

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI  
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 2466/Del/2023  
(Assessment Year: 2017-18)**

ACIT,  
Circle-46(1),  
New Delhi

(Appellant)

**PAN:AAKPG2768D**

Vs. Shri Deepak Gambhir,  
68/8, NEA, Near Sindhi  
Park, Old Rajendra  
Nagar, New Delhi  
(Respondent)

Assessee by :	Shri Ved Jain, Adv Ms. Uma Upadhyay, CA
Revenue by:	Shri Vivek Kumar Upadhyay, Sr. DR
Date of Hearing	09/04/2024
Date of pronouncement	08/07/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.2466/Del/2023 for AY 2017-18, arises out of the order of the Id. Commissioner of Income Tax (Appeals)-27, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. DIN & Order No: 27/11134/2016-17 dated 30.06.2023 against the order of assessment passed u/s 147/143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.03.2022 by the Assessing Officer, DCIT, Central Circle-19, New Delhi (hereinafter referred to as 'Id. AO').
2. The revenue has raised the following grounds of appeal before us:-

*"1. Whether on the facts & circumstances of the case and in law, the Ld. CIT(A) has erred in differentiating the information received on the basis of seized material (as required u/s 148 of the Act) with seized material as per Section 153C of the Act?*

*2. Whether on the facts & circumstances of the case and in law, the Ld. CIT(A) has erred in the considering the fact that satisfaction note drawn by AO of the searched person is a necessary requirement for initiation of proceedings u/s 153C of the Act and information in this case was disseminated by investigation wing of the department?*

*3. Whether on the facts & circumstances of the case and in law, the Ld. CIT(A) has erred in overlooking the fact that no satisfaction note of the AO of the searched was sent to the AO of the assessee?*

*4. Whether on the facts & circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition ignoring the fact that there are no provisions in the Act that limit the scope of assessment/re-assessment u/s 147 of the Act in cases arising from information received on the basis of seized material?*

*5. (a) The Order of the Ld. CIT(A) is erroneous and not tenable in law and on facts.*

*(b) The appellant craves to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal."*

3. We have heard the rival submissions and perused the material available on record. The assessee is an individual and had filed his return of income for assessment year 2017-18 declaring total income of ₹3,54,72,680/-. This return was duly processed u/s 143(1) of the Act on 24.12.2017, accepting the return. A Search and seizure action was carried out on 18.10.2019 u/s 132 of the Act in the case of Alankit Group, its key promoter, Shri Alok K Agarwal, his son- Ankit Agarwal, and some of his close associates and key employees. During the course of search action, in the case of Alankit Group, digital data was seized from the laptop of one Sunil Kumar Gupta, who is employee and accountant of Shri Alok Kumar Agarwal, in which the name of the

assessee was appearing in some list. This information was passed on by DDIT(Inv.)-7(4), New Delhi dated 15.03.2015 to the Id AO of the assessee. Based on the information, the Id AO of the assessee concluded that the assessee has received accommodation entry in the form of bogus Long-Term Capital Gains (LTCG)/ Short-Term Capital Gains (STCG) of ₹3,64,21,799/- from M/s Alankit Ltd through one entry operator namely Sri Alok Kumar Agarwal. Accordingly, Id AO sought to reopen the assessment for AY 2017-18 by issuance of notice u/s 148 of the Act on 28.03.2021, which was duly served on the assessee well within the prescribed time. In response to the above notice, the assessee filed his return of income on 26.04.2021, declaring total income of ₹3,54,72,680/- (which was the same as the original return of income). The assessee requested for providing copy of reasons recorded for reopening the assessment which was duly provided on 26.11.2021 and on 14.12.2022 (in which the issue regarding the assessee having received accommodation entry in the form of bogus LTCG/ STCG of ₹3,64,21,799/- from M/s. Alnakit Ltd through one entry operator, namely Sri Alok Kumar Agarwal, was discussed). The assessee filed his objection vide letter dated 19.01.2022 for the reasons recorded for reopening. The said objection was duly disposed of by the Id AO, by a separate speaking order dated 14.02.2022. Thereafter, the proceedings for reassessment was followed by the Id AO. In the reassessment proceedings, the Id AO treated the amount received from M/s. Alankit Ltd as bogus LTCG/ STCG and added the sum of ₹3,64,21,799/- as unexplained cash credit u/s 68 of the Act.

4. The Id CIT(A) deleted the said addition by observing as under:-

*5.4.1 The paper on the basis of which addition has been made pertains to the appellant as*

- *It has the name of the appellant i.e. Mr. Deepak Gambhir*
- *It relates to transactions of security (Alankit Limited) on National Stock Exchange (NSE).*
- *The details as per contract note Issued by M/s Rajgul Securities Pvt Ltd to the appellant in this regard matches with details on this seized sheet*

*5.4.2 The seized paper has some extra details other than what is available in contract note. These details are as under:*

- *Commission @ 5.5% (second last column)*
- *Our share: Calculation given in third last column and distribution of commission is given at the bottom. As per the distribution, the share of Alankit Group is 70%.*
- *Bhallaji Share: Calculation given in second last column and distribution of commission is given at the bottom. As per the distribution, the share of Mr. Sunil Bhalla is 30%.*
- *Remark: received". In this column, it has clearly been mentioned that "Commission*
- *This commission was over and above the brokerage and received in cash as stated by Mr. SK Gupta in his statement.*

*5.4.3 Further, the name of Mr. S K Bhalla is also appearing in the statement of Mr. S K Gupta wherein he has clearly mentioned that he and Mr. S K Bhalla are involved in providing the entries of capital gains/losses to their clients. Mr. SK Gupta in his statement has also explained in detail the modus operandi of providing the entries of capital gains/losses to their clients.*

*5.4.4 In view of the above analysis, it can be concluded that this seized paper, based on its contents and the statement of Mr. S K Gupta, acquires the nature of "Incriminating paper."*

*5.4.5 Once it is established that the seized paper is an incriminating material found during the search operation on Alankit Group and pertains to third party i.e. Mr. Deepak Gambhir, then correct section under which any addition on the basis of this paper can be made in the case of the appellant, is Section 153 C of the Act.*

*5.5 Some judicial decisions in this regard are as under*

*5.5.1 The decision of the Co-ordinate Bench of Hon'ble ITAT Amritsar in the case of ITO Vs Arun Kumar Kapoor, ITA No. 147 (ASR.) of 2010 dated 21.06.2011:*

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

*5.5.2 Rajat Shubra Chatterji Vs. ACIT, ITAT Bench, ITA No.2430/Del/2015 New Delhi*

*"7. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), we find that in that case as in the present case before us, reassessment wasinitiated on the basis of incriminating material found in search of third party and the validity of the same was challenged by the assessee before the Learned CIT(Appeals) and the Learned CIT(Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisionsof sec. 153C were applicable which excludes the application of sections 147 and 148 of the Act. The ITAT held the notice issued under sec. 148 und*

*proceedings under sec. 147 as illegal and void ab initio. It was held that Assessing Officer having not followed procedure under sec 153C, reassessment order was rightly quashed by the Learned CIT(Appeals). In the present case before us, it is an admitted fact, as also evident from thereasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information received from the Directorate of Income- tax (Inv.) on the basis of search & seizure operation conducted at the premises of Rock Land Group of Cases and the documents related to the assessee found during the course of search were made available to the Assessing Officer of the present assessee. We thus respectfully following the decision of Co-ordinate Bench of the ITAT in the case of ACIT vs. Arun Kapur - 140 TT) 249 (Amritsar) hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which excludes the application of sec. 147 of the Act, hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. The reassessment in question is accordingly quashed. The ground No.1 is accordingly allowed."*

*5.5.3 Jitender Jain vs ITO bearing ITA No. 5078/Del/2019 Dated. 28.09.2020:*

*"11. These documents belong to the assessee and, therefore, the AO should have framed assessment u/s. 153 C of the Act.*

*12. I find that on identical set of facts were there in the case of Girish Chand Sharma in ITA No.987/Dei/2018 wherein similar reasoning were given for reopening of the assessment. I further find that similar set of facts were there in the case of Sushil Gaur in ITA No.1500/Del/2018 which decision was used in the case of Girish Chand Sharma (supra). The relevant findings of the coordinate Bench read as under: -*

*10. I have given a thoughtful consideration to the orders of the authorities below. The reasons recorded for initiating proceedings u/s 147 of the Act read as under: -*

*"Dr. Girish Chandra Sharma,*

*38, Chhoti Holi, Near Ganga Mandir, Khurja, Bulandshahr*

*PAN:-AGNPS2979Q*

*Reason for initiating proceeding u/s 147 of IT Act 1961.*

*A search operation u/s 132 was carried on 27.06.2013 in the premises of Santosh Group of institution and Dr. P. Mahalingam. Certain documents/ books of account were seized from the above premises which revealed that donation/capitation fee over and above the regular courses, During the course of recording statement u/s 132(4)*

*of 1 T. Act, 1965 relevant seized materials were confronted to Dr. P. Mahalingam, chairman of the Trust. He has categorically admitted of accepting donation/capitation fee in cash and offered unaccounted money so received for taxation.*

*On perusal of list given with the above information, it is revealed that Sh. Girish Chand Sharma, 38, Chhoti Holi, Near Ganga Mandir, Khurja, Bulandshahr, has given donation/capitation fee for the admission of his son Sh. Shiv Kumar Gaur for the course of MS ENT on 27.04.2010 amounting to JJ 40,01,000/-. In view of the above facts, I have reason to believe that income of JJ 40,01,000/- has escaped assessment due to failure on the part of the assessee to disclose true and correct particulars of income. In order to assess the same, notice u/s 148 of the 1.T. Act needs to be issued."*

*11. It can be seen from the above that search operation was carried on in the premises of Santosh Group of Institutions. This means that any document found during the course of the search makes the assessee "other person" therefore the correct section for initiation of any proceeding against the assessee is section 153C of the Act. On identical set of facts the coordinate bench in the case of Sushil Gaur (supra) had the occasion to consider identical set of facts. In that case also the search in the premises of Santosh Medical College was under consideration. The relevant findings of the coordinate bench reads as under: -*

*"8.1 have heard both the parties and perused the records, especially the impugned order as well as the Paper Book. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), I find that in that case as in the present case before me, reassessment was initiated on the basis of incriminating material found in search of third party and the validity of the same was challenged by the assessee before the Learned CIT(Appeals) and the Learned CIT(Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisions of sec. 153 C were applicable which excludes the application of sections 147 and 148 of the Act. The ITAT held the notice issued under sec. 148 and proceedings under sec. 147 as illegal and void ab initio. It was held that Assessing Officer having not followed procedure under sec.153C, reassessment order was rightly quashed by the Learned CIT(Appeals). I also draw my support from the ITAT, New Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016, wherein the reassessment was quashed on the similar facts and circumstances by following the ITAT, Amritsar decision in the case of*

*ITO vs. Arun Kumar Kapoor (supra). In the present case before me, it is an admitted fact, as also evident from the reasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information available with the AO. I thus respectfully following the decision of Co-ordinate Bench of the ITAT, Amritsar in the case of ACIT vs. Arun Kapur-140 TTJ 249 vs. (Amritsar) and the ITAT, Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016 hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which that the Assessing Officer has initiated reassessment proceedings in the present case on the basis of information received based on the material found excludes the application of sec. 147 of the hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. Hence, the reassessment in question is accordingly quashed. Since I have already quashed the reassessment, there is no need to adjudicate other grounds.*

*12. In the result, both the appeals filed by the different Assessee stand allowed in the aforesaid manner."*

*13. A similar view was taken by Lucknow Bench of the Tribunal in ITA No.205/LKW/2016 wherein also the search in the premises of Santosh Medical College was under consideration and coordinate bench was pleased to delete the impugned addition.*

*14. Respectfully following the findings of the coordinate bench (supra). I am inclined to hold that the notice issued u/s 148 of the Act and assessment framed u/s 147 of the Act is void ab initio.*

*15. On finding parity of facts I do not find any reason to differ from the findings of the coordinate bench (supra) and following the findings of the coordinate bench I am inclined to hold that the notice issued u/s. 148 and the assessment framed u/s. 147 of the Act is void-ab-initio.*

*16. Since the assessment has been quashed, I do not find it necessary to dwell into the merits of the case. Accordingly, the appeal filed by the assessee is allowed."*

*5.5.4 Sushil Gaur, Shelly Agarwal vs. ITO, in ITA No.1500/Del/2017 and ITA No. 1501/Del/2017:*

*"6. At the time of hearing, Ld. Counsel of the assessee has filed a Paper Book containing pages 1 to 22 in which the Assessee's counsel has attached the written submissions; copy of reasons recorded and the copy of the order of the ITAT, New Delhi in the case of Rajat*

*Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016. He contended that the action taken by the Assessing Officer under sec. 147 is not tenable for the simple reason that provisions of sec. 153 C of the Act are applicable in this case and not the provisions laid down under sec. 147 of the Act. He further submitted that it is an admitted position of the fact as it is also evident from the assessment order that the Assessing Officer has initiated reassessment proceedings in the present case on the basis of information received based on the material found during the course of search from the premises of Santosh Medical College run by Moharaja Education Trust. The Learned AR contended that provisions of sec. 153C provides that persons relating to whom some material is found in search of some other person should be assessed under sec. 153C of the Act. The provisions of section 153-C are non-obstantive provisions and specially excludes the operation of sec. 147 of the Act, therefore, the Assessing Officer in the present case has erred in invoking the provisions of sec. 147, instead of 153C of the Act. If action under sec. 147 is permitted on the basis of material found in the course of search, then the provisions of sec. 153 would be redundant. In this regard, he placed reliance on the following decisions to support his above contentions that no action under sec. 147 is permissible on the basis of material found in search*

- *ACIT vs. Arun Kapur-140 TTJ 249 (Amritsar),*
- *Cargo Clearing Agency vs. JCIT-307 ITRI(Guj.);*
- *Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016.*

*9. On the contrary, Ld. DR relied upon the orders of the authorities below and has tried to justify the action of the Assessing Officer in initiating reopening proceedings.*

*10. I have heard both the parties and perused the records, especially the impugned order as well as the Paper Book. On having gone through the decisions cited above especially the decision of Amritsar Bench in the case of ITO vs. Arun Kumar Kapoor (supra), I find that in that case as in the present case before me, reassessment was initiated on the basis of incriminating material found in search of third party and the validity of the same was challenged by the assessee before the Learned CIT(Appeals) and the Learned CIT(Appeals) vitiated the proceedings. The same was questioned by the Revenue before the ITAT and the ITAT after discussing the cases of the parties and the relevant provisions in details has come to the conclusion that in the above situation, provisions of sec. 153C were applicable which excludes the application of sections 147 and 148 of the Act. The ITAT held the notice issued under sec. 148 and proceedings under sec. 147*

*as illegal and void ab initio. It was held that Assessing Officer having not followed procedure under sec. 153C, reassessment order was rightly quashed by the Learned CIT(Appeals). I also draw my support from the ITAT, New Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016, wherein the reassessment was quashed on the similar facts and circumstances by following the ITAT, Amritsar decision in the case of ITO vs. Arun Kumar Kapoor (supra). In the present case before me, it is an admitted fact, as also evident from the reasons recorded and the assessment order that the initiation of reopening proceedings was made by the Assessing Officer on the basis of information available with the AO. I thus respectfully following the decision of Co-ordinate Bench of the ITAT, Amritsar in the case of ACIT vs. Arun Kapur - 140 TT) 249 vs. (Amritsar) and the ITAT, Delhi decision in the case of Rajat Shubra Chatterji vs. ACIT, New Delhi ITA No. 2430/Del/2015 dated 20.5.2016 hold that provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which excludes the application of sec. 147 of the ~ hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. Hence, the reassessment in question is accordingly quashed. Since I have already quashed the reassessment, there is no need to adjudicate other grounds."*

*5.6 In view of the above discussion and respectfully following the decision of Co-ordinate Bench of the Hon'ble ITAT, Amritsar, in the case of ACIT vs. Arun Kapur 140 TTJ 249 (Amritsar) and cases decided by various other ITATS including Hon'ble ITAT, Delhi, it is held that the provisions of sec. 153C of the Act were applicable in the present case for framing the assessment, if any, which excludes the application of sec. 147 of the Act, hence, notice issued under sec. 148 of the Act and assessment framed in furtherance thereto under sec. 147 read with section 143(3) of the Act are void ab initio. Therefore, the reassessment u/s 147/148 of the Act for AY 2016-17 & 2017-18 are hereby quashed and this ground of appeal is hereby allowed.*

*6. In view of the decision at para 5.6 above, all other grounds of appeal are not adjudicated separately."*

5. It is not in dispute that the addition of ₹3,64,21,799/- has been made based on incriminating material found in the course of search of M/s Alankit Group as information pertaining to the assessee herein. Hence, the same becomes a search material/ incriminating material

found during the course of search of M/s Alankit Group which pertains to assessee herein. Hence, the right course of action to be initiated on the assessee qua such incriminating material would be initiation of proceedings u/s 153C of the Act and not u/s 147 of the Act. This has been rightly addressed by the Id CIT(A) while deleting the addition in the hands of the assessee. Further, we find that the issue in dispute is squarely covered by the decision of the Hon'ble Karnataka High Court in the case of Sri Dinakara Suvarna v. Dy. CIT reported in 454 ITR 21 (Kar.) dated 08.07.2022 wherein it was held that the provisions of section 153C of the Act are pari materia with Section 158BD of the Act (erstwhile block assessment proceedings under Chapter XIVB of the Act). Hence, the ratio laid down by the Hon'ble Supreme Court in the case of Manish Maheshwari Vs. ACIT reported in 289 ITR 341(SC) referred in the context of section 158BD proceedings shall apply mutatis mutandis to Section 153C proceedings also. In the facts of the case before the Hon'ble Karnataka High Court, the Id AO in his order dated 24.12.2010 for assessment year 2005-06 had held in para 4.2 that reasons formed to reopen the assessment on the basis of assessee's voluntary depositions and seized materials are in order and further that assessee's objection on that aspect has been rejected by his order dated 07.06.2010. Admittedly, no proceedings were initiated u/s 153C of the Act thereon and hence there was patent non-application of mind on the part of the Id AO. Accordingly assessment was duly quashed by the Hon'ble Karnataka High Court. It is further noted that the Special Leave Petition (SLP) preferred by the revenue against this decision was dismissed by the Hon'ble Supreme Court in SLP (Civil) Diary No. 7976/23 dated 27.03.2023.

6. In view of the aforesaid observations and respectfully following the judicial precedents relied upon herein above, we hold that the Id CIT(A) had rightly quashed the reassessment proceedings u/s 147 of the Act in the facts and circumstances of the instant case. We do not find any infirmity in the said order. Accordingly, the grounds raised by the revenue are dismissed

7. Since the assessment is quashed, there is no need to adjudicate the other arguments advanced by the Id AR on merits of the addition as it would be academic in nature.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 08/07/2024.

**-Sd/-**  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

**-Sd/-**  
**(M BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 08/07/2024  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi