IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 12825 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 12829 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 12832 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17489 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17490 of 2018
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R/SPECIAL CIVIL APPLICATION NO. 19074 of 2018
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R/SPECIAL CIVIL APPLICATION NO. 19078 of 2018
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R/SPECIAL CIVIL APPLICATION NO. 19116 of 2018
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R/SPECIAL CIVIL APPLICATION NO. 19841 of 2018
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R/SPECIAL CIVIL APPLICATION NO. 16419 of 2018
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R/SPECIAL CIVIL APPLICATION NO. 20276 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 20825 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 20828 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 20830 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE HARSHA DEVANI

and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	

4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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ANILUKMAR GOPIKISHAN AGRAWAL

Versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 3(2) AHMEDABAD

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Appearance:

Special Civil Applications No.12825, 12829, 12832, 17487, 17489, 17490, 19074, 19078, 19079, 19083, 19214, 19215, 19216, 19221, 19222, 19223, 19674, 19675 and 20108 of 2018 :

Mr. Hardik Vora, Advocate, for the petitioners
Mrs. Mauna M. Bhatt, Advocate for the respondent

Special Civil Applications No.16419, 16421, 16425, 16426, 16427, 16782, 16786, 16800, 16801, 16821, 17771, 17788, 17789, 17790, 17791, 17793, 17796, 17797, 18270, 18271, 18272, 18273, 18274, 18712, 18773, 18777, 19232, 19234, 19236, 19321, 19323, 19325, 19647, 19676, 19844, 19871, 20221, 20228, 20241, 20244, 20245, 20272, 20276, 20825, 20828 and 20830 of 2018 :

Mr. Sudhir Mehta, Advocate with Ms. Shailee Mehta, Advocate for the petitioners
Mrs. Mauna M. Bhatt, Advocate for the respondent

Special Civil Application No.18346 of 2018 :

Mr. S. N. Soparkar, Senior Advocate with Mr. B.S. Soparkar, Advocate for the petitioners
Mrs. Mauna M. Bhatt, Advocate for the respondent

Special Civil Applications No.19116, 19119, 19121, 20128, 20129, 20143, 20145, 20146, 20149, 20151, 20152, 20154, 20604, 20629 and 20632 of 2018:

Mr. Tushar Hemani, Advocate with Ms. Vaibhavi Parikh, Advocate for the petitioners
Mrs. Mauna M. Bhatt, Advocate for the respondent

Special Civil Applications No.18362 of 2018 and No.19869 of 2018 :

Mr. B. S. Soparkar, Advocate for the petitioner
Mrs. Mauna M. Bhatt, Advocate for the respondent

Special Civil Application No.20081 of 2018:

Mr. M.J. Shah, Advocate for the petitioner
Mrs. Mauna M. Bhatt, Advocate for the respondent

Special Civil Application No.19239 of 2018 :

Mr. Mihir Joshi, Senior Advocate with Mr. Darshan Gandhi, learned advocate for the petitioner
Mrs. Mauna M. Bhatt, Advocate for the respondent

Special Civil Applications No.12849, 18611, 19654, 19657, 19658, 19659, 19661, 19899, 19900 and 19902 of 2018 :

Mr. Ketan Shah, Advocate for the petitioner
Mrs. Mauna M. Bhatt, Advocate for the respondent

Special Civil Application No.20610 of 2018 :

Mr. S. N. Divatia, Advocate for the petitioner
Mrs. Mauna M. Bhatt, Advocate for the respondent

Special Civil Application No.19841 of 2018 :

Mr. Darshan Patel, Advocate for the petitioner
Mrs. Mauna M. Bhatt, Advocate for the respondent

Special Civil Application No.19868 of 2018 :

Mr. Ankit Talsania, Advocate for the petitioner
Mrs. Mauna M. Bhatt, Advocate for the respondent

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 02/04/2019

COMMON ORAL JUDGMENT
(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. In all these petitions under article 226 of the Constitution of India, notices under section 153C of the Income Tax Act, 1961 (hereinafter referred to as "the Act") issued by the respondent-Assessing Officer to the respective petitioners are subject matter of challenge. In a few cases, pursuant to the impugned notices assessment orders have been passed. Though such assessment orders were passed prior to the filing of the writ petitions, it appears that the same were not communicated to the petitioners at the relevant point of time and hence, the petitioners were not aware of the same at the time of filing the respective petitions. Nonetheless, since the questions of law involved in all the petitions whether at the stage of notice under section 153C of the Act or at the stage of assessment orders are common, the court had taken up the petitions for hearing together and has decided them by this common judgment.

2. Since the facts and contentions in all the petitions are more or less common, for the sake of convenience, in case of H N Safal Group, reference is made to the facts as referred to in Special Civil Application No.12825 of 2018.

2.1 The petitioner therein, and individual, had filed his return of income for assessment year 2012-13 on 11.9.2012 declaring total income of Rs.44,73,820/- as business income of M/s Gujarat Foundries (Partnership Firm) and other income. A search came to be conducted on various premises of H N Safal Group on 4.9.2013, wherein a panchnama came to be

prepared on 7.9.2013. On the basis of the seized material, the Assessing Officer initiated proceedings against the petitioner under section 153C of the Act by issuing a notice dated 8.2.2018.

2.2 In response thereto, the petitioner filed his reply dated 1.5.2018 and submitted his return of income. Vide letter dated 14.5.2018, the Assessing Officer furnished the satisfaction note recorded by him and also attached therewith the satisfaction of the Assessing Officer of the searched person. From the satisfaction recorded, it was found that no document belonging to the petitioner was found during the course of search. However, a hard-disc was seized in excel sheet data of the computer of the searched person, wherein there was reference of the petitioner's name.

2.3 On receiving the details, the petitioner raised objections to the proceedings under section 153C of the Act with detailed submissions, *inter alia*, contending that on the basis of the excel sheet data of the computer of the searched person wherein there was only reference to the petitioner's name, the Assessing Officer could not have initiated proceedings against the petitioner under section 153C of the Act inasmuch as the condition precedent for invoking section 153C of the Act as it stood on the date of the search, viz. that the Assessing Officer should be satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned "belongs or belong to" the person other than the searched person was not satisfied. It was further contended that for the purpose of initiating action under section 153C of the Act, independent satisfaction has to be

recorded, by the Assessing Officer of the searched person as well as the Assessing Officer of the person other than the searched person; however, on a perusal of the satisfaction note recorded by the Assessing Officer of the petitioner, it is clear that he has merely reproduced the satisfaction of the Assessing Officer of the searched person and has not recorded the requisite satisfaction as contemplated under section 153C of the Act.

2.4 By an order dated 23.7.2018, the Assessing Officer rejected the objections filed by the petitioner. Being aggrieved, the petitioner has approached this court by way of present petition challenging the impugned notice dated 8.2.2018 issued by the Assessing Officer under section 153C of the Act for assessment year 2012-13.

2A In case of Venus Group, reference is made to the facts as appearing in Special Civil Application No. 19647 of 2018.

2A.1 The petitioner, who is an individual and proprietor of M/s Ocean Valves Mfg. Co. filed his return of income for assessment year 2012-13 on 14.3.2013 declaring total income of Rs.7,27,700/-. A search came to be conducted on various premises of Shri Ashok Sundardas Vaswani, M/s Venus Infrastructure and Developers P. Ltd. on 13.3.2015. During the course of search various documents were seized in which information about transactions relating to the petitioner was found. The seized incriminating documents related to unaccounted cash transactions which were analysed and correlated with other seized documents. Among the cash transactions as recorded in the seized unaccounted cash book

which was found during the course of search, reference was also made to the petitioner. Based on such seized material, the Assessing Officer initiated proceedings under section 153C of the Act by issuing the impugned notices dated 22.3.2018 and 14.8.2018. Subsequently notices have been issued to the petitioner under section 142(1) of the Act to which the petitioner has responded.

2A.2 By a letter dated 6.12.2018, the petitioner requested the respondent to furnish a copy of the satisfaction note so as to enable the petitioner to submit objections thereto. In response thereto, the Assessing Officer furnished a copy of the satisfaction note on 7.12.2018. Upon receipt of the satisfaction note, the petitioner filed objections to the proceedings under section 153C of the Act. By an order dated 11.12.2018, the respondent rejected the objections, which has given rise to the petition.

2B Insofar as the Barter Group of petitions is concerned, reference is made to the facts as appearing in Special Civil Application No. 20143 of 2018.

2B.1 The petitioner is a company incorporated under the Companies Act, 1956. The respondent issued the impugned notice dated 2.11.2018, under section 153C read with section 153A of the Act for assessment year 2009-10, wherein it is stated that a search action under section 132 of the Act was conducted in the case of accommodation entry provider group (Barter Group and Pradip Birewar Group) on 4.12.2014 during the course of which, certain incriminating documents were found and seized. The Assessing Officer of various persons

enlisted in the notice under section 153C read with section 153A of the Act, handed over such seized documents to the respondent since the same allegedly pertained to the petitioner and a bearing on the determination of the total income of the petitioner for the year under consideration. The petitioner was called upon to furnish the return of income under section 153C read with section 153A(1)(a) of the Act.

2B.2 The respondent provided a copy of the satisfaction note recorded by him for the year under consideration on 5.12.2018 along with a notice under section 142(1) of the Act. By a letter dated 7.12.2018, the petitioner raised objections against initiation of proceedings under section 153C of the Act for the year under consideration. By an order dated 10.12.2018, the respondent disposed of the objections raised by the petitioner and held that the case of the petitioner was fit for initiating proceedings under section 153C of the Act, which has given rise to the petition.

3. In response to the averments made in the petitions, the respondents therein have filed affidavits-in-reply. Since the affidavit-in-reply filed in Special Civil Application No.19239 of 2018 is a more detailed one, reference is also made to the averments made in the said affidavit along with the averments made in the affidavit-in-reply filed in response of the averments made in Special Civil Application No. 12825 of 2018. In the said affidavits-in-reply, it is *inter alia*, contended that the petition is filed at a pre-mature stage, inasmuch as only the notice under section 153C of the Act has been issued. In the event, the petitioner is aggrieved by the re-assessment order that may be passed, the statutory remedy of appeal

under the provisions of the Income Tax Act is available and that on this limited ground alone, the petition may not be entertained.

3.1 In the affidavits-in-reply, it has also been contended that the Finance Act, 2015 amended section 153C of the Act with effect from 1.6.2015 and the language of the amended section 153C is clearer than the pre-amended section. It has also been submitted that the contention of the assessee that the seized material/document does not belong to the assessee is of no consequence because in view of the amended provisions of section 153C (1) with effect from 1.6.2015, even if the seized material pertains to or any information contained therein relates to a person other than the searched person, notice under section 153C can be issued. It is further contended that in this case search was initiated on 4.9.2013, but notice under section 153C was issued on 12.3.2018, that is, after the amendment and therefore, the amended provisions of section 153C of the Act would be applicable.

3.2 Reference is made to the Explanatory Notes to the provisions of the Finance Act, 2015 (Circular No.19/2015). It is submitted that a perusal of the memorandum of the Finance Act, 2015, introducing the amendments makes it amply clear that the amendment was introduced in view of the disputes with the wording of the previous provisions. Therefore, it is evident that the amended provisions are not substantive but a clarification of the previous wordings of the provisions. Furthermore, even a dictionary meaning of the words pertains/belongs/ relates show that they are synonymous.

3.3 It is further averred that the grounds raised by the assessee are not about taxability of "on money payments" in immovable property acquisition transactions but on the grounds of the procedure of taxation of such transactions in respect of other persons in searched cases. Through the amendment in section 153C(1) of the Act by the Finance Act, 2015, no new liability of the assessee has been created or scope of taxation has not been widened. "On money payments" in immovable property acquisition transactions have always been within the scope of charge of income tax. Thus, the amendment is merely procedural amendment. Every assessee has a vested right in substantive law but no such right exist in procedural law. It is accordingly, contended that the procedural amendment applicable by the legislature with effect from 1.6.2015 also covers notice under section 153C of the Act issued on 12.3.2018.

3.4 It is further contended that while deciding an issue related to the provisions of section 158BD of the Act, the Supreme Court, in the case of ***Commissioner of Income-tax-III v. Calcutta Knitwears, Ludhiana****, (2014) 43 taxmann.com 446 (SC)*, considered the first or basic principle of interpretation of a fiscal legislation in the light of various judicial pronouncements and held that: "*It is the duty of the of the court while interpreting the machinery provisions of a taxing statute to give effect to its manifest purpose. Wherever the intention to impose liability is clear, the courts ought not to be hesitant in espousing a commonsense interpretation to the machinery provisions so that the charge does not fail. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not*

defeat the same."

3.5 In the affidavit-in-reply reliance has also been placed upon the decision of the Delhi High Court in ***PCIT v. Super Malls P. Ltd.***, *(2016) 76 taxmann.com 267 (Delhi)*, wherein the contention of the assessee on the basis of the amendment by the Finance Act, 2015 has not been accepted, and it is held thus:

> *"Plainly put, the Assessing Officer was satisfied that the documents belonged to the assessee in view of what was contained or brought out on a fair reading of their contents. It must not be overlooked that while construing a document, expressions should not be interpreted too literally as if they are, words, carved in stone or in a statute – as the ITAT did in this case. For these reasons, the ITAT should not have allowed the appeal only on hyper technical ground raised by the assessee with regard to the satisfaction note."*

3.6 Reliance has also been placed upon paragraph 22 of the decision of this court in ***Kamleshbhai Dharamshibhai Patel***, *(2013) 214 Taxmann 588 (Guj)*, wherein it has been held thus:

> *"Term "belong" is not defined and does not have legally technical connotation and therefore, we once again fall back on the dictionary meaning of the same. We need to ascertain if such document can be stated to "have relation or reference to" to the petitioners."*

It is averred that therefore, after the procedural amendment in section 153C (1) of the Act, such “on money payments”, where these payments are found recorded in impounded material from several persons covered under section 153A, are required to be assessed under section 153C of the Act when notice is issued after the date of the amendment, that is, 1.6.2015 without any ambiguity.

3.7 It is further averred that on a perusal of the details mentioned in the satisfaction note of the Assessing Officer, it is clear that the Assessing Officer has gone through the available material carefully and recorded reasons after due application of mind. In these satisfaction notes, cogent reasons have been recorded after detailed discussion on the seized documents for invoking provisions of section 153C of the Act in respect of the assessee.

3.8 Reliance has been placed upon the decision of the Supreme Court in ***Commissioner of Income-tax v. Vijaybhai N. Chandrani***, *(2013) 35 taxmann.com 580 (SC),* to contend that the writ petitions against notices issued under section 153C of the Act are not maintainable.

4. In this batch of petitions, there are in all three different groups relating to different searches. In one group of petitions, the search had been carried out in the case of HN Safal Group; in another group, the search had been carried out at the premises of Barter Group; and in the third group, the search had been carried out at the premises of Venus Group. In almost all the cases, pursuant to the notice issued under section 153C of the Act, the concerned petitioner has filed

return of income and has requested the Assessing Officer to furnish the satisfaction note and upon receipt thereof, has raised objections thereto. It is after such objections came to be rejected, that these petitions had been filed challenging the notice under section 153C of the Act on the ground that the notices lack jurisdiction. In one or two cases, the Assessing Officer has not decided the objections. However, the facts and contentions raised in all the petitions are more or less similar, and to the extent there is any notable distinction in the facts of any other case, reference shall be made to the same at an appropriate stage of this judgment.

SUBMISSIONS MADE ON BEHALF OF THE PETITIONERS

5. Mr. Hardik Vora, learned advocate for the petitioners in Special Civil Applications No.12825, 12829, 12832, 17487, 17489, 17490, 19074, 19078, 19079, 19083, 19214, 19215, 19216, 19221, 19222, 19223, 19674, 19675 and 20108 of 2018, submitted that the entire issue is based on the hard-disc found during the course of search, whereas there is no allegation that the hard-disc belonged to the assessee. It was submitted that in the present case, the search came to be carried out on the premises of HN Safal group on 4.9.2013, at which point of time, the amendment dated 1.6.2015 was not in force. Therefore, at the relevant time, the Assessing Officer of the searched person could have recorded limited satisfaction to the effect that the books of account or documents seized or requisitioned assets belong to or belongs to the petitioner. It was submitted that admittedly, the hard-disc found during the course of search on the basis of which the notice has been issued under section 153C of the Act to the petitioner, does

not belong to the petitioner. Referring to the satisfaction note recorded by the Assessing Officer of the searched person, it was pointed out that such satisfaction is based on the ground that the documents found and seized from the premises of HN Safal group pertain to or the information contained therein, relates to the petitioner. It was submitted that therefore, the Assessing Officer has recorded satisfaction in terms of the amended provision of section 153C of the Act, which came into force on 1.6.2015. According to the learned advocate. the amendment dated 1.6.2015 confers a new power on the Assessing Officer and is, therefore, prospective in effect and hence, could not have been made applicable in the facts of the present case when the amendment was not in force as on the date of the search.

5.1 In support of his submissions, the learned advocate placed reliance upon the decision of the Supreme Court in the case of ***State of Tamil Nadu v. Star Tobacco Co.***, *(1974) 3 SCC 249*, wherein the court held thus:

> *"**5**. The question for decision is whether the jurisdiction to reopen is a question of procedure or power. Mr Ram Ready contended that it relates only to procedure and on that basis sought to seek support from the decision of this Court in State of Madras v. Lateef Hamid and Co., 28 STC 690. We are unable to accept this contention. In Hamid case this Court was dealing with an alleged infraction of a provision dealing with procedure. Herein we are dealing with a question of power. The question for decision is as to who had the concerned jurisdiction to reopen the assessments. Such a question cannot be considered as a question of procedure. Under the old Rules the assessee had a right to have his assessments reopened only by the Appellate Authority. This was undoubtedly a right conferred on the assessee. It is a valuable right. That being so, the same is protected by the proviso quoted above."*

5.2 Reference was made to the decision of the Supreme Court in the case of ***CED v. M.A. Merchant****, 1989 Supp (1) SCC 499*, wherein the court held thus:

> ***"6.*** *The Estate Duty (Amendment) Act, 1958 effected a substantial change in the parent Act. Sections 56 to 65 were substituted in place of the existing Sections 56 to 65, and the originally enacted Section 62 was repealed. The original Section 62 provided essentially for the rectification of mistake apparent from the record or in the valuation of any property or by reason of the omission of any property. The newly enacted Section 59 deals with property escaping assessment. The provision is analogous to Section 34 of the Indian Income Tax Act, 1922 and Section 147 of the Income Tax Act, 1961. It seems to us that the new Section 59 endeavours to cover a substantially different area from that treated by the old Section 62. The only area which seems common to the two provisions relates to the "omission of any property", but it seems to us that the incidents of the power under Section 62 relate to a situation materially different from the incidents of the power contemplated under Section 59. The High Court has closely analysed the provisions of the two sections and has come to the conclusion that the power or re-assessment conferred by the new Section 59 is quite different from the power conferred by the old Section 62. We are in agreement with the High Court. The contention on behalf of the revenue based on the identity alleged between the new Section 59 and the old Section 62, and that, therefore, the new section should be regarded as retrospective cannot be accepted.*
>
> ***7.*** *As it stands, there are no specific words either which confer retrospective effect to Section 59. To spell out retrospectivity in Section 59, then, there must be something in the intent to Section 59 from which retrospective operation can be necessarily inferred. We are unable to see such intent. The new Section 59 is altogether different from the old Section 62 and there is nothing in the new Section 59 from which an intent to give retrospective effect to it can be concluded.*
>
> ***8.*** *The new Section 59 came into force from 1-7-1960. Much earlier, on 26-2-1960 the assessment on the accountable person had already been completed. There is*

a well settled principle against interference with vested rights by subsequent legislation unless the legislation has been made retrospective expressly or by necessary implication. If an assessment has already been made and completed, the assessee cannot be subjected to re-assessment unless the statute permits that to be done. Reference may be made to Controller of Estate Duty, West Bengal v. Smt Ila Das, [1981] 132 ITR 720 (Cal.), where an attempt to reopen the estate duty assessment consequent upon the insertion of the new Section 59 of the Estate Duty Act was held infructuous.

9. *We hold that Section 59 of the Estate Duty Act is not retrospective in operation and that the reopening of the assessment under Section 59 of the Act is bad in law."*

5.3 It was submitted that the words "pertains to" or "any information relates to" have been inserted with effect from 1.6.2015 and therefore, the amendment is prospective unless made specifically retrospective.

5.4 Reference was also made to the decision of this court in the case of ***Kamleshbhai Dharamshibhai Patel v. Commissioner of Income Tax***, *[2013] 214 Taxman 588 (Guj.)*, wherein the court held thus:

"20. What ever be the position of title of the lands post 16th September 2010, it can hardly be disputed that the documents in question belong to the petitioners. The petitioners required vacant possession of the land to be able to pass on the title and vacant possession. To be able to do so, the petitioners entered into agreements with the tenants. Such documents thus are documents which definitely belong to the petitioners. Simply because on subsequent date, the land was sold, may have a bearing on the title of such land, the same would not in any manner alter the nature of the document concerned. Such documents belong to the petitioners and continue to so belong, irrespective of the transfer of the title of the land. We do not see how the petitioners can contend that simply because at a subsequent point of time they

disposed of the property and transferred the title to the purchasers, the documents since to belong to them. The term belong to has not been defined in the Act. In the Webster's Third New Intl. Dictionary, the word, belong is described as, to have relation or reference to a person or thing. In Advanced Law Lexicon P. Ramanatha Aiyar [3rd Edition], the term, belong in context of Section 400 IPC means, implied something more than the idea of casual association; it involves a notion of continuity and indicates a more or less intimate connection with a body of persons extending over a period of time sufficiently long to warrant the inference that the person affected was identified himself with a band, the common purpose of which is the habitual commission of dacoity."

5.5 Reference was also made to the decision of the Supreme Court in the case of ***Commissioner of Income Tax v. Sinhgad Technical Education Society***, *(2018) 11 SCC 490*, wherein it has been held thus:

> *"20. Insofar as the judgment of the Gujarat High Court relied upon by the learned Solicitor General is concerned, we find that the High Court in that case has categorically held that it is an essential condition precedent that any money, bullion or jewellery or other valuable articles or thing or books of accounts or documents seized or requisitioned should belong to a person other than the person referred to in section 153A of the Act. This proposition of law laid down by the High Court is correct, which is stated by the Bombay High Court in the impugned judgment as well. The judgment of the Gujarat High Court in the said case went in favour of the Revenue when it was found on facts that the documents seized, in fact, pertain to third party, i.e. the assessee, and, therefore, the said condition precedent for taking action under section 153C of the Act had been satisfied."*

5.6 It was submitted that the relevant date for applying the amended section 153C of the Act would be the date of actual search. Reference was made to the provisions of section 292C

of the Act, which provides that where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under the Act, be presumed that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person. It was submitted that once the hard-disc has been found from the premises of the searched person, considering the provisions of section clause (i) of sub-section (1) of section 292C of the Act, it is evident that no documents belonging to the petitioner have been found inasmuch as it is no one's case that the hard disk belonged to the petitioner and hence, the pre-amendment provisions would apply, and therefore, the Assessing Officer lacks jurisdiction to initiate proceedings under the provisions of section 153C of the Act.

6. Mr. Sudhir Mehta, learned advocate for the petitioners in Special Civil Applications No.16419, 16421, 16425, 16426, 16427, 16782, 16786, 16800, 16801, 16821, 17771, 17788, 17789, 17790, 17791, 17793, 17796, 17797, 18270, 18271, 18272, 18273, 18274, 18712, 18773, 18777, 19232, 19234, 19236, 19321, 19323, 19325, 19647, 19676, 19844, 19871, 20221, 20228, 20241, 20244, 20245, 20272, 20276, 20825, 20828 and 20830 of 2018, reiterated the submissions advanced by Mr. Hardik Vora. Since the submissions advanced by the learned advocate are more or less similar to the submissions advanced by Mr. Hardik Vora, learned advocate, it is not necessary to reproduce the same. The learned advocate submitted that the amendment made in section 153C with

effect from 1.6.2015 by Finance Act, 2015 would not be applicable as search was conducted much before that date. The learned advocate submitted that since the petitioners have come against the notice under section 153C of the Act, the petition is maintainable. In support of such submission reliance was placed upon the decisions of the Supreme Court in the case of ***State of U.P. v. Mohammad Nooh****, AIR 1958 SC 86*, and in the case of ***A.V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobraj Wadhwani and another****, AIR 1961 SC 1506*.

6.1 Reliance was also placed upon the decision of the Supreme Court in the case of ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others****, (1998) 8 SCC 1*, wherein the court has held that under article 226 of the Constitution of India, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. Alternative remedy has been consistently held by the Supreme Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. It was submitted that in the facts of the present case, the proceedings under section 153C of the Act being wholly without jurisdiction, these writ petitions under article 226 of the Constitution of India are maintainable.

7. Mr. S. N. Soparkar, Senior Advocate, learned counsel with Mr. B. S. Soparkar, learned advocate for the petitioner in Special Civil Application No.18346 of 2018, submitted that the question that arises for consideration is whether the amendment of section 153C(1) of the Act with effect from 1.6.2015 is retroactive, retrospective or prospective. It was submitted that since the amendment has been made prospective, it would cover those cases where search is made after the amendment. It was submitted that on the date of search, there was no power to proceed against the petitioner under section 153C of the Act. It was submitted that if under section 153C of the Act as it stood then, the petitioner was not covered at the time of the search; the amended provisions cannot be made applicable to the petitioner. It was submitted that one should not interpret the amendment so as to cover what was impermissible at the time of the search.

7.1 Reliance was placed upon the decision of the Supreme Court in ***R. Rajagopal Reddy v. Padmini Chandrasekharan****, (1995) 2 SCC 630*, wherein the court held thus:

> *"**11.** Before we deal with these six considerations which weighed with the Division Bench for taking the view that Section 4 will apply retrospectively in the sense that it will get telescoped into all pending proceedings, howsoever earlier they might have been filed, if they were pending at different stages in the hierarchy of the proceedings even up to this Court, when Section 4 came into operation, it would be apposite to recapitulate the salient feature of the Act. As seen earlier, the preamble of the Act itself states that it is an Act to prohibit benami transactions and the right to recover property held benami, for matters connected therewith or incidental thereto. Thus it was*

enacted to efface the then existing right of the real owners of properties held by others benami. Such an Act was not given any retrospective effect by the legislature. Even when we come to Section 4, it is easy to visualise that sub-section (1) of Section 4 states that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other shall lie by or on behalf of a person claiming to be the real owner of such property. As per Section 4(1) no such suit shall thenceforth lie to recover the possession of the property held benami by the defendant. Plaintiff's right to that effect is sought to be taken away and any suit to enforce such a right after coming into operation of Section 4(1) that is 19-5-1988, shall not lie. The legislature in its wisdom has nowhere provided in Section 4(1) that no such suit, claim or action pending on the date when Section 4 came into force shall not be proceeded with and shall stand abated. On the contrary, clear legislative intention is seen from the words "no such claim, suit or action shall lie", meaning thereby no such suit, claim or action shall be permitted to be filed or entertained or admitted to the portals of any court for seeking such a relief after coming into force of Section 4(1). In Collins English Dictionary, 1979 Edition as reprinted subsequently, the word 'lie' has been defined in connection with suits and proceedings. At page 848 of the Dictionary while dealing with Topic No. 9 under the definition of term 'lie' it is stated as under:

"For an action, claim appeal etc. to subsist; be maintainable or admissible."

The word 'lie' in connection with the suit, claim or action is not defined by the Act. If we go by the aforesaid dictionary meaning it would mean that such suit, claim or action to get any property declared benami will not be admitted on behalf of such plaintiff or applicant against the defendant concerned in whose name the property is held on and from the date on which this prohibition against entertaining of such suits comes into force. With respect, the view taken that Section 4(1) would apply even to such pending suits which were already filed and entertained prior to the date when the section came into force and which has the effect of destroying the then existing right of plaintiff in connection with the suit property cannot be sustained in the face of the clear language of Section 4(1). It has to be visualised that the legislature in its wisdom

has not expressly made Section 4 retrospective. Then to imply by necessary implication that Section 4 would have retrospective effect and would cover pending litigations filed prior to coming into force of the section would amount to taking a view which would run counter to the legislative scheme and intent projected by various provisions of the Act to which we have referred earlier. It is, however, true as held by the Division Bench that on the express language of Section 4(1) any right inhering in the real owner in respect of any property held benami would get effaced once Section 4(1) operated, even if such transaction had been entered into prior to the coming into operation of Section 4(1), and henceafter Section 4(1) applied no suit can lie in respect to such a past benami transaction. To that extent the section may be retroactive. To highlight this aspect we may take an illustration. If a benami transaction has taken place in 1980 and a suit is filed in June 1988 by the plaintiff claiming that he is the real owner of the property and defendant is merely a benamidar and the consideration has flown from him, then such a suit would not lie on account of the provisions of Section 4(1). Bar against filing, entertaining and admission of such suits would have become operative by June 1988 and to that extent Section 4(1) would take in its sweep even past benami transactions which are sought to be litigated upon after coming into force of the prohibitory provision of Section 4(1); but that is the only effect of the retroactivity of Section 4(1) and nothing more than that. From the conclusion that Section 4(1) shall apply even to past benami transactions to the aforesaid extent, the next step taken by the Division Bench that therefore, the then existing rights got destroyed and even though suits by real owners were filed prior to coming into operation of Section 4(1) they would not survive, does not logically follow."

7.2 It was submitted that the law would be generally prospective and the exceptions are: (1) procedural law and (2) declaratory law. The amendment in section 153C of the Act is not in the nature of a procedural law, but creates a new substantive right or obligation, therefore, the first exception will not apply. It was submitted that amendment is equally not

a declaratory law as it does not intend to clarify any ambiguity and that since the scope of section 153C of the Act is being expanded, such an amendment cannot be regarded as clarificatory in nature and any attempt to rely upon the amended provision is impermissible.

7.3 Reliance was placed upon the decision of the Supreme Court in ***Commissioner of Income Tax-19, Mumbai v. Sarkar Builders****, [2015] 375 ITR 392* as well as the decision of this court in ***Tata Teleservices v. Union of India and others****, [2016] 385 ITR 497,* for the proposition that whether the prospective or retrospective rule of construction should apply depends on the nature of the new statute or the amending statute. If it is purely a procedural statute and does not deal with substantive rights, then the retrospective rule of construction should apply. But where the statute deals with substantive rights, or deals with both procedural and substantive rights, then the prospective rule of construction is applicable. The court further placed reliance upon the decision of the Supreme Court in ***Zile Singh v. State of Haryana****, (2004) 8 SCC 1*, wherein the court observed that it is a cardinal principle of construction that every statute is *prima facie* prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only - "*nova constitutio futuris forman imponere debet non praeteritis*" - a new law ought to regulate what is to follow, not the past. It

was submitted that prior to the amendment, the Assessing Officer had no jurisdiction to take any action against the petitioner under section 153C of the Act as none of the seized material belonged to the petitioner. Therefore, the subsequent amendment will not vest jurisdiction in him as the amendment is neither procedural nor declaratory, but it is substantive. It was submitted that but for the amendment, the Assessing Officer would have no right to issue notice and hence, the impugned notice is bad in law and without jurisdiction.

7.4 An alternative argument was raised by the learned counsel for the petitioner that the impugned notice is barred by delay. It was submitted that the notice under section 153C of the Act which was issued on 8.2.2018 cannot be said to be a legal notice as it is far beyond the assessment proceedings in the case of HN Safal group. Therefore, no proceedings could have been conducted under section 153C of the Act. Reliance was placed upon the decision of the Supreme Court in the case of ***National Agricultural Co-operative Marketing Federation of India Ltd. and another v. Union of India and others***, *[2003] 260 ITR 548*, wherein the court on the given facts found that the assessment had been concluded on the basis of the decision in *Kerala Marketing's case, [1998] 231 ITR 814 (SC)* and the period for reopening such assessments had become time barred. In any event, the 1998 amendment cannot be construed as authorizing the revenue authorities to reopen assessments when the reopening is already barred by limitation. The court held that the amendment does not seek to touch on the periods of limitation provided in the Act, and in the absence of any such express provision or clear implication, the legislature clearly could not

be taken to intend that the amending provision authorizes the Income Tax Officer to commence proceedings which before the new Act came into force, had, by the expiry of the period provided become barred. It was submitted that what was impermissible in law because of bar of limitation would not become permissible on account of amendment, unless the amendment expressly extends the period of limitation.

7.5 Reliance was also placed upon the decision of the Supreme Court in the case ***Commissioner of Income Tax-III v. Calcutta Knitwears, Ludhiana***, *(2014) 6 SCCC 444*, wherein the court, in the context of section 158BD of the Act, has held that a satisfaction note is *sine qua non* and must be prepared by the Assessing Officer before he transmits the record to the other Assessing Officer who has jurisdiction over such other person. The satisfaction note could be prepared at either of the following stages:(a) at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; (b) along with the assessment proceedings under section 158BC of the Act; and (c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person.

7.6 It was submitted that while section 158BD of the Act requires satisfaction as regards undisclosed income, section 153C of the Act relates to satisfaction based on tangible material like books of account etc. It was submitted that it was not necessary for the Assessing Officer of the searched person to wait for the order of Settlement Commission for the purpose of recording the requisite satisfaction as required under section 153C(1) of the Act. Therefore, the satisfaction recorded

on 25.4.2017 by the Assessing Officer of the searched person was belated. It was submitted that the Assessing Officer of the searched person handed over the records to the Assessing Officer of the petitioners who recorded the satisfaction only on 8.2.2018, at a highly belated stage and that in the light of the decision of the Supreme Court in the case of ***Commissioner of Income Tax-III v. Calcutta Knitwears, Ludhiana*** (supra), the impugned notice is barred by limitation and deserves to be quashed and set aside. In the above decision the Supreme Court has held that the satisfaction must be recorded by the Assessing Officer immediately after the assessment proceedings are completed under section 158BC of the searched person. The learned counsel submitted that some meaning must be assigned to the words "immediately after" and therefore, the satisfaction recorded by the Assessing Officer the petitioner in February, 2018 is grossly belated.

8. Mr. Mihir Joshi, Senior Advocate, learned counsel with Mr. Darshan Gandhi, learned advocate for the petitioner in Special Civil Application No.19239 of 2018, submitted that the provision of section 158BD of the Act is a special procedure, wherein the trigger points are the search and seizure. It was submitted that section 158BD of the Act is unrelated to sections 132 or 132A of the Act as satisfaction has to be recorded regarding undisclosed income. It was submitted that the first termini under section 158BD of the Act is the satisfaction of the Assessing Officer that undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 of the Act. It was submitted that in case of section 153A of the Act, the point of

applicability must always be the date of search or the last date of search. It was submitted that insofar as section 153C of the Act is concerned, the search or requisition under section 132 or 132A will result in assessment and therefore, at the first stage, there is no requirement of undisclosed income. It was submitted that prior to its amendment, section 153C of the Act provided that satisfaction be recorded by the Assessing Officer of the searched person that any money, bullion, jewellery or other valuable article or thing or books of account or document seized or requisitioned belong or belongs to the person other than the searched person, whereas after the amendment of section 153C (1) with effect from 1.6.2015, the scheme is substituted. Before the amendment, the person in whose case the search took place and the other person to whom the material seized or requisitioned belong, were covered. Therefore, the provision gets frozen as on the date of the search or requisition and it is the law as on that date that is required to be taken into consideration and that the amended section 153C cannot be superimposed into the old scheme. It was submitted that after 1st June, 2015, a completely new scheme has been introduced as it brings completely new persons within its ambit namely that a person who could not be proceeded against is now brought into its purview and that the entire scheme in relation to assessment of person other than the person searched is changed. It was contended that therefore, the amended provision can be made applicable to searches made after it was brought into force as there is completely different scheme from 2015. According to the learned counsel, the terminal point of time for deciding the reasonableness for the purpose of considering whether the notice under section 153C of the Act has been issued within a

reasonable time has to relate to the first point of search and that once reasonable time has elapsed, the Assessing Officer cannot act under that section.

9. Mr. Tushar Hemani, learned counsel with Ms. Vaibhavi Parikh, learned advocate for the petitioners in Special Civil Applications No.19116, 19119, 19121, 20128, 20129, 20143, 20145, 20146, 20149, 20151, 20152, 20154, 20604, 20629 and 20632 of 2018, invited the attention of the court to the provisions of section 153B of the Act, which provides for the time limit for completion of assessment under section 153A of the Act. It was pointed out that the first proviso to sub-section (1) thereof provides that in case of the other person referred to in section 153C of the Act, the period of limitation for making the assessment or re-assessment shall be the period as referred to in clauses (a) and (b) of that sub-section or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later. Referring to sub-section (1) of section 153B, it was pointed out that under clause (a) thereof, it is provided that the Assessing Officer shall make assessment or re-assessment in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b) of sub-section (1) of section 153A, within a period of twenty-one months from the end of the financial year in which the last of the authorizations for search under section 132 or for requisition under section 132A was executed. It was submitted that in the facts of the present case, the limitation for assessment under section 153A of the Act was 31st March,

2016, whereas in the present case, the impugned notice has been issued on 21.2.2018, that is, after the period of limitation under clause (a) had expired. It was submitted that the point of initiation of proceedings under section 153C of the Act is the search proceedings and the original date of search is not given a go-bye. It was submitted that if the date on which the Assessing Officer of the other person receives the material were the relevant date, there was no need for clauses (a) and (b) in the proviso that applies to section 153C of the Act. It was submitted that there is no separate date of search insofar as the proceedings under sections 153A and 153C of the Act are concerned and that the date of search even in the case of proceedings under section 153C is the date of original search and conceptually, the date of search is only one.

9.1 Reliance was placed upon the decision of the Supreme Court in ***Commissioner of Income Tax v. Vatika Township P. Ltd.***, *[2014] 367 ITR 466*, for the proposition that of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow’s backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. It was submitted that the provisions of the amended section 153C (1) of the Act are required to be

applied with respect to the date of search. Reliance was also placed on the decision of this court in ***Denish Industries Ltd. v. Income Tax Officer***, *[2004] 271 ITR 340*, for a similar proposition of law.

10. Mr. B. S. Soparkar, learned advocate for the petitioners in Special Civil Applications No.18362 of 2018 and No.19869 of 2018, invited the attention of the court to the provisions of sections 158BD and 153C of the Act. It was submitted that in section 153C of the Act, there is a requirement of two satisfaction notes; one by the Assessing Officer of the searched person and the other by the Assessing Officer of the other person; whereas in section 158BD of the Act, there is only one satisfaction note of the Assessing Officer of the searched person. Thus, both sections operate differently. It was submitted that section 158BD relates to undisclosed income, where the Assessing Officer of the searched person records satisfaction that there is an element of undisclosed income. Referring to the definition of "undisclosed income" as defined under section 158B(b) of the Act, it was submitted that the subsequent part which says that "such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act, or any expense, deduction or allowance claimed under this Act which is found to be false", is not found in section 153C of the Act. It was submitted that insofar as section 153C of the Act is concerned, the first satisfaction which is to be recorded by the Assessing Officer of the searched person prior to the amendment is limited to whether the seized material belongs to the other

person, and whether it pertains to or relates to the other person after the amendment. Therefore, recording of such satisfaction has to be done at the time of search, because it is at that time that such articles are recovered and the occasion arises to identify whether such articles belong to the searched person or some other person. The Assessing Officer of the searched person cannot wait for the adjudication of the searched person for recording satisfaction that some of the seized material belongs to another person.

10.1 It was submitted that the search is conducted by the Investigating Officer and not the Assessing Officer and that the Investigating Officer prepares the appraisal report and sends it along with relevant seized material to the Assessing Officer, based on which the Assessing Officer conducts inquiry and frames the assessment. The time limit for submitting appraisal report is two months from the date of the last panchnama.

10.2 It was contended that the notice under section 153C of the Act is bad because the Assessing Officer of the searched person is required to hand over the material found during the search concerning (belonging to or relating to) the petitioner immediately after the search action and the receipt of documents from the Investigating Officers. Therefore, when the search took place on 4.9.2013, the law as it stood at that point of time, allowed him to hand over only the material belonging to the petitioner and therefore, he could not have handed over the hard disk in question to the Assessing Officer of the petitioner. It was submitted that therefore, if the Assessing Officer of the searched person was not legally

allowed to hand over the hard disk in question to the Assessing Officer of the petitioner before the amendment of 1.6.2015, then the amendment of 1.6.2015 does not vest any additional power in him enabling him to hand over the same on 25.4.2017.

10.3 Next, it was contended that the Assessing Officer of the searched person is required to be satisfied to a limited extent that the material belongs to a person other than the searched person. He is required to be satisfied with respect to the impact of the same to the income of such other person. Once the material is handed over, thereafter the Assessing Officer of the other person is required to be satisfied about whether such material has any bearing upon the determination of the total income of such person. Therefore, the nature of satisfaction required to be recorded by the Assessing Officer of the searched person and the Assessing Officer of the other person is different.

10.4 It was submitted that in the facts of the present case, it is the case of the revenue that until the order of Settlement Commission, the Assessing Officer of the searched person could not determine the material concerning (belonging to or relating to) the petitioner and there is no time limit prescribed for notice under section 153A or 153C of the Act and therefore, the notice under section 153C of the Act is valid and cannot be objected to. It was contended that the contention raised on behalf of the revenue is not tenable, inasmuch as the Supreme Court in ***Commissioner of Income Tax-III v. Calcutta Knitwears, Ludhiana*** (supra) has held that although there is no time limit for recording satisfaction

under section 158BC of the Act, the same is required to be recorded at either of the following stages: (a) at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; (b) along with the assessment proceedings under section 158BC of the Act; and (c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person. It was submitted that drawing an analogy, although there is no time limit prescribed for recording satisfaction under section 153C of the Act, such satisfaction is required to be recorded immediately after the search (or the receipt of documents from the Investigating Officers), more so, because unlike the requirement under section 158BD of the Act of "undisclosed income", under section 153C of the Act, the scope of satisfaction is narrower. The Assessing Officer of the searched person is required to only look at the material received from the Investigating Officer and such material which does not belong to the searched person but belong or belongs to other persons need to be sent to the Assessing Officer of such other persons.

10.5 It was further submitted that the time limit for assessment under section 153C of the Act read with proviso to sub-section (1) of section 153B, is a period of twenty one months from the end of the financial year in which search was conducted, or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over. Since the search was conducted in September 2013, the end of the financial year would be 31st March, 2014 and twenty one months from the end of such financial year would be 31.12.2015. Therefore, on

the date of notice under section 153C of the Act viz. 8.2.2018, the first time period had expired on 31.12.2015. It was submitted that the second condition for computing time needs to be read in conjunction with the entire scheme of assessment and therefore, the same cannot be valid because the searched person applied to the Settlement Commission. It was submitted that regardless of the searched person applying to Settlement Commission, the material belonging to the petitioner ought to have been handed over to the Assessing Officer of the petitioner and in case of failure in doing so, the delay is inordinate and beyond limitation.

10.6 In support of such submission the learned advocate placed reliance upon the decision of this Court in ***Tata Teleservices v. Union of India,*** *[2016] 385 ITR 497***,** for the proposition that unless the terms of the statute expressly provide or unless there is necessary implication, retrospective operation should not be given to the statute so as to affect, alter or destroy any right already acquired or to revive any remedy already lost by efflux of time. Unless the language clearly manifests in express terms or by necessary implication, a contrary intention a statute divesting vested rights is to be construed as prospective. A statute is retrospective if it takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in regard to events already past. There is however said to be an exception in the case of a statute which is purely procedural, because no person has a vested right in any particular course of procedure, but only a right to prosecute or defend a suit according to the rules for the conduct of an action for the time being prescribed.

10.7 Mr. Soparkar has submitted that the hard disk does not belong to the petitioner. From the date of search till the amendment of 2015, the Assessing Officer did not have jurisdiction to issue notice under section 153C of the Act because till then the jurisdiction was limited to material seized belonging to the other person. After the amendment, if it is prospective, the Assessing Officer still would have no jurisdiction. It was submitted that even if the amendment is retroactive, even then the satisfaction should have been recorded immediately after the search or upon identification of material in the hard disk and therefore, the impugned notice under section 153C of the Act is time barred.

11. Mr. M. J. Shah, learned advocate for the petitioner in Special Civil Application No.20081 of 2018, invited the attention of the court to the provisions of section 153C of the Act, to submit that prior to its amendment, section 153C provided that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person. It was submitted that after the amendment, section 153 provides that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that, - (a)

any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, “belongs to”, or, (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned, shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess and re-assess the income of the other person in accordance with the provisions of section 153A. It was submitted that on a conjoint reading of unamended section 153C and amended section 153C, it is evident that half the section insofar as it relates to any money, bullion, jewellery, or other valuable article or thing, seized or requisitioned, remains the same namely that the same should belong to a person other than the searched person. It is only the subsequent part, namely in the context of books of account or documents seized or requisitioned that there is an amendment to the effect that if any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person searched, the Assessing Officer is empowered to initiate the proceedings under section 153C of the Act. It was submitted that the amendment is, therefore, specifically with effect from 1.6.2015 and cannot be made applicable where a search has been carried out prior to that date.

12. Mr. Ketan Shah, learned advocate for the petitioner in Special Civil Applications No.12849, 18611, 19654, 19657, 19658, 19659, 19661, 19899, 19900 and 19902 of 2018,

reiterated the submissions advanced by the learned counsel for the petitioners which have already been referred to hereinabove. He has further placed reliance upon the decision of the Bombay High Court in the case of ***Commissioner of Income Tax, Central-III, Mumbai v. Arpit Land (P) Ltd.***, *[2017] 78 taxmann.com 300 (Bombay)*, wherein the court held thus:

> *"6. We note that in terms of Section 153C of the Act at the relevant time i.e. prior to 1st June, 2015 the proceedings under Section 153C of the Act could only be initiated/proceeded against a party - assessee if the document seized during the search and seizure proceedings of another person belonged to the party - assessee concerned. The impugned order records a finding of fact that the seized documents which formed the basis of initiation of proceedings against the respondent assessees do not belong to it. This finding of fact has not been shown to us to be incorrect. Further, the impugned order placed reliance upon a decision of Gujarat High Court in Vijaybhai Chandrani vs. ACIT 333 ITR 436 which records that the condition precedent for issuing notice under Section 153C of the Act is that the document found during search proceedings should belong to assessee to whom notice is issued under Section 153C of the Act. It was fairly pointed out to us by Mr. Mistry, the learned Senior Counsel for the respondent – assessee that the above decision was reversed by the Supreme Court in CIT vs. Vijaybhai N. Chandrani (2013) 357 ITR 713. However, we find that the Apex Court reversed the view of Gujarat High Court on the ground that efficacious alternative remedy was available to the petitioner to raise its objections before the authorities under the Act. Therefore, the Gujarat High Court should not have exercised its extra ordinary writ jurisdiction to entertain the petition. However, the Apex Court also clarified that it was not expressing any opinion of the correctness or otherwise of construction placed by the High Court on Section 153C of the Act. The Revenue has not pointed out any reason why the construction put on Section 153C of the Act by Gujarat High Court is not correct/appropriate. We find that in*

any case our Court has also taken a similar view in CIT vs. Sinhgad Technical Education Society (2015) 378 ITR 84 and refused to entertain Revenue's appeal."

12.1 It was submitted that it is only if the books of account, etc. do not pertain to the searched person that action can be taken against the other person. If it relates to the searched person, the material will remain with the Assessing Officer of the searched person. Reliance was also placed upon the decision of this court in the case of ***Khandubhai Vasanji Desai and others v. Deputy Commissioner of Income Tax and another***, *[1999] 236 ITR 73*, for the proposition that the Assessing Officer of the searched person should send the material to the Assessing Officer of the other person within the reasonable time which has not been done, thereby vitiating the entire proceedings. It was submitted that in the satisfaction note, there is no specific conclusion that the seized material does not belong to the searched person and that without such satisfaction having been recorded no action can be taken against the other person.

13. Mr. S. N. Divatia, learned advocate for the petitioner in Special Civil Application No.20610 of 2018, submitted that sections 153A to 153D of the Act are a complete Code. If section 153C of the Act is seen prior to the amendment, it covered only those persons to whom the material belonged to, however, now a wider classification has been made. The scope of the section has become wider affecting the rights of the other persons and therefore, cannot be applied retrospectively.

13.1 Reliance was placed upon the following extracts

from the Principles of Statutory Interpretation by Justice G. P. Singh:

> *(iv) Statements of the rule against retrospectivity.- The classification of a statute as either substantive or procedural does not necessarily determine whether it may have a retrospective operation. For example, a statute of limitation is generally regarded as procedural but if its application to a past cause of action has the effect of reviving or extinguishing a right of suit, such an operation cannot be said to be procedural. It has also been seen that the rule against retrospective construction is not applicable merely because a part of the requisites for its action is drawn from a time antecedent to its passing. For these reasons, the rule against retrospectivity has also been stated avoiding the classification of statutes into substantive and procedural and avoiding use of words like existing or vested*."
>
> "***(e) Fiscal statutes***
> *Fiscal legislation imposing liability is generally governed by the normal presumption that it is not retrospective and it is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication. The above rule applies to the charging section and other substantive provisions such as a provision imposing penalty and does not apply to machinery or procedural provisions of a taxing Act which are generally retrospective and apply even to pending proceedings. But a procedural provision, as far as possible, will not be so construed as to affect finality of tax assessment or to open up liability which had become barred. Assessment creates a vested right and an assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective. A provision which in terms is retrospective and has the effect of opening up liability which had become barred by lapse of time will be subject to the rule of strict construction. In the absence of a clear implication such a legislation will not be given a greater retrospectivity than is expressly mentioned; nor will it be construed to authorize the Income-tax Authorities to commence proceedings which, before the new Act came into force, had by the expiry of the period then provided become barred. But unambiguous language must be given*

effect to, even if it results in reopening of assessments which had become final after expiry of the period earlier provided for reopening them. There is no fixed formula for the expression of legislative intent to give retrospectivity to a taxation enactment. Though the Legislature has enormous power to make retrospective taxing laws, yet when a retrospective Act is entirely arbitrary and irrational it may be declared invalid as offending Article 14 of the Constitution. But the retrospective operation would have to be found to be unduly oppressive and confiscatory before it can be held to be so unreasonable as to violate constitutional norms of Articles 14 and 19 of the Constitution.

It was submitted that for initiating proceedings under section 153C of the Act, the basic event is the search and, therefore, the amended provision which was not on the statute book on the date of the search, cannot be applied retrospectively in the facts of the present case.

13.2 Referring to the Explanation I to sub-section (1) of section 153A of the Act, which provides that for the purposes of the sub-section, the expression “relevant assessment year” shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made, it was submitted that all previous years relate to the date of search. Referring to the amended portion of section 153C of the Act as amended with effect from 1st June, 2015, it was submitted that it has been synchronized with the date of search and it is the date of search which is the relevant point while considering the validity of the impugned notice issued

under section 153C of the Act.

14. Mr. Darshan Patel, learned advocate for the petitioner in Special Civil Application No.19841 of 2018 submitted that the date of the search is the relevant date which has to be taken into consideration for applying the amendment which has been brought into effect from 1.6.2015 which is supported by the C.B.D.T. Circular No.2/2018 dated 15.2.2018, issued in the context of the amendments made in section 153A with effect from 1st April, 2017. It was pointed out that paragraph 80.5 of the said circular clearly states that the amended provisions of section 153A of the Act shall apply where search under section 132 is initiated or requisition under section 132A has been made on or after 1st April, 2017. Reliance was placed upon the decision of the Delhi High Court in the case of ***Canyon Financial Services Ltd. v. Income Tax Officer***, *[2017] 399 ITR 202 (Delhi)*, to submit that the court has observed that the date of search has to be taken into consideration. It was submitted that even in the Act, reference is made to the date of initiation of search and hence, the date of search is to be taken into consideration for applying the amendment. It was submitted that in the facts of the present case, the date of search is 4.9.2013, which is prior to the amendment, the amended provision would not be applicable and that the stand taken by the Department that the date of notice is to be taken into consideration is without any basis.

14.1 It was further submitted that the first proviso to section 153C of the Act is only applicable when the pending proceedings have abated as per the second proviso to section 153A, and only in such cases, the date of search shall be

construed as the date of receiving the books of accounts or documents or assets seized or requisitioned by the Assessing Officer of the other person. Therefore, the Department has misinterpreted the proviso to section 153C of the Act.

14.2 Next, it was contended that the satisfaction note of the other person (the petitioner) has to be recorded immediately after the assessment proceedings are completed in the case of the searched person. Whereas in the present case, the Settlement Commission passed its order on 1.8.2016, and the satisfaction in the other person's (petitioner's) case was recorded on 6.9.2018 which is after a huge delay and is clearly in contravention of the decision of the Supreme Court in ***Commissioner of Income Tax v. Calcutta Knitwears*** (supra) and the above referred C.B.D.T. Circular.

14.3 It was also submitted that the satisfaction recorded by the Assessing Officer of the petitioner is completely identical to the satisfaction recorded by the Assessing Officer of the searched person, which clearly shows that there is no independent application of mind by the Assessing Officer and he has merely relied upon the satisfaction recorded by the Assessing Officer of the searched person while recording the satisfaction in the present case.

14.4 Reference was also made to the affidavit-in-rejoinder filed by the petitioner, wherein it has been averred thus:

"The petitioner further submits that as per section 153B,

the Assessing Officer shall pass an order of assessment or reassessment within a period of twenty-one months from the end of financial year in which the last of the authorizations for search under section 132 or for requisition under section 132A was executed.

As per section 153B(2), the authorization referred to in clause (a) of sub-section (1) shall be deemed to have been executed in case of the search, on conclusion of search when the last panchnama is drawn in the case of search.

In the present case, the last panchnama was drawn on 07/09/2013 (pg. 48 of the petition) and therefore, the time limit to pass assessment order under section 153A in case of the searched person would end on 07/06/2015 (being 21 months from 07/09/2013).

The petitioner therefore places reliance on Circular No.24/2015 issued by the CBDT (which was issued after taking into consideration the Hon'ble Supreme Court's decision in the case of M/s Calcutta Knitwears) which provides guidelines for recording of satisfaction under section 158BD / section 153C. As per para-2 of the said circular, satisfaction note could be prepared at any of the following stages:

[a] at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; or
[b] in the course of the assessment proceedings under section 158BC of the Act; or

[c] immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person.

The petitioner therefore submits that the provisions of section 153C of the Act are substantially similar / par-materia to the provisions of section 158BD of the Act.

As per (c) , the satisfaction note under section 153C has to be issued by the Assessing Officer of the petitioner immediately after the assessment proceedings are completed in case of the searched person.

Therefore, in the present case, even assuming that the assessment in case of HN Safal i.e. the searched person was completed on the last date, i.e., on 07/06/2015, the satisfaction in the petitioner's case came to be recorded on 06/09/2018 (which is approximately after three years).

The petitioner, therefore, submits that the satisfaction note and the notice under section 153C issued by the Assessing Officer of the petitioner is invalid as the same is issued in contravention to the above referred circular."

15. Mr. Ankit Talsania, learned advocate for the petitioner in Special Civil Application No.19868 of 2018 reiterated the submissions advanced by the learned advocates for the petitioners as recorded hereinabove.

SUBMISSIONS MADE ON BEHALF OF THE RESPONDENTS

16. At the outset, Mrs. Mauna Bhatt, learned senior standing counsel for the respondents, raised a preliminary objection to the very maintainability of the petitions. It was submitted that the petitions challenging the notices under section 153C of the Act are not maintainable in view of the availability of an efficacious alternative statutory remedy by way of appeal. It was submitted that there is no provision under the Act to raise objections against a notice issued under section 153C of the Act and disposal of the same by the Assessing Officer and that the contention raised by the petitioners in the memorandum of petitions that the documents do not relate to/ pertain to them, cannot be decided by this court in exercise of its writ jurisdiction, this being a finding of fact.

16.1 It was submitted that the contention of the petitioner that the notices under section 153C of the Act are bad in law as the same were not issued immediately as held by the Supreme Court in the case of ***Commissioner of Income Tax v. Calcutta Knitwears*** (supra) is also without any basis because immediate is a relative term and may have to be interpreted in relation to the facts of each case. Immediate or belated issuance of notice is a question of fact and may not be amenable to the writ jurisdiction of this court. Further, in the absence of any limitation having been prescribed under the provisions of the Act, belated satisfaction or belated notice per say will not be a jurisdictional issue.

16.2 It was submitted that there are a few petitions which are filed subsequent to the assessment order under section 153A read with section 153C of the Act being passed, which are not maintainable in view of the fact that there is an efficacious alternative remedy of appeal available against such assessment orders.

16.3 In support of her submissions, the learned counsel placed reliance upon the decision of this court in the case of ***Rajhans Builders v. Deputy Commissioner of Income Tax,*** *[2014] 46 taxmann.com 34 (Gujarat)*, wherein the petitioner therein had challenged the notice under section 153C of the Act as well as the reference made by the Assessing Officer to the District Valuation Officer to opine on the valuation of certain immovable properties of the petitioner to ascertain the investment made by the petitioner in such properties. The court has opined that at this stage, no

interference is called for. The court observed that section 153C of the Act, as is well known, pertains to assessment of income of persons other than one who is subjected to search. Sub-section (1) of section 153C of the Act provides that where any Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belonged to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that the Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A of the Act. The court placed reliance upon the decision of the Supreme Court in the case of ***Commissioner of Income Tax v. Calcutta Knitwears*** (supra) and held that the petitioner's contention that the notice under section 153C of the Act could not have been issued after the search operations were over, cannot be accepted. The court further observed that with respect to the validity of the notice itself, it is not inclined to examine the same in view of the decision of the Supreme Court in ***Commissioner of Income Tax v. Vijaybhai N. Chandrani***, *[2013] 357 ITR 713 (SC)* and the decision in ***Commissioner of Income Tax v. Chhabil Dass Agarwal***, *[2013] 357 ITR 357* and relegated the petitioners to remedies under the statute without expressing any opinion on the validity of the reference.

16.4 Reliance was also placed upon the decision of the Supreme Court in the case of ***Commissioner of Income Tax***

v. Vijaybhai N. Chandrani (supra), wherein the court had observed that the assessee had invoked writ jurisdiction of the High Court at the first instance without first exhausting the alternative remedies provided under the Act. The court was of the considered opinion that at the said stage of proceedings, the High Court ought not to have entertained the writ petition and instead should have directed the assessee to file reply to the said notices and upon receipt of a decision from the Assessing Authority, if for any reason it is aggrieved by the said decision, to question the same before the forum provided under the Act.

16.5 Reliance was also placed upon the decision of this court in the case of ***Rajesh Sunderdas Vaswani v. Assistant Commissioner of Income Tax***, *[2016] 76 taxmann.com 311 (Gujarat)*, wherein the court referred to the decision of the Supreme Court in the case of ***Commissioner of Income Tax v. Chhabil Dass Agarwal***, *[2013] 357 ITR 357*, and ultimately after having glanced through the appraisal report, observed that the material on record would persuade it to hold that this was not a case where the satisfaction recorded by the Assessing Officer of the searched person could be stated to be based on no material. The court held that thus, there was *prima facie* material to suggest that incriminating documents seized during the search belonged to the petitioner therein and refused to interfere with the pending assessments.

16.6 Reliance was also placed upon the decision of the Supreme Court in ***Commissioner of Income Tax v. Chhabil Dass Agarwal*** (supra), wherein the court has held thus:

> ***15.*** *Thus, while it can be said that this Court has recognised some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, AIR 1964 SC 1419, Titaghur Paper Mills case, (1983) 2 SCC 433, and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.*

The Supreme Court was, accordingly, of the view that the writ court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under section 148 of the Act, the reassessment orders passed and the consequential demand notices issued thereon.

16.7 On the merits of the case, it was submitted that the amended provisions of section 153C of the Act as inserted with effect from 1.6.2015 would be applicable to the facts of the present case. It was submitted that after the search was conducted on 4.9.2013 in the case of HN Safal Group, the Safal Group made an application before the Settlement Commission on 30.1.2015. The Settlement Commission passed an order under section 245D(4) of the Act on 29.7.2016, which was received by the Assessing Officer of the searched person on

2.8.2016. The Assessing Officer of the searched person was thereafter required to go through the documents and arrive at an independent satisfaction that the documents seized belong to/relate to/pertain to the petitioner-assessee. In this case there are five group entities which were before the Settlement Commission and there were hundreds of beneficiaries assessed in different charges and an independent satisfaction was required to be recorded upon verification of the documents in each case. Therefore the satisfaction recorded by the Assessing Officer of the searched person on 25.4.2017 cannot be said to be not immediate. It was submitted that the Assessing Officer of the petitioner recorded his satisfaction on 8.2.2018 and the notices were also issued on 8.2.2018. It was submitted that the term immediate being relative has to be read in the context of the facts of this case. In support of such submission, reliance was placed upon the decision of the Delhi High Court in ***Commissioner of Income-tax v. Sudhir Dhingra,*** *[2015] 373 ITR 555 (Delhi)*, wherein the notice under section 158BD of the Act was issued to the assessee after expiry of five months from the satisfaction recorded by the Assessing Officer of the person searched. The court held that it could not be concluded that there was unreasonable delay in issuing the said notice and that the same was fatal to the block assessment proceedings initiated against the assessee.

16.8 It was next submitted that section 153C of the Act starts with a *non obstante* clause and therefore, the other provisions of the Act have no application. Furthermore, there are two mandatory requirements for issuance of notice under section 153C of the Act. Firstly, satisfaction by the Assessing Officer of the searched person that the documents belong

to/relate to/pertain to, the person other than the person searched. After recording such satisfaction, he shall have to hand over the records/documents to the jurisdictional Assessing Officer, and secondly, the jurisdictional Assessing Officer, before proceeding further, shall have to record his satisfaction that the said documents have a bearing on the determination of the total income of such other person and thereafter, issue notice under section 153C of the Act. It was submitted that in the present case, both the events, that is, recording of satisfaction by the Assessing Officer of the searched person, as also the handing over of documents and recording of satisfaction by the Assessing Officer of the petitioner-assessee, took place after 1.6.2015. Therefore, the amended provisions of section 153C of the Act will be applicable. In other words, when the Assessing Officer of the searched person assumed jurisdiction for initiation of proceedings under section 153 of the Act, the amended provisions had already been brought into effect and, therefore, the contention of the petitioner that the unamended provisions of section 153C of the Act will be applicable, does not merit acceptance.

16.9 Referring to the decision of this court in the case of ***Dilip Avatar Construction***, rendered on 24.12.2018 in Tax Appeal No.1 of 2017, the learned senior standing counsel submitted that relying upon the decision of the Supreme Court in *Pooran Mal v. Director of Inspection (Investigation), (1974) 93 ITR 505* and the decision of this court in *Gunjan Girishbhai Mehta v. Director of Investigation, 2017 (393) ITR 310*, this court has observed that once the satisfaction to assume jurisdiction as contemplated under the provision was recorded,

the search has no relevance. It was submitted that therefore, the contention of the petitioner that the date of search is relevant, is contrary to the settled position of law.

16.10 Next, it was submitted that as held by the Supreme Court in ***Commissioner of Income Tax-III v. Calcutta Knitwears, Ludhiana*** (supra), sections 158BD and 153C of the Act are procedural sections. No vested right has been taken away by the said amendment and section 153C of the Act being a procedural section, shall have its operation on the date of notice.

16.11 It was submitted that even otherwise, the amended provisions of section 153C of the Act would be applicable to the notices issued after 1.6.2015 because the legislative intent behind inserting sections 153A, 153B and 153C by Finance Act, 2003, with effect from 1.6.2003, is to tax undisclosed income in the search proceedings. Therefore, once the Assessing Officers are satisfied that the documents seized belong to/pertain to/relate to the person other than the person searched and have a bearing on the determination of the total income of such other person, the provision being a machinery provision shall have to be read so as to make the charging section workable.

16.12 It was submitted that in the present case, the search entity, viz., Safal Group went before the Settlement Commission and accepted that they had accepted cash as referred to in the seized documents and that such cash is their undisclosed income. Therefore, the contention of the petitioners-assessees that they have not paid any cash is

factually incorrect. In support of her submissions, the learned senior standing counsel placed reliance upon the decision of the Supreme Court in ***Commissioner of Income Tax-III v. Calcutta Knitwears, Ludhiana*** (supra). Reliance was placed upon the decision of this court in ***Kamleshbhai Dharamshibhai Patel v. Commissioner of Income Tax-3*** (supra), for the meaning to be assigned to the term "belong to". Reliance was also placed upon the decision of this court in ***Udhana Udhyog Nagar Sahkari Sangh Ltd. v. Shailendra Lodha***, *[2016] 75 Taxman.com 185 (Guj.)*, wherein it has been held thus:

> *"9. We are concerned with the position prevailing before and after 01.04.2008. The petitioner filed a return of income on 21.08.2007. As per the then prevailing proviso to section 143(2), the Assessing Officer could not serve the notice on the assessee after expiry of twelve months from the end of the month in which the return was furnished. The outer limit as per this provision worked out to 31.08.2008. This proviso was, however, substituted w.e.f. 01.04.2008 which provided that no such notice could be served after expiry of six months from the end of the financial year in which the return was furnished. Thus, from computing the period of limitation from the end of the month during which the return was filed it was shifted to a period of six months from the end of financial year in which the return was furnished thereby bringing a greater uniformity of the last date for issuing the notice in case of commonly placed class of assessees. Whatever be the legislative philosophy for making such a change, one thing that cannot be denied is that the substitution had to take effect from 01.04.2008. We may record that the Finance Act 2008 received assent of the President on 10.05.2008 and was published in official gazette on the same day. By 10.05.2008 therefore, this provision formed part of the statute and was given effect of 01.04.2008. For two reasons the contention of the petitioner cannot be accepted that such a provision cannot be applied to the petitioner. Firstly, on the date when such notice was being issued, the amended provision had already come*

into force. More particularly, this amendment was made effective from 01.04.2008 by the law which was passed on 10.05.2008 and thus, both the events took place long before the last date for serving of notice in case of the petitioner as per the unamended provision. We may recall, as per the unamended provision such a notice could be served latest by 31.08.2008. Long before that, the statutory provision underwent a change by virtue of which such a notice could be served latest by 30.09.2008. The Assessing Officer was, thus, authorized to issue such a notice as per the amended provision. He was not bound by the unamended provision since the same had already been amended long before the final date for serving of notice even as per the unamended provision had expired. This is therefore, not a case where a vested right is being taken away by amendment in the statute. The notice under section 143(2) of the Act had not yet become time barred by the time amendment in the statute took place."

16.13 It was submitted that though the search was carried out on 4.9.2013, the satisfaction note was recorded by the Assessing Officer of the searched person on 25.4.2017 and the notices under section 153C of the Act were issued in February, 2018. Thus, the satisfaction note and assumption of jurisdiction under section 153C of the Act are after 1st June, 2015, that is, after the amended provision came into force. It was submitted that in the present case the assumption of jurisdiction starts subsequent to the amendment and that before the Assessing Officer of the searched person records satisfaction, there is no point at which the action is required to be taken. The date of search has no relevance for assumption of jurisdiction, and it is the date on which the notice is issued which would be the relevant date.

16.14 Referring to the decision of the Supreme Court in ***Calcutta Knitwears*** (supra), it was submitted that while

interpreting the provisions of an enactment, a literal interpretation has to be given, more particularly, to a machinery provision. It was contended that section 153C of the Act being a machinery provision, it should give meaning to the charging section, inasmuch it was not the intention of the legislature that undisclosed income should be given a go-bye. It was submitted that once the Assessing Officer of the searched person records satisfaction that the seized documents have a bearing on the determination of the total income of such person, such meaning should not be assigned which results in income not being taxed.

16.15 It was further contended that the contention of the petitioners that the amended provision substitutes the old provision which gives rise to new liability and therefore, the old provisions will be applicable, is not correct. Section 158BD of the Act refers to undisclosed income belonging to the person other than the person searched, whereas section 153C inserted with effect from 1.6.2015, refers to the assets/documents which has a bearing on determination of income of the other person. Therefore, the legislative intent is to tax undisclosed income. The term 'determination of total income' refers to the income which has not been disclosed. Further, no vested right has been taken away by the amendment to section 153C of the Act, nor has any accrued right been taken away by the amendment. Therefore, the decisions on which reliance has been placed by the learned advocates for the petitioners in ***R. Rajagopal Reddy and others v. Padmini Chandrasekharan****, 213 ITR 340 (SC)*, ***National Agricultural Co-operative Marketing Federation of India Ltd. and another v. Union of India***

and others**, 260 ITR 548 (SC)* and ***Commissioner of Income Tax v. Sarkar Builders**, [2015] 375 ITR 392 (SC),* are of no consequence. It was further submitted that this court in ***Commissioner of Income Tax v. Bipinchandra Chimanlal Doshi, *395 ITR 632 (Guj.), has* not agreed with the view adopted by the Delhi High Court in ***Commissioner of Income Tax v. Bharat Bhushan Jain***, [2015] *370 ITR 695 (Delhi)*, and that this court, relying upon the decision of the Supreme Court, has observed that there is no limitation prescribed by the statute for recording of satisfaction. It was submitted that the contention of the petitioner-assessee that the point of satisfaction would be on the date of seizure is misplaced, inasmuch as, once the search takes place, the authorized officer is required to transfer the records to the concerned Assessing Officer having jurisdiction and from that point of time, the limitation prescribed in the first proviso to section 153B of the Act starts. Besides, section 153C of the Act talks about satisfaction of the respective Assessing Officers and not that of the authorized officers.

16.16 It was further submitted that when the Assessing Officer recorded satisfaction and when the notice was issued, the amendment was there on the statute book. Since section 153C of the Act is a procedural provision, it has to be construed in the manner as held by the Supreme Court in ***Calcutta Knitwears*** (supra). It was submitted that the decision of the Supreme Court in ***Commissioner of Income Tax v. Vatika Township (P) Ltd.**, (2015) 1 SCC 1*, on the contrary, helps the revenue. It was submitted that as per the literal interpretation of section 153C of the Act, the amended provisions would be applicable to the facts of the present case,

inasmuch as, all the requirements of the section are complied with. It was urged that no vested right of the petitioners has been taken away and that the petitions being devoid of merits, deserve to be dismissed.

16.17 As regards the contention raised on behalf of the petitioners that the Assessing Officer of the searched person has not recorded satisfaction immediately, it was submitted that such contention has no basis. It was submitted that immediate or belated, as referred to by the Supreme Court in ***Calcutta Knitwears*** (supra), is a finding of fact and may not be amenable to the writ jurisdiction of this court. It was submitted that no limitation has been prescribed under section 153A or section 153C of the Act for issuance of notice, and as held by the Supreme Court in the above decision, a literal interpretation is to be given to the statute without destroying or twisting the language. Therefore, any presumption of limitation would amount to adding words to the statute. It was urged that while considering the provisions of section 158BC and section 158BD, which are in pari materia with the provisions of sections 153A/153C of the Act, and its scope, the Supreme Court has clearly observed that there is no limitation to issue notice under section 158BD of the Act. It was submitted that the above view has been reiterated by this court in ***Commissioner of Income Tax v. Bipinchandra Chimanlal Doshi***, *[2017] 395 ITR 632 (Guj.)*, wherein the court in the context of section 158BD of the Act, has held that the language of the provision is clear and unambiguous. The legislature has not imposed any embargo on the Assessing Officer in respect of the stage of proceedings during which the satisfaction is to be reached and recorded in respect of the

person other than the searched person. The said section does neither provides for nor imposes any restrictions or conditions on the period of limitation for preparation of satisfaction note under section 158BD and consequent issuance of notice to the other person.

16.18 It was submitted that section 132 of the Act refers to the authorized officer who is only required to carry out the search and retain documents. He has no power of assessment. The authorized officer will transmit the documents to the Assessing Officer of the searched person. Under section 153A of the Act, the Assessing Officer will then assume jurisdiction and issue notices for six assessment years. The Assessing Officer thereafter analyses the data and only at the time of section 153A assessment, this satisfaction regarding belonging to would have to be recorded. It was submitted that in this view of the matter, the provisions applicable at the time of assumption of jurisdiction are relevant. It was submitted that the Settlement Commission passed the order on 1.8.2016 after the amendment came into force. This is a case where proceedings have been initiated under sections 153A and 153C of the Act and there are more than hundred proceedings under section 153C of the Act. As per the provisions of section 153C of the Act, when the details are received by the Assessing Officer of the other person, it will be the starting point. To say that it has to relate to the date of the search is factually incorrect and legally impermissible. What is relevant is as on the date when the Assessing Officer received the books, what was the position of law. It was submitted that therefore, there is no delay. Moreover, the delay is not a jurisdictional issue as no time limit is prescribed under section

153C of the Act for issuance of notice. It was submitted that the argument that the notices are barred by limitation is, therefore, misconceived.

16.19 It was urged that the assessee filed an application before the Settlement Commission under section 245C of the Act. Once the application under section 245C came to be allowed to be proceeded with under section 245D(1) of the Act, in view of the specific provision of section 245F of the Act, the Settlement Commission shall, until an order is passed under sub-section (4) of section 245D of the Act, have exclusive jurisdiction to exercise the power and perform the functions of the income tax authority under the Act. It was submitted that once the application under section 245C of the Act had been accepted by the Settlement Commission, it had exclusive jurisdiction and therefore, the contention of the petitioners that the Assessing Officer ought to have recorded his satisfaction immediately after the search is misconceived.

16.20 Placing reliance upon the decision of the Supreme Court in ***Calcutta Knitwears*** (supra), it was submitted that it is permissible for the Assessing Officer of the searched person to record satisfaction at any of the three stages, viz., (1) at the time of search, (2) at the time of passing of assessment order, and (3) immediately after the assessment order. It was submitted that in the present case, the searched person had filed application before the Settlement Commission and no order of assessment was passed. The action of recording of satisfaction was immediately taken after the order of Settlement Commission. It was submitted that in case of rejection of an application under section 245D(4) of the Act by

Settlement Commission, the jurisdictional Assessing Officer of the searched person shall have to pass an order of assessment. Therefore, the satisfaction can be recorded at any stage and considering the facts of these cases, the action taken by the Assessing Officer of the searched person, is immediate and therefore, even on merits, the satisfaction was immediately recorded.

16.21 On the question as to which would be the six years which would be relevant in the case of the other persons, it was submitted that the search was conducted on 4.9.2013. In view of section 153A (1)(b) read with section 153C(1) of the Act, the six years shall be assessment years immediately preceding the assessment relevant to the previous year in which the search is conducted. In this case, search was conducted on 4.9.2013 and, therefore, the previous year is 2013-14. Consequently, the assessment year relevant to the previous year in which search was conducted is 2014-15. Therefore, 2008-09 to 2013-14 are the six assessment years covered for assessment under section 153A/153C of the Act. Therefore, the notices can be issued under section 153A/153C of the Act for assessment years 2008-09 to 2013-14. It was submitted that the contention raised on behalf of some of the petitioners that six years from the date when the Assessing Officer of the other person received the records may be taken into consideration and therefore, the assessment years 2010-11 and 2011-12 were out of the purview of section 153C of the Act is not correct.

16.22 It was submitted that the first proviso to section 153C of the Act was inserted by Finance Act, 2005 with effect

from 1.6.2003. The first proviso was inserted only for the purpose of counting limitation and for abatement of proceedings. It was submitted that (i) Explanatory note to the Finance Act, 2005; (ii) Memo explaining Bill 2003 and (iii) Notes on Clauses to Finance Bill 2005 explain the same. It was submitted that taking a hypothetical case, viz., pursuant to search in the year 2013, the documents belonging to/pertaining to the other person for assessment year 2007-08 were found and seized. The documents were handed over to the jurisdictional Assessing Officer in the year 2015. If the assessee's contention is accepted, then though the documents belonging to/relating to assessment year 2007-08 were seized, it is to be ignored. Further, there will be six different assessment years covered under sections 153A and 153C of the Act. Therefore, the six assessment years covered for assessment/reassessment under sections 153A/153C in this case are 2008-09 to 2013-14.

REJOINDER ON BEHALF OF THE PETITIONERS

17. In rejoinder, Mr. Tushar Hemani, learned advocate for the petitioners submitted that insofar as computation of limitation is concerned, the order of the Settlement Commission does not have any bearing, inasmuch as, section 153C of the Act relates only to seized material. It was submitted that the decision of the Supreme Court in ***Commissioner of Income Tax-III v. Calcutta Knitwears, Ludhiana*** (supra) was rendered in case of a normal block assessment, whereas a settlement petition is on an admitted position. Therefore, both would stand on a different footing. It was submitted that in the proceedings before the Settlement

Commission, at the stage of 245D(2), the entire material goes to the Commissioner of Income Tax and at that stage, he would be able to see the computation and therefore, there was no need for revenue to wait for the order of the Settlement Commission and no reason to avail further period after the order of Settlement Commission. Under the circumstances, the decision of the Supreme Court in ***Commissioner of Income Tax-III v. Calcutta Knitwears, Ludhiana*** (supra), would not apply.

17.1 Insofar as the decisions on which reliance has been placed by the learned counsel for the respondent for contending that the petitions are not maintainable, it was submitted that there is no absolute embargo in entertaining the writ petitions.

FINDINGS

(I) MAINTAINABILITY

18. Since a preliminary objection has been raised to the very maintainability of the petitions, the said contention is required to be dealt with at the outset.

18.1 In the present case, what is the subject matter of challenge are the notices under section 153C of the Act, which are jurisdictional notices, inasmuch as it is upon issuance of the notices under section 153C of the Act, that the Assessing Officer of the person other than the person searched assumes jurisdiction. In the present case, the notices under section 153C of the Act have been challenged on various grounds, but principally on a purely legal ground that as on the date of the

search, the amended provisions under section 153C of the Act were not in existence and therefore, the amended provisions of section 153C of the Act which were brought into force with effect from 1st June, 2015, would not be applicable and hence, the notices issued under section 153C of the Act based on the amended provisions are without jurisdiction.

18.2 On behalf of the respondents, reliance has been placed upon the decision of the Supreme Court in ***Commissioner of Income Tax v. Vijaybhai N. Chandrani*** (supra) for contending that the present petitions are not maintainable as the same challenge the notices under section 153C of the Act. In this regard, a perusal of the said decision reveals that in the facts of the said case, the petitioners therein had directly approached the High Court against the notice under section 153C of the Act without responding to the same. In the facts of the present case, from the facts as noted hereinabove, it is evident that the petitioners have responded to the notice under section 153C of the Act and after receipt of the satisfaction note, objected to the jurisdiction of the Assessing Officers in issuing such notices. The respective Assessing Officers, in majority of the cases, have rejected such objections and it is at this stage that the petitioners have approached this court challenging the impugned notices. Under the circumstances, the decision of the Supreme Court in the case of ***Commissioner of Income Tax v. Vijaybhai N. Chandrani*** (supra) would not be applicable to the facts of the present case.

18.3 The respondents have also relied upon the decision of the Supreme Court in ***Commissioner of Income Tax v.***

Chhabil Dass Agarwal (supra), wherein the Supreme Court has held that it has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance.

18.4 Thus, the Supreme Court has carved out an exception in case where the statutory authority has not acted in accordance with the provisions of the enactment in question.

18.5 On behalf of the petitioners, reliance has also been placed, *inter alia*, upon the decision of the Supreme Court in the case of ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others***, *(1998) 8 SCC 1*, wherein the Supreme Court has held that under article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the court not to operate as a bar in at

least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights; or where there has been a violation of the principles of natural justice; or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In the facts of the present case, main contentions raised in these petitions is that the proceedings initiated by issuance of notice under section 153C of the Act are wholly without jurisdiction. Under the circumstances, this case clearly falls within the exceptions carved out by the Supreme Court in the case of ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai*** (supra) and hence, the contention that these petitions under article 226 of the Constitution of India are not maintainable, cannot be accepted. Moreover, as noticed earlier, there are a few petitions in which the assessment orders have already been passed. In those cases also, the petitioners have challenged the notices under section 153C of the Act on the ground of lack of jurisdiction. While against the assessment order, there is a remedy of statutory appeal under the provisions of the Income Tax Act, however, in the light of the above decision of the Supreme Court wherein it has been held that when the proceedings are wholly without jurisdiction, the alternative remedy does not operate as a bar to a writ petition under article 226 of the Constitution of India, it is not possible to non suit the petitioners on the ground of maintainability.

(II) WHETHER SECTION 153C OF THE ACT AS AMENDED WITH EFFECT FROM 1ST JUNE, 2015 WOULD BE APPLICABLE TO CASES WHERE SEARCH IS INITIATED PRIOR TO THAT DATE.

19. Sections 153A and 153B of the Act are special provisions carved out by the Legislature for the purpose of assessment of cases pertaining to section 132 and 132A of the Act. These provisions were introduced with effect from 1.6.2003 under Chapter XIV of the Act, which provides for procedure for assessment. The dispute in this case relates to applicability of the provisions of the section 153C of the Act which came to be amended with effect from 1.6.2015, to cases where search had been carried out prior to such amendment having come into force. For the purpose of better understanding the controversy involved in the present case, it would be germane to refer to the relevant statutory provisions, which as they stood at the relevant time when the search came to be conducted, read as under:

> ***153-A. Assessment in case of search or requisition****.— Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, in the case of a person where a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132-A after the 31st day of May, 2003, the Assessing Officer shall—*
>
> *(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139;*
>
> *(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is*

made:

Provided *that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:*

Provided further *that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this section pending on the date of initiation of the search under Section 132 or making of requisition under Section 132-A, as the case may be, shall abate.*

Explanation.—For the removal of doubts, it is hereby declared that, —

(i) save as otherwise provided in this section, Section 153-B and Section 153-C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

153-B. Time limit for completion of assessment under Section 153-A*.— (1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or reassessment,—*

(a) in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b) of sub-section (1) of section 153-A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132-A was executed;

(b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132-A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132-A was executed:

Provided that in case of other person referred to in section 153-C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (a) or clause (b) of this sub-section or nine

months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153-C to the Assessing Officer having jurisdiction over such other person, whichever is later:

Provided further that in the case where the last of the authorisations for search under section 132 or for requisition under section 132-A was executed during the financial year commencing on the 1st day of April, 2018,—

(i) the provisions of clause (a) or clause (b) of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted;

(ii) the period of limitation for making the assessment or reassessment in case of other person referred to in section 153-C, shall be the period of eighteen months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132-A was executed or twelve months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153-C to the Assessing Officer having jurisdiction over such other person, whichever is later:

*"**153-C. Assessment of income of any other person**.—(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153-A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153-A:*

***Provided that** in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132-A*

in the second proviso to section 153-A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132-A and in respect of such assessment year—

(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-section (2) of Section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, 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 153-A.

19.1 Section 153C of the Act came to be amended with effect from 1st June, 2015 whereby instead of the words *"where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153-A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that*

Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153-A" in the existing provisions, the following came to be provided:

"where the Assessing Officer is satisfied that,—

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

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153-A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153-A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153-A:"

19.2 Sub-section (1) of section 153C of the Act as it stands at present, reads thus:

153-C. Assessment of income of any other person*.—(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—*

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

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153-A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153-A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153-A:

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

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred

to in sub-section (1) of section 153-A except in cases where any assessment or reassessment has abated.

19.3 Thus, while prior to the amendment in section 153C of the Act, if the Assessing Officer of the searched person was satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to or belongs to a person other than the searched person he was required to hand over the books of account or documents or assets seized or requisitioned to the Assessing Officer having jurisdiction over such other person, and that Assessing Officer was required to proceed against such other person in accordance with the provisions of section 153A of the Act and asses or reassess his income. However, by virtue of the amendment in section 153C of the Act which was brought into force with effect from 1st June, 2015, the scope of the section was widened by providing that if the Assessing Officer of the searched person is satisfied that (a) any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to; (b) or books of account or documents or documents pertain to, or any information contained therein, relate to any person other than the searched person he shall hand over the books of account or documents or assets seized to the Assessing Officer having jurisdiction over such other person. The amendment further provided that that Assessing Officer shall issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in

sub-section (1) of section 153A.

19.4 Section 153C of the Act is a machinery provision which is inserted in the statute book for the purpose of carrying out assessments of a person other than the person searched under sections 132 and 132A of the Act. The moot question that arises for consideration in the present case is as to what is relevant date from which the amended provisions of section 153C of the Act would be applicable. While the amended provisions have been expressly brought into force with effect from 1.6.2015, the controversy in the present case arises because the searches in all these case had been conducted prior to 1.6.2015, whereas the proceedings under section 153C of the Act have been initiated after that date and it is in this backdrop that the validity of the impugned notices has been called in question. It is the case of the petitioners that the proceedings under section 153C of the Act are triggered by the search, and hence the provisions of law as existing on the date of the search have to be followed, while it is the case the respondents that the provisions of law as existing on the date of recording of satisfaction by the Assessing Officer of the person searched and the date of issuance of notice under section 153C of the Act have to be followed.

19.5 On behalf of the respective parties, reliance has been placed upon the decision of the Supreme Court in ***Commissioner of Income Tax v. Calcutta Knitwears*** (supra). A perusal of the said decision of the Supreme Court reveals that the question before the Supreme Court was the stage at which the satisfaction note could be prepared. In the

facts of the present case, we are concerned with the applicability of the amended provisions which are brought into force with effect from 1.6.2015 as to whether the same would be applicable to cases where the search was conducted prior to that date. Thus, the question is what would be the relevant date for applicability of the amended provision, whether it has to be considered in the context of the date of search or date of recording of satisfaction by the Assessing Officer of the searched person or the date of issuance of notice under section 153C of the Act.

19.6 On behalf of the respondents it has been contended that section 153C of the Act is a machinery provision. In ***Calcutta Knitwears*** (supra), the Supreme Court has held that while interpreting a machinery provision, the courts would interpret a provisions in such a way that it would give meaning to the charging provisions and that the machinery provisions are liberally construed by the courts; and that it is the duty of the court while interpreting the machinery provisions of a taxing statute to give effect to its manifest purpose, the section should be liberally construed. The court has further held that wherever the intention to impose liability is clear, the courts ought not to be hesitant in espousing a commonsense interpretation to the machinery provisions so that the charge does not fail. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. It is contended that the legislature having the clear intent to bring in persons other than the person searched within the ambit of section 153C of the Act even if the books of account or documents seized or requisitioned pertain to or any information therein relates to

such other person, the amended provisions should be so construed as would effectuate the object and purpose of the statute and not defeat the same, namely to tax the total income of the assessee.

19.7 In ***Calcutta Knitwears*** (supra) the Supreme Court has held that section 158-BD of the Act is a machinery provision and inserted in the statute book for the purpose of carrying out assessments of a person other than the searched person under sections 132 or 132A of the Act. The court has referred to its earlier decision in the case of *J.K. Synthetics Ltd. v. CTO, (1994) 4 SCC 276*, wherein it has been held thus:

> *"16. It is well known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. ... Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. (See Whitney v. IRC, 1926 AC 37 (HL), CIT v. Mahaliram Ramjidas, (1940) 8 ITR 442, Indian United Mills Ltd. v. Commr. of Excess Profits Tax, (1955) 27 ITR 20 (SC) and Gursahai Saigal v. CIT, (1963) 48 ITR 1 (SC).)"*

19.8 While it is true that section 153C of the Act is also a machinery provision for assessment of income of a person other than the person searched, in the opinion of this court, this is not a case where by virtue of the amendment, there is merely a change in the procedural provisions affecting the

assessees who were covered by the unamended provision. By the amendment, a new class of assessees are sought to be brought within the sweep of section 153C of the Act, which affects the substantive rights of the assessees and cannot be said to be a mere change in the procedure. Since the amendment expands the scope of section 153C of the Act by bringing in an assessee if books of account or documents pertaining to him or containing information relating to him have been seized during the course of search, within the fold of that section, this question assumes significance, inasmuch as in the facts of the present case, as on the date of search, it was only if such material belonged to a person other than the searched person, that the Assessing Officer of the searched person could record such satisfaction and forward the material to the Assessing Officer of such other person. However, subsequent to the date of search, the amendment has been brought into force and based on the amendment, the petitioners who were not included within the ambit of section 153C of the Act as on the date of the search, are now sought to be brought within its fold on the ground that the satisfaction note and notice under section 153C of the Act have been issued after the amendment came into force. Therefore, this case does not relate to the interpretation of the provisions of any of the sections, but relates to the stage at which the amended section 153C of the Act can be made applicable, as to whether it relates to the date of search; or the date of recording of satisfaction by the Assessing Officer of the searched person; or the date of recording of satisfaction by the Assessing Officer of the other person; or the date of issuance of notice under section 153C of the Act.

19.9 In the facts of the present case, the search was conducted in all the cases on a date prior to 1st June, 2015. Therefore, on the date of the search, the Assessing Officer of the person searched could only have recorded satisfaction to the effect that the seized material belongs or belong to the other person. In the present case, the hard disc containing in the information relating to the petitioners admittedly did not belong to them, therefore, as on the date of the search, the essential jurisdictional requirement to justify assumption of jurisdiction under section 153C of the Act in case of the petitioners, did not exist. It was only on 1st June, 2015 when the amended provisions came into force that the Assessing Officer of the searched person could have formed the requisite belief that the books of account or documents seized or requisitioned pertain to or the information contained therein relates to the petitioners.

19.10 In this backdrop, to test the stage of applicability of the amended provisions, a hypothetical example may be taken. The search is carried out in the case of HN Safal group on 4.9.2013. If the Assessing Officer of the searched person had recorded satisfaction that some of the seized/requisitioned material belongs to a person other than the searched person and forwarded the material to the Assessing Officer of the other person, had issued notice under section 153C of the Act prior to the coming into force of the amended provision. The notice under section 153C of the Act was challenged before the appropriate forum on the ground that the seized material does not belong to such other person and such issue was decided in favour of such person on a finding that the seized material

does not belong to the other person. Thereafter, in view of the amendment in section 153C (1) of the Act, since the books of account or documents did not belong to the other person but did pertain to him or the information contained therein related to him, can the Assessing Officer of the searched person once again record satisfaction as contemplated under the amended provision and forward the material to the Assessing Officer of such other person. The answer would be an emphatic “no” as the Assessing Officer of the searched person after recording the earlier satisfaction would have already forwarded the material to the Assessing Officer having jurisdiction over the other person, therefore, there would be no question of his again forming a satisfaction as required under the amended provisions of section 153C of the Act.

19.11 In the opinion of this court, if a date other than the date of search is taken to be the relevant date for the purpose of recording satisfaction one way or the other, it would result in an anomalous situation wherein in some cases, because the notices under section 153C of the Act were issued prior to the amendment, they would be set aside on the ground that the books of account or documents seized or requisition did not belong to the other person though the same pertained to or the information contained therein related to such person, whereas in other cases arising out of the same search proceedings, merely because the notices are issued after the amendment, the same would be considered to be valid as the books of account or documents seized or requisitioned pertain to or the information contained therein relate to the other person. It could not have been the intention of the legislature to deal with two sets of identically situated persons differently,

merely because in one case the Assessing Officer of the searched person records satisfaction as required under section 153C of the Act prior to the coming into force of the amended provisions and in any another case after the coming into force of the amended provisions.

19.12 In ***Principal Commissioner of Income Tax v. Vinita Chaurasia***, *[2017] 394 ITR 758 (Delhi)*, the Delhi High Court has held that, *at the outset, it requires to be noticed that the search in the present case took place on 19th June, 2009, i.e., prior to the amendment in section 153C(1) of the Act with effect from 1st June, 2015. Therefore, it is not open to the Revenue to seek to point out that the document in question 'pertains to' or 'relates to' the assessee.* Against this decision the revenue filed a special leave petition before the Supreme Court being Special Leave Petition (Civil) Diary No.27566 of 2018. The Supreme Court by an order dated 20th August, 2018 condoned the delay and dismissed the special leave petition.

19.13 In ***Principal Commissioner of Income-tax (Central) -2 v. Index Securities (P.) Ltd.***, *[2017] 88 taxmann.com 84 (Delhi)*, on which reliance had been placed on behalf of the petitioners, the Delhi High Court has held thus:

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

which is stated by the Bombay High Court in the impugned judgment as well."

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

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

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

19.14 Thus, it is the date of search that has been considered to be the relevant date for the purpose of applying the

amended provisions of section 153C(1) of the Act.

19.15 This court is of the considered view that that the trigger for initiating action whether under section 153A or 153C of the Act is the search under section 132 or requisition under section 132A of the Act and the statutory provisions as existing on the date of the search would be applicable. The mere fact that there is no limitation for the Assessing Officer of the searched person to record satisfaction will not change the trigger point, namely, the date of the search. The satisfaction of the Assessing Officer of the searched person would be based on the material seized during the course of the search or requisition and not the assessment made in the case of the searched person, though he may notice such fact during the course of assessment proceedings. Therefore, whether the satisfaction is recorded immediately after the search, after initiation of proceedings under section 153A of the Act or after assessment is framed under section 153A of the Act in the case of the searched person, the trigger point remains the same, viz., the search and, therefore, the statutory provision as prevailing on that day would be applicable. While it is true that sections 153A and 153C of the Act are machinery provisions, but the same cannot be made applicable retrospectively, when the amendment has expressly been given prospective effect. Besides, though such provisions are machinery provisions, the amendment brings into its fold persons who are otherwise not covered by the said provisions and therefore, affects the substantive rights of such person. In the opinion of this court, the decision of the Supreme Court in ***CED v. M.A. Merchant*** (supra) would be squarely applicable to the facts of the present case wherein it was held thus:

*"**6.** The Estate Duty (Amendment) Act, 1958 effected a substantial change in the parent Act. Sections 56 to 65 were substituted in place of the existing Sections 56 to 65, and the originally enacted Section 62 was repealed. The original Section 62 provided essentially for the rectification of mistake apparent from the record or in the valuation of any property or by reason of the omission of any property. The newly enacted Section 59 deals with property escaping assessment. The provision is analogous to Section 34 of the Indian Income Tax Act, 1922 and Section 147 of the Income Tax Act, 1961. It seems to us that the new Section 59 endeavours to cover a substantially different area from that treated by the old Section 62. The only area which seems common to the two provisions relates to the "omission of any property", but it seems to us that the incidents of the power under Section 62 relate to a situation materially different from the incidents of the power contemplated under Section 59. The High Court has closely analysed the provisions of the two sections and has come to the conclusion that the power or re-assessment conferred by the new Section 59 is quite different from the power conferred by the old Section 62. We are in agreement with the High Court. The contention on behalf of the revenue based on the identity alleged between the new Section 59 and the old Section 62, and that, therefore, the new section should be regarded as retrospective cannot be accepted.*

***7.** As it stands, there are no specific words either which confer retrospective effect to Section 59. To spell out retrospectivity in Section 59, then, there must be something in the intent to Section 59 from which retrospective operation can be necessarily inferred. We are unable to see such intent. The new Section 59 is altogether different from the old Section 62 and there is nothing in the new Section 59 from which an intent to give retrospective effect to it can be concluded.*

***8.** The new Section 59 came into force from 1-7-1960. Much earlier, on 26-2-1960 the assessment on the accountable person had already been completed. There is a well settled principle against interference with vested rights by subsequent legislation unless the legislation has been made retrospective expressly or by necessary implication. If an assessment has already been made and completed, the assessee cannot be subjected to re-*

assessment unless the statute permits that to be done. Reference may be made to Controller of Estate Duty, West Bengal v. Smt Ila Das, [1981] 132 ITR 720 (Cal.), where an attempt to reopen the estate duty assessment consequent upon the insertion of the new Section 59 of the Estate Duty Act was held infructuous.

9. *We hold that Section 59 of the Estate Duty Act is not retrospective in operation and that the reopening of the assessment under Section 59 of the Act is bad in law."*

19.16 In ***Principal Commissioner of Income Tax v. Saumya Construction P. Ltd.***, *[2016] 387 ITR 529 (Guj.)*, this court had in the context of section 153A of the Act, observed thus:

"15. On a plain reading of section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A of the Act to the person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Since the assessment under section 153A of the Act is linked with search and requisition under sections 132 and 132A of the Act, it is evident that the object of the section is to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition. However, instead of the earlier regime of block assessment whereby, it was only the undisclosed income of the block period that was assessed, section 153A of the Act seeks to assess the total income for the assessment year, which is clear from the first proviso thereto which provides that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years. The second proviso makes the intention of the legislature clear as the same provides that assessment or

reassessment, if any, relating to the six assessment years referred to in the sub-section pending on the date of initiation of search under section 132 or requisition under section 132A, as the case may be, shall abate. Sub-section (2) of section 153A of the Act provides that if any proceeding or any order of assessment or reassessment made under sub-section (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived. The proviso thereto says that such revival shall cease to have effect if such order of annulment is set aside. Thus, any proceeding of assessment or reassessment falling within the six assessment years prior to the search or requisition stands abated and the total income of the assessee is required to be determined under section 153A of the Act. Similarly, subsection (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of the Act is annulled in appeal or any other proceeding."

19.17 In the opinion of this court, the test would be whether at the first point of time when satisfaction could have been recorded by the Assessing Officer of the person searched, could he have recorded the satisfaction as envisaged under the amended provision. In ***Commissioner of Income Tax v. Calcutta Knitwears*** (supra), the Supreme Court has held that for the purpose of section 158BD of the Act, a satisfaction note is *sine qua non* and must be prepared by the Assessing Officer before he transmits the records to the other Assessing Officer who has jurisdiction over such other person. The satisfaction note could be prepared at either of the following stages: (a) at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; (b) along with the assessment proceedings under section 158BC of the Act; and (c) immediately after the assessment proceedings are

completed under section 158BC of the Act of the searched person.

19.18 The CBDT vide circular No.24/2015 dated 31.12.2015 has accepted that these guidelines would apply to proceedings under section 153C of the Act. Applying these guidelines, it may be ascertained as to whether at the time of or along with the initiation of proceedings against the searched person under section 153A of the Act, the Assessing Officer of the searched person could have recorded the requisite satisfaction that the books of account or documents seized or requisitioned pertain to or any information contained therein relates to the other person. If no, in the opinion of this court, it is not permissible for him to record such satisfaction at any other stage merely because at a later date the statutory provision came to be amended.

19.19 It may be pertinent to note that vide CBDT Circular No.2/2018 dated 15.2.2018, it has been clarified that the amended provisions of section 153A of the Act shall apply where search under section 132 of the Act is initiated or requisition under section 132A of the Act is made on or after 1st day of April, 2017. It is further stated therein that section 153C of the Act has also been amended to provide a reference to the relevant assessment year or years as referred to in section 153A of the Income Tax Act. It is also stated therein that thus, the amendment will take effect from 1st April, 2017. Therefore, even the CBDT, in the context of the amended provisions of section 153A of the Act, has clarified that it would apply when search or requisition is made after the date of the amendment.

Evidently, therefore, even the amended provisions of section 153C of the Act would apply when search or requisition is made after the amendment.

19.20 In ***Commissioner of Income Tax v. Vatika Township (P) Ltd.***, (supra), the Supreme Court has discussed the general principles concerning retrospectivity and has observed that, of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. The court has further held that the legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. The court pointed out that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly

is the justification to treat procedural provisions as retrospective. Where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. The court observed that in such cases, retrospectivity is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the facts of the said case, the proviso added to section 113 of the Act was not beneficial to the assessee. On the contrary, it was a provision which was onerous to the assessee. The court held that in such a case, one has to proceed with the normal rule of presumption against retrospective operation. It further held that the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication.

19.21 At this stage, reference may be made to the following extract of the notes on clauses to Finance Bill 2005 (II-A) explaining clause 46 whereby section 153B of the Act relating to time-limit for completion of assessment under section 153A was sought to be amended:

> *"This amendment will take effect retrospectively from 1st June, 2003 and will, accordingly, apply in relation to a search initiated under section 132 or in relation to books of account, other documents or any assets requisitioned under section 132A after 31st May, 2003"*.

Thus, when the legislature thought it fit to make the amendment in section 153B of the Act relating to time limit of assessment under section 153A of the Act retrospective from a particular date, it provided that such retrospectivity would relate to cases where the search is initiated or books of account, documents or other assets are requisitioned, from such date. Thus, even the legislature has considered the initiation of search or making of requisition as the trigger point for applying the provisions of section 153B of the Act to assessment under section 153A of the Act. Under section 153C of the Act also, ultimately, assessment or re-assessment is required to be made in accordance with section 153A of the Act. Thus, when the amended provisions of section 153C (1) of the Act have been brought into force with effect from 1st June, 2015, it has to be construed that such amended provisions would apply to a search initiated under section 132 or in relation to books of account, other documents or any assets requisitioned under section 132A of the Act after 31st May, 2015. Consequently, in relation to searches carried out till 31st May 2015, it was not permissible for the Assessing Officer to assume jurisdiction under section 153C of the Act as amended with effect from 1st June, 2015.

19.22 Certain decisions on which reliance has been placed on behalf of the revenue may now be dealt with. The Delhi High Court in ***C.B. Richards Ellis Mauritius Ltd. v. Assistant Director of Income-tax***, *[2012] 208 Taxman 322 (Delhi)*, on which reliance has been placed on behalf of the revenue, has held thus:

"7. Having considered the contentions of the parties and the legal issues raised therein, we feel that the petitioner is entitled to succeed. Section 6 of General Clauses Act deals with effect of repeal of an enactment and stipulates that unless a different intention appears, the repeal will not affect the previous operation of any enactment so repealed or any right, privilege, obligation or liability acquired, accrued or affect any penalty, investigation, legal proceeding or remedy. The said Section deals with substantive rights and liabilities. It is also subject to intention to the contrary. Intention can be implied. The procedural law when it is repealed should be applied from the date the new provision or procedure comes into force. The reason is that no person has a vested right or an accrued right in the procedure. No obligation or liability is normally imposed by a procedure. Sometime distinction is drawn between the right acquired or accrued and legal proceedings to acquire a right. In the latter case, there is only hope which is destroyed by the repeal. What is protected is the preserved right and privileges acquired and accrued and corresponding obligation and liability incurred on the other party. The legal process or the procedure for the enjoyment of the said right is not protected. Section 6, normally does not apply to procedural law. The procedural law when amended or substituted is generally retroactive and applies from the day of its enforcement and to this extent it can be retrospective. The question raised is whether the amendment/substitution of the period with effect from 1.6.2001 in Section 149 of the Act, is procedural or substantive.

8. Law of limitation is a procedural law and the provision or the limitation period stipulated on the date when the suit is filed applies. (see, Mathukumalli Ramayya and Ors. v. uppalapati Lakshmayya, AIR 1942 PC 54 and C. Beepathuma v. Velasari Shankaranarayana Kadambolithaya, AIR 1965 SC 241).

9. In T. Kaliamurthi v. Five Gori Thaikkal Wakf, (2008) 9 SCC 306, it has been held as under:-

"40. In this background, let us now see whether this section has any retrospective effect. It is well settled

that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right."
(emphasis supplied)

10. Similarly, in Thirumalai Chemicals Limited v. Union of India, (2011) 6 SCC 739, it was observed as under:-
"24. Right of appeal may be a substantive right but the procedure for filing the appeal including the period of limitation cannot be called a substantive right, and aggrieved person cannot claim any vested right claiming that he should be governed by the old provision pertaining to period of limitation. Procedural law is retrospective meaning thereby that it will apply even to acts or transactions under the repealed Act.
XXX
26. Therefore, unless the language used plainly manifests in express terms or by necessary implication a contrary intention a statute divesting vested rights is to be construed as prospective, a statute merely procedural is to be construed as retrospective and a statute which while procedural in its character, affects vested rights adversely is to be construed as prospective."

In view of the fact that this court has held that though the provisions of section 153C of the Act are machinery provisions, the amendment brings into its fold persons who are otherwise not covered by the said provisions and therefore, affects the substantive rights of such person, the above decision in facts

supports the case of the petitioners inasmuch as it has been held that a statute which while procedural in its character, affects vested rights adversely is to be construed as prospective.

19.23 The decision of this court in case of ***Dilip Avtar Construction Pvt. Ltd.*** (supra) on which reliance had been placed by the learned senior standing counsel for the revenue, would not be applicable to the facts of the present case, inasmuch as the same was rendered in the context of totally different facts and the controversy involved therein was whether proceedings under section 153C of the Act would stand vitiated if the authorisation of search under section 132 of the Act has been set aside in case of the searched person.

19.24 The decision of this court in ***Udhna Udyog Nagar Sahkari Sangh Ltd. v. Shailendra Lodha,*** *[2016] 75 taxmann.com 185 (Gujarat),* also does carry the case of the revenue any further inasmuch as in that case the court had found that it was not a case where a vested right was being taken away by an amendment in the statute and the notice under section 143(2) of the Act had not yet become time barred by the time the amendment in the statute took place. In the facts of the present case, the legislature has specifically made the amended provisions of section 153C of the Act applicable with prospective effect from 1.6.2015. If such amended provisions are made applicable to searches carried out prior to 1.6.2015, they affect the substantive rights of persons who are brought within the ambit of section 153C of the Act by virtue of such amendment, and hence, the above decision would have no applicability to the facts of the present

case.

(III) WHETHER THE NOTICES UNDER SECTION 153C OF THE ACT ARE BARRED BY LIMITATION

20. Another contention raised on behalf of the petitioners is that the time-limit for assessment under section 153C read with the proviso to section 153B (1) of the Act is a period of twenty one months from the end of the financial year in which the search was conducted or nine months from the end of the financial year in which the books of account or documents or assets seized or requisitioned are handed over. It was submitted that in this case, the search was carried out on 4.9.2013 and therefore, the period of twenty one months from the end of the financial year in which the search was conducted would be 31.12.2015. Therefore, on the date when the notice under section 153C of the Act was issued, the first time limit for assessment under section 153A of the Act was already over. It was submitted that if the assessment was barred by limitation on the day when the notice came to be issued, unless the amendment expressly permits framing of assessment, it would not be permissible for the revenue to frame assessment.

20.1 Insofar as the contention that the notice is barred by limitation is concerned, on a plain reading of section 153C of the Act, it is evident that the same does not provide for any limitation for issuance of notice to the person other than the searched person, whereas section 153B of the Act provides for the time limit for completion of assessment under section 153A of the Act and the proviso to sub-section (1) thereof says that

in case of other person referred to in section 153C, the period of limitation for making the assessment or re-assessment shall be the period as referred to in clauses (a) and (b) of that sub-section or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153 to the Assessing Officer having jurisdiction over such other person, whichever is later.

20.2 The learned counsel for the petitioners have sought to draw a distinction between the provisions of section 158BD and section 153C of the Act, viz., that in case of section 158BD, the Assessing Officer is required to be satisfied that any undisclosed income belongs to the other person, whereas in case of section 153C, the Assessing Officer should be satisfied that money, bullion, jewellery or other article or thing seized or requisitioned belong to or books of account or documents seized or requisitioned, pertains to or pertain to, or any information contained therein relates to the other person; therefore, the starting point in case of section 158BD of the Act is the undisclosed income, which may be ascertained after the assessment in case of the searched person, whereas insofar as section 153C of the Act is concerned, the starting point is money, bullion, jewellery or other article or books of account or documents seized or requisitioned and does not depend on the determination of the income of the searched person.

20.3 In the context of the above submission, it may be germane to refer to the definition of “undisclosed income” as

defined under section 158B of the Act, which reads thus:

> *"(b) "undisclosed income" includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act, or any expense, deduction or allowance claimed under this Act which is found to be false."*

Therefore, while section 158BD of the Act uses the expression "undisclosed income belongs to", which expression includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, section 153C of the Act employs the words "any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs to a person other than the searched person". Under section 158BD of the Act, the Assessing Officer of the searched person has to record satisfaction that such undisclosed income belongs to a person other than the searched person, whereas under section 153C of the Act, the Assessing Officer of the searched person has to record satisfaction that the money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs to a person other than the searched person. However, insofar as section 158BD of the Act is concerned, to fall within the ambit of undisclosed income, such money, bullion, jewellery, valuable article, thing, entry in the books of account or other documents or transaction should

represent wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act, or any expense, deduction or allowance claimed under this Act which is found to be false. Thus, while the definition of "undisclosed income" under section 158BD of the Act includes money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, it qualifies it by providing that such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction should represent wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act, or any expense, deduction or allowance claimed under this Act which is found to be false; whereas there is no such qualification insofar as section 153C of the Act is concerned. Insofar as section 153C of the Act is concerned, the trigger point is when the Assessing Officer of the searched person finds that the money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to; or books of account or documents seized or requisitioned pertains or pertain to or any information contained therein, relates to the other person. However, this distinction would have no bearing on the question of limitation for issuance of notice under section 153C of the Act, inasmuch as both, in case of section 158BD as well as section 153C of the Act, the statute does not provide for any limitation.

20.4 Sub-section (1) of section 153C of the Act provides that after the Assessing Officer of the searched person records the requisite satisfaction that any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs

to or books of account or documents seized or requisitioned pertains or pertain to, or any information contained therein relates to a person other than the person searched, he shall hand over the books of account or documents or assets seized or requisitioned to the Assessing Officer having jurisdiction over the other person, who upon recording satisfaction that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person shall issue notice and assess or re-assess the income of such other person in accordance with section 153A of the Act; whereas section 158BD of the Act provides that after the Assessing Officer of the searched person records the requisite satisfaction that any undisclosed income belongs to any person other than the person in respect of whom search was made under section 132 or whose books of account, other documents or assets were requisitioned under section 132A of the Act, he shall hand over the books of account, other documents or assets seized or requisitioned to the Assessing Officer having jurisdiction over such other person. While section 158BD of the Act requires satisfaction to be recorded only by the Assessing Officer of the searched person, section 153C of the Act requires satisfaction to be recorded by the Assessing Officer of the searched person as well as the Assessing Officer having jurisdiction over the other person. In either case, no limitation has been provided for issuance of notice thereunder.

20.5 Insofar as the provisions of section 158BD of the Act are concerned, the question regarding limitation is no longer *res judicata*, inasmuch as the same stands concluded by the decision of the Supreme Court in ***Calcutta Knitwears*** (supra),

wherein it has been held thus:

> ***"35.*** *Having said that, let us revert to the discussion of Section 158-BD of the Act. The said provision is a machinery provision and inserted in the statute book for the purpose of carrying out assessments of a person other than the searched person under Sections 132 or 132-A of the Act. Under Section 158-BD of the Act, if an officer is satisfied that there exists any undisclosed income which may belong to any other person other than the searched person under Sections 132 or 132-A of the Act, after recording such satisfaction, may transmit the records/documents/chits/papers, etc. to the assessing officer having jurisdiction over such other person. After receipt of the aforesaid satisfaction and upon examination of the said other documents relating to such other person, the jurisdictional assessing officer may proceed to issue a notice for the purpose of completion of the assessments under Section 158-BD of the Act, the other provisions of Chapter XIV-B shall apply.*
>
> ***36.*** *The opening words of Section 158-BD of the Act are that the assessing officer must be satisfied that "undisclosed income" belongs to any other person other than the person with respect to whom a search was made under Section 132 of the Act or a requisition of books was made under Section 132-A of the Act and thereafter, transmit the records for assessment of such other person. Therefore, the short question that falls for our consideration and decision is at what stage of the proceedings should the satisfaction note be prepared by the assessing officer: whether at the time of initiating proceedings under Section 158-BC for the completion of the assessments of the searched person under Sections 132 and 132-A of the Act or during the course of the assessment proceedings under Section 158-BC of the Act or after completion of the proceedings under Section 158-BC of the Act.*
>
> ***37.*** *The Tribunal and the High Court are of the opinion that it could only be prepared by the assessing officer during the course of the assessment proceedings under Section 158-BC of the Act and not after the completion of the said proceedings. The courts below have relied upon the limitation period provided in Section 158-BE(2)(b) of the Act in respect of the assessment proceedings initiated under Section 158-BD i.e. two years from the*

end of the month in which the notice under Chapter XIV-B was served on such other person in respect of search initiated or books of account or other documents or any assets are requisitioned on or after 1-1-1997. We would examine whether the Tribunal or the High Court are justified in coming to the aforesaid conclusion.

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

39. *Further, Section 158-BE(2)(b) only provides for the period of limitation for completion of block assessment under Section 158-BD in case of the person other than the searched person as two years from the end of the month in which the notice under this Chapter was served on such other person in respect of search*

carried on after 1-1-1997. The said section thus, neither provides for nor imposes any restrictions or conditions on the period of limitation for preparation of the satisfaction note under Section 158-BD and consequent issuance of notice to the other person.

40. *In the lead case, the assessing officer had prepared a satisfaction note on 15-7-2005 though the assessment proceedings in the case of a searched person, namely, S.K. Bhatia were completed on 30-3-2005. As we have already noticed, the Tribunal and the High Court are of the opinion that since the satisfaction note was prepared after the proceedings were completed by the assessing officer under Section 158-BC of the Act which is contrary to the provisions of Section 158-BD read with Section 158-BE(2)(b) and therefore, have dismissed the case of the Revenue. In our considered opinion, the reasoning of the learned Judges of the High Court is contrary to the plain and simple language employed by the legislature under Section 158-BD of the Act which clearly provides adequate flexibility to the assessing officer for recording the satisfaction note after the completion of proceedings in respect of the searched person under Section 158-BC. Further, the interpretation placed by the courts below by reading into the plain language of Section 158-BE(2)(b) such as to extend the period of limitation to recording of satisfaction note would run counter to the avowed object of introduction of the Chapter to provide for cost-effective, efficient and expeditious completion of search assessments and avoiding or reducing long-drawn proceedings.*

41. *In the result, we hold that for the purpose of Section 158-BD of the Act a satisfaction note is sine qua non and must be prepared by the assessing officer before he transmits the records to the other assessing officer who has jurisdiction over such other person. The satisfaction note could be prepared at either of the following stages:*

(a) at the time of or along with the initiation of proceedings against the searched person under Section 158-BC of the Act;

(b) along with the assessment proceedings under Section 158-BC of the Act; and

(c) immediately after the assessment proceedings are completed under Section 158-BC of the Act of the searched person."

20.6 Thus, the Supreme Court has held that the Assessing Officer, who has initiated proceedings for completion of the assessments under section 158BD of the Act, should be satisfied that an undisclosed income which has been traced out when a person was searched under section 132 or the books of accounts were requisitioned under section 132A of the Act. Thus, such undisclosed income has to be traced out when a person was searched under section 132 or the books of account were requisitioned under section 132A of the Act. Similarly in the present case also, under section 153C of the Act it is on the basis of the books of account or documents or assets seized or requisitioned that the Assessing Officer of the searched person is required to record satisfaction that the money, bullion jewellery or other valuable article or thing belongs to or the books of account or documents seized or requisitioned pertain or pertains to, or any information contained therein relates to a person other than the person searched. Therefore, in both cases, whether it be satisfaction as regards undisclosed income as contemplated under section 158BD or satisfaction based on books of account or documents or assets seized or requisitioned as contemplated under section 153C, the same have to be traced out when a person is searched under section 132 or the books of account or documents were requisitioned under section 132A of the Act.

20.7 It has been contended on behalf of the petitioners that at the time when the notices under section 153C of the Act came to be issued, the period of limitation as provided under clauses (a) and (b) of section 153B of the Act, had lapsed and

therefore, the impugned notices are barred by limitation. In this regard it may be pertinent to note that that in case of the other person referred to in section 153C, the first proviso to section 153B of the Act provides for two periods of limitation. (i) The period of limitation for making assessment or re-assessment referred to in clause (a) or clause (b) of that sub-section; or (ii) nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person. The proviso further provides that whichever of the two periods of limitation is later shall be the period of limitation. Thus while computing the period of limitation one has to consider the period of limitation provided under clause (a) or clause (b) of sub-section (1) of section 153B of the Act, as well as the alternative limitation of nine months from the end of the financial year in which the books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later. Therefore, when the statute itself provides for an alternative period of limitation, merely because the period of limitation is provided under the first part has elapsed; it cannot be said that the notices are barred by limitation on this ground.

20.8 Insofar as the limitation provided under section 153B of the Act is concerned, akin to section 158BE, this section provides for the limitation for completion of assessment and neither provides for nor imposes any restrictions or conditions on the period of limitation for preparation of the satisfaction note under section 153C of the

Act and consequent issuance of notice to the other person. The Supreme Court, in the case of ***Calcutta Knitwears*** (supra) has in the context of section 158BD of the Act held that the satisfaction note could be prepared at either of the following stages:

(a) at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act;

(b) along with the assessment proceedings under section 158BC of the Act; and

(c) immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person.

The CBDT has issued Circular No.24/2015 dated 31.12.2015 in the context of the above decision, *inter alia* stating thus:

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

Thus, the above decision of the Supreme Court would also be applicable insofar as recording of satisfaction as contemplated under section 153C of the Act by the Assessing Officer of the person searched is concerned. In the facts of the present case admittedly, such satisfaction has not been recorded at the time of or along with the initiation of proceedings against the

searched person under section 153A of the Act. In the case of HN Safal Group the searched persons approached the Settlement Commission and hence, there was no assessment under section 153A of the Act. However, the proceedings before the Settlement Commission came to be concluded by an order dated 29.7.2016 under section 245D (4) of the Act. Such order came to be received by the Assessing Officer of the searched person on 2.8.2016, whereafter the said Assessing Officer recorded satisfaction on 25.4.2017, that is, after a period of more than eight months from the date of receipt of the order of the Settlement Commission. In the opinion of this court, such satisfaction can by no stretch of imagination be stated to have been recorded immediately after the assessment proceedings are over in the case of the searched person. Not only that, the Assessing Officer of the searched person handed over the record to the Assessing Officer of the other person on 25.4.2017, however, the said Assessing Officer recorded his satisfaction only on 8.2.2018, that is after a period of more than nine months from the date of receipt of the record. Therefore, the satisfaction note does not appear to have been prepared at any of the stages at which could it have been prepared in terms of the above decision of the Supreme Court. Be that as it may, since on the main issue, viz. on the question of assumption of jurisdiction of the Assessing Officer under section 153C of the Act, this court has held in favour of the petitioners, it is not necessary to dwell on the issue any further. Similarly, this court also refrains from entering into the larger controversy as to whether the proceedings before the Settlement Commission could be said to be assessment proceedings and whether the Assessing Officer of the searched person was justified in waiting for the conclusion of the said

proceedings before recording the requisite satisfaction under section 153C of the Act. Insofar as the Barter and Venus Group of petitions are concerned, the relevant facts regarding the date of the order of assessment made in the case of the searched person, date of recording of satisfaction by the Assessing Officer of the searched person, etc. do have not appear to have been brought on record.

(IV) WHICH ARE THE RELEVANT ASSESSMENT YEARS CONTEMPLATED UNDER SECTION 153A OF THE ACT

21. It may be noted that while the learned counsel for the petitioners have not argued on the aspect of which would be the relevant assessment years contemplated under section 153A of the Act in respect of which proceedings could be initiated under section 153C of the Act. However, in some of the petitions it has been contended that such six years have to be computed in relation to the assessment year in which the notice under section 153C of the Act has been issued and not in relation to the assessment year in which the search came to be conducted, and hence, the learned senior standing counsel for the respondent has made submissions in this regard.

21.1 Section 153C of the Act provides that after recording satisfaction as provided therein, the Assessing Officer having jurisdiction over the other person shall proceed against each such other person and issue notice and assess or re-assess the income of the other person in accordance with the provisions of section 153A of the Act, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total

income of such other person. Sub-section (1) of section 153A of the Act as it stood at the relevant time when the search came to be conducted provided that the Assessing Officer shall:- (a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of the Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139; (b) assess or re-assess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made.

21.2 On a plain reading of section 153A of the Act, it is evident that the trigger point for issuance of notice under that section is a search under section 132 or a requisition under section 132A of the Act. Notice is required to be issued to the searched person calling upon him to file return of income for six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Thus, insofar as computation of the six assessment years in respect of which notice is required to be issued is concerned, the relevant date is the immediately preceding assessment year relevant to the previous year in which such search is conducted or requisition is made.

21. Accordingly, in terms of clause (b) of sub-section (1) of

section 153A of the Act, in case of HN Safal Group, since the search is conducted on 4.9.2013 the previous year in which such search is conducted or requisition made is 1.4.2013 to 31.3.2014 and the assessment year relevant to such previous year would be 2014-15; therefore, the six years assessment years would be the six assessment years preceding assessment year 2014-15 which would be 2013-14, 2012-13, 2011-12, 2010-11, 2009-10 and 2008-09. In case of Barter Group and Venus Group, since the search is conducted on 4.12.2014 and 13.3.2015 respectively, the previous year in which such search is conducted or requisition made is 2014-15 and the assessment year relevant to such previous year would be 2015-16 and therefore, the six assessment years preceding 2015-16 would be 2014-15, 2013-14, 2012-13, 2011-12, 2010-11 and 2009-10. Therefore, in case any notices under section 153C of the Act which have been issued for assessment years beyond the six assessment years referred to hereinabove, such notices would be beyond jurisdiction as the same do not fall within the six assessment years as contemplated under section 153A of the Act.

(V) OTHER ISSUES RAISED IN THE PETITIONS

22. It may be noted that the learned advocates for the petitioners have made submissions in respect of individual satisfaction notes recorded by the Assessing Officer in each case. It has also been contended that the Assessing Officer of the other person has not recorded satisfaction as provided under sub-section (1) of section 153C of the Act and has merely reproduced the satisfaction recorded by the Assessing Officer of the searched person. However, considering the view

taken by this court on the question of jurisdiction of the Assessing Officer to issue notice under section 153C of the Act, the court has not gone into the merits of each individual petition.

FINAL ORDER

23. In the light of the above discussion, the petitions succeed, and are accordingly, allowed. The impugned notices issued under section 153C of the Income Tax Act, 1961 in each of the petitions are hereby quashed and set aside. In cases where the assessment orders are subject matter of challenge, the impugned assessment orders are hereby quashed and set aside on the ground that the very initiation of proceedings under section 153C of the Income Tax Act, 1961 was without jurisdiction. Rule is made absolute accordingly in each of the petitions, with no order as to cost.

(HARSHA DEVANI, J)

(BHARGAV D. KARIA, J)

B.U. PARMAR