

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 93/JP/2021
निर्धारण वर्ष/Assessment Year : 2010-11.

Shri Siya Ram Jat 553, village Soda Sri Nagar, The. Malpura, Distt. Tonk – 304 504.	बनाम Vs.	The ACIT, Ward – Tonk.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. BPGPJ 2617 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 123/JP/2021
निर्धारण वर्ष/Assessment Year : 2010-11.

Shri Jagdish Lal Jat Village – Shri Nagar, Soda, Tehsil Malpura, District Tonk.	बनाम Vs.	The Income Tax Officer, Ward - Tonk.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AXXPJ 2848 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Advocate)

राजस्व की ओर से / Revenue by : Shri P.R. Meena (PCIT)

सुनवाई की तारीख / Date of Hearing : 07/12/2022

उदघोषणा की तारीख / Date of Pronouncement: 6/03/2023

आदेश / ORDER

PER BENCH :

These two appeals by the assesseees are directed against two separate orders dated 26.07.2021 & 27.08.2021 respectively of Id. CIT (A), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the Income Tax Act, 1961 for the

assessment year 2010-11. In both these appeals common grounds, except figures, have been raised by the assesseees. Therefore, we decide these two appeals by this combined order for the sake of convenience. We first take up the appeal in ITA No. 93/JP/2021 as a lead case and the decision arrived at will be applicable to other appeal. The grounds raised by the assesseees are as under :-

ITA NO. 93/JP/2021 :

1. Under the facts and circumstances of the case the learned CIT (A) has erred confirming the order passed by learned AO u/s 147 of the Income Tax Act, 1961 which is void ab-initio deserves to be quashed.
2. Under the facts and circumstances of the case the learned CIT (A) has erred confirming the addition of Rs. 11,28,325/- account of alleged undisclosed long term capital gain.
3. Under the facts and circumstances of the case the learned CIT (A) has erred confirming the action of AO for not allowing the cost of improvement of Rs. 3,93,791/- incurred by the assessee for constructing the boundary wall on the plot.
4. Under the facts and circumstances of the case the learned CIT (A) has erred confirming the adoption of the sale consideration of Rs. 12,74,000/- as against actual sale consideration of Rs. 5,43,465/- shown by the assessee and taken by the sub-registrar u/s 50C of the Income Tax Act, 1961.
5. Under the facts and circumstances of the case the learned CIT (A) has erred in not giving opportunity of the cross examination of the persons on whose statement the AO has relied upon.
6. Under the facts and circumstances of the case the learned CIT (A) has erred in not providing the complete material on which the AO has relied upon and opportunity to confront the same before passing the appellate order completion of the assessment.
7. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.

ITA NO.123/JP/2021 :

1. Under the facts and circumstances of the case the learned CIT (A) has erred confirming the order passed by learned AO u/s 147 of the Income Tax Act, 1961 which is void ab-initio deserves to be quashed.
2. Under the facts and circumstances of the case the learned CIT (A) has erred confirming the addition of Rs. 13,58,326/- account of alleged undisclosed long term capital gain.
3. Under the facts and circumstances of the case the learned CIT (A) has erred confirming the action of AO for not allowing the cost of improvement of Rs. 2,78,520/- incurred by the assessee for constructing the boundary wall on the plot.
4. Under the facts and circumstances of the case the learned CIT (A) has erred in adopting the sale consideration of Rs. 15,08,000/- as against actual sale consideration of Rs. 5,43,465/- shown by the assessee and taken by the sub-registrar u/s 50C of the Income Tax Act, 1961, which has been wrongly made by the AO.
5. Under the facts and circumstances of the case the learned CIT (A) has erred in not giving opportunity of the cross examination of the persons on whose statement was relied upon by the learned AO.
6. Under the facts and circumstances of the case the learned CIT (A) has erred in not providing the complete material on which the AO has relied upon and opportunity to confront the same before passing the appellate order assessment.
7. The assessee craves your indulgence to add amend or alter all or any grounds of appeal before or at the time of hearing.

ITA NO. 93/JP/2021 A.Y. 2010-11.

2. The brief facts of the case are that the assessee is an Individual and did not enjoy taxable income during the year under consideration and as such did not file the return of income. A search and seizure operation was conducted on Shri Madan Mohan Gupta on 23-05-2013 by the Investigation Wing, Jaipur of the Income Tax Department. During the course of search and seizure operation on Shri Madan

Mohan Gupta, certain incriminating documents were found and seized from his possession. Statement of Shri Madan Mohan Gupta was recorded on 23-05-2013 and 27-05-2013. In respect to some incriminating documents found and was seized from the possession of Shri Madan Mohan Gupta, allegedly contained dealings in respect of certain properties sold by the assessee. Shri Madan Mohan Gupta during the course of recording the statement stated that the details mentioned at page no. 57 of seized Annexure-A- 1 are related to the plot sold to one Shri Rajendra Kumar Jain of Jaipur by the assessee Shri Siyaram Jat. However, in this case notice under section 148 was issued on 27.03.2017 after obtaining approval from the Principal CIT-3, Jaipur which was served on 29.03.2017 for reopening of the case of the assessee. Thereafter, the case of the assessee was reopened and in response to the notice under section 148, the assessee filed the return of income on 01.12.2017 declaring the income of Rs. 1,24,955/- for the year under consideration as per computation below :

Plot 22/05/2009 Value u/s 50C Sales consideration received		Rs. 5,43,465/-
Less: Indexed cost F.Y. 2001-02 – Rs.16,662/426x632	Rs. 24,719/-	
Development Cost F.Y. 2002-03- Rs.2,78,520/447x632	Rs. 3,93,791/-	Rs. 4,18,510/-
LTCG		Rs. 1,24,955/-

However, it appears that due to inadvertence the return filed by the assessee escaped the notice of the Assessing Officer as he has completed the assessment under section 147 on 25.12.2017 without taking into consideration the return filed by the assessee. Assessment under section 147 of the IT Act was completed on a total income of Rs. 12,49,280/- by increasing the sale consideration received on sale

of land at Rs. 12,74,000/- on the basis of alleged noting in some diary found and seized during the course of search from the residence of Shri Madan Mohan Gupta instead of Rs. 5,43,465/- declared by the assessee as per registered sale deed dated 23.05.2009. Aggrieved by the order of the AO, assessee preferred appeal before the Id. CIT (A), who has confirmed the additions made by the AO.

Now the assessee has come in appeal before the Tribunal.

In Ground no. 1 the assessee has challenged confirming the order of the AO and validity of reopening of the case of the assessee under section 147 read with section 148 of the IT Act.

2. Before us, the Id. Counsel for the assessee has reiterated the submissions as made before the Id. CIT (A) and further submitted as under :-

“ It is submitted that in this case notice u/s 148 has been issued illegally, unlawfully and without any justification and asstt completed is also against settled principles of equity and justice. The same was challenged before the learned CIT(A) as under: -

1. **Notice issued u/s 148 is without application of mind and therefore ab-initio void: -**

It is submitted that the Learned Assessing Officer recorded reasons for issuing notice u/s 148 which are scanned below –

“An inquiry report of the DDIT (Inv.)-III, Jaipur has been received in this office on 10.1.2014 vide No. 1415 dated 7-1-2014. A search action u/s 132 was carried out in the case of Shri Madan Mohan Gupta on 23-5-2013 at Jaipur when certain incriminating documents were found and seized. As per page-57 of seized Annexure A-1, plot No. 82 of Jamna Vihar was sold @ Rs. 4,900 per Sq. yard i.e. for Rs. 12,74,000/- to one Shri Rajendra Kumar Jain of Jaipur. However, in the registered sale agreement dated 25-5-2009, consideration of this plot was shown to be Rs. 5,43,465/- only. Thus the

consideration to the extent of Rs. 7,30,535/- was not disclosed by the assessee.

In view of these facts, I have reasons to believe that income to the tune of Rs. 7,30,535/- has escaped assessment within the meaning of section 147 of the I.T. Act, 1961."

2. **The perusal of the aforesaid reasons reveals the following:-**

- (a) On the basis of information received from DDIT(Inv)-III, Jaipur the Learned Assessing Officer has guessed that the assessee has sold a plot no. 84 at Jamna Vihar to one Shri Rajendra Jain for a sum of Rs. 15,08,000/- as against registered sale deed amount of Rs. 5,43,450/-. In the opinion of the Learned Assessing Officer the plot no. 84 Jamna Vihar Teelawala sold by the assessee is the same of which similar particulars are available in the diary seized from Shri Madan Mohan Gupta although the of the seller and purchaser and amount of purchase and date of sale is not mentioned there. The action is totally based on guess work.
- (b) The sanctioning authority Pr. CIT-III has granted sanction in a mechanical manner without ascertaining whether any enquiry was conducted by the Learned Assessing Officer before reaching to the conclusion that there was any escapement of income.
- (c) The Learned Assessing Officer has further wrongly held that the entire sale consideration of Rs. 15,08,000/- is escaped income. He has not considered that the index cost of the plot required to be reduced from the sale consideration.

It is submitted that the above facts observed by the Learned Assessing Officer are not in order. There was no evidence of assessee selling the plot for a sum of Rs. 15,08,000/-. There is no reference of any document in this regard. The Learned Assessing Officer has not given any basis to reach to the conclusion that there was escapement of income of Rs. 15,08,000/-. The Learned Assessing Officer did not cause any enquiry either to verify the actual sale price or the purchase price. The Learned Assessing Officer has simply jumped to the conclusion that entire sale proceeds was escaped income whereas on

the other hand he also observed that income on sale of the plot was not ascertainable. Thus the reasons recorded by the Learned Assessing Officer are contradictory. On the one hand it is stated that income on sale of land is not ascertainable and on the other hand entire sale proceeds is considered as income, The Learned Assessing Officer has issued notice u/s 148 as a thumb rule following the dictate of DDIT(inv)-3 without making any enquiry at his end. The notice u/s 148 has been issued mechanically without application of mind and hence the same is ab-initio void. He has not applied his mind before taking action on the information. His action is mechanical and without application of mind. The same therefore is vitiated. It is submitted that recording of reasons is not a mere empty formality. Whereas in the case the Learned Assessing Officer has acted non-seriously, causally and negligently. Acting on the information without application of mind has no justification for issuing notice u/s 148. **In view of the above there was no case before the Learned Assessing Officer for taking action u/s 148. The action of the Learned Assessing Officer was just based on conjecture and suspicion. There was no reason to believe but only reason to doubt. In the circumstances the notice issued u/s 148 deserves to be quashed. It is submitted that there were no facts before the Learned Assessing Officer on the basis of which he could have reasons to believe that there was escapement of income. Mere receipt of information received from DDIT(Int)-3 Jaipur does not lead to any belief that there was any escapement of income. It was incumbent upon the Learned Assessing Officer to have caused enquiries and applied his mind whether there was any escapement of income and only then he could have taken action u/s 148. The assesee further quotes following decision which are directly applicable to the facts of the case: -**

(i) **SIGNATURE HOTELS (P) LTD. vs. INCOME TAX OFFICER (2011)**
338 ITR 51 (Delhi)

Reassessment—Reason to believe—Information received from Director of IT (Inv.) vis-a-vis accommodation entry—For reopening an assessment the AO must have "reason to believe" that certain income chargeable to tax has escaped assessment and such reasons are required to be recorded in writing by the AO—Sufficiency of reasons is not a matter which is to be decided by the writ Court but existence of belief can be subject-matter of scrutiny—Notice under s. 148 can be quashed if the "belief" is not bona fide or one based on vague, irrelevant and non-specific information—Basis of the belief should be discernible from the material on record which was available with the AO when he recorded the reason—There should be a link between the reasons and the material available with the AO—In the instant case, the first sentence of the reasons recorded by the AO states that information has been received from Director of IT (Inv.) that assessee has introduced unaccounted money amounting to Rs. 5 lacs during the relevant year as per the details given in the Annexure—Said Annexure mentions a cheque received by assessee from SS Ltd. and the account number—Last sentence states **that as per the information the amount received was an accommodation entry—Aforesaid information and the reasons are extremely scanty and vague and do not satisfy the requirements of s. 147—There is no reference to any document or statement, except the Annexure—Said Annexure cannot be regarded as a material or evidence that prima facie shows or establishes escapement of income—Further, it is apparent that the AO did not apply his own mind to the information and examine the basis of the information—He accepted the information in a mechanical**

manner—CIT also acted on the same basis by mechanically giving his approval—Company SS Ltd. had applied for and was allotted shares in the assessee company on payment of Rs. 5 lacs by cheque—SS Ltd. is an incorporated company and it has been allotted PAN—Facts on record do not show that SS Ltd. is a non-existing and a fictitious entity—Proceeding under s. 147 quashed.

(ii) **Pr. CIT vs. G & G Pharma India Ltd (Delhi High Court) dated 08.10.2015**

Reopening only on the basis of information received that the assessee has introduced unaccounted money in the form of accommodation entries without showing in what manner the AO applied independent mind to the information renders the reopening void.

(iii) **ITO vs. M. B. Jewellers P. Ltd (ITAT Delhi) dt. 14.11.2014**

A perusal of the above reasons demonstrate that the reasons recorded by the AO are not reasons acceptable to law. There is no independent application of mind. The AO had mechanically issued notices u/s 148 of the Act, on the basis of information allegedly received by him from the CIT, New Delhi 2. From the proforma for approval of notice, which is extracted above, it is clear that the AO was also not aware that the assessee had filed a return of income for the said AY. The ACIT has also not applied his mind. No satisfaction has been recorded by the Ld.ACIT. Only an approval is given. Thus in our view the reopening is bad in law (Signature Hotels (P) Ltd. Vs. ITO 338 ITR 51 (Delhi) followed).

(iv) **ACIT vs. Devesh Kumar (ITAT Delhi) dt. 31.10.2014**

Reopening solely on the basis of information received from the investigation wing & without independent application of mind is void.

(v) **Unique Metal Industries vs Income Tax Officer (ITAT Delhi) dated 28.10.2015**

Reopening solely on the basis of information received from another AO that the assessee has booked bogus bills but without independent application of mind to the information renders the reopening void.

(vi) **CIT Vs. SFIL Stock Broking Ltd. (2010) 41 DTR 98 (Del)**

Reassessment-Reason to believe-Reopening on directions of superior officers-50-called reasons recorded by the AO for reopening assessee's assessment comprises mere information received from Dy. Director of IT (Inv.) followed by directions of the very same officer and the Addl. CIT to initiate proceedings under s. 147- These cannot be the reasons for proceeding under s. 147/148-From the so-called reasons it is not at all discernible as to whether the AO has applied his mind to the information and independently arrived at a belief on the basis of the material before him that income had escaped assessment-Proceedings under s. 147/148 rightly quashed by Tribunal-No substantial question of law arises for consideration.

(vii) **SARTHAK SECURITIES CO. (P) LTD. vs. INCOME TAX OFFICER (2010) 329 ITR 110 HIGH COURT OF DELHI**

Where the identity of the companies who had invested in the shares of petitioner-company was not disputed and neither the reasons in the initial notice nor the communication providing reasons remotely indicated independent application of mind by AO, reassessment

proceedings were unwarranted and notice issued under s. 148 was liable to be quashed.”

The Id. A/R, therefore, requested that in view of totality of facts of the case and position of law, there is prima facie no material before the Assessing Officer to form his belief pursuant to which reasons could be recorded that income of assessee has been escaped to assessment and therefore, the proceedings initiated are bad in law and deserves to be quashed. In view of the above, reopening done by the Id. AO is illegal and deserves to be quashed.”

3. On the contrary, the Id. CIT D/R has vehemently supported the order of the Assessing Officer.

4. We have considered the rival submissions as well as relevant material on record along with the judgments cited by the parties. During the previous year relevant to assessment year under consideration the assessee sold a plot no. 82 situated at Jamna Vihar, Teelawala for total consideration of Rs. 5,43,465/- vide registered sale deed dated 23.05.2009.

Subsequently, a search and seizure operation under section 132 of the IT Act, 1961 was conducted on Shri Madan Mohan Gupta on 23-05-2013 by the Investigation Wing, Jaipur of the Income Tax Department. During the course of search and seizure operation on Shri Madan Mohan Gupta, some alleged notings in a diary including various incriminating documents were found and seized. During the course of search and seizure action, statement of Shri Madan Mohan Gupta was recorded, who had explained the various documents found and seized during the search operation. The AO reopened the case of the assessee and initiated proceedings after

approval by the Principal CIT-3, Jaipur. Consequently the AO while initiating proceedings under section 148 recorded following reasons under section 147 of the Act :-

“An inquiry report of the DDIT (Inv.)-III, Jaipur has been received in this office on 10.1.2014 vide No. 1415 dated 7-1-2014. A search action u/s 132 was carried out in the case of Shri Madan Mohan Gupta on 23-5-2013 at Jaipur when certain incriminating documents were found and seized. As per page-57 of seized Annexure A-1, plot No. 82 of Jamna Vihar was sold @ Rs. 4,900 per Sq. yard i.e. for Rs. 12,74,000/- to one Shri Rajendra Kumar Jain of Jaipur. However, in the registered sale agreement dated 25-5-2009, consideration of this plot was shown to be Rs. 5,43,465/- only. Thus the consideration to the extent of Rs. 7,30,535/- was not disclosed by the assessee.

In view of these facts, I have reasons to believe that income to the tune of Rs. 7,30,535/- has escaped assessment within the meaning of section 147 of the I.T. Act, 1961.”

Thus the Assessing Officer has proceeded on the premises that the assessee has sold the property by showing lesser amount of Rs. 5,43,465/- in the registered sale deed dated 23.05.2009 whereas the impugned plot was actually sold for a consideration of Rs. 12,74,000/- as per noting on the seized incriminating documents found mentioned in the diary found in possession of Shri Madan Mohan Gupta. The diary found from the possession of Shri Madan Mohan Gupta allegedly contained dealings in respect of certain properties sold by the assessee. The details recorded in the seized diary found from the possession of Shri Madan Mohan Gupta allegedly revealed the sale value of the plot at Rs. 12,74,000/-. The statement of Shri Madan Mohan Gupta was recorded by Investigation Wing in which he has explained the transactions of land sold by the assessee and purchased by Shri Rajendra Kumar Jain. The department also recorded the statements of Shri Rajendra

Kumar Jain who has admitted the purchase of the plot as it was through registered sale deed. The assessee has denied having sold the plot at Rs. 12,74,000/- other than amount mentioned in the registered sale deed. The Assessing Officer after reopening the case of the assessee has assessed the income of the assessee at Rs. 12,49,285/- by making an addition of Rs. 11,28,325/- on account of difference of LTCG on sale of the plot. Therefore, in the search and seizure proceedings and in the subsequent investigation what was detected by the Department is the seized material containing the transaction of land sold by the assessee and purchased by Shri Rajendra Kumar Jain. The AO has assumed the higher sale consideration merely on the basis of notings in the diary seized from the residence of Shri Madan Mohan Gupta. It is pertinent to note that the alleged seized material contains nothing regarding any transaction between the purchaser of the land, supra, and the assessee and the entries found in the seized material are confined only to the sale of plot of land by the assessee. Therefore, the seized material itself does not reveal any transaction of receiving sale consideration over and above the amount mentioned in the sale deed by the assessee in respect of sale of the plot of land to the purchaser, supra. Further, in the statement of Shri Madan Mohan Gupta nothing incriminating was disclosed against the assessee but he has explained the nature of transactions recorded in the seized material regarding the sale of plot of land by the assessee. The department then also conducted further inquiry by recording statements of the assessee and specifically asked the question regarding the consideration received in respect of the land sold by him. Therefore, even if the seized material along with the statements of Shri Madan Mohan Gupta and assessee are taken into consideration nothing has come out to be regarded as any incriminating material or

fact to reveal any higher consideration received by the assessee for selling of the plot land in question. The addition made by the AO is solely on his own presumption that the assessee has received sale consideration over and above the amount mentioned in the sale deed without any tangible material or evidence in support of his decision. When the seized material found from Shri Madan Mohan Gupta as well as other material gathered during post search inquiry has not established any direct or proxy connection with the transaction of sale of land by the assessee then the assumption and presumption of the AO that the assessee might have received amount over and above the consideration shown in the sale deed is only surmises and conjectures. Thus the addition so made has no legs to stand in the absence of any incriminating material but the said addition is merely based on assumption of the A.O. We further note that an identical issue of reopening of the assessment in the case of Shri Navrattan Kothari Vs. ACIT in ITA No. 425/JP/2017 has been considered and decided by this Tribunal vide order dated 13/12/2017 in paragraphs No. 6 and 7, which is reproduced as under:

“ 6. We have considered the rival submissions as well as relevant material on record. The matter revolves around the transaction of purchase and sale of land situated at Village Chainpura, Tehsil Sanganer (behind of Entertainment Paradise) Jaipur. The said land was purchased by M/s Shri Kalyan Buildmart Pvt. Ltd. on 24.08.2006. Thereafter the assessee purchased 8,000 shares M/s Shri Kalyan Buildmart Pvt. Ltd. from Shri Madan Mohan Gupta and his wife Smt. Shashi Kala Gupta. There is no dispute that this transfer of purchase of shares of M/s Shri Kalyan Buildmart Pvt. Ltd. was dully reflected in the books of accounts as on 31.03.2008 and also brought before the Assessing Officer in the course of initiation assessment completed u/s 143(3) r.w.s. 153A on

31.03.2013. Thereafter the AO proposed to reopen the assessment to assess the consideration paid by the assessee for alleged purchase of land by issuing notice u/s 148 on 25.03.2014. The AO recorded the reasons for reopening of the assessment as reproduce at page 4 of the assessment order are as under:-

"During the course search and seizure operation in the case of Rajendra Jain Group DOS 23-05-2013 and survey proceedings at the business premises of Shri Madan Mohan Gupta, certain incriminating documents were found and seized which were inventories as Exhibit 1 to 5 of Annexure-AS and Exhibit 1 to 8 of Annexure- A. The documents found and seized from the residence and business premise of Shri Madan Mohan Gupta during the course of search proceedings revealed that on various page of Exhibit- 1,2 & 5 of Annexure-A as well as Exhibit-1 of Annexure-As, some date wise amounts have been written in the name of 'KGK'. These transactions noted on page no. 28,43,69 and 73 of Exhibit-1 of Annexure-A total up to Rs. 14,24,12,650/-. The assessee has failed to satisfactorily explain the transactions recorded on this page. I have thus reason to believe that income to the extent of Rs. 14,24,12,650/- has escaped assessment within the meaning of section 147of the I.T. Act, 1961."

Thus, it is clear that the basis of reopening of the assessment is the seized material found during the course of search and seizure operation in the case of Rajendra Jain Group and the statement of Shri Madan Mohan Gupta recorded u/s 132(4) and 131 of the Act. The Assessing Officer analyzed the statement and the seized material for his satisfaction as recorded in paras 4 and 5 of the assessment order as under:-

"4. In his statements, recorded during the course of search/post search proceedings, Shri Madan Mohan Gupta submitted that the following pagers of various exhibits are related to land transactions at Chainpura behind Entertain Paradise, Jaipur.

Sr.	Annexure No. & Exhibit No.	Page No.	Found/seized from
-----	----------------------------	----------	-------------------

1	Annexure A Exhibit-1	15 to 24,27,38,43,44, and 69 to 74	Residential premises
2	Annexure A Exhibit-2	47 and back side of 48, 50 to 54	Residential premises
3	Annexure A Exhibit-5	1 to 77	Residential premises
4	Annexure AS Exhibit-1	1 to 3,7,9,10	Office premises

5. Further in the statements of Shri Madan Mohan Gupta, he submitted that on the above page, details w.r.t. a land transactions at Village chainpura behind entertainment Paradise, Jaipur has been recorded which was purchase by Shri Rajendra Kumar Jain resident of D-25, Lal Bahadur nagar, Jaipur, through him i.e. Shri Madan Mohan Gupta. The deal was finalized at Rs. 12,43,27,000/- out of which discount of Rs. 1% was allowed for registration of land. Therefore, Rs. 13,30,84,000/- were net payable to the seller and the details of the same have been recorded on page No. 15-18 of Exhibit-1 of Annexure-A, found and seized from his residence. Later on this land was sold to Shri K.G. Kothari. Shri Madan Mohan Gupta further submitted that this land was purchased in the name of M/s Kalyan Buildmart Pvt. Ltd. in which he was a director along with hiswife Smt. ShashiKala Gupta. This land was purchased during the year 2006-07 and sold to K G. Kothari, Prithviraj Road, C-Scheme, Jaipur and Shir vimal Chand Surana in the month of March, 2007 and the details of the same have been recorded on page Nos. 27 & 28 of Exhibit of Annexure-A. During the course of statement, Shri Madan Mohan Gupta admitted that the amounts mentioned against dates have been recorded in coded form such as Rs. 1.00 crore have been written as 1=00 and Rs. 50.00 lacs have been written as .50. This sale transactions were finalized for Rs. 20,83,39,232/- and the payments to the sellers were made through Shri Rameshwar Prasad Sharma resident of Barkat Nagar, Tonk Phatak, Jaipur. Shri Madan Mohan Gupta further admitted that he got Rs. 8.00 lacs as his reimbursement from this land transaction."

Thus it reveals from the assessment order that after the initial assessment u/s 143(3) r.w.s. 153A the AO got the alleged

incriminating material in the shape of diary and transactions recorded therein found and seized in the search and seizure operation in case of Rajendra Jain Group. Accordingly, the AO proceeded to reassess the income of the assessee u/s 147 of the Act. The entire decisions of the AO to reassess the income of the assessee is based on the seized material and statement of Shri Madan Mohan Gupta recorded u/s 132(4) of the Act for which the specific remedy is provided u/s 153C of the Act. For ready reference we quote section 153C as under:-

“ **153C.** ⁷⁹[(1)] ⁸⁰[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, ⁸¹belongs 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] ⁸²[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 ^{82a}[*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](#) :]

⁸—³[**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 ⁸⁴[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 :]

⁸~~5~~**[Provided further** that the Central Government may by rules⁸⁶ 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 ^{86a}**[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.]

⁸~~7~~[(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](#).”

This section begins with non-obstante clause and therefore, has an overriding effect on the Sections 147&148 of the Act. As per the scheme and object of Section 153C r.w.s 153A the AO has no discretion or choice to invoke the provisions of Section 147/148 instead of section 153C r.w.s. 153A of the Act. Once the case of reassessment is made out by the AO which falls in the preview of specific provisions of section

153C of the Act, the AO cannot resort to invoke the provisions of Section 147/148 of the Act to assessee or reassess income of the assessee. The action of the AO to initiate the proceedings Under section 147/148 of the Act vitiates the entire reassessment proceedings and the assessment order. Once, the AO is satisfied that the documents seized belong to the persons other than the searched person, the Assessing Officer shall proceed against such other persons and issued notice u/s 153C and assessee or reassess income of such other persons in accordance with the provisions of section 153A of the Act. Therefore, it is mandatory for the AO to proceed u/s 153C if he is satisfied that the seized material reveals the income of such other persons to be assessed or reassessed. The Amritsar Bench of this Tribunal in case of ITO vs. Arum Kumar Kapoor (supra) while deciding an identical issue of validity of initiation of proceedings u/s 147/148 on the basis of seized material has held in paras 7.2 and 8 as under:-

"7.2. The undisputed facts are that a search was conducted under s. 132 of the Act in the case of M/s. Today Homes & Infrastructure (P.) Ltd. on 28th March, 2006, during the course of which certain incriminating documents were allegedly seized. It is also a matter of record that the Dy. CIT, Central Circle-22, New Delhi intimated the AO of the assessee about seizure of certain documents pertaining to the assessee during search and enclosed copy of those documents requesting him to take appropriate action under s. 153C/148 of the Act. It is after that that during the course of appellate proceedings before the CIT(A) the assessee took an additional ground of appeal to the effect that the reassessment proceedings initiated by the AO under s. 148 are illegal and void ab initio. In the instant case, the learned CIT(A) has correctly observed that the AO should have issued notice under s. 153C of the Act and should have framed the assessment under s. 153C r/w s. 153A of the Act. Sec. 153C of the Act reads as under :

"153C. Notwithstanding anything contained in s. 139, s. 147, s. 148, s. 149, s. 151 and s. 153, where the AO is

satisfied that any money, bullion 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 s. 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the AO having jurisdiction over such other person and that AO 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 s. 153A."

8. *On a perusal of the above provisions, it would be clear that the provisions of s. 153C of the Act were applicable, which supersedes the applicability of provisions of ss. 147 and 148 of the Act. As we have already noted hereinabove that the documents were seized during the search under s. 132 of the Act and the same were sent to the assessee's AO at Amritsar by the officer at Delhi in our view, the learned CIT(A) has correctly observed that only the provision in which any assessment could be made against the assessee in the IT Act was s. 153C r/w s. 153A of the Act. It is also apparent from the record that the officer at Delhi has mentioned in his letter that the necessary action may be taken as per law under s. 153C/148 of the Act. Hence, notice issued under s. 148 of the Act and proceedings under s. 147 of the Act by the AO are illegal and void ab initio. In view of the provisions of s. 153C of the Act, s. 147/148 stands ousted. In the instant case, the procedure laid down under s. 153C has not been followed by the AO and, therefore, assessment has become invalid. We also observe that the CIT(A) was justified in following the ratio laid down by the Hon'ble Supreme Court in the case of *Manish Maheshwari v. Asstt. CIT* [2007] [289 ITR 341 / 159 Taxman 258](#) wherein it has been held that if the procedure laid down in s. 158BD is not followed, block assessment proceedings would be illegal. The CIT(A) has correctly observed that the provisions of s. 153C are exactly similar to the provisions of s. 158BD of the Act in block assessment proceedings. Thus, considering the entire facts and the circumstances of the present case, we hold that the CIT(A) was fully justified in quashing the reassessment order. We also do not find any merit in the submissions of the learned Departmental Representative that during the course of*

search, it was found at premises of M/s. Today Homes & Infrastructure (P.) Ltd. pertaining to M/s. P.R. Infrastructure Ltd. and not the assessee. In this regard, we may point out that the contention raised by the learned Departmental Representative is factually incorrect and contrary to the available records of seized documents specifically mentioned in the assessment order dt. 30th Dec, 2008. In view of the above factual discussion, we do not find any merit and substance in the contention of the learned Departmental Representative. Therefore, we uphold the order of the CIT(A) and dismiss the ground Nos. 1 to 4 of the appeal."

A similar view was taken by the Visakhapatnam Bench of this Tribunal in case of G. Koteswara Rao vs. DCIT (supra) in para 11 to 17 as under:-

"11. A careful study of section 153A to 153C and also the circular issued by the CBDT explaining the procedure of assessment in search cases, it shows that these are separate provisions independent of other provisions relating to reassessment, because of the non obstante clause begins with the said sections. The language used in these sections, i.e. 'notwithstanding anything contained' in section 139, section 147, section 148, section 149, section 151 and section 153 made it clear that provisions of these sections are not made applicable to the assessments covered by the provisions of section 153A. Prior to the introduction of these three sections, there was a separate chapter XIV -B of the Act, by section 158BC to 158BE which governs the search assessments which is popularly known as Block assessment. The earlier provisions provides for single assessment to be made in respect of undisclosed income of Block period consisting of 10 assessment years immediately preceding the assessment year in which search took place and the broken period of up to the date of search was also included in the block period. After the introduction of new sections, i.e. section 153A to 153C, the single block assessment concept was done away with the new scheme of assessment of search cases where the Assessing Officer is to assess or reassess the total income of each of the assessment years falling within the period of six assessment

years immediately preceding the assessment year in which the search is conducted. Therefore, under the new scheme, the Assessing Officer is required to exercise the normal assessment powers in respect of the previous year in which the search took place. From these facts, one thing is clearly emerged that both i.e. earlier concept of Block assessment and the new scheme of assessment is separate provisions created for assessment of search cases where the search is conducted u/s 132 or requisition was made u/s 132A of the Act.

12. *Under the provisions of section 147, the Assessing Officer is having power to re-open the assessment, if he is of the opinion that the income chargeable to tax has escaped assessment. Before doing so, the Assessing Officer should satisfy himself that, there is material which suggests that there is an escapement of income. The AO can exercise these powers with a reasonable belief coupled with some material which suggest the escapement of income. Once the conditions precedent for assumption of jurisdiction to commence the reassessment proceedings, he has to cross the hurdles attached with reassessment by way reasons for reopening of assessment, time limit for issue of notice and provision for obtaining sanction of higher authority in certain circumstances. Under the provisions of section 153A to 153C these hurdles are cleared by using the non obstante clause in the said section. In other words, under the new provisions of section 153A, the AO is not required to satisfy these conditions before issue of notice. The only requirement is that there should be a search action u/s 132 or books of account, other documents or any other asset are requisitioned under section 132A. Therefore, we are of the opinion that though, the Assessing Officer from both sections empowered to tax the income escaped from tax, both are works in a different situations, i.e. section 147 comes in to operation where there is an escapement of income chargeable to tax and section 153A comes in to operation where there is search u/s 132.*

13. *Under the provisions of section 153A, the Assessing Officer is bound to issue notice to the assessee to furnish the returns of income for each assessment years falling within the six assessment years immediately preceding the assessment year in*

which search or requisition is made. Another significant feature of this section is that the Assessing Officer is empowered to assess or reassess the total income of the aforesaid period which includes disclosed and undisclosed income. Therefore, the new provisions has given wide powers to the Assessing Officer to assess or reassess the total income of six assessment years falling within the period of those six assessment years immediately preceding the assessment year in which search is conducted. Under the new provisions of section 153A, the statute is provides wide powers to the Assessing Officer in respect of assessments already completed u/s 143(1) or 143(3). If such orders is already in existence prior to the initiation of search, the Assessing Officer is empowered to reopen those proceedings and reassess the total income taking note of the undisclosed income, if any, found during the course of search. For this purpose, the restrictions imposed on the Assessing Officer by way of sections 148 to 153 to reopen the assessment u/s 147 has been removed by the non obstante clause used in section 153A.

14. *In the present case on hand, admittedly, the Assessing Officer has reopened the assessment based on a search conducted in a third party case. The AO formed the opinion based on the statement recorded from the assessee, consequent to post search proceedings taken up by the DDIT(Inv), which shows undisclosed income which is the very basis of reopening the assessment. The search is conducted on 22-8-2008 which comes under the assessment year 2009-10. The Assessing Officer reopened the assessment year 2008-09, which is falling within those six assessment years immediately preceding the assessment year in which search is conducted. The assessee case falls within the provisions of section 153C, as the incriminating document seized in the case of search in another case. The Assessing Officer, on satisfying the above condition is under obligation to issue notice to the person requiring him to furnish the return for the six assessment years immediately preceding the assessment year in which search is took place. Thereafter, the Assessing Officer has to assess or reassess the total income of those six assessment years. The word "shall" used in section 153A made it clear that the Assessing Officer has no option, but to issue notice and proceed*

thereafter to assess or reassess the total income. In the instant case, the Assessing Officer issued notice u/s 148 to reopen the assessment. Therefore, in view of the non-abstante clause begin with section 153A, the Assessing Officer has no jurisdiction to issue notice u/s 148 reopen the assessment of those six assessment year which falls within the exclusive jurisdiction of section 153A. Though, both provisions of the Act empowers the Assessing Officer to assess or reassess the income escaped from assessment, both sections are dealing with different situations. Section 147 comes into operation when, the Assessing Officer believes that there is an escapement of income chargeable to tax, either from the return already filed or through some external material evidence came to his knowledge, which shows the escapement of income. Whereas, section 153A comes into operation when there is search u/s 132 or books of accounts, or any other asset or other documents requisitioned u/s 132A. If Assessing Officer justified in proceeding with section 147 to reopen the assessment, then there would be no relevance to section 153A, which was inserted in to the Act to deal exclusively with search cases. The legislators in their wisdom clearly spelt out the provisions of law applicable to search cases by using the word shall to begin with section 153A, made it mandatory that the Assessing Officer bound to issue notice u/s 153A or 153C, thereafter proceed to assess or reassess the total income, where search is conducted u/s 132 or requisition is made u/s 132A. Therefore, in our opinion, the AO is not justified in reopening the assessment u/s 147 and his order is illegal and arbitrary.

15. *A similar issue came up for consideration before the Special Bench of this tribunal and the special bench had an occasion to deal with the interpretation of section 153A of the Act in the case of All Cargo Global Logistics Ltd. v. Dy. CIT [\[2012\] 137 ITD 287/23 taxmann.com 103 \(Mum\) \(SB\)](#). The Special Bench after considering the provisions of section 153A and CBDT circular has held as under:*

'52. The provision comes into operation if a search or requisition is initiated after 31.5.2003. On satisfaction of this condition, the AO is under obligation to issue notice to the person requiring him to furnish the return of

income of six years immediately preceding the year of search. The word used is "shall" and, thus, there is no option but to issue such a notice. Thereafter he has to assess or reassess total income of these six years. In this respect also, the word used is "shall" and, therefore, the AO has no option but to assess or reassess the total income of these six years. The pending proceedings shall abate. This means that out of six years, if any assessment or reassessment is pending on the date of initiation of the search, it shall abate. In other words pending proceedings will not be proceeded with thereafter. The assessment has now to be made u/s 153A (1)(b) and the first proviso. It also means that only one assessment will be made under the aforesaid provisions as the two proceedings i.e. assessment or reassessment proceedings and proceedings under this provision merged into one. If assessment made under sub-section (1) is annulled in appeal or other legal proceedings, then the abated assessment or reassessment shall revive. This means that the assessment or reassessment, which had abated, shall be made, for which extension of time has been provided under section 153B.

53. The question now is - what is the scope of assessment or reassessment of total income u/s 153A (1) (b) and the first proviso? We are of the view that for answering this question, guidance will have to be sought from section 132(1). If any books of account or other documents relevant to the assessment had not been produced in the course of original assessment and found in the course of search in our humble opinion such books of account or other documents have to be taken into account while making assessment or reassessment of total income under the aforesaid provision. Similar position will obtain in a case where undisclosed income or undisclosed property has been found as a consequence of search. In other words, harmonious interpretation will produce the following results :-

(a) In so far as pending assessments are concerned, the jurisdiction to make original assessment and assessment u/s 153A merge into one and only one assessment for each assessment year shall be made separately on the basis of the findings of the search and any other material existing or brought on the record of the A.O.

(b) in respect of non-abated assessments, the assessment will be made on the basis of books of account or other documents not produced in the course of original assessment but found in the course of search, and undisclosed income or undisclosed property discovered in the course of search."

58. Thus, question No. 1 before us is answered a) as under

(a) In assessments that are abated, the A.O. retains the original jurisdiction as well as jurisdiction conferred on him under s. 153A for which assessments shall be made for each of the six assessment years separately ;'

16. *In yet another case, the ITAT Mumbai Bench, in the case of State Bank of India v. Dy CIT [2013] 22 ITR (Trib.) 609, had considered the issue. The Mumbai bench after considering the relevant sections and CBDT circular has held as under:*

"18. A perusal of Section 153A shows that it starts with a non obstante clause relating to normal assessment procedure which is covered by Sections 139, 147, 148, 149, 151 and 153 in respect of searches made after 31.5.2003. These Sections, the applicability of which has been excluded, relate to returns, assessment and reassessment provisions. Prior to, the introduction of these three Sections, there was Chapter XIV- B of the Act which took care of the assessment to be made in cases of search and seizure. Such an assessment was popularly known as block assessment because the Chapter provided for a single assessment to be made in respect of a period of a block of ten assessment years prior to the assessment year in which the search was made. In

addition to these ten assessment years, the broken period up to the date on which the search was conducted was also included in what was known as block period. Though a single assessment order was to be passed, the undisclosed income was to be assessed in the different assessment years to which it related. But all this had to be made in a single assessment order. The block assessment so made was independent of and in addition to the normal assessment proceedings as clarified by the Explanation below Section 158BA(2). After the introduction of the group of Sections namely, 153A to 153C, the single block assessment concept was given a go-by. Under the new Section 153A, in a case where a search is initiated under Section 132 or requisition of books of account, documents or assets is made under Section 132A after 31.5.2003, the Assessing Officer is obliged to issue notices calling upon the searched person to furnish returns for the six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted or requisition was made. The other difference is that there is no broken period from the first day of April of the financial year in which the search took place or the requisition was made and ending with the date of search/requisition. Under Section 153A and the new scheme provided for, the AO is required to exercise the normal assessment powers in respect of the previous year in which the search took place.

19. Under the provisions of Section 153A, as we have already noticed, the Assessing Officer is bound to issue notice to the assessee to furnish returns for each assessment year falling within the six assessment years immediately preceding the assessment year relevant to the previous year in which the search or requisition was made. Another significant feature of this Section is that the Assessing Officer is empowered to assess or reassess the "total income" of the aforesaid years. This is a significant departure from the earlier block assessment scheme in which the block assessment roped in only the undisclosed income and the regular assessment

proceedings were preserved, resulting in multiple assessments. Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the total income of the six assessment years in question in separate assessment orders. This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax.

20. A question may arise as to how this is sought to be achieved where an assessment order had already been passed in respect of all or any of those six assessment years, either under Section 143(1)(a) or Section 143(3) of the Act. If such an order is already in existence, having obviously been passed prior to the initiation of the search/requisition, the Assessing Officer is empowered to reopen those proceedings and reassess the total income, taking note of the undisclosed income, if any, unearthed during the search. For this purpose, the fetters imposed upon the Assessing Officer by the strict procedure to assume jurisdiction to reopen the assessment under Sections 147 and 148, have been removed by the non obstante clause with which sub section (1) of Section 153A opens. The time-limit within which the notice under Section 148 can be issued, as provided in Section 149 has also been made inapplicable by the non obstante clause. Section 151 which requires sanction to be obtained by the Assessing Officer by issue of notice to reopen the assessment under Section 148 has also been excluded in a case covered by Section 153A. The time-limit prescribed for completion of an assessment or reassessment by Section 153 has also been done away with in a case covered by Section 153A. With all the stops having been pulled out, the Assessing Officer under Section 153A has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters, if need be.

21. Now there can be cases where at the time when the search is initiated or requisition is made, the assessment

or reassessment proceedings relating to any assessment year falling within the period of the six assessment years mentioned above, may be pending. In such a case, the second proviso to sub section (1) of Section 153A says that such proceedings "shall abate". The reason is not far to seek. Under Section 153A, there is no room for multiple assessment orders in respect of any of the 'six assessment years under consideration. That is because the Assessing Officer has to determine not merely the undisclosed income of the assessee, but also the total income of the assessee in whose case a search or requisition has been initiated. Obviously there cannot be several orders for the same assessment year determining the total income of the assessee. In order to ensure this state of affairs namely, that in respect of the six assessment years preceding the assessment year relevant to the year in which the search took place there is only one determination of the total income, it has been provided in the second proviso of sub Section (1) of Section 153A that any proceedings for assessment or reassessment of the assessee which are pending on the date of initiation of the search or making requisition "shall abate". Once those proceedings abate, the decks are cleared, for the Assessing Officer to pass assessment orders for each of those six years determining the total income of the assessee which would include both the income declared in the returns, if any, furnished by the assessee as well as the undisclosed income, if any, unearthed during the search or requisition. The position thus emerging is that where assessment or reassessment proceedings are pending completion when the search is initiated or requisition is made, they will abate making way for the Assessing Officer to determine the total income of the assessee in which the undisclosed income would also be included, but in cases where the assessment or reassessment proceedings have already been completed and assessment orders have been passed determining the assessee's total income and such orders are subsisting at the time when the search or the requisition is made, there is no question of any abatement since no proceedings are pending. In this

latter situation, the Assessing Officer will reopen the assessments or reassessments already made (without having the need to follow the strict provisions or complying with the strict conditions of Sections 147, 148 and 151) and determine the total income of the assessee. Such determination in the orders passed under Section 153A would be similar to the orders passed in any reassessment, where the total income determined in the original assessment order and the income that escaped assessment are clubbed together and assessed as the total income. In such a case, to reiterate, there is no question of any abatement of the earlier proceedings for the simple reason that no proceedings for assessment or reassessment were pending since they had already culminated in assessment or reassessment orders when the search was initiated or the requisition was made.

20. Applying the ratio of the above decisions to the facts of the present case, we find that there is no dispute that the original assessment for the A.Y. 2001-02 was completed u/s 143(3) on 13-2-2004 determining the total income at Rs. 26354942360/-. Thereafter, a search and seizure action was initiated in assessee's case by the Department on 2-7-2005 on which date the assessment for the A.Y. 2001-02 was not pending. Therefore, in view of the non-obstinate clause with which sub section (1) of section 153A opens, the A.O. has no jurisdiction to issue notice u/s 148 of the Act in respect of those six assessment years which falls within the exclusive jurisdiction of section 153A of the Act and accordingly the A.O. was not justified in issuing notice u/s 148 on 28-8-2006 and in completing the impugned assessment u/s 143(3) r.w.s. 147 of the Act on 31-10-2006. The A.O. instead of complying with the requirement of section 153A proceeded with the provisions of section 147/148 which are not applicable in the assessment u/s 153 A of the Act, therefore, the impugned assessment completed u/s 143(3) r.w.s. 147 of the Act is a nullity and as such the assessment order dtd. 31-10-2006 passed u/s 143(3) r.w.s. 147 of the Act is illegal, arbitrary, wholly without jurisdiction and, hence, the same is quashed."

17. *Considering the facts and circumstances of the case and also applying the ratios of the above mentioned decisions, we*

are of the considered opinion that the Assessing Officer, has no jurisdiction to issue notice u/s 148 of the Act to reopen the assessments in respect of those six assessment years immediately preceding the assessment year in which search is conducted or requisition is made. The period under consideration falls within the exclusive domain of section 153A. In the instant case, since the assessment is made consequent to search in another case, the Assessing Officer is bound to issue notice u/s 153C and thereafter proceed to assess or reassess total income under section 153A of the Act. The Assessing Officer, instead of complying with the provisions of section 153C, proceeded with the reassessment under section 147/148 which is not applicable to search cases. Therefore, the impugned assessment order passed u/s 143(3), r.w.s. 147 of the Income tax Act, 1961 is illegal, arbitrary and without any jurisdiction. Hence, the assessment order dated 31-12-2010 passed u/s 143(3) r.w.s. 147 is quashed."

Thus, it is clear that the Tribunal has taken a consistent view on this issue and further the Delhi Benches of this Tribunal in case of *Rajat Shubra Chatterji vs. ACIT (supra)* has held in para 7 as under:-

"7. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), we find that in that case as in the present case before us, reassessment was initiated on the basis of incriminating material found in search of third party and the validity of the same was challenged by the assessee before the Learned CIT(Appeals) and the Learned CIT(Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisions of sec. 153C were applicable which excludes the application of sections 147 and 148 of the Act. The ITAT held the notice issued under sec. 148 and proceedings under sec. 147 as illegal and void ab initio. It was held that Assessing Officer having not followed procedure under sec. 153C, reassessment order was rightly quashed by the Learned CIT(Appeals). In the present case before us, it is an

admitted fact, as also evident from the reasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information received from the Directorate of Income-tax (Inv.) on the basis of search & seizure operation conducted at the premises of Rock Land Group of Cases and the documents related to the assessee found during the course of search were made available to the Assessing Officer of the present assessee. We thus respectfully following the decision of Co-ordinate Bench of the ITAT in the case of ACIT vs. Arun Kapur – 140 TTJ 249 (Amritsar) hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which excludes the application of sec. 147 of the Act, hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. The reassessment in question is accordingly quashed. The ground No.1 is accordingly allowed.”

Therefore, in conjoint reading of provisions of section 153A, 153C and 147/148 of the Act as well as a consistent view taken by this Tribunal in a series of decision cited (supra) we hold that the assessment or reassessment of income of the person other than search persons based on seized material can be only be made u/s 153C r.w.s. 153A and the provisions of section 147/148 of the Act are not applicable in such cases. No contrary decision has been brought to our notice. Accordingly, we hold that initiation of proceedings u/s 147/148 by the AO to reassess the income is illegal being without jurisdiction and consequently the reassessment order passed u/s 147 r.w.s. 143(3) is also illegal and void abinitio and is liable to be quashed.

7. As regards the second objection of the assessee against the reopening of the assessment u/s 148 we find that undisputedly the notice u/s 148 issued on 25.03.2014 is after the expiry of 4 years from the end of the assessment year under consideration. The initial assessment was framed by the Assessing Officer u/s 143(3) r.w.s. 153A

and therefore, the proviso to section 147 comes to play and the Assessing Officer cannot reopen the assessment except when there is failure on the part of the assessee to disclose fully and truly all the facts necessary for the assessment. The reasons recorded by the AO has been reproduced by us in the foregoing part of this order and it is clear that the AO has not stated in the reasons that the assessee failed to disclose fully and truly all the facts necessary for the assessment. The AO while completing the initial assessment on 31.03.2013 Under section 143(3) r.w.s. 153A accepted the transaction of purchase of 8000 shares of M/s Kalyan Buildmart Pvt. Ltd. from Shri Madan Mohan Gupta and his wife Smt. Shashi kala Gupta. When the transaction of purchase of shares was disclosed by the assessee and accepted by the AO in the post search assessment framed u/s 153A then even if the purchase consideration is subsequently found to be incorrect or under stated it does not give jurisdiction to AO to resort to the provisions of section 147/148 of the Act after expiry of 4 years from the end of the assessment year. Further, reassessment proceedings were initiated by the AO on the premise that the assessee has not disclosed the purchase consider of the alleged land, however, it is pertinent to note that the assessee did not purchase any land as it remained with M/s Shri Kalyan Buildmart Pvt. Ltd. and there is no change of the ownership of the said land as belong to M/s Kalyan Buildmart Pvt. Ltd. We find that there is no transaction of sale and purchase of land in question between the assessee and Shri Madan Mohan Gupta. What was transferred by Shri Madan Mohan Gupta and his wife Smt. Shashi Kala Gupta were the shares of M/s Kalyan Buildmart Pvt. Ltd. which owned the land in question. There may be a case of under valuation of shares and understatement of consideration paid by the assessee however, it is not a case of purchase of land. The purchase consideration of shares was accepted by the AO while completing the assessment u/s 143(3) r.w.s. 153A and therefore, the AO is precluded to reassess the income on the

basis of non existing transaction of purchase of land. Further, the AO himself was not sure about the escapement of income and assess the income in the hands of the assessee only on protective basis. The very basis of invoking the provisions of section 147/148 is contrary to the facts and record that it was a transaction of purchase of shares of M/s Kalyan Buildmart Pvt. Ltd. and not purchase of land owned by the said company. Even if the purchase consideration of share is under stated the reasons for reopening do not state so and therefore, the reopening on the basis of non existing transaction is not permitted. Once, the transaction of purchase of shares was revealed during the assessment u/s 143(3) r.w.s. 153A and the same was considered and accepted by the AO then the AO is not permitted to reopen the assessment to review its order as it would amount to change of opinion. The Hon'ble Madras High court in case of CIT vs. Remedies Ltd. (Supra) has held in paras 10 to 12 as under:-

"10. We find from the order of the Tribunal and also on the facts as has been culled out from the assessment order in question that there is no element of failure to disclose fully and truly all material facts necessary for assessment. Therefore, there was no justification for the department for invocation of proceeding under Section 147 r/w 148 of the Income Tax Act.

11. Our stand is further fortified by the decision of this Court in TCA No.217/2015 dated 2.6.2015, wherein in a similar matter, this Court has held as under :—

'16. Our view is fortified by the decision of the Full Bench of the Delhi High Court in the case of Commissioner of Income-tax v. Kelvinator of India Ltd. reported in [\[2002\] 256 ITR 1 \(Del\)](#), wherein, the Delhi High Court held as follows:

"We are unable to agree with the submission of Mr. Jolly to the effect that the impugned order of reassessment cannot be faulted as the same was based on information derived from the tax audit report. The tax audit report had already been submitted by the assessee. It is one thing to say that the Assessing Officer had received

information from an audit report which was not before the Income-tax Officer, but it is another thing to say that such information can be derived by the material which had been supplied by the assessee himself.

We also cannot accept the submission of Mr. Jolly to the effect that only because in the assessment order, detailed reasons have not been recorded an analysis of the materials on the record by itself may justify the Assessing Officer to initiate a proceeding under section 147 of the Act. The said submission is fallacious. An order of assessment can be passed either in terms of sub-section (1) of section 143 or sub-section (3) of section 143. When a regular order of assessment is passed in terms of the said sub-section (3) of section 143 a presumption can be raised that such an order has been passed on application of mind. It is well known that a presumption can also be raised to the effect that in terms of clause (e) of section 114 of the Indian Evidence Act judicial and official acts have been regularly performed. If it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further, the same would amount to giving a premium to an authority exercising quasi-judicial function to take benefit of its own wrong."

17. The above said decision of the Full Bench of the Delhi High Court was upheld by the Supreme Court in the decision reported in Commissioner of Income-tax v. Kelvinator of India Ltd [\[2010\] 320 ITR 561 \(SC\)](#), wherein the Supreme Court held that the concept of "change of opinion" on the part of the Assessing Officer to reopen the assessment did not stand obliterated after the substitution of Section 147 of the Income Tax Act. The Supreme Court also held that the Assessing Officer has power to reopen the assessment, provided there is "tangible material" to come to a conclusion that there was an escapement of income from assessment. For better appreciation, the relevant portion of the said decision reads as follows:

"6. On going through the changes, quoted above, made to section 147 of the Act, we find that, prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under the above two conditions and fulfilment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the

Act (with effect from 1st April, 1989), they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to reopen the assessment. Therefore, post-1st April, 1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review ; he has the power to reassess. But reassessment has to be based on fulfilment of certain preconditions and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, the Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in section 147 of the Act. However, on receipt of representations from the companies against omission of the words "reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No. 549 dated October 31, 1989 ([1990] 182 ITR (St.) 1,29), which reads as follows :

"7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression 'reason to believe' in section 147.—A number of representations were received against the omission of the words 'reason to believe' from section 147 and their substitution by the 'opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, 'reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these

fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression 'has reason to believe' in place of the words 'for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same." (emphasis supplied)

18. *Similar view has been taken by this Court in the decision reported in Commissioner of Income-tax v. Cholamandalam Investment and Finance Co. Ltd. [\[2009\] 309 ITR 110](#), wherein it was held as follows:*

"In those circumstances, it could not be regarded that the assessee had failed to disclose fully and truly all material facts relevant for the assessment. As the facts revealed that the Assessing Officer who made the original assessment order has called for all the details regarding the case where 100 per cent. depreciation were claimed and the assessee had furnished the invoices for purchase of assets on which 100 per cent. depreciation were claimed, there was no failure on the part of the assessee and if at all there was any failure, according to the Commissioner of Income-tax (Appeals), it was on the part of the Assessing Officer, who made the original assessment without going behind the nature of the transactions accepting the details furnished by the assessee. The Tribunal also extracted that portion of the order and found on the fact that there was no fault on the part of the assessee so as to enable the Department to reopen the assessment as the proviso to section 147 of the Income-tax Act would squarely apply to the case of the assessee. We find no infirmity in the order passed by the Tribunal. Hence, the appeal is dismissed."

19. *In an identical circumstances, a learned single Judge of this Court considered the issue in the decision reported in Fenner (India) Ltd. v. Deputy Commissioner of Income-Tax [\[2000\] 241 ITR 672 \(Mad\)](#), wherein, it was observed as follows:*

"The pre-condition for the exercise of the power under section 147 in cases where power is exercised within a period of four years from the end of the relevant assessment year is the belief reasonably entertained by the Assessing Officer that any income chargeable to tax has escaped assessment for that assessment year. However, when the power is invoked after the expiry of the period of four years from the end of the assessment year, a further pre-condition for such exercise is imposed by

the proviso namely, that there has been a failure on the part of the assessee to make a return under section 139 or in response to a notice issued under section 142 or section 148 or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year. Unless, the condition in the proviso is satisfied, the Assessing Officer does not acquire jurisdiction to initiate any proceeding under section 147 of the Act after the expiry of four years from the end of the assessment year. Thus, in cases where the initiation of the proceedings is beyond the period of four years from the end of the assessment year, the Assessing Officer must necessarily record not only his reasonable belief that income has escaped assessment but also the default or failure committed by the assessee. Failure to do so would vitiate the notice and the entire proceedings. The relevant words in the proviso are,

". . . . unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee"

Mere escape of income is insufficient to justify the initiation of action after the expiry of four years from the end of the assessment year. Such escapement must be by reason of the failure on the part of the assessee either to file a return referred to in the proviso or to truly and fully disclose the material facts necessary for the assessment. Whenever a notice is issued by the Assessing Officer beyond a period of four years from the end of the relevant assessment year, such notice being issued without recording the reasons for his belief that income escaped assessment, it cannot be presumed in law that there is also a failure on the part of the assessee to file the returns referred to in the proviso or a failure to fully and truly disclose the material facts. The reasons referred to in the main paragraph of section 147 would, in cases where the proviso is attracted, include reasons referred to in the proviso and it is necessary for the Assessing Officer to record that any one or all the circumstances referred to in the proviso existed before the issue of notice under section 147....

.....

The duty of an assessee is limited to fully and truly disclosing all the material facts. The assessee is not required thereafter to prepare a draft assessment order. If the details placed by the assessee before the Assessing Officer were in conformity with the requirements of all applicable laws and known accounting principles, and material details

had been exhibited before the Assessing Officer, it is for the Assessing Officer to reach such conclusions as he considered was warranted from such data and any failure on his part to do so cannot be regarded as the assessee's failure to furnish the material facts truly and fully. Any lack of comprehension on the part of the Assessing Officer in understanding the details placed before him cannot confer a justification for reopening the assessment, long after the period of four years had expired. On the facts of this case, it is clear that the escapement of income, if any, on this account is not on account of any failure on the assessee's part to disclose the material facts fully and truly. The notice issued by the Assessing Officer in exercise of his power under section 147, therefore, cannot be sustained.

As the error here is one of jurisdiction it is not necessary for the assessee to have recourse to the remedies by way of appeal, revision, etc. It is well settled that when a jurisdictional error is brought to the notice of this court such errors are capable of being corrected by this court in exercise of the court's powers under article 226 of the Constitution of India. The Supreme Court in the case of CIT v. Progressive Engineering [1993] 200 ITR 231 (sic), held that when all the relevant facts were before the court and the law is clear on the subject, it is the duty of the High Court to interfere. That was also a case where the proceedings were sought to be initiated against the assessee under section 147 of the Act.

20. In the case of ICICI Securities Ltd . v. Assistant Commissioner of Income Tax 3(2), Mumbai, the Bombay High Court vide order dated 22.08.2006 in W.P.No.1919 of 2006, while dealing with the issue on the reopening of assessment, held as follows:

"7. In the facts of the present case, there is nothing new which has come to the notice of the revenue. The accounts had been furnished by the Petitioner when called upon.

Thereafter the assessment was completed under section 143(3) of the Income Tax Act. Now, on a mere relook, the officer has come to the conclusion that the income has escaped assessment and he is of course justified in his analysis. In our view, this is not something which is permissible under the proviso to section 147 of the Income Tax Act which speaks about a failure on the part of the assessee to make a proper return. In the present case, no such case is made out on the record.

8. In the circumstances, we allow this petition in terms of prayer (a) and quash and set aside the notice dated 27th March 2006 directing reopening of the assessment for the year 1999-2000.

21. The above-said view of the Bombay High Court was affirmed by the Supreme Court in Civil Appeal No.5960 of 2012.'

12. In the light of the above, we hold that when the Assessing Officer had failed to record anywhere his satisfaction or belief that the income chargeable to tax had escaped assessment on account of the failure of the assessee to disclose truly and fully all material facts necessary for assessment. On the contrary, it was the Assessing Officer, who failed to consider the materials placed before him at the time of regular assessment for which the assessee cannot be found fault with. Therefore, the notice issued under Section 147 of the Income Tax Act beyond the period of four years was wholly without jurisdiction and cannot be sustained. Accordingly, for the reasons stated above, the substantial question of law is answered in favour of the respondent/assessee and against the appellant/Revenue."

Thus, when the AO has not recorded in his satisfaction or believe that the income chargeable to tax has escaped assessment on account of failure of the assessee to disclose fully and truly all material facts necessary for assessment then the notice issued u/s 148 beyond the period of 4 years was without jurisdiction and is not sustainable. Hon'ble Bombay High Court in case of Sitara Diamond (P.) Ltd. vs. DCIT (supra) while considering the validity of notice issue u/s 148 after 4 years has held in para 6 as under:-

"6. We have considered the rival submissions. By the impugned notice dated 20 June 2011, the assessment for Assessment Year 2005-06 is sought to be reopened beyond a period of four years of the end of the relevant assessment year. The condition precedent to the exercise of the jurisdiction to reopen an assessment beyond a period of four years as spelt out in the proviso to Section 147 is that there ought to be a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for that assessment year. In the present case, the sole basis on which the assessment proceedings were sought to be reopened is the order which has been passed on 5 July 2011 for Assessment Year 2007-08. In that order, according to the Revenue, it has been held that the assessee acts as a mere facilitator

and is not a manufacturer so as to entitle it to the deduction under Section 10A. The issue, however, before the Court, is as to whether that can form the basis of the reopening of the assessment beyond a period of four years. The reasons which have been disclosed by the Assessing Officer do not set out as to what facts the assessee had failed to fully and truly disclose. Even a prima facie reference to the basis on which it is sought to be inferred that there was a failure to disclose all material facts has not been set out in the reasons. In that view of the matter, we are of the view that the primary jurisdictional requirement for reopening the assessment beyond a period of four years has not been fulfilled in this case. Since the order passed by the CIT (Appeals) for Assessment Year 2007-08 has been passed after the assessment for Assessment Year 2005-06 has been sought to be reopened by the notice dated 29 June 2011, we have, for the purposes of this discussion, kept that circumstance out of consideration. We have come to the conclusion that the Assessing Officer having failed to establish that there was a failure on the part of the assessee to disclose fully and truly all material facts for Assessment Year 2005-06, the reopening beyond a period of four years is clearly not valid. There was a finding of fact by the Assessing Officer in the assessment order for Assessment Year 2005-06 that the business activity of the assessee is manufacturing of jewellery in a Special Economic Zone. That finding, as the assessment order notes, was based upon a consideration of the facts of the case and upon examining the contentions of the assessee.”

When the AO has failed to set out in the reasons recorded as to what facts the assessee has failed to disclose fully and truly then the reopening after 4 years is invalid being without jurisdiction. We do not wish to multiply the precedent on this issue though relied upon by the Id. AR of the assessee. Accordingly, in the facts and circumstances of the case and in view of the various decisions as stated above we hold that the reopening after 4 years from the end of the assessment year is bad in law being without jurisdiction and consequential assessment is invalid, accordingly, the reassessment order is quashed. Since, we have quashed the reassessment order itself, therefore, we do not propose to go into the other grounds raised by the assessee.”

The reasons recorded by the Assessing Officer in reopening the case of the assessee are identical to the case of Shri Navrattan Kothari in ITA No. 425/JP/2017 dated 13.12.2017 wherein under identical set of facts the entire reassessment proceedings were quashed by the Tribunal. Further the Assessing Officer has proceeded in the case of assessee on the premises that the assessee has sold the plot of land in question by receiving money over and above the consideration mentioned in the sale deed, as found recorded in the seized material, which was explained by Shri Madan Mohan Gupta. However, no tangible material is placed on record to support the action of the AO warranting reopening of the assessee's case. The AO did not rebut the appellant's contention that nothing over and above the amount recorded in the registered sale deeds was received by bringing necessary details. The unsubstantiated material found in the diary in possession of Shri Madan Mohan Gupta cannot be considered in the hands of the assessee as a conclusive evidence so as to reopen the assessment and make additions towards long term capital gain in sale of the plot of land. Undisputedly, no other material suggesting receipt of higher amounts was recovered during the search. It is trite law that burden is on the revenue to prove that the price had been under stated and no addition is possible without any inquiry. In this case, there is no cogent material to support the reopening of the assessment within the meaning of section 147 and that the appellant has actually received higher amount than that recorded in the registered sale deed and the AO did not conduct any inquiry to bring some material to corroborate the notings found in the diary allegedly contained dealings in respect of

certain properties sold by the assessee, except relying on the statement of Shri Madan Mohan Gupta. Therefore, following the earlier order of this Tribunal in the case of Shri Navrattan Kothari Vs. ACIT (supra), wherein exactly same facts were involved and after considering the various judicial pronouncements on the issue held the issue of notice u/s 147 without jurisdiction, we hold that the reopening of the assessment after four years from the end of the assessment year under consideration and also with reference to the provisions of section 151 is not valid and the same is quashed.

6. Since, we have quashed the validity of the reopening of the case of assessee and consequential reassessment order, therefore, we do not propose to go into the other grounds raised by the assessee as the same have now become infructuous.

ITA NO. 123/JP/2021 A.Y. 2010-11.

7. The issues involved in this appeal are identical to issues raised in the appeal in ITA No. 93/JP/2021 for the assessment year 2010-11 in the case of Siyaram Jat. The facts involved in this case are same and revolve around the search and seizure action conducted at the residential and office premises of Shri Madan Mohan Gupta on 23.05.2013. We have decided the appeal in ITA No. 93/JP/2021 wherein we have quashed the proceedings for reopening of the assessee's case. Since the facts involved in this appeal are exactly similar, therefore, the decision arrived at in ITA No. 93/JP/2021 are squarely applicable in this case also. Thus following the view taken in ITA No. 93/JP/2021, we quash the reopening of the case of the present assessee.

8. In the result, the appeals of the assesseees are allowed.

Order pronounced in the open court on 6/03/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 6/03/2023.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Siya Ram Jat and Shri Jagdish Lal Jat, Tonk
2. प्रत्यर्थी / The Respondent- ACIT Ward Tonk & ITO Ward Tonk.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 93/JP/2021 & 123/JP/2021}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

