

HIGH COURT OF MADHYA PRADESH : JABALPUR

I.T.A. No.44/2011, I.T.A. No.45/2011

I.T.A. No.48/2011, I.T.A. No.50/2011

I.T.A. No.53/2011, I.T.A. No.54/2011

I.T.A. No.56/2011

Commissioner of Income Tax

.....Appellant

Versus

M/s Mechmen 11-C, Industrial Area
Govindpura, Bhopal

....Respondents

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Coram:

Hon'ble Shri Justice A. M. Khanwilkar, Chief Justice

Hon'ble Shri Justice K.K.Trivedi, J.

Whether approved for reporting : Yes

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Shri Sanjay Lal, Advocate for the appellant/Commissioner of
Income Tax.

Shri A. P. Shrivastava, Advocate with Shri Sapan Usrethe,
Advocate for the respondent.

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Reserved On : 02.07.2015

Date of Decision : 10.07.2015

J U D G M E N T

{10th July, 2015}

Per: A.M. Khanwilkar, Chief Justice:

These appeals are filed by the Department qua single assessee
regarding seven separate assessment years i.e. 2000-01, 2001-02,

2002-03, 2003-04, 2004-05, 2005-06, 2006-07, bearing I.T.A. Nos.53, 48, 50, 54, 45, 44 and 56 of 2011 respectively. Moreover, these appeals emanate from a common order passed by the Income Tax Appellate Tribunal, Indore Bench, at Indore dated 29.12.2010. Since common substantial questions of law have been framed in these appeals, the same were heard analogously and, therefore, are being disposed of by this common judgment.

2. The respondent is a partnership firm carrying on the business of Hi. Tech Heavy Steel Fabricators and manufacturer for last more than 25 years. It is stated that the respondent has been maintaining regular books of accounts, which were duly audited under Section 44AB of the Income Tax Act (hereinafter referred to as the IT Act). Further, it had filed returns under Section 139(1) of the IT Act regularly. A search was conducted against the partners of respondent firm under Section 132(1) of the IT Act on 16.9.2005. A survey under Section 133A was conducted at the business premises of the respondent firm and no papers were impounded during the course of that survey. However, the Assessing Officer [ACIT-1(2)] issued notice under section 153C on 22.3.2006, calling upon the respondent to file returns for the AYs 2000-01 to 2005-06 within 30 days from the date of receipt of the said notice. The respondent

filed returns within the prescribed time on 24.4.2006 for the respective assessment years. The respondent also filed return for the Assessment Year 2006-07 under Section 139(1) on 30.10.2006. Besides, a response was also filed to the notice under Section 142 (1) dated 1.9.2007 on 28.9.2007. The Assessing Officer vide order dated 31.12.2007, passed under Section 153C/143(3) of the IT Act, made identical additions towards disallowances of purchase amounts and fabrication charges for all the assessment years and by making further addition towards excess stock in the Assessment Year 2006-07. Being aggrieved, the respondent filed seven appeals before the Commissioner of Income Tax (Appeals)-I, Bhopal, (M.P.), bearing Appeal Nos.CIT(A)-I/BPL/IT-275 to 281/2007-08. These appeals were decided by a common order passed by the First Appellate Authority dated 15.7.2008. Before the Appellate Authority, amongst other grounds, the principal grievance was about the inappropriate assumption of jurisdiction under Section 153C. With regard to that ground, the Appellate Authority relied on the decision of CIT (A), Jabalpur in the case of **Hotel Sonam and Smart Bar, Sagar** in appeal No.J/CIT (A)-1/ACIT/SAGAR/116 to 122/06-07 and extracted the relevant portion of Paragraph No.6.1 of that decision, which reads thus:-

“I have carefully considered the facts on record and the submissions made by the rival parties. First of all, it is noted that the section 153C affects the substantive rights of a person in so far as a person, who has not been searched is made to face the harsh consequences of reopening of six year cases. This section thus cannot be given a liberal interpretation since if it is so done, then the proceedings under this section can be initiated against a person-not-searched merely on the ground that some account or even a bank statement of the person has been found in a search action. If in such a case invoking of section 153C is held to be justified, then this section can become a ready tool for reopening six year cases on any pretext of a person, who had some dealing with the person-searched. The Id. A. R. has argued that before invoking section 153C there has to be some material on record to come out of the presumption of sec. 292C and which is possible only after confronting the impugned material to the person-searched. But no such finding of presumption not being application has been given before invoking section 153C. I find some merit in this claim. Further I also find that the satisfactions recorded in March’2006 for all the seven years were without application of mind as is evident from the fact that in all the other 12 cases, involving about 40 assessments, the assessing officer has recorded identical stereo type satisfactions by stating that during search actions carried out in December’2003 in the cases of Santosh Kumar Sahu and others incriminating documents pertaining to each of the years were found and seized whereas the fact is that in some of the years of some of those concerns were not in existence. However, these facts by themselves could not be regarded to be a sufficient ground to hold the invoking of section 153C was illegal. It is because of the reason that on a plain reading of sec. 153C, it does not transpire that recording of a satisfaction is a must. But at the same time, it is also to hold that it does not mean that required satisfaction could be highly subjective, not open to scrutiny by the appellate authorities. The minimum requirement to justify the invoking of sec. 153C is that at least it should be possible to gather a satisfaction-there should be some seized record pertaining to the assessee which had been found in a search action. Further the same should have also been confronted to the assessee. But during the assessment proceedings no seized record pertaining to the assessee was confronted to him. What were confronted were the documents impounded during the survey action conducted at its office. In view of these

facts, it is held that the invoking of section 153C against the assessee was bad in law. The proceedings so initiated, therefore, are held to be void ab-initio and all the assessments therefore, are declared ab-initio null and void.”

(emphasis supplied)

3. The First Appellate Authority found as of fact that, in the present case, no incriminating material attributable to the respondent was seized during the course of search at the premises of the searched person and there was no satisfaction or even the basis for satisfaction to issue a notice under Section 153C of the IT Act. It further held that no satisfaction has been recorded by the Assessing Officer even before issuance of notice under Section 153C. On these findings, the Appellate Authority concluded that the action of the Assessing Officer was illegal and invalid; and quashed the same for the concerned assessment years. The First Appellate Authority accordingly allowed the appeals filed by the respondents. The First Appellate Authority also considered other grounds raised by the respondent in the said appeals about denial of adequate opportunity, book of A/cs, finding of the Assessing Officer regarding undisclosed sales of Rs.9,73,541/-, bogus purchases for concerned assessment year, disallowances of fabrication expenses, levy of interest under Section 234 A, 234 B, 234C, credit for prepaid taxes for the concerned assessment years. However, those

aspects are not the relevant for the present appeals.

4. The Department carried the matter in appeal before the Income Tax Appellate Tribunal, Indore Bench at Indore by filing separate appeals which were numbered as I.T(SS).A.Nos.182 to 188/Ind/2008 for the concerned assessment years. The respondent assessee also filed cross objection numbered as C.O.No.126/Ind/2008 for A.Ys. 2003-04. All the above numbered appeals and cross objection were disposed of together by a common judgment by the Tribunal. The Tribunal, in turn, relied on its decision in the case of **M/s Chirchind Hydro Power Limited - IT (SS) A No.171. 172 and 174/Ind/2008** and also **M/s Gwalior Tanks & Vessels Limited – IT(SS) A No.175 to 181/Ind/2008.**

Paragraph Nos.78 to 82 of the said decision has been reproduced by the Tribunal for dealing with the question about the scope of Section 153C of the IT Act and the efficacy of notices issued by the Assessing Officer against the respondent therein. The same reads thus :-

"78. We have considered the rival contentions, carefully gone through the orders of the authorities below and deliberated on the case laws referred by the lower authorities in their respective orders and by the respective counsels during the course of hearing before us. From the record we find that the search was carried out at the residential premises of directors/partners of these concerns and not at the premises of these concerns. After the search was carried out at the

residence of directors/partners of these associate concerns, assessment was framed in respect of these concerns u/s 153C of the Act on the plea that incriminating material was found during the course of search at the residence of partners/directors. The assumption of power by the Assessing Officer u/s 153C of the Act for framing the assessment is subject to the condition that the Assessing Officer assessing the search party, is satisfied that the jewellery or other valuable articles or things or books of accounts or documents or assets, seized or requisitioned, pertain to some person other than the person referred to in section 153A, then the books of accounts or the documents or assets seized or requisitioned, shall be handed over by the Assessing Officer of searched person to the Assessing Officer having jurisdiction over such other person and that the Assessing Officer shall proceed against each of such persons and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A of the Act. The opening word of section 153C speaks that not-with-standing anything contained in sections 139, 147, 148, 149, 151 and 153, where the Assessing Officer is "satisfied" that any money, jewellery or books of accounts or documents seized or requisitioned belongs to a person other than the person referred to in section 153A, meaning thereby the Assessing Officer is to record a satisfaction to the effect that such jewellery or document so seized does not belong to the searched person but to some other person referred to in section 153A of the Act. Thus, the pre-requisite of section 153C is that the Assessing Officer making the assessment of the searched person has to satisfy himself that some material found during the course of search and seizure belongs to some person other than the searched person. Then the Assessing Officer making the assessment of searched person has to hand-over the said incriminating material belonging to some person other than the searched person to the Assessing Officer having jurisdiction over the said other person. Thereafter, the Assessing Officer having the jurisdiction over the person other than the searched person shall issue a notice u/s 153C to such other person and assess his income in terms of the provisions of section 153A of the Act. Thus, the notice u/s 153C of the Act is to be issued only after recording of satisfaction. The assumption of jurisdiction to issue notice and frame assessment under section 153C read with section 153A is acquired by the Assessing Officer only after having been satisfied and such satisfaction is recorded in writing. These provisions of section 153C are in pari materia with the provisions of

section 158BD which provides that the Assessing Officer making the assessment of the searched person has to satisfy himself that some undisclosed income found by him belongs to some person other than the searched person and then he or the Assessing Officer having jurisdiction over such other person after receipt of record from the Assessing Officer of the searched person has to issue notice u/s 158BD of the Act and has to assess income of such other person. The provisions of section 158BD of the Act were examined in detail by the Hon'ble Supreme Court in the case of Manish Maheshwari; 208 CTR 97. The said Hon'ble Supreme Court decision was followed by the Hon'ble Delhi High Court in the case of New Delhi Auto Finance Limited; 300 ITR 83. The Hon'ble Supreme Court has laid down a proposition that the Assessing Officer making the assessment of the searched person has to necessarily record in writing the specific objective satisfaction which is mandatory to the effect that the undisclosed income found by him, on the basis of seized material, belongs to some person other than the searched person. Insofar as the provisions of section 153C of the Act are in pari materia with the provisions of section 158BD of the Act with regard to the requirements of recording necessary satisfaction by the Assessing Officer of searched person, the law laid down by the Hon'ble Supreme Court in the case of Manish Maheshwari (supra) shall apply with full force in case of initiation of proceedings u/s 153C. The assumption of jurisdiction and framing of assessment by the Assessing Officer u/s 153C without recording such satisfaction is void ab initio. Applying the proposition of law laid down by the Hon'ble Supreme Court, as discussed above, it is quite evident that recording of satisfaction before issue of notice u/s 153C is mandatory and in case where no such satisfaction has been recorded by the Assessing Officer in the case of searched person to the effect that some incriminating material so found belongs to some other person, the assessment framed u/s 153C will be liable to be quashed. However, detailed finding has been recorded by the learned Commissioner of Incometax (Appeals) after examining the assessment records of the concerned person/parties to the effect that no satisfaction has been recorded by the Assessing Officer of the searched person. This finding of the learned Commissioner of Income tax (Appeals) has not been controverted by the department by bringing any positive material on record. Accordingly, applying this proposition of law, the assumption of jurisdiction and framing of assessment in the instant cases by the Assessing Officer u/s 153C were bad in law.

79 & 80

81. We have deliberated upon the contentions of the learned CIT DR, Shri K.K. Singh and learned counsel for the assessee, Shri H.P. Verma, with regard to interpretation of recording of satisfaction while assuming jurisdiction u/s 153C of the Act. Even in the new scheme of framing of assessment in case of search cases, the legislature has clearly stipulated the requirement for recording of satisfaction while assuming jurisdiction to issue notice and frame assessment u/s 153C of the Act which requires that satisfaction to be recorded with reference to the documents and other materials found during the course of search belonging to a person other than the searched person. Prima facie, Assessing Officer of searched person should form an opinion with regard to any document, valuable, etc. as found during the course of search that such document, which is declined by the searched person, actually belongs to some other person against whom proceedings u/s 153C are required to put into operation. After such recording, of satisfaction, the documents so seized should be handed over to the Assessing Officer of such other person. The legal requirement of recording of such satisfaction cannot be substituted by appraisal note which is prepared by the search party after completion of search insofar as such appraisal note is a secret document prepared by the department for their internal use, contents of which are not conveyed to the assessee nor its copy is supplied to the assessee even on making a written request. The appraisal note so prepared by the department is meant to monitor after the search proceedings are over so as to ensure exhaustive assessment of all searched person with respect to their correct income and to plan a strategy for further deep inquiry and investigation of documents found during the course of search. Since copy of such appraisal note is not supplied to the assessee, it cannot be taken at par with the requirement of recording of satisfaction note as stipulated u/s 153C of the Act, which is a mandatory requirement. What is the legislative intent of such satisfaction and in what manner it should be recorded has been dealt with in the judicial pronouncements in the cases of Manish Maheshwari and G.K. Drive Shaft by the Hon'ble Supreme Court. Accordingly, we are not inclined to agree with the proposition that the appraisal note prepared by the department should be treated as a satisfaction note as required to be recorded in terms of section 153C of the Act so as to empower the Assessing Officer to assume jurisdiction to issue notice and thereafter frame assessment u/s 153A read with section 143(3) of the Act.

82. In view of the above discussion, we do not find any infirmity in the order of the learned Commissioner of Income tax (Appeals) who has quashed the assessment framed u/s 153C of the Act. Further, the detailed finding recorded by the learned Commissioner of Incometax (Appeals) with respect to recording of satisfaction has not been controverted by the department by bringing any positive material on record. We, therefore, do not find any infirmity in the order of the learned Commissioner of Income tax (Appeals) quashing the assessments framed u/s 153C of the Act in the cases of all these assessee."

(emphasis supplied)

5. The Tribunal, advertent to the finding of fact recorded by the First Appellate Authority on the question under consideration; and agreeing with that finding, proceeded to dismiss all the appeals preferred by the Department. In this backdrop, present seven appeals have been filed by the Department against the common order of the Tribunal dated 29.12.2010.

6. These appeals have been admitted only on two substantial questions of law, which read thus:-

“(i) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in upholding the order of the CIT(A) quashing the assessment proceedings on the ground that the AO had not recorded, his satisfaction even which the AO making the assessment of searched person was himself having jurisdiction over such other person (i.e. the assessee) and thus was not required to record any satisfaction for initiating proceedings u/s 153C in case of the assessee?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in upholding the quashing of the assessment proceedings u/s 153C on the ground that the AO had not recorded, in writing, his satisfaction, by placing reliance on the decision of the Hon’ble Supreme Court in the case of Manish Maheshwari

vs. ACIT, 289 ITR 341 which was delivered in the context of section 158BD and not section 153C of the I.T. Act?”

7. Counsel for the Department more or less reiterated the grounds as were pressed into service by the Department before the Appellate Authority and the Tribunal. According to the appellant, manifest error has been committed in assuming that the procedure specified in Section 153C is identical or *pari materia* with the procedure prescribed in Section 158BD of the I.T. Act. For, Section 153C has been placed in Chapter XIV which deals with the procedure for assessment, unlike Section 158BD is placed in Chapter XIV-B which deals with the special procedure for assessment of search cases for block period and undisclosed income. It is contended that in the matter of search carried out with reference to the provisions under Chapter XIV the Assessing Officer is not required to record satisfaction that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned during search belongs or belong to a person other than the person referred to in Section 153A. Inasmuch as, the said Assessing Officer cannot have access to the information which may be germane to proceed against the person other than the person referred to in Section 153A. Besides, explanation can be offered by the other person (other than the

person referred to in Section 153A) on the basis of the returns already filed by him before the Assessing Officer having jurisdiction over that person. Further, if any tentative opinion is recorded by the Assessing Officer forwarding the material to the Assessing Officer having jurisdiction, that may result in preempting the discretion of the Assessing Officer having jurisdiction to form his own view on the subject matter. It is submitted that on a bare reading of Section 153C it is clear that it involves two stages. First stage is referable to the seizure made by the Assessing Officer engaged in search of the assessee within his jurisdiction and finds that the material (money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned) belongs or belong to a person other than the person under search. At this stage, the Assessing Officer carrying on the search of a person within his jurisdiction cannot assume that the said material has not been disclosed by the other person to be treated as undisclosed or escaped income of that person (other than the person referred to in Section 153A). That being a stage of investigation and enquiry, no opinion much less even tentative opinion need to be or can be expressed by the officer carrying on the search against the person referred to in Section 153A. The obligation of the Assessing

Officer, at this stage, is merely to forward the material not belonging to the person under search referred to in Section 153A to the Assessing Officer having jurisdiction over the other person for further action. It is further submitted that other person would be served with notice by the Assessing Officer having jurisdiction and proceeded in accordance with the provision of Section 153A where he would get opportunity to explain his position. It was faintly argued that the even notice to be sent by the Assessing Officer having jurisdiction need not record any reason or satisfaction for resorting to procedure under Section 153A of the I.T. Act; and moreso, in case the Assessing Officer for both the assessee is common, as in the present case the transaction are within the group of persons and firms belonging to the same persons. It is submitted that forwarding of the material by the Assessing Officer carrying on the search of a person referred to in Section 153A does not visit with any consequence to the other person (other than the person referred to in Section 153A) until the issuance of notice by the Assessing Officer having jurisdiction over such person.

8. The respondent, on the other hand, has supported the opinion of the Tribunal. That, the principle underlying the mandate of Section 158BD would apply on all fours to the procedure specified

in Section 153C of the I.T. Act. Because, the purpose of both the provisions is the same and the person against whom such notice is issued suffers the same consequence. The respondents have then invited our attention to the finding of fact recorded by the First Appellate Authority and affirmed by the Tribunal that no satisfaction has been recorded by the Assessing Officer having jurisdiction before issuing notice under section 153C. Further, none of the material adverted to, belong to the respondent or can be said to belong to it. Further, no addition or even observation has been made by the Assessing Officer having jurisdiction in any of the orders for the concerned assessment years on the basis of the material found during the course of search. Even for that reason, no action under Section 153C could have been initiated against the respondent. The respondent submits that the Assessing Officer who seized or requisitioned the material during the search of a person referred to in Section 153A as also the Assessing Officer having jurisdiction over the respondent have acted without jurisdiction.

9. Reliance was placed on the judgments of the Supreme Court and of different High Courts by the counsel appearing for the parties to buttress their arguments. The two decisions of the Supreme Court are in respect of scope of Section 158BD. In the

case of **Manish Maheshwari Vs. Assistant Commissioner of Income Tax & another**¹ and in the case of **Commissioner of Income Tax-III Vs. Calcutta Knitweares**². Even the Tribunal has referred to the decision of the Supreme Court on the scope of Section 158BD as no direct judgment of the Supreme Court on Section 153C was referred to. Besides the Supreme Court decisions on Section 158BD, reliance has been placed on the decisions of different High Courts with reference to the same provisions on Section 158BD. To wit, **Amity Hotels (P) Ltd. and others Vs. Commissioner of Income Tax and others**³ dated 5.10.2004, **New Delhi Auto Finance (P) Ltd. Vs. Joint Commissioner of Income Tax**⁴ dated 22.2.2008, **Commissioner of Income Tax Vs. Dawn View Farms (P) Ltd.**⁵ dated 16.10.2008, **Commissioner of Income Tax Vs. Panchajanyam Management Agencies and Services**⁶ dated 15.11.2010, **Commissioner of Income Tax Vs. Late Raj Pal Bhatia**⁷ dated 29.11.2010, **Commissioner of Income Tax Vs. Bimbis Creams and Bakes**⁸ dated 29.3.2012, **Creative Co-operative Credit Society Ltd. Vs. Amal Garg, Deputy**

¹ (2007) 289 ITR 341 (SC)

² (2014) 362 ITR 673 (SC)

³ (2005) 272 ITR 75 (Delhi)

⁴ (2008) 300 ITR 83 (Delhi)

⁵ (2009) 224 CTR 504 (Delhi)

⁶ (2011) 333 ITR 281 (Ker)

⁷ (2011) 333 ITR 315 (Delhi)

⁸ (2012) 254 CTR 633 (Ker)

Commissioner of Income-Tax⁹ dated 26.2.2014, **Asstt. Commissioner of Income Tax Vs. J.B. Enterprises and others**¹⁰ dated 26.6.2014. Since there is no direct judgment of the Supreme Court on Section 153C, reliance has been placed on the decisions of different High Courts on Section 153C, namely- of **SSP Aviation Ltd. Vs. Deputy Commissioner of Income-tax**¹¹ dated 29.3.2012, **Commissioner of Income Tax Vs. Classic Enterprises Cantt Road Lucknow**¹² dated 17.4.2013, **Commissioner of Income Tax (Central) Vs. Gopi Apartment**¹³, dated 1.5.2014, **Pepsi Foods Pvt. Ltd. Vs. Assistant Commissioner of Income Tax**¹⁴ dated 7.8.2014, **Pepsico India Holdings Pvt. Ltd. Vs. Assistant Commissioner of Income Tax and another**¹⁵ dated 14.8.2014 and lastly **Commissioner of Income Tax Vs. Madhi Keshwani**¹⁶ dated 11.3.2015.

10. Having considered the rival submissions, even though, the wider issues raised on behalf of the Department may not require consideration in the facts of the present case; and more particularly in the backdrop of the concurrent finding recorded by the two

⁹ (2014) 369 ITR 596 (Guj)

¹⁰ (2014) 24 ITJ 754 (MP)

¹¹ (2012) 346 ITR 177 (Delhi)

¹² (2013) 358 ITR 465 (All)

¹³ (2014) 365 ITR 411 (All)

¹⁴ (2014) 90 CCH 0017 (DelHC)

¹⁵ (2015) 370 ITR 295 (Delhi)

¹⁶ Income Tax Appeal No.108 of 2014 (All)

Appellate Authorities, we may deal with the same in this judgment as it may arise for consideration in the companion appeals heard analogously and are being disposed of by separate judgment passed today with reference to the concerned assessee.

11. The moot question is: whether there is any distinction or dissimilarity between Section 158BD and Section 153C of the I.T. Act? If we accept the argument of the Department, that the purpose underlying the two provisions is completely different, further investigation into the scope of Section 153C may become necessary. For the sake of convenience, therefore, we deem it apposite to advert to the relevant part of Section 153C which may have to be considered and juxtaposed with Section 158BD for answering the issue. Sections 153C(1) and 158BD reads thus :-

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

158BD. Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other 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 under section 158BC against such other person and the provisions of this Chapter shall apply

against each such other person and accordingly.
 issue such other person notice and
 assess or reassess income of such
 other person in accordance with the
 provisions of section 153A:

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

12. As the scope of Section 158BD has already been considered by the Supreme Court, we may first advert to the decision in the case of **Manish Maheshwari** (supra). After analyzing the relevant provisions for amplifying the efficacy of Section 158BD, in Paragraph No.7, the Court observed thus:-

“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 AO 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 AO has proceeded under Section 158BC against such other person.

The conditions precedent for invoking the provisions of Section 158BD, thus, are required to be satisfied before the provisions of the 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.”

(emphasis supplied)

13. In a recent decision of the Supreme Court in the case of

Commissioner of Income Tax-III Vs. Calcutta Knitweaves

(supra), although the question considered was at what stage the

Assessing Officer must record his satisfaction as envisaged in

Section 158BD. The observed thus:-

“38. Having said that, let us revert to discussion of Section 158BD of the Act. The said provision is a machinery provision and inserted in the statute book for the purpose of carrying out assessments of a person other than the searched person under Sections 132 or 132A of the Act. Under Section 158BD of the Act, if an officer is satisfied that there exists any undisclosed income which may belong to a other person other than the searched person under Sections 132 or 132A of the Act, after recording such satisfaction, may transmit the records/documents/chits/papers etc to the assessing officer having jurisdiction over such other person. After receipt of the aforesaid satisfaction and upon examination of the said other documents relating to such other person, the jurisdictional assessing officer may proceed to issue a notice for the purpose of completion of the assessments under Section 158BD of the Act, the other provisions of XIV-B shall apply.

39. The opening words of Section 158BD of the Act are that the assessing officer must be satisfied that “undisclosed income” belongs to any other person other than the person with respect to whom a search was made under Section 132 of the Act or a requisition of books were made under Section 132A of the Act and thereafter, transmit the records for assessment of such other person. Therefore, the short question that falls for our consideration and decision is at what stage of the proceedings should the satisfaction note be prepared by the assessing

officer: whether at the time of initiating proceedings under Section 158BC for the completion of the assessments of the searched person under Section 132 and 132A of the Act or during the course of the assessment proceedings under Section 158BC of the Act or after completion of the proceedings under Section 158BC of the Act.

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41. We would certainly say that before initiating proceedings under Section 158BD of the Act, the assessing officer who has initiated proceedings for completion of the assessments under Section 158BC of the Act should be satisfied that there is an undisclosed income which has been traced out when a person was searched under Section 132 or the books of accounts were requisitioned under Section 132A of the Act. This is in contrast to the provisions of Section 148 of the Act where recording of reasons in writing are a sine qua non. Under Section 158BD the existence of cogent and demonstrative material is germane to the assessing officers' satisfaction in concluding that the seized documents belong to a person other than the searched person is necessary for initiation of action under Section 158BD. The bare reading of the provision indicates that the satisfaction note could be prepared by the assessing officer either at the time of initiating proceedings for completion of assessment of a searched person under Section 158BC of the Act or during the stage of the assessment proceedings. It does not mean that after completion of the assessment, the assessing officer cannot prepare the satisfaction note to the effect that there exists income tax belonging to any person other than the searched person in respect of whom a search was made under Section 132 or requisition of books of accounts were made under Section 132A of the Act. The language of the provision is clear and unambiguous. The legislature has not imposed any embargo on the assessing officer in respect of the stage of proceedings during which the satisfaction is to be reached and recorded in respect of the person other than the searched person.

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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 the searched person.”

(emphasis supplied)

14. Thus, as envisaged by Section 158BD, “satisfaction” of the Assessing Officer before he transmits the material/records to other Assessing Officer having jurisdiction over such other person is *sine qua non*. Sans such satisfaction, the Assessing Officer cannot validly take recourse to the machinery provision.

15. We may now turn to Section 153C. No doubt, the form of Section 153C is dissimilar to that of Section 158BD. It is also true that the two provisions are embedded under different chapters. For, Section 153C is in Chapter XIV providing for procedure for assessment, whereas Section 158BD is found in Chapter XIV-B providing for special procedure for assessment of search cases. Further, Section 153C opens with non-obstante clause. However, the non-obstante clause in Section 153C is necessitated to give power to the Assessing Officer having jurisdiction to proceed against the person other than the person referred to in Section 153A, inspite of the action under Section 139, 147, 148, 149, 151 and 153 of the I.T. Act. However, on closer scrutiny of the two provisions, it is indisputable that, these provisions are machinery

provisions and have been provided for in the statute book for the purpose of carrying out assessment of a person other than the searched person under Section 132 or 132A of the I.T. Act in relation to Section 158BD; and Section 153A in relation to Section 153C. Notably, the purpose underlying both these provisions is similar, even though Section 153C does not specifically refer to the expression “undisclosed” income. However, in both the situations, the Assessing Officer engaged in carrying on search of the assessee within his jurisdiction, if seizes or requisitions the items (books of account or other documents or any assets for Section 158BD; and money, bullion, jewellery or other valuable article or thing or books of account or documents for Section 153C), is expected to handover those items to the Assessing Officer having jurisdiction over such other person and thereafter the Assessing Officer having jurisdiction has to proceed against such other person within his jurisdiction. Even for the purpose of Section 153C, the Assessing Officer before handing over the items to the Assessing Officer having jurisdiction must be “satisfied” that the items belongs or belong to the person other than the person referred to in Section 153A. That satisfaction of the concerned Assessing Officer is a *sine qua non*. The consequences flowing from the action to be taken on

the basis of such information handed over to the Assessing Officer having jurisdiction, for the assessee, who is a person other than the person referred to in Section 153A, is drastic – of assessment or re-assessment of his income falling within six assessment years.

16. Suffice it to observe that the dissimilarity of the form of two provisions would make no difference to the purpose underlying. The power bestowed on the Assessing Officer having jurisdiction – be it under Section 153C or Section 158BD – is identical.

17. We are not inclined to accept the argument of the Department that the purpose underlying the two provisions is different. We also find that even the procedure is not different. The subject matter of the action would differ in the context of the machinery provision invoked, in the given case. That, however, cannot be the basis to extricate the Assessing Officer, who resorts to power under Section 153C of handing over the items referred to in Section 153C to the Assessing Officer having jurisdiction, of his duty to be satisfied about the jurisdictional fact that the items belongs or belong to a person other than the person referred to in Section 153A.

18. The concomitant of this conclusion, is that, the legal position as applicable to Section 158BD regarding satisfaction in the first instance of the first Assessing Officer forwarding the items to the

Assessing Officer having jurisdiction; and in the second instance of the Assessing Officer having jurisdiction whilst sending notice to such other person (other than the person referred to in Section 153A), must apply *proprio vigore*. The fact that incidentally the Assessing Officer is common at both the stages would not extricate him from recording satisfaction at the respective stages. In that, the Assessing Officer is satisfied that the items referred to in Section 153C belongs or belong to a person (other than the person referred to in Section 153A), being *sine qua non*. He cannot assume jurisdiction to transmit those items to another file which incidentally is pending before him concerning other person (person other than the person referred to in Section 153A). The question as to whether that may influence the opinion of the Assessing Officer having jurisdiction over such other person, also cannot be the basis to take any other view. As a matter of fact, the other Assessing Officer to whom the items are handed over, before issuing notice must himself be satisfied after due verification of the items received and the disclosures made by the other person in the returns for the relevant period already filed by the other person before him. For the same reason, we must reject the argument of the Department that the discretion of the Assessing Officer having jurisdiction will be

impaired in any manner, if he were to hold a different view. Similarly, as there is no provision either express or implied (in the Act) to dispense with the requirement of satisfaction, if the Assessing Officer happens to be the same, as in this case, the argument of the Department must be negated.

19. After receipt of the materials, the Assessing Officer having jurisdiction is expected to conduct enquiry and due verification of the relevant facts; before forming his prima facie satisfaction. The Assessing Officer having jurisdiction will be well within his rights to form an independent view before issuing notice to the other person (person other than the person referred to in Section 153A) under his jurisdiction on the basis of his own enquiry. In our opinion, the view formed by the Assessing Officer after his own enquiry does not entail in seating in appeal over the satisfaction of the first Assessing Officer, who had handed over the items to him.

20. As a result, we hold that there is no infirmity in the view taken by the Tribunal on the questions under consideration. The view taken by us is reinforced from the decisions of other High Courts in the cases of **Commissioner of Income Tax (Central) Vs. Gopi Apartment** (supra), **Pepsi Foods P. Ltd.** (supra), **Pepsico India Holdings P. Ltd.** (supra) and lastly **CIT Vs. Madhi Keshwani**

(supra). The observations of the Delhi High Court in the case of **SSP Aviation Ltd.** (supra) have been explained in the subsequent case of **Pepsico India Holdings P. Ltd.** (supra).

21. We conclude that the condition precedent for resorting to action under Section 158BD delineated by the Supreme Court in the case of **Manish Maheshwari** (supra) and in the recent case of **Commissioner of Income Tax-III Vs. Calcutta Knitwears** (supra), would apply on all fours mandating satisfaction of the Assessing Officer(s) dealing with the case at the respective stages referred to in Section 153C.

22. Reverting to the substantial questions of law articulated while admitting these appeals, we hold that the same will be of no avail to the Department considering the fact situation of the present case and for the reasons mentioned hitherto. In that, we have rejected the argument that even in cases, under Section 153C the Assessing Officer(s) need not record satisfaction and in particular at both the stages – be it Assessing Officer of searched person or Assessing Officer having jurisdiction over such other person. Notably, the requirement of recording satisfaction is not for the benefit of the Assessing Officer(s), but lending credence to his satisfaction and on which matters the assessee can give meaningful explanation and

reason it out as and when opportunity is given to the concerned assessee.

23. In the present case, the concurrent finding of fact recorded by the Appellate Forums is that, no satisfaction has been recorded by the Assessing Officer before issuing of notice under section 153C. Further, none of the papers seized belongs or belong to the assessee (noticee). The Appellate Forums have further found that no addition or even observations have been made by the Assessing Officer in any of the orders for the relevant assessment years in connection with any material found during the course of search. Even for that reason no action under section 153C, is justified. These findings of fact need no interference and have not been questioned before us. Considering the above, these appeals must fail.

24. Accordingly, these appeals are **dismissed** with no order as to costs.

(A.M. Khanwilkar)
Chief Justice

(K.K.Trivedi)
Judge

Anchal