

## Amit K. Patel,, Mehsana vs Assessee on 31 May, 2016

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "B" BENCH

Before: Shri Anil Chaturvedi, Accountant Member  
and Shri S. S. Godara, Judicial Member

IT(SS)A Nos. 258 to 260 /Ahd/2013  
A.Y. 2007-08, 2008-09 & 2010-11

Shri Anilkumar G. Darji,  
14, Shivalik Villa, Nr.  
Rajpath Club, Ambali Road, Ahmedabad-  
380058  
PAN: AAW PD3288R  
(Appellant)

Vs

The ACIT,  
Cir:1(1),  
Ahmedabad  
(Respondent)

Revenue by: Shri Jagdish, CIT-D.R.  
Assessee by: Shri S.N. Divetia, A.R.

IT(SS)A No. 254 & CO No. 211 /Ahd/2013  
Assessment Year 2008-09

The ACIT,  
Central Circle 1(1),  
Ahmedabad  
(Appellant)

Vs

Shri Amit K. Patel,  
65, Snehkunj Society,  
Opp. Eye Hospital,  
Malgodown Road,  
Mehsana-384002  
PAN: AGMPP0135D  
(Respondent/Cross  
Objector)

Revenue by: Shri Jagdish, CIT-D.R.  
Assessee by: Shri Anil Kshatri ya, A.R.

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11  
Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel

IT(SS)A No. 256 & CO No. 213/Ahd/2013  
Assessment Year : 2008-09

The ACIT,  
Cir:1(1),

Shri Narendra R. Patel,  
21, Silicon House,

Ahmedabad  
(Appellant)

Vs

Behind Kalapi Nagar,  
Radhanpur Road,  
Mehsana-384002,  
PAN: AJCPP7450L  
(Respondent/Cross  
Objector)

Revenue by:  
Assessee by:

Shri Jagdish, CIT-D.R.  
Shri Anil Kshatri ya, A.R.

Date of hearing  
Date of pronouncement

: 02-05-2016  
: 31-05-2016

/ORDER

PER BENCH:-

This batch of seven cases pertains to three different assesseees. First assessee Shri Anil Kumar G. Darji has instituted three appeals IT(SS)A Nos. 258 to 260 of 2013 in assessment years 2007-08, 2008-09 and 2010-11 against separate orders of the CIT(A)- I, Ahmedabad all dated 19-04-2013, passed in appeal Nos. CIT(A)- I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 3 Assesseees: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel I/CC.1(1)/320/2011-12, CIT(A)-ICC.1(1)/321/2011-12 and CIT(A)- ICC.1(1)/322/2011-12; respectively.

2. We come to second assessee Shri Amit K. Patel. The Revenue has filed IT(SS)A 254/Ahd/2013 followed by his cross objections no. 211/Ahd/2013 in assessment year 2008-09 against the order of CIT(A)-I, dated 05-04-2013 in case no. CIT(A)- I/CC.1(1)/268/2011-12

3. The Revenue has preferred appeal IT(SS)A 256/Ahd/2013 in case of third assessee Shri Narendra R. Patel in assessment year 2008-09 followed by his CO No. 213/Ahd/2013 against the CIT(A)-I order dated 05-04-2013 passed in case no. CIT(A)- I/CC.1(1)/279/2011-12 Relevant proceedings in assessment years 2007-08 and 2008- 09 hereinabove are u/s. 153C r.w.s 143(3) of the Income Tax Act, 1961; in short "the Act". Last assessment year 2010-11 involves proceedings u/s. 143(3) of the Act.

4. We come to respective pleadings first. First assessee Shri Anil R. Darji pleads two substantive grounds in assessment year 2007-08. The first one challenges validity of section 153C proceedings. Latter ground on merits assails correctness of unexplained investment addition u/s. 69 of Rs. 56,61,200/- made by the Assessing Officer and affirmed in the lower appellate order.

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 4 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel This assessee in assessment year 2008-09 raises identical no. of grounds inter alia testing validity of section 153C proceedings as well as unaccounted short term capital gain enhancement of Rs. 1,61,21,622/-; respectively.

Shri Anil R. Darji raises multiple grounds in assessment year 2010-11 inter alia in testing legality of section 143(3) proceedings followed by other pleadings on merits. The same would be discussed in detail in succeeding paragraphs.

5. We come to second assessee Shri Amit K. Patel. The Revenue files IT(SS)A 254/Ahd/2013 in challenging CIT(A)'s order deleting substantive addition of Rs. 54,26,376/- and the one made on protective basis of Rs. 32,53,733/-; respectively made by the Assessing Officer in the nature of unaccounted income based on seized material. The assessee's cross objection CO No. 211/Ahd/2013 raises following grounds:-

"1) On the facts & circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the jurisdiction and validity of the initiation of the proceedings and the assessment order passed U/S.153A/153C, without considering the ground (amongst others) that without having recorded the satisfaction by the A.O. prior to the issuance of notice U/S.153C of the Act, the initiation of proceeding U/S.153C is illegal, unlawful and bad in law.

2) The Ld. CIT(A) has erred in law and on facts that as though the income from the deal of land bearing Revenue Survey No.217/1 & 217/2, Chandolia was held to be an adventure in the nature of trade and to be taxed as business income being income from I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 5 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel business or profession and not income from Capital Gain and also in view of the fact as upheld by the Ld. CIT(A) that entire cash for all the transaction of sale as well as purchase of this land was done by Anil G Darji and not by any other person then the alternative plea taken to grant deduction u/s 28 of the Act for the alleged equivalent share of profit out of sale consideration as retained/siphoned off by Anil G Darji should have been given as set off being incidental business loss as per the alternative plea raised by the appellant before the A.O. and the Ld. CIT(A).

3) On the facts and circumstances of the case and in law and also in view of the finding of fact recorded by the Ld. CIT(A) that cash amounting to Rs.56,61,200/- has been paid by Anil G Darji out of unexplained sources and cash amounting to Rs.41 lakhs was paid out of money received from Umiya group person then in view of the above there could be no occasion for taxing the sum of Rs.32,53,733/- on protective basis at the rate 1/3rd of Rs. 97,61,200/-

(1/4th share as upheld by Ld. CIT(A)) for the assessment year under consideration as land had been purchased and the payment was made for this land as land was not sold to Suresh Patel & Vishnu Patel, therefore, ground No. 2 of the departmental appeal deserves to be dismissed/rejected."

6. This leaves us with the third Shri Narendra R. Patel. The Revenue has preferred IT(SS)A 256/Ahd/2013 against the CIT(A)'s order deleting unaccounted capital gains addition on sale of lands of Rs. 53,70,646/- and Rs. 32,53,733/- made on substantive and protective basis respectively by the Assessing Officer on the basis of various seized documents. The assessee's CO therein is stated to be identical to those extracted in preceding paragraphs.

7. We come to relevant facts first in assessment years 2007-08 and 2008-09. These three assesseees are assessed as individuals. Shri Anil Darji deals mainly in petroleum products. Latter two I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 6 Assesseees: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel assesseees derive income from partnership firms, capital gains and other sources. The department conducted a search in case of M/s. Umiya Group and one of its partner Shri Vikas R. Patel. It came across an MOU(memorandum of understanding) dated 07-04-2007 pertaining to land plot no. 32, TP no. 29 of survey no 217/01 and 217/02 at Chandlodia, Ahmedabad admeasuring 2956 sq. yd. The same indicated that these three assesseees had agreed to sell the above stated land to vandeess S/sh Brijesh and Mahendra D. Patel @ Rs. 10,171/- per sq. yd as against Shri Vikas R. Patel's statement recording during search revealing therein cash payments of Rs. 2.5 crores made. The registered sale deed 31-10-2007 had quoted consideration amount as Rs. 20 lacs. Shri Patel deposed in his statement that these transactions had been entered by his firm M/s. Uma Shakti Corporation for the project "Umiya Tirth Residency". The assessment year 2008-09 also contains identical facts.

8. The Assessing Officer in both these two assessment years recorded section 153C satisfactions. The same is dated 14-07-2011 in Shri Darji's cases and dated 19-07-2011 in appeals relating to Shri Amit K. Patel and Shri Narendra R. Patel. The Assessing Officer thereafter completed assessments in the cases of all the three assesseees making the above stated additions as confirmed/modified by the CIT(A) indicated hereinabove leaving all the three parties aggrieved to the extent of their grievances narrated in preceding paragraphs.

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 7 Assesseees: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel

9. S/Sh S. N. Divetia, Anil Kshtriya and Jagdish (CIT- Departmental Representative) represent the assesseees Anil R. Darjee, Shri Amit Patel and Narendra R. Patel and Revenue respectively. They state that first and foremost issue involved in assessment year 2007-08 and 2008-09 is a legal one challenging validity of section 153C proceedings taken recourse to by the Assessing Officer and upheld in the lower appellate orders under challenge. It is submitted that the same goes to the very root of the matter. We accordingly take up this legal issue in all cases pertaining to assessment years 2007-08 and 2008-09 for adjudication.

10. Shri Divetia opens up arguments at the behest of Shri Anil R. Darji. He submits that the department had conducted the impugned search in case of M/s. Umiya group and its partners Shri Vikas R. Patel on 04-03-2010. The same led to seizure of above stated incriminating documents. He makes it clear that Assessing Officer in case of the searched parties and assessee's case is the same. He recorded satisfaction on 14-07-2011 that the relevant documents in the nature of above stated MOU (supra) etc belonged to the assessee for the purpose of initiating section 153C proceedings. Shri Divetia takes us to the relevant satisfaction note reading as under:-

"A search operation u/s 132 was conducted on Umiya Group by issuing warrants of authorization u/s 132 of the IT Act on 04.03.2010 and various documents/books of account/other valuable articles/other things were found and seized from the various premises covered u/s 132 of the IT Act.

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 8 Assessee: Shri Anilkumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel On verification of various documents found and seized from the residential premises of Shri Vikas R Patel situated at 23, Uma Bungalows, R.C. Technical Road, Ghatlodia, Ahmedabad, it is noticed that the page no 1-6 of annexure A-1 are 'Memorandum of Understanding' dated 07/04/2007 pertaining to the land at Final Plot No.32, TP No. 29 of Survey No.217/1 and 217/2 at Chandlodia admeasuring 2472 sq.mt. (2956 sq.yd). This memorandum of understanding is between Shri Brijesh S. Patel and Shri Mahendra D. Patel (First Party) and Shri Anilkumar G. Darji, Shri Amitkumar K Patel and Shri Narendra R Patel (Second Party). This memorandum of understanding has signature of all the above persons. Thus, I am satisfied that the page no 1-6 of Annexure A-1 belongs to Anilkumar G Darji.

It is further noticed that page no 128 -135 of Annexure A-3 seized from the residential premises of Shri Vikas R Patel consist of Bana Chitti dated 03/05/2008 and Banakhat/Karar dated 13/05/2008 between Brijesh Patel and Dipak G Prajapati (First Party) and Amitkumar K Patel, Anilkumar G. Darji and Others (Second Party) for Final Plot No 48, TP No 29 of Survey No 206 at Chandlodiya admeasuring 3344.48 sq mtrs. This banakhat/karar has the signatures of Shri Brijesh S Patel, Deepakbhai G Prajapati and Shri Anilkumar G Patel (Darji). Thus, I am satisfied that the page no 128- 135 of Annexure A-3 belongs to Anilkumar G Darji.

It is also noticed that the page no 1-17 of Annexure A-3 seized from the residential premises of Shri Vikas R Patel is the copy of registered sale deed of land at Survey No 206 admeasuring 7386 sq mtr at Chandlodia of Rs 4,25,000 dated 07/04/07 between Amitkumar K Patel, Anilkumar G. Darji, Narendra R Patel and Others (First Party-buyers) and Ishwarbhai Valjibhai & Others (Second Party-Sellers). Thus, I am satisfied that the page no 1-17 of Annexure A-3 belongs to Anilkumar G Darji.

The page no 31 to 34 of Annexure A-1 seized from the residential premises of Shri Vikas R Patel is the Banakhata dated 22 Jan 07 for Survey No 217/1 and 217/2 at Chandlodia between Vishnubhai P Patel and Sureshkumar S Patel (First Party) and Amitkumar K Patel, Anilkumar G. Darji and Narendra R Patel (Second Party). The Banakhata has the signatures of all the parties. Thus, I am satisfied that the page no 31-34 of Annexure A-1 I belongs to Anilkumar G Darji.

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 9 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel In view of the above, I am satisfied that page no 1-6 of Annexure A-1; page no 128-135 of Annexure A-3; page no 1-17 of Annexure A-3 and page no 31-34 of Annexure A-1 seized from the residential premises of Vikas R Patel belongs to Shri Anilkumar G Darji (PAN:AAWPD3288R) and hence the case is fit for initiating proceedings u/s. 153C r.w.s. 153A of the IT Act. 1961. Accordingly, the notice u/s 153C r.w.s 153A of the Act is issued for AY:04-05 to AY:09-10"

Learned counsel states that the Assessing Officer thereafter issued section 153C notice dated 20-07-2011 leading to framing of the impugned assessments. His first argument is that the Assessing Officer has not recorded any satisfaction in searched parties' cases in respective case files that the impugned incriminating material belonged to the assessee as specified u/s. 153C followed by a similar action being adopted in this assessee's case. His case is that the revenue authorities have not placed on record any satisfaction to have recorded in searched parties' cases. Case law of hon'ble jurisdiction high court (2014) 222 Taxman 96 (Guj) DCIT vs. Lalitkumar M. Patel upholding tribunal's order in IT(SS)A No. 61/Ahd/2007 is also quoted. Shri Divetia submits that the impugned assessment framed u/s. 153C of the Act is liable to be quashed on this ground alone.

11. Next comes Shri Darji's argument that the impugned satisfaction for initiating section 153C proceedings does not comply with hon'ble apex court decision in Calcutta Knitwears case Civil Appeal no. 3958/2014 decided on 12-03-2014 that the same has to I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 10 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel be recorded inter alia at the time or along with the initiation of proceedings against the searched persons u/s. 158BC or in course of the said proceedings or immediately after conclusion of the said assessment being framed. Our attention is invited to Board's circular No. 24/2015 date 31-12-2015 in pursuance to the above stated decision requiring an Assessing Officer to record section 153C satisfaction first in case of the searched assessee followed by a similar exercise in case of other persons even if they are assessed in the same jurisdiction. Learned counsel clarifies that the Board has treated section 158BD of old scheme of block assessment to be pari materia to section 153C proceedings.

12. Shri Divetia thereafter argues that there is no dispute about the fact that his assessee Shri Anil R. Darji is the vendor and the searched party happens to be the vendee. The relevant seized material in the nature of Banakhata/MOU/Sale deed which cannot be held to be belonging to the seller since it is the buyer who owns the said documents/receipts as per the necessary presumption stipulated u/s. 132(4) of the Act. Case law of ITA 1475/Bangalore/2013 decided on 18-03-2016 The Senate vs. DCIT

is quoted holding that the Revenue has to establish that the assessee sought to be proceeded u/s. 153C of the Act is owner of the seized documents. Shri Divetia accordingly concludes his arguments to pray for quashing of the impugned section 153C proceedings in the light of above narrated submission.

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 11 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel

13. Shri Jagish (CIT-D.R.) represents the Revenue. He narrates factual position first. He states that the date of relevant search is 04-03-2010. The Assessing Officer initiated section 153A proceedings in case of Shri Vikas R. Patel on 18-02-2011. The department transferred assessment in all these three assessee's case to the very Assessing Officer on 20/06/2011. He recorded reasons after going through the seized material of Shri Vikas R. Patel that the above stated documents belonged to these assessee. The Assessing Officer thereafter recorded common section 153C satisfaction hereinabove in all cases. Shri Jagish places on record one of them dated 12-01-2012 in case of Shri Vishnubhai Punjabhai. He makes out a case that the above extracted satisfaction dated 14-07-2011 has to be read as a common one applicable in all cases of searched parties as well as the ones in hand. Case law of KPC Medical College and Hospital vs. DCIT(Kol) ITA Nos. 1832 to 1834/Kol/2014 decided on 24-06-2015 upholding a similar common satisfaction is quoted in support.

14. Next comes Shri Jagdish's reply to assessee's argument that the seized material (supra) cannot be held to be belonging to Shri Darji. He clarifies that all these three assessee are signatories to the MOU/Sale deeds in question. Shri Darji's signature appears on revenue stamp receipt. The Revenue takes us to para 4.3 page 10 of the CIT(A)'s order holding that this seized material belonged to the assessee. Case law of hon'ble jurisdictional high court in Kamleshbhai Dharamshibhai Patel vs. CIT Special Civil No. I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 12 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel 13635/2012 decided on 24-12-2012 is quoted in support holding that the term 'belongs to' can be stated to be having relation or reference to Shri Jagdish invites our attention to facts narrated in this judgement treating vendors payment receipt containing their signatures held as to be belonging to them. Another case law (2014) 162 TTJ 171(AHD) Pravinbhai Keshavbhai Patel vs. DCIT treating an MOU to be belonging to parties therein is quoted in support. Shri Jagdish accordingly seeks to defend the impugned assessments by stating that the same confirms to all the legal requirements necessary for initiating section 153C proceedings.

15. Shri Anil Kshtriya represents the remaining two assessee Shri Amit K. Patel and Shri Narendra R. Patel. He files voluminous written submissions after putting a lot of effort for supporting the above extracted cross objections. He clarifies that the Assessing Officer had framed protective assessment in his cases. Shri Kshtriya strongly submits that the Revenue did not provide him copy of section 153C satisfaction note. He takes us to page 03(d) of the CIT(A)'s order dealing with his corresponding submissions. It is pleaded that these two assessee have exhausted all their remedies including RTI applications in order to get copy of section 153C satisfaction notes. We are taken to our directions dated 14-10-2015 issued to the department for providing searched assessee's records and also to allow inspection of the relevant satisfaction note. Learned counsel submits that section

153C satisfaction note in his two cases are dated 19-07-2011 and no such course of action has been adopted in case I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 13 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel of the searched party (supra). He argues that the hon'ble jurisdictional high court has settled the law in Lalitkumar M. Patel case (supra) making it obligatory for the Assessing Officer to comply with the two tier satisfaction exercise therein.

Learned counsel thereafter invites our attention to the crucial expression used in satisfaction note of these two assessee stating 'notice is issued' instead of 'notice is to be issued'. His contention is that the inference that follows is that there is no satisfaction in case of searched party which renders the impugned section 153C assessment to be not sustainable in the eyes of law.

16. Shri Jagdish (CIT-D.R.) representing Revenue reiterates his submissions as made in case of the first assessee Shri Anil R. Darji.

17. We afforded rebuttal opportunity to both the learned counsel representing assessee. More particularly for throwing light on Kolkata bench decision of the tribunal (supra) propounding common satisfaction principle u/s. 153C of the Act being recorded in case of the searched party as well as third party. They submit that a co- ordinate bench in case of Shailesh R. Daxini vs. ACIT IT(SS)A No. 1- 3/Ahd/2011 decided on 22-04-2016 has already distinguished the above stated decision. They accordingly pray for quashing of the impugned assessments.

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 14 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel

18. We have heard rival contentions. Case files perused with the able assistance of the learned representatives. We come to admitted facts first. The department conducted search in case of M/s. Umiya group and its partners Shri Vikas R. Patel. It seized MOU/Banakhat/Sale deed demonstrating these three having acted as vendors of the land in question. The registered sale deed quoted price is Rs. 20 lacs. Shri Vikas R. Patel got recorded his search statement deposing that these three assessee had received unaccounted cash money of Rs. 2.5 crores. The Assessing Officer is admittedly common in all these cases. He initiated section 153A proceedings against Shri Vikas R. Patel on 18-02-2011. This followed three separate satisfaction under challenge. The Assessing Officer recorded section 153C satisfaction in case of Shri Darji on 14- 07-2011 as followed by remaining two dated 19-07-2011 in cases of S/sh Amit K. Patel and Narendra R. Patel. We have already extracted hereinabove satisfaction note in case of Shri Anil R. Darji. We find that remaining two satisfactions dated 19-07-2011 are repetition thereof in extempore except namesake difference. We put up a specific query to Shri Jagdish appearing at Revenue behest as to whether or not the Assessing Officer recorded satisfaction in case of Shri Vikas R. Patel's. His reply is in negative. He reiterates his submission already made that the impugned satisfaction has to be taken as a common one in case of the searched party as well as all the three assessee herein as per Kolkata bench decision (supra). We tend to disagree with this Revenue's contentions. The law is very well settled now that an Assessing Officer has first to form an opinion I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 15 Assessee: Shri AnilKumar G. Darji,



Shri Amit K. Patel & Shri Narendra R. Patel in the case file of the searched party that the seized incriminating material in the form of money/bullion/jewellery etc. belongs to any third person followed by a similar exercise in latter's case file. Hon'ble jurisdictional high court (supra) has also decided the very substantive question against the Revenue. There can be no dispute therefore that recording of a satisfaction by following the above stated two tier exercise is a mandatory condition.

19. We come to Revenue's arguments that the impugned satisfaction hereinabove has to be read as a common one by drawing strength from Kolkata bench decision. We find that latter decision of this bench itself in case of Shailesh R. Daxini (supra) takes into account the same to hold that even the said bench does not dispute the legal requirement of recording of section 153C satisfaction. It holds that the Revenue must place on record sufficient material to make out its case of a common satisfaction recorded by the Assessing Officer being same in case of searched party as well as such other person. Board's circular (supra) issued after Kolkata bench decision has also been considered therein. We deem it appropriate at this stage to reproduce operative portion thereof reading as under:-

"5. We come to the relevant facts first. This assessee trades in shares and commodities. He carried out his business through a broker M/s. Kunvarji Commodities Brokers Pvt. Ltd. (in short 'M/s KCBPL'). The department conducted a search in the latter's case on 25.03.2008. It allegedly came across incriminating material in the nature of documents, books of account and other valuable articles. I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 16 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel This included file documents Annexures A-55, 64 & 65 belonging to the assessee. The same culminated in issuance of section 153C notice dated 23.07.2009. The assessee filed return on 23.08.2009 stating income of Rs.1,32,400/-. The Assessing Officer took up scrutiny. He inter alia noticed assessee's action of allegedly misusing client code facility and observed that the same resulted in suppression of income/profits of Rs.63,26,507/- not offered in the books of account. This amount stood added as assessee's income in assessment order dated 29.12.2009.

6. The assessee preferred appeal. He inter alia raised two substantive grounds. First one assailed legality of the impugned section 153C proceedings. Latter ground on merits challenged correctness of the above stated addition. We reiterate that the instant adjudication is confined to legal aspect only. The assessee argued in the course of lower appellate proceedings that none of the seized material belonged to him as contemplated under section 153C of the Act. The CIT(A) concurs with the Assessing officer to hold that above stated incriminating material annexure-55, 64 to 65 belongs to assessee only thereby rejecting assessee's legal plea.

7. This leaves the assessee aggrieved.

8. Learned authorised representative opens up assessee's arguments. We are taken to the satisfaction note relevant for initiation of the impugned section 153C proceedings reading as under :-

"Satisfaction note to initiate proceeding u/s. 153C r.w.s.153A of the IT Act in the case of Mr. Shailesh R. Daxini A search u/s 132 of the IT. Act 1961 was conducted in the case of Kunwarji Commodities & Brokers Pvt. Ltd. and other persons of Kunwarji Group on 25.03.2008 & subsequent dates and various documents were found & seized. On verification of various documents found and seized from the business premises of Kunwarji Commodities & Brokers Pvt. Ltd. Ahmedabad, it is noticed that seized file Annexure- A-55 contains the following documents belong to Mr. Shailesh R. Daxini.

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 17 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel Page 65 to 73 is the client registration form of Mr. Sailesh R. Daxini in which relevant details have been provided by Sailesh R. Daxini including his signed photograph. This document has been signed by Sailesh R. Daxini at different pages.

Page 76 to 83 are the copy of bank statement of Central Bank of India of Sailesh R. Daxini.

Page 85 is the copy of PAN card of the assessee.

From the above it is clear that the said documents belong to Shri Shailesh R. Daxini, for which I am satisfied.

Further, annexure A-64 and A-65 are seized document containing computer data. These documents also contain document being computer data belonging to Mr. Shailesh R. Daxini. Based on the above seized data, it has been found that Mr. Shailesh R. Daxini has suppressed income amounting to Rs.1,29,67,176/- in F.Y.2005-06 and income amounting to Rs.1,35,30,671 in F.Y.2006-07 by adopting the methodology of client code modification carried out with the connivance of the broker Kunwarji Commodities & Brokers Pvt. Ltd. This has been done by taking over loss of other persons as well as transferring their profit to other persons and thereby the assessee has evaded payment of taxes. This has resulted in escapement of income assessable to tax.

From the above it is clear that the said documents belong to Mr. Shailesh R. Daxini for which I am satisfied.

Therefore, in view of the provision of Sec.153C (1) r.w.s.153A of the I.T. Act I am satisfied that proceedings u/s.153C r.w.s, 153A is required to be initiated in this case.

Accordingly notice u/s.153C r.w.s. 153A of the Act is issued for the A.Y 2002-03 to 2007-08.

Sd/-

(GAURAV BATHAM) Dy. Commissioner of Income Tax, Central Circle-1(1), Ahmedabad"

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 18 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel

9. Learned authorised representative strongly argues that the above extracted satisfaction note has been made in assessee's case who happens to be other than the searched assessee and no such satisfaction has been recorded in the case file of M/s. Kunvarji (supra) that the incriminating material hereinabove belonged to the assessee. It is further stated that the assessee filed RTI application as well seeking to confirm as to whether the Assessing Officer had recorded any satisfaction in case of the above stated searched assessee under section 153C. We are informed that the department has furnished the above extracted satisfaction only to have been entered for the purpose of initiating the impugned proceedings. The assessee accordingly contends that this course of action adopted by the Assessing Officer is not sustainable as per the case law of hon'ble jurisdictional high court (2014) 222 Taxman 96 (Guj) DCIT vs. Lalitkumar M. Patel upholding tribunal's order in IT(SS)A No.61/Ahd/2007 propounding this two tier exercise of satisfaction first in case of the searched party followed the one in case of the other assessee as under :-

"7. Copy of the reasons recorded for issue of notice under Section 158BC is at page no.25 of the Revenue's paper book which reads as under:

"REASONS FOR ISSUE OF NOTICE U/S.158BD OF THE ACT.

Assessee : Shri Upendra N. Patel, Shri Lalit M. Patel & Shri Champak M. Patel "A search and seizure action in the Jayraj Group was carried out u/s.132 (1) on 19.12.2001. Certain incriminating documents pertaining to Shri Upendra N.Patel, Shri Lalit M.Patel & Shri Champak M.Patel has been seized, which have not been accounted for in his regular books of accounts. The seized documents show that Shri Lalit M.Patel and Shri Champak M.Patel have acquired rights in the landed property of M/s.Hindustan Earth Movers Pvt. Ltd, which was finally acquired by Shri Jayesh Dave and Shri Upendra N.Patel, on the basis of final compromise agreement entered into by the respective parties dated 30.09.2000, which was duly I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 19 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel approved by the jurisdictional Civil Court, Baroda vide compromise decree dated 03.10.2000. As per the MOU dated 01.11.1996, Shri Lalit M.Patel and Shri Champak M.Patel acquired the right in the land of M/s.HEMPL and they have made total cash payment of Rs.37 lacs and unaccounted demand draft of Rs.1 crore to the

Court Receiver appointed by the Hon'ble High Court of Mumbai. Shri Jayesh Dave entered into a Court Settlement Decree on 30.09.2000 with Shri Upendra N.Patel, Shri Lalit M.Patel & Shri Champak M.Patel for ceding their rights in the land of M/s.HEMPL and they received 1,20,000 Sq.ft of land of M/s.HEMPL. The Sale Deed was executed in the name of Shri Upendra N.Patel only for Rs.5.60 lacs only, which was much below the market rate. Hence, long term capital gain had accrued to Shri Upendra N.Patel, which has not been offered for taxation. Since, these facts could be discovered from the various MOUs seized during the course of search in the Jayraj Group, the notices u/s.158BD are issued to the assessee. The incriminating papers referred to are A-15, pages 99-95, A-41 pages 36-39, A-3/5 pages 138 to 146, A-57 pages 122 to 158, A-35 pages 66-87J A-2 pages- 1, A-15 pages 75&76 and others of the Appraisal Report."

Sd/-

(A.K. SINHA) Dy. Commissioner of Income Tax Central Cir.1, Baroda.

Date : 23.02.2004"

8. The learned counsel for the assessee has challenged the validity of the initiation of the proceedings under Section 158BD mainly on two counts - (i) that the proceedings were initiated after completion of the assessment in the case of Jayaraj Group of cases and (ii) during the assessment proceedings of Jayaraj Group no satisfaction was recorded by the AO of Jayaraj Group but reasons was recorded by the AO of the assessee for issuing of notice under Section 158BD. In support of his contention, he relied upon the decision of the I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 20 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel Hon'ble Apex Court in the case of Manish Maheshwari Vs. ACIT, 289 ITR 341 and Special Bench of the ITAT in the case of Manoj Agarwal Vs. DCIT, 113 ITD 377. The learned DR, on the other hand, relied upon the orders of the authorities below and stated that the satisfaction recorded by the AO under Section 158BC is a valid satisfaction because the persons who recorded the satisfaction was the AO for Jayaraj Group of cases as well as the assessee. He also submitted that notice under Section 158BD was duly issued before the completion of the assessment under Section 158BC read with section 263, in the Jayraj Group of cases.

9. We have heard both the parties and perused the material placed before us. The provisions of section 158BD has been considered by the Hon'ble Apex court in the case of Manish Maheshwari (supra). At Page No.348 of the report, Their Lordships held as under:

"The 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 precedent 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 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 I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 21 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel had been searched or whose documents and other assets had been requisitioned under section 132A of the Act.

10. That the Special Bench of the ITAT in the case of Manoj Aggarwal (supra) has considered the above decision of the Hon'ble Apex Court and also other decisions of various Courts and examined in detail the conditions which are to be satisfied before the issue of notice under Section 158BD. The Special Bench held as under:

"Section 158BD provides for assumption of jurisdiction to make a block assessment in the case of a person not searched and against whom no proceedings have been initiated. It cannot be said that such jurisdiction can be assumed without recording satisfaction. It has been noted that the proceedings under section 158BC are against the person searched and if in the course of such proceeding the Assessing Officer assessing the person searched comes across material indicating the presence of undisclosed income in the hands of the person not searched, there has to be a provision for making a similar assessment in the case of the other person. As section 158BC relates to a person searched there has to be different provision for making a similar assessment in the case of the other person and hence section 158BD has been enacted. So, the said section states that if the Assessing Officer is satisfied that the undisclosed income belongs to the other person, then he shall hand over the seized material so as to enable the second Assessing Officer to make a block assessment in a similar manner and that is not possible if the satisfaction is not recorded. And this can be recorded only and only in the course of the section 158BC proceeding and nowhere else. It is the Assessing Officer assessing the person searched who goes, through the seized material and comes to a decision as to whether there is any undisclosed income unearthed as a result of search, if so its nature and to whom it belongs. If the said undisclosed income belongs to the person searched that is the end

of the matter. If, on the other hand, the material examined I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 22 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel shows that the undisclosed income pertains to some other person he has to give a finding to this effect and thereupon transmit the related seized material to the Assessing Officer having jurisdiction over the other person. All these findings have to be recorded after an honest appreciation of the seized material with an objective mind and there has to be a record reflecting such findings on the basis of which alone the other Assessing Officer can assume jurisdiction to proceed against the other person and it is this record which forms the 'note of satisfaction' or the 'record of satisfaction'. In such circumstance, the recording of such satisfaction is impliedly to be done in the course of the section 158BC proceeding as the satisfaction has to be recorded only by the Assessing Officer making the block assessment in the case of the person searched which in turn means the section 158BC proceedings such satisfaction cannot be recorded beyond the date of the block assessment in the section 158BC proceeding and the date of the block assessment is the outer limit for recording such satisfaction. This is for the reason that the satisfaction has to be recorded by the Assessing Officer examining the material in the case of the person searched and he will have to find out whether there is any undisclosed income at all unearthed which again can only be in the course of such proceeding. After finding that there is undisclosed income, he will have to give a finding as to whether such income belongs to the person searched and this too has to be in the course of the said proceeding only. If he finds that any or all of such income belongs to a person not searched, then he has to record such finding in this behalf and takes follow-up action as envisaged in section 158BD which again has to be only in the course of section 158BC proceeding and, hence, if no such satisfaction is recorded in course of section 158BC proceeding, then assumption of jurisdiction under section 158BD is not possible. In the circumstances, the absence of the words 'in the course of the proceeding' in the section is no material to the issue in the context of the said section itself."

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11. Let us examine the facts of the assessee's case in the light of the above decision of the Hon'ble Apex Court and the Special Bench of the ITAT. As per the decision of the Hon'ble Apex Court, before the issue of notice under section 158BD, satisfaction must be recorded by the AO of the person searched, that the undisclosed income belongs to the person other than the person searched and then books of accounts or other documents seized has to be handed over to the AO of the person to whom the undisclosed income belongs. Thereafter on the basis of such satisfaction, the AO of the persons to whom the undisclosed income belongs will take proceedings under Section 158BD. Special Bench of the ITAT has further held that such satisfaction by the AO of the person searched has to be recorded in the course of proceedings under Section 158BC and not thereafter. Meaning thereby, the satisfaction must be recorded before the completion of the assessment of the person

searched. Now in the case of the assessee we have reproduced the satisfaction note in para-7 above.

12. From the satisfaction note, it seems that it is recorded by the AO of the assessee and not the AO of Jayraj Group of cases. This inference of ours is on the following basis:

i) Heading of the note is "Reasons for issue of Notice u/s.158BD of the Act". Thus, it is the reasons recorded by the AO before the issue of notice under Section 158BD. Obviously, the reason is recorded by the AO who issued the notice under Section 158BD. It seems that the AO considered the provision of section 158BD similar to Section 148 and therefore before the issue of notice, he recorded the reasons for issuing of such notice.

ii) The name of the assessee mentioned in the satisfaction note is Shri Upendra N. Patel, Shri Lalit M. Patel & Shri Champak M. Patel. Thus, the reason is recorded in the case of these assessee and not in the case of Jayraj Group of cases. Had the satisfaction recorded by the AO of Jayraj Group of cases, then the name of the assessee would have been "Jayraj Group of cases" and not as Shri Upendra N. Patel, Shri Lalit M. Patel & Shri Champak M. Patel.

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iii) In the first line of the satisfaction note, the AO has mentioned the "Search and seizure action in the Jayraj group of cases was carried out under Section 132(1) on 19-12-2001". If the satisfaction note was recorded by the AO of Jayraj group of cases, he would have mentioned "a search and seizure action has taken place in the case of the assessee."

iv) At the end of the notice, the AO has mentioned "since this fact could be discovered from the various MOUs seized during the course of search in Jayraj Group, the notices u/s.158BD are issued to the assessee". This noting clearly proves that the reason was recorded by the AO of Shri Lalit M. Patel and not of the AO of Jayraj group. If the satisfaction has been recorded by the AO of Jayraj Group cases, he would have mentioned that "during the course of search in the case of the assessee, various MOUs belonged to Shri Upendra N. Patel, Shri Lalit M. Patel & Shri Champak M. Patel were found. The same are being forwarded to their AO for taking action under Section 158BD in their cases. In view of the above, we are of the opinion that the satisfaction was recorded by the AO of the assessee and not by the AO of the person searched. As per the decision of the Hon'ble Apex Court in the case of Manish Maheshwari (supra) as well as Special Bench decision in the case of Majoj Aggarwal (supra), the satisfaction is to be recorded by the AO of the persons searched that too during the course of assessment proceedings under Section 158BC of the person searched.

13. That the reasons recorded for issue of notice under Section 158BC was dated 23-2-2004, while the assessment of Jayraj Group was originally completed under Section 158BC on 30-1-2004. That thereafter under Section 263 such order was set aside and fresh assessment order was passed on 29-12-2006. However, it is not the case of the Revenue that the order under Section 263 was passed

with regard to some finding pertaining to undisclosed income of the assessee viz. Shri Lalit M. Patel. In the fresh assessment order passed in pursuance of Section 263 also there is no mention with regard to undisclosed income, if any belonged to Shri Lalit M. Patel. I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 25 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel

14. In view of the totality of the above facts, we are of the opinion that the reasons recorded for issue of notice under Section 158BD by the AO of the assessee cannot be said to be valid satisfaction for issue of notice under Section 158BD, we therefore respectfully following the decision of the Hon'ble Apex Court in the case of Manish Maheshwari (supra) and the decision of the Special Bench of the ITAT in the case of Manoj Aggarwal (supra), hold that the issue of notice under Section 158BD in the case of the assessee was not valid. We quash the same. Once the notice under Section 158BD itself is quashed, the assessment order passed under Section 158BC in pursuance to the notice issued under section 158BD is also quashed. "

Learned authorised representative accordingly submits that the Assessing Officer has erred in taking recourse to above stated satisfaction note as the triggering point for initiation of section 153C proceedings under challenge.

10. We afforded ample opportunity to the learned departmental representative for defending legality of the impugned proceedings. These case files were part heard on 10.03.2016. We directed the Revenue to produce the relevant satisfaction note(s) entered before initiation of the impugned section 153C proceedings. The case stood fixed for 22.03.2016 and 01.04.2016. Learned departmental representative could not produce any specific satisfaction note in the case of the searched party. She admitted that the Assessing Officer has not entered any separate satisfaction note in case of the searched party M/s Kunvarji. She submits that the Assessing Officer is the same in case of assessee as well as the searched party. He is accordingly supposed to have all the relevant information as to in whose case the impugned incriminating material is to be used for the purpose of assessing undisclosed income based on the alleged incriminating material. Learned departmental representative files on record decision of another bench in ITA Nos.1832 to 1834/Kol/2014 in the case of KPC Medical College & Hospital vs. DCIT decided on 24.06.2015 observing as under :-

"16. There is built-in fallacy in the arguments of the ld. counsel for the assessee. The fallacy became evident if the argument is tested by envisioning to the facts of the present case. There is no dispute that notice under section 153C was issued by the AO after recording the satisfaction extracted I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 26 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel supra. The AO is the same AO who has jurisdiction over the searched person as well as the other person i.e. the assessee. Let us take a situation, the AO was examining the file of Shri Bhaskar Ghosh. On perusal of his statement recorded under section 132(4) coupled with the fact of cash found during the course of search and buttressed by the



Managing Director (Finance) of the KPC Group of companies, visualized that cash belonged to the assessee, he immediately took a piece of paper and recorded his satisfaction that the money belongs to the assessee, therefore notice under section 153C is to be issued in the case of assessee. The question is, where this paper was placed by him? Whether in the order sheet entries of Shri Bhaskar Ghosh's assessment proceedings; in a separate file or in cupboard available in his room. There is no dispute raised by the ld. representatives that this satisfaction was not recorded within the stages contemplated by the Hon'ble Supreme Court in the case of CIT vs. Calcutta Knitwears (extracted supra). The attempt at the end of ld. counsel for the assessee is that there should be a straight jacket system, whereby the satisfaction recorded even by the same AO then, that should be placed in the file of searched person and if it is placed in some other cupboard in his room by the AO then, there cannot be any satisfaction, we fail to appreciate that technical approach at the end of assessee. The law does not require the manner and the procedure of keeping the files. The section only requires that a satisfaction be recorded and it should be during the period propounded by Hon'ble S.C. in Calcutta Knitwears, that has been recorded in the present case. It is available on page 74 of the Paper Book. The second scenario can also happen that seized material of KPC group might be kept in a common bundle, wrapped in a cloth where all the files are emanating from search and survey are being placed. If the above satisfaction note was found to be tagged with other file would it be held that no satisfaction was recorded. In our understanding the reply will be that satisfaction was recorded."

Learned departmental representative thereafter takes us to the co-ordinate bench conclusion of the Assessing Officer having recorded satisfaction after noticing that both assessee's case files were on the same table as under :-

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 27 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel "20. As far as the judgments relied upon by the ld. counsel for the assessee are concerned, we have considered them and they are distinguishable on facts. The emphasis of the ld.

counsel for the assessee was on the decision of ITAT in the case of Tanvir Collections (P) Ltd. vs. ACIT 54 taxmann.com 379 (Delhi-Trib). In this case the ITAT has dealt with a similar situation, where the AO was happened to be a common AO. The argument of the ld. Departmental Representative was that if AO of the searched person and the assessee is the same it does not make any difference whether satisfaction is recorded in the case of the searched person or the other person. The ITAT had arrived at a conclusion that satisfaction was recorded while taking up the cases of other person. This conclusion has been drawn on the basis of material supplied under query made as per RTI Act. It is a factual issue. We are conscious of this fact but we have dealt with the facts in the present case and observed that satisfaction was recorded by the AO while scrutinizing the papers of the searched person. It is very difficult to create a distinction to find out when such satisfaction was recorded when files of both the assessee are lying open upon the table of A.O. The

ITAT, Delhi Bench had drawn inference on the basis of facts available in that case. It had not interpreted any provision. We have considered this aspect under the fore going paragraph. Therefore, we do not find any merit in the first fold of submission made by the ld. counsel of the assessee."

11. The Revenue accordingly seeks to validate the impugned satisfaction note to have been entered as per true and correct interpretation of section 153C of the Act.

12. We have heard rival submissions. Case files stands perused. There is no dispute that this assessee is not the one searched since the impugned proceedings are under section 153C of the Act conducted on 25.03.2008 in case of M/s. Kunvarji Commodities Brokers Pvt. Ltd. There is further no issue that the DCIT Central Circle 1(1) is the common assessing authority in case of both the assesseees. The legal position envisaged under section 153C of the Act is very clear that the Assessing Officer of the searched assessee I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 28 Assesseees: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel has to satisfy himself that any money, bullion, jewellery or other valuable articles etc. belongs to some other persons and not the searched assessee. This has to be followed by another exercise in case of such other assessee that the same is caused escapement of any income. It is at this stage that both parties have cropped up the instant issue. The assessee's case is that there is no satisfaction at first level in case of the searched entity opposed by the Revenue by saying that the Assessing Officer is the same who has expressed satisfaction in assessee's case. The law about entering of such a satisfaction is very well settled now. Hon'ble apex court in the case of Manish Maheshwari vs. ACIT (2007) 289 ITR 341 (SC) holds that such a satisfaction is indeed mandatory. We deem it appropriate to observe that this case dealt with block assessment scheme under section 158BD of the Act as it existed in the erstwhile avatar under Chapter XIV-B of the Act. The same stands repealed by newly inserted sections 153A to 153C by the Finance Act 2003. It comes to our notice that the Central Board of Direct Taxes has issued its Circular No.24 of 2015 already accepting that rigor of section 153C vis-a-vis 158BD is substantially similar/pari materia as held by various hon'ble courts. It further clarifies that recording of section 153C/158BD satisfaction is a must in case of searched person followed by transmission of the case records to the Assessing Officer of the other assessee. Para no.4 of this Circular further envisages that this dual exercise is to be complied with even if the Assessing Officer happens to be the same in both cases. We deem it appropriate to observe in this factual and legal backdrop that an Assessing Officer has to mandatorily follow the above stated dual satisfaction exercise before initiating section 153C proceedings. We find that neither the jurisdictional tribunal's decision nor that of Kolkata bench (supra) deviate from this principle. The former deals with a situation wherein the department carried out a search in case M/s. Jairaj group, followed by Assessing Officer's action recording satisfaction forming basis for initiating section 153C proceedings in case of a third party without following the first hurdle of satisfaction that the money, bullion or jewellery etc. belonged to some third person and not the searched party. The latter decision precedes a step further. It holds that the Assessing Officer in case of searched and third party is the same. And it is very difficult to create a distinction to find out when such satisfaction was recorded since both files were lying together on the assessing authority's table. It is therefore clear to us that there is no distinction on legal principle of the satisfaction precondition before initiation of section 153C I.T(SS)A Nos. 254,256, 258 to 260 & CO 211&

213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 29 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel proceedings in both these decisions. The latter decision is of the view that the timing of this satisfaction being recorded in case of searched assessee and third party is purely a factual issue. We deem it appropriate to observe that there is no mutual contradiction so far as ratio of these tribunal's decisions is concerned.

13. We take note of our discussion hereinabove and revert back to facts of the instant case. We reiterate that the assessee's case is that once the Assessing Officer does not specifically record satisfaction in searched entity's case that the money, bullion, jewellery etc. in question belongs to a third person, places the same in its file followed by an opinion of the above stated material having caused escapement of any income. It is accordingly argued that the impugned satisfaction does not adhere to above stated settled law. The Revenue on the other hand makes out a case that the Assessing Officer's satisfaction has come only after careful examination of the above stated incriminating material being examined together in the cases of M/s. Kunvarji as well as the assessee. We find no reason to agree with this contention. As observed by the learned co-ordinate bench in Lalit Kumar M. Patel's case, the Assessing Officer in the impugned satisfaction mentions only assessee's name on top of the satisfaction note and not that of the searched entity. There is no material placed on record before us that the Assessing Officer had kept the case files of the searched party and that of the assessee together before drawing the impugned satisfaction note. It is made clear that the Revenue's contention based on Kolkata bench decision of the tribunal puts a heavy onus on the department to positively prove that the same Assessing Officer in case of searched assessee as well as the third party had collectively examined the case files before recording a satisfaction note contemplated under section 153C of the Act. Needless to say, this burden stands un-discharged. We hold in these peculiar facts and circumstances that the Revenue's arguments justifying the impugned satisfaction note are devoid of merits being not supported by any evidence much less in the nature of substantive material. We conclude in view of the above stated legal position, board's circular and our discussion hereinabove that the Assessing Officer has not recorded a valid satisfaction before initiating section 153C proceedings in question. The impugned assessment is accordingly quashed. IT(SS)A No.01/Ahd/2011 is allowed."

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 30 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel We draw support from our above extracted decision on the very issue to conclude that the Revenue has failed in proving the fact that the Assessing Officer recorded any satisfaction whether common or separate in case of the searched person Shri Vikas R. Patel before initiating section 153C proceedings under challenge. We are of the opinion that this inaction on part of the Assessing Officer violates law mandating recording of satisfaction as settled by hon'ble supreme court in case of Manish Maheshwari as well as that of Lalitkumar M. Patel (supra). We accordingly quash the impugned assessments framed in cases of all the three assessee in assessment years 2007-08 and 2008-09.

First assessee Shri Anil R. Darji succeeds in his appeal IT(SS)A 258 and 259/Ahd/2013. The Revenue's appeals in cases of the other two assessee i.e. Shri Amit K. Patel and Shri Narendra R. Patel IT(SS)A Nos. 254 & 256/Ahd/2013 are dismissed and CO Nos. 211 & 213/Ahd/2013; respectively challenging validity of section 153C proceedings are accepted on the legal issue. This

renders all other submissions on 'belonging to' aspect and merits as having been rendered infructuous.

20. We are now left with assessment year 2010-11 involving Shri Darji's appeal IT(SS)A 260/Ahd/2013 raising the following substantive grounds:-

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 31 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel "1.1 The order passed u/s.250 on 19.4.2013 for A.Y.2010-11 by CIT(A)-I, Abad not only confirming but enhancing the addition in respect of land deal bearing Survey No.206 is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned addition.

2.1 The Ld. CIT(A) has grievously erred in law and on facts in confirming the addition of Rs. 1,50,91,800 in the hands of the appellant on substantive basis as unaccounted business income in respect of land bearing S. No. 206 at Chandlodiya, that too without giving any notice of enhancement to the appellant.

2.2 That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) ought not to have upheld the addition of Rs.

1,50,91,800 as unaccounted business income instead of short term capital gain on substantive basis in the hands of the appellant in respect of land deal bearing survey No.206 at Chandlodiya. The enhancement made by CIT(A) was illegal unlawful and without jurisdiction apart from against the principles of natural justice.

3.1 The Ld. CIT(A) has grievously erred in law and or on facts in holding that the entire sales consideration in cash from Shri Vikas Patel was received by the appellant alone and had not paid over a part of their share to Shri Amit Patel and Narendra Patel. The observations made and conclusion reached by CIT(A) to hold that the entire consideration paid in cash as belonging to the appellant and had not passed on their share to the remaining co-purchasers are not admitted by the appellant so that the same should be condemned. The Ld. CIT(A) ought not to have arrived at these conclusions without allowing sufficient opportunity to the appellant or furnishing the material produced by the said co-purchasers or before passing the appellate order in their cases. The Ld. CIT(A) has grossly erred in ignoring the overwhelming evidence including the findings given by AO in asstt order as well as in remand report establishing beyond doubt that the entire transaction was carried out jointly by appellant and other two parties and had shared the proceeds equally. Both these parties were not benamidar of the I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 32 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel appellant but real and beneficial owners having enjoyed the

fruits of the deal.

4.1 The Ld. CIT(A) has grievously erred in law and or on facts in confirming the addition of Rs.2 lakh as unexplained payment u/s.69 towards the purchase of rights from Shri Amit Patel and Narendra Patel.

5.1 The Ld. CIT(A) has grievously erred in working out taxable gains in respect of this land deal. The Ld. CIT(A) has erred in considering the purchase cost at Rs. 1 lakh.

6.1 Without prejudice to the above and in the alternative, the Ld. CIT(A) has failed to appreciate that the signature of the appellant appears in respect of payments received aggregating to Rs. 36 lakhs so that only 1/5th share therein was assessable in his hands as against the total consideration of Rs. 1,50,91,800 assessed by the lower authorities."

21. We come to facts first. The department came across Bana/chithi dated 03-05-2008 as well as Banakhat/Karar dated 13- 05-2008 pertaining to the land in question at survey no. 206, Chandlodia (Ahmedabad) admeasuring 3344.48 sq. mt. in the course of search dated 04-03-2010. S/sh Brijesh Patel and Dipak G. Prajapati acted as first party therein. S/sh. Amit K. Patel, Anil G. Darji (appellant), Narendra Patel, Chandu Patel and Bhagyesh Patel were second party in the same and S/sh Bhagwan Ajara and Dipak Prajapati were buyers therein. The above stated Banakhat contains signature of S/sh Anil Darji, Brijesh Patel and Dipak ji Prajapati. This was followed by the registered sale deed in question being executed on 17-11-2009 in previous year relevant to the impugned assessment year stating consideration of Rs. 73,58,000/-. Shri Vikas I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 33 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel R. Patel in his search statement deposed that this sale deed involved cash payment of Rs. 1.5 crores made to Shri Darji and others.

22. The assessee filed his return on 28-03-2011 declaring total income of Rs. 37,16,870/- followed by a revised one on 08-11-2011 increasing income to Rs. 44,36,870/-. The Assessing Officer issued section 143(2) notice dated 19-09-2011alleging that the above stated sale deed and agreements involved the impugned cash sum of Rs. 1.5 crores on 8 occasions from 03-05-2008 to 07-08-2008 against registered sale deed price of Rs. 73.58 lacs. He referred to assessee's statement u/s. 131 dated 16-06-2010 recorded before the ADIT(Investigation) confirming cash receipt of Rs. 36 lacs. The Assessing Officer sought to add further sum of Rs. 3,14,84000/- in the nature of undisclosed income.

23. The assessee filed reply on 10-11-2011 inter alia stating that there were five partners in the above stated land transaction (supra). He pleaded for equal addition in all these cases. Shri Darji highlighted that he had received Rs. 36 lacs only in cash and Rs. 73.58 lacs by cheques. Latter sum was clarified to have been obtained on behalf of all other partners. The Assessing Officer thereafter issued notices to the remaining two assesseees. S/sh Amit K. Patel and Narendra Patel. They denied to have signed the MOU in question. And pointed that no opportunity to cross examine or copy of Shri Patel's search statement had been given. The Assessing Officer summoned Shri Darji as well as Shri Patel. The other two I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y.

2007-08, 08-09 & 2010-11 Page No 34 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel assessee did not cross examine them. They claim to have waived off all their rights in the land in question in the relevant revenue record on 25-04-2008 duly stated in page 6 of the sale deed as in favour of Shri Darji. Both these assessee accordingly stated that they had no interest left whatsoever in agreements dated 03-05-2008 and 13-05-2008. There further case was Shri Darji only received the payments in question whose share had increased to 60% from 20% after acquiring 40% from them.

24. The Assessing Officer thereafter recorded statements of the two remaining vendors of 20% each i.e. S/sh Bhagyesh Patel and Chandubai Patel who denied to have received any cash sum for having sold the land in question. The Assessing Officer reverted back to the assessee. He again confirmed only 20% of the cash amount. This made the Assessing Officer to make the impugned additions in assessee's hands by holding as under:-

"From the above submissions and inquiries, following sequence of events emerges with respect to land at Survey No 206, Chandlodiya:

1. The said land was purchased by Shri Amitkumar K Patel, Anilkumar G. Darji, Narendra Patel, Chandu Patel & Shri Bhagyesh Patel (buyers) from Shri Ishwarbhai & Others at Rs 4,25,000 (as per the registered sale deed dated 17/07/2007).

The registered deed dated 17/07/07 was bearing the name of all these five persons (buyers).

2. Shri Amit Patel & Shri Narendra Patel transferred their rights in favour of Anil G Darji and corresponding entries made in revenue record on 25/04/08

3. Tha Banakhat/Karar was executed on 13/05/2008 between Brijesh Patel and Dipak G Prajapati (First Party) and I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 35 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel Amitkumar K Patel, Anilkumar G. Darji, Narendra Patel, Chandu Patel & Shri Bhagyesh Patel (Second Party) for the purchase of said land. The banakhata was bearing the signatures of Shri Brijesh Patel, Dipak G Prajapati and Shri Anil G Darji. However, the banakhata was not bearing the signatures of Shri Amit Patel, Shri Narendra R Patel, Chandu Patel & Shri Bhagyesh Patel

4. The sale deed of the land at Survey No 206 at Chandoliya admeasuring 3344.48 sq mtrs (or 3997.275 Sq Yard) was executed at Rs 73,58,000 between Shri Anilkumar G. Darji, Shri Chandu Patel & Shri Bhagyesh Patel (Sellers) and Shri Bhagwan Ajara & Shri Dipak Prajapati (Buyers).

The details of payment of Rs 150 lakhs have been found on page 128, 129 & 132 of the Annexure A-3 seized from the residential premises of Shri Vikas R Patel. Shri Anil G Darji has also placed his signatures against the entries evidencing payment on these pages. From the details of these payments, it is established that the said MoU was duly executed and unaccounted payment of Rs 150 lakhs was made on this land transaction (in accordance with statement of Shri Vikas R Patel recorded u/s 132(4) of the IT Act on 05/03/10 and submission of Shri Bhagwan K Ajara dated

12/12/11). In view of this, total short-term capital gain on sale of land at 206, Chandlodiya is computed at Rs 2,19,33,000 (ie Rs 1,50,00,000 (cash) + Rs 73,58,000 (cheque) -Rs 4,25,000).

It is considered that the cash payment of Rs 150 lakhs was distributed equally among the five persons (viz Shri Amitkumar K Patel, Anilkumar G. Darji, Narendra Patel, Chandu Patel & Shri Bhagyesh Patel as the land was originally held jointly by each of these persons), the taxable capital gain in the hands of Shri Anil G Darji comes at Rs 73,15,000 (ie Rs 30,00,000 (cash) + Rs 44,15,000 (cheque)- Rs 1,00,000) as follows Sale Consideration Payment made Taxable for purchase Capital Gain (Rs) (Rs) Cash (Rs ) Cheque (Rs ) I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 36 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel Shri Anil 30,00,000 44,15,000 1,00,000 73,15,000 G Darji However, the assessee (Shri Anil G Darji) in his return of income for AY: 10-11 has offered short-term capital gain of Rs 42,23,000 for tax on sale of land at Survey No 206, Chandlodiya. In view of this, addition of Rs 30,92,000 is made to the total income of the assessee on account of short-term capital gain on sale of land at Survey No 206, Chandlodiya not offered for tax. Penalty proceedings u/s 271AAA of the IT Act are initiated on undisclosed income of Rs 30,92,000 4.2 The registered deed for the said land executed on 17/11/09 was not having the names of Shri Amitkumar Patel and Shri Narendra Patel as 'Selling Party'. As per the registered sale deed dated 17/11/09, Shri Amitkumar Patel and Shri Narendra Patel had transferred their share to Shri Anil G Darji on 25/04/08 (ie prior to signing of Bana Chitti on 03/05/2008 and Banakhat/Karar on 13/05/2008). Also, Bana Chitti dated 03/05/2008 and Banakhat/Karar dated 13/05/2008 was having the signature of only Shri Anil G Darji and was not having the signatures of Shri Amit Patel, Shri Narendra Patel, Shri Bhagyesh Patel & Shri Chandu Patel. (in view of this, further addition of short-term capital gain of Rs 1,20,00,000 (ie Rs 1,50,00,000-Rs 30,00,000) is made in the hands of Shri Anilkumar G Darji on 'substantive basis' as the seized banakhata was having the signature of Shri Anil G Darji only (among above persons). Corresponding protective addition of Short-term Capital Gain is being made in the hands of Shri Amit Patel. Shri Narendra Patel. Shri Bhagyesh Patel and Shri Chandubhai Patel at Rs 30,00,000 each (ie Rs 1,50,00,000 / 5). Penalty proceedings u/s 271AAA of the IT Act are initiated on undisclosed income of Rs 1,20,00,000.

5. During the course of search another notarized document was seized vide page 24-27 of Annexure A/3 from the residence of Shri Vikas R Patel. As per this document, payment of Rs 1,00,000 was made by Shri Anil G Darji to Shri Amit Patel & Shri Narendra Patel, each, for transfer of rights in land at Survey No 206, Chandlodiya. In view of this, the assessee vide notice u/s 142(1) of the IT Act dated 20/12/11 was asked to explain the source of above payment. I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 37 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel However, no explanation could be filed by the assessee. In view of this, Rs 2,00,000 is added to the total income of the assessee u/s 69 of the IT Act. Penalty proceedings u/s 271AAA of the IT Act are initiated on undisclosed investment of Rs 2,00,000."

25. The assessee preferred an appeal. Other parties/assessee S/sh. Amit K. Patel and Narendra Patel preferred their separate appeals. The CIT(A) inter alia holds that the latter two assessee do not have any stake in the seized material documents dated 03-05- 2008 and 13-05-2008 thereby

waiving off all their rights and interests in the revenue record on 25-04-2008, Shri Darji had entered into an adventure in real estate business thereby deciding the issue against him as follows:-

"5. I have gone through the assessment order and submission of the A.R. of the appellant and also submissions of Shri Narendra R. Patel and Shri Amit K. Patel in their appeals in appeal No.CIT(A)- I/CC. 1(1)7280/2011-12 and appeal No. CIT(A)-I/CC.l(1)/269/2011-12 dated 05.04.2013 respectively. I have also perused the statement recorded of the concerned persons. It is seen that the inferences drawn by the Assessing Officer are mostly on sound footing except in a few cases where he has erred. From the sequence of events, it is clear that the contention of Shri Amit K. Patel and Shri Narendra R. Patel that they were only name holder does not appear to be sound because it is seen that Shri Anil G. Darji himself is a agriculturist capable of getting agricultural lands registered in his name. Hence, if Shri Amit K. Patel and Shri Narendra R. Patel had not made any contribution towards purchase of land then there would have been no question of including their names in the purchase deed because even Shri Anil G. Darji himself was an agriculturist and could make the purchase himself.

5.1 It is also seen that the Assessing Officer has held the transactions to be that of transaction in capital asset. The above finding of the Assessing Officer is not borne from the records because it is seen that the appellants have not made the complete I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 38 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel payment for purchase of land through cheque. Many persons have joined in to make the purchase of this land whereas the contribution made by them is no specified in the banakhat. The land is sold within a period of less than 1 year of being purchased. The sellers are similarly engaged in similar transactions of purchase and sale of lands earlier also. All of them have stated in their statements recorded before the A.O. that the transactions were only for earning profit. This fact is further evident when one looks at the kind of transactions entered into by the concerned persons. Originally five persons had joined to purchase this land however, two of the persons later withdrew because probably the earnings were not coming through within their desired time frame indicating thereby that all the persons had entered into the transactions only with a motive to earn profits by sale of the land within a very short while. In view of the above, the sale and purchase of the land at Survey No.206 at Chandlodiya is to be treated as business transaction and gains or losses if any are to be assessed as business income / business loss.

5.2 As far as the other inference is drawn by the Assessing Officer are concerned, the same are correct and flow naturally from the records seized during the search and seizure operation at the premises of Shri Vikas R. Patel.

5.3 As far as the protective addition in the hands of Shri Amit K. Patel and Shri Narendra R. Patel is concerned, it is seen that Shri Amit K. Patel and Shri Narendra



R. Patel had transferred their rights in favour of Shri Anil G. Darji and the corresponding entries made in revenue record on 25/4/2008. The banakhat executed on 13.05.2008 between Shri Brijesh Patel and Shri Deepak Prajapati on one hand and Shri Amit K. Patel, Shri Anil G. Darji, Shri Narendra R. Patel, Shri Chandu Patel and Shri Bhagyesh Patel (the selling party) for the sale of land has been signed by Shri Brijesh Patel, Shri Deepak Prajapati and Shri Anil G. Darji only. This finding has been recorded by the Assessing Officer on page No. 14 of the assessment order.

5.4 Further, the sale deed for this land (at Survey No.206 at Chandlodia) was executed by Shri Anil G. Darji, Shri Chandu Patel, Shri Bhagyesh Patel as sellers and Shri Brijesh Patel and Shri Deepak Prajapati as buyers for sum of Rs.73,58,000/-. This deed was not signed by Shri Narendra R. Patel or Shri Amit K. Patel. This I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 39 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel finding has been recorded by the Assessing Officer on page 15 of the assessment order. In view of the above, it is clear that Shri Amit K. Patel and Shri Narendra R. Patel received only a sum of Rs. 1,00,000/- each at the time of transferring their rights to Shri Anil G. Darji and had no rights left in the land after 02.04.2008.

5.6 It is seen that as far as Shri Amit K. Patel and Shri Narendra R. Patel are concerned, these persons had joined with the appellant and other two partners namely Shri Bhagyesh Patel and Shri Chandubhai Patel to purchase a land at Survey No.206 admeasuring 3344.48 sq.mts. The consideration paid for this land as before the registered deed dated 17.07.2007 was Rs.4,25,000/-. As a result of this in the cases of Shri Amit K. Patel and Shri Narendra R. Patel in A.Y.2008-09, it has been held that they had made unaccounted investment of Rs.82,500/- each towards purchase of this land having 175th share. However, Shri Narendra R. Patel and Shri Amit K. Patel transferred their rights in favour of Shri Anil G. Darji vide banakhat dated 02.04.2008 for sum of Rs. 1,00,000/- each which was paid to them by Shri Anil G. Darji. This is evident from the seized documents which were seized at pages 24 to 27 of Annexure-A-3 from the residence of Shri Vikas R. Patel. Thereafter, a banakhat was executed on 13.05.2008 between Shri Brijesh Patel and Shri Deepak Prajapati on one hand (purchasers) and Shri Amit K. Patel, Shri Narendra R. Patel, Shri Chandubhai Patel and Shri Bhagyesh Patel (sellers) for sale of this land for a consideration of Rs. 1,50,00,000/- in cash and Rs.73,58,000/- by cheque. This banakhat has been signed by Shri Brijesh Patel and Shri Deepak Prajapati on behalf of the purchasers. However, on behalf of the sellers, only Shri Anil G. Darji has signed banakhat. The sale deed for land at survey No.206, Chandlodiya admeasuring 3344.48 sq. mtrs. was executed for a sum of Rs.73,58,000/- between Shri Anil G. Darji, Shri Chandubhai Patel and Shri Bhagyesh Patel (sellers) and Shri Bhagwanbhai Ajara and Shri Deepak Prajapati (buyers). The details of payments of Rs. 1,50,00,000/- have been found on pages 128,129 and 132 of Annexure-A-3 seized from the residential premises of Shri Vikas R. Patel. Shri Anil G. Darji has also placed

his signature against the entries evidencing payments on these entries. In view of the above facts, it become clear that the entire cash of Rs. 1,50,00,000/- in this case was received by Shri Anil G. Darji alone for the following reasons:

(i) Shri Amit K. Patel and Shri Narendra R. Patel had already surrendered their interest in this land in favour of Shri I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 40 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel Anil G. Darji vide banakhat dated 02.04.2008 as consequence of this banakhat the names were removed from revenue records on 25.04.2008. Thus, these two persons could not have been a party to the banakhat executed on 13.05.2008.

(ii) Shri Bhagyesh Patel and Shri Chandubhai Patel have not signed the banakhat which was made between Shri Brijesh Patel and Shri Deepak Prajapati (purchasers) and Shri Anil G. Darji (seller) for a sum of Rs.73,58,000/- by cheque of Rs. 1,50,00,000/- by cash. This deed has been signed by Shri Brijesh Patel and Shri Deepak Prajapati on behalf of the purchasers. However, on behalf of sellers, only Shri Anil G. Darji has put his signatures.

(iii) However, the sale deed has been executed at 73,58,000/- by cheque where all the three persons i.e. Shri Anil G. Darji, Bhagyesh Patel and Shri Chandubhai Patel have signed as sellers. Thus, it is clear that Shri Bhageysh Patel and Shri Chandubhai Patel not being signatories to the banakhat dated 13.05.2008 cannot be said to be parties to the cash transactions. However, the cash receipts as evidenced by page No.128, 129 and 132 of Annexure-A-3 seized from the residential premises of Shri Vikas R. Patel have been signed only by Shri Anil G. Darji.

(iv) Part of the cheque payment was to be received by Shri Chandubhai Patel (20%) and Bhagyesh Patel (20%).

5.7 The above clearly indicates that the money has been received by Shri Anil G. Darji alone. In view of the above, the following inquiries are drawn as far as the sale of land at survey No.206, Chandlodiya concerned.

(i) The total sale value of this land was Rs.1,50,00,000/-in cash and Rs.73,58,000/- by cheque. Shri Anil G. Darji was owner of this land to the extent of 60%. Further, Shri Anil G. Darji alone has received the cash component of Rs.1,50,00,000/- for Shri Bhagyesh Patel and Shri Chandubhai Patel have received 20% each of the cheque amount of Rs.73,58,000/-. Thus, the income of Shri Anil G. Darji on account of the said transactions is as under:

Cash Rs. 1,50,00,000/-

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 41 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel Add: 60% of

cheque of Rs. 73,58,000/- Rs. 44,14,800/- Less: Cost paid by Shri Anil G. Darji Rs.1,00,000/-

Rs.1,93,14,800/-

Less: Income shown by Shri Anil G. Darji as Rs.42,23,000 capital gain from this transactions Less: The addition on amount of this Rs.1,50,91,800/- transactions to be made to be returned income Thus, the addition to be made in the hands of Shri Anil G. Darji from sale of this land is Rs.1,50,91,800/- which has to be assessed as business income."

26. Shri S.N. Divetia files before us amended grounds of appeal seeking to raise an additional plea that both the lower authorities have erred in framing the impugned assessments u/s. 143(3) of the Act. His status is that all the relevant facts necessary for adjudicating this legal argument already on record. No additional material is required. He quotes tribunal's special bench decision in (2012) 137 ITD 26 (Mum) All Cargo Global Logistics Ltd vs. DCIT entertaining a similar legal ground subject to a caveat that no fresh fact is to be entertained or examined. Learned counsel submits that the hon'ble apex court in NTPC case 229 ITR 383 has already held that this tribunal can very well entertain a pure question of law have all relevant facts on record in order to ascertain the correct tax liability.

27. Shri Divetia thereafter states that the impugned search is dated 04-03-2010. The Assessing Officer in assessee's case; a person not searched, entered into section 153C satisfaction on 14-07-2011 on the basis of seized material that the same belonged to him. Learned I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 42 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel counsel takes us to section 153C(1) 1st proviso stipulating reference to the date of the search u/s. 132 or requisition u/s. 132A to 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 third person. He emphasizes that this section 153C satisfaction date 14-07-2011 is the relevant date for taking into account preceding six assessment years before the assessment year relevant to the previous year of the search. His contention is that the impugned assessment year 2010-11 comes within block of six assessment years preceding the date of search to be constructed as 14-07-2011 on the basis of first proviso to section 153C(1). It strongly argues that the relevant six assessment years would accordingly be 2006-07 to 2011-12 including the impugned assessment year 2010-11. Learned counsel submits that this illegality is assumption of jurisdiction violates the entire assessment as held by hon'ble Delhi high court in (2016) 380 ITR 612 CIT vs. RPJ Securities.

28. Learned counsel thereafter argues on merits of the impugned addition by inter alia stating that this assessee had only 1/5 share in the land in question, he received Rs. 36 lacs as already declared in the return, his signature are not thereon, the receipt which leads to an inference all the five partners (supra) have received the cash component alike the one by cheque, the CIT(A) has wrongly held these transactions as adventure in the nature of real estate business, there are cuttings and overwriting in the relevant cash receipts and I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 43 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel that MOU price of the land in question comes to Rs.

2,63,24,402/- (Rs. 7871X3344.48) as against that determined of Rs. 2,23,58,000/- (Rs. 1.5 crores + Rs. 73.58 lacs). He further reiterates assessee's pleadings relevant to the other substantive grounds to be decided in succeeding paragraphs.

29. Shri Jagdish (CIT-Departmental Representative) files before us a written note pointing technical shortcomings in assessee's legal ground. He submits that a very strong case is to be made out before admitting this legal plea only after taking into account the relevant explanation for not having raised before the lower authorities. He supports the impugned assessment framed u/s. 143(3) of the act as against section 153C. Sections 292B & 292BB in the nature of validating provision are quoted in support. Shri Jagdish thereafter seeks to defend the impugned addition made by the lower authorities on merits.

30. We afforded rebuttal opportunity to Shri Divetia. He reiterates his earlier submissions. He comes to sections 292B and 292BB. It is stated that the former one cures only mistakes, defects and omissions and latter one deals with non-service of notice within time or manner prescribed. Learned counsel emphasizes that his legal plea seeking to quash the impugned regular assessment is neither mistake nor defect or omission but the one touching the very assumption of jurisdiction. He accordingly prays for quashing the assessment under challenge.

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 44 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel

31. We have heard rival submissions. There is no dispute that the impugned search was conducted on 04-03-2010 leading to seizure of MOU/agreements dated 03-05-2008 and 13/05/2008 pertaining to the land in question whose sale deed was executed on 17-11-2009 in previous year relevant to the impugned assessment year. Shri Vikas R. Patel (searched party) deposed before the search authorities that this land transaction involved cash payment of Rs. 1.5 crore over and above registered sale price of Rs. 73.58 lacs. The assessee filed his return on 28-03-2011. His Assessing Officer (common in all cases) received the relevant record pertaining to the search in question on 14-07-2011. This followed section 143(2) notice being served on 19-09-2011. He thereafter framed the impugned regular assessment u/s. 143(3) of the Act making the impugned additions in assessee's hands as confirmed/modified in the lower appellate order. The first issue between the parties is about validity of this regular assessment. The assessee's case is that the impugned assessment year 2010-11 comes within six preceding assessment years from date of section 153C satisfaction/receipt of record by his Assessing Officer on 14-07-2011 and therefore, he ought not to have been proceeded u/s. 143(3) of the Act. The Revenue seeks to reject this legal plea. We are of the opinion that Special Bench decision of the tribunal (supra) has taken into account all the relevant law to conclude that such a legal plea can be allowed to be raised if necessary for determining appropriate tax liability without requiring any new findings. We quote the same to overrule the Revenue's objections.

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 45 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-

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(c) assessment or reassessment, if any, has been made, before the date of receiving the book of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.]"

33. A perusal of the above extracted section makes it clear that the same applies in case it is found that any money, bullion or jewellery or other material stated therein belongs to any other person, the Assessing Officer shall arrive at the necessary satisfaction to proceed against such a third party by handing over the necessary record to the Assessing Officer having jurisdiction. Section 153C(1) contains a proviso to the effect that reference of the date of search or requisition in case of a third person is to be construed as the date of receiving the books of accounts or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over the third person in I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 47 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel question. This is followed by sub-section 2 to section 153C. This provision envisages the course of action to be adopted by the latter Assessing Officer having jurisdiction over a third person on receiving the relevant record after the due date for furnishing return of income for the assessment year relevant to the previous year in which search is conducted under sec. 132 or requisition is made under sec. 132A. This due date of furnishing return is 31/07/2010 u/s. 139(1) Explanation 2(c) of the act. The assessee admittedly filed his return on 28/03/2011 after this due date.

34. We pause for a moment here. We make it clear that section 153C is in the nature of a special provision at the expense of general one for framing assessment in facts and circumstances enumerated herein sub-section 1 thereof. Sub-section 2 thereof prescribes the course of action when an Assessing Officer having jurisdiction over a third party receives the relevant record after the due date for furnishing return of income for assessment year relevant to the previous year in which search is conducted. We are of the opinion all these expressions are to be construed as they appear without any further emphasis being supplied. Then come the specific wordings 'search is conducted'. We deem it appropriate to observe that the legislature itself has chosen to use this expression instead of 'search' only. We are of the opinion that the legislative intention in using the former expression is clear that only the date of actual search matters in case the third party's Assessing Officer receives the relevant record after due date of filing return and not the one deemed under I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 48 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel 1st proviso to section 153C(1) as this proviso does not put any embargo on operation of sub-section 2. Meaning thereby that the same cannot be read as part of the latter sub-section 2.

35. We stay on the three specific clauses (a) to (c) to sub-section 2 of section 153C of the Act. They contemplate three eventualities for an Assessing Officer to deal with before proceedings u/s. section 153C. The first clause (a) is that the third party assessee has not furnished his return and no notice u/s. 142(1) of the Act has been issued. This is not the case here since the assessee already filed return dated 28-03-2011 well before record being received by his Assessing Officer on 14-07-2011. Then comes clause (b) applicable in case the third person concerned furnished return but no notice u/s. 143(2) of the Act has been served and its limitation has expired. He furnished his return on

28-03-2011. The Assessing Officer served him section 143(2) notice dated 19/09/2011 i.e. well within the statutory limit of six months from the end of the financial year of filing of return. This section 143(2) proviso limitation expires on 30-09- 2011. The legislature envisages in section 153C(2) clause (b) that this limitation for issuing section 143(2) has to expire so as to result in initiation of section 153C proceedings. This admittedly is not the case here. We apply reverse implication rule that the legislature in its full wisdom does not include a case wherein limitation for serving section 143(2) notice has not expired after a third party has furnished return. Clause (c) to sub-section 2 of section 153C of the Act applies in case assessment or reassessment have been framed. There is no I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 49 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel such factual position exiting herein. We conclude in these facts and circumstances that all the relevant conditions in sec. 153C(2) clause

(a) to (c) must be satisfied before an Assessing Officer having jurisdiction over such third party for initiating section 153C proceedings. We are of the opinion that the proviso to sub-section 153C(1) applies only if the main provision is attracted and not in isolation. Our view is that the Assessing Officer could not have invoked sec. 153C(2) proceedings in assessee's case since all conditions u/s. sec. 153C(2) are not satisfied. He therefore rightly proceeded under regular assessment provision

36. Learned counsel for the assessee invited our attention to hon'ble Delhi high court decision (supra) as well as other co-ordinate bench decision of Ahmedabad bench of the tribunal holding that six preceding assessment years for framing section 153C assessments have to be computed from the date of receiving records under section 153C first proviso. He also places on record similar sec. 153C notices being issued to the other two co-vendors. There is no reason for us to disagree with the legal position settled by hon'ble Delhi high court or for that the ld. co-ordinate bench decision. It is evident that Hon'ble Delhi high court quashed 153C assessments framed in assessment years 2003-04 and 2004-05 in case of a search conducted on 20-10-2008 followed by section 153C satisfaction dated 08-09-2010. Their lordships held that six preceding assessment years in this factual backdrop would not include the above stated two assessment years u/s. 153(1) proviso. The tribunal's decisions also I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 50 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel follow the same principle. We also support ratios propounded therein that an Assessing Officer having jurisdiction over a third person has to proceed u/s. 153C of the Act by following 1st proviso. These cases do not anywhere deal with relevant stipulation u/s. 153C(2) of the Act. We accordingly distinguish the same in view of our reasoning hereinabove.

37. We come to learned counsel submission that the Assessing Officer has himself proceeded against the co-vendors u/s. 153C of the Act. There is no material placed before us as to whether those cases satisfied all the relevant conditions for exigibility of section 153C or not i.e. they furnished their returns and no notice u/s. 143(2) had been served on them or its limitation had expired. This argument therefore does not rescue the assessee. We reject his legal ground challenging validity of section 143(3) assessment by concluding facts of the instant case as narrated in preceding paragraphs do not satisfy all necessary conditions u/s. 153C(2) of the Act for issuing corresponding notices.

38. We come to the merits of the impugned addition of Rs. 1.5 crores cash component. The assessee's plea is that the same has to be equally divided in case of all the five partners. He does not dispute the correctness of having received cash amount in principle since he has already declared Rs. 36 lacs in the return turning out to be more than his share of Rs. 30 lacs. This itself is sufficient to decline his apportionment plea. It further transpires that his two I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 51 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel partners S/sh Amit K. Patel and Narendra R. Patel had already waived off their interests in revenue record on 25-04-2008 in Shri Darji's favour. The same precedes the impugned seized material dated 03-05-2008 and 13-05-2008. The assessee accordingly acquired 60% interest in land in question. This fact is evident from the contents of the registered sale deed dated 17-11-2009. We are of the view that 60% of the impugned cash amount of Rs. 1.5 crores coming to Rs. 90 lacs has to be assessed in assessee's hands in any case even if his apportionment plea is accepted.

39. The assessee's further case that the two co-shares/co- vendors have to be assessed for the remaining sums. We find that it is the assessee only who has signed the relevant documents revealing cash payments in question. He is the only person receiving even the cheque payments on behalf of other co-vendors. We are of the opinion that it was for the assessee to discharge a very strong onus for proving that the other co-vendors received the cash payments in question from him or from the vendees. He has failed to do so. This tribunal's proceedings are summary in nature based on reasonable preponderance of probabilities not requiring application of stricter provisions of evidence law. We observe in these facts that all these payment patterns are sufficient to conclude that it is assessee only who has received the impugned cash sum in tune with the cheque payments. We accordingly hold that the Ld. CIT(A) has rightly assessed the entire cash payment of Rs. 1.5 crores in assessee's hands thereby partly modifying Assessing Officer's action I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 52 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel as extracted hereinabove. The corresponding grounds raised in the instant appeal accordingly fail.

40. The assessee's next substantive ground pleads that the CIT(A) has erred in treating the impugned additions as his business income instead of short term capital gains. It has come on record that the assessee has purchased land in question having huge potential signed jointed MOU and ventures, acquired agricultural land having old condition liable to premium for non-agricultural purposes and sold the same within a very short span of time after changing its usage in the impugned three assessment years. We draw inference from assessment year 2007-08 and 2008-09 as well subject matter of this very order to observe that this assessee has been acting in a well planned manner in real estate business thereby purchasing lands at cheaper rates and executing sales thereof at premium prices in addition to huge cash payments being received from the vendees. We uphold CIT(A)'s action. The assessee's corresponding ground is accordingly rejected.

41. Next come assessee's substantive ground 4.1 and 5.1 challenging section 69 addition of Rs. 2 lacs made towards purchase of right from Shri Amit K. Patel and Narendra R. Patel and the latter addition of Rs. 1 lacs pertaining to purchase cost. Learned counsel representing assessee could not refer to any material in order to rebut the findings of the lower authorities. There is no material



placed before us explaining source of former addition amount. I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 53 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel Coming to the latter addition of Rs. 1 lacs for calculating short term capital gains, we find that the lower appellate order holds that there is no evidence stating the cost of land to Rs. 9,12,000/- and not Rs. 1 lacs. Both these grounds are accordingly rejected.

42. The assessee's alternative submission in ground no. 6.1 stands already rejected in our discussion pertaining to the main grounds. This ground is decided in the same terms in Revenue's favour. IT(SS)A 260/Ahd/2013 fails.

43. We refer to our above discussion to allow Shri Anilkumar G. Darji's appeal IT(SS)A No. 258 and 259/Ahd/2013 for assessment year 2007-08 and 2008-09. His appeal IT(SS)A 260/Ahd/2013 for assessment year 2010-11 is dismissed. Revenue's appeals IT(SS)A Nos. 254 and 256/Ahd/2013 preferred in cases of S/sh. Amit K. Patel and Narendra R. Patel in assessment year 2008-09 are dismissed. These two assessee's CO Nos. 211 & 213/Ahd/2013 challenging legality of Section 153C proceedings are allowed. Ordered accordingly.

Order pronounced in the open court on 31-05-2016 Sd/- Sd/-

(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER  
Ahmedabad : Dated 31/05/2016  
ak

(S. S. GODARA)  
JUDICIAL MEMBER

/ Copy of Order Forwarded to:-

I.T(SS)A Nos. 254,256, 258 to 260 & CO 211& 213/Ahd/2013 A.Y. 2007-08, 08-09 & 2010-11 Page No 54 Assessee: Shri AnilKumar G. Darji, Shri Amit K. Patel & Shri Narendra R. Patel

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/ , / ,