

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA Nos. 2147 & 2146/MUM/2024
Assessment Years: 2014-15 & 2015-16**

Asstt. CIT Circle-41(1)(1),
Room No. 623, 6th floor,
Kautilya Bhavan, BKC,
Bandra East,
Mumbai-400051.

Appellant

Vs. Jaj International,
66/5A, Bharat Coal Compound,
Bail Bazar, Kale Marg, Kurla (W),
Mumbai-400070.

**PAN NO. AAAFJ 1936 E
Respondent**

**CO Nos. 108 & 107/MUM/2024
(Arising out of ITA Nos. 2147 & 2146/MUM/2024)
Assessment Years: 2014-15 & 2015-16**

Jaj International,
66/5A, Bharat Coal Compound,
Bail Bazar, Kale Marg, Kurla (W),
Mumbai-400070.

**PAN NO. AAAFJ 1936 E
Appellant**

Vs. Asstt. CIT Circle-41(1)(1),
Room No. 623, 6th floor,
Kautilya Bhavan, BKC,
Bandra East,
Mumbai-400051.

Respondent

Assessee by : Mr. Subhash Shetty
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 08/07/2024
Date of pronouncement : 24/07/2024



ORDER

PER OM PRAKASH KANT, AM

These appeals by the Revenue and cross-objections by the assessee, are directed against a common order dated 21.02.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment years 2014-15 and 2015-16 respectively. The Ld. CIT(A) has passed a common order for both the assessment years therefore, both these appeals and cross-objections are adjudicated by way of this consolidated order for convenience.

2. The identical grounds have been raised in appeals of Revenue and cross objections of the assessee for AYs 2014-15 and 2015-16. Therefore sake of brevity, the grounds raised by the Revenue and cross-objection raised by the assessee for assessment year 2014-15 are only reproduced as under:

Revenue’s Ground

1. *Whether on facts and circumstances of this case, the Ld' CIT(A) has erred in allowing the appeal of the assessee by quashing the order passed u/s 143(3) by holding that, the procedure laid under Chapter XIVB (section 153C) was to be followed instead of Chapter XIV(section 143(3))."?*

2. *Without prejudice to above, whether lapse in the adherence to the procedure can be held against the Revenue which ultimately results in non collection of rightful taxes. ?*



3. Whether on facts and circumstances of this case, the Ld' CIT(A) has erred in allowing the appeal of the assessee without appreciating the fact that the assessee had contended the stamp duty value to be superfluous however he had not contested the same by filing an appeal to the stamp duty adjudicator."?

4. Whether on facts and circumstances of this case, the Ld' CIT(A) has erred in allowing the appeal of the assessee without appreciating the fact that difference between the stamp duty value and agreement value is similar to the amount of On money paid which Shri Nayan Bheda of Neptune Group has admitted on oath to have received from the assessee."?"

5. Whether on facts and circumstances of this case, the Ld' CIT(A) has erred in allowing the appeal of the assessee without appreciating the fact that the date on which On money of Rs. 5,43,04,954/- was received by the Neptune Group is same as the date of agreement of purchase of the property in question, which cannot be a coincidence."?

6. Whether on facts and circumstances of this case, the Ld' CIT(A) has erred in allowing the appeal of the assessee by deleting the addition of Rs.5,43,04,954/- made as unexplained investment without appreciating the fact that Shri Nayan Bheda of Neptune Group has admitted on oath to have received On money from the assessee.?

Cross-objection of the assessee

The learned Commissioner of Income Tax (Appeals) Committed a gross error of law and facts in not deleting the impugned unjustified and unsustainable addition of Rs.5,43,04,954/- on various grounds raised by the Appellant on merits of the matter.

3. Briefly stated, facts of the case are that the assessee filed its return of income for the assessment years 2014-15 and 2015-16 on 30.09.2014 and 30.09.2015 declaring total income at Rs.1,95,22,333/- and Rs.4,08,54,660/- respectively. Subsequently, the returns of income filed by the assessee were selected for scrutiny assessment. In the assessment completed u/s143(3) of the Income-tax Act, 1961 (in short 'the Act'), the Assessing Officer made addition of Rs.5,43,04,954/- for assessment year 2014-15



and Rs.8,44,60,000/- for assessment year 2015-16, towards unexplained investment in purchase of flats. The Assessing Officer has referred to the finding in the case of M/s Neptune Group of cases, wherein it is held that said group companies received 'on money' on sale of commercial premises to the assessee. The addition relevant to assessment year 2014-15 has been made on the basis of the information received from the Investigation Wing of Income-tax department that the assessee had paid 'on-money' of Rs.5,43,04,954/- in cash to M/s Neptune Group towards purchase of commercial premises. Similarly, in assessment year 2015-16, the Investigation Wing informed that assessee paid 'on-money' of Rs.8,44,60,000/- to M/s Neptune Group towards purchase of commercial premises. The Assessing Officer has further referred that during the search proceedings in the case of M/s Neptune Group 'Shri Nayan Bheda' of M/s Neptune Ventures & Developers Pvt. Ltd. in the sworn statement recorded u/s 132(4) of the Act has accepted that they had received 'on-money' (amount received in cash) from the purchaser of the residential and commercial units.

4. On further appeal before the Ld. CIT(A), the assessee contested the action of the Assessing Officer in completing the assessment u/s 143(3) of the Act. According to the assessee since, the Assessing Officer has made addition on the basis of information received during the search in the case of M/s Neptune Group cases, therefore, the assessment should have been made invoking section



153C of the Act. On merit, the assessee contested that M/s Neptune group of the cases opted for settlement before the Settlement Commission wherein, the additional income of Rs.12.3 crores for assessment year 2014-15 and additional income of Rs.6.96 crores for assessment year 2015-16 has been offered and in view of this addition made in the hands of the assessee is much higher than additional income in the hands of M/s Neptune Ventures & Developers Pvt. Ltd.

5. The Ld. CIT(A) decided the legal issue and held that in the case of the assessee assessment proceedings should have been carried out invoking section 153C of the Act and thus quashed the impugned assessment orders passed u/s 143(3) of the Act. The Ld. CIT(A) did not adjudicate the issue on the merit.

6. Aggrieved, the Revenue is before us by way of challenging the legal ground on which the Ld. CIT(A) adjudicated the appeal in favour of the assessee. The Revenue has also raised grounds challenging the merit of the addition whereas the assessee in cross-objection has raised the issue that the Ld. CIT(A) has not adjudicated on the merit of the addition.

7. On the grounds challenging the validity of the assessment u/s 143(3) of the Act by the assessee, the Ld. CIT(A) has adjudicated as under:

“4.3 Grounds of Appeal on Procedural Infirmary:



4.3.1 The Appellant has through the Grounds of Appeal has contended that the Assessment Orders passed for AY 2014-15 and AY 2015016 are without jurisdiction as the additions to Total Income, in respect of the alleged on-money payments made outside the books of account emanating from search proceedings, cannot be under taken in an order u/s 143(3) without resorting to the provisions of section 153C. Even otherwise, according to the appellant, the addition is not sustainable as the same was made without extending the mandatory requirement of cross-examination of the witness, being the person searched. It was further expressed that the information lacks evidentiary value and cannot result in addition and when made the same is arbitrary. All the three procedural aspects are dealt together in this order.

The undisputed facts of the case that pertains to these additions to total income have emanated as a result of search action in the case of M/s. Neptune group of Builders, where in it surfaced that the appellant had allegedly paid an on-money of Rs. 5,43,04,954/- for AY 2014-15 and Rs. 8,44,60,000 for AY 2015-16 in respect of the acquisition of immovable properties from the said real-estate developer.

Secondly, the information was received directly from the officer of the Investigation Wing and not from the jurisdictional Assessing Officer of the searched person.

Thirdly, the opportunity to cross examine the witness was not accorded to the appellant.

Fourthly, when a noting in the absence of any corroborative evidence cannot possess evidentiary value, the assessing officer, according to the appellant does not possess jurisdiction to undertake any addition, merely on surmises, suspicions and conjectures.

4.3.2 Assumption of incorrect jurisdiction without resorting to the provisions of S. 153C:

According to the appellant, the process of undertaking the corresponding these additions, irrespective of the genuineness of the averment made by the officer in the Investigation Wing, has to be undertaken resorting to the provisions of section 153C after drawing necessary satisfaction by the AO of the searched person followed by the satisfaction drawn by the AO of the person other than the searched person, being the AO of the appellant and not u/s 143(3) of the Act. When this statutory procedure is not complied, the addition has to be treated as null and void.

The facts of the case in the light of the contention expressed by the appellant were carefully considered. It is not in dispute that the corresponding addition to total income is made based on the information directly received from the Investigation wing and not routed through the Assessing Officer of the person searched during the course of the relevant scrutiny proceedings and further that the information has emanated from a



record or document seized at the ongoing scrutiny proceedings without drawing any satisfaction.

4.3.3 The procedure which has to be followed in case of search cases and information that emanates from the search are to be undertaken as per the procedure laid down under CHAPTER XIVB of the Income Tax Act which is titled "Special procedure for assessment of search cases". **Obviously, anything connected with search and the information that emanates from the seized records have to undertake u/s 153C only and not under regular assessment.**

Chapter XIV of the Income Tax Act deals with regular assessment and both the proceedings are independent, distinct and cannot be intertwined. Reliance is placed on the following decisions:

- **Manish Maheswari vs ACIT (2007) 159 Taxman 258 (SC) / [2007] 289 ITR 341 (SC) / 159 Taxman 258 (SC) -**

On analogous provision of sec 158BD

- **Delhi Tribunal in the case of Rajat Shubra Chatterji v. ACIT [ITA.2430/Del/2015, dt.20.05.2016] in para 7**
- **Amritsar Tribunal in the case of ITO vs Arun Kumar Kapoor (2011) 140 TTJ (ASR) 249**
- **The 'B' Bench of Bangalore ITAT in the case of Srinivasa Rao Hoskote in ITA.1154 & 1155/Bang/2015 dated 21.02.2018**

Further, different Benches of the ITAT have held that section 153C begins with non-obstante clause and has an overriding effect on section 147/148. It has been held that as per the scheme of section 153C, AO has no discretion or choice to invoke the provisions of section 148.

In the case of Arun Kumar Kapur (Supra), it has been held that

"On a perusal of section 153C, it would be clear that the provisions of this section are applicable, which supersedes the applicability of provisions of sections 147 and 148. In the instant case, the documents were seized during the search under section 132 and the same were sent to the Assessing Officer of the assessee and, thus, the Commissioner (Appeals) has correctly observed that only the provision in which any assessment could be made against the assessee was section 153C, read with section 153A. It was also apparent from the record that the officer in the case of 'T' Ltd. had mentioned in his letter that the necessary action may be taken as per law under section 153C/148. Hence, notice issued under section 148 and proceedings under section 147 by the Assessing Officer were illegal and void ab initio. In view of the provisions of section 153C, section 147/148 stands ousted. In the instant case, the procedure laid down under section 153C has not been followed by the Assessing Officer and, therefore, assessment has become invalid. The Commissioner (Appeals) was justified in following the



ratio laid down by the 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 section 158BD is not followed, block assessment proceedings would be illegal. The Commissioner (Appeals) has correctly observed that the provisions of section 153C are exactly similar to the provisions of section 158BD in block assessment proceedings. Thus, considering the entire facts and the circumstances of the case, the Commissioner (Appeals) was fully justified in quashing the reassessment order."

The above view was taken and reopening u/s 148 was quashed. Subsequently, the said decision has been followed by different Benches of ITAT inter alia in the following cases:

- **G Koteshwar Rao v DCIT** [2015] 64taxmann.com159 (Vishakhapatnam Trib.)
- **Navrattan Kothari v ACIT** [ITA No. 425/JP/2017, order dated 13.12.2017, ITAT, Jaipur
- **Adarsh Agarwal v ITO** [ITA No 777/ Del/2019; order dated 14.01.2020, ITAT, Delhi

Though these verdicts have been rendered in the context of section 147, they equitably apply to the process of regular assessment involving additions that emanates from seized records at the time of search.

Therefore, the addition irrespective of its validity has to be undertaken only as procedure laid under CHAPTER XIVB and not under CHAPTER XIV of the Act. Having omitted to undertake the same legitimately u/s 153C, there is a serious flaw made in these assessment orders while making the said additions for AY 2014-15 and AY 2015-16.

4.3.4 Necessity to record satisfaction by the AO:

Another essential condition while making the addition is that the

AO has to record his satisfaction first. A careful reading of the provisions of section 153C will imply that recording of satisfaction is an indispensable procedure to be followed. For easier comprehension the contents of section 153C is reproduced below:

Assessment of income of any other person.

153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or



(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A

With regard to the aspect of making an addition without recording the satisfaction, the Hon'ble Supreme Court in the case of Manish Maheshwari (supra) has laid down a proposition that the Assessing Officer making the assessment of the searched person has to necessarily record in writing the specific objective satisfaction which is mandatory to the effect that the undisclosed income found by him, on the basis of seized material, belongs to some person other than the searched person. Hon'ble Apex court further held that assumption of jurisdiction and framing of assessment by the Assessing Officer without recording such satisfaction is void ab initio."

8. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. As far as provisions of section 153C of the Act is concerned, the action is required to be initiated in case of persons other than searched person when any asset belonging to the assessee is found in the search of the searched person or any books of accounts or the documents pertaining to the other person or any information contained therein relating to the other person is found during the course of the search of the searched person. If above condition is satisfied then the Assessing Officer of the searched person is required to send assets seized belonging to the other person or the books of accounts or the documents pertaining to the other person



to the Assessing Officer of the other person after recording a satisfaction that books of accounts or documents of the assets belongs to or pertains to other person. Thereafter, the Assessing Officer of the other person record a satisfaction that said books of accounts of the asset seized have a bearing on the determination of the total income of such other person. For ready reference section 153C of the Act is reproduced as under:

“153C (1)Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a)any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b)any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A :

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

Provided further that the Central Government may by rules30 made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant



to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year-

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.]

[(3) Nothing contained in this section shall apply in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of April, 2021]"

8.1 The Hon'ble Kerala High Court in the case of **CIT vs Sh Promy Kuriakose in ITA No. 296 of 2013** also observed as under:

10.A comparative analysis of the provisions contained in [sections 153A](#) and [153C](#) reveal that jurisdiction under [section 153C](#) can be invoked by the Assessing Officer only when money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned and it is found that the seized or requisitioned articles belongs or belong to a person other than the person referred to in [section 153A](#). In such a case, the Assessing Officer shall hand over



the books of account or documents or assets seized or requisitioned to the Assessing Officer having jurisdiction over such other person. Thereupon, it is for the Assessing Officer having jurisdiction to proceed against such other person by issuing notice and complete assessments or re-assessments as the case may be, in accordance with [section 153A](#). Therefore, the fundamental jurisdictional requirement for invoking the powers under [section 153C](#) is the seizure or requisitioning of books of account or documents or assets which belong to a person other than the person referred to in [section 153A](#). Otherwise, the Assessing Officer has no jurisdiction at all to proceed under [section 153C](#). Therefore, the conclusion of the Tribunal that in the absence of search material, proceedings under [section 153C](#) cannot be initiated by the Assessing Officer, which finding is consistent with the precedents referred to by the Tribunal itself, does not spell out any illegality.

8.2 In view of the above, for initiating of proceedings u/s 153C of the Act conditions specified in said provision are required to be fulfilled. As far as the instant case is concerned, the initial condition required to be satisfied is that whether any books of accounts or documents seized in the case of M/s Neptune Group of cases pertains to assessee or any information contained therein relates to the assessee. Before us, the Ld. counsel for the assessee has only referred to the statement of 'Shri Nayan Bheda' on the basis of which the Assessing Officer has assessed 'on-money' There is no reference to any document seized in the case of M/s Neptune Group of cases which pertained to the assessee or any information contained therein is relating to the assessee. This condition is *sine-*



que non for invoking section 153C of the Act. Unless this condition is satisfied, the Assessing Officer is not authorized to initiate action u/s 153C of the Act. In our opinion in view of the information by way of statement of Shri Nayan Bheda ,which is neither arising out of any documents or any books of accounts pertaining to the assessee and therefore, he has validly assessed the assessment u/s 143(3) of the Act. In the case of Arun Kumar Kapur(supra), relied upon by the ld CIT(A) , documents pertaining to the other person i.e. respective assessee was found in the search of the searched person, whereas in the instant case, no material pertaining to the assessee or information contained thereon relating to assessee has been found or seized. The relevant finding of the Tribunal in the case of Arun Kumar kapur(supra) is reproduced as under:

7.2 The undisputed facts are that a search was conducted under section 132 of the Act in the case of M/s.Today Homes & Infrastructure Pvt. Ltd. on 28-3-2006, during the course of which certain incriminating documents were allegedly seized. It is also a matter of record that the DCIT, Central Circle- 22, New Delhi intimated the AO of the assessee about seizure of certain documents pertaining to the assessee during search and enclosed copy of those documents requesting him to take appropriate action under section 153C/148 of the Act. It is after that during the course of appellate proceedings before the CIT(A) the assessee took an additional ground of appeal to the effect that the reassessment proceedings initiated by the AO u/s.148 are illegal and void ab initio. In the instant case, the learned CIT(A) has correctly observed that the A.O. should have issued notice under section 153C of the Act and should



have framed the assessment under section 153C read with section 153 of the Act. Section 153C of the Act reads as under:-

"153C. Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A."

8. On a perusal of the above provisions, it would be clear that the provisions of section 153C of the Act were applicable, which supersedes the applicability of provisions of sections 147 and 148 of the Act. As we have already noted hereinabove that the documents were seized during the search under section 132 of the Act and the same was sent to the assessee's A.O. at Amritsar by the Officer at Delhi. In our view, the learned CIT(A) has correctly observed that only the provisions in which any assessment could be made against the assessee in the Income tax Act was section 153C read with section 153 of the Act. It is also apparent from the record that the Officer at Delhi has mentioned in his letter that the necessary action may be taken as per law under section 153C/148 of the Act. Hence, notice issued under section 148 of the Act and proceedings under section 147 of the Act by the AO are illegal and void ab initio. In view of the provisions of section 153C of the Act, section 147/148 stand ousted. In the instant case, the procedure laid down under section 153C has not been followed by the A.O. and, therefore, assessment has become invalid. We also observe that the CIT(A) was justified in following the ratio



laid down by the Hon'ble Supreme Court in the case of Manish Maheshwari Vs. ACIT and another, reported in (2007) 289 ITR 341, wherein it has been held that if the procedure laid down in section 158BD is not followed, block assessment proceedings would be illegal. The CIT(A) has correctly observed that the provisions of section 153C are exactly similar to the provisions of section 158BD of the Act in block assessment proceedings. Thus, considering the entire facts and the circumstances of the present case, we hold that the CIT(A) was fully justified in quashing the reassessment order. We also do not find any merit in the submissions of the learned DR that during the course of search, it was found at premises of M/s.Today Homes & Infrastructure Pvt. Ltd. pertaining to M/s.P.R. Infrastructure Ltd. and not the assessee. In this regard, we may point out that the contention raised by the learned D.R. is factually incorrect and contrary to the available records of seized documents specifically mentioned in the assessment order dated 30-12-2008. In view of the above factual discussion, we do not find any merit and substance in the contention of the learned D.R. Therefore, we uphold the order of the CIT(A) and dismiss the ground Nos.1 to 4 of the appeal.

8.3 We may also note that the Hon'ble Delhi High Court in the case of **CIT vs Harjiv Aggrawal in ITA 8/2004** held that statement u/s 132(4) of the Act is not in the nature of the 'incriminating material' found during the course of the search. Further, neither the Assessing officer of searched person has recorded any satisfaction for invoking section 153C of the Act nor handed over any material pertaining to the assessee to the Assessing officer of the assessee.



8.4 In view of the above discussion, we set aside the finding of the Ld. CIT(A) on the issue in dispute.

9. As far as grounds raised by the assessee in cross-objection and the grounds raised by the Revenue appeal related to merit is concerned the Ld. CIT(A) as under:

“4.4.2 On careful consideration of the facts, it is found that but for the statement of Shri Nayan Beda, no corroborative evidence is brought on record. The coincidence between the quantum of alleged on-money payment to that of the difference between actual consideration paid and FMV of the property for AY 2014-15 did not prove the theory for the AY 2015-16. The AO did not establish the case successfully and satisfactorily that the assessee had actually paid the on-money.

The decision rendered by the Hon'ble Supreme Court in the case of K.P. Varghese 131 ITR 597 is squarely applicable to the facts in the present case, which held that:

"It is a well settled rule of law that the onus of establishing that the conditions of taxability are fulfilled is always on the Revenue. To throw the burden of showing that there is no understatement of the consideration, on the assessee would be to cast an almost impossible burden upon him to establish the negative, namely that he did not receive any consideration beyond that declared by him".

The situation in the case of the appellant remains the same and the exact circumstances being showcased in the aforementioned case law are similar in nature and the action of the AO to make an addition, in the absence of corroborative evidence does not find favour.

Moreover, the assessment order framed, has been invalidated due to serious procedural discrepancy as well as not in accordance with the provisions of the Income Tax Act, 1961, as detailed in the earlier part of this order when the grounds of appeal of the appellant relate to the procedural lapses on part of the assessing officer has been allowed, the necessity to adjudicate thread-bare into the merits of the case stands unwarranted and hence refrained from even though the contentions of the AO are not supported by the material evidence on record as relied by him.”

8.1 We find that the Ld. CIT(A) has specifically mentioned that he has refrained from adjudicating on merit and therefore, we feel it appropriate to restore this issue of deciding the addition on merit to



the file of the Ld. CIT(A). In the result, the grounds relating to merit on cross-objection of the assessee and appeal of the Revenue are allowed for statistical purposes.

10. In the result, the appeals of the Revenue are allowed partly for statistical purposes whereas cross-objections of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 24/07/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 24/07/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai