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

Reserved on: 05.02.2018
Pronounced on: 18.04.2018

\+ **ITA 791/2017**

PR. COMMISSIONER OF INCOME TAX DELHI-18..... Appellant
Through : Sh. Zoheb Hossain, Sr. Standing Counsel, for Revenue.

versus

M/S. N.S. SOFTWARE (FIRM) ..... Respondent
Through : Sh. Sudesh Garg, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT

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I. FACTS

1. This appeal has been filed under Section 260A of the Income Tax Act, 1961 ("the Act") for the Assessment Year (AY) 2009-10 against order dated 28.02.2017 of the Income Tax Appellate Tribunal ('ITAT' hereafter). The question of law framed for this appeal is as follows:

> *" Did the Income Tax Appellate Tribunal (ITAT) fall into error in quashing the assessment on the ground that it was not based upon a notice under Section 153C of the Income Tax Act, 1961?"*

2. The relevant facts of the case are that on 15.03.2004, the assessee Firm was established through a partnership deed between Sharada Erectors Private Limited and Mr. Rakesh Kumar Garg and his company. A search and seizure operation was carried out under Section 132 on 31.07.2008 in the Rajdurbar group of cases. During this operation, a hard disk containing books of accounts of the assessee were seized. After the assessee declared its total income to be NIL on 29.09.2009, a notice under Section 142(1) read with Section 153C was issued to the assessee on 23.07.2010. When it filed a reply on 27.08.2010 once again declaring its income to be NIL, further notices under Section 142(2) and 142(1) were issued. The Assessing Officer (AO, hereafter) by his order dated 28.12.2010 held the total taxable income for AY 2009-10 to be ₹ 1,56,99,738/-, and disallowed deductions claimed under Section 80IA. The reasons for disallowance recorded, *inter alia*, were as follows:

> *"11. The above details clearly suggest that the during the F.Y. 2008-09 corresponding to the A.Y. 2009-10, only three units were located in the Industrial park which is in contravention to the condition No. 5(i) of the approval letter dated 12.4.2005 issued by Ministry of Commerce and Industry. Furthermore, the tenant namely M/s Price water house Coopers (P) Ltd is occupying an area of 34186 square feet which is more than the 50 % of the total area of the industrial Park admeasuring 56560 Square feet. Thus the assessee has not fulfilled the conditions mentioned in Para 6 (f) and Para 9 (2) of the Industrial Park Scheme 2002. Furthermore, as no notification has been issued by the Central board of Direct Taxes notifying the said Industrial Park, therefore, conditions as mentioned in Rule 18 C (4) of the Income Tax Rules have also not been fulfilled by the assessee. In view of these facts it is held that the assessee is not eligible for benefits under section 801A (4) (iii)*

of the Act. Hence the deduction of Rs. 1,56,99,738/- as claimed by the assessee is disallowed."

3. The assessee appealed to the Commissioner of Income Tax (Appeals), (hereafter called "CIT (A)"). By order dated 09.04.2014, the CIT (A) held that the proceedings under Section 143(3) for AY 2009-10 were valid, and enhanced the taxable income to ₹1,91,49,006. The CIT (A), *inter alia*, held:

- Whether the seized documents were incriminating in nature could not be determined before conducting proceedings under Section 153C because the Ld. AO had never conducted any scrutiny assessments of the Assessee Firm.
- The initiation of proceedings under Section 153C was proper, and there was no obligation upon the Ld. AO to exhaustively list all the documents or reasons for his satisfaction in the note.
- For AY 2009-10, proceedings under Section 143(3) had been completed, and no notice under Section 153C was issued.
- The Assessee Firm participated in the proceedings under Section 153C without raising an objection before the Ld. AO.

4. The CIT (A)'s order was challenged before the ITAT by both parties. By the impugned order, the ITAT held that proceedings under Section 153C were *void ab initio* and quashed them. For so concluding, it *inter alia* held:

- The satisfaction note under Section 153C was defective because it did not provide the reasoning employed by the Ld. AO to conclude that the seized material belonged to the Assessee Firm.
- Moreover, the AO for Sh. Narendra Kumar Aggarwal did not record a separate satisfaction note as required by law. Courts

have consistently held that recording two separate satisfaction notes is necessary even if the Assessing Officer for the person from whose premises the material was seized is also the Assessing Officer for the person to whom the material belongs to. The revenue is aggrieved by the above decision of the ITAT.

Submissions of Parties

5. Mr. Zoheb Hossain, learned counsel for the Revenue argued that the ITAT failed to appreciate that the notice for AY 2009-10 was issued under Section 142(1), and not under Section 153C. Therefore, a satisfaction note was not mandatory in the present case. In any event, the CIT (A) found that the AO could have reasonably determined that the seized material belonged to the assessee based on circumstances surrounding the search and seizure. Counsel relied upon the observations of the CIT (A), to the following effect:

> *"4.2.1 It is noted that the books of accounts of the assessee firm were found in a computer found at the residence cum office premises of Mr. Narendra Kumar Aggarwal S/o Late Sh. R.C. Agarwal who was neither employee of the company nor a partner. Office Address of the assessee was different from the place where the books of accounts of the assessee's firm in the computer were located. The hard disk of the computer has been seized as Annexure A-26. In the statement recorded U/S 132(4) on 31.07.2008, Mr. Aggarwal has stated that he was an employee of V.K. Financial Services Pvt. Ltd. and drew salary of Rs. 20,000 per month. This there is no dispute that the documents belonging to the appellant' were found and seized during action U/S 132 of the Act. Whether these documents were incriminating or not could not have been decided before taking up proceedings U/S 153C, as for none of the A.Ys. in question, AO had not done any scrutiny assessments of the appellant in the past. There is also the search finding that the*

appellant group had not cooperated in supplying the documents and books of accounts of various companies and individuals and other members of the Rajdurbar Group. Thus, the AO had to verify the correctness of the declared income from the seized books of A/c found in the hard disk. In view of this it has to be held that the proceedings u/s 153C have been rightly initiated."

6. Learned counsel also relied on the satisfaction note of the AO, while issuing notice under Section 153C to the assessee. He also relied on the Indore Bench (of ITAT) in *Deputy Commissioner of Income Tax v. Sushil Kumar Jain* (2010 127 ITD 264). It was also urged that the ITAT should not have permitted the assessee to argue new aspects and points that were not urged and, therefore, not considered by the lower revenue authorities, including the CIT (A).

7. Learned counsel for the assessee, Mr. Sudesh Garg defended the impugned order and urged three broad submissions. He urged, firstly that the AO's decision did not outline any details of the documents which were seized on 31.07.2008. These documents were never shown to the assessee, and, therefore, it was unable to rebut any assumptions, for lack of opportunity. Counsel argued that the initiation of proceedings was unjustified because the seized material did not incriminate the assessee. The additions made by the AO are based on returns filed under Section 139, and they have no relation to the seized material. It was lastly urged that the AO failed to record a specific finding that the material seized belonged to the assessee. The satisfaction note was prepared in a mechanical manner without any application of mind by the AO to the specific facts of this case. Learned counsel relied on *CIT v. RRJ Securities Limited* (2015) 62 Taxmann.com 391 (Delhi)*; Pepsi Foods Pvt. Ltd. v ACIT* [2014] 52 taxmann.com 220 (Delhi)

and *Pepsico India Holdings Pvt. Ltd v ACIT* [2015] 371 ITR 295 (Delhi) in support of his submission that the ITAT's conclusions were justified.

Analysis and Conclusions

8. The satisfaction note of the AO, while issuing notice under Section 153C in this case, was as follows:

> *"A search operation was conducted on Raj Darbar Group of cases on 31.07.2008. During the course of Search operation at the premises of*
> *i) Party A-20, Residence Cum Office of Narender Kumar Aggarwal, 1st and 2nd Floor, 7, Western Avenue, Maharani Bagh –New Delhi.*
> *Various papers were found and seized belonging to M/s N S. Softwares Pvt. Ltd.*
>
> *The annexures are marked as under:*
>
> *PartyA-20*
> *Annexure 26, Hard Disc containing Books of Accounts of M/s NS. Softwares Pvt. Ltd.*
> *Thus the proceedings u/s 153C r/w. section 153A of the Income Tax Act 1961 are being initiated in the above case."*

9. The ITAT, in *Sushil Kumar Jain (supra)* held that issuing a notice under Section 153C for the previous search year is not mandatory, and the AO can issue a normal notice under Section 142(1) instead. The relevant extracts from the case are as follows:

> *"However, in our view, there cannot be a mandatory jurisdiction for six back years, even for those entities, which were not in existence in all such six years and which is also so because of the fact that jurisdiction under s. 153A is for assessment or reassessment of total income of each year falling in such period. Thus, scope of s. 153A, if viewed in this manner, cannot be interpreted to mean that assessment in respect of previous year in which search was conducted or requisition*

was made, cannot be made in accordance with provisions of s. 153A r/w s. 153B or 153C as contended by the assessee. It is further noteworthy that concept of broken period in the year of search applicable for block assessment is not present under the new scheme, hence, the AO has to wait to exercise the assessment powers after the relevant financial year during which search took place and such procedure, in fact, provides an opportunity to assessee to disclose unexplained assets/income in such return and avoid penalty. It is also pertinent to mention here that notice under s. 153A requiring the assessee to file return for such is, generally, not to be issued for the previous year of search or requisition precisely for the reason that the assessee is required to file return for such previous year of search in normal course and, in case of failure of the assessee to do so, the AO can issue notice under s. 142(1) of the Act to file the return under s. 139(4). Thus, absence of requirement of issue of notice under s. 153A for the year of search, in our opinion, does not result into an inference that assessment of previous year of search is to be made as per the normal provisions of the Act, specially when state of provisions of s. 153A is not different from scope of provisions of s. 143 for making assessment of total income of such year. We may further add that, in case, any notice under s. 153A is issued in case of such previous year, the same should be construed as issued under s. 142(1) as the scope object of these two provisions on the aspect of requiring the assessee to file the return is same. Even otherwise, under the new scheme, total income has to be computed as per the normal provisions of the Act and tax, interest and penalty also is to be levied as per the general provisions of the Act applicable to such assessment year, hence, there cannot be any prejudice to the assessee merely because an AO proceeds to make an assessment in case of year of search as per the provisions of s. 153A r/w s. 153B, particularly when time-limit of service of notice under s. 143(2), subject to provisions of s. 153B, would also be applicable (reasons on this aspect are given later in this order).”

10. In the same case, the Ld. ITAT went on to observe that the AO has to comply with Section 153A even if the assessment is with respect to the previous year in which the search was conducted and even if the due date for furnishing returns for that assessment year has not passed.

> *"Further, the provisions of s. 153C(2) also provide for completion of assessment in respect of the person other than the person referred to in s. 153A in the manner provided in s.153A. No doubt, the provisions of s. 153C(2) provide for specific situations wherein the assessment in respect of the assessment year relating to the previous year in which search is conducted under s. 132 or requisition is made under s. 132A has to be made in the manner provided in s. 153A. However, in our opinion, where AO having jurisdiction over such other person receives the books of account or documents, etc. before the due date of furnishing the return of income for such assessment year, then also, the assessment would be completed in the manner provided under s. 153A of the Act because in that case, the AO can assess/reassess under s. 153C(1) in routine course. We are, accordingly, of the view that if under specific circumstances as provided under s. 153C(2) assessment of a person covered under s. 153C has to be completed in the manner provided in s. 153A of the Act, then, there should not be any doubt that the assessment in case of a searched person for the year of search has to be completed under s. 153A r/w s. 153B of the Act."*

11. The assessee relied on the decisions in *RRJ Securities Limited (supra); Pepsi Foods Pvt. Ltd. v ACIT* [2014] 52 taxmann.com 220 (Delhi) and *Pepsico India Holdings Pvt. Ltd v ACIT* [2015] 371 ITR 295 (Delhi). In *RRJ Securities Limited (supra)*, clearly held that recording of a satisfaction note is the most important step in initiation of proceedings under Section 153C. The relevant extract from the case is as follows:

"13. The first and foremost step for initiation of proceedings under Section 153C of the Act is for the AO of the searched person to be satisfied that the assets or documents seized belong to the Assessee (being a person other than the searched person). The AO of the Assessee, on receiving the documents and the assets seized, would have jurisdiction to commence proceedings under Section 153C of the Act. The AO of the searched person is not required to examine whether the assets or documents seized reflect undisclosed income. All that is required for him is to satisfy himself that the assets or documents do not belong to the searched person but to another person. Thereafter, the AO has to transfer the seized assets/documents to the AO having jurisdiction of the Assessee to whom such assets/documents belong. Section 153C(1) of the Act clearly postulates that once the AO of a person, other than the one searched, has received the assets or the documents, he is to issue a notice to assess/re-assess the income of such person - that is, the Assessee other than the person searched - in accordance with provisions of Section 153A of the Act.

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

153A has to be construed as the date on which the AO receives the documents or assets from the AO of the searched person. Thus, by virtue of second proviso to Section 153A of the Act as it applies to proceedings under Section 153C of the Act, the assessment/reassessment pending on the date on which the assets/documents are received by the AO would abate. In respect of such assessments which have abated, the AO would have the jurisdiction to proceed and make an assessment. However, in respect of concluded assessments, the AO would assume jurisdiction to reassess provided that the assets/documents received by the AO represent or indicate any undisclosed income or possibility of any income that may have remained undisclosed in the relevant assessment years. This Court in CIT v. Kabul Chawla [2015] 61 taxmann.com 412 (Delhi) has held that completed assessments could only be interfered with by the AO on the basis of any incriminating material unearthed during the course of the search or requisition of the documents. In absence of any incriminating material, the AO does not have any jurisdiction to interfere in concluded assessments."

12. In *Pepsi Foods Pvt. Ltd.*, the Court has clarified that the Income Tax Act, 1961 creates a general presumption that documents found in the control and possession of a person belong to him or her. Therefore, to rebut this presumption, the AO should provide clear and cogent reasons which explain why the seized material belongs to somebody else. The relevant extract from the case is as follows:

"6. Section 132(4A)(i) clearly stipulates that when inter alia any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in Section 292C(1)(i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come

to a conclusion or "satisfaction" that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of "satisfaction".

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11. It is evident from the above satisfaction note that apart from saying that the documents belonged to the petitioner and that the Assessing Officer is satisfied that it is a fit case for issuance of a notice under Section 153C, there is nothing which would indicate as to how the presumptions which are to be normally raised as indicated above, have been rebutted by the Assessing Officer. Mere use or mention of the word "satisfaction" or the words "I am satisfied" in the order or the note would not meet the requirement of the concept of satisfaction as used in Section 153C of the said Act. The satisfaction note itself must display the reasons or basis for the conclusion that the Assessing Officer of the searched person is satisfied that the seized documents belong to a person other than the searched person. We are afraid, that going through the contents of the satisfaction note, we are unable to discern any "satisfaction" of the kind required under Section 153C of the said Act."

13. In *Pepsico India Holdings Pvt. Ltd* the meaning and scope of the term "belong" in Section 153C was explained as follows:

"14. In view of this phrase, it is necessary that before the provisions of Section 153C of the said Act can be invoked, the Assessing Officer of the searched person must be satisfied that the seized material (which includes documents) does not belong to the person referred to in Section 153A (i.e., the searched person). In the Satisfaction Note, which is the subject matter of these writ petitions, there is nothing therein to indicate that the seized documents do not belong to the Jaipuria Group. This is

even apart from the fact that, as we have noted above, there is no disclaimer on the part of the Jaipuria Group insofar as these documents are concerned.

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

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

15. *Principal Commissioner of Income Tax v Nikki Drugs & Chemicals Pvt. Ltd.* [2015] 64 taxmann.com 309 (Delhi)**,** was a case where Court held that separate satisfaction notes must be recorded even if the Assessing Officer of the person from whose premises the document is seized is the

same as the Assessing Officer of the person to whom the document belongs. The Court explained its reasoning as follows:

> *"17. In the present case, the ITAT specifically recorded that, admittedly, a satisfaction note had not been recorded by the assessing officer of the searched person. It was contended by the Revenue before the ITAT that the assessing officer of the searched i.e. SVP Group was not required to record such satisfaction as both the Assessee and the SVP Group were being assessed by the same officer. This contention was rejected by the ITAT by following the decision of this Court in Pepsi Foods Pvt. Ltd v. Asstt Commissioner of Income Tax : (2014) 367 ITR 112 (Del).*
>
> *18. This Court has also expressed a similar view in Commissioner of Income Tax-7 v. RRJ Securities Ltd.: (2015) 62 taxmann.com 391 (Delhi). Thus, the controversy whether it is necessary for the assessing officer of the searched person to record his satisfaction that the assets/documents seized belong to the assessee other than the searched person is no longer res integra. It is settled that recording of such satisfaction is sine qua non for commencing any proceedings under Section 153C of the Act. Thus, the decision of the ITAT in this regard cannot be faulted."*

16. *ARN Infrastructure India Ltd. v ACIT, New Delhi* [2017] 81 taxmann.com 260 (Delhi), too affirmed the holding in *RRJ Securities (supra)* and held that seized material cannot be used for reopening concluded assessments under Section 153C unless the material was incriminating in nature. The Court applied this principle to the facts of that case and held as follows:

> *"17. As regards the other document seized, and mentioned in the Satisfaction Note viz., the extract of the ledger account maintained by the Petitioner concerning the payments of commission made by it to RGEPL, even if it is held to 'belong'*

to the Petitioner, it could hardly be said to be an 'incriminating' document. This was a document relevant only for the AY 2010-11. It could not have been used for re-opening the assessments of the earlier years i.e. AYs 2007-08 to AY 2009-10, 2011-12 and 2012-13. This position again stands settled by the decision in RRJ Securities Ltd (supra). The fact that the Revenue's SLP against the said decision is pending in the Supreme Court does not make a difference sine the operation of the said decision has not been stayed.

18. While the ledger account extract may be relevant for AY 2010-11, it cannot be said to be incriminating material warranting re-opening of the assessment. The return originally filed by the Petitioner for the said AY 2010-11 was picked up for scrutiny and finalised by an assessment order under Section 143 (3) of the Act. The payments of commission to RGEPL to the tune of Rs. 4.95 crores as reflected in the ledger account was already disclosed in the Petitioner's accounts which were examined while finalising the regular assessment. Therefore, the ledger account could not have led the AO to be satisfied that any income had escaped assessment for the AY 2010-11.

19. The net result is that neither of the documents mentioned in the Satisfaction Note could have formed a valid basis for the AO to initiate proceedings against the Petitioner under Section 153 C of the Act for AY 2010-11 or any of the other years as proposed."

Analysis and Conclusions

17. In this appeal, the scope of controversy between the revenue and the assessee has been narrowed down to a single question of law. At this stage, we are only concerned with whether the proceedings against the Assessee Firm for AY 2009-10 were conducted under Section 153C read with Section 143(3) or only under Section 143(3). The AO Order for AY 2009-10 explicitly states that it has been passed under Section 153C read with Section

143(3). However, the CIT Order states that for AY 2009-10, the assessment was done under Section 143(3). It is worth noting that for all other assessment years from 2005 to 2009, the Ld. CIT recorded that the assessment was under Section 153C read with Section 143(3). It is just for AY 2009-10 that the Ld. CIT found the assessment to be done under Section 143(3) only.

18. The reliance by the revenue on *Sushil Kumar Jain* (supra) to say that issuing a notice under Section 153C was not necessary for AY 2009-10 because the year immediately preceding it was the search year i.e. 2008 is not apt, because that case was only concerned with non-issuance of notice under Section 153A, and not Section 153C. A normal notice issued under Section 142 can serve as a substitute for a notice under Section 153A because both these provisions serve the same purpose of directing the assessee to file returns. However, the function served by a satisfaction note under Section 153C is completely different. The special nature of Section 153C was noted in *Pepsi Foods Pvt. Ltd,* as follows:

> *"Under Section 158BD the Assessing Officer's satisfaction is with regard to 'undisclosed income' belonging to a person other than the searched person. It is obvious that such satisfaction under Section 158BD by its very nature has to be prima facie and tentative. The same methodology cannot be imported into Section 153C where, in our view, the Assessing Officer is required to arrive at a conclusive satisfaction that the document belongs to a person other than the searched person because such Assessing Officer has to rebut the normal presumptions which are suggested by the statute under Sections 132(4A)(i) and 292C(1)(i) of the said Act."*

19. Therefore, that decision does not aid the revenue in this case. Further, the AO Order explicitly states that the assessment for AY 2009-10 was carried out pursuant to Section 143(3) read with Section 153C, and the Income Tax Department has failed to provide an explanation for this discrepancy. Finally, the timeline of events indicates that notices under Section 142(1) and Section 153A were issued on the same day that the satisfaction note was prepared i.e. 23.07.2010. Even for assessment years 2005 to 2009 for which the Assessee Firm had already filed returns, the revenue did not initiate any proceedings till the Assessee Firm filed its return for AY 2009-10 as NIL. If the Ld. AO had initiated proceedings for reassessment of returns filed for assessment years 2005 to 2009 under Section 153C before the filing of returns for AY 2009-10, it would have been plausible that the satisfaction note was only relevant for assessment years 2005 to 2009 and that the proceedings for AY 2009-10 were solely carried out under Section 142 and 143. However, in the present case, since the notice under Section 142(1) was issued on the same day as the satisfaction note, it is very difficult to sever them from each other.

20. After holding that the assessment for AY 2009-10 was conducted pursuant to Section 143(3) read with Section 153C, it is now necessary to determine whether the satisfaction note in the present case is valid. The satisfaction note recorded by the Ld. AO reads as follows:

> *"23.07.2010*
> *A search and operation was conducted on Raj Darbar Group of cases on 31.07.2008. During the course of Search and operation at the premises of*

i) Party A-20, Residence Cum office of Narendra Kumar Aggarwal, 1st & 2nd Floor, 7, Western Avenue, Maharani Bagh, New Delhi.
Various papers were found and seized belonging to M/s. N S Software Pvt. Ltd. the annexure are marked as under:
Party A-20
Annexure A-26, Hard Disk containing Books of Accounts of M/s N. S. Software Pvt. Ltd.
Thus the Proceedings u/s 153C r.w.s. 153A of the Income Tax Act 1961 are being initiated in the above case."

21. The CIT Order upheld the validity of the satisfaction note by providing the following reasoning:

"4.2.2 I have also examined the hard disk seized from the premises of Mr. Agarwal. Apart from containing documents and books of accounts of various companies and individuals and other members of the Rajdurbar Group. Thus, the AO had to verify the correctness of the declared income from the seized books of A/c found in the hard disk. In view of this it has to be held that the proceedings u/s 153C have been rightly initiated. I have also examined the hard disk seized from the premises of Mr Agarwal. Apart from containing the books of accounts of the appellant firm, there is also a soft copy of partnership deed dated 01104/2007 (placed as Annexure-X to this order). It is not ascertainable as, to whether the said deed was executed. In this partnership deed it has been mentioned that M/s Narsi Properties Pvt. Ltd., one of the partners, vide Board resolution dated 25th of February 2007, have decided to retire from the partnership with effect from 31/03/2007. The said company belongs to Rajdurbar group. It is however seen that no such change' in the partnership has been reflected in the return of income of the appellant filed for A.Y.2008-09. The return of income for the said A.Y. has been filed subsequent to the date of search and there is no change in the constitution of the firm. It is noted that there is a specific mention of Board

Resolution dated 25/02/2007 in the said deed.

4.23 From the contents of the partnership deed, I going to hellot is also evident that the share of Mr Rakesh Kumar Garg had in the partnership increased from 8% to 50% at the cost of M/s Narsi Properties Private Ltd. The firm is owner of a huge and valuable property in the heart of Mumbai, which fetches rentals of more than Rs. 5 crore per annum. The property has been let out to Price Waterhouse group on a eleven-years-nine-months Leave & License agreement. In the said partnership deed, there is no mention of anyone paying towards goodwill etc. to the retiring partner in spite of the appellant owning such valuable property which earns huge income. The retiring partner M/s Tarsi Properties Private Ltd has surrendered its share in the firm without any consideration to a 'Related Party' i.e. its own main shareholder/Director/member of the 'Rajdurbar Group'. The transaction is between the related parties and one of them is shown to be retiring without any consideration. The retiring party is the person who had in fact brought/borrowed the initial amount used for making payments to the hitherto actual owners of the property. Under the Income Tax Act, partnership deed is an important document that determines the expenses like salary and interest payable to the partners. Further there are restrictions on the interest and remuneration payable to partners. The appellant has charged interest on borrowed funds to its P&L account. There is, thus, a clear case of a transaction reflected in the document belonging to the appellant which had a tax angle. This transaction is not reflected in the books. However, due to search action, it is possible that, the appellant and the partners have decided not to give effect to this partnership deed which in all probability must have been executed as on the date of search (and not found by the search party) as is evident from the date of Board resolution (25/02/2007) of the retiring company and the date of the partnership deed itself (01/04/2007).

4.2.4 Further Mr Rakesh Kumar Garg along with other members of Rajdurbar group have been found to have indulged

in several measures that have resulted in alleged suppression of income and tax evasion. The group has surrendered nearly Rs. 100 crore as 'Undisclosed income' an ago included the same in their returns of income of various members of the group. One of the methods followed by the group is to borrow funds in the hands of the company earning rental income and pay interest on such borrowed funds. However these funds are subsequently transferred to the group concerns interest free. Thus, the group has indulged in reducing tax liability on the rental income of the properties through this method.(example is that of Narendra Impex Pvt. A.Y.2009-10). In the appellant's case also the borrowed funds have been transferred to the group concerns or to the partners without charging interest.

4.2.5 Therefore, the circumstances show that the books of accounts. and other documents like Reconstitution of partnership found in possession of a person other than the employee or partner and at a place not belonging to the appellant firm coupled with other factors as explained above, makes it evident that the AO had to initiate proceedings u/s 153C of the Act in order to at least ensure that the appellant has declared income and filed the returns of income as per the books of A/c found in the computer kept at a place other than the appellant's business address… There is no requirement under the law that the AO should mention or give an exhaustive list of all the documents or reasons in the satisfaction note before initiating proceedings u/s 153C. To the extent that, the documents, belonging to the firm were recovered from the premises, where search u/s 132 was carried out, there appears to be no impropriety in initiation of proceedings u/s 153C."

22. The ITAT Order reversed the CIT Order and found the satisfaction note under Section 153C to be inadequate based on the following grounds:

"3.4.2 The perusal of the satisfaction note clearly indicates that the action under Section 153C of the Act was not based on the correct legal foundations. The following may kindly be noted:-

i. Ld. AO didn't even indicate how vaguely referred documents in the satisfaction note were found to be belonging to the assessee within the meaning of section 153C of the Act.
ii. No mention of any documents belonging to the appellant in the assessment order ultimately passed under section 153C lead to the conclusion that these documents had no relevance or belongingness to the assessee.
iii. Ld. AO doesn't even for record's sake record satisfaction for initiating valid proceedings under section 153C except in the heading.
iv. There is no recording/ reference about the contents of these documents allegedly pertaining to the appellant. Even in the assessment order, no such mention has been made. This indicates how irrelevant those assumed documents were to the assessment of the appellant.
v. No satisfaction note has been recorded by the assessing officer of Sh. Narendra Kumar Aggarwal from whose premises the documents etc. allegedly belonging to the appellant were seized which was apparently the basis for the satisfaction of assessing officer of Sh. Narendra Kumar Aggarwal that the documents belonged to the appellant. It is necessary that the assessing officer of the entity in whose hands the documents/asset was/were seized records a satisfaction that the document/asset belonged to some other entity. This has been repeatedly held to be necessary for invoking jurisdiction u/s 153C by higher judicial authorities including the jurisdictional High Court.
vi. Even the name of appellant has been mentioned incorrectly as N.S. Software Pvt. Ltd. In place of N.S. Software vii. The AO has mentioned in the satisfaction note that books of account of M/s N.S. Softwares Pvt. Ltd. were found and seizes. There is no such entity called M/s N.S. Softwares Pvt. Ltd. This indicates gross non application / mechanical application of mind by the assessing officer."

23. This court concurs with the impugned order. In the present case, the Ld. AO has not explained steps taken by him to determine that the seized

material belonged to the Assessee Firm. The satisfaction note has been prepared in a standard mechanical format and it does not provide any details about the books of accounts which allegedly belong to the Assessee Firm. Most importantly, a satisfaction note was not recorded by the AO of Sh. Narendra Kumar from whose premises the documents were seized. In light of the decision in *Nikki Drugs and Chemicals Pvt. Ltd.* it is now a settled proposition of law that even if the Assessing Officer for the person from whose premises the documents are seized is the same as the Assessing Officer for the person to whom the document belongs, separate satisfaction notes must be recorded. Here the AO's note nowhere reflects whether any document seized, on application of his mind, disclosed that it belonged to the assessee, and if so, its *prima facie* nature. Whilst an AO of the searched party and that of the individual under Section 153C may be the same, nevertheless at the stage of sending notice under Section 153C, the AO has to record a specific reason or reasons, *why the material seized from the other person has a nexus to the assesse, to whom the notice under that provision is addressed.* In this case, this never happened. Thus, for the previous years, the rule in *Commissioner of Income Tax v Kabul Chawla* 380 ITR 573 (Del), i.e., that in the absence of any incriminating materials, the previous years' assessments cannot be disturbed, applies.

24. In the present case, therefore, the failure of the AO to record a specific satisfaction as to how the recovered material belonged to the assessee in the note that preceded the notice issued under it, vitiates the assessments. As far as the pending assessment year is concerned, the return was filed on 29.09.2009. No notice in terms of Section 143 (2) had been issued to the

assessee, and the time provided by law had expired by the time its AO received the papers from the searched party. Notice issued, necessarily, in terms of Section 153C (2) had to be in the light of the satisfaction that the books of account or materials seized are relevant (i.e. *"..that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess* the *income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A".* As held by previous decisions, without that nexus, and fulfillment of the preconditions, clearly, the option provided by Section 153C (2) to proceed against pending or assessments cannot be made recourse to. Since the satisfaction in terms of Section 153C (1) was clearly inadequate (assuming that the original satisfaction, transmitting the papers to the assessee's AO was valid), the assessment completed for these years was also invalid. The court also notices in this regard, that the *non-obstante* provisions in both Sections 153A and 153C are identical; they override Sections 136, 147, 148, 149, 151 and 153. However, they do not override the mandatory provisions of Sections 142 (2) or 143 (2). This legislative design is taken further by Section 153 (2) (a) to (c) which are relatable to the satisfaction under Section 153C (1) notice, i.e. that if notice for pending assessments have not been issued, to take further proceedings, and the time has lapsed, the only condition when they can be taken forward, is if the satisfaction with respect materials seized are

relatable to the assessee is through application of mind and not a mechanical one, as insisted by *RRJ Securities (supra), Pepsico Holdings India Ltd (supra), Nikki Drugs (supra) etc.*

25. For the above reasons, the question of law is answered against the revenue; its appeal fails. The Appeal is, therefore, dismissed without costs.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

APRIL 18, 2018