IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA Nos.1018 & 1019/Bang/2024
Assessment Years: 2017-18 & 2018-19

Niyaz Sea Foods 1st Floor, Federation Diesel Bunk New South Wharf Bunder Mangaluru 575 001 **PAN NO : AABFN2449R**	**Vs.**	DCIT Central Circle-1 Mangaluru
APPELLANT		**RESPONDENT**

Appellant by	:	Smt. Sheetal, A.R.
Respondent by	:	Shri V. Parithivel, D.R.

Date of Hearing	:	07.08.2024
Date of Pronouncement	:	12.08.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These two appeals by assessee are directed against different orders of CIT(A)-2, Panaji for the assessment years 2017-18 & 2018-19 both are dated 18.3.2024. First we take ITA No.1018/Bang/2024 for assessment year 2017-18. The assessee has raised following grounds of appeal:

1. *The learned CIT(A) on the facts and in the circumstances of the case is not justified in law in making additions under section 41 (1) of the act a sum of Rs. 1,94,18,130 by overlooking the explanation and submission made by the appellant during the course of assessment.*

2. *The learned CIT(A) has failed to understand the fact that additions on account of cession or remission of liability cannot be made under section 41 (1) unless it is established that liability has been ceased.*

3. *The learned CIT(A) ought to have appreciated that the assessing officer has made an addition under section 153C without having found any incriminating material, hence assessment is bad in law.*

4. *The learned CIT(A) has grossly ignored that the voluntarily declared.income of Rs.7.50 crores has additional income which subsumed the said alleged additions made under section 41(1) amounting to Rs.1,94,18,130/-.*

5. *For these and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeal may be allowed.*

2. Facts of the issue are that the assessee is a partnership firm engaged in wholesale trading of raw fishes. During the year under question, assessee filed his return of income on 12.10.2017 declaring a total income of Rs.67,06,650/-. Consequent to the search and seizure operation conducted under section 132 of the Act, at the residential premises of Mr. Bava U.K., partner of the assessee on 8.2.2018, there was survey u/s 133A of the Act was conducted on 8.2.2018 at the business premises of the assessee and certain documents were impounded during the course of survey. Consequent to the search and seizure u/s 153A, the notices u/s 153C of the Act dated 21.2.2019 were issued by the ld. AO for the assessment years 2012-13 to 2018-19. In response to the said notice assessee has filed return of income for the AY under section on 18.3.2019 declaring income of Rs.8,17,06,650/-. Subsequently, assessment selected for scrutiny and notice under sub-sec.2 of section 143 of the Act was issued on 26.3.2019 calling for the details. In response thereto, assessee through his ld. A.R. appeared before the ld. AO from time to time and furnished the details called for. Finally, assessment was completed u/s 143(3) r.w.s. 153C of the Act vide order dated 17.12.2019. In the order of assessment, the ld. AO has made disallowance of Rs.1,94,18,130/- u/s 41(1) as cessation of liability and thereby raised tax demand of Rs.1,76,67,975/-. Aggrieved by this addition made, assessee went in appeals before ld. CIT(A) and the ld. CIT(A) confirmed the same. Against this assessee once again is in appeal before us.

3. The ld. A.R. submitted that this is the assessment framed u/s 143(3) r.w.s. 153C of the Act. According to her, section 153C of the Act pertain to the non-searched entity and in respect of whom any material, books of accounts or documents would found seized and were found to belong to or pertain to a person other than the searched person. In terms of this provision, the ld. AO empowered to undertake and initiate assessment in respect of non-searched entity for these assessment years as well as for the "relevant assessment year" in which search took place. Thus, consequently, the ld. AO could frame the assessment for these assessment years u/s 153C of the Act and the searched assessment year only u/s 143(3) of the Act. Thus, she submitted that the assessment year 2017-18 is covered u/s 153C of the Act. This assessment should be solely based on the incriminating material found during the course of search action in case of searched person, which belong to the present assessee being the third person. She submitted that in the present case, the addition made by ld. AO by invoking the provisions of section 41(1) of the Act is not based on any seized material found during the course of search action. On the other hand, the ld. AO examined the books of accounts of the assessee and observed that an amount of Rs.1,94,18,130/- was seized to exist and it is a cessation of liability made an addition on this count, which was to be deleted. Even on merits, she submitted that provisions of section 141(1) of the Act cannot be applied as there was cessation of liability and this liability was shown in the assessee's balance sheet as on 31.3.2017, which was duly audited by the CA. Further, she submitted that ld. AO not doubted the purchases in respect of these creditors and he has doubted only the one side of the entry made in the books of accounts of the assessee without rejecting the same. Further, ld. A.R. submitted that there was no write off of these debts in the books of accounts of the assessee and further she submitted that the ld. AO collected the evidence beyond the back of the assessee

and the same has been relied to make an addition by invoking the provisions of section 141(1) of the Act without giving opportunity examination of those parties. She relied on the judgement of Hon'ble Supreme Court in the case of CIT Vs. Sinhgad Education Society (397 ITR 344)

3.1 Further, the ld. A.R. submitted that during the course of search in the case of U.K Bava statement recorded u/s 132(4) of the Act on 8.2.2018 where he has offered an amount of Rs.7.5 crores as additional income of the present assessee by answering question no.25.

3.2 According to her, the income has been offered u/s 132(4) of the Act has been considered as additional income. While framing assessment order, the ld. AO once again cannot make further addition, which amounts to double addition.

4. On the other hand, ld. D.R. submitted that income offered by the assessee at Rs.7.5 crores during the course of search action as additional income nothing to do with this the addition made by ld. AO u/s 41(1) of the Act at Rs.1,94,18,130/-. These are mutually exclusive additions to be considered separately as these creditors are not traceable. This relating to 21 creditors who were stated that they have not done any business with the assessee, as such, the addition has been made. The same requires to be sustained.

5. We have heard the rival submissions and perused the materials available on record. There was search in the case of U.K. Bava, partner of the assessee firm u/s 132 of the Act on 8.2.2018. Consequent to this, statement u/s 132(4) of the Act was recorded from U.K. Bava on 8.2.2018. While recording the statement u/s 132(4) of the Act, he stated to question no.25 as follows:

> *"25. Do you have anything else to say?*
>
> *Ans. I would like to state that we are unable to furnish material evidences and details in respect of sundry creditors Pertaining to M/S Niyaz Sea Foods and M/S Niyaz Sea Foods Exports, Mangaluru which are our family concerns. At the moment, we are unable to furnish details*

of purchase bills / purchase invoices and corresponding details of payments made as well as payable for these transactions as noted above.
In view of the above, we are hereby agreeable to offer additional income of Rs.7.5 crores over and above the regular income for the assessment year 2017-18 in these two concerns. We request the department to take a lenient view with regard to penal matters considering the nature of business done by us and the admission additional income as above. I have consulted my Son Mr. Niyaz and my Auditors and understood the issues noted above. A lenient view may be taken with regard to penalty matters as we are not very organized in accounts matter."

5.1 During the search action the statement of assessee was recorded u/s 132(4) of the Act on 8.2.2018. The present assessee has offered Rs.7.5 crores as additional income in the assessment year under consideration. Further, while framing the assessment on examination of the books of accounts, the ld. AO observed that there are 21 creditors in whose name balance shown as outstanding at Rs.1,94,18,130/-. The ld. AO issued a show cause notice to the assessee on 27.11.2019 asking the assessee as to why the said amount shown as payable in respect of 21 persons who claimed to have not done any business with the assessee firm should not be added to his income u/s 41(1) of the Act. The assessee replied vide letter dated 6.12.2019 as follows:

"With reference to the above, we would like to bring to your kind notice that we have been dealing raw fish trading business in wholesale in Bunder from past many years. We, proud to inform you that we are one among the big, reputed and trusted raw fish dealers in Mangaluru.

We used to buy raw fishes (various varieties) from various boat owners on daily basis and same will be supplied to different Fish meal factories and other fish processing centers located in various states like Karnataka, Kerala, Gujarath etc.

The creditors what we have shown in the books of accounts as on 31.03.2017 are genuine. But we have not able to prove the balances of all the creditors as the nature of business involved and the business is in unorganized sector. Many boat owners are hesitating to confirm the balance though they have supplied the fishes. Some of boat owners have

not been filing income tax returns as their income are in below taxable limit.

As like earlier years, we have made purchases from the creditors named in the list during the year 2016-17 also. But we think they might have hesitated from the enquiries of Income Tax department and given statement that they have not done any business with Niyaz Sea Foods though they have supplied genuinely. If you add again Rs.1.94 crore, it will definitely affect adverse to our business as we are already facing financial problems due to recent business conditions (Fish catches have drastically came down during last 2 financial years).

Considering all the facts and to buy peace and to avoid litigation with the Department we had voluntarily declared Rs. 7.5 crore as additional income on account of sundry creditors and other matters (Niyaz Seafoods and Niyaz Sea food exports) for the Ay 2017-18.

We therefore request you to your honor consider the above facts; declaration of amount of Rs. 7.5 crore and nature of business involved, kindly drop the proposal of additions of Rs. 1.94 crore and do the needful sir."

5.2 The ld. AO not agreeing with the above reply made addition of Rs.1,94,18,130/-. First of all, there was no seized material found during the course of search action at the place of U.K. Bava in whose case there was search u/s 132 of the Act as it is to be noted that Hon'ble Supreme Court in the case of CIT Vs. Sinhgad Education Society (397 ITR 344), wherein their Lordship considered the judgement of Mumbai High Court in that case reported in 378 ITR 84 wherein observed as follows:

"Held, dismissing the appeals, that the reasons assigned by the Assessing Officer in the satisfaction note were silent about the assessment year in which specific incriminating information or unaccounted or undisclosed hidden information was discovered or seized by the Revenue from the assessee. In the circumstances, the general satisfaction and as recorded in the note was not enough. There was absolutely nothing to indicate as to in which educational courses, the education was imparted and institution-wise, whether the admissions were granted to the technical courses merit-wise or on the basis of marks obtained in XII standard HSC exam. Whether any fee structure was approved and cash component was, therefore, collected over and above the sanctioned fees were matters which ought to have been gone into and there could not be a general or vague satisfaction. The Tribunal was justified in setting aside the assessments."

5.3 As per provision u/s 153C of the Act, incriminating material which was seized had to define to the assessment years in question and it is the undisputed fact that the documents, which are seized did not establish any co-relation, document-wise with these assessment years. Since this requirement u/s 153C of the Act is essential for assessment under the provisions of section 153C of the Act, it becomes the jurisdictional fact. We find this reasoning to be logical and valid, having regard to provisions of section 153C of the Act. The crux of the above finding of the Hon'ble Supreme Court that assessment framed u/s 153C of the Act shall be based on the incriminating material found during the course of search action u/s 132 of the Act as relating to the third person mentioned in section 153C of the Act. In the present case, there was no seized material found to suggest the cessation of liability in respect of 21 parties mentioned by ld. AO in para 5.1 of his order. No material is there to suggest there was cessation of liability in respect of these creditors totalling of Rs.1,94,18,130/-. It is not possible to sustain the addition made by ld. AO while framing order u/s 143(3) r.w.s. 153C of the Act for the assessment year 2017-18 as this was not extended search A.Y. to make addition without any seized material. On this count, the addition to be deleted. Even otherwise, for making addition by invoking provisions of section 41(1) of the Act with regard to cessation of liability debt should be ceased to exist on the date of balance sheet i.e. on 31.3.2017. This issue was considered by Hon'ble Supreme Court in the case of CIT Vs. Mahindra & Mahindra Ltd. (404 ITR 1) (SC) wherein held that "to invoke the provisions of section 41(1) of the Act, it is a sine-qua-non that there should be an allowance or deduction claimed by the assessee in any assessment year in respect of loss, expenditure or trading liability incurred by assessee. This is, subsequently, during any previous year, if the creditor remits or waives any such liability then the assessee is liable to pay tax u/s 41(1) of the Act. The objection behind this is simple.

It is made to ensure that assessee does not get away with the double benefit once by way of deduction and another by not being taxed on the benefit received by him in the later year. With reference to deduction allowed, earlier in case of remission of said liability section 41(1) of the Act particularly deals with the remission of trading liability.

5.4 In the present case, there was no material found during the course of search action to hold that the said liability ceased to exist and it has been shown in the books of accounts and there was no write off of said debts by the assessee or by the creditors, in such circumstances, it is not possible to hold that there was cessation of liability in the assessment year under consideration. On this count also, addition cannot be made. More so, when the ld. AO has not rejected the books of accounts of the assessee that it has not been maintained so as to deduce true profit and loss of the assessee. Considering the totality of the facts and circumstances of the case, we delete the addition made by ld. AO by invoking the provisions of section 41(1) of the Act in respect of impunged amount of Rs.1,94,18,130/-. Accordingly, all the grounds of appeal of assessee are allowed.

5.5 In the result, appeal in ITA No.1018/Bang/2024 is allowed.

ITA No.1019/Bang/2024 (AY 2018-19):

6. In this appeal, the assessee raised following grounds:

1. *The learned CIT(A) on the facts and in the circumstances of the case is not justified in law in making additions amounting to Rs.36,58,288 as unaccounted purchases by overlooking the explanation and submission made by the appellant during the course of assessment.*

2. *The learned CIT(A) has grossly ignored that the voluntarily declared income of Ü.50 crores has additional income which subsumed the said alleged additions amounting Rs.33,84,300/-*

3. *Without prejudice to the above, CIT(A) ought to have been taxed, only the profit element of Rs.33,84,300/- at gross profit ratio of Rs. 2-3 percent as prevailing in the fishing business.*

4. *For these and other grounds that may be urged at the time of hearing of the appeal, the appellant prays that the appeal may be allowed.*

7. Facts of the issue are that the assessee is a partnership firm engaged in wholesale trading of raw fishes. During the year under question, assessee filed his return of income on 8.3.2019 declaring a total income of Rs.1,46,86,239/-. Consequent to the search and seizure operation conducted under section 132 of the Act, at the residential premises of Mr. Bava U.K., partner of the assessee on 8.2.2018, there was survey u/s 133A of the Act was conducted on 8.2.2018 at the business premises of the assessee and certain documents were impounded during the course of survey. Consequent to the search and seizure u/s 153A, the notices u/s 153C of the Act dated 21.2.2019 were issued by the ld. AO for the assessment years 2012-13 to 2018-19. Subsequently, assessment selected for scrutiny and notice under sub-sec.2 of section 143 of the Act was issued on 26.3.2019 calling for the details. In response thereto, assessee through his ld. A.R. appeared before the ld. AO from time to time and furnished the details called for. Finally, assessment was completed u/s 143(3) r.w.s. 153C of the Act vide order dated 17.12.2019. In the order of assessment, the ld. AO has made additions of Rs.33,84,300/- as unaccounted purchases based on the materials impounded during the course of survey and thereby raised tax demand of Rs.36,58,288/-. Aggrieved by this addition made, assessee went in appeal before ld. CIT(A) and the ld. CIT(A) confirmed the same. Against this assessee once again is in appeal before us.

8. The ld. A.R. submitted that these additions solely based on the loose slips bearing No.12/A/NSF/2017-18 from page 101 to 1014 which contains the payment made to Ibrahim towards purchase of raw fish to the tune of Rs.33,84,300/-. According to the assessee, assessee made total purchase of Rs.28,91,700/- which was duly accounted and there was no unaccounted purchase. As such, addition to be deleted.

9. The ld. D.R. submitted that there was evidence in the form of seized material No.12/A/NSF/2017-18 pages 101 to 104 showing the purchase of Rs.33,84,300/-, which has not been accounted by the assessee. Hence, the addition has been made.

10. We have heard the rival submissions and perused the materials available on record. In this case, addition has been made on the basis of loose slips bearing No.12/A/NSF/2017-18 which reads as follows:

SL.NO.	DATE	AMOUNT	SL.NO.	DATE	AMOUNT	SL.NO.	DATE	AMOUNT
1	13/09/2017	10,000	23	31/10/2017	10,000	45	30/12/2017	1,000
2	20/09/2017	1,000	24	11-01-2017	10,000	46	31/12/2017	10,000
3	20/09/2017	10,000	25	11-03-2017	5,000	47	01-02-2018	1,50,000
4	23/09/2017	6,000	26	11-07-2017	1,000	48	01-05-2018	1,00,000
5	25/09/2017	50,000	27	11-07-2017	25,000	49	01-05-2018	30,000
6	25/09/2017	5,00,000	28	11-09-2017	1,000	50	01-09-2018	2,00,000
7	27/09/2017	100	29	11-12-2017	10,000	51	01-10-2018	3,000
8	10-03-2017	10,000	30	14/11/2017	1,000	52	01-10-2018	1,450
9	10-04-2017	10,000	31	15/11/2017	50,000	53	01-12-2018	10,000
10	10-05-2017	10,000	32	17/11/2017	25,000	54	13/01/2018	3,00,000
11	10-07-2017	10,000	33	22/11/2017	10,000	55	13/01/2018	1,000
12	10-07-2017	1,000	34	24/11/2017	2,000	56	16/01/2018	3,00,000
13	10-08-2017	8,500	35	27/11/2017	1,000	57	17/01/2018	10,000
14	10-10-2017	1,000	36	28/11/2017	27,000	58	23/01/2018	22,000
15	10-11-2017	1,00,000	37	30/11/2017	10,000	59	23/01/2018	1,000
16	13/10/2017	1,00,000	38	12-03-2017	10,000	60	23/01/2018	5,250
17	18/10/2017	30,000	39	12-05-2017	1,000	61	27/01/2018	3,00,000
18	21/10/2017	10,000	40	12-05-2017	1,500	62	27/01/2018	2,000
19	21/10/2017	1,00,000	41	12-08-2017	22,000	63	30/01/2018	1,000
20	24/10/2017	1,000	42	12-09-2017	50,000	64	02-04-2018	1,00,000
21	25/10/2017	50,000	43	23/12/2017	25,000		TOTAL	20,41,200
22	27/10/2017	2,000	44	26/12/2017	25,000			
		10,20,600			3,22,500		GRAND TOTAL	33,84,300

10.1 According to the ld. AO, it shows the purchase made by assessee from Ibrahim. However, this is unsubstantiated loose slips not supported by any corroborative material. It is incumbent upon the searched party/AO to bring on record corroborative material suggesting unaccounted assets/purchases.

10.2 At this point, we consider few precedents on this issue. In the case of Mahesh Reddy Vs. ACIT in ITA No.1236/Hyd/2012, Gyan Kumar Agrawal Vs. ACIT 60 DTR 241, Dhatrii Constructions Pvt. Ltd Vs. DCIT in ITA No.2185/Hyd/2011, ITO Vs. Kranti Impex Pvt. Ltd., Mumbai in ITA No.2229/Mum/2013 dated 28.12.2018, PCIT Vs.

Umesh Israni 108 Taxmann.com 437 (Bom), DCIT Central Circle Vs. Sri Krishna Yadav 12 taxmann.com 4 (Hyd), Gayatri Enterprises Vs. ITO 116 Taxmann.com 359 (Guj), ITO Vs. Bharat A. Mehta 60 taxmann.com 31 (Guj), CIT Vs. Vineet Gupta 46 taxmann.com 439 (Del), CIT Vs. K.V. Laxmi Savitri Devi Vs. ACIT 60 DTR 148. In all these judgements it was held that no addition can be made on the basis of loose papers which does not contain the name and date of payment. The department is precluded in drawing inference on the basis of suspicion, conjectures and surmises and no addition can be made on the basis of such document or loose slips.

10.3 In the case of K.V. Laxmi Savitri Devi Vs. ACIT 60 DTR 148 it was held by the ITAT Hyderabad Bench that "No addition can be made on the basis of a loose paper which does not contain the name and the date of payment. The department is precluded in drawing inferences on the basis of suspicion, conjecture and surmises and no addition can be made on the basis of such dump document or loose sheets.

10.4 On further appeal before the Hon'ble AP High Court, the court vide its order in ITTA No.563 of 2011 upheld the decision of the Tribunal. While upholding the decision of the Hon'ble ITAT, the court held as following:

" We are of the view that the Tribunal has rightly held that the registered document dt.21-08-2006 under which the respondent purchased the above property showed that only Rs.65.00 lakhs was paid to the vendor by the respondent; that there was no evidence to how that the respondent had paid Rs.1.oo crore in cash also to the vendor; that no presumption of such payment of rs.1.00 crore in cash can be drawn on the basis of an entry found in a diary/loose sheet in the premises of C.Radha Krishna Kumar which is not in the respondent's handwriting and which did not contain the name of the respondent or any date of payment or the name of the person who made the payment. It rightly held that the Revenue failed to establish the nexus of the seized material to the respondent and had drawn inferences based on suspicion, conjectures and surmises which cannot take the place of proof. We also agree with the Tribunal that the assessing Officer did not conduct any independent enquiry relating to the value of the property purchased and the burden of proving the actual consideration in the purchase of the property is on the Revenue and it had failed to discharge the said burden."

10.5 No undisclosed Income can be computed by invoking the presumption U/s 132(4A) when the documents are seized from the premises of a third party. This was held in the case of [2005] 147 Taxman 59 (Visakhapatnam) (Mag.) In the ITAT VISAKHAPATNAM BENCH Smt. Bommana Swarna Rekha v. Assistant Commissioner of Income-tax. A presumption can be raised on the basis of possession of a document found during the course of search only against a searched person and, thus, no adverse inference could be drawn against the assessee on the basis of the possession of the diary with the third party. This was held in the case of SMC Share Brokers Ltd Vs DCIT [2008] 22 SOT 7 by Hon'ble ITAT Delhi.

10.6 Where Assessing Officer made addition to assessee's income on basis of a document seized in course of search, in view of fact that document seized was both undated and unsigned and even taken at face value did not lead to further enquiry on behalf of Assessing Officer, impugned order of Tribunal deleting addition was to be confirmed. Where Assessing Officer in course of block assessment proceedings made addition in respect of unexplained investment relating to purchase of property, in absence of any incriminating evidence with respect to payment over and above reported amount, addition so made deserved to be deleted.

10.7 In the case of HIGH COURT OF DELHI Commissioner of Income-tax-XIV v. Vivek Aggarwal [2015] 56 taxmann.com 7 (Delhi) the Assessing Officer has resorted to make the addition on mere loose paper without corroborative evidence. The document which does not describe and express any meaning cannot be relied upon by the Assessing Officer.

10.8 It was held by Hon'ble Delhi High court in the case of CIT Vs Sant Lal vide [2020] 118 Taxmann.com 432 that

"13. In view of the aforesaid facts and the concurrent findings given by the CIT (A) and ITAT, it is evident that the Revenue has not been able to produce any cogent material which could fasten the liability on the respondent. The CIT(A) has also

examined the assessment record and has observed that the AO did not make any further inquiry/investigation on the information passed on by the DCIT, Central Circle-19, New Delhi. No attempt or effort was made to gather or corroborate evidence in this relation.

14. In these facts and circumstances, we are not inclined to entertain the present appeal as no substantial question of law arises for our consideration. Accordingly, the present appeal is dismissed".

10.9 The word "such person" used in section 292C of the Act is only referrable to the person in whose premises the things or materials were found in possession or control at the time of search. Admittedly, the assessee before us was not person in whose premises, the things were found in possession or control at the time of search action. Therefore, provisions of section 292C of the Act cannot be invoked to assist the department, which is without any basis and contrary to law. In our opinion, if any document is found in the premises/possession/control of such person which belongs to the other person then the said documents can be used for making the addition, however, it is necessary to prove that the said document is incriminating in nature and belong to other person. The presumption u/s 292C of the Act can only be invoked against such/searched person and not against another person like person before us. The above said proposition is based and relatable to the Evidence Act which casts data of a person in whose possession, a thing or article was found to discharge the burden that it does not belong to him.

10.10 In the case of Dreamcity Buildwell (P.) Ltd. reported in [2019] 110 taxmann.com 28 (Delhi), in the identical facts, Hon'ble High Court of Delhi had deleted the additions with the following reasoning:-

> *"15. It can straightaway be noticed that the crucial change is the substitution of the words 'books of account or documents, seized or requisitioned belongs to or belong to a person other than the person referred to in Section 153A' by two clauses i.e. a and b, where clause b is in the alternative and provides that 'such books of account or documents, seized or requisitioned' could 'pertain' to or contain information that 'relates to' a*

person other than a person referred to in Section 153A of the Act.

- *The trigger for the above change was a series of decisions under Section 153C, as it stood prior to the amendment, which categorically held that unless the documents or material seized 'belonged' to the Assessee, the assumption of jurisdiction under Section 153C of the Act qua such Assessee would be impermissible. The legal position in this regard was explained in Pepsi Foods (P.) Ltd. v. Asstt. CIT [2014] 367 ITR 112 (Del)where in para 6 it was held as under:*

'6. On a plain reading of Section 153C, it is evident that the Assessing Officer of the searched person must be "satisfied" that inter alia any document seized or requisitioned "belongs to" a person other than the searched person. It is only then that the Assessing Officer of the searched person can handover such document to the Assessing Officer having jurisdiction over such other person (other than the searched person). Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or reassess his income in accordance with the provisions of Section 153A. Therefore, before a notice under Section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is -after such satisfaction is arrived at - that the document is handed over to the Assessing Officer of the person to whom the said document "belongs". In the present cases it has been urged on behalf of the petitioner that the first step itself has not been fulfilled. For this purpose it would be necessary to examine the provisions of presumptions as indicated above. Section132 (4A) (i) clearly stipulates that when inter alia any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. It is similarly provided in Section 292C (1) (i). In other words, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or "satisfaction" that the document in fact belongs to somebody else. There must be some cogent material available with the Assessing Officer before he/she arrives at the satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of "satisfaction'.

- *In the present case the search took place on 5th January 2009. Notice to the Assessee was issued under Section 153 C on 19th November 2010. This was long prior to 1st June, 2015 and, therefore, Section 153C of the Act as it stood at the relevant time applied. In other words, the change brought about prospectively with effect from 1st June, 2015 by the amended Section 153C (1) of the Act did not apply to the search in the instant case. Therefore, the onus was on the Revenue to show that the incriminating material/documents recovered at the time of search 'belongs' to the Assessee. In other words, it is not enough for the Revenue to show that the documents either 'pertain' to the Assessee or contains information that 'relates to' the Assessee.*

- *In the present case, the Revenue is seeking to rely on three documents to justify the assumption of jurisdiction under Section 153 C of the Act against the Assessee. Two of them, viz., the licence issued to the Assessee by the DTCP and the letter issued by the DTCP permitting it to transfer such licence, have no relevance for the purposes of determining escapement of income of the Assessee for the AYs in question. Consequently, even if those two documents can be said to 'belong' to the Assessee they are not documents on the basis of which jurisdiction can be assumed by the AO under Section 153C of the Act.*

- *As far as the third document, being Annexure A to the statement of Mr. D. N. Taneja, is concerned that was not a document that 'belonged' to the Assessee. Admittedly, this was a statement made by Mr. Taneja during the course of the search and survey proceedings. While it contained information that 'related' to the Assessee, by no stretch of imagination could it be said to a document that 'belonged' to the Assessee. Therefore, the jurisdictional requirement of Section 153C of the Act, as it stood at the relevant time, was not met in the present case.*

- *For the aforementioned reasons, this Court concludes that the ITAT committed no legal error in holding that the AO had wrongly assumed jurisdiction under Section 153C qua the Assessee. The ITAT, rightly, therefore, set aside the order of the CIT (A), which had held the contrary."*

10.11 Moreover, in the decision of the Hon'ble Supreme Court in the case of CIT Vs. Singhad Technical Education Society reported in [2017] (378 ITR 84) (SC) it was categorically held that the incriminating material should belong to the

assessee and for the assessment year under consideration in the following manner:

> *"15. At the outset, it needs to be highlighted that the assessment order passed by the AO on August 7, 2008 covered eight Assessment Years i.e. Assessment Year 1999-2000 to Assessment Year 2006-07. As noted above, insofar as Assessment Year 1999-2000 is concerned, same was covered under Section 147 of the Act which means in respect of that year, there were re-assessment proceedings. Insofar as Assessment Year 2006-07 is concerned, it was fresh assessment under Section 143(3) of the Act. Thus, insofar as assessment under Section 153C read with Section 143(3) of the Act is concerned, it was in respect of Assessment Years 2000-01 to 2005-06. Out of that, present appeals relate to four Assessment Years, namely, 2000-01 to 2003-04 covered by notice under Section 153C of the Act. There is a specific purpose in taking note of this aspect which would be stated by us in the concluding paragraphs of the judgment.*
>
> • *In these appeals, qua the aforesaid four Assessment Years, the assessment is quashed by the ITAT (which order is upheld by the High Court) on the sole ground that notice under Section 153C of the Act was legally unsustainable. The events recorded above further disclose that the issue pertaining to validity of notice under Section 153C of the Act was raised for the first time before the Tribunal and the Tribunal permitted the assessee to raise this additional ground and while dealing with the same on merits, accepted the contention of the assessee.*
>
> • *First objection of the learned Solicitor General was that it was improper on the part of the ITAT to allow this ground to be raised, when the assessee had not objected to the jurisdiction under Section 153C of the Act before the AO. Therefore, in the first instance, it needs to be determined as to whether ITAT was right in permitting the assessee to raise this ground for the first time before it, as an additional ground.*
>
> • *The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, documentwise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under*

that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act. Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.

- *We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy."*

10.12 At this point, we rely on the order of the Tribunal in the case of ACIT Vs. Manchukonda Shyam in ITA 87/Viz/2020 dt.23.09.2020 wherein the Tribunal at paras 6 and 6.1 has held as under :

"6. We have heard both the parties, gone through the orders of the authorities below. Shri Lanka Anil Kumar is an employee of M/s Navaratna Estates Ltd. A search u/s 132 was conducted in the residence of Shri Lanka Anil Kumar and certain sums were found in whatsapp messages in digits. When asked to explain, Shri Anil Kumar stated that the amounts were written in thousands represent lakhs and the total sum of Rs.1,05,00,000/-was taken as loan from the assessee in cash for his business purposes. When confronted with the assessee, he explained that the amounts mentioned in thousands are correct and the total amount would be in the range of Rs.5,000/- and Rs.10,000/- given to Shri Anil Kumar to meet the petty cash or miscellaneous expenses from M/s Navaratna Estates during registration of properties. A search u/s 132 was conducted in the case of Shri Lanka Anil Kumar as well as the assessee and the survey u/s 133A was conducted in the case of M/s Navaratna Estates. No evidence was found by the department either in the premises of the assessee or in the premises of M/s Navaratna Estates, having given loan to Sri Anil Kumar to the extent of Rs.1,05,00,000/-. In the search proceedings in the residence of Shri Anil Kumar also, no evidence with regard to unaccounted investment or

expenditure representing the loan supposed to be taken from the assessee was found. Merely on the basis of the statement given by Shri Lanka Anil Kumar, which was subsequently retracted, the AO made the addition on the presumption that the assessee had advanced the sums to Shri Lanka Anil Kumar without bringing any evidence on record. The AO has neither given opportunity to the assessee to cross examine the third party nor disproved the explanation given by the assessee. As found from the order of the AO Sri Lanka Anil Kumar is an employee of M/s Navaratna Estates and drawing the salary of Rs.25000/- per month. He explained that the sums mentioned in the whatsapp messages were related to the amounts given to Sri Lanka Anil Kumar in the range of Rs.5,000/- to Rs.10,000/- to meet the petty cash and miscellaneous expenses. No evidence was found with regard to the investment made by Shri Anil Kumar in his own business out of the loans stated to have given by the assessee. In the above facts and circumstances there is no reason to disbelieve the statement given by the assessee that the payments were given for meeting petty cash or miscellaneous expenses. The Ld.CIT(A) following the decisions of Hon'ble Jurisdictional High Court as well as this Tribunal held that on the basis of notings and loose sheets found from third parties and the statement of third parties, the additions cannot be made without having corroborative / independent evidences. For the sake of clarity and convenience, we extract relevant part of the order of Ld.CIT(A) in para No.6.2 of page No.13 which reads as under :

"6.2. I have considered the assessment order and submissions of the appellant. It is seen that the addition made by the AO is solely based on the social media (whatsapp) messages exchanged between the appellant and Mr. Anil Kumar, an employee of M/s Navaratna Estates. A statement u/s.132 recorded from Mr. L, Anil Kumar during the course of Search during which Mr. L. Anil Kumar was questioned and he explained the nature and 'details of messages exchanged by him with the appellant. The messages contain details of transactions in digits. Those were explained to be in lakhs of rupees and the transaction was loans advanced by the appellant to Mr.L. Anil Kumar whereas the appellant explained the same to be in thousands of rupees which were given for miscellaneous expenses. Mr.L. Anil Kumar also took similar stand in his assessment proceedings and said that the statement given during Search was under duress. The AO has not brought on record any evidences as to utility of such amount nor any other corroborative evidence to support the findings. Such evidences(Messages) without any supporting/corroborative along with admission of third person cannot be, basis for AO to come to conclusion and make addition in the assessment order. The low or the issue is laid down by the jurisdictional High Court, and followed by ITAT consistently in the following cases.

- *K. V. Lakshmi Savitri Devi Vs ACT 148 ITJ 517 (Hyd).*

- *K. V. Lakshmi Savjtri Devi Vs ACIT ITTA 563 of 2017 (AP)(HC)*
- *iii) Jawahar Bhai Atmaram Hathiwala Vs ITO 128 ITJ 36 (Ahd)*
- *iv) DCIT Vs B. Vijaya Kumar ITA No.930 & 931 of 2009 (Hyd).*
- *v) CIT Vs R. Nalini Devi ITTA 232 of 2013 (A. P)*
- *CIT Vs P. V Kalyana Sundaran (2007) 294 ITR 49*
- *i. Venkata Rama Sai Developers Vs DCIT ITA 453/Vizag/2012.*
- *P. Venkateshwar Rao Vs DCIT ITA 25/825/Vizag/2012.*

The ratio laid down is that solely on the basis evidences such as notings in loose sheets found with third parties and the statement of third parties, additions cannot be made without corroborative evidences and independent enquiries. Applying the above ratio to the facts of the case, it is held that the addition made is not warranted, the same is deleted."

6.1. No evidence was found by the department to establish that assessee has given loans to Shri Lanka Anil Kumar during the course of search and no evidence was found regarding utilization of purported advances by Shri Lanka Anil Kumar. Shri Anil Kumar also subsequently retracted from the statement and clarified that he has not received any cash loans from the assessee. Addition was made merely on the basis of whatsapp messages and the statement recorded from section 132(4) from Shri Lanka Anil Kumar which was subsequently retracted. Therefore we are of the view that the addition made by the AO is unsustainable and the Ld.CIT(A) rightly deleted the addition. Accordingly, we do not see any reason to interfere with the order of the Ld.CIT(A) and the same is upheld. The appeal of the revenue on this ground is dismissed."

10.13 Further, Hon'ble Supreme Court in the case of Common Cause (A registered Society) Vs. Union of India in Writ Petition (Civil) No.505 of 2015 dated 2.7.2018 *[2017]* 394 ITR *220* (SC) wherein considered and observed that the entries in the loose papers/sheets are not "books of accounts" and has no evidentiary value u/s 34 of the Indian Evidence Act. The Hon'ble Supreme Court dismissing the writ petition filed by Common Cause, a registered society, refused to give nod to investigate against the Sahara and Birla Groups in the alleged payoff scandal. The factual setting of the case are that, a search was conducted by the CBI in the premises of Birla Groups, as

a result of which, certain incriminating materials and an amount of Rs.25 crores were recovered. CBI referred the matter to Income Tax Department. In another search, the IT department recovered certain incriminating materials and unaccounted money of Rs.135 crores from Sahara Group of Companies. Allegedly the department recovered certain print out of excel sheets showing that Rs.115 crores were paid to several public figures. The settlement commission granted immunity to the Sahara Group of Companies on ground that the scrutiny of entries on loose papers, computer prints, hard disk, pen drives, etc. have revealed that the transactions noted on documents were not genuine and have no evidentiary value and that details in these loose papers, computer print outs, hard disks and pen drives, etc. do not comply with the requirement of the Indian Evidence Act and are not admissible evidence. The Income Tax Settlement Commission has also observed that department has not been able to make out a clear case of taxing such income in the hands of the applicant firm on the basis of these documents. The petitioner, Common Cause, impugned the orders before the Hon'ble Supreme Court. Dismissed the petition Supreme Court clarified that the evidence that had surfaced was not credible and cogent. The Attorney General contended that documents which have been filed by the Birla as well as Sahara Group are not in the form of Account books maintained in the regular course of business. They are random sheets and loose papers and their correctness and authenticity even for the purpose of income mentioned therein have been found to be unreliable having no evidentiary value, by the concerned authorities of Income Tax. Analysing the veracity of the evidences procured from the companies, the Supreme Court, relied upon the ratio laid in V.C. Shukla case and observed that the entries in loose sheets of papers are not in the form of "Books of Accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible u/s 34 of Indian Evidence Act, and that only

where the entries are in the Books of Accounts regularly kept depending on the nature of the occupation, that those are admissible.

10.14 Further, we rely on the order of this Tribunal in the case of M/s. John Distilleries in ITA Nos.982 to 987/Bang/2023 dated 24.7.2024 wherein held as under:

"20.13 *Further, the ld. AO cannot solely rely on the statement recorded u/s 132(4) of the Act without appropriate corroborative materials as recently held by Hon'ble Delhi High Court in the case of PCIT Vs. Pavitra Realcon Pvt. Ltd. reported in ITA No.579/2018 dated 29.5.2024, wherein held as under:*

> *"17. We have heard the learned counsels appearing on behalf of the parties and perused the record.*
>
> *18. The primary grievance which arises in the present appeals pertains to whether the ITAT was right in deleting additions made under Section 68 of the Act by holding that no assessment could have been made on mere presumption of existence of incriminating material.*
>
> *19. Undisputedly, during the period of search, no incriminating material appears to have been found. However, the Revenue proceeded to issue notice under Section 143(2) of the Act on the pretext of the statements of the Directors of the respondent-assessee companies recorded under Section 132(4) of the Act and material seized from the search conducted on Jain group of companies. The assessment order was also passed under Section 143(3) read with Section 153C of the Act making additions under Section 68 of the Act.*
>
> *20. However, it is an undisputed fact that the statement recorded under Section 132(4) of the Act has better evidentiary value but it is also a settled position of law that addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the content of the statements.*
>
> *21. In the case of* ***Kailashben Manharlal Chokshi v. CIT***[1]*, the Gujarat High Court held that the additions could not be made only on the basis of admissions made by the assessee, in the absence of any corroborative material. The relevant paragraph no. 26 of the said decision has been reproduced hereinbelow: -*
>
> > *26. In view of what has been stated hereinabove we are of the view that this explanation seems to be more convincing, has not been considered by the authorities below and additions were made and/or confirmed merely on the basis of statement recorded under section 132(4) of the Act. Despite the fact that the said statement was later on retracted no evidence has been led by the Revenue authority.* ***We are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such***

additions unless and until, some corroborative evidence is found in support of such admission. *We are also of the view that from the statement recorded at such odd hours cannot be considered to be a voluntary state ment, if it is subsequently retracted and necessary evidence is led contrary to such admission. Hence, there is no reason not to disbelieve the retrac tion made by the Assessing Officer and explanation duly supported by the evidence. We are, therefore, of the view that the Tribunal was not justified in making addition of Rs. 6 lakhs on the basis of statement recorded by the Assessing Officer under section 132(4) of the Act. The Tribunal has com mitted an error in ignoring the retraction made by the assessee.*

[Emphasis supplied]

22. Further, the position with respect to whether a statement recorded under Section 132(4) of the Act could be a standalone basis for making assessment was clarified by this Court in the case of ***CIT v. Harjeev Aggarwal***[2]*, wherein, it was held that merely because an admission has been made by the assessee during the search operation, the same could not be used to make additions in the absence of any evidence to corroborate the same. The relevant paragraph of the said decision is extracted herein below:*

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"20. *In our view, a plain reading of section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search.* ***The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations.*** *However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the Explanation to section 132(4) of the Act.* ***However, such statements on a stand alone basis without reference to any other material discovered during search and seizure operations would not empower the Assessing Officer to make a block assessment merely because any admission was made by the assessee during search operation.***

[Emphasis supplied]

23. In our opinion, the Act does not contemplate computing of undisclosed income solely on the basis of statements made during a search. However, these statements do constitute information, and if they relate to the evidence or material found during the search, they can be used in proceedings under the Act, as specified under Section 132(4) of the Act. Nonetheless, such statements alone, without any other material discovered during the search which would corroborate said statements, do not grant the AO the authority to make an assessment.

24. Coming to the findings of the ITAT with respect to incriminating material in the case of M/s Pavitra Realcon Pvt. Ltd and M/s Delicate Real Estate Pvt. Ltd, it is seen that the ITAT has explicitly held in paragraph no. 18 that no addition has been made on the basis of any incriminating material found during the course of search. Further, the ITAT relied on the decision of the Supreme Court in the case of ***CIT v. Sinhgad Technical Education Society***[1] *and held as follows: -*

> *"18. Further, while writing the order it has come to our notice that the Hon'ble Apex Court in the case of Sinhgad Technical Education Society has held that section 153C can be invoked only when incriminating materials assessment year-wise are recorded in satisfaction note which is missing here. Therefore, the proceedings drawn u/s 143(3) as against 153C are invalid for want of any incriminating material found for the impugned assessment year.*
>
> *19. In view of the above, the additional grounds raised by the assessee in the case of M/s Pavitra Realcon Pvt. Ltd. And M/s Delicate Real Estate Pvt. Ltd. are accepted. Since the assessee succeeds on this legal ground, we refrain ourselves from adjudicating the issue on merit as far as these two cases are concerned."*

25. Also, the Supreme Court in the case of ***CIT v. Abhisar Buildwell (P) Ltd.***[4]*, has clarified that in case no incriminating material is found during the search conducted under Section 132 of the Act, the AO will have no jurisdiction to make an assessment. The relevant paragraph is reproduced herein below: -*

> *"36.4. In case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132-A of the 1961 Act. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under Sections 147/148 of the Act and those powers are saved."*
>
> *[Emphasis supplied]*

26. This Court in the case of ***CIT v. Kabul Chawla***[5]*, has explicitly noted that the information/material which has been relied upon for assessment has*

to relate with the assessee. The relevant portion of the said decision is extracted herein below: -

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

27. Recently, this Court, in the case of ***Saksham Commodities Limited v. Income Tax Officer, Ward 22(1), Delhi & Anr***[6]*, while relying upon the decision of the Supreme Court in Abhisar Buildwell (supra) and this Court's decision in the case of* ***CIT v. RRJ Securities Ltd.***[7]*, upheld the position of law that the AO would not be justified to assess income in case no incriminating material is found during the search. The relevant paragraph is reproduced herein below: -*

> ***"54. In any case, Abhisar Buildwell, in our considered opinion, is a decision which conclusively lays to rest any doubt that could have been possibly harboured. The Supreme Court in unequivocal terms held that absent incriminating material, the AO would not be justified in seeking to assess or reassess completed assessments. Though the aforesaid observations were rendered in the context of completed assessments, the same position would prevail when it comes to assessments which abate pursuant to the issuance of a notice under Section 153C.*** *Here too, the AO would have to firstly identify the AYs' to which the material gathered in the course of the search may relate and consequently it would only be those assessments which would face the spectre of abatement. The additions here too would have to be based on material that may have been unearthed in the course of the search or on the basis of material requisitioned. The statute thus creates a persistent and enduring connect between the material discovered and the assessment that may be ultimately made. The provision while speaking of AYs' falling within the block of six AYs' or for that matter all years forming part of the block of ten AYs', appears to have been put in place to cover all possible contingencies. The aforesaid provisions clearly appear to have been incorporated and made applicable both with respect to Section 153A as well as Section 153C ex abundanti cautela. Which however takes us back to what had been observed earlier, namely, the existence of the power*

being merely enabling as opposed to a statutory compulsion or an inevitable consequence which was advocated

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56. We also bear in mind the pertinent observations made in RRJ Securities when the Court held that merely because an article or thing may have been recovered in the course of a search would not mean that concluded assessments have to "necessarily" be reopened under Section 153C and that those assessments are not liable to be revised unless the material obtained have a bearing on the determination of the total income. ***This aspect was again emphasised in para 38 of RRJ Securities with the Court laying stress on the existence of material that may be reflective of undisclosed income being of vital importance. All the aforenoted judgments thus reinforce the requirement of incriminating material having an ineradicable link to the estimation of income for a particular AY."***

[Emphasis supplied]

28. So far as the submission made by the learned counsel for the Revenue that the AO acted on a bona fide belief that the date of search has to be taken as the date of initiation of proceedings under Section 153C of the Act is concerned, it is apposite to refer to our decision in the case of ***CIT v. Ojjus Medicare (P) Ltd.***[8] *This Court, in the said case, reiterated the already settled law that the date of initiation of assessment proceedings under Section 153C would be calculated from the date of handing over of the books of accounts, documents or assets seized to the jurisdictional AO of the non-searched person. The relevant paragraphs of the said decision are extracted herein below: -*

"K. SUMMARY OF CONCLUSIONS

119. *We thus record our conclusions as follows:*

A. Prior to the insertion of Sections 153A, 153B and 153C, an assessment in respect of search cases was regulated by Chapter XIVB of the Act, comprising of Sections 158B to 158BI and which embodied the concept of a block assessment. A block assessment in search cases undertaken in terms of the provisions placed in Chapter XIVB was ordained to be undertaken simultaneously and parallelly to a regular assessment.

Contrary to the scheme underlying Chapter XIVB, Sections 153A, 153B and 153C contemplate a merger of regular assessments with those that may be triggered by a search. On a search being undertaken in terms of Section 153A, the jurisdictional AO is enabled to initiate an assessment or reassessment, as the case may be, in respect of the six AYs' immediately preceding the AY relevant to the year of search as also in respect of the "relevant assessment year", an expression which stands defined by Explanation 1 to Section 153A. Of equal

significance is the introduction of the concept of abatement of all pending assessments as a consequence of which curtains come down on regular assessments.

B. *Both Sections 153A and 153C embody non-obstante clauses and are in express terms ordained to override Sections 139, 147 to 149, 151 and 153 of the Act. By virtue of the 2017 Amending Act, significant amendments came to be introduced in Section 153A. These included, inter alia, the search assessment block being enlarged to ten AYs' consequent to the addition of the stipulation of "relevant assessment year" and which was defined to mean those years which would fall beyond the six year block period but not later than ten AYs'. The block period for search assessment thus came to be enlarged to stretch up to ten AYs'. The 2017 Amending Act also put in place certain prerequisite conditions which would have to inevitably be shown to be satisfied before the search assessment could stretch to the "relevant assessment year". The preconditions include the prescription of income having escaped assessment and represented in the form of an asset amounting to or "likely to amount to" INR 50 lakhs or more in the "relevant assessment year" or in aggregate in the "relevant assessment years".*

C. *Section 153C, on the other hand, pertains to the non-searched entity and in respect of whom any material, books of accounts or documents may have been seized and were found to belong to or pertain to a person other than the searched person. As in the case of Section 153A, Section 153C was also to apply to all searches that may have been undertaken between the period 01 June 2003 to 31 March 2021. In terms of that provision, the AO stands similarly empowered to undertake and initiate an assessment in respect of a non-searched entity for the six AYs' as well as for "the relevant assessment year". The AYs', which would consequently be thrown open for assessment or reassessment under Section 153C follows lines pari materia with Section 153A.*

D. ***The First Proviso to Section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is governed by the First Proviso to Section 153C, which significantly shifts the reference point spoken of in Section 153A(1), while defining the point from which the period of the "relevant assessment year" is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the non-searched person. The shift of the relevant date in the***

case of a non-searched person being regulated by the First Proviso of Section 153C(1) is an issue which is no longer res integra and stands authoritatively settled by virtue of the decisions of this Court in SSP Aviation and RRJ Securities as well as the decision of the Supreme Court in Jasjit Singh. The aforesaid legal position also stood reiterated by the Supreme Court in Vikram Sujitkumar Bhatia. The submission of the respondents, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted.

E. *The reckoning of the six AYs' would require one to firstly identify the FY in which the search was undertaken and which would lead to the ascertainment of the AY relevant to the previous year of search. The block of six AYs' would consequently be those which immediately precede the AY relevant to the year of search. In the case of a search assessment undertaken in terms of Section 153C, the solitary distinction would be that the previous year of search would stand substituted by the date or the year in which the books of accounts or documents and assets seized are handed over to the jurisdictional AO as opposed to the year of search which constitutes the basis for an assessment under Section 153A.*

F. *While the identification and computation of the six AYs' hinges upon the phrase "immediately preceding the assessment year relevant to the previous year" of search, the ten year period would have to be reckoned from the 31st day of March of the AY relevant to the year of search. This, since undisputedly, Explanation 1 of Section 153A requires us to reckon it "from the end of the assessment year". This distinction would have to necessarily be acknowledged in light of the statute having consciously adopted the phraseology "immediately preceding" when it be in relation to the six year period and employing the expression "from the end of the assessment year" while speaking of the ten year block."*

[Emphasis supplied]

29. It is thus seen that in order to determine block of six AYs, one must first identify the FY in which the search occurred, leading to the identification of the AY relevant to the previous year of the search. The block of six AYs will then be those immediately preceding the AY relevant to the search year. For a search assessment under Section 153C of the Act, the only difference is that the previous year of the search is replaced by the date or year in which the seized books of accounts, documents, and assets are handed over to the jurisdictional AO, rather than the year of the search, which is the basis for an assessment under Section 153A of the Act. Therefore, the relevant AY in the present case would come under the block of six AYs immediately preceding the

AY in which the satisfaction note was recorded by the AO of the respondent-assessee companies.

30. Further, in the case of M/s Design Infracon Pvt. Ltd., the ITAT held that there is violation of principles of natural justice as neither the statement of owner of Jain group of companies was provided to the said company, nor the opportunity of cross-examination was given. The ITAT in paragraph no. 23 has held as under: -

> *"23.Now, coming to Design Infracon (P) Ltd., we find from the material available on record that there is brazen violation of principles of natural justice inasmuch as neither the statement of Mr. Jain recorded at the time of search nor his cross-examination was provided to the assessee by both the lower authorities despite specific and repeated requests made by the assessee in this regard. The Hon'ble Supreme Court in the case of M/s Andaman Timber Indusgies vs. CCE reported in 281 CTR 241 has held that not giving opportunity of cross-examination makes the entire proceedings invalid and nullity. The Co-ordinate Bench of the Tribunal in the case of Best City Infrastructure Ltd. (supra) has also held that not providing opportunity of cross-examination makes the addition invalid. It has come to our notice that the Hon'ble Delhi High Court recently has upheld the said decision as reported in 397 ITR 82."*

31. On this aspect, it is beneficial to refer to the decision of the Supreme Court in the case of ***Andaman Timber Industries v. CCE***[9]*, wherein, it was held that not providing the opportunity of cross- examination to the assessee amounts to gross violation of the principles of natural justice and the same will render the order passed null and void. The relevant paragraph of the said decision is extracted herein below: -*

> ***"6. According to us, not allowing the assessee to cross-examine the witnesses by the adjudicating authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected.*** *It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the adjudicating authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the adjudicating authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the adjudicating authority. As far as the Tribunal is*

concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross- examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their exfactory prices remain static. It was not for the Tribunal to have guesswork as to for what purposes the appellant wanted to crossexamine those dealers and what extraction the appellant wanted from them."

[Emphasis supplied]

32. Additionally, the Supreme Court in the case of ***State of Kerala v. K.T. Shaduli Grocery Dealer***[2]*, held that tax authorities being quasi- judicial authorities are bound by the principles of natural justice. The relevant paragraph is extracted herein below: -*

"2. ***Now, the law is well settled that tax authorities entrusted with the power to make assessment of tax discharge quasi-judicial functions and they are bound to observe principles of natural justice in reaching their conclusions.*** *It is true, as pointed out by this Court in Dhakeswari Cotton Mills Ltd. v. CIT [AIR 1955 SC 154 : (1955) 1 SCR 941 : (1955) 27 ITR 126] that a taxing officer "is not fettered by technical rules of evidence and pleadings, and that he is entitled to act on material which may not be accepted as evidence in a court of law", but that does not absolve him from the obligation to comply with the fundamental rules of justice which have come to be known in the jurisprudence of administrative law as principles of natural justice. It is, however, necessary to remember that the rules of natural justice are not a constant: they are not absolute and rigid rules having universal application. It was pointed out by this Court in Suresh Koshy George v. University of Kerala [AIR 1969 SC 198 : (1969) 1 SCR 317*
: (1969) 1 SCJ 543] that "the rules of natural justice are not embodied rules" and in the same case this Court approved the following observations from the judgment of Tucker, L.J. in Russel v. Duke of Norfolk [(1949) 1 All ER 109] :"There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case."

[Emphasis supplied]

33. Further, the argument of learned counsel for the Revenue that this mistake is curable under Section 292B of the Act lacks merit as the plain language of the said Section makes it abundantly clear that this provision condones the invalidity which may arise merely by mistake, defect or omission in notice. The said Section reads as under: -

> *292-B. Return of income, etc., not to be invalid on certain grounds.—No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.*

34. Reliance can also be placed upon the decision in the case of ***CIT v. Micron Steels P. Ltd.****[11], whereby, it was held that the jurisdictional defects cannot be cured under Section 292B of the Act and they render the entire proceedings null and void.*

35. In the present case, it is seen that the Revenue has failed to allude to any steps which were taken to determine that the seized material belonged to the respondent-assessee group. Notably, the satisfaction note has also been prepared in a mechanical format and it does not provide any details about the incriminating material. Therefore, a failure on the part of the Revenue to manifest as to how the material gathered from the search of Jain group of companies belonged to the respondent-assessee group and the same is incriminating, vitiates the entire assessment proceedings.

36. Accordingly, we find no reason to intermeddle with the order of the ITAT which has rightly set aside the assessment order and deleted the additions made therein.

37. In view of the aforesaid and on the basis of the findings of fact arrived at before the authority, these appeals do not raise any substantial question of law and consequently, they stand dismissed. Pending applications, if any, are also disposed of."

20.14 *Further, Hon'ble Supreme Court in the case of Common Cause (A registered Society) Vs. Union of India in Writ Petition (Civil) No.505 of 2015 dated 2.7.2018 [2017] 394 ITR 220 (SC) wherein considered and observed that the entries in the loose papers/sheets are not "books of accounts" and has no evidentiary value u/s 34 of the Indian Evidence Act. The Hon'ble Supreme Court dismissing the writ petition filed by Common Cause, a registered society, refused to give nod to*

investigate against the Sahara and Birla Groups in the alleged payoff scandal. The factual setting of the case are that, a search was conducted by the CBI in the premises of Birla Groups, as a result of which, certain incriminating materials and an amount of Rs.25 crores were recovered. CBI referred the matter to Income Tax Department. In another search, the IT department recovered certain incriminating materials and unaccounted money of Rs.135 crores from Sahara Group of Companies. Allegedly the department recovered certain print out of excel sheets showing that Rs.115 crores were paid to several public figures. The settlement commission granted immunity to the Sahara Group of Companies on ground that the scrutiny of entries on loose papers, computer prints, hard disk, pen drives, etc. have revealed that the transactions noted on documents were not genuine and have no evidentiary value and that details in these loose papers, computer print outs, hard disks and pen drives, etc. do not comply with the requirement of the Indian Evidence Act and are not admissible evidence. The Income Tax Settlement Commission has also observed that department has not been able to make out a clear case of taxing such income in the hands of the applicant firm on the basis of these documents. The petitioner, Common Cause, impugned the orders before the Hon'ble Supreme Court. Dismissed the petition Supreme Court clarified that the evidence that had surfaced was not credible and cogent. The Attorney General contended that documents which have been filed by the Birla as well as Sahara Group are not in the form of Account books maintained in the regular course of business. They are random sheets and loose papers and their correctness and authenticity even for the purpose of income mentioned therein have been found to be unreliable having no evidentiary value, by the concerned authorities of Income Tax. Analysing the veracity of the evidences procured from the companies, the Supreme Court, relied upon the ratio laid in V.C. Shukla case and observed that the entries in loose sheets of papers are not in the form of "Books of Accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible u/s 34 of Indian Evidence Act, and that only where the entries are in the Books of Accounts regularly kept depending on the nature of the occupation, that those are admissible.

20.15 *Tribunal in the case of ACIT Vs. Manchukonda Shyam in ITA 87/Viz/2020 dt.23.09.2020 wherein the Tribunal at paras 6 and 6.1 has held as under:*

> *"6. We have heard both the parties, gone through the orders of the authorities below. Shri Lanka Anil Kumar is an employee of M/s Navaratna Estates Ltd. A search u/s 132 was conducted in the residence of Shri Lanka Anil Kumar and certain sums were found in whatsapp messages in digits. When asked to explain, Shri Anil Kumar stated that the amounts were written in thousands represent lakhs and the total sum of Rs.1,05,00,000/-was taken as loan from the assessee in cash for his business purposes. When confronted with the assessee, he explained that the amounts mentioned in thousands are correct and the total amount would be in the range of Rs.5,000/- and Rs.10,000/- given to Shri Anil Kumar to meet the petty cash or miscellaneous expenses from M/s Navaratna Estates during registration of properties. A search u/s 132 was conducted in the case of Shri Lanka Anil Kumar as well as the assessee and the survey u/s 133A was conducted in the case of M/s Navaratna Estates. No evidence was found by the department either in*

the premises of the assessee or in the premises of M/s Navaratna Estates, having given loan to Sri Anil Kumar to the extent of Rs.1,05,00,000/-. In the search proceedings in the residence of Shri Anil Kumar also, no evidence with regard to unaccounted investment or expenditure representing the loan supposed to be taken from the assessee was found. Merely on the basis of the statement given by Shri Lanka Anil Kumar, which was subsequently retracted, the AO made the addition on the presumption that the assessee had advanced the sums to Shri Lanka Anil Kumar without bringing any evidence on record. The AO has neither given opportunity to the assessee to cross examine the third party nor disproved the explanation given by the assessee. As found from the order of the AO Sri Lanka Anil Kumar is an employee of M/s Navaratna Estates and drawing the salary of Rs.25000/- per month. He explained that the sums mentioned in the whatsapp messages were related to the amounts given to Sri Lanka Anil Kumar in the range of Rs.5,000/- to Rs.10,000/- to meet the petty cash and miscellaneous expenses. No evidence was found with regard to the investment made by Shri Anil Kumar in his own business out of the loans stated to have given by the assessee. In the above facts and circumstances there is no reason to disbelieve the statement given by the assessee that the payments were given for meeting petty cash or miscellaneous expenses. The Ld.CIT(A) following the decisions of Hon'ble Jurisdictional High Court as well as this Tribunal held that on the basis of notings and loose sheets found from third parties and the statement of third parties, the additions cannot be made without having corroborative / independent evidences. For the sake of clarity and convenience, we extract relevant part of the order of Ld.CIT(A) in para No.6.2 of page No.13 which reads as under :

"6.2. I have considered the assessment order and submissions of the appellant. It is seen that the addition made by the AO is solely based on the social media (whatsapp) messages exchanged between the appellant and Mr. Anil Kumar, an employee of M/s Navaratna Estates. A statement u/s.132 recorded from Mr. L, Anil Kumar during the course of Search during which Mr. L. Anil Kumar was questioned and he explained the nature and 'details of messages exchanged by him with the appellant. The messages contain details of transactions in digits. Those were explained to be in lakhs of rupees and the transaction was loans advanced by the appellant to Mr.L. Anil Kumar whereas the appellant explained the same to be in thousands of rupees which were given for miscellaneous expenses. Mr.L. Anil Kumar also took similar stand in his assessment proceedings and said that the statement given during Search was under duress. The AO has not brought on record any evidences as to utility of such amount nor any other corroborative evidence to support the findings. Such evidences(Messages) without any supporting/corroborative along with admission of third person cannot be, basis for AO to come to conclusion and make addition in the assessment order. The low or the issue is laid down by the jurisdictional High Court, and followed by ITAT consistently in the following cases.

- *K. V. Lakshmi Savitri Devi Vs ACT 148 ITJ 517 (Hyd).*
- *K. V. Lakshmi Savjtri Devi Vs ACIT ITTA 563 of 2017 (AP)(HC)*
- *Jawahar Bhai Atmaram Hathiwala Vs ITO 128 ITJ 36 (Ahd)*
- *DCIT Vs B. Vijaya Kumar ITA No.930 & 931 of 2009 (Hyd).*
- *CIT Vs R. Nalini Devi ITTA 232 of 2013 (A. P)*
- *CIT Vs P. V Kalyana Sundaran (2007) 294 ITR 49*
- *Venkata Rama Sai Developers Vs DCIT ITA 453/Vizag/2012.*
- *P. Venkateshwar Rao Vs DCIT ITA 25/825/Vizag/2012.*

The ratio laid down is that solely on the basis evidences such as notings in loose sheets found with third parties and the statement of third parties, additions cannot be made without corroborative evidences and independent enquiries. Applying the above ratio to the facts of the case, it is held that the addition made is not warranted, the same is deleted."

6.1. No evidence was found by the department to establish that assessee has given loans to Shri Lanka Anil Kumar during the course of search and no evidence was found regarding utilization of purported advances by Shri Lanka Anil Kumar. Shri Anil Kumar also subsequently retracted from the statement and clarified that he has not received any cash loans from the assessee. Addition was made merely on the basis of whatsapp messages and the statement recorded from section 132(4) from Shri Lanka Anil Kumar which was subsequently retracted. Therefore we are of the view that the addition made by the AO is unsustainable and the Ld.CIT(A) rightly deleted the addition. Accordingly, we do not see any reason to interfere with the order of the Ld.CIT(A) and the same is upheld. The appeal of the revenue on this ground is dismissed."

20.16 *In the light of the above decisions, statements recorded u/s 132(4) of the I.T. Act, 1961 solely cannot constitute as incriminating material so as to make these additions.*

20.17 *The Hon'ble Supreme Court in Andaman Timber Industries v. Commissioner of Central Excise, 281 CTR 241 (SC) held as follows:-*

> *"Not allowing the assessee to cross-examine the witness by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed*

by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. (para 6)

Appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price-list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price-list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. (para 7)

If the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show-Cause Notice. (para 8)"

10.15 In view of the above discussion, we delete the impugned addition.

11. In the result, appeal of the assessee in ITA No.1019/Bang/2024 is also allowed.

Order pronounced in the open court on 12th Aug, 2024

Sd/-	**Sd/-**
(Keshav Dubey)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 12th Aug, 2024.
VG/SPS

Copy to:
1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.