

आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJIT SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

1. आयकर अपील सं./ I.T.A. No.2284/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)
&
2. आयकर अपील सं./ I.T.A. No.2286/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2011-12)
&
3. आयकर अपील सं./ I.T.A. No.2285/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2012-13)
&
4. आयकर अपील सं./ I.T.A. No.2287/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2013-14)

Kalyanji Velji HUF Plot No. 368, Vishrani Niwas Bhandarkar Road Matunga CR, Mumbai – 400 019	बनाम/ Vs.	DCIT-Central Circle-8(4) Room No.658 Aaykar Bhawan M.K. Road, Mumbai- 400 020.
स्थायीलेखासं./जी आइ आर सं./PAN/GIR No. AAAHK-1097-D		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

5. आयकर □ पील सं./ I.T.A. No.1784/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2012-13)
&
6. आयकर अपील सं./ I.T.A. No.1785/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2013-14)

DCIT-Central Circle-8(4) Room No.658 Aaykar Bhawan M.K. Road, Mumbai- 400 020.	बनाम/ Vs.	Kalyanji Velji HUF Plot No. 368, Vishrani Niwas Bhandarkar Road Matunga CR, Mumbai – 400 019
स्थायीलेखासं./जी आइ आर सं./PAN/GIR No. AAAHK-1097-D		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Neel Khandelwal-Ld.AR
Revenue by	:	Shri Gurbinder Singh-Ld. DR

Date of Hearing	:	24/12/2020
Date of Pronouncement	:	08/01/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2010-11 to 2013-14 contest common order of Ld. Commissioner of Income Tax (Appeals)-50, Mumbai [CIT(A)] dated 28/01/2019. The revenue is in appeal for AYs 2012-13 & 2013-14. The facts as well issues are stated to be pari-materia the same in all the years and therefore, adjudication in any year would equally apply to other years also. The Appeal for AY 2010-11 is taken as the lead year wherein the grounds raised by the assessee read as under:-

1. On the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the Order of the AO in reopening the case of the Appellant u/s 147 of the Income Tax Act and the Ld. AO ought to have made the assessment u/s. 153C.
2. Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the proceedings u/s. 147 in spite of admitting that the documents being whatsapp messages seized from third party pertains/relates to the Appellant and there being specific provisions prevailing at the time when papers are seized to assess such documents u/s. 153C. Confirming the proceedings u/s. 147 and having not followed the procedure u/s. 153C is bad in law and the entire addition needs to be deleted.
3. Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, Ld. CIT(A) erred in holding that the AO had valid reasons to initiate reassessment proceedings. The Ld. CIT(A) ought to have quashed the notice issued u/s. 148 of the Act and consequential assessment order which is based on dumb document.
4. Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in considering the seized documents found in the mobile phone of third party, in the absence of forensic report. The Ld. CIT (A) has confirmed the additions on the basis of the dumb documents, for which no forensic report was provided to Appellant. These dumb documents have no evidentiary value and therefore, the Order of the CIT (A) is bad in law and the additions are required to be deleted.
5. Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in partly confirming the addition only on the basis of seized document, even though the concerned parties who were summoned by the Ld. AO during the cross-examination had denied of any unaccounted transactions.
6. Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition to the extent of profit on alleged on-money when the Appellant is regularly following project completion method

of accounting and the profit on alleged on-money should not have been taxed in the year of receipt

7. Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in rejecting the books of accounts of the Appellant u/s 145(3) and estimating the income of the Appellant u/s 144 of the Act.

8. Without prejudice to the above and without admitting, on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in estimating the net profit at the rate of 15% of alleged on-money receipts amounting to Rs. 3,78,0007- in spite of the fact that even on completion of project there will be losses in the project and thus no income can be said to have been earned by the Appellant.

2. We have carefully heard the rival arguments as urged before us. We have also perused relevant material on record including the documents placed in the paper-book. The judicial pronouncements as cited during the course of hearing have duly been deliberated upon. Our adjudication to the appeal would be as given in succeeding paragraphs.

Assessment Proceedings

3.1 The material facts are that an assessment was framed against the assessee for the year under consideration u/s 143(3) r.w.s. 147 of the Act on 15/12/2017 wherein the assessee was saddled with addition of unexplained cash credit u/s 68 for Rs.25.20 Lacs. The original return was filed on 30/03/2012 which was processed u/s 143(1). The assessee being resident HUF was stated to be engaged in construction business during the year. During the year, the assessee was developing a project titled as *Vishrani Niwas / Vivaria*, the project consultancy services of which were being rendered by M/s Goshar Ventures Pvt. Ltd., an associated concern run by one Shri Pankaj Goshar.

3.2 The reassessment proceedings stem from the fact that a search action was carried out u/s 132 on 10/09/2015 in the case of Shri Pankaj Dhanji Goshar (PG) and his associated concerns. Based on search findings, the assessee's case was reopened vide notice u/s 148 on 14/03/2017. The reasons for reopening were duly supplied during the

course of assessment proceedings which were objected to by the assessee. However, all these objections were disposed-off vide rebuttal order dated 30/10/2017.

3.3 During the course of search action, page nos. 1 to 3 as per Annexure-1 were seized by the department, a copy of which was supplied to the assessee. The image of seized papers was also recovered from the mobile phone used by Shri Pankaj Goshar (PG) which was imaged in his presence by investigation wing using sophisticated forensic software. The image of above pages was present in the mobile phone of Pankaj Goshar in the folder named 'Umkant Manania'. It transpired that Shri Umakant Manania's family had booked two flats in the name of Shri Jayesh Umakant Manania & Shri Nimesh Umakant Manania in the project *Vivaria* at agreement value of Rs.350 Lacs each. However, the two buyers had allegedly paid on-money in cash on various dates for purchase of two flats over and above the aggregate registration / agreement value of Rs.7 Crores. The seized paper nos. 1 to 3 showed that an amount of Rs.25.20 Lacs (written as 25.02) was received in cash by the assessee from two buyers on 02/12/2009. Since, the same was not offered to tax, it was to be considered as concealed income of the assessee in the background of the fact that the image of pages was found in the mobile phone of Shri Pankaj Goshar and hard copy thereof was also seized from his premises. The associated concern of Shri Pankaj Goshar rendered end-to-end project consultancy for assessee. Shri Pankaj Goshar and Karta of assessee HUF were stated to be relatives of each other and entered into few financial transactions in the past.

3.4 A page No. 68 of Annexure-H was also impounded by the department during survey u/s 133A on 10/09/2015 in the case of M/s Krazee Properties Private Ltd. (a concern owned by Shri Pankaj Goshar). This page showed booking made by the various parties in the project *Vivaria* being developed by the assessee. The project management consultancy services of the same were being rendered by M/s Goshar Ventures Private Limited, another associated concern of Shri Pankaj Goshar.

3.5 As per assessee' request, cross-examination of Shri Pankaj Goshar, Shri Umakant Manania, Shri Jayesh Manania & Shri Nimesh Manania was provided to the assessee on 14/12/2017 which took place before Ld. AO. In the background of all these facts, the amount of Rs.25.20 Lacs was added back to the income of the assessee u/s 68 as unexplained cash credit.

4. The copy of cross-examination proceeding has been placed before us in the paper-book. Upon perusal of same, we find that Shri Pankaj Goshar submitted that statement recorded during the course of search and survey was under duress and the same has subsequently been retracted by him on 11/12/2015, 13/01/2016 & 19/02/2016. He further submitted that his associated concern M/s Goshar Ventures Pvt. Ltd. was engaged as project management consultant for the said project which would include seeking permission from Municipal Corporation, execution of job work, procurement of material required for construction, assisting the buyers and certifying bills for payments.

Shri Pankaj Goshar also submitted that image found on the mobile was sent by somebody and wrongly stored in the folder. He also denied

having undertaken any financial transaction with Shri Umakant Manania during last more than 10 years.

Shri Nimesh Manania, upon cross examination, submitted as under: -

I have agreed to purchase the flat in Vishrani Niwas at lumpsum price of Rs.3,50,00,000/- in the year 2012 necessary flat agreement has already registered on 18.12.2013. So far I have paid Rs.50 lakhs by cheque in the month of April, 2012. Secondly I have not made any cash payment / on money payment towards purchase of flats to Kalyanji Velji (HUF) or Pankaj Goshar on behalf of Kalyanji Velji (HUF).

Similar was the statement of Shri Jayesh Manania who denied having paid any cash payment / on money to the assessee. In nutshell, all the three parties denied having received or paid any cash against sale of the two flats. Shri Pankaj Goshar submitted that his entity was merely acting as project management consultant for the project. The two buyers denied having paid any on-money against purchase of the two flats.

The Karta of assessee HUF, Shri Ajay Vishrani, submitted that M/s Goshar Ventures Pvt. Ltd. had no authority for any financial dealing with any buyer. Their role included selecting vendors, suppliers and contractors. He also denied having received any cash / on-money from the two buyers over and above the agreement / registered value.

Upon perusal of the said cross examination proceedings, it is quite evident that none of the party has admitted to having paid or received any cash / on money in the course of transactions of sale / purchase of two flats.

Proceedings before Ld. CIT(A)

5.1 Before Ld. CIT(A), the assessee challenged the validity of reassessment proceedings on legal grounds. However, the same was rejected by Ld. CIT(A), inter-alia, by observing that Ld. AO was in possession of tangible material clearly depicting the receipt of on-money.

Only prima facie belief was sufficient for reopening the assessment. The statutory requirements to reopen the case were duly fulfilled and there was no procedural infirmity in reopening the case. Therefore, Ld. AO had bona-fide material for forming a prima facie belief that income chargeable to tax had escaped assessment. Therefore, the reopening was valid in the eyes of law and therefore, this ground was to be rejected.

5.2 The assessee also raised another additional legal ground by submitting that the assessment should have been framed u/s 153C only if the seized documents pertained to the assessee. The attention was drawn to the fact that search took place on 10/09/2015 and the provisions of Sec.153C as amended w.e.f. 01/06/2015 would apply to assessee's case. Therefore, the assessee should have been assessed only u/s 153C and not u/s 147. The failure to do so would vitiate the assessment proceedings.

The Ld. CIT(A), while admitting the additional ground, observed that the words '*pertain to*' or '*pertains to*' or '*relates to*' as appearing in the post amended provisions of Sec.153C could not be imported into the pre-amended provisions of Sec.153C. Relying on the decision of Hon'ble Gujarat High Court in the case of **Vijaybhai N.Chandrani V/s ACIT (333 ITR 436)**, it was held that notice u/s 153C would not be valid if money, jewellery or other valuable article or thing or books of accounts or documents seized or requisitioned do not belong to such person. Since the seized documents were found from the mobile of a third-party, the same did not belong to the assessee. There was only a reference about the unaccounted cash transactions entered into by the Manania family and the assessee in the seized document. Thus, it could not be held that

the seized document belonged to the assessee. Since statutory conditions of Sec. 153C were not satisfied, reopening was rightly resorted to by Ld.AO.

5.3 Proceeding on merits, it was noted that the seized page contained both the accounted as well as unaccounted transactions. The seized page had to be read in totality and if the figures related to accounted entries noted on the seized document are found to be correct then the unaccounted cash entries noted on the same seized paper was also to be considered as true. The seized document had correct numerical figures recorded on it and there were signatures of the persons receiving the unaccounted cash and date of receipt of cash. Thus the document could not be considered as mere *dump document* but rather it clearly reflects the date wise on-money received by the assessee from the Manania family.

5.4 The Ld. CIT(A) also opined that regardless of cross-examination, the entire case stands on the tangible seized record found during the course of search operation. Further, Pankaj Goshar was not an independent third party. The method of accounting being followed in the books of accounts for computation of income could not be applied to unaccounted cash transactions which were not even part of the books of account. Thus, the books were to be rejected u/s 145(3). Finally, the addition was estimated @15% of aforesaid alleged on-money received by the assessee. The same restricted the impugned additions to the extent of Rs.3.78 Lacs. Aggrieved, the assessee is in further appeal before us.

Our Adjudication

6. The Ld. AR, at the outset, raised similar legal plea that the assessment has wrongly been framed under Sec. 147 instead of Sec.153C which was applicable to the facts of the case. The failure to do so would vitiate the assessment proceedings as held by Pune Tribunal in the case of **V.L.Khandge V/s ITO (ITA Nos. 1971 & ors./Pune/2014 common order dated 24/04/2018)**. A copy of the same has been placed on record. The Ld.AR also advanced other arguments, legal as well as on merits, to assail the impugned additions as sustained by Ld. CIT(A). Per Contra, Ld. DR relied on the assessment framed by Ld. AO and pleaded for confirmation of the same.

7. Upon careful consideration of material facts, it is evident that the whole basis of making impugned additions is incriminating material in the shape of page nos. 1 to 3 of Annexure-1 as seized by the department during search action u/s 132 on 10/09/2015 in case of Shri Pankaj Goshar and his associated concerns. These documents were found at the premises of Shri Pankaj Goshar and the image of these documents was also found on the mobile phone being used by Shri Pankaj Goshar. The seizure of the same triggered reopening of assessee's case and accordingly a notice u/s 148 was issued to the assessee. It is the plea of Ld. AR that the provisions of Sec.153C were clearly applicable to the case of the assessee and these provisions would override other provisions of the act governing framing of assessment since the provisions of Sec, 153C start with non-obstante clause. The failure to do so would render the assessment illegal and bad in law.

8. We find that the search leading to seizure of incriminating document, took place on 10/09/2015 and therefore, the provisions of

Sec. 153C as amended w.e.f. 01/06/2015 were applicable to the fact of the case. The new provisions would read as under: -

Assessment of income of any other person.

153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

- (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 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 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 153A:

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

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 153A except in cases where any assessment or reassessment has abated.

(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 132A 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 153A.

We find that the provisions of Sec.153C start with non-obstante clause and overrides the provisions of various Sections as mentioned therein including the provisions of Sec.147 & 148. In terms of sub-clause (b) of Sec.153C(1), where any books of accounts 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 Sec.153A then said material shall be handed over to the Assessing Officer having jurisdiction over such other person. Accordingly, Ld. AO shall proceed against such other person and issue notice to assess or reassess the income of the other person in accordance with the provisions of Section 153A. Therefore, law mandate Ld. AO to frame assessment in such cases under specific provisions of Sec.153C in a particular manner. This being so, it would be obligatory on the part of Ld. AO to issue notice u/s 153C and assess / reassess income in accordance with the provisions of section 153A.

9. The word *belongs or belong to* in case of any books of account or documents, seized or requisitioned has been replaced by Finance Act, 2015 w.e.f. 01/06/2015 with the words *pertains or pertain to*. The rationale of the amendment as per explanatory notes to the provisions of The Finance Act, 2015 was as follows:-

39. Assessment of income of a person other than the person in whose case search has been initiated or books of account, other documents or assets have been requisitioned.

39.1 Section 153C of the Income-tax Act relates to assessment of income of any person other than the person in whose case search has been conducted or requisition has been made. The provisions contained in sub-section (1) of the section 153C, before amendment made by the Act, provided that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the Income-tax Act, 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 belong to any person, other than the person referred to in section 153A of the Income-tax Act, 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 income of such other person in accordance with the provisions of section 153A.

39.2 Disputes have arisen as to the interpretation of the words "belong to" in respect of a document as for instance when a given document seized from a person is a copy of the original document. Accordingly, section 153C has been amended so as to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153 of the Income-tax Act, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing belongs to, or any books of account or documents seized or requisitioned pertain to, or any information contained therein, relates to, any person, other than the person referred to in section 153A of the Income-tax Act, 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 income of such other person in accordance with the provisions of section 153A.

39.3 Applicability: This amendment has taken effect from the 1st day of June, 2015.

Thus, as per amended provisions w.e.f. 01/06/2015, if any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to a third person then it would be obligatory on the part of Ld. AO to issue notice u/s 153C and frame an assessment in accordance with Section 153A. The provisions of Sec.153C override the application of certain other provisions including the provisions of Sec.147 & 148. The failure to do so would vitiate the assessment proceedings as held by Pune Tribunal in the case of **V.L.Khandge V/s ITO (ITA Nos. 1971 & ors./Pune/2014 common order dated 24/04/2018)**. The operative portion of decision was as follows: -

8. The issue which arises before us is whether in such facts and circumstances of the case, where the basis of making investigation and assessment thereafter in the hands of assessee is on the basis of information unearthed during the course of search action on the premises of Shri Ganesh Khandge on 12.02.2013, then whether proceedings are to be initiated under section 148 or under section 153C of the Act. The perusal of provisions of section 153C of the Act reflects that in case any document relating to any other person is found during the course of search on a person, then the said document is to be forwarded to the Assessing Officer in-

charge of the person other than the person searched. The proceedings have to be initiated against such person on the basis of such document found and impounded. Section 153C of the Act very clearly provided that where the conditions as mentioned in the said section prevail, then provisions of said section have to be applied notwithstanding anything contained in sections 139, 147, 148, 149, 151 and 153 of the Act. The requirement of section 153C of the Act is the first satisfaction of Assessing Officer that any money, bullion, jewellery or other valuable article or thing or books of account or documents or assets belongs to a person other than the person referred in section 153A of the Act, 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 such other person and issue notice of assessment or re-assessment of the income of other person in accordance with provisions of section 153A of the Act. The Assessing Officer has to record satisfaction that books of account or assets seized or requisitioned, have a bearing on determination of the total income of such other person. The said provisions are notwithstanding anything contained in sections as mentioned above including sections 147 / 148 of the Act. In other words, where the provisions of section 153C of the Act are attracted in given set of facts and the documents impounded during the course of search, then the proceedings have to be initiated under section 153C of the Act as per prescribed procedure and no proceedings can be initiated under section 147 / 148 of the Act. The said proposition has been held by the Pune Bench of Tribunal in the case of Joshi Wadewale Hadapsar Vs. DCIT in ITA Nos.105 & 106/PUN/2016, relating to assessment years 2009-10 & 2010-11 with lead order in the case of Mrs. Vasundhara Shailesh Joshi Vs. DCIT in ITA Nos.95 & 96/PUN/2016, relating to assessment years 2009-10 & 2010-11, vide consolidated order dated 27.03.2018. The relevant findings of the Tribunal are as under:- —

28. The first issue which arises is whether the assessment in such circumstances was to be made under section 153C or 148 of the Act and connected issue is whether such an issue of assessment being completed under a particular section was valid or not, can be raised while deciding the issue of levy of penalty under section 271(1)(c) of the Act against the income assessed in the hands of assessee. In this regard, the learned Authorized Representative for the assessee has pointed out that the issue stands covered by the ratio laid down in ITO Vs. Shri Shailendra B. Agrawal (supra) and in bunch of appeals with lead order in ACIT Vs. Shamsundar Laxman Jagtap (supra). The relevant provisions of the Act to which reference is being made is section 153C of the Act which provides as under:-

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

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

.....

(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 132A 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 153A.

29. Section 153C of the Act very clearly lays down that notwithstanding anything contained in sections 139, 147, 148, 149, 151 and 153 of the Act, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing seized or requisitioned, belongs to; or 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, such 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 the Assessing Officer shall proceed against such other person and issue notice and assess or reassess the income of other person in accordance with provisions of section 153A of the Act. Section thus, very clearly lays down the procedure to be followed when during the course of search on a person any money, bullion, jewellery or valuable article or thing, or any books of account or documents or any information contained therein pertains to or relate / relates to other than the person searched; then first, all the said assets or information is to be handed over to the Assessing Officer, who is incharge of the person other than the person searched and then the Assessing Officer has to proceed and determine the income of the other person in accordance with provisions of section 153C of the Act. The said section very clearly also lays down that the provisions of section 153C of the Act are to be applied notwithstanding anything contained in sections 139, 147, 148, 151 and 153 of the Act. Applying the said provisions to the facts of the present case, wherein

certain documents were found during the course of search at the residence of partners of assessee firm on the basis of which, additional income was to be assessed in the hands of partnership firm i.e. one of the assessees before us, then for making aforesaid addition, recourse which was open to the Assessing Officer was to initiate proceedings under section 153C of the Act. Where the provisions of said section are to be applied, then no proceedings can be initiated under section 147, 148, 151 and 153 of the Act. Accordingly, we hold that when during the course of search under section 132 of the Act at the residence of Mrs. Vasundhara S. Joshi and Shri Shailesh Joshi, loose paper bundle Nos.6, 7, 8 and 9 were found, which depicted the receipts and expenditure relating to different outlets being run under the partnership firms and the additional income was also offered by the persons searched on behalf of partnership firms, in which he was partner, on the basis of such documents found during the course of search, then for making addition in the hands of partners, provisions of section 153C of the Act are attracted. Once the said provisions are so attracted, then there is no question of initiating any proceedings under section 147 / 148 of the Act. Accordingly, we hold that proceedings initiated under section 147 / 148 of the Act are thus, not correctly initiated.

9. The issue raised in the present appeal is squarely covered by the issue before the Tribunal in Joshi Wadewale Hadapsar Vs. DCIT (supra) and following the same parity of reasoning, we hold that re-assessment proceedings initiated against the assessee under section 147 / 148 of the Act are not warranted. The Assessing Officer after receipt of information belonging to the assessee should have invoked provisions of section 153C of the Act and not section 147 / 148 of the Act. Accordingly, we hold so. Consequently, re-assessment order passed under section 148 of the Act does not stand. The Assessing Officer is thus, directed to cancel the same. Consequently, the additional ground of appeal raised by the assessee is allowed and we hold that assessment framed by the Assessing Officer is null and void. Consequently, the issue raised on merits by the assessee and the Revenue becomes academic in nature and the same are dismissed.

The Ld. CIT(A), in our considered opinion, has erred in overlooking the amendment brought in by Finance Act, 2015 in Sec.153C and carried away by the fact that the seized document must belong to the assessee for application of Sec.153C. However, as already noted the said words stood replaced by words *belongs or belong to*. The seized document, in the present case, undisputedly pertains to the assessee and the same form the very basis of making additions in the hands of the assessee.

In view of the foregoing, we would hold that the provisions of Sec.153C were applicable to the facts of the case and Ld.AO was not justified in framing the assessment u/s 143(3) r.w.s. 147. The failure to do would

vitiating the assessment proceedings. Hence, we are inclined to cancel the assessment framed u/s 143(3) r.w.s. 147. Accordingly, the impugned additions would not survive.

10. Another aspect of the matter is that the additions have been made u/s 68 which is also not applicable to the facts of the case since credit of sum in the books of accounts being maintained by the assessee is *sine qua non* to trigger the provisions of Sec.68. However, going by the factual matrix, it is quite clear that there was no credit entry in assessee's books of accounts rather it was the Ld. AO's allegation that the assessee received on-money on sale of flats. There was no sum found credited in assessee's books and therefore, the provisions of Sec.68 could not have been invoked against the assessee.

11. Lastly, none of the parties have admitted to have paid or received any on-money which is evident from cross-examination proceedings. The two buyers denied having paid any cash while purchasing the flat. The assessee denied having received the on-money. Shri Pankaj Goshal was not authorised to undertake financial transactions on behalf of the assessee. He also denied having undertaken any financial transactions with Manania family. Therefore, the whole basis of making addition is mere *dumb document* found at the premises of a third party, without there being any corroborative evidences to support the same. No much weightage could be attached to the said document in the absence of any cogent material supporting the entries therein.

12. Thus viewing from any angle, the additions made by Ld. AO has no legs to stand. We quash the assessment so framed by Ld. AO. Consequently, ground Nos. 1 & 2 stand allowed. Ground No.3 has not been pressed. Rest of the grounds become academic in view of the fact

that the assessment order has been quashed by us. The appeal stands partly allowed in terms of our above order.

Assessee's Appeal for AYs 2011-12 to 2013-14

13. The facts are pari-materia the same in all these years. The assessments have been framed u/s 143(3) r.w.s. 147 vide separate orders all dated 15/12/2017 on similar lines making certain additions on the basis of documents seized during search operations on a third party i.e. Shri Pankaj Goshar. The appellate order is common order for all the four years. The assessee is before us on, more or less, similar grounds of appeal. Facts being pari-materia the same, our findings as well as adjudication as for AY 2010-11 shall *mutatis-mutandis* apply to all these years. Resultantly, all the three appeals stand partly allowed.

Revenue's Appeal for AYs 2012-13 to 2013-14

14. In both these years, the revenue challenges the order of Ld. CIT(A) in restricting the additions to the extent of 15%. Both these appeals have been rendered infructuous in view of the fact that the assessment orders stood quashed by us for these years. Consequently, the appeals stand dismissed.

Conclusion

15. The assessee's appeal stand partly allowed whereas revenue's appeal stand dismissed.

Order pronounced on 08th January, 2021.

Sd/-

(Amarjit Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 08/01/2021
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.