several files are available having complete description of the items, the architectural specifications, photos and bills of accessories, details of items procured from abroad etc. In fact the quotations are in the name of Sh.C.T. Ravi and Sh. H.B.Sudarshan. Various details also point to purchase of materials from Dubai for the construction of the house. It is very much clear that the funds of Conc Shade Construction Pvt. Ltd. has been used for the construction of the house for the benefit of the assessee.

7. Sh. H.B. Sudarshan and Sh. C.T. Ravi both have been confronted with the evidences and have disowned the evidences which are elaborate. It is very much clear that Sh. C.T. Ravi has not disclosed the investment in his Basavanahalli house fully. The investment reflected Assessment year wise in the statement of the affairs of Sh. C.T. Ravi is as under :-

| A.Y | Value of the house (Rs.) | Amount spent During the | % of total value |
|---|---|---|---|
| 10-11 | 24,63,150 | 24,63,150 | 28 |
| 11-12 | 63,90,000 | 39,26,850 | 45 |
| 12-13 | 87,58,500 | 23,68,500 | 27 |

8. The total undisclosed investment as per the seized evidence is Rs. 3,96,18,767/-. Thus, going by the percentage of construction as per the statement of affairs of the assessee year-wise, the undisclosed investment in the Basavanahalli house amounts to-

| A.Y | UNDISCLOSED INVESTMENT (Rs.) |
|---|---|
| 10-11 | 1,10,93,254/- |
| 11-12 | 1,78,28,445/- |
| 12-13 | 1,06,97,067/- |

9. Sh. C.T. Ravi was given an opportunity to provide supporting proofs of the expenses incurred on the construction of his house in Basavanahalli which he did not avail. Thus, Rs. 1,10,93,254/- was added to the total income of Sh. C.T. Ravi for the year as his undisclosed income being in the nature of undisclosed investment. The assessee company was also confronted with the above evidence, however it chose to disown it even though the seized digital data pertaining to investment in the Basavanahalli house is clearly titled as "Concshade Constructions Private Ltd." Hence, Rs. 1,10,93,254/- is protectively added to the total income of the assessee company as the property belongs to Sh. C.T.Ravi, however the construction was done by the assessee company.

10. In response to the notice u/s. 153C of the Act the Assessee Company filed his returns & assessments duly completed thereafter with the following additions being made to the Income Returned for the impugned assessment years:

| ***Details*** | ***2010-11*** | ***2011-12*** | ***2012-13*** |
|---|---|---|---|
| *Undisclosed Investment in Residential House belonging to one C.T. Ravi* | *1,10,93,254/-* | *1,78,28,445/-* | *1,06,97,067/* |
| *Unexplained cash deposits* | *40,12,909/-* | *2,23,23,900/-* | *81,65,000/-* |
| *Undisclosed investment in construction of an office belonging to a Trust called Bharathiya Jagruthi Prathisthana* | *54,66,483/-* | *54,66,483/-* | *-* |
| *Additional profit from contract* | *9,68,072/-* | *16,54,287/-* | *12,65,930/-* |

The assessing officer made various additions in these assessment years, which are deleted by Ld. CIT(A) and also he quashed the assessments framed u/s 153C of the Act. Against this the revenue is in appeal before us.

**SATISFACTION RECORDED FOR THE IMPUGNED ASSESSMENT YEARS IS NOT IN ACCORDANCE WITH LAW AND IS NO SATISFACTION AT ALL:**

11. The ld. DR submitted that the assessment records are transferred from the AO of the searched person to the AO of the present assessee after duly recording satisfaction that there are certain undisclosed income of the present assessee and thereafter the AO of the present assessee issued notice u/s. 153C of the Act, for which the assessee duly cooperated and hence it cannot be challenged before the CIT(Appeals) and the CIT(Appeals) is not justified in holding that assuming jurisdiction u/s. 153C is bad in law. He relied on Delhi High Court judgment in the case of *CIT v. Safetag International Pvt. Ltd., 332, ITR 622 (Del)* and Apex Court

decision in the case of *Shri Vijaybhai N. Chandrani, 357 ITR 713 (SC).*

12. The ld. AR submitted that the satisfaction Recorded, if any, to initiate proceedings u/s 153C in the case of the Assessee Company, is not in conformity with the provisions of the Act and fails the test of law and hence the entire proceeding u/s 153C of the Act is void ab initio.

13. In the case of *CIT vs IBC Knowledge Park (P) Ltd 385 ITR 346*, the Jurisdictional Karnataka High Court held as under:-

> *"55. If the observations made by the Tribunal are considered in this regard, it is noted by the Tribunal that it is not necessary that satisfaction should be recorded that documents or valuable assets found in the course of search showed undisclosed income. In view of the aforesaid discussion, we do not think that such can be the correct position of law.*
>
> *56. Further, in the judgments referred to by the learned counsel for the Revenue, where incriminating material leading to undisclosed income of another assessee was detected in a search operation, in those cases, reopening of the concluded assessment have taken place. There has been no single decision cited by the learned counsel for the Revenue where the assumption of jurisdiction of the Assessing Officer is in the absence of any incriminating material or undisclosed income having been detected during the course of search leading to reopening of a concluded assessment. In the instant case, though documents belonging to the assessee were seized at the time of search operation, there was no incriminating material found leading to undisclosed income. Therefore, assessment of income of the assessee was unwarranted. Consequently, no satisfaction was recorded in the case of the assessee.*
>
> *We answer substantial question of law No.2 by holding that the Tribunal was not correct in holding that the assessment under Section 153C was valid despite there being no satisfaction*

*recorded to the effect that the documents found during the search on 17/06/2008 were incriminating in nature and prima facie represented undisclosed income."*

14. The ld. AR submitted that in view of the above binding decision of the Jurisdictional Karnataka High Court, there is no proper satisfaction and thus the entire proceedings initiated u/s 153C is void ab initio. It is clear from the above judgment that the satisfaction recorded is no satisfaction at all to initiate proceedings u/s 153C of the Act. The term 'satisfaction' clearly connotes that there must be satisfaction arrived at to the effect that "*Documents found during Search are Incriminating in Nature and Prima Facie represent Undisclosed Income*." In other words, the satisfaction Note, prepared to initiate proceedings must necessarily contain these most essential words *"Documents found during Search are Incriminating in Nature and Prima Facie represent Undisclosed Income."*

15. He submitted that in the instant case, these words are not present in the satisfaction note prepared by the AO of the person searched. Thus, in the absence of a satisfaction that documents found during search are incriminating in nature and prima facie represent Undisclosed Income, no proceeding can be initiated u/s 153C of the Act and the entire proceedings u/s 153C in the case of this assessee company is to be necessarily cancelled for want of requisite jurisdiction, in as much as the same is void ab initio.

16. He further submitted that in view of the above submissions, the CIT(A) held that if one were to go by the plain reading of words used in 153C it is necessary for Assessing officer of the person searched to come to a satisfaction that the seized material does not

belong to the person searched but belongs to another person and thereafter the assessing officer shall hand over such seized material to the assessing officer who has the jurisdiction to assess the person to whom such seized material belongs to. According to the CIT(A), the section *per se*, does not require the assessing officer of the person searched to arrive at a satisfaction that the seized material is "Incriminating in nature and represents Undisclosed income of the person to whom it belongs to and thus the Assessing officer in the case of Sri H.B. Sudarshan, the person searched cannot be faulted for material found to be belonging to the Assessee Company Conc Shade Constructions Pvt Ltd is not arriving at a satisfaction that the seized mating in Nature and represents Undisclosed Income.

17. The ld. AR submitted that in view of the fact that the Jurisdictional Karnataka High Court has decided in the case of *CIT vs IBC Knowledge Park (P) Ltd 385 ITR 346*, a decision which is relied upon by the Assessee Company and which is binding on CIT(A), that it is perforce necessary that a satisfaction to the effect that the seized material is incriminating in nature and represents undisclosed income has to be arrived at by the assessing officer of the person searched, the CIT(A) held that the Satisfaction Note arrived at in the case of the Assessee Company would have to be necessarily treated as one which is not accordance with law.

18. Further, the Hon'ble Karnataka High Court in its decision rendered in the case of IBC Knowledge Park observed that apart from concurring with various decisions of other High Courts and after considering its own decision in other cases, also relied on the circular dated 31.12.2015, No.24/2015 issued by CBDT, which

circular clearly spells out the stand of CBDT that, on the issue of satisfaction the provisions of section 158BD and section 153C being largely similar, the decision of the Hon'ble Supreme Court on the issue of Satisfaction u/s 1588D rendered in the case of *Calcutta Knitwear* case be accepted as applicable to the satisfaction u/s 153C of the Act.

19. The amended provisions of section 153C of the Income Tax Act, as stands today (effective from 14 October 2014), stipulates two satisfactions. One by the assessing officer of the person searched that the seized material does not belong to the person searched, but to another person AND a Second one by the assessing officer who has jurisdiction on the Other Person to whom the seized material belongs to, to the effect that the seize material has a bearing on the income of that other person.

20. Prior to 14th October 2014, there being a necessity to record a satisfaction only once and that being of the assessing officer who assessed the person searched, it can be safely concluded that the satisfaction should have contained two parts, the first being that "The seized material does not belong to the person searched, but to another person" and the second being that " the seize material being incriminating in Nature and represents Undisclosed Income of that other Person".

21. In the present case the second part of the satisfaction is not recorded in writing and hence in view of the binding decision of the Jurisdictional Karnataka High Court in the case of *CIT v. IBC Knowledge Park (P) Limited 385 ITR 346*, the CIT(A) held that the satisfaction as recorded by the AO is not in order and renders the

assessment proceedings Void-ab-Initio for want of necessary jurisdiction to commence proceedings u/s. 153C of the Income Tax Act and cancelled the assessment.

**THE MATERIAL BELONGING TO THE ASSESSEE COMPANY AND FOUND IN THE PREMISES OF THE PERSON SEARCHED ARE NOT INCRIMINATING IN NATURE AND DO NOT REPRESENT ANY UNDISCLOSED INCOME FOR THE IMPUGNED ASSESSMENT YEARS AND HENCE THE SATISFACTION RECORDED TO COMMENCE PROCEEDINGS IS BAD IN LAW**

22. The ld. AR submitted that the materials belonging to the Assessee Company, which were found during the course of search in the case of H.B.Sudarshan and which are relied upon by the assessing officer to commence proceedings u/s 153C are as below:-

a) *A/HBS/3.7.2012-Pages-107-121 and 133-135 15, being original bills of purchase of cement and other construction materials issued to Conc Shade Constructions (P) Ltd by one Malnad Steels and Traders;*

b) *A1/1/HBS/3.7.2012 - Page no's-17, 18, 61, 62, 96, 97, 122, 123, 124, 146, 147, 148, 149, 150, 151, 152 to 162, 182*

c) *A1/HBS/2/3.7.2012 – Pages 1 to 149*

d) *A1/HBS/3/3.7.2012 – Pages 1 to 196*

*Items listed at Sl No.2,3 & 4 are in the nature of detailed weekly expenditure, invoices.*

23. The ld. AR submitted that none of the above material relied upon by the assessing authorities to commence proceedings u/s 153C, are incriminating in nature. They do not constitute any information of incriminating nature and nor do they reveal any undisclosed income. No addition is made in the assessing the income of the Assessee Company u/s 153C based on the said seized materials. To label a seized material as 'incriminating' the

material seized must represent undisclosed income which the assessee has no intention of disclosing, which is clearly absent in the present case.

24. He submitted that the above documents relied upon to initiate proceedings u/s 153C are not incriminating in nature in the light of the judgment of the jurisdictional High Court in the case of *IBC Knowledge Park 385 ITR 346*.

25. Another objection is that addition is not based on a seized material which is relied upon to initiate proceedings u/s 153C in the case of the Assessee Company. Any addition made to income u/s 153C ought to be confined to income arising out of material seized and relied upon to initiate proceedings u/s 153C. In this case the additions are not based on the material relied upon to initiate proceedings u/s 153C and hence the additions made is bad in law and needs to be deleted. This proposition is clearly laid down by the Supreme Court in the case of *CIT Pune vs Sinhgad Technical Education Society in Civil Appeal No.11080 of 2017, arising out of SLP (C) No.2527 of 2015*. The Hon'ble Supreme Court has clearly held that an assessment u/s 153C must be made only in respect of those assessment years for which incriminating seized material is found to be recorded in the Satisfaction Note prepared to initiate proceedings u/s 153C.

26. In the present case as demonstrated earlier the material relied upon to arrive at the satisfaction to initiate proceedings u/s 153C are not subject matter of addition and the material relied upon to make additions to income are not subject matter of satisfaction.

27. In view of the above submissions the CIT(A) rightly held that that the above seized materials which are relied upon to initiate proceedings u/s. 153C of the Act in the case of the Assessee Company, have not resulted in any addition being made to the income of the Assessee Company in the assessment proceedings u/s. 153C in any of the assessment years. It is submitted that the materials cannot be termed as incriminating in nature, which is a sine qua non for making an assessment u/s. 153C as held in IBC Knowledge park case (*supra*).

28. Further on reading the decision of the Hon'ble Supreme Court in the case of *CIT Pune V Singhad Technical Education Society in civil appeal no. 11080 of 2017, arising out of SLP (C) No. 2527 of 201*, relied upon by the Assessee Company, it is clear that the Hon'ble Supreme court has also taken the same view on this issue in as much as the Hon'ble Apex Court has approved the decision of the Bombay High Court on the following two issues:

a) *No assessment can be made u/s. 153C in respect of an assessment year for which there is no incriminating document seized during the search;*

b) *The additions to be made in an assessment u/s. 153C is to be confined to incriminating seized materials only.*

29. Whereas, in the case of the Assessee company, the seized material relied upon to initiate proceedings u/s. 153C have not resulted any addition to income in any of the assessment years which have been subjected to proceedings u/s. 153C of the Act. There is no whisper of these documents in any of the assessment years. Accordingly, the CIT A cancelled the assessment on this ground too, that no incriminating material is relied upon to record

satisfaction to initiate proceedings u/s. 153C, rendering the very satisfaction to be bad in law.

30. The ld. AR relied on the decision of this Tribunal 'B' Bench in the case of ACIT Central Circle 2(3) vs Smt. Pallavi Ravi & C.T. Ravi in ITA No's 272 to 274 & 282 to 286 / Bang / 2018 by order dated 05/07/2019, wherein, following the decision of the Hon'ble Supreme Court, it was held that an assessment proceeding u/s 153C can be initiated in respect an assessment year only when there is incriminating seized material pertaining to that assessment year and when there is no addition made in the assessment order u/s 153C of the Act, that is relatable to seized material, relied upon to initiate proceedings u/s 153C of the Act, such an assessment order is bad in law & deserves to be cancelled. In the light of this decision, every addition made in the assessment proceedings for each of the assessment years that are subject matter of appeal before this ITAT, deserves to be deleted.

31. Reliance is also placed upon the decision of this Tribunal in the case of *Sri. Devaraj Urs Educational Trust vs ACIT Central Circle Bangalore in ITA NO's. 500 to 506 by order dated 16/08/2021*, wherein it is held that additions cannot be made merely based on data found at the time of search in the absence of corroborative evidence. In the case on hand there is no single evidence in support of any of the additions made in each of the assessment years.

32. We have heard both the parties and carefully perused the material on record including the various judicial decisions cited by the parties. The provisions of section 153C of the Act are as follows:-

*"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 :"*

33. The provisions of Sec.153C of the Act, were substituted by the Finance (No.2) Act, 2014 w.e.f 1.10.2014 for the following words "and that Assessing Officer shall proceed against each of 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".

34. The Assessments in the present case relate to the period prior to the amendment referred to above. The aforesaid amendment has been held to be clarificatory in nature and therefore has to be held as applicable retrospectively from the inception of Sec.153C of the Act in the statue, by the ITAT Kolkata Bench in the case of *Trishul Hi-Tech Industries Vs. DCIT IT(SS)A.Nos.84-86/Kol/2011 (AY 04-05, 05-06 & 06-07) order dated 24.9.2014*. In the aforesaid decision the

Hon'ble Kolkata Bench of ITAT, after considering the amended provisions of Sec.153C of the Act by the Finance Act, 2014, held that the provisions of Sec.153C of the Act as amended by Finance (No.2) Act, 2014 though is made applicable on and from 1.10.2014, is also relevant for earlier assessment years as it cures the infirmities of the previous legislation and also makes the provisions workable by avoiding absurd consequences. Accordingly, such provision is to be given retrospective operation and is also applicable to pending proceedings. In proceedings u/s.153C of the Act, the Assessee would not be a person who was subjected to a search u/s.132 of the Act and therefore proceedings u/s.153A of the Act could not be initiated against the Assessee. Even if no incriminating material whatsoever are found in the course of a search relating to some other person, in terms of Sec.153-C of the Act, prior to its amendment by the Finance Act, 2014 w.e.f. 1-10-2014, the AO has to proceed to issue notice u/s.153C of the Act for making an assessment of income for the periods referred to in Sec.153A of the Act. This would cause undue hardship. Take for instance in the course of search of a person a copy of sale deed of some other person is found which does not per se indicate any undisclosed income and based on which on adverse inference can be drawn, the AO, however, has to make an assessment in the case of the other person u/s.153C of the Act for the six assessment years referred to in Sec.153A of the Act, even if no incriminating material was found in the course of search. This created hardship and this was the reason why the provisions of Sec.153C of the Act were amended by the Finance Act, 2014. With the amendment by the Finance Act, 2014, the AO of the other person after receiving the material from the AO of the Searched person has to make an

Assessment based on the material so received by him which has a bearing on the determination of the total income of the other person. This is clear from the amended provisions of the law which reads thus:

> *"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 :"*

35. The Kolkatta Bench of the ITAT in the case of Trishul Hi-Tech Industries (supra) dealt with the purpose behind the aforesaid amendment and as to why it should held to be retrospective. The condition precedent for assessing or reassessing income u/s.153C is that the AO has to be satisfied that the seized material in the course of search has a bearing on determination of the total income of the other person i.e., it should be incriminating in nature.

36. We are in respectful agreement with the view expressed by the ITAT Kolkata Bench in the case of Trishul Hi-Tech (supra). We may also add that it is settled rule of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. Ordinarily the Courts are required to gather the intention of the legislature from the overt language of the provision as to whether it has been made prospective or retrospective, and if retrospective, then from which date. What happens sometimes is that the substantive provision, as originally enacted or later amended, fails to clarify the intention of

the legislature. In such a situation, if subsequently some amendment is carried out to clarify the real intent, such amendment happens to be retrospective from the date the earlier provision was made effective. Such clarificatory or explanatory amendment is declaratory. As the later amendment clarifies the real intent and declares the position as was originally intended, it takes retroactive effect from the date the original provision was made effective. Normally such clarificatory amendment is made retrospectively effective from the earlier date. It may so happen that sometimes the clarificatory or explanatory provision introduced later to depict the real intention of the legislature is not specifically made retrospective by the statute. Notwithstanding the fact that such amendment to the substantive provision has been given prospective effect, nonetheless the judicial or quasi-judicial authorities, on a challenge made to it, can justifiably hold such amendment to be retrospective. The justification behind giving retrospective effect to such amendment is to apply the real intention of the legislature from the date such provision was initially introduced. The intention of the legislature while introducing the provision is gathered, inter alia, from the Finance Bill, Memorandum Explaining the Provision of the Finance Bill. Any amendment to the substantive provision which is aimed at clarifying the existing position or removing unintended consequences to make the provision workable has to be treated as retrospective notwithstanding the fact that the amendment has been given effect prospectively. The above principles, if applied to the amendment to the provisions of Sec.153C of the Act by the Finance Act, 2014, can lead to only one conclusion that the said

amendment is clarificatory and therefore should be held to be retrospective in operation.

37. A plain reading of the amended provisions of section 153C(1) of the Act, would show that the AO is required to arrive at a satisfaction that the seized assets, books of account or documents belongs to or relates to a person other than the person was subjected to search. For arriving at such a satisfaction, it is necessary for the AO to prima facie spell out the nature of seized documents and how it belongs to or relates to the assessee. Before the Hon'ble High Court of Karnataka in the case of IBC Knowledge Park, 385 ITR 346 [Kar] the issue for consideration and adjudication was whether the Tribunal was right in holding that it was not necessary to record a satisfaction to the effect that seized material shows undisclosed income. While deciding this issue, the High Court came to the conclusion at para 50 thereof, that "the detection of seized material leading to an inference of undisclosed income is a sine qua non for invocation of section 153C of the Act". The Hon'ble Court came to the above conclusion after considering the decision of the Hon'ble Apex Court in the cases of Manish Maheshwari Vs. ACIT (289 ITR 341) and CIT Vs. Calcutta Knitwears (2014) 362 ITR 673 and other judgments of the Hon'ble Apex Court and other Hon'ble High Courts and CBDT, Circular No.24/2015 dated 31.12.2015. The Hon'ble High Court also took the view that the AO is expected to spell out as to how the documents were incriminating in nature and prima facie represent undisclosed income. In this regard, we also find that in the order of assessment, the AO has not proceeded to make any assessment on the basis of material referred to in the satisfaction note. On the other hand, he has made additions which are not based on any

seized material which pertains to assessee. Such a course is not permissible u/s. 153C of the Act as laid down by the Hon'ble High Court of Karnataka in the case of IBC Knowledge Park (supra). The decision of the Hon'ble Supreme Court in the case of *Sinhgad Technical Education Society (supra)* also supports the plea of the assessee that additions made cannot be sustained in the absence of any incriminating material.

38. In the present case, the proceedings of these assessments were not pending and did not get abated by virtue of 2nd proviso to section 153A(1) of the Act, which provides that in assessment proceedings for any of these assessment years set out in section 153A(1) of the Act, which is pending as on the date of initiation of search action u/s. 132 of the Act, such assessment proceedings would abate and AO will make assessment after considering the original return of income as well as material found in the course of search. The assessment proceedings which have been completed as on the date of search u/s. 132 however will continue to remain valid. Thus, the former proceedings are referred to as "abated assessment proceedings" and latter proceedings are referred to as "unabated assessment proceedings". Therefore the scope of making assessment on total income u/s. 153C in an unabated assessment proceedings is limited and can be only of assessing income that is not disclosed which is detected or which emanates from material found in the course of search of some other person and which relate to the assessee.

39. In the present case, the impugned addition made by AO is based on incriminating material found during the course of search. The addition can stand since there is seized material in support of

the addition made by the AO. The assessee in the return of income disclosed certain transactions as discussed in the assessment order which is reproduced in earlier part of this order and that can be the basis to make addition while framing assessment u/s. 143(3) r.w.s. 153C of the Act. There is seized material found in the course of search which forms the basis for assessing income in the hands of the assessee for these three AYs.

40. As per the provisions of section 153C of the Act, incriminating material which was seized had to pertain to the assessment year under consideration. It is an undisputed fact that documents which are seized referred to in para 4 of this order do establish co-relation with the additions made in these assessment years. The requirement u/s. 153C of the Act was satisfied which is essential under the provisions of section 153C which is a jurisdictional fact as held by the Supreme Court in Sinhgad Technical Edn. Society (supra). After taking note of the material as recorded in para 4 of this order, there was seized incriminating material so as to frame assessment for these three assessment years u/s. 153C of the Act. Since the assessment framed u/s. 153C of the Act is based on material found during the course of search which relate to or belong to the assessee and since we have held that there are seized material for addition made by the AO, we inclined to reject the arguments made by the ld. AR for the assessee that the condition precedent for initiating the proceedings u/s. 153C of the Act having not been satisfied in the present case. Accordingly, we hold that the addition made by the AO is based on seized material found in the course of search and therefore the framing of assessment u/s 153C of the Act is justified.

41. In view of the above, we are inclined to hold that framing of assessment u/s. 143(3) r.w.s. 153C of the Act is valid.

**On merits**

42. On the issue of undisclosed investment in residential house, the AO held that the Assessee Company has made an undisclosed investment in a residential house property situated at Basavanahalli and the said investment is spread over three financial years i.e. 2009-10, 2010-11 & 2011-12, in the manner as given below:-

| Sl No. | Financial Year | Assessment Year | Amount of Investment in Rupees. |
|---|---|---|---|
| 1 | 2009-10 | 2010-11 | ,1 1,10,93,254/- |
| 2 | 2010-11 | 2011-12 | 1,78,28,445/- |
| 3 | 2011-12 | 2012-13 | 1,06,97,067/- |
| | Total | | 3,96,18,768/- |

43. The ld. DR submitted that the CIT(Appeals) should not have deleted the addition made on protective basis unless substantive assessment reached finality.

44. The ld. AR submitted that It is an undisputed fact that the impugned House property is not owned by the Assessee Company but is owned by one Shri. C.T. Ravi. The AO has assessed the investment in house property in question in Shri. C.T.Ravi's hands. However, he has proceeded to assess the same protectively in the hand of the Assessee Company as well as in the hands of Sri H.B.Sudarshan, the Managing Director of the Assessee Company.

45. As far as this Assessee Company is concerned, the so called incriminating material is not found with the Assessee Company. The contents could also be some estimates prepared and need not necessarily be expenditure incurred on construction of the property. Since this Assessee Company has nothing to do with the preparation of the same, it would be wholly unjust and unfair to conclude that this Assessee Company has actually incurred this expenditure out of its own funds and add the same as undisclosed income of the Assessee Company.

46. The fact that the AO has also protectively assessed this impugned undisclosed investment also in the hands of Shri. H.B.Sudarshan, makes it is evident that the AO himself is not convinced of the fact that the impugned investment, alleged to have been made, actually represents the undisclosed Income of the Assessee Company.

47. It is of paramount importance that the assessing officer of the person searched should be satisfied that a particular material seized, during the course of search, does not belong to the person searched, but instead belongs to a person other than the person searched. If he is satisfied that the material represents the undisclosed income of that other person, he will form a satisfaction to the said effect and transfer the material to the assessing officer having jurisdiction over that other person. In other words, the satisfaction arrived at must be decisive and should not leave any doubt as to the person in whose hands the income needs to be taxed.

48. In the instant case based on very same material relied alleged to have been found during search, the very same income is assessed to tax substantively in the hands of C.T.Ravi and protectively in the hands of H.B.Sudarshan and also this Assessee Company. In such an event can it be said that the concerned AO has arrived at a proper satisfaction. The Concerned AO, in this case, is not sure as the who is the person who has actually made the alleged undisclosed investment.

49. Thus, there is no satisfaction arrived at to initiate proceedings u/s 153 C in the case of this Assessee Company, based on this impugned seized material, in as much as the addition made is protective in nature.

50. It is the stand of this Assessee Company that NO PROTECTIVE ADDITION CAN BE MADE U/S 153 C in as much as the same violates the concept of arriving at a satisfaction that the undisclosed income belongs to the person who is protectively assessed for the same. A Protective addition only means that there is no satisfaction that the income belongs to the person who is assessed protectively in respect of the same. Further it is not the case of the AO that the impugned expenditure incurred in relation to the Basavanahalli House, have gone from out of the funds belonging to the Assessee Company. Therefore, it is apparent from the above that the AO has no basis for the impugned additions made in respect of Basavanahalli House allegedly invested by the Assessee Company. The AO has passed his impugned order merely on the basis of hypothesis, surmise and conjecture.

51. One another important objection is that the Addition is not based on a seized material which is relied upon to initiate proceedings u/s 153C in the case of the Assessee Company. Any addition made to income u/s 153C ought to be confined to income arising out of material seized and relied upon to initiate proceedings u/s 153 C. In this case the material relied upon to initiate proceedings u/s 153 C is not incriminating in nature in as much as no addition is made based on the same and hence the addition made on this count is bad in law and needs to be deleted. This proposition is clearly laid down by the Supreme Court in the case of CIT Pune vs Sinhgad Technical Education Society in Civil Appeal No.11080 of 2017, arising out of SLP (C) No.2527 of 2015. The Hon'ble Supreme Court has clearly held that an assessment u/s 153 C must be made only in respect of those assessment years for which incriminating seized material is found to be recorded in the Satisfaction Note prepared to initiate proceedings u/s 153 C.

52. In the present case as demonstrated earlier the material relied upon to arrive at the satisfaction to initiate proceedings u/s 153 C are not subject matter of addition and the material relied upon to make additions to income are not subject matter of satisfaction.

53. In view of the above submissions every addition made in an assessment u/s 153C must be necessarily based on incriminating seized material pertaining to that assessment year as held the Hon'ble Supreme Court in the case of *CIT Pune vs Sinhgad Technical Education Society (supra).* In the present case, the addition made is not based on any incriminating seized material relied upon to initiate proceeding u/s 153C and, the seized material

relied upon to arrive at a satisfaction to commence proceedings u/s 153C do not pertain to the assessment year on hand and accordingly the order of the CIT(A) is to be upheld. Further the AO has made a protective addition, which itself demonstrates that there is no satisfaction that the income belongs to the other person, who is to be assessed u/s. 153C. In the absence of this mandatory satisfaction no addition can be made in the assessment u/s. 153C.

54. We have heard both the parties and perused the material on record. Since the issue relating to this addition was remitted in the case of H B Sudarshan in ITA No. 309 to313 & 1494 to1497Bang/18 vide order dated 20.4.2022, where the addition is made substantively, accordingly this issue is also remitted to the Assessing Officer to examine the issue afresh in the light of incriminating material found during the course of search including the CD retrieved from the computer of the searched person. Ordered accordingly.

**Unexplained cash deposits**

55. The AO brought to tax the alleged unexplained Cash deposits mentioned below u/s. 68 of the Act:-

| FY | AY | Cash Deposits |
|---|---|---|
| 2009-10 | 2010-11 | 40,12,909 |
| 2010-11 | 2011-12 | 2,23,23,900 |
| 2011-12 | 2012-13 | 81,65,000 |
| **Total** | | **3,45,01,809** |

56. During the above mentioned financial years the assessee maintained the books of account as are statutorily mandatory and got them duly audited as per the requirement of the Companies Act 1956 and a separate tax audit under the provisions of Income tax Act, 1961. During the Assessment proceedings consequent to the notice u/s. 153C, the Assessee Company furnished the audited cash book and bank book along with the bank statement concerned and also submitted that the impugned cash deposits as stated above, made in the bank was made out of the cash received on account of contract works carried by the Assessee Company and the cash withdrawals made from the bank during impugned financial years. However, according to the assessee, the AO ignored the evidence produced in the form of audited cash book, Bank book etc., and proceeded to tax the impugned cash deposits by way of unexplained credits.

57. The ld. DR submitted that the CIT(Appeals) was not justified in deleting the addition holding that there is no seized material cash deposits remain unsubstantiated without satisfactory explanation of the assessee and without examining the cash flow/fund flow statement. He submitted that the case law relied on by the assessee in the case of *Sinhgad Technical Education (supra)* is distinguishable.

58. The ld. AR submitted that no addition can be made on this count by the AO in as much as the deposits of cash into bank account of the Assessee Company is accounted for and recorded in the books of Assessee Company. By no stretch of imagination it can be termed as unexplained cash deposits. Only such of those

deposits which are not recorded in the books and which need an explanation can be called as unexplained deposits. Further it is not the case of the AO that the Assessee Company did not have enough cash balance in its books to explain the deposit and if the same were to be accounted, it would result in a negative cash balance. Nor, is it the case of the AO that he disbelieves the sources for the cash balance as per books and has held that the cash is from unexplained sources. Hence in the absence of any such finding the addition made on this count ought to be deleted. The AO has simply made the addition purely based on suspicion and surmise and the addition made is baseless, to say the least.

59. One another important objection is that the Addition is not based on a seized material which is relied upon to initiate proceedings u/s 153C in the case of the Assessee Company. Any addition made to income u/s 153C ought to be confined to income arising out of material seized and relied upon to initiate proceedings u/s 153 C. In this case the material relied upon to make the addition is not part of the Satisfaction Note prepared to initiate proceedings u/s 153C and hence the addition made on this count is bad in law and needs to be deleted. This proposition is clearly laid down by the Supreme Court in the case of *CIT Pune vs Sinhgad Technical Education Society in Civil Appeal No.11080 of 2017, arising out of SLP (C) No.2527 of 2015*. The Hon'ble Supreme Court has clearly held that an assessment u/s 153C must be made only in respect of those assessment years for which incriminating seized material is found to be recorded in the Satisfaction Note prepared to initiate proceedings u/s 153C.

60. In the present case as demonstrated earlier the material relied upon to arrive at the satisfaction to initiate proceedings u/s 153 C are not subject matter of addition and the material relied upon to make additions to income are not subject matter of satisfaction.

61. We have heard both the parties and perused the material on record. As discussed by this Tribunal in the case of *H B Sudarshan in ITA No. 309 to313 & 1494 to1497Bang/18 vide order dated 20.4.2022*, the issue is remitted to the file of AO to consider the cash flow/fund flow statement for the relevant assessment year and decided the issue afresh.

**Undisclosed investment in construction of an office premises belonging to a Trust called Bharathiya Jagruthi Prathisthana Trust of Rs. 54,66,483/- for AY 2010-11 & Rs. 54,66,483/- for AY 2011-12.**

62. The AO held that the Assessee Company has invested a sum of Rs. 54,66,483/- for AY 2010-11 & Rs. 54,66,483/- for AY 2011-12 in order to build the Trust/BJP office and brought the same to tax. The CIT(Appeals) deleted the additions.

63. The ld. DR submitted that this addition made on protective assessment should not have been deleted by the CIT(A) unless the conclusion of the substantive assessment in the case of H B Sudarshan.

64. The ld. AR submitted that the Assessee Company in no way is connected with the affairs of either Bharathiya Jagruthi Prathisthana Trust as made out by the AO. Moreover Shri. H.B. Sudarshan, one of the Directors of the Assessee Company has clearly stated before the Income Tax authorities during the course

of search, in his own case, that the funds in respect of impugned trust/BJP office was not spent from out of the Assessee Company.

65. It is submitted that the AO has clearly stated in page 7 of the assessment order that Bharathi Jagruthi Pratishtan is a Trust formed on 25th October 2006 and that the Trust Deed is available from the records seized from the office premises of Bhargava Associates. In this background, it is clear that it was the Bharathi Jagruthi Pratishtan which had to give details of how much it has spent on constructing its office building and also explain the sources of funds to meet the same.

66. It is further submitted that the satisfaction to initiate proceedings u/s 153C on this issue ought to have been on Bharathi Jagruthi Pratishtan, in as much as, incriminating material, if any, would only belong or pertain to it. Despite the fact Sri.Sudarshan, the Director of this Assessee Company stating that it was the Trust which spent monies on the construction of its office, the AO has chosen to add the same in the hands of this Assessee Company, which is a mere contractor. Further the seized material relied upon by the AO and brought out as part of the assessment order clearly proves that it a weekly bill raised by the Assessee Company on the Trust for the work carried out from 27/08/2009 to 01/09/2009, which amounts to Rs.83,546/-. Therefore, it is apparent that the AO is not justified in holding that the Assessee Company has invested a sum of Rs. 54,66,483/- towards the Trust/BJP office building. The impugned addition is based on surmise conjecture and hypothesis which is against the principles of natural justice, equity, good conscience and fair play of law.

67. One another important objection is that the Addition is not based on a seized material which is relied upon to initiate proceedings u/s 153C in the case of the Assessee Company. Any addition made to income u/s 153C ought to be confined to income arising out of material seized and relied upon to initiate proceedings u/s 153 C. In this case the material relied upon to make the addition does not form part of the satisfaction note prepared to initiate proceedings u/s 153 C and hence the addition made on this count is bad in law and needs to be deleted. This proposition is clearly laid down by the Supreme Court in the case of *CIT Pune vs Sinhgad Technical Education Society in Civil Appeal No.11080 of 2017, arising out of SLP (C) No.2527 of 2015*. The Hon'ble Supreme Court has clearly held that an assessment u/s 153 C must be made only in respect of those assessment years for which incriminating seized material is found to be recorded in the Satisfaction Note prepared to initiate proceedings u/s 153C.

68. In the present case as demonstrated earlier the material relied upon to arrive at the satisfaction to initiate proceedings u/s 153 C are not subject matter of addition and the material relied upon to make additions to income are not subject matter of satisfaction. According to the AO, Bharati Jagruthi Pratishtan is a Registered Body, but there are no proceedings initiated against it. The CIT(A) has given a finding that the assessing officer has not brought any concrete/substantial evidence on record to conclude a conclusion that the Assessee Company has spent its money to put up the Construction free of cost, to justify the addition in the hands of the Assessee Company. He, therefore, rightly deleted this addition for want of proper evidence.

69. We have heard both the parties and perused the material on record. Since we have remitted the issue in the substantive assessment in the case of H B Sudarshan cited (supra) to the file of AO for fresh consideration to compute income as per the incriminating material found during the course of search, this issue is also remitted to the AO with similar directions.

**ADDITIONAL PROFIT FROM CONTRACT**

70. The AO brought to tax the alleged additional profit from contract for the below mentioned impugned assessment years:-

| AY | Profit(Rs.) |
|---|---|
| 2010-11 | 9,68,072 |
| 2011-12 | 16,54,287 |
| 2012-13 | 12,65,930 |
| **Total** | **38,88,289** |

71. The ld. DR submitted that the CIT(Appeals) is not justified in deleting the addition without appreciating the fact that the books of account are not produced by the assessee.

72. The ld. AR submitted that The Assessee Company has maintained the books of account and other documents as mandated by the provisions of the Income Tax Act & the Companies Act during above mentioned Assessment Years. Further these books of accounts are duly audited by the statutory auditor appointed by the Assessee Company and the tax audit under the Act has also been carried out, further these Audit Reports have not been rejected by the Income Tax Department.

73. It is submitted the that the Assessee Company was never required by the AO to produce its Books of Accounts before him, yet he says erroneously in his impugned order that the Assessee Company did not provide the books of Account maintained. However, the facts borne on the records of the Income Tax Department prove that the Assessee Company has voluntarily produced the audited cash book, bank book, bank statement etc., during the impugned assessment proceedings.

74. In view of the above therefore it is submitted that the AO is not justified in ignoring the taxable income offered to tax of Rs. 5,04,958/- and instead to estimate the income of the Assessee Company from the contract receipts of Rs. 1,84,96,700/- at 8% thereof u/s. 44AD despite the presence of duly audited books of account.

75. It is trite law that no estimation of income can be made without rejection of books u/s 145 (3) of the Act. Further the reasons for rejection of books must be cogent and clear and must be of a nature that necessitates rejection of books u/s 145(3). The AO has not rejected the books u/s 145(3) of the Act. The ld. AR relied upon the decision of the Jurisdictional Karnataka High Court in the case of *Karnataka State Forest Corporation Ltd vs CIT 201 ITR 694* in support of its contention that since there is no rejection of books u/s 145(3) the AO is not justified in estimating the income of the Assessee Company.

76. One another important objection is that the Addition is not based on a seized material which is relied upon to initiate proceedings u/s 153C in the case of the Assessee Company. Any

addition made to income u/s 153 C ought to be confined to income arising out of material seized and relied upon to initiate proceedings u/s 153C. In this case the material does not does not form part of the satisfaction note prepared to initiate proceedings u/s 153C and hence the addition made on this count is bad in law and needs to be deleted. This proposition is clearly laid down by the Supreme Court in the case of *CIT Pune vs Sinhgad Technical Education Society in Civil Appeal No.11080 of 2017, arising out of SLP (C) No.2527 of 2015*. The Hon'ble Supreme Court has clearly held that an assessment u/s 153 C must be made only in respect of those assessment years for which incriminating seized material is found to be recorded in the Satisfaction Note prepared to initiate proceedings u/s 153C.

77. In the present case as demonstrated earlier the material relied upon to arrive at the satisfaction to initiate proceedings u/s 153C are not subject matter of addition and the material relied upon to make additions to income are not subject matter of satisfaction.

78. In view of the above, it was submitted that the CIT(A) upheld the submissions of the Assessee company that the AO is not correct in estimating the income without proper rejection of books u/s. 145(3) of the Act, which clearly falls out of the Judgement of the jurisdictional High Court in the case of *Karnataka State Forest Corporation Limited v. CIT 201 ITR 694* relied upon by the Assessee Company and accordingly, he deleted the addition on this count.

79. After hearing both the parties, we are of the opinion that the issue is to be considered by the AO afresh. We direct the assessee

to produce the books of account before the AO and the AO is directed to verify the same along with the incriminating material seized during course of search and decide the issue afresh in accordance with law.

**NO ADDITION CAN BE MADE BASED ON DIGITAL DATA BELONGING TO THE PERSON SEARCHED IN THE ABSENCE OF COROBORATIVE EVIDENCE**

80. The AO vide questionnaire No.4 asked the assessee to explain the cash deposits to the tune of Rs.3,56,959 and why the same should not be treated as undisclosed income for AYs 2009-10 to 2012-13. The assessee in reply stated that it had received cash advances from customers and some deposits were on account of withdrawals. In the absence of confirmations for cash advances received from customers and details of withdrawals for the cash deposits, the AO treated it as unexplained in the hands of the assessee and made addition. The CIT(A) placing reliance on the judgment of Supreme Court in the case of V.C. Shukla and other cases relied upon by the assessee deleted the addition. Against this, the revenue is in appeal before us.

81. The ld. DR submitted that the Ld. CIT(A) was not justified in accepting the ground of validity of digital evidence based on VC Shukla case rendered in 1998, which has been overridden by provisions of Information Technology Act 2000 and Section 2(22AA) of the I.T. Act and Section 292C of the IT Act.

82. On the other hand, the ld. AR submitted that the Digital Data allegedly found in the residence of the person searched cannot be relied upon solely to make an addition to the income of the Assessee Company and that it is absolutely necessary to have

corroborative evidence in order to make an addition. He relied on the the Landmark Decision of Supreme Court on admissibility of evidence in the case of CBI vs V.C.Shukla (1998) 3 SCC wherein it was observed as under:-

> *"According to Section 34 of the Indian Evidence Act, 1872, entries in books of account regularly kept in the course of business, are relevant whenever they refer to a matter into which the court has to enquire but such statements shall not alone be sufficient evidence to charge any person with liability.*
>
> *From a plain reading of Section 34 it is manifest that to make an enquiry relevant thereunder it must be shown:*
>
> *That it has been made in a book;*
>
> *That book is a book of account;*
>
> *And*
>
> *That book of account has been regularly kept in the course of business.*
>
> *From this it is also understood that even if the requirements are fulfilled and the entry becomes admissible as a relevant evidence still the statement made therein alone shall not be sufficient evidence to charge any person with liability. From the above it is seen that the first part of the Section speaks of relevancy of evidence and the second part speaks in a negative way of its evidentiary value for charging a person with liability. (C.B.I. v. V.C. Shukla (1998) 3 scc 410 at 425).*
>
> *It cannot be gainsaid that words "account", "books of account", "business", "regularly kept" appearing in Section 34 are of general import. Necessarily, therefore, such words must receive a general construction unless there is something in the Act itself such as the subject matter with which the Act is dealing or the context in which the words are used and to show the intention of the legislature that they must be given a restrictive meaning. (C.B.I. v. V.C. Shukla (1998) 3 SCC 410 at 425).*
>
> *"Book" ordinarily means a collection of sheets of paper or other material, blank, written, or printed, fastened or bound together so as to form a material whole. Loose sheets or scraps of paper cannot be termed as book for they can be easily detached and replaced. Thus,*

*spiral notebooks and spiral pads can be regarded as "books" within the meaning of Section 34 of the Indian Evidence Act, but not the loose sheets of paper contained in the files. Further to ascertain that the books of account has been regularly kept, the nature of occupation is an eminent factor to be considered. In order to charge any person with liability it is not enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is also necessary for the person relying upon those entries to prove that they were in accordance with facts. In other words, even correct and authentic entries in books of account cannot without independent evidence of their trustworthiness fix a liability upon a person. (C.B.I. v. V.C. Shukla 1998 3 Scc 410 at 425).*

*Entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another.*

*The Supreme court laid down the following principles.*

*(i) Entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act. It is only where the entries are in the books of account regularly kept, depending on the nature of occupation, that those are admissible;*

*(ii) As to the value of entries in the books of account, such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. Even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability;*

*(iii) The meaning of account book would be spiral note book/pad but not loose sheets;*

*(iv) Entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another;*

*(v) Even if books of account are regularly kept in the ordinary course of business, the entries therein shall not alone be sufficient evidence to charge any person with liability. It is not enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts;*

*(vi) The Court has to be on guard while ordering investigation against any important Constitutional functionary, officers or any person in the absence of some cogent legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence it is not admissible in evidence.*

83. The ld. AR submitted that from the above decision of the Supreme Court in the V.C. Shukla case it is clear that in the case of the Assessee Company that the allegedly retrieved data from a CD allegedly found in the residence of the person searched, during the course of search, does not constitute books of accounts regularly maintained by the person searched, let alone the Assessee Company. Further, more importantly, in the absence of any corroborative evidence, which is essential, the same cannot be said to represent the transactions pertaining to the Assessee Company much less undisclosed income of the Assessee Company and no addition can be made based on the same.

84. He submitted that the Assessee Company has been maintaining regular books of accounts and all transactions have been duly incorporated therein. How entries in a CD which do not relate to its transactions at all can be the basis for making an addition to the income of the Assessee Company. It is for the reason that when there is no corroborative evidence to substantiate the authenticity of the data which is contained in the CD, that the same cannot be accepted as incriminating in nature, representing undisclosed income.

85. In view of the above, he submitted that the CIT(A) has deleted the additions, which are made in absence of independent corroborative evidence.

86. We have heard both the parties and perused the material on record. With regard to the evidentiary value of date recovered from computer in the form of digital data and other documents listed in earlier part of this order is concerned, section 132(4) of the Income-tax Act, permits the authorised officer to seize books of accounts and other documents. The judgement relied upon by learned Counsel for petitioner in the case of V.C. Shukla case (supra), and others reported in 1998 (3) SCC 410, has no bearing for the case on hand, as that case was dealing with a criminal proceeding involving criminal conspiracy under section 120-B of IPC and further, it was dealing with "books of accounts". Whereas, in the case on hand, it is an income tax proceeding before a quasi judicial authority. A Division Bench of the Madras High Court, in the case of Rangroopchand Chardia (241Taxman 221) and in the case of M.Vivek Vs. DCIT (121 Taxmann.com 366), relied upon by the ld. DR, while dealing with section 132 of the Income-tax of the Income-tax, similar to the case on hand, has held that loose sheets picked up during search under section 132 of the Income-tax Act, falls within the definition of "document", mentioned in section 132(4) of the Income Tax and therefore, it had got evidentiary value. Therefore, the contention raised by the learned Counsel for the assessee that digital evidence seized during the search under section 132 of the Income-tax Act does not have any evidentiary value, is rejected. This issue is remitted to the AO in all assessment years for consideration along with the incriminating material found during the course of search and for fresh decision.

87. In the result, all the appeals by the assessee are partly allowed for statistical purposes.

Pronounced in the open court on this 20th day of April, 2022.

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|---|---|
| Sd/- | Sd/- |
| ( BEENA PILLAI ) | ( CHANDRA POOJARI ) |
| JUDICIAL MEMBER | ACCOUNTANT MEMBER |

Bangalore,
Dated, the 20th April, 2022.

/*Desai S Murthy /VG*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.