

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G': NEW DELHI**

**BEFORE,  
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

**ITA No.1587/Del/2024  
(ASSESSMENT YEAR 2013-14)**

**ITA No.1588/Del/2024  
(ASSESSMENT YEAR 2015-16)**

Sanjay Jain 17/71, Punjabi Bagh West New Delhi-110026 PAN-AAGPJ1847C <b>(Appellant)</b>	Vs.	PCIT (Central)-3 Delhi <b>(Respondent)</b>
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Assessee by	Sh. Pavan Kumar Ved, Adv.
Respondent by	Sh. Dharm Veer Singh, CIT-DR

Date of Hearing	07/05/2024
Date of Pronouncement	22/05/2024

**ORDER**

**PER S.RIFAUR RAHMAN, AM:**

1. Both the appeals have been filed by the Assessee against the orders of Principal Commissioner of Income Tax (Central), Delhi-3 ["Ld. PCIT", for short], dated 30/03/2024 for Assessment Year 2013-14 & 2015-16.

2. As the issues for consideration are common in both the appeals and common written submissions have been placed on record by the assessee as well as by the revenue, a consolidated common order is being passed in this case.

3. The Assessee has raised the following grounds before the bench: -

**“For A.Y. 2013-14**

1. *That on the facts and in the circumstances of the case, the orders passed by the assessing officer u/s 153A of the Act as well as the Ld. PCIT(Central) u/s 263 of the Act are bad in law, violative of principles of natural justice and void-ab-initio.*

2. *That on the facts and in the circumstances of the case, the Ld. PCIT(Central) has erred in law and on facts in initiating revisionary proceedings u/s 263 of the Act against an invalid and void-ab-initio assessment order u/s 153A of the Act as the Ld. PCIT(Central) cannot exercise powers u/s 263 of the Act to revise an assessment order which is non est in the eyes of law.*

3. *That on the facts and in the circumstances of the case, the Ld. PCIT(Central) has erred in law in invoking provisions of Sec. 263 of the Act totally against the principles of natural justice and without any merit as there is/was no occasion to initiate the revisionary proceedings u/s 263 of the Act.*

4. *That on the facts and in the circumstances of the case, the Ld. PCIT(Central) has erred in directing the Ld. AO to adjudicate the alleged cash loan amounting to Rs. 2,00,00,000/- based on mere surmises, conjectures and on his own whims & fancies vide order dated 30.03.2024 u/s 263 of the Income Tax Act.*

5. *That on the facts and in the circumstances of the case, the Ld. PCIT(Central) has erred in law in assuming jurisdiction u/s 263 of the Act beyond the reasonable period of time and without properly satisfying & demonstrating as to how the twin conditions for invoking the provisions of Sec. 263 of the Act were met as prescribed u/s 263 of the Act.*

6. That on the facts and in the circumstances of the case, the Ld. PCIT(Central) has erred in law in framing an adverse order u/s 263 of the Act without providing a reasonable opportunity of being heard to the appellant which is a mandatory pre-requisite before passing order u/s 263 of the Act.

7. That on the facts and in the circumstances of the case, the Ld. PCIT(Central) has erred in law by distorting the facts as the direction has been issued vide order u/s 263 dated 30.03.2024 based on a different piece of information whereas the first Show Cause Notice dated 15.03.2024 u/s 263 of the Act was issued providing the appellant a different piece of information to comment upon and only few hours' time was afforded to the appellant to confront the information based on which the impugned adverse order u/s 263 of the Act has been passed on 30.03.2024.

8. That on the facts and in the circumstances of the case, the Ld. PCIT(Central) has erred in law and on facts by making wrong allegation of Cash Loan of Rs. 2 Crores without any supporting corroborative material or evidence on record and therefore, the order u/s 263 of the Act is devoid of merits and against the principles of natural justice.

9. That the order so framed by the Ld. Assessing Officer as well as the Ld. PCIT(Central) are bad in law and on facts (to the extent as elaborated above) and needs to be quashed.

10. That the appellant craves to add, amend, alter or withdraw any Ground or Grounds of Appeal.”

**For A.Y. 2015-16**

1. That on the facts and in the circumstances of the case, the orders passed by the assessing officer u/s 153A of the Act as well as the Ld. PCIT(Central) u/s 263 of the Act are bad in law, violative of principles of natural justice & void-ab-initio.

2. That on the facts and in the circumstances of the case, the Ld. PCIT(Central) has erred in law and on facts in initiating revisionary proceedings u/s 263 of the Act against an invalid and void-ab-initio assessment order u/s 153A of the Act as the Ld. PCIT(Central) cannot exercise powers u/s 263 of the Act to revise an assessment order which is non est in the eyes of law.

3. That on the facts and in the circumstances of the case, the Ld. PCIT(Central) has erred in law in invoking provisions of Sec. 263 of the Act totally against the principles of natural justice and without any merit as there is/was no occasion to initiate the revisionary proceedings u/s 263 of the Act.

4. That on the facts and in the circumstances of the case, the Ld. PCIT(Central) has erred in directing the Ld. AO to adjudicate the alleged fund transfer amounting to Rs. 10,53,99,925/- based on third party averments without any corroborative material or evidence on record as well as without providing the opportunity of cross examination to the appellant to rebut the wrong testimony of the third party.

5. That on the facts and in the circumstances of the case, the Ld. PCIT(Central) has erred in law in assuming jurisdiction u/s 263 of the Act beyond the reasonable period of time and without properly satisfying & demonstrating as to how the twin conditions for invoking the provisions of Sec. 263 of the Act were met as prescribed u/s 263 of the Act.

6. That on the facts and in the circumstances of the case, the Ld. PCIT(Central) has erred in law in framing an adverse order u/s 263 of the Act without providing a reasonable opportunity of being heard to the appellant which is a mandatory pre-requisite before passing order u/s 263 of the Act.

7. That on the facts and in the circumstances of the case, the Ld. PCIT(Central) has erred in law by distorting the facts as the direction has been issued vide order dated 30.03.2024 based on a mere third party averments whereas as per the first Show Cause Notice dated 15.03.2024 issued u/s 263 of the Act, it was asserted that the aforesaid allegation is being made based on the perusal of the material seized during the course of search which was totally not the case for invoking provisions of Sec. 263 of the Act as no such material was seized which would suggest that the appellant has made such fund transfers as the material which has relied upon by the Ld. PCIT(Central) does not bear the name or signature or any reference of the appellant.

8. That on the facts and in the circumstances of the case, the Ld. PCIT(Central) has erred in law and on facts by making wrong allegation of alleged fund transfer amounting to Rs. 10,53,99,925/- just on the basis of some vague averments made by some third party in his submissions during the course of his assessment proceedings without any supporting corroborative material on record and that too without providing the opportunity of confronting the said third party which makes the impugned

*order so passed u/s 263 of the Act devoid of merits and against the principles of natural justice.*

*9. That the order so framed by the Ld. Assessing Officer as well as the Ld. PCIT(Central) are bad in law and on facts (to the extent as elaborated above) and needs to be quashed.*

*10. That the appellant craves to add, amend, alter or withdraw any Ground or Grounds of Appeal.”*

**4.** Brief facts of the case are that a search action u/s 132 of the Act was initiated on 06.02.2019 vide Warrant of Authorization bearing no. 7263 in the case of “Avtar Singh Kochar, Gagandeep Singh Kochar, Hari Singh Kochar, M/s. H.L. Forex Pvt. Ltd.” which was conducted at the residence of the assessee/Sh. Sanjay Jain, i.e., at H.no. 17, Road no. 71, Punjabi Bagh West, New Delhi. Pursuant to the aforesaid search action, Ld. Assessing Officer (A.O.) framed the assessments u/s 153A of the Income Tax Act, 1961 for AY 2009-10 to AY 2019-20 vide his orders all dated 23-04-2021 in case of the assessee. The assessee has preferred appeals before the Ld. CIT(A) against all the said orders framed u/s 153A of the Act for AY 2009-10 to AY 2019-20 and the said appeals are pending for adjudication. Subsequently, on 15.03.2024, Ld. PCIT initiated proceedings u/s 263 of the Act for AY 2013-14 and AY 2015-16 and

thereafter, passed orders u/s 263 r.w.s. 153A of the Act on 30.03.2024 by deeming the order passed u/s 153A of the Act by the Assessing Officer as erroneous and prejudicial to the interests of revenue against which orders, the assessee is in appeal before us.

**5.** At the time of hearing, the Ld AR submitted before us that the order u/s 153A of the Act was passed by the Ld. Assessing Officer without having a valid jurisdiction as there was no warrant of search issued in the case of the assessee rather only the residential premises of the assessee was searched on the strength of the Warrant No. 7263 dated 06.02.2019 issued in the names of “Avtar Singh Kochar, Gagandeep Singh Kochar, Hari Singh Kochar, M/s. H.L. Forex Pvt. Ltd.” and not in the case of the assessee himself. During the course of hearing and vide the written submissions and Synopsis, the assessee has submitted the copy of the Warrant no. 7263 and the copy of the Panchnama which are reproduced hereunder:-

**WARRANT NO. 7263 DATED 06.02.2019**

FORM NO. 45

**WARRANT OF AUTHORISATION UNDER SECTION 132 OF  
THE INCOME TAX ACT, 1961  
AND RULE 112 (1) OF THE INCOME-TAX RULES, 1962**

To

The Addl. Director of Income Tax *Vivek Verma*The Joint Director of Income Tax *S. N. Meena*The Deputy Director of Income-Tax *Dr. Sahil Malik*

The Deputy Commissioner of Income-Tax

The Assistant Director of Income-Tax

The Assistant Commissioner of Income-Tax

The Income-Tax Officer

7263

Whereas information has been laid before me and on the consideration thereof I have reason to believe that:-

a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 131 of the Income-tax Act, 1961, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of the Income-tax Act, 1961, was issued by the Deputy Commissioner/the Assistant Commissioner/the Income-tax

Sarvashri/Shri/Shrimati Akshay Singh Kochhar, Gayandeep Singh Kochhar,  
Harri Singh Kochhar, M/s H.L. Forex Pvt. Ltd.

are/is in possession of any money, bullion, jewellery or other valuables articles or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be disclosed for the purposes of the Indian Income-tax act, 1922, or the Income-tax Act, 1961;

And whereas I have reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable articles or thing have been kept and are to be found in the residence of Sh. Sanjay Jain at H.No.17, Road No.71, Mayapuri, Bugh West, New Delhi.

(Specify particulars of the building/place/vessel/vehicle/aircraft);  
This is to authorise and require you at mentioned overleaf

[Name of the Deputy Director or of the Deputy Commissioner or of the Assistant Director or of the Assistant Commissioner of the Income-tax Officer]

- (a) to enter and search the said building/place/vessel/vehicle/aircraft;
- (b) to search any person who has got out of, or is about to get into, or is in the building/place/vessel/vehicle/aircraft if you have reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;
- (c) to place identification marks on such books of account and documents as may be found in the course of the search and as you may consider relevant to or useful for the proceedings aforesaid and to make a list thereof together with particulars of the identification marks;
- (d) to examine such books of account and documents and make, or cause to be made, copies or extracts from such books of account and documents
- (e) to seize any such books of account, documents, money, bullion, jewellery or other valuable article or thing found as a result of such search and take possession thereof;
- (f) to make a note of an inventory of any such money, bullion, jewellery, or other valuable article or thing;
- (g) to convey such books of account, documents, money, bullion, jewellery, or other valuable article or thing to the office of the Deputy Commissioner of Income-tax or any other authority not below the rank of the Income-tax Officer employed in the execution of the Income-tax Act, 1961; and
- (h) to exercise all other powers and perform all other functions under section 132 of the Income-tax Act, 1961, and the rules relating thereto.

You may requisition the services of any police officer or any officer of the Central Government or of both, to assist you for all or any of the purposes specified in sub-section (1) of section 132 of the Income-tax Act, 1961.

(SEAL)



WL  
Sudh  
06/02/19  
8:20 AM

Sanjay Jain  
6/2/19  
9:20 AM  
Ding  
C-2-19  
8:20 AM

199  
6/2/19  
Sanjay Jain  
18/3/19  
Director General of Income-tax (Inv.)

Addl Director of Income-tax (Inv.)

Office of the Addl. Director of Income-tax (Inv.)  
1st Floor, Room No. 41,  
Income Tax, West Block, 110, Connaught Place, New Delhi-110002

18/3/19  
11:30 AM

Sanjay Jain  
18/3/19  
3:00 PM

**PANCHNAMA DRAWN W.R.T. WARRANT NO. 7263 DATED 06.02.2019****PANCHNAMA**  
(To be prepared in quadruplicate)

- (A) Warrant in the case of : Avtar Singh Kochar, Gagandeep Singh Kochar, Hari Singh Kochar, M/s H. L. Forex Pvt. Ltd.
- (B) Warrant to search : The residence of Sh. Sanjay Jain at House No. 17, Road No. 71, Punjabi Bagh West, New Delhi.  
(Details & ownership of place of search)  
Telephone Numbers
- (C) (A) & (B) stated to be assessed by : (A) -  
(B) -

(D) Search Party consisting of :

**Authorised Officers:**

Name	Full Designation
1. Sh. Sohail Malik	DDIT, Unit-1(2), New Delhi

**Other officials who assisted the authorized officers:**


1. V.N Bala Subramanyam	ITO
2. Alok Kumar	ITI
3. Phani Bhushan Srivastava	ITI
4. Saurabh Kumar Maurya	ITI
5. Himanshu Kapoor	ITI
6. Sonika Tripathi	ITI
7. Sourav Kumar	ITI

(E) **Name & complete address of Panchas:**

1. **Witness - 1**  
Sh. Dinesh Chand  
S/o- Late Sh. Harish Chand  
R/o-32/120, Trilokpuri,  
New Delhi-110091

Dinesh  
10-2-19Sunil  
12/02/19

2. **Witness - 2**  
Sh. Sunil Kumar  
S/o - Rajpal Singh  
R/o - 11/52, Block-II, Trilokpuri,  
Delhi-110091

Sunil  
10/2/19
  
10-02-2019  
Dr. SOHAIL MALIK  
Dy. Director of Income Tax (Inv.)

10

(b) The following were found but not seized:

- (i) Books of account and documents as per Annexure-I. Marks of identification were placed on these and the specimen of the marks and the pages where these have been placed are shown in the inventory prepared.
- (ii) The other valuable articles or things (including money) and stock as per annexure J (One Sheet)<sup>#</sup> and Annexure 'O' (One Sheet- List of Watches)<sup>@</sup> (Separate inventories of jewellery, ornaments, silverware etc. were prepared for items found in different places or claimed to be belonging of different person).

# Jewellery found of Rs 17,88,936/- (as per Annexure 'J')

Jewellery given back to Party of Rs 17,88,936/-

Jewellery Seized - Nil

@Watches found valued of Rs. 59,94,232/-

Watches released to the party valued of Rs. 59,94,232/-

Watches Seized - Nil

6. In the course of the search the authorised officer Sh. Sohail Malik, DDIT(Inv.), Unit - 1(2), New Delhi recorded the statement(s) of Sh. Sanjay Jain, Smt. Neena Jain and Sh. Pranav Jain on solemn affirmation/oath, in our presence. No coercion, threat, inducement, promise or other influence was brought to bear on the above deponent. The statement was read over/explained in the local language viz. English/Hindi to the deponent who signed the statement in token of having understood its content and of agreeing that it has been correctly recorded. The deponent has made a statement under Explanation 5 to Section 271 (1) (c) of I.T. Act/18(1)(c) of W.T. Act about unaccounted assets and income of Rs. -

7. The following other important persons were present in the place of search and either took an active part in or helped in the search proceedings:

<u>Name</u>	<u>Relationship</u>
<del>.....</del>	<del>.....</del>

Sanjay Jain

Smt. Neena Jain

Sanjay Jain  
10/2/19

Sh. Sohail Malik  
10.02.2019  
Dr. SOHAIL MALIK  
Director, Income Tax (Inv.)

Date of Search: 06.02.2019

Annexure: A Page -1 of 3

Team: KG-7

LIST/INVENTORY OF BOOKS OF ACCOUNT/DOCUMENTS FOUND AND SEIZED

List of Books of accounts/documents Found & seized in the case of Avtar Singh Kochar, Gagandeep Singh Kochar, Hari Singh Kochar, M/s H. L. Forex Pvt. Ltd. at the residence of Sh. Sanjay Jain at House No. 17, Road No. 71, Punjabi Bagh West, New Delhi during the course of Search / Survey conducted under section 132 of Income Tax Act, 1961

Sr. No	Description of the Articles	Number of Pages	Remarks
1	Loose Papers	1 to 85	Annexure-A-1
2	Loose Papers	1 to 82	Annexure-A-2
3	Loose Papers	1 to 77	Annexure-A-3
4	Loose Papers	1 to 97	Annexure-A-4
5	Loose Papers	1 to 165	Annexure-A-5
6	Loose Papers	1 to 156	Annexure-A-6
7	Loose Papers	1 to 82	Annexure-A-7
8	Loose Papers	1 to 74	Annexure-A-8
9	Loose Papers	1 to 65	Annexure-A-9
10	Loose Papers	1 to 100	Annexure-A-10
11	Loose Papers	1 to 93	Annexure-A-11
12	Loose Papers	1 to 110	Annexure-A-12
13	Loose Papers	1 to 150	Annexure-A-13
14	Loose Papers	1 to 190	Annexure-A-14
15	Loose Papers	1 to 131	Annexure-A-15
16	Loose Papers	1 to 62	Annexure-A-16
17	Loose Papers	1 to 104	Annexure-A-17
18	Loose Papers	1 to 91	Annexure-A-18
19	Loose Papers	1 to 91	Annexure-A-19
20	Loose Papers	1 to 62	Annexure-A-20
21	Loose Papers	1 to 190	Annexure-A-21
22	One Brown Diary	1 to 43	Annexure-A-22
23	One Neelgagan Account Book (Note Book)	1 to 42	Annexure-A-23
24	One Red Diary	1 to 152	Annexure-A-24

Signature of Panchas  
(in case of search only)Signature of Officers  
authorised to search/survey  
(with name and designation)Signature of Party  
(with name and position)

D. SOHAIL MALIK  
Dy. Director of Income Tax (Inv.)  
Unit-1(2), New Delhi

10-2-19

10/02/19

Date of Search: 06.02.2019

Annexure: A Page -2 of 3

Team: KG-7

LIST/INVENTORY OF BOOKS OF ACCOUNT/DOCUMENTS FOUND AND SEIZED

List of Books of accounts/documents Found & seized in the case of Avtar Singh Kochar, Gagandeep Singh Kochar, Hari Singh Kochar, M/s H. L. Forex Pvt. Ltd. at the residence of Sh. Sanjay Jain at House No. 17, Road No. 71, Punjabi Bagh West, New Delhi during the course of Search / Survey conducted under section 132 of Income Tax Act, 1961.

Sr. No	Description of the Articles	Number of Pages	Remarks
25	One Red Diary	1 to 302	Annexure-A-25
26	One Green Diary	1 to 208	Annexure-A-26
27	Loose Papers	1 to 89	Annexure-A-27
28	Loose Papers	1 to 74	Annexure-A-28
29	Loose Papers	1 to 76	Annexure-A-29
30	Loose Papers	1 to 69	Annexure-A-30
31	Loose Papers	1 to 100	Annexure-A-31
32	One Neelgagan Slip Pad	1 to 14	Annexure-A-32
33	One Black Pocket Diary	1 to 74	Annexure-A-33
34	One Neelgagan Slip Pad	1 to 18	Annexure-A-34
35	One Neelgagan Slip Pad	1 to 29	Annexure-A-35
36	One Neelgagan Slip Pad	1 to 17	Annexure-A-36
37	One Neelgagan Slip Pad	1 to 51	Annexure-A-37
38	One HDFC BANK diary	1 to 17	Annexure-A-38
39	One Neelgagan Account Book (Note Book)	1 to 86	Annexure-A-39
40	One Red Diary	1 to 278	Annexure-A-40
41	One Green Diary	1 to 102	Annexure-A-41
42	One Diary (Directory)	1 to 168	Annexure-A-42
43	Loose Papers	1 to 71	Annexure-A-43
44	Loose Papers	1 to 75	Annexure-A-44
45	Loose Papers	1 to 57	Annexure-A-45
46	Loose Papers	1 to 50	Annexure-A-46
47	Loose Papers	1 to 52	Annexure-A-47

Signature of Panchas  
(in case of search only)Signature of Officers  
authorised to search/survey  
(with name and designation)Signature of Party  
(with name and position)

D: SOHAIL MALIK  
Dy. Director of Income Tax (Inv.)  
Unit-1(2), New Delhi

W. D. Dany  
10-2-19

W. S. Sanyal

Date of Search: 06.02.2019


Annexure: A Page -3 of 3

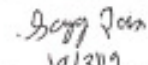
Team: KG-7

LIST/INVENTORY OF BOOKS OF ACCOUNT/DOCUMENTS FOUND AND SEIZED

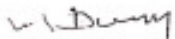
List of Books of accounts/documents Found & seized in the case of Avtar Singh Kochar, Gagandeep Singh Kochar, Hari Singh Kochar, M/s H. L. Forex Pvt. Ltd. at the residence of Sh. Sanjay Jain at House No. 17, Road No. 71, Punjabi Bagh West, New Delhi during the course of Search & Survey conducted under section 132 of Income Tax Act, 1961.

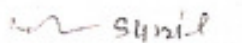
Sr. No	Description of the Articles	Number of Pages	Remarks
48	One Imaged Hard Disk along with one working copy Content: 1. HP laptop 2. Neena iPhoneX 3. Pranav Dell Laptop 4. Pranav iPhoneX 5. Pranav Oneplus 6T Mobile 6. Sanjay Samsung S8 Mobile	-	Annexure-A-48
49	One Imaged Hard Disk along with one working copy Content: 1. Internal 500 GB HDD 2. Mac Book Air Laptop 3. <a href="mailto:Sanjayjain1771@gmail.com">Sanjayjain1771@gmail.com</a> 4. Tablet Apple i-pad mini	-	Annexure-A-49
50	One Compaq Laptop	-	Annexure-A-50
51	One envelope containing 11 Mobile SIM	-	Annexure-A-51
52	One Samsung Galaxy S8 Mobile of Sh. Sanjay Jain	-	Annexure-A-52

Signature of Panchas  
(in case of search only)

 Signature of Officers  
authorised to search/survey  
(with name and designation)

  
Signature of Party  
(with name and position)

 D. SOHAIL  
Dy. Director of Income Tax (Inv.,  
Unit-1(2), New Delhi

  
10-2-19

  
10/2/19

The Ld. AR submitted that the law laid down under Sec.153A of the Act, which provision of income tax law strictly mandates that the assessment shall be framed u/s 153A of the Act, **only**, in the case of a person in case of whom the search warrant is issued u/s 132 of the Act, the relevant contents of Sec. 153A(1) of the Act are reproduced hereunder: -

*“Notwithstanding anything contained in ssection139, 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, 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 .....*”

6. The Ld. AR for the assessee further submitted that in the instant case, **the search warrant bearing no. 7263 was issued in the name of “Avtar Singh Kochar, Gagandeep Singh Kochar, Hari Singh Kochar, M/s. H.L. Forex Pvt. Ltd.” And not in the name of Sh. Sanjay Jain/the assessee** and accordingly, under no means of imagination, the provisions of Sec. 153A could have been invoked in the case of the assessee. The Ld. AR for the assessee placed reliance on the decision of the Coordinate Bench in the case

of Jindal Stainless Ltd. v. ACIT, CC-6 [2009] 120 ITD 301 (Delhi) wherein the bench observed that since there was no valid search warrant in the case of the assessee, resort to provisions of Sec. 153A was violation of law and accordingly, vide Para 73(i) of the said decision held that the assessments framed on the assessee under section 153A are non-est, void-ab-initio & invalid assessments. The relevant paras of the aforementioned decision are reproduced herein below: -

*45. "There also the search warrants are in the name of Shri Sandeep Bansal only and are not in the name of the appellant-company. Thus, prerequisite condition of search being initiated in the case of appellant is not fulfilled....."*

*There may be a valid search in the case of said Shri Sandeep Bansal but assessment under section 153A could be made only in his hands and not in the case of appellant....."*

*Such defect in framing the assessment is a jurisdictional defect which cannot be cured and assessment has to be held to be invalid because the Assessing Officer did not have any jurisdiction to assess the appellant."*

Further held at Para 73(i):

*"To sum up our conclusions are:—*

*(i) That the assessments framed on the appellant under section 153A are invalid assessments as discussed in the body of this order. ...."*

7. The Ld. AR also brought on record that no material or document was found during the course of search which pertains to

or relates to or belongs to the aforementioned parties in whose names Warrant no. 7263 was in fact issued, i.e., “Avtar Singh Kochar, Gagandeep Singh Kochar, Hari Singh Kochar, M/s. H.L. Forex Pvt. Ltd.”. Further, Ld. AR also demonstrated during the course of hearing that no addition whatsoever has been made in the impugned orders u/s 153A pertaining to any document belonging to the aforementioned parties.

**8.** The Ld.AR further submitted that in view of the crystal clear & settled position of law that assessment u/s 153A of the Act can ONLY be framed in case of such person in whose case a search action is initiated u/s 132 of the Act, the assessment orders so framed u/s 153A of the Act in case of the assessee by the Ld. AO on 23.04.2021 for AY 2009-10 to AY 2019-20 are all **non est**, invalid, void-ab-initio, illegal and unlawful as no search warrant of authorisation was ever issued in the name of the assessee.

**9.** The Ld.AR further submitted that it is a well settled principle of law that the Orders passed which are non-est in the eyes of law cannot be revised by invoking provisions of Sec. 263 of the Act as a non-est order cannot be held to be erroneous & prejudicial to the

interest of revenue, the AR insisted that his aforesaid argument as “Once a nullity always a nullity”. The Ld.AR further buttressed his argument by submitting that the said principle was laid down by the Hon’ble Apex Court in the case of Kiran Singh & Others vs Chaman Paswan &ors [1955] 1 SCR 117 by observing that *"It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties."*

**10.** The Ld.AR further submitted that as earlier discussed in paras above that the orders framed u/s 153A of the Act are non-est, null & void ab initio, therefore, an order which is non-existent in the eyes of law (i.e., the order passed u/s 153A of the Act), then such an order cannot be deemed as erroneous & prejudicial to the interest of revenue as the same does not exist as per the law and

therefore, the resultant proceedings ( i.e., orders passed u/s 263 of the Act) based on the said non-est order are also non-est, bad in law and void-ab-initio.

**11.** The Ld.AR further relied by placing reliance on another decision of the coordinate Bench in the case of *M/s Shahi Exports Pvt. Ltd v. PCIT in ITA Nos. 2170-71/DEL/2017* whereby the Bench vide Para 16 of the said judgement held that *the assumption of jurisdiction u/s 263 of the Act in respect of an assessment which is non-est is also bad in law as a non-est order cannot be erroneous and prejudicial to the interest of the Revenue. An order framed u/s 263 of the Act for both the A.Ys 2008-09 and 2010-11 are accordingly quashed on the principle of Sublato Fundamento Cedit Opus, meaning thereby, that in case the foundation is removed, the super structure falls. Since the foundation, i.e. the order u/s 153C has been removed, the super structure i.e. the order u/s 263 must fall.*

**12.** The Ld.AR further prayed before us that since the order u/s 153A of the Act is non-est in the eyes of law then order framed u/s

263 of the Act on the strength of the said non-est order is also bad in law and void ab initio in view of the settled law.

**13.** On the other hand, the Ld. CIT (DR) had made his detailed oral arguments and filed his summarized written submissions, that are reproduced herein below:-

*“In respect of the above issue raised by the assessee, detailed arguments were made by the undersigned during the course of hearing. As desired by the Hon'ble Bench, the same are being summarized as under.*

*1. It is submitted that the copy of Warrant of authorisation for search and Panchnama filed by the assessee before Hon'ble Bench constitute additional evidence as the same were not brought before learned PCIT during the course of proceedings under section 263 of the Income tax Act. In this regard, it would be pertinent to highlight that for the purpose of proceedings under section 263 of the Act before Ld. PCIT, assessment order passed by the assessing officer is the starting point. Proceedings under section 263 and 153A of the Act are two separate and distinct proceedings before two different authorities. Copy of documents such as Warrant for authorisation of search, Panchnama etc, which are prepared by the Investigation wing are normally not kept in/not part of the assessment folder and are kept separately. They are referred by the assessing officer as and when required during the course of assessment proceeding. Therefore, it would not be reasonable to presume that the learned PCIT was having these two documents on his record, while conducting proceedings under section 263 of the Act, even if he had access to assessment folder. This will be even more true as during the course of assessment proceedings, no such objection with regard to non-issue of search warrant in the name of the assessee was raised by the assessee at all and above mentioned two documents (copy of Warrant of authorisation and Panchnama being submitted now before Hon'ble Bench) were not filed by the assessee before the assessing officer. In light of these peculiar facts of the case, both above documents can not expected to be available in assessment folder.*

*Further, importantly, the assessee did not submit such documents even before learned PCIT during the course of proceedings under section 263 of the Act. Therefore, the learned PCIT had no occasion to examine such documents and connected claim of the assessee. In view of the above factual matrix, above two documents (copy of Warrant of authorisation and Panchnama) being produced by the assessee now before the Hon'ble Bench definitely constitute 'additional evidence' for the purpose of instant proceedings before Hon'ble Tribunal within the meaning of Rule 29 of ITAT Rules.*

*2. In of this regard, it would be pertinent to go through Rule 29 of ITAT Rules dealing with production additional evidence, which is reproduced below :*

*"Production of additional evidence before the Tribunal.*

*29. The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or, if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by the, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced."*

*As per the above rule, none of the parties to the appeal is entitled to produce additional evidence before the Hon'ble Tribunal. The assessee has not substantiated that sufficient opportunity was not allowed to it to produce or it was prevented due to some reasonable cause from producing documents before Ld. PCIT during proceeding under section 263 of the Act. These documents were available with the assessee at the time of proceedings under section 263 of the Act and assessee had made multiple submissions before learned PCIT during the course of proceedings under section 263 of the Act. Such submissions made on 20.03.2024, 26.03.2024, 27.03.2024 and 28.03.2024 are forming part of paper book filed by the assessee (Pg. No. 61-63, 68-80, 135-136 and 137-139 respectively of the Paper Book filed by the assessee). It is noteworthy that during the course of hearing before Hon'ble Bench, the learned A.R. of the assessee has not given any reason at all explaining*

*as to why above documents could not be produced/ before the learned PCIT.*

*Therefore, in my respectful submission, Hon'ble bench is requested not to admit above mentioned additional evidence in the form of copy of warrant of authorisation and copy of Panchnama as it is in contravention of Rule 29 of ITAT Rule.*

*It is, further submitted that objection raised by the assessee with regard to validity of the assessment under section 153A of Income-tax Act and consequent proceeding under section 263 of the Act may kindly be dismissed and appeal may be heard on merit.*

3. *During the course of hearing, the learned AR of the assessee also contended that he had raised the point relating to non-issue of warrant of authorisation and Panchnama in the name of the assessee during the course of proceeding under section 263 of the Act. In this regard, it would be pertinent to peruse the submissions filed by the assessee before learned PCIT. As stated earlier, there are total 4 submissions filed by the assessee in response to multiple notices for hearing issued by the Learned PCIT. In one of such submissions (i.e. submission dated 26.03.2024 at page 69 of Paper Book), the assessee had made this assertion/point in very general manner covering only 4 lines. However, it is important to note that this assertion of the assessee before Ld. PCIT was not supported by any kind of evidence or any document, which are sought to be produced before Hon'ble bench now. It is not understandable as to why the assessee did not enclose the aforesaid documents (copy of Warrant of authorisation and Panchnama) while filing its submissions before learned PCIT. There is nothing on the record to suggest that the assessee was not having both these documents at the time of making such submissions before Learned PCIT and he was afforded multiple opportunities of being heard by Learned PCIT. It is also strange to note that assessee maintained complete silence on this issue/point in subsequent submissions filed on 27.03.2024 and 28.03.2024 before learned PCIT. It is well accepted principal in law that onus to substantiate an assertion is on the person who makes such an assertion unless statute provides otherwise. The assessee failed to discharge such onus. In this regard, one thing is evident from the records that assessee chose not to substantiate its assertion before learned PCIT despite having above referred documents in his possession at the time of making submissions before learned PCIT. It is also apparent from facts of the case as discussed above that due to some*

reasons, the assessee did not want to highlight and contest the issue of non-issuance of warrant and panchnama in its name at the stage of proceedings before Ld. PCIT. Irrespective of whatever was the reason for such an approach adopted by the assessee, two points are evident from conduct of the assessee, firstly the learned PCIT had no occasion to examine the claim of the assessee and no failure on this count can be attributed to Learned PCIT. Secondly, both above mentioned documents will qualify as additional evidence in terms of Rule 29 of ITAT Rule.

4. Without prejudice to above objection against admission of additional evidence, if Hon'ble bench is of considered view that above discussed documents are required to be taken into consideration to enable it to pass the order, it is respectfully submitted that in the interest of natural justice, matter may be remanded back to learned PCIT to examine the claim of the assessee on this point as such documents were not before Ld. PCIT. It will also provide an opportunity of being heard to the Revenue on this issue. Here, it would be pertinent to mention that even though Warrant of authorisation and Panchnama produced as part of the paper book by the assessee do not bear name of the assessee, it cannot be ruled out that there may be some other Warrant of authorisation and Panchnama having name of the assessee. During the course of such operations, multiple Warrants are issued and multiple Panchnama are prepared. Therefore, production of above two documents by the assessee does not conclusively prove that no warrant of authorization was issued in the name of the assessee. If the case is remanded back to learned PCIT, all these aspects will get examined. There are catena of decisions of Hon'ble Tribunal and Hon'ble Courts, where issues have been remanded back to the concerned lower authorities once additional evidence is admitted. One of such latest decisions on which reliance is placed is decision in the case of FR. Sauter AG vs. ITO(International tax) (2024), 158 Taxmann.com 161 the (Delhi-Tribunal), wherein Hon'ble Tribunal restored the additional evidences filed by assessee to the file of the Ld. CIT(A) for deciding the grounds of appeal afresh after considering additional evidences so failed.

5. Since, during the course of hearing before Hon'ble Bench, only the issue of absence of warrant of authorisation and Panchnama in the name of the assessee was discussed and argued, I am restricting my submission at this stage to the said issue only. Further submission will be made by the undersigned if and when Hon'ble bench decides to hear the appeal on merit and other points.”

**14.** In summary, the Ld. CIT (DR) argued that the assessee has challenged the entire proceedings framed u/s 263 of the Act on the basis of a Search Warrant bearing no. 7263 which may have not found a place in the records of the Ld. PCIT while examining the assessment records and he may have started examining the issue from the assessment order u/s 153A of the Act upfront in presumption that the Ld. Assessing Officer must have appropriately dealt with the matter of jurisdiction.

**15.** The Ld. DR further argued that the assessee has brought the issue that no warrant of search was issued in the name of the assessee only before the Hon'ble Bench and has not taken up this issue during the course of proceedings u/s 263 of the Act before the Ld. PCIT and therefore, the Warrant of Search and Panchnama so placed before the Hon'ble Bench by the assessee are additional evidences for the Ld. PCIT and therefore, the matter should be remanded back to the file of Ld. PCIT to examine the Warrant no. 7263 dated 06.02.2019 and its respective Panchnama.

**16.** The Ld. DR further argued & submitted that there may be another warrant in the name of the assessee as in the normal course of search & seizure action, multiple warrants are issued.

**17.** Against the aforementioned written submissions/arguments raised by the Ld. DR, the Ld. AR has also filed a rejoinder, the relevant portion of the same is reproduced below:-

*“II. COUNTER ARGUMENTS/REBUTTAL AGAINST WRITTEN SUBMISSIONS FILED BY LD. CIT(DR)*

*II(i). The Ld. CIT(DR), Bench-G, ITAT, Delhi has filed his written submission.*

*II(ii). The appellant would like to submit his counter arguments against the written submissions filed by the Ld. DR as aforesaid.*

*II(iii). On appraisal of the said written submissions, it has been observed that the arguments of the Ld. DR are threefold which have no legs in the eyes of law as demonstrated herein below: -*

*a) That appellant did not raise the issue of warrant of search before the Ld. PCIT during the course of proceedings u/s 263 of the Act*

*Rebuttal:*

*With respect to the first argument of the Ld. DR, it is most respectfully submitted that the said argument that the appellant did not raise the relevant issue before Ld. PCIT does not hold good as the appellant has duly raised the said issue before the Ld. PCIT that no warrant of search has been issued in the case of the appellant during the course of proceedings u/s 263 of the Act vide his letter dated 26.03.2024 for both the assessment years (as imaged below for your honors' ready reference: -*

*For AY 2013-14*

Acknowledgement Number : 153671931260324

e-Proceedings Response Acknowledgement				
INCOME TAX DEPARTMENT				
PROCEEDING DETAILS				
PAN/TAN	AAGPJ1847C			
Name	SANJAY JAIN			
Financial Year	2012-13			
Assessment Year	2013-14			
Proceeding Name	Revision Proceedings u/s 263(Income Tax)			
Notice/Communication Reference ID	100077307165			
Notice Section	263			
Description	[ITBA]Hearing notice			
Notice Issue Date	21-Mar-2024			
Due Date for Submission	26-Mar-2024			
Communication Sent date				
Document Reference ID	ITBA/REV/F/REV1/2023-24/1063100284(1)			
RESPONSE SUBMITTED				
Remarks	Respected Sir, Please find enclosed letter dated 26.03.2024.			
Hash * Value Of Remarks	d9b681732e4e179b8cd65e577c3410af09d64c6587d18524a06ef7545e3ee367			
Sl No	Attachment Name	Description	Size(bytes)	Hash * value of Attachment
1	Letter dated 26.03.24 AY 2013-14.pdf	Letter dated 26.03.2024	579058	afbcee223e733a78eb292c8a3f8a68943231ffc36b05c1d2a8f500cba32ef07a

PCIT(Central)-3,  
Delhi.  
E-Mail:- DELHI.CIT.CEN3@INCOMETAX.GOV.IN

26.03.2024

Respected Sir,

**Reg.: Show Cause Notices issued u/s 263 of the Income Tax Act, 1961 dated 21.03.2024 & 15.03.2024 for AY 2013-14 in case of Sh. Sanjay Jain (PAN: AAGPJ1847C)**

This is in reference to the captioned matter.

Your good-self has issued notice dated 21.03.2024 u/s 263 of the Act desiring the assessee to reply to the show cause notice dated 15.03.2024 on 26.03.2024 at 05:00 PM irrespective of the adjournment request made by the assessee on 20.03.2024 for adjourning the matter for 15-20 days' time as the assessee is out of station due to some medical exigency of his family member.

At the outset, it is hereby submitted that the search was conducted at my premises namely, 17/71, Punjabi Bagh, New Delhi though the warrant was issued in the name of some third person, therefore, no legally tenable proceedings arises u/s 263 r. w. s. 153A of the Act.

Further, it is most respectfully submitted that the present proceedings so initiated u/s 263 of the Act are totally against the principles of natural justice, illegal and uncalled for. The tax department does not have absolute isolated powers to initiate the proceedings at their convenience and then dictating & directing the assessee to comply even when the assessee is not in a position to effectively & reasonably comply or contest the queries the so raised at the given point of time.

The pre-requisite for passing an order u/s 263 of the Act is to grant an opportunity of being heard to the assessee before passing any such order. In the instant case, your good-self has issued the very first notice for the captioned assessment year, i.e., AY 2013-14 on 15.03.2024 for complying the same before 20.03.2024 and when the assessee requested for granting reasonable time of 15-20 days then again a notice has been issued on 21.03.2024 for making compliance on 26.03.2024 stating that "if no reply is received within the above given time period, it will be presumed that you have nothing to say in the matter and order u/s 263 of the Income tax Act, 1961 will be passed on merits on the basis of material available on record as 31st March is the last date to pass the order."

AY 2015-16

Acknowledgement Number : 153573801260324

e-Proceedings Response Acknowledgement				
INCOME TAX DEPARTMENT				
PROCEEDING DETAILS				
PAN/TAN	AAGPJ1847C			
Name	SANJAY JAIN			
Financial Year	2014-15			
Assessment Year	2015-16			
Proceeding Name	Revision Proceedings u/s 263(Income Tax)			
Notice/Communication Reference ID	100077297486			
Notice Section	263			
Description	[ITBA]Hearing notice			
Notice Issue Date	21-Mar-2024			
Due Date for Submission	26-Mar-2024			
Communication Sent date				
Document Reference ID	ITBA/REV/F/REV1/2023-24/1063094532(1)			
RESPONSE SUBMITTED				
Remarks	Respected Sir, Please find enclosed letter dated 26.03.2024.			
Hash * Value Of Remarks	d9b681732e4e179b8cd65e577c3410af09d64c6587d18524a06ef7545e3ee367			
Sl No	Attachment Name	Description	Size(bytes)	Hash * value of Attachment
1	Letter dated 26.03.24 AY 2015-16.pdf	Letter dated 26.03.2024	529045	c43fd0315b5525724565b8b077bfbad3be04520070723186d20a916a3da02c49

PCIT(Central)-3,  
Delhi.  
E-Mail:- DELHI.CIT.CEN3@INCOMETAX.GOV.IN

26.03.2024

Respected Sir,

**Reg.: Show Cause Notices issued u/s 263 of the Income Tax Act, 1961 dated 21.03.2024 & 15.03.2024 for AY 2015-16 in case of Sh. Sanjay Jain (PAN: AAGPJ1847C)**

This is in reference to the captioned matter.

Your good-self has issued notice dated 21.03.2024 u/s 263 of the Act desiring the assessee to reply to the show cause notice dated 15.03.2024 on 26.03.2024 at 05:00 PM irrespective of the adjournment request made by the assessee on 20.03.2024 for adjourning the matter for 15-20 days' time as the assessee is out of station due to some medical exigency of his family member.

At the outset, it is hereby submitted that the search was conducted at my premises namely, 17/71, Punjabi Bagh, New Delhi though the warrant was issued in the name of some third person, therefore, no legally tenable proceedings arises u/s 263 r. w. s. 153A of the Act.

Further, it is most respectfully submitted that the present proceedings so initiated u/s 263 of the Act are totally against the principles of natural justice, illegal and uncalled for. The tax department does not have absolute isolated powers to initiate the proceedings at their convenience and then dictating & directing the assessee to comply even when the assessee is not in a position to effectively & reasonably comply or contest the queries the so raised at the given point of time.

The pre-requisite for passing an order u/s 263 of the Act is to grant an opportunity of being heard to the assessee before passing any such order. In the instant case, your good-self has issued the very first notice for the captioned assessment year, i.e., AY 2015-16 on 15.03.2024 for complying the same before 20.03.2024 and when the assessee requested for granting reasonable time of 15-20 days then again a notice has been issued on 21.03.2024 for making compliance on 26.03.2024 stating that "if no reply is received within the above given time period, it will be presumed that you have nothing to say in the matter and order u/s 263 of the Income tax Act, 1961 will be passed on merits on the basis of material available on record as 31st March is the last date to pass the order."

Page 1 of 5

*Even otherwise, without prejudice to the above factual position, the Hon'ble Apex Court of the Country in the case of NTPC v. CIT [1998] 97 Taxman 358 (SC) vide order dated 04.12.1996 has held that the appellate authorities have jurisdiction to examine any ground having a bearing on the tax liability of the assessee which goes to the roots of the matter in accordance with law and reason and the same cannot be overlooked.*

*In view of the above, the first argument of the Ld. CIT (DR) is devoid of any merit, baseless, vague and invalid in toto.*

*b) That the Warrant of Search and Panchnama are additional evidence for the Ld. PCIT and therefore, the matter should be remanded back*

*Rebuttal:*

*It is quite surprising that the documents which form part & parcel of the assessment records and that too very much in the possession of the Ld. Assessing Officer himself as well as available before the Ld. PCIT are being described as the additional evidences put forward by the appellant which documents are the creation of the department itself and not a new material or evidence which have been brought on record. In fact, these are the documents which are the basis of the entire proceedings which took place in case of the appellant.*

*The appellant has just pointed out the relevant material which was lying in their own records and which was available to both the Ld. AO while framing the assessment u/s 153A of the Act and to the Ld. PCIT while examining the records u/s 263 of the Act.*

*The Ld. CIT DR by his aforementioned argument is just praying before the Hon'ble Bench to give the Ld. PCIT an opportunity to examine their own records in the interest of natural justice – Quite a lame & shallow argument.*

*How a document obtained by the appellant from the revenue authorities can be termed as an additional/new evidence for the revenue authorities itself. It is sheerly an attempt of the Ld. DR to delay/ prolong the litigation/appellate proceedings as otherwise the department has no merits in its case.*

,

*The appellant has duly disclosed the fact that no warrant of search was issued in the name of the appellant in “black & white” before the Ld. PCIT as already stated above.*

””

*Even it is assumed that the appellant did not enlighten the Ld. PCIT about the aforesaid fact, it was the duty of the Ld. PCIT to peruse all the relevant documents including the Warrant of Search & Panchnama before taking any adverse inference against the appellant while framing impugned order u/s 263 of the Act.*

,

*Further to the above, the Ld. DR argued that the Ld. PCIT must have started looking into the documents from the Assessment Order but failed to appreciate the fact that the Ld. PCIT challenged the assessment order framed u/s 153A of the Act by referring to the Seized Material and Search Proceedings as the Ld. PCIT categorically quoted the Annexure number in his Show Cause Notice dated 15.03.2024 from which it can also be presumed that the Ld. PCIT had gone through the Panchnama*

*drawn in the case of the appellant – This assumption is clearly possible but the arguments of the appellant are absolutely backed by facts as well as the law for which no assumption is warranted as against the arguments raised by the Ld. CIT(DR) which are solely based on the assumptions & presumptions which have no defined limits and hence, arbitrary & baseless.*

*In view of the above, the second argument of the Ld. CIT (DR) is also devoid of any merit, baseless, vague and invalid in toto.*

*c) That there may be any other Warrant of Search in the name of the appellant*

*Rebuttal:*

*”*

*The Ld. DR argued that in a search action, there may be multiple warrants and therefore, has put forward his presumption & assumption without any evidence or supporting material on record that in the instant case of the appellant as well, there may be some other warrant which was issued in the name of the appellant - There cannot be any assumption / presumption of some more panchnama.*

*In this regard, it is most respectfully submitted that the Hon’ble Bench provided reasonable opportunity to the Ld. DR to bring on record if there is any other warrant issued in the name of the*

*appellant but the Ld. DR failed to produce any warrant which was issued in the name of the appellant.*

”””

*It is again reiterated that no warrant of search was issued in the name of the appellant and all the arbitrary additions made while framing assessment u/s 153A of the Act have been made based on the material seized during the course of search action conducted at the residential premises of the appellant at 17/71, Punjabi Bagh West, New Delhi – 110026 under Warrant no. 7263 dated 06.02.2019 which was issued in the name of “Avtar Singh Kochar, Gagandeep Singh Kochar, Hari Singh Kochar, M/s. H.L. Forex Pvt. Ltd.” to search the premises of the appellant as there was no warrant of search issued in case of the appellant in his individual capacity/ in his own case.*

*In view of the above, the third argument of the Ld. CIT (DR) is also devoid of any merit, baseless, vague and invalid in toto.”*

**18.** In summary, during the course of hearing as well, the Ld. AR has submitted that the assessee has duly highlighted the said fact that no warrant of search was issued in the name of the assessee during the course of proceedings u/s 263 of the Act before the Ld. PCIT vide his letter dated 26.03.2024 which finds place at Pages

68-80 of the Paper-book filed by the assessee whereby the said fact was mentioned.

**19.** The Ld.AR further argued that the contention of the Ld. DR that the Warrant no. 7263 dated 06.02.2019 and its respective Panchnama forms part & parcel of the assessment records and therefore, the same cannot be termed as “additional evidence” as the said documents were already lying in the file/assessment & case records of the Ld. Assessing Officer as well as that of the Ld. PCIT and therefore, all the arguments raised by the Ld. DR are legally not tenable and have no substance in the eyes of law.

**20.** The Ld. AR also submitted that the law laid down by the Hon'ble Apex Court of the Country in the case of **NTPC v. CIT [1998] 97 Taxman 358 (SC)** vide order dated 04.12.1996 which states that the appellate authorities have jurisdiction to examine any ground having a bearing on the tax liability of the assessee which goes to the roots of the matter in accordance with law and reason and the same cannot be overlooked. Therefore, even if the assessee did not take up the issue before the Ld. PCIT, it can always raise any ground before any appellate authority which goes

to the roots of the matter and have a great bearing on the outcome of the case and therefore, the arguments raised by the Ld. DR are devoid of merit.

**21.** Considered the rival submissions and perused the material placed on record. We observed that the assessments were framed by the Assessing Officer u/s 153A of the Act for AY 2009-10 to AY 2019-20 pursuant to search action conducted at the residential premises of the assessee at H.no. 17, Road no. 71, Punjabi Bagh West, New Delhi under Warrant no. 7263 dated 06.02.2019 in the case of “Avtar Singh Kochar, Gagandeep Singh Kochar, Hari Singh Kochar, M/s. H.L. Forex Pvt. Ltd.”. On query raised during the hearing at the bar, the Ld. DR failed to produce any other warrant in the name of the assessee, i.e., Mr. Sanjay Jain and moreover, there can be no presumption or assumption with regard to any additional warrant unless & until produced before the Bench. As already mentioned above, the Ld. DR was unable to produce any other warrant in the name of the assessee.

**22.** The provisions of Sec. 153A of the Act mandates that to issue a notice u/s 153A, a search must have been initiated in case of the said person based on a warrant of authorization issued in the name of very such person, i.e., to invoke the provisions of Sec. 153A, initiation of search u/s 132 in case of the said person is a pre-requisite. The person referred under Sec.153A and Sec. 132 is one & the same person. It is an undisputed & undeniable fact that there must be an issuance of a valid warrant of authorization of search in the name of the very person u/s 132 of the Act in whose case proceedings u/s 153A of the Act are initiated. In the case of the assessee, the Warrant of Authorization, Warrant no. 7263 on Form 45, was issued in the names of “Avtar Singh Kochar, Gagandeep Singh Kochar, Hari Singh Kochar, M/s. H.L. Forex Pvt. Ltd.” And not in the name of the assessee, i.e., Sh. Sanjay Jain.

**23.** Therefore, we find merit in the argument of the Ld. AR that when no Warrant of Authorization has been issued u/s 132 of the Act in the name of the assessee then the assessment proceedings & orders cannot be framed u/s 153A of the Act in case of the assessee. Hence, the orders framed u/s 153A of the Act in case of

the assessee are **non est**, invalid, void-ab-initio, illegal and unlawful. Further, the facts of the instant case of the assessee are also similar to the case of Jindal Stainless Ltd. v. ACIT, CC-6 [2009] 120 ITD 301 (Delhi) as relied upon by the Ld AR whereby the Coordinate Bench held that the assessments framed on the assessee under section 153A are invalid assessments when there is no warrant of authorization of search u/s 132 of the Act in his own name. Accordingly, following the decision of the coordinate bench only, it is held that the assessments framed u/s 153A of the Act in case of the assessee are **non est**, invalid, void-ab-initio, illegal and unlawful and deserves to be quashed in the interest of justice.

**24.** As regards the second argument of the Ld AR is concerned that when the primary proceedings are non-est then the subsequent proceedings cannot be treated as valid also holds good and the same is also a covered matter of the coordinate Bench in the case of M/s Shahi Exports Pvt Ltd v. PCIT in ITA Nos. 2170-71/DEL/2017 which has been relied upon by the Ld AR as well.

**25.** Further, we also do not find any merit in the arguments raised by the Ld. DR so far as that the Ld. PCIT was not in the possession of the Search Warrant and Panchnama as it is the duty of the Ld. PCIT to examine each & every document of the completed assessment record before passing any order u/s 263 of the Act and the Warrant no. 7263 & its respective panchnama forms are an integral part of the assessment records and it cannot be said that these documents were not in possession of the Ld. PCIT while examining the assessment records. In our view, the said documents cannot at all be described as additional evidence and the Revenue cannot term its own records as Additional Evidence. Therefore, the decision of the coordinate bench in case of *FR Sauter AG v. ITO (Intl. Tax) (2024)*, 158 Taxmann.com 161 (Delhi-Tribunal) as relied upon by the Ld. DR does not hold good in the instant case as the Revenue cannot term its own file/ documents available in the assessment records forming part of the revisionary proceedings u/s 263 of the Act as “Additional Evidence” under any stretch of imagination. Accordingly, the copy of search warrant and consequent panchnama relied upon by the assessee which were

already in the possession of the Revenue since inception will not qualify as Additional Evidences in terms of Rule 29 of Income Tax (Appellate Tribunal) Rules, 1963.

**26.** Moreover, during the revision proceedings u/s 263 of the Act, the Ld AR has drawn the attention of the Ld. PCIT vide their reply dated 26.03.2024 that “no Search Warrant has been issued in the name of the appellant and therefore, no legally tenable proceedings arises u/s 263 r.w.s. 153A of the Act which is a matter emanating from the facts on record”. However, the Ld. PCIT failed to go through the case records and erroneously proceeded with proceedings u/s 263 of the Act based on a **non est**, invalid, void-ab-initio, illegal and unlawful order u/s 153A of the Act which is bad in law.

**27.** In view of the above discussion, since the orders u/s 153A of the Act are held to be **non-est**, invalid, *void-ab-initio*, illegal and unlawful, the consequent orders passed by the Ld. PCIT u/s 263 of the Act for AY 2013-14 and AY 2015-16 are hereby quashed on the principle that in case the foundation is removed (i.e., assessment

orders u/s 153A of the Act), the super structure (i.e., orders u/s 263 r.w.s. 153A of the Act) must fall.

**28.** As the subject orders u/s 263 r.w.s. 153A of the Act are itself quashed, therefore, no adjudication is required for other grounds raised by the assessee.

**29.** In the result, the appeals preferred by the assessee are allowed.

Order pronounced in open Court on 22<sup>nd</sup> May, 2024.

Sd/-  
**(VIMAL KUMAR)**  
**JUDICIAL MEMBER**

Sd/-  
**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Dated: 22/05/2024

*Pk/sps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI