

**IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI, AM &
SHRI N. K. CHOUDHRY, JM**

I.T.A. No. 640/Mum/2023
Assessment Year: 2011-12)

Kashyap K. Mehta
2203, Artesia Baburao
Pendharkar Road, Hind
Cycle Marg, Woril,
Mumbai- 400030

Vs.

ACIT 21(1) Now PAN with
DCIT CC-4(1)
Piramal Chambers, Dr. S S
Rao Marg Parel Mumbai/
DCIT CC 4(1), Air India
Building, Nariman Point,
Mumbai- 400012

PAN No. **AAFPM4290H**

Appellant) : **Respondent)**

Appellant by : Shri. Vinod Kumar Bindal,
Satish Kumar a/w Ms. Shivani
Bajpai

Respondent by : Ms. Shreekala Pardeshi, Ld.
Sr.AR

Date of Hearing : 07.06.2023
Date of pronouncement : 27.07.2023
:

O R D E R

Per N. K. Choudhry, JM:

The Assessee/Appellant herein has preferred this appeal against the order dated 01.02.2023 impugned herein passed by Ld. Commissioner of Income Tax (Appeal) {in short 'Ld. Commissioner'} u/s 250 r.w.s. 154 of the Income Tax Act 1961 (in short 'the Act').

2. In the instant, the Assessee has declared its total income of Rs. 66,83,960/- by filing its return of income dated 30.09.2011, which was processed u/s 143(1) of the Act, whereby the return filed by the Assessee was accepted and no scrutiny assessment was done. Subsequently, the case of the Assessee was reopened u/s 147 of the Act, after recording the following reasons:-

"Information has been received from the Directorate of Investigation that an organized racket of generating bogus entries of LTCG in penny stocks has been unearthed is a result of investigation carried out throughout the country. As a result of this investigation, 64000 beneficiaries who have taken bogus entries of LTCG amounting to Rs.38,000 crores have been identified. Sh. Kashyap K Mehta, having PAN: AAFPM4290H who is assessed in this charge has also availed of such an entry. The same is reflected in the return of Income filed by the assessee for AY 2011-12 by way of claim of exemption amounting to Rs.5,22,02,762/- u/s. 10(38) of the Income tax Act, 1961.

The Directorate of Investigation has made available various confessional statements of entries involved in the transactions for generating such bogus claims of LTCG. I have examined these statements and the detailed report of the investigation. I have also examined these evidence vis-a- vis the return of income filed by the assessee. After appraisal of these material on record, Here is enough reason to believe that not only the claim of exemption u/s

10(38) of the Act by the assessee at Rs.5,22,02,762/- is prima facie bogus but by making such bogus claim, the assessee has clearly failed to disclose all material facts for determination of income. In fact in this case the assessee seems to have fabricated evidence in order to mislead the revenue to believe the apparent as real".

3. On the basis of aforesaid reasons, the notice dated 06.03.2017 u/s 148 of the Act was issued and served upon the Assessee, in response to which the Assessee vide letter dated 27.03.2017, filed its return of income on 27.03.2017. The Assessee also raised the objections for reopening of the case on 24.10.2017, which were disposed off, by the AO vide order dated 27.10.2017.

The Assessing Officer vide assessment order dated 28.12.2017 u/s 143(3) r.w.s. 147 of the Act, ultimately made the additions of Rs. 52078411 /- by treating the capital gain transaction as non genuine and unexplained cash credit u/s 68 of the Act, representing, the undisclosed income and of Rs. 29,24,005/- being 6% of Rs. 4,87,33,411/- as commission u/s 69C of the Act, for providing arranged capital gains to various parties.

4. The Assessee being aggrieved carried the matter upto the level of the ITAT. The Hon'ble ITAT vide order dated 24.06.2022 remanded the case to the file of the Ld. Commissioner for decision afresh. In the remand proceedings before the Ld. Commissioner, the Assessee challenged the jurisdiction of the assessing officer as well as additions on merit. The Ld. Commissioner vide impugned order dated 01.02.2023 affirmed the said additions and also the

jurisdiction of the assessing officer in passing the assessment order dated 28.02.2017.

5. The Assessee being aggrieved is an appeal before us and raised the following grounds of appeal as under:-

1. The CIT(A) erred in law and on facts by not following the binding precedent decision of the Hon'ble ITAT 'D' Bench, Mumbai vide order dated 28/07/2022 passed in the case of Mrs. Rupal Kashyap Mehta, the spouse of the assessee on identical facts/law, thereby breaking the principles of judicial discipline which require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities as enunciated by Apex Court judgement in UOI vs Kamalashi Finance Corporation Ltd. Thus, the impugned appellate order and the original assessment order in appeal must be declared as illegal and void ab initio.

2. The CIT(A) erred in law and on facts in dismissing the following grounds of appeal taken / relating to the jurisdictional error occurred due to:

a.) Non-issuance of the mandatory assessment jurisdiction transfer order u/s 127(2) of the Act by PCIT, while transferring assessment jurisdiction from the ITO Ward 27(3)(2) Mumbai to the ACIT 21(2) Mumbai.

b.) Non-issuance of the mandatory intimation u/s 129 of the Act for change in the incumbent AO and never given to the assessee by the AO.

c.) Framing the impugned assessment order by illegally assuming jurisdiction u/s 147 of the Act instead of the correct section 153A r.w.s. 153C of the Act, by relying on an incriminating information found by the revenue, admittedly in a search on a third party.

Thus, the impugned assessment order passed u/s 147 of the Act is void ab initio and liable to be quashed as illegal.

3. The CIT(A) erred in law and on facts otherwise also in not adjudicating the ground restored by the Hon'ble ITAT challenging the addition of Rs. 5,20,78,411/- made u/s 68 of the Act for LTCG on sale of listed equity shares of Shreenath Commercials and Finance Ltd relying on a report of the investigation wing of the department and some statements recorded u/s 132(4)/ 131 of the Act at the back of the appellant without giving copies of the material gathered and cross examination of the persons whose statements were relied by the revenue. Thus, the impugned addition by incorrect application of law and assumption of a void ab initio jurisdiction must be deleted.

4. The CIT(A) erred in law and on facts otherwise also in not adjudicating the ground restored by the Hon'ble ITAT challenging the addition of Rs. 29,24,005/- made by the AO u/s 69C of the Act alleging the same to be an unexplained expenditure being commission @ 6% of the amount of a long-term capital gain on sale of those listed equity shares, merely on surmises/ conjectures and without any basis / evidence. Thus, the impugned addition made on presumptions must be deleted.

5. The Ld. CIT(A) erred in law and on facts in considering the gain on sale of shares of M/s Shreenath Commercial & Finance Ltd. As penny stock without appreciating the documents, evidences etc. submitted in the assessment as well as appellate proceedings supporting the genuineness of the transactions of sale and purchase of shares. Thus, the addition must be deleted.

6. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.

6. At the outset, we observe that the Assessee has raised the legal ground (2 c) with regard to the jurisdiction of the assessing officer in framing the assessment u/s 147 of the Act instead of section 153A r.w.s. 153C of the Act by relying on an incriminating

information found by the Revenue, in search operation on a 3rd party.

6.1 We observe the similar issue was also raised before the Hon'ble Tribunal in Assessee's wife case i.e. Rupal Kashyap Mehta Vs. ITO Ward-21(3)(1) (ITA No. 1235/Mum/2019 decided on 28.07.2022 and Hon'ble Tribunal in that case has clearly held the assessment order u/s 147/143(3) as void-ab-initio being passed without assuming valid and legal jurisdiction u/s 153A of the Act. For completeness and ready reference, the conclusion drawn by the Hon'ble ITAT, is reproduced below.

18. We have heard the rival submissions and perused the relevant record available before us, on the issue of jurisdiction of the AO on both the counts as raised by assessee before us as discussed above and the relevant law on these points. First of all, in order to appreciate the issue raised by assessee in the aforesaid submissions, the provisions of the section 153A of the Act as were applicable during the relevant period need to be appreciated which was as below:

Assessment in case of search or requisition.

153A. (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 132A after the 31st day of May, 2003 [but on or before the 31st day of March, 2021], 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 [and for the relevant assessment year or 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 [and for the relevant assessment year or years:*

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

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years **and for the relevant assessment year or 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 132A, as the case may be, shall abate:**

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years:

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

- (a) ***the Assessing Officer has in his possession books of***

account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

- (b) **the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and**
- (c) **the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.**

*Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which **falls beyond six assessment years** but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.*

*Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, **deposits in bank account.***

(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 Principal Commissioner or 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 153B and section 153C, 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.*

19. Thus, on perusal of the above, it is clear from the language in the **Second Proviso** to the Section 153A(1) of the Act w.e.f. 01/04/2017 which envisages, “Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years **and for the relevant assessment year or 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 132A, as the case may be, **shall abate**”. Ergo, on the search has taken place and AO was in possession of any documents, information or evidence which reveal that the income has escaped assessment amounts to or is likely to amount to Rs. 50 lakhs or more in the relevant assessment year or in aggregate in relevant assessment years, if falls within 10 assessment years from the end of assessment year in which search has been conducted, then the AO can on resort to frame the assessment u/s 153A.

20. It is an undisputed fact that the reassessment proceedings initiated by notice u/s 148 of the Act issued on 31/03/2017 were pending on the date of the search, i.e., 06/10/2017 and the impugned assessment order was passed later on 28/12/2017. Once search u/s 132(1) or requisition u/s 132A has taken place, then the provisions of section 153A gets triggered and AO has to mandatorily pass assessment order for the period prescribed therein. Second proviso clearly provides that, all the pending assessment on the date of search gets abated. Here in this case assessment proceedings initiated u/s 148 was pending on the date of search. Thus, the AO should have treated the pending assessment proceedings initiated u/s 148 of the Act for this AY 2011-12 as abated, because it fell in the extended period of 4 relevant assessment years as per the provision brought from 1.04.2017. It is neither, the assessee’s acquiescence nor the AO’s discretion in this matter, because it is purely a matter of jurisdiction which needs to be acquired in accordance with the statute. It was incumbent upon the AO to pass order u/s 153A, as after the amendment if the AO is in possession of any document or other evidence which reveal that the income which has escaped assessment is more than Rs. 50 lakhs, which here in this Rs. 6.93 crores. The AO here in this case did not act upon in accordance with the law though specifically brought to his notice by the assessee in writing before completing the reassessment on 28/12/2017. The additional time of 4 years were specifically brought within the scope of **relevant assessment years** inserted by the Finance Act, 2017,

w.e.f. 01/04/2017, if the income escaped assessment is more than Rs. 50 lakhs in terms of 4th Proviso. It is noteworthy that prior to the enactment of the Finance Act 2017, the period covered by the sections 153A/153C and 148 of the Act was limited to the six years only. It is trite law that if there is a special provisions for assuming jurisdiction to pass order, it will always prevail over the general provisions which cannot at all be resorted to make a thing or act apparently permissible which is otherwise impermissible under the special provisions.

21. *It is clear as per scheme of the Act, the provisions of the section 148 of the Act were not at all available for a period of the ten years including for the relevant assessment year in this case. The rule of construction which is relevant to the present issue is expressed in the maxim "**generaliaspecialibus non derogant**", meaning where there is a conflict between a general or special provision, the latter shall prevail. This proposition has been upheld in **Forbes Campbell & Co. Ltd. v. CIT (1994) 206 ITR 495 (Bom)**. The Hon'ble Supreme Court in in **CTO vs. Binani Cement Ltd. & Anr on 19 February, 2014- CIVIL APPEAL NO.336 OF 2003**, after considering *Union of India & Anr. vs. Indian Fisheries (P) Ltd. (1965) 57 ITR 331,334 (SC)*; *CIT vs. Indian Molasses Co. (P) Ltd. (1989) 176 ITR 473 (Cal)*, *ITO vs. Shrilekha Business Consultancy (P.) Ltd.* approved the said law.*

22. *Thus, in view of the aforesaid position of law as above, we hold that the AO could have only pass reassessment order u/s 153A of the Act for the A.Y.2011-12 instead of the section 147 of the Act, because after the search, the only option to the AO was to undertake the period of 10 years for the purpose of assessment and reassessment u/s 153A of the Act and the AY 2011-12 falls within the ambit of relevant assessment years of 10 years from the date of search, as income escaped assessment was more than Rs. 50 Lakhs. AO even though might have reopened the assessment u/s 147 on the basis of information or evidence on record, but once search u/s 132(1) has taken place, then the reassessment proceedings initiated by notice u/s 148 has to be reckoned as pending in terms of 2nd proviso to section 153A, therefore, such an assessment for the AY 2011-12 which was sought to be reopened gets abated. Once the assessment is abated, the entire assessment is open and AO should have frame the assessment /re-assessment taking into consideration all the material on record coming in his possession only u/s 153A, which here in this case, AO has failed to comply with the mandatory requirement of law as brought in the*

statute and the Finance Act 2017 w.e.f. 01.04.2017. Because here in this case, search has taken place after the amendment, therefore the amended provisions was likely to be applicable. We, therefore, hold that the assessment order u/s 147/143(3) is void ab initio being passed without assuming a valid and legal jurisdiction u/s 153A of the Act and instead he has resorted to section 147 of the Act which he could not have and is hereby quashed.

8. Now coming to ground nos. 2 (a) and (b), the Assessee has also raised the issue that in the instant case, by transferring jurisdiction from ITO, Ward 27(3)(2) Navi Mumbai to the ACIT 21(2) Mumbai, neither the mandatory assessment jurisdiction transfer order has been passed u/s 127(2) of the Act nor the intimation u/s 29 of the Act, for change in the incumbent of AO was given to the Assessee. Therefore, the assessment order being void-ab-initio is liable to be quashed.

8.1 We find that the Hon'ble Tribunal in the case of Assessee's wife case i.e. Rupal Kashyap Mehta Vs. ACIT-21(2) (supra) also dealt with the identical situation/issue and categorically held that the AO ward-21(3)(1) Mumbai who passed the Assessment order in the subjected appeal, never had any jurisdiction of the Assessee's case and therefore the assessment passed by the AO is without a valid jurisdiction. For ready reference and completeness, the concluding part of the order passed by the Hon'ble Tribunal in the said case is reproduced below.

23. Now coming to other legal ground raised by the assessee, that assessment order has been passed by the AO who did not had jurisdiction. The provisions of the section 127 of the Act are as below:

Power to transfer cases.

127. (1) *The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or] Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.*

(2) *Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—*

(a) *where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners to whom such Assessing Officers are subordinate **are in agreement**, then the Principal Director General or Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner from whose jurisdiction the case is to be transferred may, **after giving the assessee a reasonable opportunity of being heard** in the matter, wherever it is possible to do so, **and after recording his reasons for doing so, pass the order;***

(b) *where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.*

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.—In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued there under, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.

24. The reply given by the income-tax department on 21/03/2022 to the application filed by the assessee under the Rights to Information Act 2005 seeking information about the assessment jurisdiction transfer order in her case has been scanned below:

 सत्यमेव जयते	<p>कार्यालय Office of the प्रधान आयकर आयुक्त-27, मुंबई Principal Commissioner of Income Tax-27, Mumbai चौथी मंजिल, टावर नं. 6, रेलवे स्टेशन संग्रह, 4th Floor, Tower no. 6, Railway Station Complex, वाशी, नवी मुंबई - 400 708. Vashi, Navi Mumbai- 400 703 Mail id: mumbai.pcit27@incometax.gov.in Phone No.- 022-27812945</p>
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No.Pr.CIT-27/RTI/Rupal Mehta/2021-22

Date: 21.03.2022

Name of the RTI Applicant	Smt. Rupal K. Mehta
PAN of the assessee	AGRPM5338E
Address of the RTI Applicant	2203, Artesia, Baburao Pendharkar Road, Hind Cycle Road, Worli, Prabhadevi, Mumbai-400025.
Date of application	Application dated 25.02.2022 received in this office Tapal on 02.03.2022.
Date of order	21.03.2022

ORDER U/S 7(1) OF THE RTI ACT, 2005

The RTI application dated 25.02.2022 filed in Tapal by Smt. Rupal K. Mehta on 02.03.2022.

2. The information sought by the RTI applicant and their replies there to is as under:

Sr. No.	Information sought	Replies thereto
(i)	The applicant has sought certified photocopy of the assessment jurisdiction transfer order passed u/s. 127(2) of I.T. Act by the PCIT-27, Mumbai to transfer the assessment jurisdiction of the assessee from ITO ward 27(3)(2), Mumbai to ITO ward 21(3)(1), Mumbai during the calendar year 2017.	As per details available on system address of applicant had been changed / updated from Ghatkopar to Worli, Prabhadevi, Mumbai-400025, accordingly PAN / assessment jurisdiction of applicant was migrated / changed from erstwhile ITO ward 27(3)(2), Mumbai to erstwhile ITO ward 21(3)(1), Mumbai through system on 14.09.2017.

4. The above mentioned RTI application is hereby disposed.

5. If the applicant is aggrieved by this order, she is entitled to file an appeal u/s. 19 of the RTI Act, 2005, within 30 days of receipt of this order before Shri Anil Kumar, Pr.CIT-27, Mumbai the First Appellate Authority, Room No.401,4th Floor, Tower No.6, Vashi Railway Station Commercial Complex, Vashi, Navi Mumbai – 400 703.



(RAJENDRA PRASAD)
CPIO & ITO (HQ) (Tech) to PCIT-27,
Mumbai.

आयकर अधिकारी (मुख्या.) तकनिकी-27, मुंबई
RAJENDRA PRASAD
Income Tax Officer (HQ) Tech-27, Mumbai

25. Thus, on perusal of the above provisions of the law, it is clear that the PCIT 27 Mumbai was under a legal obligation to pass a written speaking reasoned assessment jurisdiction transfer order u/s 127(2) of the Act after seeking consent from the PCIT 21 Mumbai in writing before the same could be transferred from the ITO 27(3)(2) Mumbai to ITO Ward 21(3)(1) Mumbai. Since, this legal requirement to assume jurisdiction by the AO who passed the assessment order in this appeal is completely missing, we are in agreement with the contentions of the assessee as above which were also not controverted on facts by the DR at the time of hearing and thus, we hold that the AO ward 21(3)(1) Mumbai who passed the assessment order in this appeal never held any assessment jurisdiction on the assessee and this order is held void ab initio passed by an AO without a valid and legal jurisdiction.

26. Thus, it is manifest that the AO passing the impugned assessment order did not possess any valid and legal jurisdiction and following the judgment of the Hon'ble Apex Court in Kanwar Singh Saini (supra), the same must be quashed as void ab initio.

27. In nutshell, both the above contentions of the assessee are accepted and the assessment order in this appeal is quashed on both grounds even considering those independent of each other.

The Hon'ble Bombay High Court in **Mavany Brothers vs CIT (2015) 62 taxmann.com 50 (Bom)** has held in para 16 that in case the Tribunal after examining all the facts comes to the conclusion that the notice was without jurisdiction then the other issues as formulated herein will not arise for consideration. This is so as the foundation of proceedings on the other issues is the validity of the reopening notices. Since, the assessment order has been quashed as above on the jurisdiction, following the above jurisdictional High Court judgment the other grounds of appeal on merits become academic and have not been adjudicated.

28. In the result, the appeal filed by the assessee is **allowed**.

9. Though the Ld. DR supported the order passed by the Ld. Commissioner and also tried to demonstrate the exercise of valid jurisdiction by the AO in making the assessment order, however it is fact that identical issues/grounds as raised by the Assessee in this appeal, have already been dealt with by the Hon'ble Tribunal in the Assessee's wife case, wherein also the identical facts and circumstances existed on the basis of same search and seizure operation carried out on dated 06/10/2017, as involved in the instant case, therefore, respectfully following the said decision of the Hon'ble Tribunal, we are inclined to accept the grounds raised by the Assessee, which are legal in nature and consequently, quashing the assessment order itself being void-ab-initio.

10. Since, we have quashed the assessment order itself, therefore adjudication of the additions on merit would prove futile exercise, hence we are not adverting to.

11. In the result, appeal filed by the Assessee stands allowed.

Orders pronounced in the open court on 27-07-2023.

Sd/-

(PRASHANT MAHARISHI)
Accountant Member

Sd/-

(N. K. CHOUDHRY)
Judicial Member

Shubham P. Lohar

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)

ITAT, Mumbai