

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "F": NEW DELHI ]**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER  
(Through Video Conferencing)**

ITA. No. 2825/Del/2016  
(Assessment Year: 2006-07)

DCIT,  Central Circle : 28,  New Delhi.	Vs.	M/s. Alchem International Ltd., 301 – Avalon Apartments, Mehrauli Gurgaon Road, Manglapuri, New Delhi – 110 030. <b>PAN: AAACA2251L</b>
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**AND**

C. O. No. 225/Del/2016  
[ in ITA. No. 2825/Del/2016 ]  
(Assessment Year: 2006-07)

M/s. Alchem International Ltd., 301 – Avalon Apartments, Mehrauli Gurgaon Road, Manglapuri, New Delhi – 110 030. <b>PAN: AAACA2251L</b>	Vs.	DCIT,  Central Circle : 28,  New Delhi.
(Appellants)		(Respondents)

Assessee by :	Shri [Dr.] Rakesh Gupta, Adv.,
Department by:	Ms. Shivani Singh [CIT] - D. R.;
Date of Hearing :	16/09/2021
Date of pronouncement :	07/12/2021

**ORDER**

**PER AMIT SHUKLA, J. M.**

1. This departmental appeal & Assessee's Cross objection are filed against the order passed by Commissioner of Income Tax (Appeal)- 29, New Delhi's order dated 29.2.2016 (hereinafter as

‘CIT(A)'). Departmental grounds of appeal and assessee's cross objections are reproduced as under:

“1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs 1,21,84,826/-, made by the AO on the ground that M/s Alchem International (HK) Ltd., which is a 100% subsidiary of the assessee Company, without appreciating the fact that a legal façade was created by the assessee by forming the above Company at Hongkong, which is a tax heaven, with the purpose of diversion of its profit to its 100% subsidiary at Hongkong.

2. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 1,21,84,826/- without appreciating the detailed evidences and reasoning discussed in the assessment order for holding that the effective management and control of M/s Alchem International (HK) Ltd., which is a 100% subsidiary of the assessee Company, was in India.

3. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that signing of documents by the official of the assessee company on behalf of M/s Alchem international (HK) Ltd. for the purpose of export does not lead to the conclusion that control and management of M/s Alchem International (HK) Ltd is situated in India without appreciating the fact that no independent entity would allow signing on important papers (required for exports) by an official of another company unless both the companies are managed together.

4. That on the facts and in the circumstances of the case, the Ld CIT(A) has erred in law and on facts in holding that no adverse inference was made by the TPO thus the transactions of the assessee with its 100% subsidiary are at arm's length and permissible without appreciating the fact that the above matter did not pertain to the jurisdiction of the TPO who can only examine whether the transactions have been made at arm's length or not and only AO can conduct inquiry whether the transactions are sham or not.

5. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that

the AO failed to conclusively prove that the transactions of the assessee with its 100% subsidiary were sham without appreciating the detailed evidences discussed in the assessment order.

6. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in holding that the income of M/s Alchem International (HK) Ltd. cannot be clubbed with the income of the assessee u/s 6(3)(ii) without appreciating the detailed evidences discussed in the assessment order conclusively establishing that the management and control of affairs of M/s Alchem International (HK) Ltd. was situated in India.

7. That on the facts and in the circumstances of the case the Ld CIT(A) has erred in law and on facts in deleting the addition of Rs. 31,69,91,238/-, made by the AO on account of unexplained purchases u/s 69C on the basis of the documents seized from Sh. R.P. Yadav, consultant of the assessee company on the ground that no corroborative evidence was found without appreciating the fact that Sh. Ram Pratap Yadav was not only a consultant who used to procure orders for the assessee company but was also a Director in M/s Lepro Herbals Pvt. Ltd., a sister concern of the assessee company, and thus the onus was on the assessee company to explain the seized documents found from his possession.

8. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 31,69,91,238/-, made by the AO on account of unexplained purchases u/s 69C on the basis of the documents seized from Sh. R.P. Yadav, consultant of the assessee company, on the ground that no corroborative evidence was found without appreciating the fact that few documents pertaining to the assessee company were seized from the residence of Sh. R.P. Yadav, which establishes that he used to keep documents of assessee at his residence, and from the bare perusal of the seized documents it is evident that these pertained to the undisclosed cash purchases made by the assessee company through Sh. R.P. Yadav.

9. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 3,03,704/- made on account of prior period

expenses, without appreciating the fact that the assessee has added back prior period expenses of only Rs. 1,36,418/- out of Rs. 4,40,122/- by netting of the prior period expenses with prior period income of Rs. 3,03,704/- without any basis.

10. That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.

11. That the grounds of appeal are without prejudice to each other.

12. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.

### **Cross Objection :**

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction u/s 153A and has erred in passing the impugned assessment order.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in assuming jurisdiction u/s 153A and has erred in passing the impugned assessment order is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in observing in **para 13.3 page 108-109** of the impugned order that Sh.R.P. Yadav is not a third party and hence it is not found necessary to record any satisfaction or invocation of provisions of section 153C of the Act.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in observing that the action of Ld. AO is in accordance with law to proceed the assessment proceedings u/s 153A/143(3) on the basis of such documents found and seized during the search action, belonging to the appellant from the premises of employee of the appellant, who was duly covered in this search.

5. That the cross objector craves the leave to add, amend, modify, delete any of the ground(s) of cross objection before or at the time of hearing. “

2. Paper book has been filed by the assessee which has been perused and considered by us. Arguments made on behalf of the revenue and on behalf of the assessee were heard. Orders passed by the lower authorities were gone through by us. We proceed to dispose the appeal and cross objection as under:
  - 2.1 First issue involved in the departmental appeal which covers grounds of appeal number 1 to 6 of the appeal relates to addition of Rs. 1,21,84,826/- which was made by the assessing officer (hereinafter as “AO”) but which was deleted by CIT(A).
  - 2.2 Assessing officer has discussed this issue at page 20-42 of the assessment order whereas CIT(A) has dealt this issue at page 35-48, 83-106 and recorded his finding at page 113-120 of the appeal order.
3. Case of the Revenue made in the assessment order and argued by CIT(DR) is that profit earned by Hongkong Subsidiary of the assessee in fact is the profit of the assessee as the it was 100% subsidiary and this legal façade was created by the assessee and effective management and control of the subsidiary company was in India. Ld. CIT(DR) relied upon the assessment order and also raised the contentions contained in the departmental grounds of appeal. On the other hand, Ld. AR on behalf of the assessee relied upon the submissions made before CIT(A) and reproduced in the assessment order and supported with the documents

contained in the paper book and also relied upon the findings recorded in the order of the learned first appellate authority.

4. We have considered the entire material before us. Findings recorded by Ld. CIT (A) relating to these grounds of appeal are as under:

*“14.13 —As discussed earlier, first of all it was not established that the control and management of AIHK is done wholly from India. AIHK is a separate legal entity, duly registered in Hongkong with an address at Hongkong. It is carrying out its activity of procurement of business and the goods are purchased through appellant and sent through appellant as per the business practice. Through exports to AIHK, there is a substantial growth in the business of the appellant.*

*Bills are raised by the appellant to AIHK, though consignment sent to third party. Payments are received from AIHK to the appellant through banking channels, duly recorded in the books of both the entities. Receipt of advance from AIHK is a business advance, looking to the running transactions between appellant and AIHK. AIHK is subject to the laws, including taxation laws of Hongkong. The exports of appellant has been recognized, on which deduction under section 80HHC of the Act has been claimed and allowed. On referring the matter to TPO, no adverse view were received meaning thereby the transactions are at the arms length price and permissible. The AO has accepted this position. This also shows that they are two different entities.*

*14.14—In view of the above, and looking to the case laws relied upon by the appellant in the case of Radharani Holdings P. Ltd.(supra) and Saraswati Holdings Corporation Ltd.(Supra) etc, it is held that the appellant and AIHK are two different entities and control and management of AIHK is being done wholly from India is not established. Therefore, the provisions of section 6(3)(ii) are not applicable looking to the facts and circumstances of the case and law.*

*14.15—It is also to be mentioned that AO did not substantiated that how this profit of AIHK, even though being treated as resident in India under section 6(3)(ii), can be clubbed and added in the hands of the appellant. Simply because it is 100% subsidiary of appellant, all of its profit cannot be clubbed in the hands of holding company even if the subsidiary is a resident of India. Subsidiary company and holding company are two different persons for the purpose of tax assessments in Income tax parlance. So even if it is considered for the sake of argument that provisions of section 6(3)(ii) are applicable to the AIHK, meaning thereby that it is a resident in India, its profit cannot be clubbed with the income of appellant. AO has also not proved conclusively that how these transactions being sham, the income of AIHK can be clubbed in the hands of appellant, which is a separate legal entity. Further, the AO has taken only the profit part leaving the expenditure incurred by Hongkong company, thereby accepting the claim of expenditure incurred by AIHK. Even if AIHK is considered as Indian resident, separate proceedings are required in the hands of AIHK to assess its profit in India.*

5. It is evident that Hongkong entity was a separate legal entity and was registered in Hong Kong. There are enough evidences which show that the Hongkong entity was doing the business and was subject to Hongkong laws. Transfer Pricing Officer has found the transactions between the assessee company and Hongkong entity at arms-length which also establish that the transactions between the assessee company and Hongkong entity were genuine business transactions. There is no evidence brought on record to prove that the control and management of Hongkong entity was being done wholly from India. In any case, even if control and management of Hongkong entity had been found situated wholly in India, though this is not the proved case of Revenue, yet the profit of Hongkong entity could not be clubbed

with the profits of the assessee company. There is no evidence brought on record by the revenue to prove that the transactions undertaken by Hongkong entity were sham transactions and were transactions of the assessee company. Hongkong entity was registered in Hongkong on 20.9.2002 and was working since then, independently. Revenue itself has accepted that the assessee company has made exports to Hongkong entity. Transactions between the assessee company and its Hongkong Subsidiary have taken place at arms length as found out by TPO also. Payments have been made& received by the assessee and Hongkong entity through banking channels only. All the factual matrix of the case have been captured and finding have been recorded by the first appellate authority. Merely because Hongkong may be a tax free or low tax jurisdiction, that alone does not prove that the Hong Kong entity was legal façade of the assessee company. CIT(A) has exhaustively discussed the issue at hand and has recorded his findings which are based on the material. It is the assessing officer who himself has accepted in para 4 of the assessment order that exports were made by the assessee company to Hong Kong entity. Reading of the assessment order para 9.1 suggests that it was the finding of DDI that Hong Kong entity was not doing any actual activity which unfortunately has been followed by the assessing officer without adverting to the facts available on record which prove that exports were made by the assessee company to Hong Kong entity. Even the finding of Transfer Pricing Officer in AY 2010-11 cannot be ignored when he records that exports executed by the assessee company to its associated enterprise was short of arms length price by Rs. 3,64,43,842/-. Had there been no activity done by Hong Kong Entity, how could such finding be arrived at

by TPO in the first place? Exports were made under the government policies and as per Import Export regulations and this cannot be ignored. There is nothing on record to suggest that the statement of Ms. Chanchal Bhutani was given to the assessee even. Thus, there is nothing before us to take a view different from the view taken by Commissioner of Income Tax (Appeal) and thus we dismiss all these grounds raised by Revenue in this regard.

6. Ground nos. 7 & 8 involved in the departmental appeal are against the relief allowed by CIT(A) amounting to Rs. 31,69,91,238/-. The addition was made by the assessing officer under section 69C on the ground that this much value of purchases was unexplained purchases based on the documents seized from Shri R P Yadav, consultant of the assessee company.
- 6.1 Departmental Representative relied upon the assessment order whereas counsel for the assessee relied upon the submissions reproduced in the appeal order and also the findings recorded by CIT(A) in his order.
7. After considering the material before us, we do not find any merit in the appeal of the Revenue in this regard. The findings recorded by first appellate authority are as under:

*“13.8 The appellant vehemently argued that the documents are not related to it, but to Mr. RP Yadav and it is to be explained by him. Since Mr. Yadav has not categorically stated that this documents belongs to the unaccounted/cash purchases of the appellant and also deposed before AO and provided affidavit in this regard. Therefore, appellant stated*

that since the documents are not found and seized from the premises of company and Sh. Yadav has not stated that since the document gives a detail of unaccounted purchase of Gloriosa seed, procured on behalf of the appellant therefore no additions can be made in its hand. It is true that Mr. Yadav who is working on behalf of company and actively involved for the purchase of Gloriosa seeds for company from Southern India and also stated to be monitoring and controlling the procurement from small producers, however any such payment made to them out of the books has been denied. It is stated that the purchases of the company was made through its agent namely M/s Jas Impex and payment is made to M/s Jas Impex, who in turn may be making payments to such farmers. It is also stated by Mr. Yadav that these are the rough workings of purchases through its accountant to monitor the procurement. No other corroborative evidence or material has been found either from the premises of Mr. RP Yadav or from the various premises of the appellant company during search to show that such payments are being made out of the books. It appears that no enquiries have been made even from the recipients nor any material brought on record to prove that the details mentioned in the said documents are correct. No unaccounted cash or undisclosed investment have been discovered during search for the year under consideration. During search in the premises of the appellant, all purchases, sales, production and stock etc. were found duly recorded in the books of accounts. The appellant is subject to the excise rules as well as drug control rules and it has to maintain its records in the proper format to comply with the same. No defects were found in such records during search in this regard.

13.9 The appellant has not been provided any opportunity to confront with the seized documents or with the statement by Mr. RP Yadav, for which the AO has not made any submission, even in the remand report. Though show cause notice was issued and the exhaustive submission of the appellant was duly considered at the assessment stage, however nothing has been brought on record to negate or counter the averments by the appellant to prove that the contents of seized documents are applicable to the appellant.

13.10 It is also stated that all the raw materials purchased are duly recorded in stock register and had there

been any such unaccounted purchases, this would have been reflected as excess stock during search. The appellant is processing the Gloriosa seeds to produce Thiocolchicoside, which is raw material for drug manufacturing and sold to various drug manufacturing companies, mainly in the international market. Any excess sale to them has to be recorded through the export process, where no such infirmity was noticed. If these seeds are sold in the market without processing, the indication/evidence of same should have been found during search, however no such evidence was found or brought on record. It is not shown by the AO that how such alleged unaccounted purchase of raw material were utilized by the appellant in the absence of any excess production/stock found.

13.11 It is stated that all the payments have been made through cheques and no proof of cash given by appellant to Mr. Yadav has been found. Thus the documents seized from the premises of Mr. RP Yadav has no bearing with the purchases/cash payments of the appellant and should not be used against it as nothing corroborative or incriminating document has been found nor any independent evidence has been brought on record. Further, there is no mandate given by the appellant to Sh. RP Yadav to distribute cash to such farmers and nothing has been stated by Mr. Yadav in this regard. Sh. RP Yadav though working as consultant of the company and rendering services to other parties including; the assessee company has a limited role to play and no cash has been found to be given by him.

13.12 It is also pointed out by the appellant that in the case of RP Yadav, where the addition has been made as commission income, the CIT(A) confirmed the addition stating that since the seized documents are received from the premises of RP Yadav, therefore it is to be treated as belonging to him, in the absence of discharging his onus to rebut the presumption cast on him under provisions of section 292C and 132(4A) in respect of notings on the seized documents. Accordingly confirmed the addition on account of 5% of total transaction value recorded in the seized document, in the hands of Sh. RP Yadav. Therefore it is stated by the appellant that the said seized documents cannot be used against the appellant. Here it is relevant to state that the addition has been made in

the hands of the appellant company on the basis of the contents of the seized documents as no other corroborative evidence were found during search or further substantiated by any enquiry or evidence.

13.13 In this regard the appellant relied upon various judgment of different jurisdiction to say that addition can not be made on the basis of standalone seized document, without any corroborative evidence or further investigation or any independent enquiry to prove the transactions recorded in such document are correct and applicable to the appellant. Some of the case laws relied upon are as below:-

(i) *Sahitya Housing Pvt. Ltd. vs. DCIT (ITAT Hyderabad)*, ITA No. 246/Hyd/2011, Date of pronouncement : 24.01.2014

(ii) *DCIT Central vs. Sri Krishna Yadav 201112 Taxmann.com 4 (Hyd)*

(iii) *ACIT vs. Satyapal Wassan 2007 295 ITR 80 (352) Jabalpur*

(iv) *CIT vs. Khazan Singh & Brothers 2007 304 ITR 243(P&H) – the*

(v) *Harish Daulatram Imani vs. DCIT(Inv) Mumbai 2008 24 SOT 541*

(vi) *CIT vs. Moulali Kumar Shah 2008 307 ITR 137(Guj)*

(vii) *DCIT vs M Aja Bahu (ITAT Hyderabad Bench - ITA Nos 1755,1756 &1757/Hyd/2012*

(viii) *CIT vs. S.M.Aggarwal (2007) 293 ITR 43 (Del)*

(ix) *CIT vs. Kulwant Rai 291 ITR 36 (Del)*

(x) *CIT vs. Anil Bhalla 322 ITR 191 (Delhi Court)*

(xi) *ACIT vs. Satyapal Wassan 295 ITR (AT) 352 (Jabalpur)*

(xii) *CIT vs. Gian Gupta (Delhi High Court) ITA No.955/2011 dated 8.5.2014.*

13.14 Mr. RP Yadav has stated that the seized documents were the proforma accounts maintained by his part time accountants for limited purpose of performance of his supervisory duties for appellant and others and confirmed that these documents did not represent the purchase transactions of appellant and does not represent any payment by cash for procurement of seeds. The AO could not substantiate that the notings in the documents seized pertains to the purchase made by appellant in cash. Therefore, the additions were made on the conjecture and surmises that the seized documents represents the cash payments for purchase made by appellant out of books without any basis. No adverse inference can be made on the basis of seized documents as per the ratio laid down in various cases, some of them are mentioned above.

13.15 —To sum up, it is seen from the submissions by the appellant and looking to the facts and circumstances of this case and law that the addition has been made on the basis of standalone document found and seized from Mr. RP Yadav, who is consultant/employee of the company and the sum and substance of the document is not proved by any corroborative evidence as books of the accounts of the appellant has been found proper, where purchases are recorded. The AO has not rejected the books of the appellant. During assessment though all the amounts mentioned in such document has been considered but while making addition, only the amount excess from the purchases recorded in the books of appellant has been taken for addition. This indicates that AO has treated these amounts mentioned in seized document as part of the duly recorded purchases in the books of appellant. However, no cogent reasoning has been provided to such action. The books of accounts of appellant are subject to excise and drug rules and no infirmity or irregularity has been noticed during search. Nothing has been found during search to that there is an unaccounted purchases and the end use of such unaccounted purchase is also not established. No further enquiries are made from such recipients regarding cash purchases nor any quantity for such purchase has been mentioned. No unaccounted sales are also established.

8. We find that no corroborative evidence or material was found from Mr Yadav or from the assessee company during the course of search which could have indicated that the payments have been made outside the books of account. Purchases, sales, production and stocks were found duly recorded in the books of accounts of the assessee company and there was nothing which could have lent any credence to this theory of purchases having been made outside the books of accounts or payments having been made outside the books of account. CIT(A) has also taken note of the fact that the assessee company is subject to excise law as well as drug control rules and there is nothing adverse even under that law. Had there been purchases outside the books and that too of the magnitude as made out by the assessing officer, there must have been some other evidence corroborating this. Nothing has been shown to us even at this stage by the Revenue which can prove that the findings recorded by the first appellate authority are not correct conclusions. We also take note of the uncontroverted finding recorded by CIT(A) in para 11.3 of the appellate order that AO had not given any submission regarding the issue of confronting the appellant with the seized documents or statement of Mr. R P Yadav. It is also noticed by us that the addition was made on the basis of the documents not found from the assessee's possession and control but were made on the basis of the documents founds from Shri R.P.Yadav and these documents were owned up by him. This admission that these documents were owned and belonged to him only was admitted by Shri Yadav during the course of search and also in his statement recorded in the assessment. Name of another entity namely Jas Impex too is appearing on these

documents and thus merely on some papers the name of the assessee is appearing does not mean that these documents or contents of these documents relate to the assessee. Statement of Vice President of the assessee company reproduced in the assessment order also mentions that 90% of the total purchases of the assessee company are through Jas Impex. No enquiry has been made from M/s Jas Impex and nothing has been shown to that effect to us. Statement of the son of Mr. R P Yadav has also been reproduced by the AO in the assessment order and there is nothing that he was made available for assessee's cross examination. To rely on the statement of the son of Mr. Yadav more than on the statement of Mr. Yadav him self is quite strange. In our considered opinion, the addition made on the basis of the notings on the loose documents of Mr. R P Yadav in the hands of the assessee company cannot be sustained and was rightly deleted by the learned first appellate authority. There is no reason for us to differ with the findings recorded by CIT(A) and hence we dismiss these grounds of the Revenue.

9. Ground no. 9 of the revenue's appeal is regarding the relief of Rs. 3,03,704/- allowed by CIT(A) which was initially made addition by the assessing officer as prior period expense.
10. Both the parties before us relied upon the respective orders in their favour.
11. We have considered the material before us and here also we do not have any good reason to deviate from the decision of the learned first appellate authority, more particularly the smallness of the amount involved and the tax rate being identical. Also,

there is nothing which was found in this regard as a result of search as can be seen from the reading of the assessment order and hence in view of Hon'ble Delhi High Court's decision in the case of Kabul Chawla 380 ITR 573(Del) also, the disallowance made by the assessing officer could not be sustained and was rightly deleted by CIT(A). We therefore dismiss this ground of appeal of the revenue.

12. Rest of the grounds involved in the departmental appeal are general and do not require any comment except what has been held above.
13. In the result, Revenue's appeal is dismissed.

### **Cross Objection**

14. First two grounds of cross objections challenge the passing of the assessment order under section 153A.
15. In this case search has taken place under section 132 of the Income Tax Act and hence passing of the assessment order for the year before us was dictated by the provisions of section 153A and hence we do not find any infirmity in passing the assessment order under section 153A. Hence these grounds of the cross objections are dismissed.
16. Ground Nos. 3 & 4 of the cross objections are relating to the addition made on the basis of the documents seized from the possession and control of Shri R P Yadav on the ground that if any addition was to be made on the basis of these documents, then process of law as prescribed under section 153C could

alone be taken and such addition could not be made in the present assessment.

17. It is seen that addition of Rs. 31,69,91,238/- which is also covered by ground nos. 7 & 8 of the departmental appeal was made on the basis of the documents seized from Shri R P Yadav. Though we have affirmed the order of CIT(A) in deleting the said addition yet we choose to dispose this legal ground raised by the assessee in its cross objection.
18. Ld. Counsel for the assessee relied upon the decision of coordinate bench in the case of Trilok Chand Chaudhary vs. ACIT ITA 5870/Del/2017 dated 20.8.2019 and placed a copy of that on record and submitted that the facts being identical, the addition could not be made without observing the jurisdictional conditions of section 153C as the documents were seized in some other search namely search of Shri R P Yadav and not of the assessee. On the other hand, Ld. CIT (DR) opposed this argument and argued that there is no substance in the legal argument.
19. We have heard the counter arguments and have taken ourselves to the panchnama held on record and also gone through the decision cited. It is noticed that though search on the assessee and search on Shri R P Yadav took place simultaneously but name of either of them is not mentioned in the respective panchnamas. Thus, documents found and seized from the premises of Shri Yadav could not be used while making assessment of the assessee company without observing and following the due process of law as contained in section 153C. Since these documents cannot be seized in the course of search

of the assessee but were seized from third person namely Shri R P Yadav, these documents could be considered in the assessment of the assessee company only in terms of section 153C. We are fortified in our conclusion by the decision of coordinate bench in which Tribunal held as under:

*“5.4 We have heard the rival submissions of the parties and also perused copy of Panchnama through which the document in dispute was seized. On perusal of the Panchnama, we find that the said search warrant was issued in the case of Shri Ashok Chaudhari and the Panchnama is not containing name of the assessee. Therefore, it is evident that the material relied upon for making addition was not found from the premises of the assessee.*

*5.5 We also find that during relevant period, i.e., FY: 2014-15, for using any material found from the premises of the third party during the course of the search in assessment proceeding of the assessee, the Assessing Officer of the third party was required to record satisfaction as the material belong to the assessee in terms of section 153C of the Act and then was required to proceed as per the provisions of section 153C of the Act. In the instant case, it is evident that addition in dispute has been made in the assessment completed under section 153A of the Act. The assessee raised this issue before the Ld. CIT(A), however, the Ld. CIT(A) rejected the arguments of the assessee observing as under:*

*"6.3 Another argument of the appellant, if understood correctly, is that in reference to the document under consideration, the AO ought to have initiated proceedings u/s 153C and that in no case this can be considered u/s 153A. This argument has no legs to stand for the simple reason that it is patently absurd. Undisputedly, a search u/s 132 was conducted in the appellant's case and therefore, the assessment was to be completed u/s 153A and the Ld. AO was under a statutory obligation to consider entire material irrespective of the place from where it was found (i.e. appellant's own place or some other place). There cannot be two assessments one u/s 153A and other u/s 153C. In short, the argument of the appellant that document seized from the premises of Sh. Ashok Chaudhary cannot be considered u/s 153A is absurd and is accordingly rejected."*

**5.6** *In our opinion, the finding of the Ld. CIT(A) is not based on correct appreciation of law. The reasoning of the Ld. CIT(A) is that there cannot be two simultaneous assessments under section 153A and other under section 153C of the Act. This reasoning is faulty. The assessment under section 153C could have been made after completion of the assessment under section 153A of the Act. The Act has provided separate provisions for making assessment in case of material found in the course of the search from the premises of the assessee as well as the material found in the course of search at the premises of the third party. The Assessing Officer is required to follow the procedure laid down in the Act for making the assessment and he cannot devise his own procedure for*

*shortcut methods. In our considered opinion, when the case of the assessee is covered under the provision of section 153 of the Act and if reliance is placed on the incriminating material found during the course of search of third-party, then provision of section 153C of the Act would be applicable and have to be adhered to. Thus, in the instant case, the Assessing Officer was required to first complete the proceedings under section 153A in hand, which were initiated by way of notice dated 30/06/2014 and thereafter, he was at liberty to take action under section 153C of the Act for bringing the material found from the premise of Sh. Ashok Chaudhri to tax in the hands of the assessee.*

**5.7** *In the case of Shivani Mahajan (supra), identical question was raised before the Tribunal as under:*

*"9. We have carefully considered the arguments of both the sides and perused the material placed before us. After considering the facts of the case and the rival submissions, we find that in these appeals, following two questions arise for our consideration:*

*(i) Whether any material found in the search of any other person than the assessee in appeal can be considered in the assessment under 153A of the assessee.*

**5.8** *The Tribunal after considering arguments of the parties held as under:*

*"14. From a reading of the above decisions of Hon'ble Jurisdictional High Court, it is evident that completed*

*assessment can be interfered with by the Assessing Officer on the basis of any incriminating material unearthed during the course of search. If in relation to any assessment year no incriminating material is found, no addition or disallowance can be made in relation to that year in exercise of power under Section 153 of the Act. Obviously, the reference to the incriminating material in the above decisions of Hon'ble Jurisdictional High Court is in regard to incriminating material found as a result of search of the assessee's premises and not of any other assessee. The legislature has provided Section 153C by invoking the same the Revenue can utilize the incriminating material found in the case of search of any other person to the different assessee. Section 153C is reproduced below for ready reference:*

*"Assessment of income of any other person.*

*153C.[C] 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 subsection (1) of section 153A]:]. "*

*15. Thus, when during the course of search of an assessee any books, document or money, bullion, jewellery etc. is found which relates to a person other than the person searched, then the Assessing Officer of the person searched shall hand over such books of account, documents, or valuables to the Assessing Officer of such other person and thereafter, the Assessing Officer of such other person can proceed against such other person. However, in the case under appeal before us, admittedly, Section 153C is not invoked in the case of the assessee and the assessment is framed under Section 153A. We, respectfully following the above decisions of Hon'ble Jurisdictional High Court, hold that during the course of assessment under Section 153A, the incriminating material, if any, found during the course of search of the assessee only can be utilized and not the material found in the search of any other person."*

**5.9** *The facts of the case of Vinod Kumar Gupta (supra) are distinguishable with the facts of the instant case. In the case of Vinod Kumar Gupta (supra) material found from Sh. S.K. Gupta was used in assessment proceeding under section 153A of the Act in the case of Sh. Vinod Kumar Gupta. But in that case warrant in fact was issued in the name of Sh. SK Gupta, Gaurav Gupta, Sh. Vinod Kumar Gupta, Ms. Veena Gupta, Sh. Vikas Gupta, and Ms. Madhu Gupta. The Panchnama drawn was also signed by both the assessee (Sh. Vinod Kumar Gupta) and SK Gupta. The statements of both Sh. S.K. Gupta and Sh. Vinod Gupta were recorded on the same date. The Hon'ble High Court held that as search and seizure was conducted through one authorization, there was no requirement of issuing separate notice under section 153C of the Act and following separate procedure under section 153C of the Act. But in the instant case, separate search warrant has been issued in the case of the assessee as well in the case of Sh. Ashok Chowdhary and the Assessing Officer has used the material found in the course of search at the premise of Sh. Ashok Chowdhary, which is not permitted in view of the express provision of the law.*

**5.10** *The addition made by the Assessing Officer in violation of the procedure provided in the Act is bad in law and void-ab-initio and cannot be sustained. Accordingly, the addition of Rs.3.3 crore, made protectively on the basis of the documents found from the premises of the third party, by the Assessing Officer and upheld by the Ld. CIT(A) on substantive basis, is*

*deleted. The ground No. 6.2 of the appeal is accordingly allowed. “*

20. We, therefore, for the above-mentioned reasons and discussion hold that the addition of Rs. 31,69,91,238/- could not have been made for this reason also and thus, we allow grounds nos. 3 & 4 of the cross objection.

21. Cross objection of the assessee is partly allowed.

Order pronounced in the open court on : **07/12/2021**.

**Sd/-  
(DR. B.R.R. KUMAR)  
ACCOUNTANT MEMBER**

**Sd/-  
( AMIT SHUKLA )  
JUDICIAL MEMBER**

Dated : 07/12/2021.

\*MEHTA\*

Copy forwarded to

1. Appellants;
2. Respondents;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	7.12.2021
Date on which the typed draft is placed before the dictating member	7.12.2021

Date on which the typed draft is placed before the other member	7.12.2021
Date on which the approved draft comes to the Sr. PS/ PS	7.12.2021
Date on which the fair order is placed before the dictating member for pronouncement	7.12.2021
Date on which the fair order comes back to the Sr. PS/ PS	7.12.2021
Date on which the final order is uploaded on the website of ITAT	7.12.2021
date on which the file goes to the Bench Clerk	7.12.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	