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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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+ **ITA No. 566/2017**

PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL)-2

..... Appellant

Through: Mr. Ashok K. Manchanda, Senior
Standing counsel with Mr. Anand Chaudhuri,
Advocate.

versus

INDEX SECURITIES PRIVATE LIMITED

..... Respondent

Through: Mr. Salil Agarwal with Mr. Ravi Pratap,
Advocates.

With

+ **ITA No. 567/2017**

PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL)-2

..... Appellant

Through: Mr. Ashok K. Manchanda, Senior
Standing counsel with Mr. Anand Chaudhuri,
Advocate.

versus

VIDYA SHANKAR INVESTMENT PRIVATE
LIMITED

..... Respondent

Through: Mr. Salil Agarwal with Mr. Ravi Pratap,
Advocates.

With

+ **ITA No. 568/2017**

PRINCIPAL COMMISSIONER OF INCOME TAX

(CENTRAL)-2

..... Appellant

Through: Mr. Ashok K. Manchanda, Senior
Standing counsel with Mr. Anand Chaudhuri,
Advocate.

versus

VIDYA SHANKAR INVESTMENT PRIVATE
LIMITED

..... Respondent

Through: Mr. Salil Agarwal with Mr. Ravi Pratap,
Advocates.

With

+

ITA No. 569/2017

PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL)-2

..... Appellant

Through: Mr. Ashok K. Manchanda, Senior
Standing counsel with Mr. Anand Chaudhuri,
Advocate.

versus

VIDYA SHANKAR INVESTMENT PRIVATE
LIMITED

..... Respondent

Through: Mr. Salil Agarwal with Mr. Ravi Pratap,
Advocates.

With

+

ITA No. 570/2017

PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL)-2

..... Appellant

Through: Mr. Ashok K. Manchanda, Senior
Standing counsel with Mr. Anand Chaudhuri,
Advocate.

versus

INDEX SECURITIES PRIVATE LIMITED Respondent
Through: Mr. Salil Agarwal with Mr. Ravi Pratap,
Advocates.

And

+ **ITA No. 571/2017**

PRINCIPAL COMMISSIONER OF INCOME TAX
(CENTRAL)-2 Appellant
Through: Mr. Ashok K. Manchanda, Senior
Standing counsel with Mr. Anand Chaudhuri,
Advocate.

versus

INDEX SECURITIES PRIVATE LIMITED Respondent
Through: Mr. Salil Agarwal with Mr. Ravi Pratap,
Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

ORDER
04.09.2017

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Dr. S. Muralidhar, J.:

1. Notice. Mr. Salil Agarwal, learned counsel accepts notice on behalf of the Respondent. With the consent of learned counsels for the parties, these appeals are disposed of finally.

2. These appeals by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') are directed against the impugned orders passed by the Income Tax Appellate Tribunal ('ITAT') in two set of appeals involving two

different Assessee but arising out of more or less the same set of facts and involving identical questions of law. Consequently, these appeals are being disposed of by this common order.

3. ITA Nos. 566/2017, 570/2017 and 571/2017, in which the Respondent Assessee is Index Securities Private Limited ('ISRPL'), are directed against the order dated 26th August 2016 passed by the ITAT in ITA Nos. 430 to 432/Del/2014 for the Assessment Years ('AY') 2007-08, 2008-09 and 2010-11.

4. ITA Nos. 567/2017, 568/2017 and 569/2017, in which the Respondent Assessee is Vidhya Shankar Investment Private Limited ('VSIPL'), are directed against the common order dated 28th September 2016 passed by the ITAT in ITA Nos. 6569 to 6571/Del/2013 for the AYs 2007-08, 2008-09 and 2009-10 respectively.

5. In both these sets of appeals, the common question of law sought to be urged by the Revenue is whether the ITAT erred in confirming the order of the Commissioner of Income Tax (Appeals) ['CIT (A)'] which held that no proceeding under Section 153C could have been initiated against the Assessee for the AYs in question since no incriminating documents belonging to the Assessee and relating to the AYs in question were found during search.

Cases relating to ISRPL

6. As far as the Assessee, ISRPL, is concerned, the background facts are that on 14th September 2010 a search and seizure operation was conducted by the

Investigation Wing of the Income Tax Department on the Jagat Group and its Directors, other individuals and connected associates at their business and residential premises. During the search a number of documents were seized.

7. As far as ISRPL is concerned, its Trial Balance and Balance Sheet for the period 1st April 2010 to 13th September 2010 were recovered from the searched person (and not the Assessee ISRPL). These were at Pages 97 and 98 of Annexure A-17. The Assessing Officer ('AO') of ISRPL prepared the following satisfaction note on 12th February 2013:

“During the course of the assessment proceedings in the case of M/s. Jagat Agro Commodities (P) Limited, it was noticed that during the search and seizure operation under Section 132 undertaken on 14th September 2010 in the case of M/s. Jagat Agro Commodities (P) Limited at 802, Ambadeep Building, K.G. Marg, New Delhi, a number of documents were found and seized from the above premises. Page No. 97 and 98 of Annexure A-17 were seized by party J-5. The seized documents contain trial balance and balance sheet of M/s. Index Securities & Research Pvt. Ltd. for the period 1st April 2010 to 13th September 2010.

2. The case of M/s. Index Securities & Research Pvt Ltd. has been centralized to this Circle vide letter F.No. CIT(C)-III/127/CC/2011-11/2553 dated 5th February 2013.

I am satisfied that the documents referred to above belong to M/s. Index Securities & Research Pvt. Ltd. warranting action under Section 153C in this case.”

8. On 13th February 2013, notice under Section 153C was issued to ISRPL seeking to reopen the assessment for the AYs 2005-06 to 2010-11.

9. The objection by ISRPL to the reopening of the assessments for the

aforementioned AYs was rejected by the AO and an assessment order dated 28th March 2013 under Section 143 (3) read with Section 153C of the Act was passed separately for each of the AYs. As far as AY 2007-08 was concerned, the AO made an addition of Rs. 48,51,87,000 representing the share application money received from 16 investors. As far as AY 2008-09 was concerned, the AO made an addition of Rs. 55 crores representing share application money received from two investors and Rs. 3,24,95,000 representing unsecured loan received from one lender. As far as AY 2010-11 was concerned, the AO made an addition of Rs. 50 crores representing share application money received from one investor.

Contentions of ISRPL before the CIT (A)

10. The Assessee then went in appeal before the CIT (A). By an order dated 28th October 2013 the CIT (A), by separate orders, allowed the appeals in respect of each of the AYs. One of the grounds urged before the CIT (A) was that there was no valid assumption of jurisdiction under Section 153C of the Act since the Revenue had failed to establish that the documents seized belonged to the Assessee. Further, since the assessment for the relevant AY already stood completed before the search took place, it was urged that the AO had erred in invoking jurisdiction under Section 153C without there being any incriminating document relevant to each of the AYs the assessments for which were sought to be reopened. Even otherwise, the documents seized, i.e. the trial balance and balance sheet, could not be termed as incriminating documents and these were already duly disclosed and accepted by the AO in the subsequent assessment years.

11. On merits, it was pointed out that the Assessee had, for each of the AYs in question, submitted the following documents to the AO:

- (i) copy of confirmation ;
- (ii) copy of balance sheet in respect of each of the investors/lenders;
- (iii) copy of the bank statement;
- (iv) copy of the ITR for the AYs in question;
- (v) copy of the annual report of the entity for each of the relevant AYs;
- (vi) copy of the reply filed in response to summons issued under Section 131 of the Act.

Order of the CIT (A) in the appeals by ISRPL

12. The CIT (A) came to the following conclusions:

(a) Annexure A-17 containing page nos. 97 and 98 were found and seized from the searched i.e. from the premises of Jagat Agro Commodities Pvt. Ltd. Therefore, they did not 'belong' to the Assessee. The AO did not undertake any initiative to prove that the documents 'belonged' to the Assessee. Therefore, the said documents could not form the basis of the satisfaction of the AO to initiate proceedings under Section 153C of the Act.

(b) The original assessment for the AY 2007-08 was completed on 29th December 2009 and for the AY 2008-09 on 4th May 2010 whereas the raid was conducted thereafter on 14th September 2010. For the said two AYs the trail balance and balance sheet were already perused by the AO when he framed the assessment for the said AYs under Section 143 (3) of the Act.

(c) As far as AY 2010-11 was concerned, the return had been processed under Section 143 (1) of the Act. In any event, the said documents which pertained to the Assessee but did not belong to it were not relevant for AY 2010-11 but to AY 2011-12. The documents “not at all incriminating documents” and further, “these loose pages did not indicate any undisclosed or concealment of income which called for addition”.

(d) Even for AY 2011-12, the AO, in the assessment order dated 28th March 2013, made no addition to the returned income. Therefore, even for the AY 2011-12 the said documents were not found to be incriminating.

(f) On merits, the CIT (A) observed that the AO in his remand report did not make any comments on the documents submitted by the Assessee. The AO did not bring on record any adverse material to disprove the documents submitted by the Assessee. Further, the CIT (A) observed that “it is also surprising to find that, the Assessing Officer did not mention a word about the enquiry that has been conducted by him by issuing summons u/s 131 to the two share holders in his assessment order dated 28.03.2013. Without bringing any material on record in support of his observation or enquiry, the Assessing Officer made an addition of the entire share capital and share premium received by the Appellant company during the year under consideration.”

(g) The CIT (A) held that the existence and identity of the shareholders cannot be doubted and stood explained on the basis of documents submitted by the Assessee.

(h) As regards the sixteen shareholders, the CIT (A) held that the Assessee had discharged its burden regarding identity, creditworthiness and genuineness of the investments made and had provided all the evidence. This was not refuted by the AO. The CIT (A) observed that the AO “failed to unearth any wrong or illegal dealings by the appellant and therefore, it would be miscarriage of justice if he harboured any suspicion to treat the subscribed share capital and share premium as undisclosed income of the appellant company.”

(i) A reference was made to the materials (Annexures A-19 to A-24) seized from the residential premises of Surender Kumar Jain and Virender Kumar Jain purportedly representing date wise cash books containing narration regarding cash receipts by Surender Kumar Jain on behalf of the Assessee from Rajesh Aggarwal. These were found to be transactions regarding Jagat Projects Limited. The CIT (A) held that drawing an inference from the said documents by the AO was irrelevant as transactions so brought on record were between Surender Kumar Jain and Rajesh Aggarwal. The AO did not bring any material or evidence on record to prove that the transaction so referred in a tabular form specifically belonged or pertained to the Assessee. These transactions pertained to AY 2010-11 but the AO did not mention

even a word about them in the assessment order for AY 2010-11 which he would have if he found them relevant.

(j) The CIT (A) further held that the AO simply reproduced the contents of paras 6 to 10 from the appraisal report without co-relating the specific seized material pertaining to the Assessee. The AO did not bring any evidence on record to show that the share capital received by the Assessee during the year was bogus and that the share holders are paper companies which were created for providing accommodation entries. Accordingly it was held that Section 68 could not be applied in the present case.

Order of the ITAT in the appeals concerning ISRPL

13. In the Revenue's appeals before it, the ITAT first took up for consideration the question relating to the validity of assumption of jurisdiction by the AO under Section 153C of the Act. The ITAT relied upon the decision of this Court in ***Commissioner of Income Tax-7 v. RRJ Securities Limited [2016] 380 ITR 612 (Del)*** and held that the CIT (A) was justified in holding that the proceedings initiated under Section 153C of the Act were not valid.

14. The ITAT found that, in the first place, the documents at Pages 97 and 98 of Annexure A-17 which were seized from the premises of the searched person did not 'belong' to the Assessee. Further, the said documents did not relate to the AYs in question i.e. AYs 2007-08, 2008-09 and 2010-11. Also, the said documents viz., the trial balance and balance sheet for the period 1st

April to 13th September 2010, did not constitute incriminating material. They were relevant for AY 2011-12 and in fact on that basis no addition was made even for that AY by the AO. No addition could have been made on the basis of the said documents for AY 2007-08, 2008-09 or 2010-11. In fact, for AY 2010-11, on the basis of the said documents, no addition was made. Although the CIT (A) also decided the case on merits, in view of the fact that the ITAT agreed with the CIT (A) that the assumption of jurisdiction under Section 153 C of the Act was erroneous, the ITAT did not examine the other grounds raised by the Revenue.

Cases relating to Vidhya Shankar Investment Pvt. Ltd.

15. In the case of VSIPL, the satisfaction note drawn up by its AO reads thus:

“During the course of assessment proceedings in the case of M/s. Jagat Agro Commodities Pvt. Ltd. it was noticed that during the search and seizure operation under Section 132 undertaken on 14th September 2010 in the case of M/s. Jagat Agro Commodities Pvt. Ltd. at 802, Amba Deep Building, K.G. Marg, New Delhi a number of documents were found and seized from the above premises. Page No. 94 and 95 of Annexure A-17 were seized by Party J-5. The seized documents contain balance sheet and trial balance of M/s. Vidhya Shankar Investments Pvt. Ltd for the period 1st April 2010 to 4th September 2010.

2. The case of M/s. Vidhya Shankar Investments Pvt. Ltd has been centralized to this Circle vide Letter F.No. CIT (C)-III/127/CC-19/2010-11/2553 dated 5th February 2013.

I am satisfied that the documents referred to above belong to M/s. Vidhya Shankar Investments Pvt. Ltd., warranting action under Section 153C in this case.”

16. Here again, it is seen that two seized documents, which were at Pages 94 and 95 of Annexure A-17 were the trial balance and balance sheet of VSIPL for the period 1st April 2010 to 4th September 2010. On the basis of the satisfaction notices dated 13th February 2013 were issued to VSIPL under Section 153 C of the Act seeking to reopen the assessments for AYs 2007-08, 2008-09 and 2009-10.

17. In this case as well, after rejecting the objections of the Assessee to the reopening of the assessment, the AO framed the assessment for AYs 2007-08, 2008-09 and 2009-10 by separate orders, all dated 28th March 2013. For AY 2007-08, the AO made an addition of Rs. 4,78,39,800/- representing share application money received from 32 investors; for AY 2008-09, the AO made an addition of Rs. 7,75,50,000/- representing share application money received from 29 investors and for AY 2009-10, the AO made an addition of Rs. 9,73,37,500/- representing share application money received from 26 investors.

18. Against the above assessment orders, the Assessee VSIPL filed appeals before the CIT (A). By separate orders, all dated 30th September 2013, the CIT (A) came to the conclusion that the assumption of jurisdiction by the AO was bad in law since the AO had failed to prove that the documents seized belonged to the Assessee or that they constituted incriminating documents *qua* each of the AYs in question. Here again, it was found that no addition was, in fact, made by the AO on the basis of the seized documents for the AY to which they related i.e. AY 2011-12.

19. It must be noted that the original assessments in all the three AYs concerning VSIPL were under Section 143 (3) of the Act. All the three assessments were completed even before the date of the search.

20. The CIT (A) held that the documents seized did not constitute incriminating material for each of the AYs in question. On merits, it was found that there was no basis for making any of the additions as the Assessee had furnished information regarding for each of the investors/groups viz., copies of confirmation letters, bank statements, income tax returns, annual reports and the replies in response to the notice under Section 131 of the Act. The CIT (A) held that the AO failed to bring on record any material to disprove the documents produced by the Assessee. On the other hand, the Assessee had been able to prove the identity, creditworthiness and genuineness of the investors.

21. In the further appeal by the Revenue against the order of the CIT (A), the ITAT concurred with the CIT (A) for the same reasons as in the appeals concerning ISRPL, that the assumption of jurisdiction by the AO under Section 153 C of the Act was bad in law.

Submissions of learned counsel for the Revenue

22. Mr. Ashok K. Manchanda, learned Senior standing counsel for the Revenue first submitted that notwithstanding that the search took place prior to 1st June 2015 (i.e. prior to the date of the amendment to Section 153 C) it was sufficient for the Revenue to show that the documents seized 'pertained' to the Assessee. There was no need for the Revenue to show that the seized document, in fact, belonged to the Assessee. He sought to rely on decisions

in *Principal Commissioner of Income Tax v. Super Malls (P) Limited* [2017] 393 ITR 557 (Del), *Commissioner of Income Tax (Central)-2 v. Nau Nidh Overseas Pvt. Ltd.* [2017] 394 ITR 753 (Del) and *Principal Commissioner of Income Tax (Central Circle)-II v. Satkar Fincap Limited* [2017] 393 ITR 378.

23. Relying on the decision of this Court in *Dayawanti v. Commissioner of Income Tax* [2017] 390 ITR 496 (Del), *Principal* Mr. Manchanda urged that at the stage of initiation of the proceedings under Section 153 C of the Act, the Revenue need not show that the documents related to each of the AYs whose assessments were sought to be reopened. Mr. Manchanda sought to distinguish the judgment of this Court in *Principal Commissioner of Income Tax Central-2, New Delhi v. Meeta Gutgutia* [2017] 395 ITR 526 (Del).

24. Mr. Manchanda further sought to distinguish the recent judgment of the Supreme Court in *Commissioner of Income Tax-III, Pune v. Sinhgad Technical Education Society* [2017] 84 taxmann.com 290 (SC) by terming the observations in that judgment as merely 'obiter'. According to him, the issue was raised as an 'additional ground' and was not the central issue that arose for determination in that case.

Submissions of counsel for the Assessee

25. Mr. Salil Aggarwal, learned counsel for the Assesseees presented the relevant documents and detailed charts giving in chronological sequence of events in each of the cases of ISRPL and VSIPL. He submitted that prior to

the amendment to Section 153 C with effect from 1st June 2015, the legal requirement was that in order to justify the assumption of jurisdiction against the 'other person' under Section 153 C the seized document had to be shown to 'belong' to the other person. It was not enough to show that it pertained to the other person. He relied on the decision in ***Pepsico India Holdings (P) Ltd. v. ACIT [2014] 370 ITR 295 (Del)***. He pointed out that the decisions relied upon by the Revenue had been discussed and distinguished by the decision of this Court in ***Principal Commissioner of Income Tax v. Vinita Chaurasia [2017] 394 ITR 758 (Del)***.

26. He submitted that the decision of the Supreme Court in ***Commissioner of Income Tax-III, Pune v. Sinhgad Technical Education Society (supra)*** placed it beyond controversy that in order to reopen the assessments of the 'other person' under Section 153 C of the Act for the AYs earlier to the year of search, there necessarily had to be incriminating material relating to each such AY. He submitted that the observations in the said decision to that effect were not *obiter dicta* but actually arose for consideration. Nevertheless even the *obiter dicta* of the Supreme Court was binding on the High Court. He submitted that even on merits the CIT (A) had returned a finding of fact on the basis of the documents produced by the Assesseees, that the additions made by the AO were not sustainable in law.

Analysis and reasons

27. The recent decision of the Supreme Court in ***Commissioner of Income Tax-III, Pune v. Sinhgad Technical Education Society (supra)*** is a complete answer to both points urged by the Revenue. The said decision,

therefore, requires to be discussed in some detail.

28.1 The Supreme Court noted that the Assessee had raised a challenge to the validity of the assumption of jurisdiction by the AO under Section 153C of the Act for the first time before the ITAT. It was urged on behalf of the Revenue that the ITAT erred in allowing the said challenge by the Assessee by way of additional grounds. A reference was made by the Revenue to the decision of this Court in *SSP Aviation Limited v. Deputy Commissioner of Income Tax* [2012] 346 ITR 177 (Del) and that of the Gujarat High Court in *Kamleshbhai Dharamshibhai Patel v. Commissioner of Income Tax-III* (2013) 263 CTR (Guj) 362 which according to the Revenue held to the contrary.

28.2 The Supreme Court noted that the appeals relating to four of the AYs i.e. 2000-01 to 2003-04 were covered by the notice under Section 153C of the Act. In dealing with the question as to whether the ITAT was right in permitting the Assessee to raise this additional ground for the first time before it, the Supreme Court in paras 18 and 19 observed as under:

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

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

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

28.3 From a reading of the above two paragraphs, it is plain that the Supreme Court (i) agreed with the ITAT that the documents seized had to relate to the AYs whose assessments were reopened and that this was an essential jurisdictional fact and (ii) upheld the decision of the ITAT to permit the additional ground to be raised before it for the first time.

28.4 The Supreme Court also agreed with the decision of the Gujarat High Court in ***Kamleshbhai Dharamshibhai Patel*** (*supra*) to the extent it held that "it is an essential condition precedent that any money, bullion or jewellery or other valuable articles or thing or books of accounts or documents seized or requisitioned should belong to a person other than the person referred to in Section 153A of the Act." The Supreme Court

observed: "This proposition of law laid down by the High Court is correct, which is stated by the Bombay High Court in the impugned judgment as well."

28.5 The above categorical pronouncement of the Supreme Court cannot, by any stretch of imagination, be termed as *obiter* as has been suggested by Mr. Manchanda. Even the *obiter dicta* of the Supreme Court is binding on this Court.

29. The search in the case before the Supreme Court was prior to 1st June 2015. Apart from the fact the Supreme Court approved the above decision of the Gujarat High Court holding that the seized documents should 'belong' to the other person, the legal position in this regard where the search has taken place prior to 1st June 2015 has been settled by the decision of this Court in ***Pepsico India Holdings (P) Ltd. v. ACIT*** (*supra*). In ***Commissioner of Income Tax v. Vinita Chaurasia*** (*supra*), this Court reiterated the above legal position after discussing the decisions in ***Principal Commissioner of Income Tax v. Super Malls (P) Limited*** (*supra*) and ***Commissioner of Income Tax (Central)-2 v. Nau Nidh Overseas Pvt. Ltd.*** (*supra*). The essential jurisdictional requirement for assumption of jurisdiction under Section 153 C of the Act (as it stood prior to its amendment with effect from 1st June 2015) *qua* the 'other person' (in this case the assessee) is that the seized documents forming the basis of the satisfaction note must not merely 'pertain' to the other person but must belong to the 'other person'.

30. In the present case, the documents seized were the trial balance and

balance sheets of the two Assesseees for the period 1st April to 13th September 2010 (for ISRPL) and 1st April to 4th September 2010 (for VSIPL). Both sets of documents were seized not from the respective Assesseees but from the searched person i.e. Jagat Agro Commodities (P) Ltd. In other words, although the said documents might 'pertain' to the Assesseees, they did not belong to them. Therefore, one essential jurisdictional requirement to justify the assumption of jurisdiction under Section 153 C of the Act was not met in the case of the two Assesseees.

31. As regards the second jurisdictional requirement viz., that the seized documents must be incriminating and must relate to the AYs whose assessments are sought to be reopened, the decision of the Supreme Court in ***Commissioner of Income Tax-III, Pune v. Sinhgad Technical Education Society*** (*supra*) settles the issue and holds this to be an essential requirement. The decisions of this Court in ***CIT-7 v. RRJ Securities (2016) 380 ITR 612 (Del)*** and ***ARN Infrastructure India Limited v. ACIT [2017] 394 ITR 569 (Del)*** also hold that in order to justify the assumption of jurisdiction under Section 153 C of the Act the documents seized must be incriminating and must relate to each of the AYs whose assessments are sought to be reopened. Since the satisfaction note forms the basis for initiating the proceedings under Section 153 C of the Act, it is futile for Mr Manchanda to contend that this requirement need not be met for initiation of the proceedings but only during the subsequent assessment.

32. In the present case, the two seized documents referred to in the Satisfaction Note in the case of each Assessee are the trial balance and

balance sheet for a period of five months in 2010. In the first place, they do not relate to the AYs for which the assessments were reopened in the case of both assessees. Secondly, they cannot be said to be incriminating. Even for the AY to which they related, i.e. AY 2011-12, the AO finalised the assessment at the returned income *qua* each Assessee without making any additions on the basis of those documents. Consequently even the second essential requirement for assumption of jurisdiction under Section 153 C of the Act was not met in the case of the two Assesseees

33. This Court does not consider it necessary to examine the merits of the case as far as the deletions by the CIT (A) of the additions made by the AO under Section 153C of the Act are concerned. In any event, a detailed analysis has been undertaken by the CIT (A) of the materials produced by the Assessee which justified the deletion of such additions. Even on this score, no interference is warranted with the impugned order of the CIT (A).

34. For the aforesaid reasons, the Court finds that no substantial question of law arises from the impugned orders of the ITAT.

35. The appeals are accordingly dismissed but, in the facts and circumstances of the case, with no orders as to costs.

C.M. APPL. 26782/2017 (exemption) in ITA No. 567/2017

C.M. APPL. 26785/2017 (exemption) in ITA No. 569/2017

C.M. APPL. 26788/2017 (exemption) in ITA No. 570/2017

C.M. APPL. 26792/2017 (exemption) in ITA No. 571/2017

36. Allowed, subject to all just exceptions.

C.M. APPL. 26781/2017 (delay) in ITA No. 566/2017
C.M. APPL. 26783/2017 (delay) in ITA No. 567/2017
C.M. APPL. 26784/2017 (delay) in ITA No. 568/2017
C.M. APPL. 26786/2017 (delay) in ITA No. 569/2017
C.M. APPL. 26789/2017 (delay) in ITA No. 570/2017
C.M. APPL. 26793/2017 (delay) in ITA No. 571/2017

37. For the reasons stated therein, the delay of 78 days in re-filing the appeals is condoned. The applications are disposed of.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 04, 2017

Rm