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T.C.(A).Nos.1050 to 1058 of 2015, 1070 to 1078 of 2015,
1005 to 1008 of 2010 and 1018 to 1020 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **29.10.2024**

Pronounced on : **29.01.2025**

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

AND

THE HON'BLE MR.JUSTICE C.SARAVANAN

**Tax Case (Appeal) Nos.1050 to 1058 of 2015, 1070 to 1078 of 2015,
1005 to 1008 of 2010 and 1018 to 1020 of 2010
and connected miscellaneous petitions**

T.C.A.No.1050 of 2015

Commissioner of Income Tax
Central-I,
121, M.G.Road,
Chennai - 600 034.

... Appellant / Appellant

Vs.

M/s. SRM Systems and Software Pvt., Ltd.,
120, G.N.Chetty Road,
T.Nagar, Chennai - 600 017.
PAN : AABCS5118D

... Respondent / Respondent

Prayer in T.C.A.No.1050 of 2015 : Appeal preferred under Section 260-A
of the Income Tax Act, 1961 against the order of the Income Tax Appellate
Tribunal, 'B' Bench, Chennai, dated 18.11.2014 in M.P.No.44/MDS/2014 in
I.T.A.No.997/MDS/2013.

For Appellant

: Mr.Karthick Ranganathan



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in all the TCAs

Senior Standing counsel

For Respondent
in all the TCAs

: Dr.S.Muralidhar
Senior counsel
for Mr.G.Baskar and
Mr.V.Venkatesan

COMMON JUDGMENT

R.SURESH KUMAR, J.

Since the issue raised in all these Tax Case Appeals is one and the same against the same assessee, all these Appeals were heard together and are disposed by this common order.

2. The necessary facts which are required to be noticed for the disposal of these Appeals are as follows :

(i) The Assessee was engaged in the business of Systems and Software Services. On 12.08.2004, the search was conducted at the premises of the Chairman of the Assessee Company under Section 132 of the Income Tax Act 1961, in short “the Act”.

(ii) Pursuant to the search conducted, notice under Section 153C of



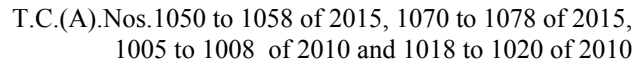
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the Act was issued against the assessee for the block years, i.e., from 1999-2000 to 2004-2005 and also the search year 2005-2006.

(iii) Pursuant to Section 153C notice, the assessee filed return of income, based on which, the Assessing Officer had completed the assessment by making certain additions.

(iv) The assessment orders were passed on 29.12.2006 for all these seven years. Therefore aggrieved over the same, the assessee preferred Appeals before the CIT(Appeals) in all the seven cases.

(v) On various dates between 18.12.2007 and 30.01.2008, orders were passed by the CIT (Appeals). As against the order passed by the CIT (Appeals), appeals were preferred by the Revenue, where regarding one addition in all seven cases, the Revenue lost the cases, in respect of all other issues, matters were remitted back to the Assessing Authority. Not satisfied with the said orders passed by the ITAT, the Revenue filed seven Tax Case (Appeals) against the one issue which they lost before the ITAT, in



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ground that, for want of satisfaction report to be recorded by the Assessing Authority of the searched person even in respect of the other person, the proceedings u/s 153C gets vitiated.

(ix) Along with these Appeals, the Appeals against the assessment made pursuant to the revision order under Section 263 of the Act also were disposed. Therefore totally 14 appeals were disposed by the common order of the CIT (Appeals) dated 20.12.2013. Against the said 20.12.2013 order of the CIT (Appeals) as the Revenue lost in all those appeals on the sole ground of non recording of the satisfaction report by the Assessing Authority of the searched person, insofar as the other person who is the assessee herein, the Revenue preferred 14 Appeals before the ITAT.

(x) All those 14 Appeals were disposed by the common order, dated 28.10.2013 by the ITAT in favour of the assessee and against the Revenue.

(xi) In fact, the assessee had also filed cross-objections which were



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also disposed by the ITAT along with the Revenue's Appeal, on 28.10.2013.

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Since number of appeals were disposed by the order, dated 28.10.2013 of the ITAT, Chennai, as against which, Appeals had been filed in this batch of cases. During the pendency of the Appeals, some of the Appeals filed by the Revenue were withdrawn as low tax effect.

(xii) Rectification applications also were filed by Revenue before the ITAT and on 18.11.2014, those Rectification applications were dismissed by the ITAT. Against that order also Tax Case (Appeals) were filed.

(xiii) Some of the Tax Case (Appeals) since were subsequently withdrawn during the pendency of these Tax Case (Appeals), the remaining Tax Case (Appeals) are 25 in number which were grouped together and are disposed by this common order.

3. The following Substantial Questions of Law have been framed commonly in all these Appeals :

"1. Whether on the facts and in the circumstances



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of the case, the Appellate Tribunal was right in quashing the assessment orders made under Section 153C of the Income Tax Act without verifying the Satisfaction Note recorded by the Assessing Officer ?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in quashing the assessment orders holding that the assessing officer has not recorded the reasons before initiating proceedings under Section 153BC of the Income Tax Act ?

3. Whether on the facts and circumstances of the case, the Tribunal was right holding that recording of reasons / satisfaction which is neither mentioned in Section 153BC of the Act nor in the circular explaining the new provisions introduced in the Finance Act 2003 ?

4. Whether in the facts and circumstances of the case, is the Tribunal justified in granting relief for Asst. Year 2005-06 on the ground that no satisfaction note was recorded u/s.153C, when Section 153C is not applicable to the impugned year ?

5. Whether on the facts and in the



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circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the addition made by the Assessing Officer u/s. 69C in respect of the unexplained expenditure on salary payments to employees as mentioned in their loan applications to the banks which were duly forwarded by the assessee and for which the assessee undertook to guarantee for the re-payment of the loans availed by the employees ?

6. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in not holding that the loan applications of the employees to the banks constituted prima facie evidence for the actual salary payments and the burden of proof to show that such expenditure was not actually incurred was on the assessee?"

4. To have an easy understanding, the following tables would explain the number of Tax Case (Appeals) covered in this batch of cases relates to the Assessment Years arising out of ITA Nos. disposed by the ITAT, Chennai.

A.Batch- I – Against common order of ITAT dated 26.02.2010



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S.No	TCA No. of 2010	Against ITA No. of 2008	A.Y	Issue
1	1005	577	1999-00	Unexplained expenditure u/s.69C of salary payments.
2	1006	910	2000-01	
3	1007	911	2001-02	
4	1008	912	2002-03	
5	1018	913	2003-04	
6	1019	914	2004-05	
7	1020	915	2005-06	

B. Batch-II – Against common order of ITAT, dated 28.10.2023

TCA 1066, 1067, 1068, 1069/2015 relating to A.Ys : 1999-00 &
2000-01 already withdrawn

Sl.No	TAC No. of 2015	Against ITA No. of 2013	A.Y	Remarks	Issues
1	1070	997	2001-02	2 nd round of litigation w.r.t.issues remanded by ITAT to AO in ITA Nos.910- 915/2008.	Whether the ITAT is right in holding that there is no 'satisfaction note" placed before the Tribunal.
2	1071	998	2002-03	Against order u/s 153(C) rws	



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				143(3) rws 263	
3	1072	999	2002-03	2 nd round of litigation w.r.t.issues remanded by ITAT to AO in ITA Nos.910 -915/2008	
4	1073	1000	2003-04	Against order u/s 153(C) rws 143(3) rws 263	
5	1074	1001	2003-04	2 nd round of litigation w.r.t.issues remanded by ITAT to AO in ITA Nos.910 -915/2008	
6	1075	1002	2004-05	Against order u/s 153(C) rws 153A rws 263	
7	1076	1003	2004-05	Against order u/s 153(C) rws 143(3) rws 263	
8	1077	1004	2004-05	2 nd round of litigation w.r.t.issues remanded by ITAT to AO in ITA Nos.910 -915/2008	
9	1078	1005	2005-06	2 nd round of litigation	



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				w.r.t.issues remanded by ITAT to AO in ITA Nos.910 -915/2008	
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Batch – III – Against common order of ITAT dated 18.11.2014

TCS 1046, 1047, 1048, 1049/2015 relating to A.Ys : 1999-00 & 2000-

01 already withdrawn

Sl.No	TCA No. of 2015	Against MP No. of 2014	A.Y	Issues
1	1050	44	2001-02	Whether the ITAT is right in not recalling the earlier orders holding that there is no “satisfaction note” placed before the Tribunal
2	1051	45	2002-03	
3	1052	46	2002-03	
4	1053	47	2003-04	
5	1054	48	2003-04	
6	1055	49	2004-05	
7	1056	50	2004-05	
8	1057	51	2004-05	
9	1058	52	2005-06	

5. When these cases came up for hearing on 24.09.2024, after hearing

Mr.Karthik Ranganathan, learned Senior Standing counsel and



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Dr.S.Muralidhar, learned Senior counsel assisted by Mr.G.Baskar, we have given interim direction that, the original records are to be produced. Therefore the Revenue was directed to produce the original records pertaining to the satisfaction note for both persons, i.e., the searched person and other person for all the Assessment Years.

6. It is to be noted that, in the second round of litigation before the CIT (Appeals), the assessee in fact had raised a ground that, the Assessing Officer had lacked jurisdiction under Section 153C of the Act because the conditions laid down in the said Section was not satisfied. The said ground since was taken by the assessee's side on the reason that the Assessing Officer of the searched person had failed to record the reason for satisfaction for invoking the provision of Section 153C of the Act in respect of other person who is none other than the assessee. Since the said ground was raised by the assessee, which in fact was accepted by the CIT (Appeals) and therefore such an additional ground was also taken into consideration for decision.

7. The CIT (Appeals) since had passed a detailed order, whereby the CIT (Appeals) had satisfied that there has been no satisfactory note



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specifically recorded by the Assessing Officer of the searched person and therefore on that ground itself, it was held by the CIT (Appeals) that the Assessing Authority has not got the jurisdiction to proceed against the assessee, who is the other person, by initiating action under Section 153C of the Act.

8. That was the only reason based on which, the CIT (Appeals) decided the cases in favour of the assessee and against the Revenue. Aggrieved over the same, since Appeals were filed in I.T.A.Nos.993 to 1005 of 2013 etc., batch by the Revenue before the ITAT, all those ITA's were heard and disposed by the common order of the ITAT dated 28.10.2023, which is impugned in all these Appeals of the year 2015.

9. Pursuant to the direction given by this Court by order, dated 24.09.2024, when the cases again came up for hearing on 23.10.2024, the learned Senior Standing counsel appearing for the Revenue had produced the relevant papers arising out of the original file pertaining to the assessee. However, insofar as the searched person is concerned, whether such a



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satisfaction note has been recorded by the Assessing Officer was asked by the Court and the learned Senior Standing counsel appearing for the Revenue on instructions had stated that, no such reason has been recorded in respect of the searched person. However, the learned Senior Standing counsel appearing for the Revenue would further add that, such a requirement of recording satisfaction note in respect of the searched person was not required during the relevant point of time in view of the fluid situation with regard to the legal position as the new provision came in to effect only on 01.06.2003 and the law has been settled only in the year 2014.

10. Therefore after hearing the learned Senior Standing counsel appearing for the Revenue, on 23.10.2024, we have given a further direction to the Revenue that, a responsible officer on behalf of the Revenue in these cases shall file an affidavit stating that, there has been no satisfaction report recorded insofar as the searched person is concerned.

11. Pursuant to the said direction given by this Court, the Deputy Commissioner of Income Tax, Central Circle, Chennai, has filed an affidavit dated 28.10.2024, whereby the Officer inter alia has stated that, file relates



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to Assessment Year 1999-2000, 2001-2002 and 2002-2003 are available and
file relates to 2000-2001, 2003-2004 and 2004-2005 were not available.

12. We have verified the note recorded by the Assessing Officer in respect of the searched person for the Assessment Years 1999-2000, 2001-2002 and 2002-2003. Invariably in all these notes for these three years verbatim the same note has been recorded, where the following satisfactory note has been recorded by the Assessing Officer.

“For these and other grounds, I have reason to believe that income chargeable to tax has escaped assessment in this case and action is initiated u/s.153A of the Income Tax Act. Notice is accordingly issued u/s.153A for the assessment year mentioned above.”

13. After having perusal of the note submitted on behalf of the Revenue for all these three years it was also contended by the learned Senior Standing counsel appearing for the Revenue that similar note must have been prepared and must be available in the file relates to other three years, but immediately the files could not be produced as it is to be traced.



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14. In this context, it is to be noted that, assuming that in all the six years, a similar note has been prepared by the Assessing Authority of the searched person, such a note could be made useful for the purpose of initiating action against the searched person under Section 153A of the Act.

15. However, here the question is, the Assessee being the category of other person and action had been initiated against the assessee only under Section 153C of the Act, whether a satisfactory note to that effect has been recorded by the Assessing Officer or Authority insofar as the other person also in the file of the such searched person? without which, whether the Assessing Authority can proceed against the assessee being the other person under Section 153C of the Act is the only question to be answered in this batch of cases.

16. In this context, Dr.S.Muralidhar, learned Senior counsel appearing for the respondent assessee by relying upon various decisions of the Hon'ble Supreme Court and other High Courts have pointed out that, even if there is



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one Assessing Authority for both the searched person and other person, in order to proceed against the other person under Section 153C of the Act, the Assessing Authority of the searched person, the moment he has satisfaction with regard to the searched person, must also record his satisfaction about the incriminating materials or documents which are made available pursuant to the search conducted in the searched person premises and accordingly, his satisfaction to transmit the file to himself as the Assessing Authority, for the other person, must have been recorded in the note and it should be made available in the files of the searched person.

17. The learned Senior counsel would make further submissions that, even in this context, one search note is enough where there must be a clear satisfactory note recorded as to the incriminating documents pertaining to the other person, then only the cause of action to transmit the file to the Assessing Authority of the other person in case the Assessing Authority is different person or transfer it to himself or herself if the Assessing Authority for the searched person and other person is one and the same, would arise.

18. He would also submit that, whether this satisfactory note is



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available or not is to be examined and if such a note is not available in the files of the searched person, the law declared by the Hon'ble Supreme Court has to be applied to the facts of the present case and if it is so, the stand taken by the assessee before the Tribunal that, no such satisfactory note was available within the meaning of the Law having been declared by the Hon'ble Courts of law in the context of Section 153A as well as 153C of the Income Tax Act is to be accepted.

19. In support of his contention, the learned Senior Counsel has relied upon the following decisions :

(i) Manish Maheshwari v. Assistant Commissioner of Income-tax, (2007) 159 Taxman 258 (SC)

(ii) Commissioner of Income-tax-III v. Calcutta Knitwears, (2014) 43 taxmann.com 446 (SC)

(iii) Assistant Commissioner of Income-tax v. Pepsi Foods (P) Ltd., (2018) 89 taxmann.com 10 (SC)

(iv) Pepsi Foods (P) Ltd., v. Assistant Commissioner of Income-tax, (2014) 52 taxmann.com 220 (Delhi)

(v) Principal Commissioner of Income-tax v. Gali Janardhana Reddy,



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(2023) 152 taxmann.com 332 (Karnataka)

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20. By relying upon these decisions, the learned Senior Counsel appearing for the assessee would contend that the law has been well settled and based on the law settled by the Courts, infact the CBDT issued a circular in Circular No.24/2015, whereby it has been made clear that, even the pending litigation with regard to recording of satisfaction note under Section 158BD/Section 153C should be withdrawn / not pressed if it does not meet the guidelines laid by the Apex Court. Therefore the learned Senior counsel would contend that, in fact the Revenue should have withdrawn the cases as per the decision of the CBDT circular which in fact was issued by the CBDT pursuant to the law settled by the Hon'ble Supreme Court. Therefore absolutely there has been no scope for entertaining even these Appeals at this juncture, therefore all these appeals filed by the Revenue are liable to be dismissed and the question of law raised in this batch of appeals are to be answered in favour of the assessee and against the Revenue, he contended.

21. On the contrary, Mr.Karthik Ranganathan, learned Senior



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Standing counsel appearing for the Revenue has argued that, when a search has been made under Section 132 of the Act, if incriminating documents and materials are seized from the premises of the searched person and some of such materials and documents pertaining not to the searched person and to the other persons, in respect of those other persons also, if the jurisdiction Assessing Officer is one and the same, once such satisfactory note is made by the Assessing Authority of the searched person under Section 153A proceedings that is sufficient to have such a satisfaction to proceed or initiate action against the other person within the meaning of Section 153C of the Act.

22. Whether this proposition stated by the learned counsel appearing for the Revenue has been accepted or endorsed in any of the decisions of the Court of Law is yet another question also to be answered.

23. The learned Senior Standing counsel appearing for the Revenue also has heavily relied upon the decision in *Manish Maheshwari v. Assistant Commissioner of Income-tax* reported in (2007) 159 Taxman 258 (SC). He also relied upon the decision of the Hon'ble Supreme Court in *Super Malls*



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(P) Ltd., v. Principal Commissioner of Income Tax reported in (2020) 115 taxmann.com 105 (SC). Even some more decisions he has relied upon, those decisions are not related to the issue which is involved in this batch of cases.

24. By citing these decisions and making the said submissions as stated supra, the learned Senior Standing counsel appearing for the Revenue seeks indulgence of this Court to interfere with the order passed by the ITAT, which is impugned herein and wanted this Court to answer the Substantial Questions of Law that has arisen in this batch of cases in favour of the Revenue and against the assessee by allowing these Appeals.

25. We have given our anxious consideration to the said legal submissions made by both the learned counsels and also have perused the materials placed before this Court.

26. If we look at the common impugned order passed by the ITAT, dated 28.10.2013, the ITAT has traced the common grounds raised in all those Appeals in para 3 of the order impugned, where the main ground was (1b), where it is stated that the CIT (Appeals) failed to note that the relied upon Court order in the case of Manish Maheshwari was rendered in the



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context of Section 158BD and provisions of 153C being different, this case law cannot be applied to the facts of the case.

27. Another important ground which was raised by the Revenue before the ITAT was ground (1d) where the Revenue stated that the CIT (Appeals) failed to note that there is no specific requirement in Section 153C of Income Tax Act, 1961, that reasons / satisfaction note has to be recorded by the Assessing Officer before initiating proceedings under Section 153C. When the provisions were newly introduced in 2003, the CBDT issued a Circular explaining the new provisions. In this Circular No.7, there is no such reference to recording of satisfaction. Normally recording of satisfaction is prescribed in the section itself whenever the same is warranted. In the absence of specific provision, recording of satisfaction is not mandatory, however the Assessing Officer has recorded the reasons for initiation of proceedings under Section 153C before issue of notice under Section 153C.

28. These grounds raised before the ITAT was answered by the ITAT



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in the impugned order by following the earlier order passed in this regard in para 9 of the ITAT's order, where the ITAT has held that, so far as jurisdiction under Section 153C is concerned, the CIT (Appeals) by following various decisions including Tribunal's decision in assessee's group cases has held that, the Assessing Officer has not assumed valid jurisdiction under Section 153C because he has not recorded the requisite satisfaction and the entire proceedings initiated under Section 153C was *void ab initio*.

29. By making these observations, the relevant portion of the order of the ITAT has been recorded. The ITAT also has recorded the decision of the Tribunal in the case of M/s. SRM Easwari Travels and Tours (P) Ltd., dated 08.01.2010 and after recording these reasons, the Tribunal was of the view that, in view of the decision of the Hon'ble Supreme Court in the case of Manish Maheshwari (*cited supra*), the Tribunal did not find any reason to interfere with the order passed by the CIT (Appeals) and accordingly, the ITAT has dismissed all those appeals including the cross-objections filed by the assessee, as the cross-objections had been filed only to strengthen and support the view taken by the CIT (Appeals) in favour of the assessee.



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30. Therefore the one and only issue which is revolving in this batch of cases right from the beginning from the CIT (Appeals) till this Court is as to whether there has been a separate satisfactory note by the Assessing Authority of the searched person in respect of the other person for initiating action under Section 153C of the Act.

31. In this context, the Judgment of the Hon'ble Apex Court in Manish Maheshwari (*cited supra*) has been relied upon by both sides. If we look at the said case, there has been a search conducted at the premises of the assessee's company's Director in that case, which lead to seizure of several incriminating documents relating to the assessee business therein. After issuing notice purported to be under Section 158BD, the Assessing Officer completed the block assessment in the assessee's case. On Appeal, the Tribunal held that, the Assessing Officer had no jurisdiction to proceed against the assessee for making the block assessment in terms of Chapter XIV-B as no search was conducted in terms of Section 132 in the assessee's case. On Appeal, the High Court was however holding that the Assessing



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Officer had the jurisdiction in terms of Section 158BD r/w Section (2)(31) and therefore the Revenue's Appeal was allowed. Assailing the same, when Appeals were preferred before the Hon'ble Supreme Court, the Hon'ble Supreme Court has held to the following effect :

"7. Condition precedent for invoking a block assessment is that a search has been conducted under Section 132, or documents or assets have been requisitioned under Section 132A. The said provision would apply in the case of any person in respect of whom search has been carried out under Section 132A or documents or assets have been requisitioned under Section 132A. Section 158BD, however, provides for taking recourse to a block assessment in terms of Section 158BC in respect of any other person, the conditions precedents wherefor are : (i) Satisfaction must be recorded by the Assessing Officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under Section 132 of the Act; (ii) The books of account or other documents or assets seized or requisitioned had been handed over to the Assessing Officer having jurisdiction over such other person; and (iii) The Assessing Officer has proceeded under



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Section 158BC against such other person.

8. The conditions precedent for invoking the provisions of Section 158BD, thus, are required to be satisfied before the provisions of the said chapter are applied in relation to any person other than the person whose premises had been searched or whose documents and other assets had been requisitioned under Section 132A of the Act.

9. A taxing statute, as is well-known, must be construed strictly. In *Sneh Enterprises v. Commissioner of Customs, New Delhi* [(2006) 7 SCC 714], it was held :

"While dealing with a taxing provision, the principle of 'Strict Interpretation' should be applied. The Court shall not interpret the statutory provision in such a manner which would create an additional fiscal burden on a person. It would never be done by invoking the provisions of another Act, which are not attracted. It is also trite that while two interpretations are possible, the Court ordinarily would interpret the provisions in favour of a tax-payer and against the Revenue."



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Yet again in *J. Srinivasa Rao v. Govt. of A.P. & Another* [2006 (13) SCALE 27], it was held :

"In a case of doubt or dispute, it is well-settled, construction has to be made in favour of the taxpayer and against the Revenue."

In *M/s. Ispat Industries Ltd. v. Commissioner of Customs, Mumbai* [JT 2006 (12) SC 379 : 2006 (9) SCALE 652], this Court opined:

"In our opinion if there are two possible interpretations of a rule, one which subserves the object of a provision in the parent statute and the other which does not, we have to adopt the former, because adopting the latter will make the rule ultra vires the Act."

10. Law in this regard is clear and explicit. The only question which arises for our consideration is as to whether the notice dated 06.02.1996 satisfies the requirements of Section 158BD of the Act. The said notice does not record any satisfaction on the part of the Assessing Officer. Documents and other assets recovered during search had not been handed over to the Assessing Officer having jurisdiction in the matter.



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

32. The Hon'ble Apex Court has held in *Manish Maheshwari* that, the condition precedent for invoking the provisions of Section 158BD thus are required to be satisfied before the provisions of Chapter XIV-B are applied in relation to any person other than the person whose premises had been searched under Section 132 or whose documents and other assets had been requisitioned under Section 132A. The Supreme Court has also held in that



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case that, a taxing statute as is well known must be construed strictly by relying upon the Judgment of the Supreme Court in *Sneh Enterprises v. Commissioner of Customs* reported in (2006) 7 SCC 714. It was further held by the Supreme Court that, law in this regard is clear and explicit. The notice in question issued under Section 158BD did not record any satisfaction on the part of the Assessing Officer. The documents and other assets recovered during search had not been handed over to the Assessing Officer having jurisdiction in this matter.

33. Therefore what has been held in the said case in *Manish Maheshwari (cited supra)* is not supporting the case of the Revenue instead it supports the case of the assessee only.

34. The next decision is *Commissioner of Income-tax-III v. Calcutta Knitwears*, reported in (2014) 43 taxmann.com 446 (SC). In this case, almost with similar facts, where the proceedings initiated under Section 158BD when was questioned on the ground that, satisfactory report should have been recorded by the Assessing Officer under Section 158BD was on a date



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subsequent to the framing of assessment under Section 158BC in case of the searched person, i.e., beyond the period prescribed under Section 158BE(2)(b) and thereby notice issued under Section 158BD was belated and consequently the assumption of jurisdiction by the Assessing Authority in the impugned block assessment would be invalid.

35. In the said case, the Hon'ble Supreme Court has held in unequivocal term to the following effect :

"44. In the result, we hold that for the purpose of Section 158BD of the Act a satisfaction note is *sine qua non* and must be prepared by the assessing officer before he transmits the records to the other assessing officer who has jurisdiction over such other person. The satisfaction note could be prepared at either of the following stages : (a) at the time of or along with the initiation of proceedings against the searched person under Section 158BC of the Act; (b) along with the assessment proceedings under Section 158BC of the Act; and (c) immediately after the assessment proceedings are completed under Section 158BC of the Act of



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the searched person."

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36. Therefore for the purpose of Section 158BD of the Act, a satisfaction note is *sine qua non* and must be prepared by the Assessing Officer before he transmits the records to the other Assessing Officer who has jurisdiction over such other person. Though Section 158BC and Section 158BD are no longer in the Income Tax Act, 1961 and have been replaced by Section 153A and Section 153C of the Income Tax Act, 1961, the ratio in Calcutta Knitwears case has been accepted in Board Circular No.24/2015, dated 31.12.2015.

37. Here in the case in hand, arguments were advanced by the learned Senior Standing counsel appearing for the Revenue that, such a contingency of preparing a satisfaction note by the Assessing Officer of the searched person before transmitting the records to the Assessing Authority of the other person would arise, if the Assessing Authority are two different persons, however in case if the Assessing Authority is one and the same for both searched person and other person, such a requirement may not be



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required at all.

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38. However, this position has been made clear after several Judgments of the Apex Court by the CBDT in its Circular No.24/2015 dated 31.12.2015. For a easy reference, verbatim, the entirety of the Circular is reproduced herein :

"Section 153C, Read with Section 158BD, of the Income-Tax Act, 1961 - Search and Seizure - Assessment of Income in case of other person - Recording of Satisfaction Note under Section 158BD/153C of Said Act Circular No.24/2015 [F.No.279/Misc./140/2015/ITJ] Dated 31.12.2015. The issue of recording satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of M/s. Calcutta Knitwears in its detailed judgment in Civil Appeal No.3958 of 2014, dated 12.03.2014 [2014] 43 taxmann.com 446 (SC) (available in NJRS at 2014-LL-0312-51) has laid down that for the purpose of section 158BD of the Act, recording of a satisfaction note is a prerequisite and the



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satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person u/s 158BD. the Hon'ble Court held that "the satisfaction note could be prepared at any of the following stages:

- (a) at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; or
- (b) in the course of the assessment proceedings under section 158BC of the Act; or
- (c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person."

3. Several High Courts have held that the provisions of section 153C of the Act are substantially similar/pari-materia to the provisions of section 158BD of the Act and therefore, the above guidelines of the Hon'ble SC, apply to proceedings u/s 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.

4. The guidelines of the Hon'ble Supreme Court as referred to in para 2 above, with regard to



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recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgment. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under section 158BD/153C, should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court."

(Emphasis supplied)

39. Para 5 of the Circular has made it very clear that, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the Judgment referred in the Circular, i.e., M/s. Calcutta Knitwears (*cited supra*).

40. The Board has further stated that, accordingly, the Board directs that pending litigation with regard to recording of satisfaction note under



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Section 158BD/153C should be withdrawn and not pressed if it does not meet the guidelines laid down by the Apex Court.

41. In para 4 of the Circular, the CBDT has made it very clear that, the Supreme Court's guidelines with regard to the recording of satisfaction note may be brought to the notice of all for strict compliance and the Circular has further made it clear that, it is clarified that even if the Assessing Officer of the searched person and the other person is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

42. Though circular issued by the CBDT is not binding on the Courts, however it is binding on the Officers, therefore in fact these Appeals which are revolving with the one and only issue of satisfactory note to be recorded in this regard before initiating action under Section 153C and the old analogous provision is Section 158BD, are liable to be withdrawn by the Revenue itself. However for the reasons best known to them, they pressed upon the matters and therefore hearing went on and are being disposed by deciding the issue once again in this order.



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43. Almost similar view has been taken by the Delhi High Court in Pepsi Foods (P) Ltd., v. Assistant Commissioner of Income-tax reported in (2014) 52 taxmann.com 220 (Delhi). This has been confirmed by the Hon'ble Supreme Court in the matter of Assistant Commissioner of Income-tax v. Pepsin Foods (P) Ltd., reported in (2018) 89 taxmann.com 10 (SC).

44. All these decisions have been taken into account by a Division Bench of the High Court of Karnataka in Principal Commissioner of Income-tax v. Gali Janardhana Reddy reported in (2023) 152 taxmann.com 332 (Karnataka), where the question framed by the Court is as follows :

"Whether on the facts and circumstances of the case, the Tribunal is right in law in setting aside assessment order passed for assessment year 2011-12 by holding that there is no satisfaction recorded by the assessing officer of the searched person (153A) in the file of the said person ignoring the intention of legislature and even when the assessing authority has passed assessment order after recording satisfaction as required under



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Section 153C of the Act?"

45. In the said case, the Division Bench of the Karnataka High Court has taken this issue elaborately and has held as follows :

"56.It is further contended that it is settled law that while construing penal statutes and taxation statutes, the Court has to apply strict rules of interpretation and Article 226 of the Constitution prohibits the State from extracting tax from the citizen without authority of law. The natural corollary to the said provision is that State cannot burden the citizen without the authority of law and thus, taxation statutes has to be interpreted strictly. The Hon'ble Supreme Court in the case of Commr. of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1 held that if there are two view possible in the matter of interpretation of a charging section, the one favorable to the assessee needs to be applied. Applying the aforesaid ratio to the facts of the present case, the Hon'ble Delhi High Court in CIT vs. RRJ Securities have on a strict interpretation construed Section 153C of the Act and held that 6 years contemplated under sub-section 1 of Section



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153C have to be reckoned from the date of handing over of documents to the AO of searched person and not the date of search. Thus, even otherwise the interpretation given by the Hon'ble High Court to Section 153C of the Act is in terms of the aforesaid law laid down by the Hon'ble Supreme Court.

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58. Even otherwise, the requirement of recording of satisfaction note is clearly borne out of the provisions contained in Section 153C of the Act. The Hon'ble Supreme Court in the case of CIT vs. Calcutta Knitwears, (2014) 6 SCC 444 has held that the recording of satisfaction note is pre-requisite and the same must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person. Several Hon'ble High Courts have held that the provisions of Section 153C of the Act are pari materia to the provisions of Section 158BD of the Act, which was the subject matter of interpretation before the Hon'ble Supreme in the case of CIT vs. Calcutta



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Knitwears (supra). The aforesaid reliance are squarely applicable to the present case on hand in the given facts and circumstances of the case wherein certain incriminating materials were found during the course of search against the respondent / Assessee as alleged.

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60.In the facts of the present case, it is an admitted position that the satisfaction note was not recorded by the Assessing Officer of the searched person and thus, the Income Tax Appellate Tribunal passed an order quashing the assessment on account of lack of jurisdiction to proceed against the respondent / assessee under Section 153-C of the Act. The said order does not suffer from any infirmities but the Tribunal has rightly quashed the assessment on account of lack of jurisdiction. These are the contentions that have been made by the learned counsel for the respondent / assessee. Therefore, the learned counsel for the respondent / assessee prays for dismissal of this appeal preferred by the appellant / Revenue.



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64. Section 153-C of the IT Act, 1961 relates to assessment of income of any other person. 153-C (1): Notwithstanding anything contained in Sections 139, 147, 148, 149, 151 and 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.

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67. In the present case on hand, the Income Tax Appellate Tribunal had arrived at a conclusion in ITA No.1444-1450/2014. It is seen that the



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Tribunal has not only followed the judgment of the Allahabad High Court rendered in the case of M/s. Gopi Apartment supra, but the Tribunal has also considered and followed the judgment of the Apex Court reported in the case of Calcutta Knitwears (supra), and the judgment of the Hon'ble Apex Court in the case of Manish Maheshwari (289 ITR 341). In the facts and circumstances of the present case on hand relating to initiation of proceedings, has been discussed based upon the materials. No satisfaction was recorded by the Assessing Officer of the searched person because it is seen that the so-called satisfaction note prepared by the Assessing Officer in his capacity as Assessing Officer of the searched person, it could not be shown by the Revenue that any satisfaction note was prepared by him as the AO of the searched person. Therefore, it is to be accepted that no satisfaction was recorded by the AO of the searched persons and therefore, the order of the Tribunal and the judgments of the Allahabad High Court rendered in M/s.Gopi Apartment (supra) and of the judgment of the Hon'ble Apex Court rendered in the case of Calcutta Knitwears (supra)



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and Manish Maheshwari (supra) are applicable to the given facts and circumstances of the case. These judgments were followed by the Income Tax Appellate Tribunal to hold that the notice issued by the AO under Section 153-C of the IT Act deserves to be quashed and accordingly had proceeded to quash the assessment orders framed by the Assessing Officer under Section 153-C read with Section 143(3) of the Income Tax Act. Accordingly, the additional ground was allowed in all the seven years. The said finding has been challenged in this appeal by urging various grounds by the appellant / Revenue. But the grounds proposed for framing substantial questions of law and referred to certain provisions of the IT Act which has been extracted supra, but the grounds urged for preferring an appeal by the appellant / Revenue do not have any substance even for contending that it requires for dwelling in detail to refer to each one of the substantial questions of law. The judgment rendered by the Tribunal does not suffer from any infirmity or absurdity to call for interference the said judgment and further no warranting circumstances arise.



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Consequently, these appeals deserve to be rejected."

46. However none of the Judgments cited by the Revenue has dealt with the issue in favour of the Revenue and even the Manish Maheshwari (*cited supra*) also has decided the issue in favour of the assessee and not in favour of the Revenue. Though it was cited by the learned Senior Standing counsel appearing for the Revenue, the case law in Super Malls (P) Ltd., v. Principal Commissioner of Income Tax, New Delhi reported in (2020) 115 taxmann.com 105 (SC), the issue that was decided by the Apex Court in the said Super Malls case was whether, when Assessing Officer of searched person and other person is same, it is sufficient for Assessing Officer to record in satisfaction note, the documents seized from searched person belong to other person and there is no requirement of transmitting documents seized from searched person. The question was answered in the affirmative and in the said case, the Assessing Officer of searched person and other person, i.e., assessee of the case was same and he was satisfied that documents seized from searched person belonged to assessee which was specifically mentioned in satisfaction note as well. Therefore requirement of



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Section 153C was duly fulfilled.

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47. This case was mainly relied upon by the learned Senior Standing counsel appearing for the Revenue. But if we look at the satisfaction note recorded by the Assessing Officer of the searched person who is also happen to be the Assessing Officer of the other person who is the assessee herein, he has recorded as reproduced herein above in the earlier paras that, “for these and other grounds, I have reason to believe that income chargeable to tax has escaped assessment in this case and action is initiated under Section 153A of the Income Tax Act, notice is accordingly issued under Section 153A for the Assessment Year mentioned above. Absolutely, there has been no whisper about the satisfaction of the Assessing Officer with regard to other person, even in the note that has been prepared for the searched person.

48. There has been no separate note prepared for the other person who is the assessee herein and no such file or note has been produced before this Court and it is in fact admitted that a similar note with verbatim same language or words used in every note prepared for the Assessment Years



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1999-00, 2001-02, 2002-03. These are all the three years, for which the note prepared by the Assessing Officer which is form part of the file had been produced before this Court for perusal and remaining years, according to the affidavit filed by the Officer concerned, those files are not available and it was also stated during the argument by the learned Senior Standing counsel appearing for the Revenue that similar note must have been prepared in other Assessment Years also.

49. Be that as it may, the language used in the note as stated supra has made very clear that the satisfaction note has been recorded by the Assessing Officer only in respect of the searched person to initiate proceedings under Section 153A alone and in the complete absence of any satisfaction note recorded by the Assessing Officer of the searched person pertains to the other person who is the assessee herein, the said Judgment cited by the learned Senior Standing counsel appearing for the Revenue in Super Malls (P) Ltd., case also would not apply to the present case, because in the said case, since the Assessing Officer for both searched person and other person is one and the same, he was satisfied that the documents seized from



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searched person belong to assessee which was specifically mentioned in satisfaction note as well, therefore the Court accepted that the requirement of Section 153C was duly fulfilled.

50. No such satisfaction has been recorded herein as if the documents seized from the searched person belong to the assessee i.e., other person. In the absence of any such note, even the import of the said decision in Super Malls (P) Ltd., case, would no way help the case of the Revenue.

51. Therefore on the basis of the law that has been settled in various decisions of the Hon'ble Apex Court followed by the decisions of the various High Courts, the recording of satisfaction report is a *sine qua non* before initiating action under Section 153C of the Act. Based on the law settled by the Hon'ble Apex Court, the CBDT itself issued a Circular, where they have made very clear by way of clarification that even if the Assessing Officer of the searched person and other person is one and the same, then also he is required to record his satisfaction as has been held by the Courts. It has further been stated in the CBDT Circular at para 5 that, the pending litigation with regard to recording of satisfaction note under Section



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158BD/153C should be withdrawn / not pressed if it does not meet the guidelines laid down by the Apex Court.

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52. Therefore as per the CBDT Circular dated 31.12.2015 of Circular No.24/2015 in fact all these appeals should have been withdrawn by the Revenue as the circular issued by CBDT binding the Revenue.

53. Therefore, at no stretch of imagination, it can be stated that, even without a separate satisfaction note pertains to the other person by the Assessing Officer of the searched person such a proceedings under Section 153C can be invoked and completed. Hence, the view taken initially by CIT (Appeals) confirmed and concurred with the same by the ITAT in the order impugned are all in consonance with the settled legal proposition. Therefore we have no hesitation to hold that, absolutely there has been no infirmity attached with the orders passed by the ITAT which is impugned herein.

54. Resultantly, all these Appeals fail, therefore they are liable to be dismissed, accordingly all these Tax Case (Appeals) are dismissed.



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Therefore the Question of Law that was recorded or arisen in this batch of cases are answered in favour of the assessee and against the Revenue. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

(R.S.K., J.) (C.S.N., J.)
29.01.2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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**R.SURESH KUMAR, J.
AND
C.SARAVANAN, J.**

tsvn

**Common Judgment in
Tax Case (Appeal) Nos.1050 to
1058 of 2015, 1070 to 1078 of 2015,
1005 to 1008 of 2010 and 1018 to
1020 of 2010**

29.01.2025