

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLEH JAYANTBHAI, AM

आयकर अपील सं./ITA. Nos. 264/JP/2022
निर्धारण वर्ष/Assessment Years : 2016-17

Deputy Commissioner of Income-Tax Central Circle-03, Jaipur	बनाम Vs.	M/s Rigid Conductors (Raj.) Pvt. Ltd. Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACR 8880 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./C.O. Nos. 13/JP/2022
(Arising out of ITA Nos. 264/JP/2022)
निर्धारण वर्ष/Assessment Years : 2016-17

M/s Rigid Conductors (Raj.) Pvt. Ltd. Jaipur	बनाम Vs.	Deputy Commissioner of Income-Tax Central Circle-03, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACR 8880 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA. Nos. 265/JP/2022
निर्धारण वर्ष/Assessment Years : 2016-17

Deputy Commissioner of Income-Tax Central Circle-03, Jaipur	बनाम Vs.	M/s Chokhi Dhani Developers Pvt. Ltd. Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACC 7034 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./C.O. Nos. 14/JP/2022
(Arising out of ITA Nos. 265/JP/2022)
निर्धारण वर्ष/Assessment Years : 2016-17

M/s Chokhi Dhani Developers Pvt. Ltd. Jaipur	बनाम Vs.	Deputy Commissioner of Income-Tax Central Circle-03, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACC 7034 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA. Nos. 266/JP/2022
निर्धारण वर्ष/Assessment Years : 2016-17

Deputy Commissioner of Income-Tax Central Circle-03, Jaipur	बनाम Vs.	M/s Vision Estates Pvt. Ltd., Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACV 5897 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./C.O. Nos. 15/JP/2022
(Arising out of ITA Nos. 266/JP/2022)
निर्धारण वर्ष/Assessment Years : 2016-17

M/s Vision Estates Pvt. Ltd., Jaipur	बनाम Vs.	Deputy Commissioner of Income-Tax Central Circle-03, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACV 5897 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA. Nos. 267/JP/2022
निर्धारण वर्ष/Assessment Years : 2016-17

Deputy Commissioner of Income-Tax Central Circle-03, Jaipur	बनाम Vs.	M/s Gee Vee Developers Pvt. Ltd., Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACG 6770 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./C.O. Nos. 16/JP/2022
(Arising out of ITA Nos. 267/JP/2022)
निर्धारण वर्ष/Assessment Years : 2016-17

M/s Gee Vee Developers Pvt. Ltd., Jaipur	बनाम Vs.	Deputy Commissioner of Income-Tax Central Circle-03, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACG 6770 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से/ Assessee by : Sh S. R. Sharma (CA) &
Sh. R. K. Bhatra (CA)
राजस्व की ओर से/ Revenue by : Sh. Ajay Malik (CIT/DR) &
Smt. Runi Pal (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 09/05/2023
उदघोषणा की तारीख / Date of Pronouncement : 24/05/2023

आदेश / ORDER

PER BENCH

There are four appeals of the different assessee filed by the revenue and four cross objections filed by the assessee on the appeal of the revenue. These four appeals and four cross objections are arising out of the order of the Commissioner of Income Tax (Appeals)-4, Jaipur [hereinafter referred to as Ld. CIT(A)'] for the assessment year 2016-17 dated 21.04.2022, 22.04.2022 & 20.04.2022 which in turn arises from the order passed by the ACIT, Central Circle- 03, Jaipur passed under Section 143(3) r.w.s 153A of the Income tax Act, 1961 (in short 'the Act') dated 27.12.2019.

2. Since the issues involved in all these appeals of the revenue for all four assessee's are almost identical and having common grounds, all these appeals of the revenue and the cross objections of the assessee were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the Id. DR has submitted that the matter pertaining to ITA No. 264/JPR/2022 and Co No. 13/JPR/2022 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical except the difference in the amount added and disputed and relates to the same assessment year. The Id. AR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of revenue in ITA No. 264/JPR/2022 and cross of assessee in CO No. 13/JPR/2022 taken as a lead case.

4. Based on the above arguments we have also seen that for all these bunch of four appeals and four cross objections grounds, facts and arguments were similar. Therefore, we have heard together these bunch of appeals and cross objections and are disposed by taking lead case facts, grounds and arguments from the folder in ITA No. 264/JPR/2022 and CO No. 13/JPR/2022.

5. Before moving towards the facts of the case we would like to mention that the revenue has assailed the appeal in ITA No.

264/JPR/2022 before us on the following grounds and grounds of cross objections of the assessee also reiterated here in below;

Grounds of revenue's appeal:

“Ground 1. The Ld. CIT(Appeal) has erred in law in holding that no additions can be made in proceedings under section 153A of the Income Tax Act 1961 in respect of the assessments which were completed prior to the date of search, except based on some incriminating material unearthed during the search which was not already available to the Assessing Officer. While granting relief to the assessee, the Ld. CIT(Appeal) has failed to take note of the position that Hon'ble Supreme Court of India has admitted SLP against this proposition in the following matters:- i Principal Commissioner of Income Tax vs. Gahoi Foods (P.) Ltd. 117 taxmann.com 118(SC)/272 Taxman 521(SC) dated 24.01.2020 ii Principal Commissioner of Income Tax, Central-4 vs. Dhananjay International Ltd. 114 taxmann.com 351(SC)/270 Taxman 15(SC) dated 16.09.2019.

Ground 2. The Ld. CIT(Appeal) has erred in law and on facts in not carrying out her duty of adjudicating the grounds on merit, and dismissing them only on a technical ground.

Ground 3. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) is justified in deleting the addition of Rs. 27,01,95,945/- by holding that the addition made on account of LTCG is without any reference to any incriminating seized material which could justify the addition.

4. Ground 4. The learned CIT Appeal has erred in granting relief to the assessee (i) on the basis of her finding that the transfer of land within the meaning of provisions of section 2(47) was completed on 19.02.2014 itself, a period falling in assessment year 2014-15 and not in assessment year 2016-17 being the year under consideration. (ii) holding that according to the assessing officer himself, the assessee had surrendered/ relinquished his rights in the land in favor of JDA on 19.02.2014, and therefore the transaction should have been taxed in the assessment year 2014-15. (iii) and in doing so, the learned CIT Appeal has ignored the vital fact that the demand notice for payment was issued on 18.06.2015, a period falling within assessment year 2016-17.

Ground 5. The appellant craves leave or reserves right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or

during the hearing of this appeal.”

Grounds of assessee's C.O.:

“1. That on the facts and in the circumstances of the case the Ld. CIT(A) is wrong, unjust and has erred in law in not adjudicating the ground of respondent that agricultural land measuring to 7.725 hectares situated at Village Jhai, Jaipur is situated outside 8 KM of municipal limit of Jaipur and therefore not a capital asset within meaning of section 2(14) of the I.T. Act, 1961 and therefore no capital gain is chargeable on its compulsory acquisition.

2. The respondent craves permission to add to or amend to any of grounds of appeal or to withdraw any of them.”

6. The fact as culled out from the records is that in this case, original return of income was e-filed by the assessee on 12.10.2016, declaring total income at Rs. 1,14,000/- for the A.Y 2016-17.

6.1 A search was conducted on 30.11.2017 in the case of “Chokhi Dhani Group, Jaipur to which the assessee belongs. Various assets/books of account and documents were found and seized as per annexure prepared during the course of search. Thereafter, jurisdiction over the case was assigned to this office vide order u/s 127 of the Income-tax Act, 1961 dated 04.04.2018 by the Pr. CIT of Income tax-1, Jaipur circulated vide no. Pr. CIT-1/ITO(Hq.)/JPR/2018-19/58 dated 09.04.2018.

6.2 Accordingly, notice u/s 153A of the IT Act, 1961 for this year was issued on 25.07.2018 and duly served upon the assessee. In compliance to the notice u/s 153A of the IT. Act, 1961, return of income was e-filed on 01.09.2018 declaring total income of Rs. 1,14,000/- for the year under consideration. Notice u/s 143(2) & 142(1) of the Income Tax, 1961 were issued along with questionnaire requiring certain details/information, which was duly served upon the assessee.

7. During the course of search action at the corporate office of M/s Chokhi Dhani Resorts Pvt. Ltd., & its sister concerns at Chokhi Dhani Tower, S-5, Shyam Nagar, Jaipur on 30.11.2017, certain 'developed land allotment letters', note sheet pages of JDA regarding acquisition & allotment of land & miscellaneous correspondence regarding acquisition of land situated at Village-Jhai and Nevta, Tehsil- Sanganer, District-Jaipur (Rajasthan) related to Chokhi Dhani Group of assessee were found and seized. The company owned land in village Nevta as evident from the Balance Sheet. The seized documents were being analyzed during the assessment proceedings and it was observed that land of the company was acquired and another land was allotted in lieu of compulsorily acquired land. From the seized material it was

gathered that the lands belonging to the assessee of Choki Dhani Group were compulsorily acquired by the Jaipur Development Authority (here in after JDA) , Jaipur in accordance with Central Land Acquisition Act, 1894. The details of the land acquired by the JDA of the assessee company is as detailed here in below:

Sr. No.	Name of land owner	Address of property	Khasra No.	Total area (in hectare)
	M/s Rigid Conductors (Raj.) Pvt. Ltd.	Jhai	538, 542, 543, 535, 537/740	0.75
		Jhai	664, 663,262-565, 579-586, 558, 661, 566, 567-569, 557	6.975
			Total	7.725

The above land was acquired for Special Economic Zone (SEZ) under section 4(1) of the Central Land Acquisition Act, 1894. For this purpose a notification dated 19.07.2007 was issued by the Urban Housing & Development Department, Government of Rajasthan which was published in the official Gazette on 25.07.2007.

7.1 A representation was made u/s. 5A of the Land Acquisition Act to the state government on 26.11.2007. After considering the representation, notification u/s. 6 of the Land Acquisition Act was published on 23.01.2008 and on 21.6.2008 to 26.06.2008; notice

u/s. 9(1) were published. In furtherance of above notifications and actions on 11.06.2010 award u/s. 11(2) of Land Acquisition Act, 1894 and in compliance to the state government circular dated 27.10.2005 & 31.12.2006 the same was sent to state government for approval. Thereafter, Urban Development & Housing Department, Rajasthan Government vide letter dated 24.06.2010 decided the award ex-parte of the lands which were acquired for special economic zone & connected roads. All these details are available in the documents seized from Choki Dhani Tower. In this context a letter written by Shri Subhash Vaswani, the director of the company was seized which sheds light on the various facts related to the acquisition and allotment of land in lieu of this acquisition. The letter was addressed by the company to the Commissioner, JDA Jaipur. From the letter it appears that in lieu of acquired land developed land has been allotted after payment of lease premium charged by the JDA. From perusal of point no. 4,5 and 6 of that letter, it is seen that the land of the company and its sister concerns were acquired as per provisions of Land Acquisition Act, 1894 and in lieu of acquired land, developed land was allotted to the concerned assessee by JDA. Further in point no. 8 of aforementioned letter, it is written by the assessee that the developed land was allotted to it in lieu of land acquired in 2007.

From contents of aforementioned letter, it can be safely concluded that the land of the Choki Dhani Group of assessee were acquired under land Acquisition Act, 1894. Against the acquisition proceedings, assessee M/s. Rigid Conductors (Raj) Private Limited along with M/s. Choki Dhani Developers Private Limited, M/s. Gee Vee Developers Private Limited, M/s. Vision Estate Private Limited & Devik Vaswani filed write petitions before the Hon'ble Rajasthan High Court. In the results the acquisitions proceedings were stayed by the Rajasthan High Court from 01.06.2007.

7.2 Further letter dated 30.08.2013 was issued by UDH, Rajasthan Government regarding acquisition of land related to Choki Dhani Group in which recommendation of empowered committed regarding acquisition of land was mentioned that in lieu of acquired land it was decided to give 25 % developed land (20% residential and 5 % commercial to Choki Dhani Group of which the assessee is a part. Hence Choki Dhani Group of Companies were allotted land in lieu of land acquired by JDA. Vide letter dated 19.02.2014 addressed to Deputy Commissioner, Zone 15, Jaipur Development Authority, Jaipur, Shri Subhash Vaswani, Director of M/s Chokhi Dani Developers Private Limited & its sister concerns

has furnished an undertaking (Pratigyapatra) regarding withdrawal of writ petitions from the Hon'ble Rajasthan High Court and has stated that JDA may initiate the necessary proceedings for allotment of developed land in lieu of acquired land which means they have agreed with the land acquisition and further allotment against the same. Thereafter cabinet meeting was held on 25.08.2014 in which the issue of land acquisition by UDH, Govt. of Rajasthan was discussed and order no. 123/14 dated 11.09.2014 regarding acquisition of agricultural & converted land situated at Jhai and Nevta was issued on the condition that the land owners (Chokhi Dhani Group) will submit an undertaking regarding withdrawal of all the writ petitions filed by them before the Rajasthan High Court. It was approved that:

- (a) In lieu of residential land admeasuring 7.38 hectare, equal land will be provided by Mahindra SEZ.
- (b) In lieu of agricultural land admeasuring 78.97 hectares, 25% developed land (20% residential & 5% commercial) will be provided by JDA.

Further, as per settlement made u/s 44 of the JDA Act, 1982 between the Chokhi Dhani Group of Companies & JDA, Jaipur, the Chokhi Dhani Group of companies had surrendered the land under reference in favour of JDA and also withdrawn all writ petition from

Hon'ble Rajasthan High Court. The assessee company has surrendered its rights in the land acquired by JDA vide letter dated 19.02.2014 addressed to JDA, Jaipur. This was an unconditional offer for surrender of land which is covered within the definition of relinquishment of rights in the land. Also this unconditional surrender of land in favour of JDA is duly covered within the definition of Transfer which includes relinquishment of the assets as per provisions of section 2(47) of the I.T. Act, 1961. Further, compulsory acquisition of land is covered within the definition of transfer as per provisions of section 2(47) of I.T. Act, 1961. In view of the above vide show cause notice dated 06.09.2019 the assessee was asked to furnish details related to Capital Gains and case was fixed for hearing on 13.09.2019 but none appeared and no reply was furnished for the same. Thereafter, the assessee was again asked to show cause vide notice dated 05.11.2019 and 25.11.2019 that as to why the company has not shown income under the head capital gain while the provisions of capital gain are applicable on the assessee in the light of allotment of land in lieu of compulsory acquisition of land. The AR of the assessee company furnished the reply vide letter dated 28.11.2019.

7.3 In the written submission filed, the assessee has raised following major issues and finding of the Id. AO to that is also tabulated for the sake of brevity of the facts:

Sr. No.	Issued raised by the assessee	Finding of the AO
1	As the land was acquired by JDA in the financial year 2005/2006 and as such capital gain (if any) was chargeable in the said year i.e. 2005-2006. It is case of shifting of land from one place to another and the case doesn't fall in the ambit of sale or transfer of the capital asset.	<p>As per Section 45(5)(a) of the Act, the consideration received on transfer of a capital assets on transfer by way of compulsory acquisition under any law shall be chargeable as income under the head capital gain of the previous year in which such compensation or part thereof was first received. In this case though land acquisition process had started but due to judicial proceedings the compensation of the same in form of land allotment was made in the year under consideration.</p> <p>On the plain reading of section 2(47) makes it amply clear that compulsory land acquisition is one of the forms of land transfer.</p> <p>Hence, the case is squarely covered under the definition of transfer of capital asset. Also section 45(5) of the I.T.Act, 1961 is related to capital gain in case of compulsory acquisition of land which is applicable in this case. Hence, the assessee's theory of 'shifting of land' is nowhere described nor application in case in view of the facts as narrated above.</p>
2.	The compensation received on compulsory acquisition of land is	A plain reading of section 10(37) makes it clear that the provisions

<p>exempt from tax u/s 10(37) of the act. The case is covered by CBDT circular no. 63/2016 dated 25-10-2016 in which the taxability of compensation given on compulsory acquisition of land was dealt with.</p>	<p>of this section are applicable in the cases of individual & HUF only upon fulfillment of certain conditions. Thus, the submission of the AR of the assessee companies is not in consonance with the provisions of section 10(37) of the Income Tax Act, 1961.</p> <p>Further, the section clearly talks about the land used for 'agricultural purpose' while the company was not involved in any kind of agricultural activities. It is also pertinent to mention here that none of the lands were put to agricultural operations as no agricultural income or expense with regard to the same has been shown by the assessee company in its return of income for any assessment year. Thus, it can be presumed that the land under reference was not used for agricultural purposes.</p> <p>Moreover to further investigate the matter, an Inspector was deputed to find out in detail about the veracity of claim of agricultural operations and distance from the municipal limits and it was reported that no such activity is being carried on this land.</p> <p>The above referred discussions makes it amply clear that neither is the assessee an individual or HUF nor does the land fall under the category of agricultural land hence section 10(37) is not applicable in this case.</p> <p>Further, AR of the assessee company has taken a plea that</p>
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		<p>the compensation received is exempt in accordance with the RFCTLAAR Act, is also not acceptable.</p> <p>In the case under reference land of the assessee company was acquired as per Central Land Acquisition Act, 1894, therefore, the assessee is not eligible for exemption as enumerated in section 96 of the RFCTLAAR Act.</p> <p>Thus, the provisions of RFCTLAAR Act are not applicable in the case of the assessee under reference as the land was not acquired as per provisions of RFCTLAAR Act.</p> <p>Therefore, the contention of the AR of the assessee regarding non-taxability of compensation received on acquisition of land in accordance with provisions of RFCTLAAR Act & CBDT's circular no. 36/2016 dated 25.10.2016 doesn't hold ground.</p>
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3	<p>No capital gain will arise till the date of giving physical possession of land and also the year of tax liability will be the year of giving physical possession of the same to the assessee.</p>	<p>This issue raised by the assessee company is that no capital gain will arise till the company gets physical possession of the land and also the year of tax liability will be the year of getting the physical possession of land. It is important to mention here that the land was allotted by the JDA through land allotment letter dated 18.01.2016 which makes it clear that the assessee received the compensation on that date itself and the assessee company became the legal owner of the land allotted.</p> <p>Here in this case land was allotted in lieu of compensation of land acquisition and the same was allotted vide allotment letter dated 18.06.2015 which makes it crystal clear that the same would be taxable in the year of allotment itself. So the contention of assessee is devoid of merit and is accordingly rejected.</p> <p>In the submission the AR of the assessee company has contended that as the land was acquired in 2005-06 so capital gain; if any should be chargeable in that year.</p> <p>The assessee is simply trying to give arguments to shift its tax liability from one year to another without any logic or reason.</p>
4	<p>Further, in the next submission the assessee has submitted a report of a surveyor measuring the distance of the land from the municipal limits and has stated that "a portion" of land falls outside the 8 km</p>	<p>To investigate this aspect the inspector was deputed by the assessing officer and he has reported the land is within 8 kms of the municipal limits.</p>

	periphery which is completely vague because the entire land is compulsorily acquired.	
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7.4 Details of the land related to the assessee which has been acquired by JDA and developed land allotted to assessee are as under:-

Sr. No.	Name of the company	Address of the property	Area of the land acquired	Land allotted in lieu of land acquired (Sq. Mts.)	Date of allotment	Value of land so allotted as per reserve price (Rs.)
1	M/s Rigid Conductors (Rajasthan) Pvt. Ltd.	Village- Jahi Sanganer, Jaipur	6.975 hectare	13950 (Residential) and 3487 (Commercial)	18.01.2016	223200000 (Residential) 55792000 (Commercial) Total 27,89,92,000

Value of allotted land is determined on the basis of reserve price of land allotted by JDA which is at Rs. 16,000/- per square meter for commercial land & 8,000/- per square meter for residential land. Also the assessee has contended that the reserve prices were being revised by the JDA and has submitted an order with regards to the same. On perusal of the same it was observed that the order was applicable from 14.09.2017 and doesn't apply during the year under consideration. Also, the assessee company has not provided any registered sale deed to claim the cost of acquisition even after repeated queries hence the cost of

acquisition is taken as mentioned in the audited balance sheet of the assessee company.

7.5 From the above discussion, the capital of assessee is worked out here under:-

Value of land so allotted as per reserve price as on 18.06.2015	Rs. 27,89,92,000/-
Less:- Cost of acquisition 903892*1081/223= Rs. 43,81,647/- 430619*1081/244= Rs. 19,07,783/- 221058*1081/259= Rs. 9,22,640/- 570000*1081/389= Rs. 15,83,985/-	Rs. 87,96,055/-
Long term capital gain	Rs. 27,01,95,945/-

From the above discussion, it is clear that the assessee has earned long term capital gain during the year under consideration but the same was not disclosed by the assessee in its return of income, therefore, the same is hereby added to the total income of the assessee. The penalty proceedings u/s 271(1)(c) of the Income tax Act, 1961 are initiated for furnishing inaccurate particulars of income as discussed above.

8. Feeling dissatisfied from the order of the assessing officer the assessee filed an appeal before the Id. CIT(A). A propose to the grounds so raised by the assessee the relevant finding of the Id. CIT(A) is reiterated here in below:

“5.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

(i) A search and seizure operation u/s 132 of the IT Act, 1961 was conducted on 30.11.2017 on Chokhi Dhani Group, of which the appellant is one of the members. Subsequently notice u/s 153A was issued to the appellant for AY 2016-17 wherein the appellant was required to file the return for the relevant assessment year. The appellant filed the return and the assessment was framed thereon.

(ii) Before me, the appellant contended that as on the date of search, the time limit for service of notice u/s 143(2) was not available for AY 2016-17. Thus, the assessment proceedings for AY 2016-17 were not pending on the date of search. In search no incriminating material indicating any undisclosed income for the year under consideration was found and as there was no seized material based on which assessment had been completed by the Assessing Officer in its case, assessment so framed by the Assessing Officer u/s 153A of the act is illegal and bad in law. In support of his contention, the appellant placed reliance on the decisions of various High Courts including the jurisdictional High Court and also of the Hon'ble Supreme Court as mentioned in his submissions mentioned supra.

(iii) I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. There is no dispute that Search was carried out in the case of the appellant on 30.11.2017 and that no assessment for the AY 2016-17 was pending when notice under section 153A of the Act on 25.07.2018 was issued and served upon the appellant. Even the time period for issuing notice under section 143(2) for the aforesaid assessment year had already elapsed. In view of the above, it is evident that the assessment for the impugned assessment year was not pending on the date of search on 30.11.2017 and did not get abated by virtue of search u/s 132 on the date of search and therefore, cannot be considered as merged into the assessment u/s 153A. In case of unabated search assessment, any undisclosed income, which can ultimately be added, is only to the extent of any unrecorded assets or any incriminating documents found as representing undisclosed income earned. The appellant has contended that in search, no incriminating material indicating any undisclosed income for the year under consideration was found and therefore the assessment has been completed by the AO without referring to any incriminating seized material.

(iv) On perusal of the assessment order, it is observed that during the course of search, certain 'developed land allotment letters, note sheet pages of JDA regarding acquisition and allotment of land and miscellaneous correspondence regarding acquisition of land situated at Village Jhai and Nevta, Teh. Sanganer, Dist. Jaipur related to Chokhi Dhani Group of assesseees were found and seized as per Exhibit 4 & 31. The AO observed that the company owned land in Village Nevta as evident from the Balance Sheet. The seized documents were analyzed by the AO and it was observed that the land of the company was acquired and another land was allotted in lieu of compulsory acquired land and that the land owned by the appellant was acquired by the

Government under Central Land Acquisition Act, 1894 revised in the year 1984.

(v) The details/particulars of the acquisition proceedings are as under :-

- Gazette Notification for acquisition of the land was issued on 20.12.2005 and published in the official Gazette on 20.12.2005.
- Final Notification of land acquisition was issued by the Government on 8th May 2006. Subsequently under section 4(1) of the Central Land Acquisition Act, 1894, a notification was issued by Urban Housing and Development Department, Govt. of Rajasthan Dt. 19.07.2007 which was published for compulsory acquisition of land for Mahindra Sez in the Gazette of Rajasthan on 25.07.2007.
- Award determining total consideration payable by the Government on account of acquisition of the agricultural land was issued on 06.08.2007. The said Award was an allotment letter of land.
- A representation was made by the appellant u/s 5A of the Land Acquisition Act to the state Government on 26.11.2007. Subsequently notification under section 6 of Land Acquisition Act was published on 23.01.2008 and on 21.06.2008 to 26.06.2008. Notice u/s 9(1) was published.
- Thereafter the State Government vide letter dated 24.06.2010 decided the award ex-parte of the lands which were acquired for Special Economic Zone and connected roads.

(vi) The aforesaid details are available in the documents seized during the course of search. Against the acquisition proceedings, M/s Rigid Conductors Pvt. Ltd., alongwith M/s Gee Vee Developers Pvt. Ltd., M/s Vision Estate Pvt. Ltd., M/s Chokhi Dhani Developers Pvt. Ltd. and Devika Vaswani filed Writ Petition before the Hon'ble Rajasthan High Court. Subsequently the acquisition proceedings were stayed by the Hon'ble Rajasthan High Court from 01.06.2007. During the search proceedings, a letter of Dy. Commissioner Zone -15, JDA addressed to the Addl. Commissioner (LPC). JDA intimating the aforesaid fact was found and seized. However, the appellant in the year 2014, made a settlement with the Government to end the long litigation on the issue. In consequence to the said settlement, the Government of Rajasthan issued a Ministerial Order dated 11.09.2014 to settle finally the litigation going on. In the said settlement order, the Government of Rajasthan agreed to allot 25% developed land in lieu of the appellant's agricultural land acquired by the Government. Further the said Ministerial Order was subject to withdrawal of Writ Petition filed by the appellant pending for disposal before the Hon'ble Rajasthan High Court. The appellant in compliance to the terms of the Ministerial Order (supra) filed an Undertaking dated 22.10.2014 accepting the land acquisition consideration determined by the Government of Rajasthan by allotment of 25% developed land. AR

(vii) The A.O. also observed that the appellant company has surrendered its rights in the land acquired by JDA vide letter dt. 19.02.2014 addressed to JDA, Jaipur and that this was an unconditional offer for surrender of land which is covered within the definition of relinquishment of rights in

the land. It was further held by the A.O. that this unconditional surrender of land in favour of JDA is duly covered within the definition of Transfer which includes relinquishment of assets as per provisions of section 2(47) of the IT Act, 1961. I find that the A.O. has himself held that the unconditional surrender of land by the appellant company vide its letter dt. 19.02.2014 falls under the definition of Transfer. Since the letter is dt.19.02.2014, the transfer falls under the F.Y. 2013-14 relevant to the A.Y.2014-15 and not to the year under consideration.

(viii) As per the above facts, it is evident and verifiable that the appellant has surrendered its rights in the land acquired by the JDA vide its letter dt.19.02.2014 i.e. in the FY.2013-14 relevant to A.Y.2014-15. I also find that the consideration on account of acquisition of agricultural land was decided by the Government on 11.09.2014, in response to which the appellant filed an Undertaking dated 22.10.2014 accepting the land acquisition consideration determined by the Government of Rajasthan by allotment of 25% developed land ie. in the FY 2014-15 relevant to assessment year 2015-16. Thereafter, a Demand Notice cum Allotment Letter was issued by the Jaipur Development Authority on 18-06-2015 for the above said land agreed to be allotted to the appellant. The appellant deposited the said amount on 26- 11-2015 & 04-01-2016 and the transaction is recorded in regular audited books of accounts. It was brought to my notice that till date no physical possession of the land is given by the Jaipur Development Authority and that they have recently filed a writ petition before the Hon'ble Rajasthan High Court again in this regard and therefore till date the appellant has not received any consideration on account of acquisition of the land from JDA.

(ix) On perusal of the record, audited financials of the company and facts of the case, I find that the appellant has regularly disclosed the facts of compulsory acquisition of land by the State Government in its audited financial statement of accounts submitted/filed along with the Income Tax Returns. The Department has also taken cognizance of the same in the AY 2005-06 during the course of assessment proceedings u/s 143(3) of the Act and the AO has mentioned the facts in the impugned assessment order. For ready reference, the relevant para of the order is reproduced herein as under-

"The construction work of Country Club has been stopped due to State Government has proposed to acquire the major part of the land for the purpose of development of SEZ."

In the Ayrs 2006-07 to 2011-12 the disclosures made in the Director's Report in the audited documents and financial statement is as follows:-

"As informed in the last AGM, the land belonging to the company has been acquired compulsorily for SEZ Project by Rajasthan State Government. The Writ Petition filed by the company against the Government of Rajasthan before Hon'ble Rajasthan High Court Jaipur Bench Jaipur is still pending for disposal. The company is continuously

working on various options including purchase of alternate land and/or alternate project."

In the audited statements of accounts a Note was put regarding the acquisition proceedings, proposed allotment of land and the amount deposited as per the Demand Notice as follows:-

(a) Assessment Year 2011-12 to 2015-16: Rajasthan State Government in exercise of the powers vested under the land acquisition act 1894 has initiated process to compulsory acquire some of the land owned by the company at Jaipur. The company has filed its objection before the competent authority to notified by the state government in this regard which are yet to be disposed off.

(b) Assessment Year 2016-17, Note No. 21: The company has been allotted residential land measuring 44,885 sq. meters and commercial land measuring 11,221 sq. meters in village Raj Darbar and Jhai Jaipur respectively in lieu of its land situated in Nevta and Jhai village which was acquired by the State Government u/s 4(1) of the land acquisition act, 1984 for development of SEZ. In compliance of the allotment letter dated 18.06.2015 issued by JDA, the company has deposited Rs. 63,39,729 towards one time Lease Demand to JDA and shown this amount under Note No. 6 "Long Term Loans and Advances" as the lease deed of the land has not been executed in the name of company as of now. AR

(x) In view of the above facts and on perusal of the assessment order, it is observed that the additions made by the A.O. is based on the aforesaid documents pertaining to compulsory acquisition of land in lieu of which, though the land was allotted by the JDA, however possession of this land has not yet been given to the appellant. Infact on perusal of the financials disclosed by the appellant company which itself is part of its Income Tax return, it is observed that all these facts are available in the income tax returns filed by the appellant company for last several years as mentioned supra and therefore cannot be considered to constitute any incriminating evidence to justify the aforesaid addition. Further, during the course of appellate proceedings, the present Ld. A.O. attended the hearing personally and submitted that since the appellant, though liable for capital gains tax on transfer of the above land through compulsory acquisition of land, has not declared any capital gains in his R.O.1, therefore the documents seized as Exhibit 4 & 31 are to be considered as incriminating documents in the case of the appellant. As regards the above contention of the Ld. AO. I find that the fact of non-declaring of capital gains in the return of income cannot in any way decide whether the allotment letters can be treated as incriminating documents more so in view of the fact that the appellant company has duly declared/disclosed the facts of compulsory acquisition in its returns of income since the initiation of the process of land acquisition by JDA. Further, the AO has himself admitted that the unconditional offer for surrender of land by the appellant company vide its letter dated 19.02.2014 is covered within the definition of transfer as per section

2(47) of the Act. Therefore even as per the AO, the transfer of land falls under the FY 2013-14 relevant to AY 2014-15. Moreover in the given facts and circumstances of the case, merely because the demand notice was issued on 18.06.2015 and the payment was made by the appellant company on 26.11.2015 and 04.01.2016, would not determine the liability of capital gain in the year under consideration, the fact remaining that the possession of the land has still not been handed over to the appellant till date.

(xi) In search assessments, any undisclosed income, which can ultimately be added, is only to the extent of any unrecorded assets/material found or any incriminating document found as representing undisclosed income earned. Further, the facts of the present case remains that there is no incriminating evidence related to addition made by the AO found during the course of search as is manifest from the order of the AO. The issue of assessment or reassessment u/s 153A in respect of the assessment year which has already been completed and the issue of addition to the income that has already been assessed can be made only on the basis of incriminating material, has been examined in detail by the various High Courts including the jurisdictional High Court in case of Jai Steel (India) Ltd. Vs. ACIT (88 DTR 1). The relevant part of the decision of the Rajasthan High Court in Jai Steel (India) Ltd. Jodhpur vs. ACIT (Supra) is reproduced herein as under:-

"22. In the firm opinion of this Court from a plain reading of the provision along with the purpose and purport of the said provision, which is intricately linked with search and requisition under Sections 132 and 132A of the Act, it is apparent that:

- (a) the assessments or reassessments, which stand abated in terms of the proviso to Section 153A of the Act, the AO acts under his original jurisdiction, for which, assessments have to be made;
- (b) regarding other cases, the addition to the income that has already been assessed, the assessment will be made on the basis of incriminating material; and
- (c) in absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made."

(xii) Similar view is expressed by Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla 380 (Delhi HC). The Hon'ble High Court, while analyzing the provisions of section 153A read with section 132 of the Act has observed in para 37 and 38 under :-

"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

- i. Once a search takes place under Section 132 of the Act, notice under Section 153 A(1) will have to be mandatorily issued to the person

searched requiring him to file returns for six Ays immediately preceding the previous year relevant to the AY in which the search takes place.

ii Assessments and reassessments pending on the date of the search shall abate. The total income for such AYS will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYS "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. in absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (ie. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

38. The present appeals concern AYS, 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed."

Thus the Hon'ble High Court has held that in the absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The Hon'ble High Court has also referred the term used in section 153A as "assess" which is relatable to abated proceedings and the word "reassess" related to completed assessment proceedings. Therefore, the completed assessments can be interfered with by the AO while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of document or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

(xiii) In *Kabul Chawla* (supra), the Court also took note of the decision of the Bombay High Court in *CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd.* [2015] 58 taxmann.com 78/232 Taxman 270/374 ITR 645 (Bom.) which accepted the plea that if no incriminating material was found during the course of search in respect of an issue, then no additions in respect of any issue can be made to the assessment u/s 153A and 153C of the Act.

It was held that once an assessment has attained finality for a particular year, i.e., it is not pending then the same cannot be subject to tax in proceedings under section 153A of the Act. This of course would not apply if incriminating materials are gathered in the course of search or during proceedings under section 153A of the Act which are contrary to and/or not disclosed during the regular assessment proceedings."

(xiv) Recently Hon'ble Supreme Court vide order dated 02-07-2018 in *Meeta Gutgutia Vs. Pr CIT* (96 Taxmann.com 468) have held that Invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search was not justified in absence of incriminating material found during search qua each such earlier assessment year. The head note of the judgment is as under:

Section 153A of the Income-tax Act, 1961- Search and seizure (General principles) - Assessment years 2001-02 to 2003-04 and 2004-05- High Court in Impugned order held that invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search was not justified in absence of incriminating material found during search qua each such earlier assessment year-Whether SLP against said decision was to be dismissed - Held, yes [Para 2] [In favour of assessee]

(xv) Further, similar view is also taken in the following judgments, including by

Hon'ble ITAT Jaipur, in many cases:

- (a) *Prateek Kothari Vs. ACIT* (312/Jaipur/2015).
- (b) *PCIT vs. Meeta Gutgutia* 152 DTR 153

- (c) Vijay Kumar D Agarwal V/s DCIT in IT(SS)A Nos 153, 154, 155 & 156/Ahd/2012
(d) Raton Kumar Sharma vs. DCIT ITA 797 & 798/Jaipur/2014
(e) Vikram Goyal vs. DCIT ITA 174/lalpur/2017 etc.
(f) Jadau Jewellers & Manufacturer PL Vs. ACIT (686/Jaipur/2014)

(xvi) Thus the essential corollary of these decisions and also the decision relied upon by the appellant is that no addition can be made in the proceedings under section 153A in respect of the assessments which were completed prior to the date of search except based on some incriminating material unearthed during the search which was not already available to the AO.

(xvii) The present appeal concerns AY 2016-17. On the date of the search, the said assessment already stood completed, as discussed supra and the additions made by the AO u/s 143(3) r.w.s. 153A on account of long term capital gain is without any reference to any incriminating seized material which could justify the addition. Since no proceedings under the Income Tax Act were pending for AY 2016-17 as on the date of search, and accordingly scope of examination of issues in the assessment u/s 153A was required to be restricted to the incriminating material, if any, found as a result of search. It is observed that the addition is neither based on any single loose paper found/seized nor on any statement recorded during the course of search conducted in the case of the appellant which can be considered as incriminating as is evident from the order of the AO. Further the reference made by the AO to the documents pertaining to allotment of land under compulsory acquisition cannot be considered as incriminating in view of the fact that these were already part and parcel of the returns of income filed by the appellant and forms part of the financials of the appellant company since A.Y.2005-06. Infact the department has also taken cognizance of this issue in the assessment proceedings u/s 143(3) of the Act for the A.Y.2005-06, as mentioned supra. Therefore in view of the aforesaid discussion and respectfully following the binding decision of the Hon'ble Jurisdictional High Court, decision of various other High Courts and the decision of Hon'ble Supreme Court as discussed supra, it is observed that the aforesaid addition made by the AO u/s 143(3) r.w.s. 153A for the year under consideration is legally not tenable, not being based on any incriminating document/ evidence found in the course of the search and hence is not liable to be sustained. Accordingly, the Ground of Appeal No. 1 is treated as allowed.

9. Revenue aggrieved from the findings of the Id. CIT(A) has preferred this appeal in ITA No. 264/JPR/2022 on the grounds as reiterated here in above. As the assessee also not satisfied fully

with the findings of the Id. CIT(A) the assessee has also preferred the cross objection in CO No. 13/JPR/2022.

10. The Id. DR heard at length, apropose to the grounds so raised by the revenue. The Id. DR vehemently argued that the Id. CIT(A) has to considered the merits of the case and has to considered the appeal of the assessee on merit and should not have decided the appeal based on the technical grounds. As regards the contention of the assessee that the land in question is agricultural land is not correct as raised in their CO as the AO has proved by a detailed discussion that the land in question was not an agricultural land. Relying on the finding recorded by the Id. assessing officer that the land of the assessee was acquired and the process is continue and the assessee has not disclosed the capital gain in the books the documents found be viewed as incriminating material and therefore the finding of the Id. CIT(A) is not correct. In the search proceeding the team has found the case records of the proceeding contested before High Court and after that the settlement reached between the parties, wherein the assessee has agreed to accept the land against the land acquired in 2005-2006. This communication was finalized and agreed in the year 2014. Based on these facts this transaction is covered within

the meaning of transfer and the assessee is liable for capital gain and the Id. AO has based on the prevalent rate charged the capital gain to the assessee and the same should be sustained. To support the various contentions so raised the Id. DR has filed the following submissions:

A paper book containing following record filed vide letter dated 06.10.2022

S.No.	Particulars	Page No.
A.Y 2016-17		
1.	Copy of letter of Director of M/s Chokhi Dhani Developer Pvt. Ltd. to the Commissioner of JDA which was seized as page no. 16 to 20 of Exhibit-2 seized from Chowki Dhani Tower, S-8, Shyam Nagar, Ajmer Road, Jaipur	1 to 6
2	Page No. 1 to 82 of Exhibit-4 seized from Chokhi Dhani Tower, S-08, Shyam Nagar, Ajmer Road, Jaipur containing certain 'developed land allotment letters, note sheet pages of JDA regarding acquisition & allotment of land & miscellaneous correspondence regarding acquisition of land situated at Village Jhai and Nevta, Tehsil-Sanganer, District-Jaipur (Rajasthan) related to Chokhi Dhani Group	7 to 100
3	Pages of Exhibit-31 seized from Chokhi Dhani Tower, S-8, Shyam Nagar, Ajmer Road, Jaipur having copies of Jamabandi of land situated at Vill-Jhai, Teh-Sanganer, Distt- Jaipur in the name of assessee group.	101 to 112
4	Copy of Allotment letter dated 18.06.2015 for the land situated at Vill-Jhai, The-Sanganer, Distt. Jaipur in the name of assessee group.	113
5	Copy of revised allotment letter which details of land allotted to assessee group Jhai and Newta.	114 to 118
6	Copy of replies received from Tehseeldar Sanganer during the assessment proceedings.	119 to 147
7	Inspector report for the physical enquiry made during the assessment proceedings.	148

It is certified that the above documents have been supplied by the DCIT, Central Circle-03, Jaipur vide letter no. 710 dated 14.09.2022."

Report of the assessing officer forwarded by the Id. DR vide letter dated 03.05.2023

“Sub:- Appeal before hon'ble bench in ITA No. 264/JPR/2022, 265/JPR/2022, 266/JPR/2022 & 267/JPR/2022 in the case of M/s Rigid Conductors (Raj.) Pvt Ltd, Ms Chokhi Dhani Developers Pvt Ltd, Ms Vision Estates Pvt Ltd & Ms Gee Vee Developers Pvt Ltd.-reg

Respected Madam and Sir.

Kindly find enclosed herewith AO report in form of "copy of SB Civil Writ Petition No. 4181/2007" filed before the Hon'ble Rajasthan High Court by M/s Vision Estate Pvt. Ltd. through its Director Shri Subhash Vaswani S/o Mohan Lal Vaswani, having its registered office at Anjali Chambers, Rajbhawan Marg, Jaipur received from DCIT, Central Circle-3, Jaipur.

2. The appellant has submitted at para 27 of page 30 of said Writ Petition before Hon'ble Rajasthan High Court –

"That it would also reveal by perusing the aforesaid letter dated 16.06.2005 that although, land owned by one colonizer Nandan Green Houses Limited was part of the scheme of acquisition, but it was proposed to be left for the reasons best known to the respondents and finally the land owned by Nandan Green Houses Limited has been left from acquisition only on the ground that it had been converted from agricultural to residential purposes, but similar treatment has not been given to the petitioners whereas in their case also conversion order for converting the land use from agricultural to residential has also been passed. Thus, it is clear that the entire exercise of acquisition undertaken by the respondents is discriminatory."

3. The appellant in above para have submitted to the Hon'ble High Court that their land has been converted from agricultural to residential. Hence, the land under discussion in the above mentioned cases is not agricultural land as already submitted by the appellants themselves before the Hon'ble High Court.

Submitted for kind consideration.”

Written submission forwarded vide letter dated 09.05.2023

“In this connection it is submitted that the contention of learned counsel of the appellant is superficial & camouflage and solely with pretext to any

how justify, a land which was neither put to agriculture use nor intended to be used for agriculture purpose.

2. In the submission of the appellant received on 08.05.2023, there are some unprecedented & unheard facts, firstly a complete new type of conversion. i.e. "Converted Residential Agriculture Land" has been incarnated by the appellant with a sole intent to welcome converted land (residential) into ambit of agriculture land so as to circumvent section 2(14) of the Act. The land can either be agriculture or residential converted land but the appellant propounded new theory of "Converted Residential Agriculture Land". Secondly, there is no whisper in submission as to whether file for conversion of the other chunk of land (claimed to be agriculture) was moved before JDA or any other authority as the same would have thrown light over the intention of the appellant to hold the same as agriculture or otherwise.

3. With this background, the contention is not tenable for want of following:

1. There is no Agriculture Income declared by the appellant in any of the financial year.

2. The notes on account annexed to the Audited financial statement also buttress the contention, that the land was never ever used for agriculture but even never intended to be used for agriculture. The relevant extract from notes on account is reproduced as under. for clearing the air over matter.

3. That the reference to the finding of the AO while making assessment u/s 143(3) for AY 2005-06, also cements the contention. The relevant part of the order is verbatim reproduced as under:

"The construction work of the country club has been stopped due to state government has proposed to acquire the major part of the land for the purpose of development of SEZ"

Emphasis Supplied

The mere glance over the observation will convey your honour that the assessee has prior to date of notification of acquisition has commenced construction of country club which was to be stopped due to proposal of acquisition therefore it is vividly clear like the day light that it was not the intent of the assessee to use the impugned land for agriculture purpose. It will be relevant to mention that there is difference between word "stopped" and "not commenced" in general parlance. The meaning of stopped suggests that any activity which was commenced now discontinued.

4. The appellant has converted 7.38 hectare of land out of 22.6162 hectare, which is roughly 33% of total holding but on the contrast the

appellant is alleging that same is very small converted area. It is pertinent to mention that the issue of converted land have seen light of day first time before the Worthy bench as the appellant deliberately concealed the fact of the converted land during the course of assessment.

Thus, taking all above factors in conjunction, will convey to your honour. without any iota of doubt that the contention of the appellant that land is agriculture is after thought & contrary to information on record.

Submitted for kind consideration.”

Written submission dated 18.05.2023

“The relevant part of Notes on Accounts attached with Audited Financial Accounts (as at 31st March, 2006) in the case of M/s Chokhi Dhani Developers Pvt. Ltd. is reproduced as under:-

“The Rajasthan State Government in exercise of the power vested under “The Land Acquisition Act 1894” has initiated process to compulsorily acquire some of the land owned by the company at Jaipur. The company has filed its objections before the competent authority notified by the state government in this regard which are yet to be disposed off.”

Submitted for your kind consideration.”

11. The Id. AR of the assessee submitted two paper book containing 237 pages in paper book I and 138 pages in paper book II being the documents relied upon by him. The Id. AR of the assessee also filed a detailed common submission in support of the CO and against the appeal filed by the revenue and the same is extracted in below;

Submission dated 08-08-2022

“The above appeal has been filed by department against appeal order passed by CIT (A) – IV, Jaipur dated 21-04-2022 in appeal No. 1214/2019-20. The department has raised following grounds of appeal:

1. *The Ld. CIT(A) has erred in law in holding that no additions can be made in proceedings under section 153A of the I.T. Act, 1961 in respect of the*

assessments which were completed prior to the date of search, except based on some incriminating material unearthed during the search which was not already available to the Assessing Officer. While granting relief to the assessee, the Ld. CIT(A) has failed to take note of the position that Hon'ble Supreme Court of India has admitted SLP against this proposition in the following matters:- (i) Principal Commissioner of Income Tax vs. Gahoi Foods (P.) Ltd. 117 taxman.com 118(SC) 272 Taxman 521(SC) dated 24-01-2020 (ii) Principal Commissioner of Income Tax, Central-4 vs. Dhananjay International Ltd. 114 taxman.com 351(SC)/270 Taxman 15(SC) dated 16-09-2019.

2. The Ld. CIT(A) has erred in law and on facts in not carrying out her duty of adjudicating the grounds on relief on merit, and dismissing them only on a technical ground.
3. Whether in the facts and in the circumstances of the case and in law the Ld. CIT(A) is justified in deleting the addition of Rs. 27,01,95,945/- by holding that the addition made on account of LTCG is without any reference to any incriminating seized material which could justify the addition.
4. The learned CIT Appeal has erred in granting relief to the assessee (i) on the basis of her finding that the transfer of land within the meaning of provisions of section 2(47) was completed on 19-02-2014 itself, a period falling in assessment year 2014-15 and not in assessment year 2016-17 being the year under consideration. (ii) holding that according to the assessing officer himself, the assessee has surrendered/relinquished his rights in the land in favor of JDA on 19-02-2014, and therefore the transaction should have been taxed in the assessment year 2014-15. (iii) and in doing so, the learned CIT(A) has ignored the vital facts that the demand notice for payment was issued on 18-06-2015, a period falling within assessment year 2016-17.
5. The appellant craves leave or reserves rights to amend, modify, alter add or forego any grounds(s) of appeal at any time before during the hearing of this appeal.

Cross objection of Assessee

In the C.O. assessee has taken following grounds:

1. That on the facts and in the circumstances of the case the Ld. CIT (A) is wrong, unjust and has erred in law in not adjudicating the ground of respondent that agricultural land measuring to 7.725 hectares situated at Village Jhai, Jaipur is situated outside 8 KM of municipal limit of Jaipur and therefore not a capital asset within meaning of section 2(14) of the I.T. Act, 1961 and therefore no capital gain is chargeable on its compulsory acquisition.
2. The respondent craves permission to add to or amend to any of grounds of appeal or to withdraw any of them.

(1) FACTS OF THE CASE:

The appellant is a private limited company. A return of income declaring total income at Rs. 1,14,000/-, as per provisions of section 139(1) of the IT Act, 1961 was filed on 12.10.2016 for the above said assessment year. The said return of income was processed under section 143(1) of the IT Act, 1961 accepting the declared income. A search and seizure action u/s 132 of the I.T. Act, 1961 was carried out at the business and residential premises of Chokhi Dhani Group on 30.11.2017. During the course of search, no incriminating material/document or jewellery was found or seized by the department.

Action of Ld. A.O.

After the search, a notice under section 153A was issued BY Ld. AO and a return declaring income at Rs. 1,14,000/- was filed in response to the said notice. The assessment was completed under section 143(3) read with section 153A of the IT Act, 1961 making an addition of Rs. 27,01,95,945/- to the declared income on account of alleged Long Term Capital Gain on compulsory acquisition of the agricultural land by the Jaipur Development Authority (JDA) in the year 2005-2007 under the provisions of Central Land Acquisition Act, 1894.

Order of CIT (A)

The assessee filed an appeal against the said assessment order before CIT (A), IV, Jaipur and filed written submissions and supporting documents which submissions are reproduced in appeal order. The Ld. CIT (A) considered the submissions of assessee and after detailed discussion in appeal order decided the grounds raised by assessee. The Ld CIT(A) allowed the appeal of assessee on legal ground. The Ld CIT(A) while deciding the appeal on legal ground relied upon the judgment of Hon'ble Supreme Court in Meeta Gutfgutia vs Pr. CIT (96 Taxmann. Com468), Delhi High Court in case of Kabul Chawla Vs ACIT (380 ITR 573) (Dlhi HC), All Cargo Global Logistic Ltd. Vs. DCIT (Bombay High Court) and various other recent decisions of Hon'ble Jurisdictional ITAT, Jaipur. For ready reference the findings of Ld. CIT (A) on legal ground are reproduced herein below:-

Para (xvii) of CIT(A) page no.17

"The present appeal concerns AY 2016-17. On the date of the search, the said assessment already stood completed, as discussed supra and the additions made by the AO u/s 143(3) r.w.s. 153A on account of long term capital gain is without any reference to any incriminating seized material which could justify the addition. Since no proceedings under the Income Tax Act were pending for AY 2016-17 as on the date of search, and accordingly scope of examination of issues in the assessment u/s 153A was required to be restricted to the incriminating material, if any, found as a result of search. It is observed that the addition is neither based on any single loose paper found/seized nor on any statement recorded during the course of search conducted in the

case of the appellant which can be considered as incriminating as is evident from the order of the AO. Further the reference made by the AO to the documents pertaining to allotment of land under compulsory acquisition cannot be considered as incriminating in view of the fact that these were already part and parcel of the returns of income filed by the appellant and forms part of the financials of the appellant company since A.Y.2005-06. Infact the department has also taken cognizance of this issue in the assessment proceedings u/s 143(3) of the Act for the A.Y.2005-06, as mentioned supra. Therefore in view of the aforesaid discussion and respectfully following the binding decision of the Hon'ble Jurisdictional High Court, decision of various other High Courts and the decision of Hon'ble Supreme Court as discussed supra, it is observed that the aforesaid addition made by the AO u/s 143(3)r.w.s.153A for the year under consideration is legally not tenable, not being based on any incriminating document/evidence found in the course of the search and hence is not liable to be sustained. Accordingly, the Ground of Appeal No 1 is treated as allowed."

Now the department is in appeal against the addition deleted by CIT (A) and assessee filed C.O. against not adjudicating the ground that agricultural land measuring to 26.2058 hectares situated at Village Newta, Jaipur is situated outside 8 KM of municipal limit of Jaipur and therefore not a capital asset within meaning of section 2(14) of the I.T. Act, 1961 and therefore no capital gain is chargeable on its compulsory acquisition.

2. The appellant Pvt. Ltd. company before submitting the ground-wise submissions, the appellant submits the following undisputed facts of the case:—

(i) That during the course of search and seizure action carried under section 132 of the IT Act by the Department no incriminating document was found and/or seized by the Department.

(ii) The agricultural land owned by the appellant and acquired by the Government under Central Land Acquisition Act, 1894 revised in the year 1984 was an agricultural land.

(iii) The details/particulars of the acquisition proceedings are as under :-

(a) Gazette Notification for acquisition of the land was issued on 20.12.2005 and published in the official gazette on 20.12.2005, a copy of the said Notification is enclosed herewith.

(b) Final Notification of land acquisition was issued by the Government on 8th May, 2006, copy enclosed

(c) Award determining total consideration payable by the Government on account of acquisition of the agricultural land was issued on 06.08.2007. The said award was an allotment order of land, copy enclosed.

(d) Land acquisition made by the government was challenged by the appellant before the Hon'ble Rajasthan High Court in the year 2007. However, since for a long time no verdict was given by the Hon'ble Rajasthan High Court, the appellant in the year 2014, made a settlement with the Government to end the long litigation on the issue. In consequence to the said settlement, the Government of Rajasthan issued a Ministerial Order dated 11.09.2014 to settle finally the litigation going on. In the said settlement order, the Government of Rajasthan agreed to allot 25% developed land in lieu of the appellant's agricultural land acquired by the Government. Further the said minister order was subject to withdrawal of Writ Petition filed by the appellant pending for disposal before the Hon'ble Rajasthan High Court. A copy of Ministerial Order is enclosed.

(e) The appellant in compliance to the terms of the Ministerial Order (supra) filed an Undertaking dated 22.10.2014 accepting the land acquisition consideration determined by the Government of Rajasthan by allotment of 25% developed land. The appellant also withdrew the Writ Petition pending for disposal before the Hon'ble Rajasthan High Court. A copy of Undertaking filed with the Government is enclosed herewith.

As per above facts, it is evident and verifiable that the consideration on account of acquisition of agricultural land was decided by the Government on 11.09.2014/22.10.2014 i.e. in the financial year 2014-15 relevant to assessment year 2015-16. Further, a Demand Notice cum Allotment Letter was issued by the Jaipur Development Authority on 18-06-2015 for the above said land agreed to be allotted to the appellant. The appellant deposited the said amount on 29-01-2016 and the transaction is recorded in regular audited books of accounts.

(f) Till date no physical possession of the land is given by the Jaipur Development Authority and accordingly till date the appellant has received no consideration on account of acquisition of the land.

(g) The appellant regularly disclosed the facts of compulsory acquisition of land by the State Government in its audited financial statement of accounts submitted/filed along with the Income Tax Returns. The department has also taken cognizance of the same in the assessment year 2005-06 during the course of assessment proceedings under section 143(3) of the IT Act, 1961 and the Id. AO has mentioned the facts in the impugned assessment order. For ready reference, the relevant para of the order is reproduced hereunder:-

“ The construction work of Country Club has been stopped due to State Government has proposed to acquire the major part of the land for the purpose of development of SEZ. A copy of the assessment order is also enclosed herewith.”

(h) In the assessment years 2006-07 to 2011-12 the disclosures made in the Director's Report in the audited documents and financial statement of accounts is as follows :-

S. No. (i) "As informed in the last AGM, the land belonging to the company has been acquired compulsorily for SEZ Project by Rajasthan State Government. The Writ Petition filed by the company against the Government of Rajasthan before Hon'ble Rajasthan High Court Jaipur Bench Jaipur is still pending for disposal. The company is continuously working on various options including purchase of alternate land and/or alternate project." A copy of audited financial statements and directors report is enclosed.

(iv) In the audited statements of account following Note was put regarding the acquisition proceedings, proposed allotment of land and the amount deposited as per the Demand Notice:-

(a) Assessment Year 2012-13 to 2015-16:

Rajasthan state Government has compulsorily acquired some of the land on by the company for development of SEZ. The writ petition filed by the company challenging the order of Govt. is pending for disposal before the Hon'ble Jaipur bench of High Court of Rajasthan Jaipur.

(b) Assessment Year 2016-17 :

Note No. 21.

The company has been allotted residential land measuring 13,950 sq. meters and commercial land measuring 129.84 sq. meters in village Raj Darbar and Jhai Jaipur respectively in lieu of its land situated in Nevta and Jhai village which was acquired by the State Government for development of SEZ. In compliance of the allotment letter dated 18-01-2016, the company has deposited Rs. 20,68,936/- towards one time Lease Demand to JDA and shown this amount under Note No. 9 "Long Term Loans and Advances" as the company has not yet received the Lease Deed from the JDA.

3. GROUND-WISE SUBMISSIONS OF THE APPELLANT:

The ground no. 1 to 4 are inter connected and on the similar issue hence combined submission is made as follows:-

As evident and verifiable from the assessment order that no incriminating document was neither found nor seized by the department for the above said assessment year. As no incriminating documents/loose papers were found / seized during the course of search at the residential premises of the assessee indicating any on money receipt/investment/advances made and any unexplained/overstated expenditure etc. in its books of account pertaining to the year under appeal thus the assessment year under appeal is an unabated

assessment year and accordingly additions made in the orders passed u/s 153C deserves to be held bad in law.

1(a) The reading of provisions of section 153A would reveal that the time limit for issuance of notice u/s 143 (2) stood expired on 30-09-2017 for the year under appeal and therefore, no assessment was pending at the time when search was conducted in this case and therefore additions, if any, to be made via assessment u/s 153A would be restricted to incriminating documents found during the course of search. In other words, no routine additions would be permitted to be made having no nexus with documents found in search. In the case of assessee, the search action was carried out on 30-11-2017 and the following assessment year(s) given in the below table stood completed on the date of search and accordingly there was no time to issue notice u/s 143(2) for the said assessment years: -

A.Y.	ROI Filling Date	143(2) notice time expiry	Date of Search
2016-17	15-10-2016	30-09-2017	30-11-2017

1(b) In the light of the facts narrated in the preceding paragraphs, it is evident that on the date of search *i.e.* 30-11-2017, income tax assessment for AY 2016-17 was un-abated. It is submitted that the provisions of section 153A of the Act, forms part of Chapter XIV of the Act contain special provisions for completing assessments in case of search conducted u/s. 132 of the Act or requisition made u/s. 132A of the Act. These provisions can be invoked only in cases where the Income-tax Department has exercised its extra ordinary powers of conducting search and seizure operations after complying with stringent pre-conditions prescribed in Section 132 of the Act. However, it is submitted that section 153A itself creates the fine distinction/differentiation amongst specified six assessment years depending whether prior to the date of search, the assessment proceedings are pending or not before the AO. It is noted that the relevant section itself clarifies that where an assessment was already completed against an assessee and any appeals or further proceedings are pending, then such appeals or other proceedings do not abate. Merely because an assessee is subjected to search u/s. 132 of the Act, such action by itself does not give carte blanche to the Department to subject such an assessee to the rigors of the assessment afresh for all the six years. It is for this reason that the Parliament in its wisdom has categorically created two classes among the six years, (a) un-abated assessment and (b) abated assessments. Consequent to a search conducted u/s. 132 of the Act, the AO is required to issue notices u/s. 153A of the Act to assess the income of the assessee for six assessment years preceding the date of search. These six assessment years comprise of assessments which are not abated (non-pending assessment before AO on the date of search); and assessments which are pending before the AO on the date of search, which would be

treated as abated. In the case of abated assessments, the AO is free to frame the assessment in regular manner and determine the correct taxable income for the relevant year *inter alia* including the undisclosed income un-earthed during search, having regard to the provisions of the Act. However, in relation to unabated assessments (AYs), which were not pending on the date of search, there is a restriction on the powers of the AO. In case of unabated assessments, the AO can re-assess the income only to the extent and with reference to any incriminating material which the Revenue has unearthed in the course of search. Merely because an assessee is subjected to search, he cannot be placed on a different pedestal or put in a more disadvantageous position than an assessee who is not subjected to search unless in the course of search some incriminating documents or evidence or information or material is gathered by the Investigating authorities so as to vest the AO with the necessary powers to make additions to the total income in relation to assessments which did not abate on account of search.

1 (c) In this connection it is further submitted that now it is a settled position of law on the issue that the requirement of assessment or reassessment under the said section has to be read in the context of sections 132 or 132A, in as much as, in case nothing incriminating is found on account of such search or requisition, then the question of reassessment of the concluded assessments does not arise, which would require more reiteration and it is only in the context of the abated assessment under second proviso which is required to be assessed. The words 'assess' or 'reassess' have been used at more than one place in the Section and a harmonious construction of the entire provision would lead to an irresistible conclusion that the word 'assess' has been used in the context of an abated proceedings and word "reasons" has been used for completed assessment proceedings, which would not abate as they are not pending on the date of initiation of the search or making of requisition and which would also necessarily support the interpretation that for the completed assessments, the same can be tinkered only based on the incriminating material found during the course of search or requisition of documents.

1 (d) The Hon'ble jurisdictional Rajasthan High court in the case of Jai Steel limited vs. ACIT (88 DTR 1) held that in case of completed assessments no addition can be made if no incriminating seized material is found during the course of search. The relevant observation of the judgment is reproduced below:

"In the firm opinion of this Court from a plain reading of the provision along with the purpose and purport of the said provision, which is intricately linked with search and requisition under Sections 132 and 132A of the Act, it is apparent that:

- (a) *The assessments or reassessments, which stand abated in terms of proviso to Section 153A of the Act, the AO acts under his original jurisdiction, for which, assessments have to be made;*

(b) *Regarding other cases, the addition to the income that has already been assessed, the assessment will be made on the basis of incriminating material and*

(c) *in absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made*

The above submissions are fully supported by series of judicial pronouncement, few of which are reproduced herewith:

- (i) All Cargo Global Logistic Ltd. Vs. DCIT 137 ITD 287 (Mum)(SB) – Upheld by Bombay High Court.

Relevant extracts:

Para 58 of SB decisions: Thus, question No. 1 before us is answered as under:-

- (a) In assessments that are abated, the A.O. retains the original jurisdiction as well as jurisdiction conferred on him u/s 153A for which assessments shall be made for each of the six assessment years separately :
- (b) In other cases, in addition to the income that has already been assessed, the assessment u/s 153A will be made on the basis of incriminating material, which in the context of relevant provisions means – (i) books of account, other documents, found in the course of search but not produced in the course of original assessment, and (ii) Undisclosed income or property discovered in the course of search.
- (ii) CIT vs Kabul Chawla, Delhi High Court, reported in (2016) 380 ITR 573 (Delhi) vide ITA Nos. 707/2014 and others, dated 28.8.2015, (SLP dismissed by Hon'ble Supreme Court on 7-12-2015) wherein the Hon'ble Delhi High Court has reiterated the above settled legal proposition that since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed
- (iii) Rajasthan High Court in the case of Jai Steel (India) vs. ACIT reported in 259 CTR (Raj.) 281.

“..... The requirement of assessment or reassessment under the said section has to be read in the context of sections 132 or 132A, in as much as, in case nothing incriminating is found on account of such search or requisition, then the question of reassessment of the concluded assessments does not arise, which would require more reiteration and it is only in the context of the abated assessment under second proviso which is required to be assessed.

.....

.....

Para 26 of the Judgement: The plea raised on behalf of the assessee that as the first proviso provides for assessment of the total income in respect of each assessment year falling within the six assessment years, is merely reading the said provision in isolation and not in the context of the entire section. The words 'assess' or 'reassess' have been used at more than one place in the Section and a harmonious construction of the entire provision would lead to an irresistible conclusion that the word 'assess' has been used in the context of an abated proceedings and word "reasons" has been used for completed assessment proceedings, which would not abate as they are not pending on the date of initiation of the search or making of requisition and which would also necessarily support the interpretation that for the completed assessments, the same can be tinkered only based on the incriminating material found during the course of search or requisition of documents.

- (iv) Recently Hon'ble Supreme court vide order dated 02-07-2018 in *Meeta Gutgutia Vs. Pr CIT (96 Taxmann.com 468)* has held that Invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search was not justified in absence of incriminating material found during search qua each such earlier assessment year. The head note of the judgment is as under:

Section 153A of the Income-tax Act, 1961-Search and seizure (General principles)- Assessment years 2001-02 to 2003-04 and 2004-05 - High Court in impugned order held that invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search was not justified in absence of incriminating material found during search qua each such earlier assessment year- Whether SIP against aid decision was to be dismissed- Held, yes [Para2][In favour of assessee]

- (v) Similar view point was expressed by the Hon'ble Delhi High Court in the case of *Kabul Chawla vs. ACIT 380 ITR 573 (Del HC)*. The relevant observation of Hon'ble court could be seen in para 37 & 38 of order.

1 (e) Summary of the legal position:

"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law exploited in the aforementioned decisions, the legal position that emerges is as under :

- i. Once a search takes place under Section 132 of the Act , notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*

- ii. *Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*
- iii. *The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the "total income" of the aforementioned six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".*
- iv. *Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment files to be made under this Section only on the basis of seized material."*
- v. *In the absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated" proceedings i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*
- vi. *In so far as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of these search and any other material existing or brought on the record of the AO.*
- vii. *Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.*

The SLP filed against the above said order has been dismissed by the Hon'ble Supreme Court vide order dated 7th December, 2015.

1 (f) The appellant also places reliance on the following judgements of Hon'ble Supreme Court and Hon'ble High Courts:

- (i) Scope of section 153A is limited to assessing only search related income and thereby revenue is denied opportunity of taxing other escaped income that came to notice of the Assessing Officer – Principal CIT v.

Vimal Kumar Rathi (2020) 115 taxmann.com 219 (Bom.), [SLP dismissed in Principal CIT v. Vimal Kumar Rathi (2020) 115 taxmann.com 220/273 Taxman 274 (SC).

- (ii) There has to be incriminating material recovered during search qua assessee in each of years for purposes of framing an assessment under section 153A – Principal CIT v. Ms. Lata Jain (2016) 384 ITR 543 (Delhi).
- (iii) Assessment under section 153A can be made only on the basis of incriminating material found in search under section 132 and only income related to incriminating documents found during search can be considered in assessment – CIT v. Deepak Kumar Agarwal (2017) 86 taxmann.com 3/251 Taxman 22 (Bom.)
- (iv) There being no incriminating material found during search, proceedings initiated under section 153A were not justified – Principal CIT v. Vikas Gutgutia (2017) 396 ITR 691 (Delhi)
- (v) Under section 153A, an assessment has to be made in relating to search or requisition, namely, in relation to material disclosed during search or requisition; if no incriminating material is found during search, no addition can be made on the basis of material collected after search – Principal CIT v. Saumiya Construction Pvt. Ltd (2017) (8) taxmann.com 292 (Guj).
- (vi) Only undisclosed income and undisclosed assets detected during search can be brought to tax in assessment under section 153A – Principal CIT v. Dipak Jashvantilal Panchal (2017) 397 ITR 153 (Guj)/ Principal CIT v. Devangi (2017) 394 ITR 184 (Guj.)

(vii) The Hon'ble ITAT, Jaipur bench, Jaipur and other Benches expressed similar view point in various cases including the following:-

- a) The Hon'ble jurisdictional ITAT, Jaipur Bench, Jaipur in the recent case of M/s Vijeyeta Buildcon Pvt. Ltd. Vs ACIT, CC-1, Jaipur (ITA No. 980/JP/2018) date of order 27-10-2020 held that “ in the entirety of facts and circumstances of the case where the reassessment completed u/s 153A without any reference to the incriminating material, following the binding precedents as cited above including that of the Jurisdictional High Court, the addition made by the AO u/s 40(A)(3) is not sustainable and the same is hereby deleted.
- b) DCIT Vs Venus Overseas Pvt. Ltd. (ITAT Delhi) ITA Nos. 276, 277, 278 & 280/DEL/2015 dated 25-08-2020 :As for the A.Y. 2006-07 to 2010-11 no incriminating material was found appeals are dismissed as per Rule 27 of ITAT Rules on the ground that the impugned assessment are bad in law as no incriminating material was found at the time of search which could trigger the provision of section 153C of the Act.
- c) Jai Lokenath Oil Extraction P. Ltd. Vs. DCIT (2017) 166 ITD 161 (Kol – ITAT).

- d) *Ratan Kumar Sharma Vs. DCIT* (ITAT – JPR ITA No. 797/JP/2014 order dated 25-7-18).
- e) *ACIT Vs Majestic Commercial Pvt. Ltd. (Kolkata ITAT ITA No. 873/KOL/2018) dated 20-03-2020 held: “No addition u/s 153A if incriminating material not found in search.”*
- 1 (g) Further Ld. CIT(A), Central, Jaipur in the various recent cases also allowed the appeal on similar ground. Few of them are as follows:-
- a) The Ld. CIT (A), Central, Jaipur in the case of ACIT CC-3, Jaipur vs Bitthal Das Parwal HUF, Jaipur (Appeal No. 362/JP/2017-18) dated 26-03-2019 held that:-

“In the assessment order there is no mention or finding that the additions have been made by the AO on the basis of any incriminating material found during the course of search and seizure in the case of the assessee. The AO has solely relied upon the report of the Investigation Wing Kolkata and statement of one Shri Anand Sharma recorded by the Investigation Wing during the survey under section 133A of the Act. Therefore, even if the information/report of the Investigation Wing Kolkata is considered as a relevant evidence, the same cannot be regarded as incriminating material unearthed during the course of search and seizure under section 132 of the IT Act in case of the assessee. The requirement for making the addition under section 153A in the assessment years where the assessment was not pending on the date of search and the proceedings are in the nature of reassessment is essentially the incriminating material disclosing undisclosed income which was not disclosed by the assessee. In the case in hand, the AO himself has not claimed any incriminating material found during the search and seizure in the case of the assessee. Accordingly, in the facts and circumstances of the case and in view of the binding precedents on this issue in which the SLP filed by the revenue was also dismissed by the Hon’ble Supreme Court, the additions made by the AO while passing the assessment orders under section 153A for the assessment years 2010-11 to 13-14 are not sustainable and accordingly the same are liable to be deleted. We order accordingly.

Thus, the crux of the above decision is that in case of completed assessment as on the date of search u/s 132(1) of the act no addition can be made unless there is ‘incriminating seized material found & seized during the course of search’. The statement of entry operator cannot be considered as incriminating seized material found during the course of search.”

- b) In the case of DCIT, CC-2, Jaipur Vs Ksheer Sagar Developers Pvt. Ltd, Jaipur (Appeal No. 472/2016-17) dated 31-07-2019 it was held:

7.1 *It is clear from the table above that assessments stood completed on the date of search and there was no time left to issue the notice u/s 143(2). Careful perusal of the assessment orders indicated that none of the additions/disallowances (except Ground of Appeal 4 in A.Y. 2013-14) made are based on seized material found during the course of search on the appellant premises.*

7.2 *in the remand report the Ld. AO has referred to decision of Hon'ble High Court of Rajasthan in the case of CIT Vs Ravi Mathur (citation not provided) to counter the legal grounds taken. In my view the decision cited is a dated decision and the issue is now settled by the decision of Hon'ble Supreme Court.*

After discussion on various judgements including judgment of Hon'ble Supreme Court in the case of Meeta Gutgutia the Ld CIT(A) held that since no incriminating documents were found as a result of search the addition made by A.O. is not justified and deserves to be deleted.

- c) Recent judgements dated 25-10-2021 and 24-11-2021
- (i) *Dy. CIT, Central V. Smt. Ratan Kanwar Ratnawat A.No. 1057/2019-20 A.Y. 2015-16 date of order 25-10-2021*
- (ii) *Shri Mahendra Singh Ratnawat A.No. 1089/2019-20 A.Y. 2016-17 date of order 24-11-2021*

As per above decided cases, the appellant's case is squarely covered by the ratio decided in the above said judgments and the legal position on the issue is finally settled. It is therefore prayed to your honour, that since no incriminating documents were found as a result of search and the assessment was an unabated one. Accordingly, the assessment made by Ld. A.O. is wrong, bad in law and without jurisdiction deserves to be set aside.

Cross objection of Assessee

In the C.O. assessee has taken following grounds:

1. *That on the facts and in the circumstances of the case the Ld. CIT (A) is wrong, unjust and has in law in not adjudicating the ground of respondent that agricultural land measuring to 7.725 hectares situated at Village Jhai, Jaipur is situated outside 8 KM of municipal limit of Jaipur and therefore not a capital asset within meaning of section 2(14) of the I.T. Act, 1961 and therefore no capital gain is chargeable on its compulsory acquisition.*
2. *The respondent craves permission to add to or amend to any of grounds of appeal or to withdraw any of them.*

Ground No. 1 of the Cross appeal :- The ground no.1 is challenging the finding of the Id. AO that the agricultural land sold was situated within 8 KM of Municipal Limits of Jaipur and, therefore, not a capital asset within the meaning of section 2(14) of the I.T. Act, 1961. Accordingly capital gain tax is leviable on compulsory acquisition of the land. In this connection it is submitted that the above said finding of the Id. AO was based on the enquiries made from the Tehsildar, Sanganer vide his letter dated 14.11.2019 and 15.11.2019 and also on the spot verification/inspection made by the Income Tax Inspector of the Id. Assessing Officer's Circle. From the above said facts mentioned in the impugned assessment order, it is evident and clear that the Id. AO enquired about the distance of land in the year 2019 for the assessment year 2016-17 and not as on 6th day of January, 1994 as per provisions of section 2(14) of the IT Act, 1961 read with notification/circular No. [SO 9447] (File No. 164/3/87-ITA.I) dated 06-01-1994. For better explaining the case of the assessee company, the provisions of section 2(14) of the IT Act, 1961 are reproduced hereunder :-

"2(14) 'capital asset' means property of any kind held by an assessee, whether or not connected with his business or profession, but does not include –

- (iii) *agricultural land in India, not being land situate-*
 - (a) *in any area which is comprised within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or*
 - (b) *in any area within such distance, not being more than eight kilometers, from the local limits of any municipality or cantonment board referred to in item (a), as the Central government may, having regard to the extent of, and scope for, urbanization of that area and other relevant considerations, specified in this behalf by notification in the Official Gazette."*

As per above definition of Capital Asset to include the agricultural land was brought on the Statute by the Finance Bill, 1970 and it would, therefore, be relevant to refer to the statement of objects and reasons vide introductory amendment to the Capital Asset contained in section 2(14) by the Finance Bill, 1970 as reported in 75 ITR (St.) 69 and relevant extracts is reproduced as under :-

"Sub-clause (a) seeks to amend clause (14) of section 2 of the Income-tax Act which defines the term 'capital asset'. The amendment seeks to bring within the term 'capital asset' agricultural land situated within the limits of any municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee or by any other name) or a cantonment board having a

population of 10,000 or more according to the last census for which the figures have been published before the first day of the previous year. Further, agricultural land situated in areas lying within a distance not exceeding 8 kilometers from the local limits of such municipalities or cantonment boards will also be covered by the amended definition of 'capital asset', if such areas are, having regard to the extent of and scope for their urbanization and other relevant considerations, notified by the Central Government in this behalf. The effect of the proposed amendment will be that capital gains arising from the transfer of agricultural land situated in municipal or other urban areas or notified adjoining areas will be liable to income-tax for the assessment year 1970-71 and subsequent years....."

"Agricultural land which is situated outside such municipal or other urban areas or the notified adjoining areas will, however, continue to be excluded from the term "capital asset" and no capital gains tax will be payable with reference to the transfer of such agricultural land, as hitherto."

2 (a). In context to above section 2(14)(iiib) of the IT Act, a notification dated 6th January, 1994 was issued by the Central Government. The relevant extracts of the said notification is reproduced herein below :-

" Now, therefore, in exercise of the powers conferred by item (B) of clause (ii) of the proviso to sub-clause (c) of clause (1A) and item (b) of sub-clause (iii) of clause (14) of section 2 of the Income-tax Act, 1961 (43 of 1961), and in supersession of the notification of the Government of India in the erstwhile Ministry of Finance (Department of Revenue and Insurance) No. S.O. 77 (E) dated February 6, 1973 see [1973] 89 ITR St.) 145, the Central Government having regard to the extent of, and scope for urbanization of the areas concerned and other relevant considerations, hereby specifies the areas shown in column (4) of the Schedule hereto annexed and falling outside the local limits of municipality or cantonment boards, as the case may be, shown in the corresponding entry in column (3) thereof and against the State or Union Territory shown in column (2) thereof for the purposes of the above mentioned provision of the Income-tax Act, 1961 (43 of 1961).

No.	Name of the State or Union Territory	Name of the municipality or cantonment board falling in the State/Union Territory mentioned under column (2)	Details of areas falling outside the local limits of municipality or – cantonment board, etc., mentioned under column (3).

1	2	3	4
19.	Rajasthan		
		7. Jaipur	Areas up to a distance of 8 kms. From the municipal limits in all directions.
**	**	**	**

Explanation 1.(1) In this notification, "Municipality" shall mean any areas which is comprised within the jurisdiction of a Municipality (whether known as a municipality, municipal corporation, notified areas committee, town areas committee, town committee or by any other name) which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year.

(2) The reference to municipal limits or the limit of Cantonment Board in the schedule to this notification is to the limits as existing on the date on which the limits as existing on the date on which the notification is published in the Official Gazette."

2(b). A perusal of the above provisions read with notification makes it clear that what is intended to be covered in the term "capital asset" is agricultural land comprised within the jurisdiction of a municipality or within the specified distance from the local limits of municipality or other local bodies mentioned therein as specified in the said notification is, therefore, mandatory to bring the land in the definition of "capital asset" which is not located within the limits of the Municipality but located within the distance of 8 kms from the local limits. Further, in view of the above, the question of land whether located beyond 8 kms from the Municipal limits of Jaipur as on the date of Notification dated 06.01.1994 but subsequently it falls within the distance of 8 kms from the Municipal limits due to expansion of Municipal Limits, would still be regarded as agricultural land not falling in the definition of "capital asset" in terms of section 2(14)(iii) of the IT Act, 1961. Further, there is no dispute that the Jaipur Municipal Limits has been duly notified in the Notification dated 06.01.1994 and as on the date of said Notification i.e. on 06.01.1994 the land in question was beyond 8 kms from the Municipal limits exists at the point of time. In this connection it is further submitted that in the month of January, 1994 the Jaipur Municipal Limits at Ajmer Road (where land of the assessee company is situated) was at DCM Ajmera Farm and from the said municipal limits the agricultural land was situated at 17 KM distance. Documentary evidence in support of submission is enclosed. The dispute between the assessee and the

department arises because of the expansion of Municipal limits as on the date of allotment of the land in the year 2014 and as on that day the distance of the land in question was not more than 8 kms from the Municipal limits. It is also evident and verifiable from the assessment order that the Id. AO has treated the land in question as not falling under the exclusion clause of section 2(14)(iiib) of the IT Act, for the said reason i.e. the land was within the 8 kms of Municipal limits in the year 2014. In this connection it is further submitted that as per sub-clause (b) of clause (iii) of section 2(14), the notification of the Central Government, is mandatory to bring the land in the definition of capital asset which is not located within the limits of Municipality but located within the distance of 8 kms from the local limits. So far the agricultural land which is located in the limits of Municipal Limits, the same will be treated as capital asset and no further requirement is to be examined. As in the case of assessee, the agricultural land was situated beyond 8 kms of limits of Municipality in the year 1994 and accordingly in order to determine whether the land in question falls under mischief of sub-clause (b) of section 2(14)(iii) of the IT Act, the distance of 8 kms has to be taken into account in terms of notification dated 06.01.1994.

2 (c). Further, as per Explanation-2 of the said Notification dated 06.01.1994, the Municipal Limits is to be the limits as existing on the date on which the notification is published in the official Gazette. For ready reference or for the sake of convenience, the Explanation-2 of the Notification is reproduced hereunder :-

“(2) The reference to the municipal limits or the limit of Cantonment Board in the Schedule to this notification is to the limits as existing on the date on which on which the notification is published in the official gazette.”

As per the above position in law, it is clear that section 2(14)(iiib) of the IT Act covers the situation where the subject land is not only located within the distance of 8 kms from the local limits which is covered by clause (a) to section 2(14)(iii) of the IT Act, but also requires the fulfillment of the condition that the Central Government has issued a notification under this Clause for the purpose of including the area up to 8 kms from the municipal limits to render the land as a “capital asset.” In other words, whether the land in question falls under mischief of sub-clause (b) of section 2(14)(iii) of the IT Act, the distance of 8 kms has to be taken into account in terms of notification dated 06.01.1994 as per Explanation-2 of the said notification. Further, there is no amendment or withdrawal of the said notification except the amendment brought in the Statute by the Finance Act, 2013 whereby the requirement of said notification has been dispensed with. The amendment by the Finance Act 2013 is with effect from 01.04.2014, therefore, applies prospectively in relation to the transfer of the agricultural land after 01.04.2014 and subsequent years. As in the case of assessee, the land was acquired in the year 2005-06 and accordingly the distance of the land is to be determined with reference to the year 2005 read with Explanation-2 of the Notification dated 06.01.1994. In this connection it is also submitted

that regarding measurement of distance of the land, there was no direct road from the main road and accordingly the distance has to be measured by the approach road. The amendment brought by the Finance Act, 2013 to measure the distance aerially is effective from 01.04.2014 and accordingly applies for the said assessment year. The above said submissions are drawing support from the Hon'ble Jaipur ITAT's judgment in case of Smt.(Dr.) Subha Tripathi in ITA No. 1129/JUP/2011 A.Y. 2008-09 dated 24.05.2013. The relevant part of the order is reproduced hereunder:-

"2.7. We have considered the rival submissions as well as the materials on record. The question arises for our consideration and adjudication is whether the land in question though located beyond 8 kms from the Municipal Limits of Jaipur Municipality as on the date of notification dated 06.01.1994 but subsequently it falls within the distance of 8 kms from the Municipal Limits due to the expansion of the Municipal Limits would still be regarded as agricultural land not falling in the definition of capital asset in terms of Section 2(14)(iii)(b) of the Act. There is no dispute that Jaipur Municipality has been duly notified vide said notification dated 6.01.1994 and as on the date of said notification, the land in question was beyond 8 kms from the Municipal Limits exists at that point of time. The dispute arises because of the expansion of Municipal Limits and thereby the said distance from the Municipal Limits as on the date of sale of the land in question is only 2 kms and thereby the authorities below have treated the land in question as not falling under the exclusion clause of Section 2(14)(iii)(b) of the Act. There is no quarrel on the point that as per sub-clause (b) of clause (iii) of Section 2(14), the notification of the Central Govt. is mandatory to bring the land in the definition of capital asset which is not located within the limits of the Municipality but located within the distance of 8 kms from the local limits. So far, the agricultural land which is located in the limits of Municipal Limits, the same will be treated as capital asset and no further requirement is to be examined. Since the land in question is located outside the local limits of Municipality, therefore, in order to determine whether the land in question falls under mischief of sub-clause (b) of Section 2(14)(iii) of the Act, the distance of 8 kms has to be taken into account in terms of notification dated 6.01.1994. As per explanation 2 of the said notification dated 6.01.1994, the Municipal Limits is to be the limits as existing on the date on which the notification is published in the official gazette. We quote the explanation 2 of the notification (supra) as under :-

"(2) The reference to the municipal limits or the limit of Cantonment Board in the Schedule to this notification is to the limits as existing on the date on which on which the notification is published in the official gazette."

If the stand of the Revenue is accepted that the distance of 8 kms should be considered from the Municipal Limit exists as on the date of the sale of land then it would render the notification issued by the Central Govt. as ineffective and unworkable / otiose. As it is made clear by explanation

2 of the said notification that Municipal Limits is to be considered as existing on the date on which notification is published in the official gazette, therefore, the date of notification is relevant and material point to determine the distance of 18 kms from Municipal Limits. There is no amendment or withdrawal of the said notification except a recent amendment has been brought in the statute by the Finance Act 2013 whereby the requirement of said notification has been dispensed with for invoking sub-clause (b) of clause (iii) of Section 2(14) of the Act w.e.f. 01.04.2014. thus it is discernible from the notification dated 06.01.1994 and the recent amendment in the statute whereby the said notification has been dispensed with that the distance of 8 kms has to be considered from the Municipal Limits as exists on the date of notification for the purpose of invoking sub-clause (b) of clause (iii) of Section 2(14) of the Act. Accordingly we hold that the land in question which was located beyond 8 kms from the Municipal Limits as on 6.01.1994 when the notification was published in the official gazette, the same would fall under the exclusion clause of the term "capital asset" as per provisions of 2(14)(iii)(b) of the Act."

In view of the above facts and a settled law position on the issue the agricultural land of the assessee, acquired by the Government, was situated beyond 8 KMs from the local Municipal Limits. Thus the said agricultural land acquired was not falling in the definition of capital asset in terms of section 2(14)(iii) of the I.T. Act, 1961 and accordingly no capital gain tax is leviable thereon.

The Ground No. 2 is a General ground."

12. In addition to the above written submission on 27/12/2022, the Id. AR appearing on behalf of the assessee submitted as under:-

"As directed by Hon'ble Bench during the course of previous hearing the appellant company submits the brief summary of events occurred in the course of acquisition of land by Government under Central Land Acquisition Act, 1894.

The details/particulars of the acquisition proceedings are as under :-

(a) Gazette Notification for acquisition of the land was issued on 20.12.2005 and published in the official gazette on 20.12.2005, a copy of the said Notification has already been filed.

(b) Final Notification of land acquisition was issued by the Government on 8th May, 2006.

(c) Award determining total consideration payable by the Government on account of acquisition of the agricultural land was issued on 06.08.2007. The said award was an allotment order of land.

(d) Land acquisition made by the government was challenged by the appellant before the Hon'ble Rajasthan High Court in the year 2007. However, since for a long time no verdict was given by the Hon'ble Rajasthan High Court, the appellant in the year 2014, made a settlement with the Government to end the long litigation on the issue. In consequence to the said settlement, the Government of Rajasthan issued a Ministerial Order dated 11.09.2014 to settle finally the litigation going on. In the said settlement order, the Government of Rajasthan agreed to allot 25% developed land in lieu of the appellant's agricultural land acquired by the Government. Further the said minister order was subject to withdrawal of Writ Petition filed by the appellant pending for disposal before the Hon'ble Rajasthan High Court.

(e) The appellant in compliance to the terms of the Ministerial Order (supra) filed an Undertaking dated 22.10.2014 accepting the land acquisition consideration determined by the Government of Rajasthan by allotment of 25% developed land. The appellant also withdrew the Writ Petition pending for disposal before the Hon'ble Rajasthan High Court. A copy of Undertaking filed with the Government has already been filed.

As per above facts, it is evident and verifiable that the consideration on account of acquisition of agricultural land was decided by the Government on 11.09.2014/22.10.2014 i.e. in the financial year 2014-15 relevant to assessment year 2015-16. Further, a Demand Notice cum Allotment Letter was issued by the Jaipur Development Authority on 18-06-2015 for the above said land agreed to be allotted to the appellant. The appellant deposited the said amount on 29-01-2016 and the transaction is recorded in regular audited books of accounts.

(f) Till date no physical possession of the land is given by the Jaipur Development Authority and accordingly till date the appellant has received no consideration on account of acquisition of the land.

(g) The appellant regularly disclosed the facts of compulsory acquisition of land by the State Government in its audited financial statement of accounts submitted/filed along with the Income Tax Returns. The department has also taken cognizance of the same in the assessment year 2005-06 during the course of assessment proceedings under section 143(3) of the IT Act, 1961 and the Id. AO has mentioned the facts in the impugned assessment order. For ready reference, the relevant para of the order is reproduced hereunder:-

“ The construction work of Country Club has been stopped due to State Government has proposed to acquire the major part of the land for the purpose of development of SEZ. A copy of the assessment order is also enclosed herewith.”

- (h) In the assessment years 2006-07 to 2011-12 the disclosures made in the Director's Report in the audited documents and financial statement of accounts is as follows :-

S. No. (i) "As informed in the last AGM, the land belonging to the company has been acquired compulsorily for SEZ Project by Rajasthan State Government. The Writ Petition filed by the company against the Government of Rajasthan before Hon'ble Rajasthan High Court Jaipur Bench Jaipur is still pending for disposal. The company is continuously working on various options including purchase of alternate land and/or alternate project." A copy of audited financial statements and directors report is enclosed.

(iv) In the audited statements of account following Note was put regarding the acquisition proceedings, proposed allotment of land and the amount deposited as per the Demand Notice:-

- (a) Assessment Year 2012-13 to 2015-16:

Rajasthan state Government has compulsorily acquired some of the land on by the company for development of SEZ. The writ petition filed by the company challenging the order of Govt. is pending for disposal before the Hon'ble Jaipur bench of High Court of Rajasthan Jaipur.

- (b) Assessment Year 2016-17 :

Note No. 21.

The company has been allotted residential land measuring 13,950 sq. meters and commercial land measuring 129.84 sq. meters in village Raj Darbar and Jhai Jaipur respectively in lieu of its land situated in Nevta and Jhai village which was acquired by the State Government for development of SEZ. In compliance of the allotment letter dated 18-01-2016, the company has deposited Rs. 20,68,936/- towards one time Lease Demand to JDA and shown this amount under Note No. 9 "Long Term Loans and Advances" as the company has not yet received the Lease Deed from the JDA."

12.1 Further, in addition to the above written submission on 25/01/2023, the Id. AR appearing on behalf of the assessee submitted as under:-

"This is with reference to the appellants cross objections and in continuation to the earlier written submissions submitted regarding agricultural land of the appellant company [Acquired by Government of Rajasthan] was not a capital asset within the meaning of section 2(14) of

the IT Act, 1961. In this connection the appellant further submits as follows:-

1. As per revenue record and other details available on assessment record, it is evident and verifiable that the land(s) of the appellant was an agricultural land, and was being used for agricultural purposes up to the year 2005 i.e. before the acquisition of the said land by the Rajasthan State Government in the year 2005. The supra facts and submissions are also supported by the acquisition Notification issued by the Government of Rajasthan as well as, Khasra Girdawari reports prepared annually by the Land Revenue Department of Government of Rajasthan. From the said Khasra Girdawari reports it is verifiable that major chunk of land(s) was Barani nature and seasonal crops as per rain fallen in the relevant year(s), were produced L.e. Bajra, Gwar and Chonla etc. As the harvesting/tilling of the land and consequential production of grains and fodders were completely dependent on climatically position in the relevant year(s). Although after meeting the harvesting wages and other expenditure incurred by the farmer(s) cultivating the land, no surplus/agricultural income was generated. Further as held by the Hon'ble Calcutta High court in case of CIT Vs. Borhat Tea Company Ltd. (1982) 138 ITR 783 (Cal.), That "for the purpose of land being agricultural land, actual operation of cultivation or tilling of the land is not necessary what is to be seen whether such land is capable of agricultural operation being carried on". Thus the said land was an agricultural land as defined in section 2(1A) of the Income Tax Act, 1961. Further, the appellant company treated the said agricultural land(s) as capital investment in its books of accounts and presented in financial statement of accounts (audited) Balance sheet under the head fixed assets and not as stock in trade i.e. business assets. The submissions are verifiable from the copies of financial statement(s) i.e. Balance Sheets regularly filed along with the return(s) of income with the Income Tax Department. Copy of the said Balance Sheet(s) is also enclosed herewith (Paper Book Page No. 88-222). In view of the above facts, duly supported by legal documents/evidence that there is absolutely no dispute regarding status of land as an agricultural land and cultivation was carried on the said land till the date of acquisition by the same by the Government of Rajasthan.

2. Further now it is a settled position of law that for determination of status of land us being agricultural land what is to be seen is whether such land is an agricultural in the revenue record. The submission are supported by the latest Judgment of the Hon'ble Supreme Court of India in case of Principal Commissioner of Income Tax vs. P.S. Raghupathy (2019) 102 Taxmann.com 223(SC). The head notes of the said judgment are reproduced herein below:

"Section 2(14) of the Income Tax Act, 1961- Capital gains- Capital asset (Agriculture land) - Assessment year 2007-08- During relevant year, assessee sold a piece of land- He did not declare any income from said sale on ground that land in question was agricultural land - Revenue authorities rejected assessee's claim taking a view that assessee could

not establish that land was agricultural land and could not submit books of account and supporting documents such as bills and vouchers towards agricultural activities- However, Tribunal, noted that land revenue records clearly showed that land specified was agricultural land- Moreover, distance from nearest Municipality had also been shown to be beyond 8 kms. Further, even though assessee ran a nursery on agricultural land, same was held to be agricultural operation by jurisdictional High Court - Accordingly, Tribunal allowed assessee's claim- High court by impugned order held that, on facts, no substantial question of law arose from Tribunal's order - Whether Special Leave Petition filed against impugned order was to be dismissed.

3. The same view was also taken held by the Hon'ble Calcutta High Court in case of CIT vs. Borhat Tea Company Ltd. (1982) 138 ITR 783 (Cal.), stated supra.

As in the case of appellant it is evident from the relevant legal documentary evidences that land of the appellant company in revenue record was an agricultural land upto the year 2005 i.e. before the date of acquisition of the said land by the Government of Rajasthan. It is therefore prayed to your Honour that the status of the land may kindly be considered as an agricultural land situated more than 8 kms. from the municipal limits in the material year. The appellant again prays for relief accordingly.”

12.2 Further, the assessee submitted on 08.05.2023 his reply which is reproduced as under:-

“This is with reference to the written submissions dated 03.05.2023 filed by the id. Senior D/R-II, ITAT, Jaipur. A copy of the said submission was supplied by the Hon'ble Bench on 04.05.2023 to the appellant. In this connection the appellant submits as follows:-

1. The reference made by the Id. Sr. D/R regarding the conversion of agricultural land to residential is based on the SB Writ Petition No. 4181/2007 filed before the Hon'ble Rajasthan High Court by M/s. Vision Estate Developers Pvt. Ltd. The relevant para and page number of the said Writ Petition has also been mentioned in the said written submissions. The plea taken by the Id. Sr. D/R is that the appellant's land is a converted land and not an agricultural land as claimed by the appellant. In this connection, the appellant submits that there were two types of lands- one was agricultural lands and another was converted residential agricultural land. The total area of the agricultural land was 6.975 hectare and another was a very small converted area of land measuring 0.75 hectare. The facts are verifiable from page nos. 2 & 27 of the assessment order. Thus the observation/submissions made by the Id. Sr. D/R that assessee's land were converted land are incorrect and far

from the correct facts of the case. In this connection, it is also submitted and worthwhile to place on record that the Id. AO has not considered the converted land in the determination of the total assessable income being the lands are under dispute and the JDA has not considered even for allotment of the land in compensation for the said converted land.

In view of the above facts and circumstances of the case, the claim of the appellant that its land were agricultural land at the time of acquisition is correct and supported by the assessment order itself.

2. The appellant has already submitted Khasra Girdhawari Report prepared by the Land Revenue Department, Government of Rajasthan, before the Hon'ble Bench along with its written submissions filed on 23.01.2023 at pages 11 & 12 of the enclosures thereof, for verification of the fact that the said lands were agricultural land at the time of acquisition by the Rajasthan State Government.

In view of the above facts and circumstances of the case, the appellant had rightly and correctly claimed that the lands acquired by the JDA/Government of Rajasthan were agricultural land and prays for relief accordingly.”

12.3 The Id. AR of the assessee in support of the written submission filed a paper book containing following records:

S. No.	Particulars	Page No.
AY 2016-17		
1	Copy of letter of Director of M/s Chokhi Dhani Developer Pvt. Ltd. to the Commissioner of JDA which was seized as page no. 16 to 20 of Exhibit-2 seized from Chowki Dhani Tower, S-8, Shyam Nagar, Ajmer Road, Jaipur	1 to 6
2	Page No. 1 to 82 of Exhibit-4 seized from Chokhi Dhani Tower, S-8, Shyam Nagar, Ajmer Road, Jaipur containing certain 'developed land allotment letters', note sheet pages of JDA regarding acquisition & allotment of land & miscellaneous correspondence regarding acquisition of land situated at Village Jhai and Nevta, Tehsil-Sanganer, District-Jaipur (Rajasthan) related to Chokhi Dhani Group.	7 to 100
3	Pages of Exhibit-31 seized from Chokhi Dhani Tower, S-8, Shyam Nagar, Ajmer Road, Jaipur having copies of Jamabandi of land situated at Vill-Jhai, Teh-Sanganer, Distt.- Jaipur in the name of assessee group.	101 to 112
4	Copy of Allotment letter dated 18.06.2015 for the land situated at Vill-Jhai, Teh-Sanganer, Distt.-Jaipur in the name of assessee group.	113

5	Copy of revised allotment letter with details of land allotted to assessee group Jhai and Newta.	114 to 118
6	Copy of replies received from Tehseeldar Sanganer during the assessment proceedings.	119 to 147
7	Inspector report for the physical enquiry made during the assessment proceedings.	148

PAPER BOOK

S. No.	PARTICULARS	PAGE NO.
1	Copy of Rajasthan Gazette notification dated 20.12.2005	1-34
2	Copy of Rajasthan Gazette notification dated 08.05.2006	35-38
3	Copy of Ministerial order dated 11.09.2014	39
4	Copy of Undertakings/surrender letter	40-42
5	Copy of final award/allotment order.	43-57
6	Copy of letter submitted to JDA in regards to possession not received of allotted plots.	58-79
7	Copy of Rajasthan Gazette notification dated 06.09.1994	80-88
8	Binder book of ITR Computation of total income and audited report and financial statements and Director report for the A.Y 2005-06 to A.Y 2016-17	89-237

PAPER BOOK-II

S. No.	PARTICULARS OF DOCUMENTS	PAGE NO.
1.	Copy of Writ Petition filed before Hon'ble High Court of Rajasthan in the case of assessee company M/s Rigid Conductors Pvt. Ltd., Jaipur	1-62
2.	Copy of order passed by Hon'ble ITAT, Jaipur Bench, Jaipur in the case of Assistant Commissioner of Income Tax, Central Circle-02, Jaipur vs. Shri Mahendra Singh Ratnawat, Jaipur dated 18.10.2022.	63-123 124-127
3.	Copy of order passed by Hon'ble High Court of Orissa in the case of Principle Commissioner of Income Tax vs. M/s E-City Projects Lucknow (P.) Ltd. dated 05.07.2022.	128-134
4.	Copy of order passed by Hon'ble High Court of Calcutta in the case of Principal Commissioner of Income Tax vs. M/s Shreeleathers, dated 14.07.2022.	135-138
	Copy of order passed by Hon'ble High Court of Delhi in the case of	

5.	Principal Commissioner of Income Tax vs. Shri Shiv Kumar Agarwal, dated 28.07.2022.	
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13. The Id. AR of the assessee relying on the detailed submission so filed summarily submitted that the company is not carrying any business. The land acquired by the assessee is agricultural land the capital gain is not attracted when the acquisition was made. By notification dated 12.12.2005 the land of the assessee was acquired. Assessee in 2007 challenged the acquisition of land before the Rajasthan High Court and the pending the decision Urban Development Ministry passed an order of settlement on 11.09.2014 and as per settlement the assessee has to withdraw the case and in consideration developed land was agreed to be given. The assessee is regularly filling ITR and has disclosed the impugned land document and related expenses in the books of the assessee company. On account of the search the assessment was reopened for the year under consideration. The assessment year as on the date of the search was completed assessment and therefore, the addition can only be made based on the incriminating material only. The revenue has not taken a ground that the assessment year under consideration is not completed year. The revenue has also not taken a ground that the material found during the search is how become incriminating

material once all the records are recorded in the books of the assessee company is disclosed and litigation even with the state government. The AO made the addition merely based on the JDA letter and the said offer letter cannot be considered as incriminating material. Based on these arguments he supported the order of the Id. CIT(A). He further submitted that recently the even the supreme court uphold the finding that the scope of section 153A was limited to assessing only search related income. Therefore, based on the detailed arguments prayed that the appeal of the revenue is not maintainable merely the SLP was filed. But now the recent judgement of the apex court even more strength the finding of the Id. CIT(A).

14. We have heard the rival contentions and perused the material placed on record. We have also gone through the various judicial ruling cited and placed before us by both the parties to drive home to their contentions.

14.1 The first ground that the revenue has challenged before us it that the Id. CIT(A) erred in holding that no additions can be made in proceedings under section 153A of the act in respect of the assessment which were completed prior to the date of

search, except based on some incriminating material unearthed during the search which was not already available to the assessing officer. The revenue also contended that while granting relief to the assessee, the Id. CIT(A) has failed to take note of the facts that Hon'ble Supreme Court of India has admitted the SLP against this proposition in the case of PCIT Vs. Gahoi Foods P. Ltd. and in the case of PCIT Vs Dhananjay International Ltd. In that case the addition was made based on the statement recorded at the time of search and the second ground raised by the revenue is that the Id. CIT(A) should have decided the case on merits instead on technical ground.

14.2 Thus, the issue in dispute in this appeal whether the view taken by the Id. CIT(A) on technical ground and thereby ordering the deletion of addition made by AO is correct one or not. The Id. DR to support the grounds so raised the order of the Id. AO and vehemently submitted that CIT(A) erred in not considering the merits of the case about the alleged income on account of long term capital gain arises on the acquisition of land of the assessee by the government. The assessee has already agreed on the consideration in terms of the land against the land therefore, the assessee should have offered the long-term

capital gain in the year in which JDA issued the letter for payment of lease. As the issue before us that whether the action of the Id. CIT(A) allowing the appeal of the assessee on technical ground holds is correct view or not? The bench noted that impugned land was acquired in 2005-2006 and the assessee has challenged the decision of acquisition and the jurisdictional high court stayed the proceedings. After a considerable time, the assessee and government reached to a settlement and agreed for settlement of dispute and the case was withdrawn. When the government proceeded to give possession of the alternate land offered, the possession and the related documents could not materialized and the assessee is again before the High Court in the matter. Thus, based on the various documents advanced by both the parties that the material unearthed during the search cannot be said to have the nature of incriminating material and based on that the mainly the appeal of the assessee was decided by the Id. CIT(A). The learned CIT Appeal further taken a view that;

i) the transfer of land within the meaning of provisions of section 2(47) was completed on 19.02.2014 itself, a period falling in assessment year 2014-15 and not in assessment year 2016-17 being the year under consideration before us. (ii)

holding that according to the assessing officer himself, the assessee had surrendered/ relinquished his rights in the land in favor of JDA on 19.02.2014, and therefore the transaction should have been taxed in the assessment year 2014-15.

14.3 Whereas before us the Id. DR contended that CIT(A) has ignored the vital fact that the demand notice for payment was issued on 18.06.2015, a period falling within assessment year 2016-17 and therefore his finding is also not correct on facts but to substantiate this argument the Id. AR of the assessee vide his submission contended that the land was acquired in the year 2005-06 even if the capital gain is to be charged the same is required to be charged in that year and the land being the agricultural land the same is not chargeable to tax. He alternatively submitted that the revenue cannot take two stands of charging the capital gain, as they cannot tax the assessee in 2005-06 taxed in the year 2016-17 which is also not correct as the settlement was reached on 11-09-2014 the same at all be taxed pertains to the assessment year 2015-16 and not A. Y. 2016-17. On this issue the sequence of event filed will make the issue clearer and therefore, the same is reproduced here in below:

S.NO.	Particulars	Paper Book Page No.
1	The Government of Rajasthan Vide Gazatte Notification Dated 22-12-2005 issued a public notification for acquisition of land by JDA for the proposed SEZ.	Paper Book Page no. 1-34 filed on 08th Aug. 2022
2	Gazzate Notification Dated 08-05-2006 specifying the details of land of assessee company to be acquired under Land Acquisition Act, 1894	Paper Book Page no. 35-38 filed on 08th Aug. 2022
3	Award determining total consideration payable by the Government on account of acquisition of the agricultural land was issued on 06.08.2007.	Paper Book Page no. 43-57 filed on 08th Aug. 2022
4	Land acquisition made by the government was challenged by the appellant before the Hon'ble Rajasthan High Court in the year 2007.	
5	Ministerial order dated 11-09-2014 for allotment of 25% developed land in lieu of agricultural land acquired to settle the long pending litigation. The said minister order was subject to withdrawal of Writ Petition filed by the appellant pending for disposal before the Hon'ble Rajasthan High Court.	Paper Book Page no. 39 filed on 08th Aug. 2022
6	In compliance to the terms of the Ministerial Order (supra) company filed an Undertaking dated 22.10.2014 accepting the land acquisition consideration determined by the Government of Rajasthan by allotment of 25% developed land. The appellant also withdrew the Writ Petition pending for disposal before the Hon'ble Rajasthan High Court. Copy of undertaking/surrender Affidavit filed by Director of Assessee Company for surrender of land as per direction of Ministerial Order No. 123/2014 Dated 11-09-2014 is enclosed.	Paper Book Page no. 40-42 filed on 08th Aug. 2022
7	A Demand Notice cum Allotment Letter was issued by the Jaipur Development Authority on 18-06-2015 for the above said land agreed to be allotted to the appellant. (a) The appellant deposited the said demand on 24-11-2015. A copy of challan is available is enclosed with this chart. The said challan contains a Note " उपरोक्त जमा कराई गई राशि मात्र से जमाकर्ता के जविप्रा के विस्द्व किसी प्रकार कोई विधिक अधिकार प्राप्त नहीं होगा, यह जमा राशि मेरे स्वनिर्धारण के आधार पर है, जिसके औचित्य एवं पर्याप्त होने आदि के लिए मैं स्वयं उत्तरदायी रहूंगा।" The appellant deposited the said amount and the transaction is recorded in regular audited books of accounts. (b) The above amount deposited amount is recorded in regular books of accounts and a separate note in financial statement of account is given in Balance sheet filed alongwith return of income.	Deperment's Paper Book Dated 06-10-2022, Page no.113
8	Lease Deed (Patta) issued on 07-07-2017 and 21-08-2017 for 19182.16 Sq Mtr of Land. For remaining 129.16 Sq. Mtr. no lease deed (paata) issued till date. However till date possession of 13950 Sq. Mtr. hasnot Given by JDA hence no consideration received on account of acquisition of Land.	

9	Reminder letter(s) Dated 16-11-2018, 19-03-2019, 21-09-2020 and 12-04-2021 filed to Jaipur Development Authority (JDA) with regard to possession not received on allotted plot(s) of Land. Copy of letter dated 12-04-2021 is enclosed.	Paper Book Page no. 58-78 filed on 08th Aug. 2022
	The appellant regularly disclosed the facts of compulsory acquisition of land by the State Government in its audited financial statement of accounts submitted/filed along with the Income Tax Returns. The disclosures made in the Director's Report in the audited financial statement of accounts are as follows:-	
	<u>A.Y. 2006-07 :- S. No. 2 of directors report :-</u> "As the state government has initiated process to compulsorily acquire free hold land owned by the company. teh company has filled its objections before the competent authority notified by the state government in this regard and is working on various options including purchase of alternate land and/or alternate project."	Paper Book Page No. 217 filed on 8 th Aug, 2022
	<u>A.Y. 2007-08 to 2011-12: Note No 2 of Directors Report:-</u> Rajasthan Govt. has made compulsory acquisition of some of the lands owned by the company for the purpose of SEZ and the writ petition filled by the company challenging the action of the state govt. before Jaipur bench of High Court of Rajasthan is still pending for disposal.	Paper Book Page no. 148, 162, 176, 189, 204 filed on 08 th Aug, 2022
	<u>A.Y. 2012-13 to 2015-16 :- Note No 6/7/18 :-</u> Rajasthan state Government has compulsorily acquired all free hold lands of the company situated in jhai village for the purpose of development of SEZ. The company has filled a writ petition challenging the order of the state Govt. before jaipur bench of High Court of Rajasthan. The said Writ is yet to be decided by the High Court, however court has ordered to maintain status quo.	Paper Book Page no. 108,120,133,142 filed on 08th Aug. 2022
	<u>A.Y. 2016-17 :- Note No. 7.:-</u> The company has been allotted residential land measuring 13,950 sq. meters and commercial land measuring 129.84 sq. meters in village Raj Darbar and Jhai Jaipur respectively in lieu of its land situated in Nevta and Jhai village which was acquired by the State Government for development of SEZ. In compliance of the allotment letter dated 18-01-2016, the company has deposited Rs. 20,68,936/- towards one time Lease Demand to JDA and shown this amount under Note No. 9 "Long Term Loans and Advances" as the company has not yet received the Lease Deed from the JDA.	Paper Book Page no. 96 filed on 08th Aug, 2022

14.4 The bench noted from the above sequence of events and submissions and discussion so made and recorded here in above that the year under consideration was completed

assessment and it is also evident that the assessee regularly disclosed the transaction in their books of account. The bench also noted that there is no incriminating material unearthed in the search proceeding to substantiate the addition as made in the assessment order even in the appellate proceeding this fact is substantiated merely based on the information as analyzed and discussed in the AO's order at para 5 which is nothing but the official communication jotted down and it is not of a nature of incriminating material. The revenue has not substantiated that how that official documents can be considered as incriminating documents. The bench noted from the records that in the year under consideration the time limit for making the regular assessment in this case was expired. Thus, if it so then whether in this case as on the date of search, the time limit for service of notice u/s. 143(2) was not available for A.Y. 2016-17, the answer is No. Thus, the assessment for the year was not pending on the date of search. As it is evident that in search no incriminating material was found, this fact is not only appreciated by the Id. CIT(A) but also not challenged by the Id. DR by filing any evidence / written submission contradicting this fact but has merely stated that based the papers found in the search the same be considered as incriminating material. On the

contrary based on these facts the Id. AR of the assessee vehemently argued that the assessment already completed can only be done qua incriminating material and thus the law did not permit to again relook the assessment already completed. To support this contention, he relied on the various judgements of high courts and Supreme Courts amongst them same it includes the jurisdictional high court also. We note that in this case the search was carried out on 30.11.2017 and on that day assessment for AY 2016-17 in the case of the assessee was not pending and even the time limit for issue notice u/s. 143(2) was also passed. Thus, based on these set of facts the assessing officer would reassess the total income of the assessee as per the provisions of section 153A in respect of assessment year 2016-17. As the assessee objected to the proposed addition on the ground that during the search no incriminating material indicating any undisclosed income for the year under consideration was found, which is also apparently clear from the assessment order itself and from the order of the Id. CIT(A). Based on this fact that in the search no incriminating material found, the Id. AO is not empowered to make any addition in the total income of the assessee. It is a settled position of law that there cannot be a review under the garb of reassessment proceeding under section

153A of the Act. Therefore, the proposed reassessment proceedings are absolutely in abuse of process of law, illegal and bad in law. The provisions of section 153A cannot be applied in respect of assessment which has already been completed unless some incriminating material / information comes into the possession / knowledge of the AO during the course of search proceedings. Since the assessment for the assessment year 2016-17 was not pending as on the date of search and there is no incriminating material found or seized during the course of search, then the AO is bound to reassess the total income as it was assessed on the original return of income. Though the AO is legally bound to assess or reassess the total income of six years immediately preceding to the year of search, however, the assessments which are pending on the date of search gets abated and the assessments which were not pending on the date of search had attained the finality. Therefore, the addition over and above the assessed income cannot be made de hors the incriminating material found at the time of search while completing the assessment under section 153A of the Act. If there is no incriminating material then the original assessment made can be reiterated and no further addition is called for and an addition can only be made on the basis of undisclosed income derived from

material / documents seized as a result of search. The completed assessment can be interfered or disturbed by the AO while making the assessment under section 153A only on the basis of some incriminating material unearthed during the course of search and requisition of income disclosing undisclosed income not already disclosed or made known in the course of original assessment. Therefore, in the absence of any incriminating material found or seized during the course of search and seizure proceedings, the additions made by the AO during the course of reassessment under section 153A of the Act are without jurisdiction and liable to be deleted and it is nothing but a review by the same rank of officer and the same is not permitted under the law. After appreciating such facts, Id. CIT(A) accepted the contentions of the assessee and held that no addition could be made as no incriminating material was found with respect to the land of the assessee. Thus, it is undisputed that when there is no incriminating material was found no addition could be made in the order passed u/s. 153A of the r.w.s. 143(3) of the Act.

14.5 The Id. AR of the assessee has relied upon various judgment including the jurisdictional high court, but he has argued that recently the Honourable apex court in the case of Principal

Commissioner of Income Tax, Central-3 Versus Abhisar

Buildwell P. Ltd. has also decided the issue in favour of the assessee and the relevant finding is reiterated here in below:

2. The core issue involved in the present batch of appeals is the scope of assessment under section 153A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act, 1961'). According to the Revenue, the Assessing Officer (hereinafter referred to as the 'AO') is competent to consider all the material that is available on record, including that found during the search, and make an assessment of 'total income'. Some of the High Courts have agreed with the said proposition. However, according to the respective assesseees and as per some of the High Courts' decisions, if no assessment proceeding is pending on the date of initiation of the search, the AO may consider only the incriminating material found during the search and is precluded from considering any other material derived from any other source.

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5. We have heard learned counsel for the respective parties at length. The question which is posed for consideration in the present set of appeals is, as to whether in respect of completed assessments/unabated assessments, whether the jurisdiction of AO to make assessment is confined to incriminating material found during the course of search under Section 132 or requisition under Section 132A or not, i.e., whether any addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under Section 132 A of the Act, 1961 or not.

6. It is the case on behalf of the Revenue that once upon the search under Section 132 or requisition under Section 132A, the assessment has to be done under Section 153A of the Act, 1961 and the AO thereafter has the jurisdiction to pass assessment orders and to assess the 'total income' taking into consideration other material, though no incriminating material is found during the search even in respect of completed/unabated assessments.

7. At the outset, it is required to be noted that as such various High Courts, namely, Delhi High Court, Gujarat High Court, Bombay High Court, Karnataka High Court, Orissa High Court, Calcutta High Court, Rajasthan High Court and the Kerala High Court have taken the view that no addition can be made in respect of completed/unabated assessments in absence of any incriminating material. The lead judgment is by the Delhi High Court in the case of ***Kabul Chawla (supra)***, which has been subsequently followed and approved by the other High Courts, referred to hereinabove. One another lead judgment

on the issue is the decision of the Gujarat High Court in the case of **Saumya Construction (supra)**, which has been followed by the Gujarat High Court in the subsequent decisions, referred to hereinabove. Only the Allahabad High Court in the case of **Pr. Commissioner Of Income Tax v. Mehndipur Balaji, 2022 SCC OnLine All 444 : (2022) 447 ITR 517** has taken a contrary view.

7.1 In the case of **Kabul Chawla (supra)**, the Delhi High Court, while considering the very issue and on interpretation of Section 153A of the Act, 1961, has summarised the legal position as under:

Summary of the legal position

38. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e., those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or

undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.”

7.2 Thereafter in the case of **Saumya Construction (supra)**, the Gujarat High Court, while referring the decision of the Delhi High Court in the case of **Kabul**

Chawla (supra) and after considering the entire scheme of block assessment under Section 153A of the Act, 1961, had held that in case of completed assessment/unabated assessment, in absence of any incriminating material, no additional can be made by the AO and the AO has no jurisdiction to re-open the completed assessment. In paragraphs 15 & 16, it is held as under:

“15. On a plain reading of section 153A of the Act, it is evident that the trigger point for exercise of powers thereunder is a search under section 132 or a requisition under section 132A of the Act. Once a search or requisition is made, a mandate is cast upon the Assessing Officer to issue notice under section 153A of the Act to the person requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Since the assessment under section 153A of the Act is linked with search and requisition under sections 132 and 132A of the Act, it is evident that the object of the section is to bring to tax the undisclosed income which is found during the course of or pursuant to the search or requisition. However, instead of the earlier regime of block assessment whereby; it was only the undisclosed income of the block period that was assessed, section 153A of the Act seeks to assess the total income for the assessment year, which is clear from the first proviso thereto which provides that the Assessing Officer shall assess or reassess the total income in respect of each assessment year, falling within such six assessment years. The second proviso makes the intention of the Legislature clear as the same provides that assessment or reassessment, if any, relating to the six assessment years referred to in the sub-section pending on the date of initiation of search under section 132 or requisition under section 132A, as the case may be, shall abate. Sub-section (2) of section 153A of the Act provides that if any proceeding or any order of assessment or reassessment made under sub-section (1) is annulled in appeal or any other legal provision, then the assessment or reassessment relating to any assessment year which had abated under the second proviso would stand revived. The proviso thereto says, that such revival shall cease to have effect if such order of annulment is set aside. Thus, any proceeding of assessment or reassessment falling within the, six assessment years prior to the search or requisition stands abated and the total income of the assessee is required to be determined under section 153A, of the Act. Similarly, subsection (2) provides for revival of any assessment or reassessment which stood abated, if any proceeding or any order of assessment or reassessment made under section 153A of, the Act is annulled in appeal or any other proceeding.

16. Section 153A bears the heading “Assessment in case of search or requisition”. It is well settled as held by the Supreme Court in a catena of decisions that the heading of the, section can be regarded as a key to the interpretation of the operative portion of, the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning From the heading of section 153, the intention of the Legislature is clear, viz, to provide for assessment in case of search and requisition. When, the very purpose of the provision is to make assessment in case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition. In other words, the assessment, should be connected with something found during the search

or requisition, viz., incriminating material which reveals undisclosed income Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer

is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition. In case no incriminating material is found, as held by the Rajasthan High Court in the case of *Jai Steel (India) v. Asst. CIT* (supra), the earlier assessment would have to be reiterated. In case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition. In case where a pending reassessment under section 147 of the Act has abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act.”

8. For the reasons stated hereinbelow, we are in complete agreement with the view taken by the Delhi High Court in the case of ***Kabul Chawla (supra)*** and the Gujarat High Court in the case of ***Saumya Construction (supra)***, taking the view that no addition can be made in respect of completed assessment in absence of any incriminating material.

9. While considering the issue involved, one has to consider the object and purpose of insertion of Section 153A in the Act, 1961 and when there shall be a block assessment under Section 153A of the Act, 1961. 9.1 That prior to insertion of Section 153A in the statute, the relevant provision for block assessment was under Section 158BA of the Act, 1961. The erstwhile scheme of block assessment under Section 158BA envisaged assessment of ‘undisclosed income’ for two reasons, firstly

that there were two parallel assessments envisaged under the erstwhile regime, i.e., (i) block assessment under section 158BA to assess the 'undisclosed income' and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income. Secondly, that the 'undisclosed income' was chargeable to tax at a special rate of 60% under section 113 whereas income other than 'undisclosed income' was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, section 153A came to be inserted and brought on the statute. Under Section 153A regime, the intention of the legislation was to do away with the scheme of two parallel assessments and tax the 'undisclosed' income too at the normal rate of tax as against any special rate. Thus, after introduction of Section 153A and in case of search, there shall be block assessment for six years. Search assessments/block assessments under Section 153A are triggered by conducting of a valid search under Section 132 of the Act, 1961. The very purpose of search, which is a prerequisite/trigger for invoking the provisions of sections 153A/153C is detection of undisclosed income by undertaking extraordinary power of search and seizure, i.e., the income which cannot be detected in ordinary course of regular assessment. Thus, the foundation for making search assessments under Sections 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search.

10. On a plain reading of Section 153A of the Act, 1961, it is evident that once search or requisition is made, a mandate is cast upon the AO to issue notice under Section 153 of the Act to the person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same. Section 153A of the Act reads as under:

"153A. Assessment in case of search or requisition - (1) Notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, in the case of a person where a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132-A after the 31st day of May, 2003, the Assessing Officer shall— (a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139; (b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made: Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment

years: Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this sub-section

pending on the date of initiation of the search under Section 132 or making of requisition under Section 132-A, as the case may be, shall abate. (2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or Section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner: Provided that such revival shall cease to have effect, if such order of annulment is set aside Explanation.—For the removal of doubts, it is hereby declared that,— (i) save as otherwise provided in this section, Section 153- B and Section 153-C, all other provisions of this Act shall apply to the assessment made under this section; (ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.” 11. As per the provisions of Section 153A, in case of a search under Section 132 or requisition under Section 132A, the AO gets the jurisdiction to assess or reassess the ‘total income’ in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate. As

per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to subsection (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the ‘total income’ for the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under Section 132 or requisition under Section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the ‘total income’ taking into consideration the incriminating material collected during the search and other material which would include income declared in the

returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy. 12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and subsection (2) of Section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law. 13. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of **Kabul Chawla (supra)** and the Gujarat High Court in the case of **Saumya Construction (supra)** and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material. 14. In view of the above and for the reasons stated above, it is concluded as under:

- i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;
- ii) all pending assessments/reassessments shall stand abated;
- iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved. The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs.”

14.6 Considering all these case laws cited before us which clear the settled position of law even by the apex court wherein it has categorically held that in search cases no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. In the light of the facts and circumstances discussed herein above and binding judicial decision of the apex court, in our considered view we do not find any error having been committed by the Id. CIT(A) in accepting the plea of the Assessee that there is no incriminating document which was seized in the course of search relating to the addition sought to be made on account of the capital gain so arising on account of compulsory acquisition, the land is already accepted and reflected in the return of income filed by the assessee in the all the past years and even the assessee is doing so consistently. Therefore,

the jurisdictional requirement of Section 153A of the Act was not satisfied in this case. **In view of the above and for the reasons stated above and considering the binding decisions of various High Courts and final findings of the apex court on the decision cited here in above, we see no reason to interfere with the impugned judgment and order passed by the learned CIT(A).**

In the result ground no. 1 & 2 raised by the revenue is dismissed.

15. Since, the disputed addition has already been allowed by the Id. CIT(A) on technical issue and we have also concurred with the findings of the Id. CIT(A), therefore, on merits this ground is also technical and educative in nature which need not require adjudication. In the results the ground of appeal no. 3 & 4 taken by revenue dismissed.

15.1 During the course of hearing, the Bench noted that the Ground No. 5 of the revenue is general in nature which does not require any adjudication. Hence, the Ground No. 5 taken by the revenue is dismissed.

In the result of the appeal of the revenue in ITA No. 264/JPR/2022 stands dismissed.

16. The fact of the case in ITA Nos. 265 to 267/JPR/2022 is similar to the case in ITA No. 264/JPR/2022 and we have heard both the parties and persuaded the materials available on record. The bench noticed that the issues raised by the revenue in the case of M/s Rigid Conductors (Raj.) Pvt. Ltd. in ITA No. 264/JPR/2022 is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 264/JPR/2022 for the Assessment Year 2016-17 shall apply mutatis mutandis in ITA NO. 265 to 267/JPR/2022 and in the result of the appeal of the revenue in ITA NO. 265 to 267/JPR/2022 stands dismissed.

17. Now take up the cross objections filed by the assessee, wherein the assessee has taken only ground about the applicability of the long-term capital gain on the land considering it as agricultural land. Since, the disputed addition has already been allowed by the Id. CIT(A) and we have also concurred with the

findings of the Id. CIT(A) on merits, therefore, this ground is also technical and educative in nature which need not require adjudication.

17.1 In terms of these observations the cross objection filed by the assessee is allowed for statistical purpose in CO No. 13/JPR/2022.

18. As the facts of cross objections in CO/13/JPR/2022 is similar to the facts of the cross objections in CO No. 14 to 16/JPR/2022 and we have heard both the parties and persuaded the materials available on record. The bench noticed that the issues raised by the assessee in the cross objections No. 13/JPR/2022 is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by the assessee. Hence, the bench feels that the decision taken by us in CO no.13/JPR/2022 for the Assessment Year 2016-17 shall apply mutatis mutandis in the co no. 14 to 16/JPR/2022. In the results cross objections of the assessee in CO no. 14 to 16/JPR/2022 allowed for statistical purpose.

In the result, the appeals of the revenue stands dismissed and the cross objection of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 24/05/2023

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 24/05/2023

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- DCIT, Central Circle-03, Jaipur
2. प्रत्यर्थी / The Respondent- M/s Rigid Conductors (Raj.) Pvt. Ltd., Jaipur
M/s Choki Dhani Developers Pvt. Ltd., Jaipur
M/s Vision Estates Pvt. Ltd., Jaipur
M/s Gee Vee Developers Pvt. Ltd., Jaipur
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 Nos. 264 to 267/JP/2022 & CO Nos. 13 to 16/JP/2022 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar