

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI****BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER****I.T.A. No. 5079/DEL/2019 (A.Y 2010-11)**

Shri Karshni Metals Pvt. Ltd. Gali No. 1, Shiv Vihar, Shahbad Dairy, New Delhi <b>PAN No. AANCS6341N</b> <b>(APPELLANT)</b>	Vs.	Income Tax officer Ward-23(3) New Delhi <b>(RESPONDENT)</b>
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<b>Assessee by :</b>	<b>Sh. Ved Jain, Adv and Ms. Supriya Mehta, CA</b>
<b>Department by:</b>	<b>Sh. Shyam Manohar Singh, SR. DR</b>

<b>Date of Hearing</b>	<b>14.08.2024</b>
<b>Date of Pronouncement</b>	<b>27.08.2024</b>

**ORDER****PER ANUBHAV SHARMA, JM**

The assessee has come in Appeal against the order u/s 250 of the Income Tax Act, 1961 passed by CIT(A)-8 (hereinafter referred as the 'Act') dated 08/03/2019 arising out of assessment order u/s 147/143 of the Act made by the ITO, Ward 23(3), New Delhi

(hereinafter referred as the 'Assessing Officer' or in short 'A.O') for the Assessment Year 2010-11.

2. On hearing both the sides, it comes up that the Ld. CIT(A) has confirmed the addition of Rs. 1,00,00,000/-, made by the Assessing Officer u/s 68 of the Act on account of receipt of share application money and an addition of Rs. 2,00,000/- on account of commission @2% on Rs. 1,00,00,000/-, treating the same as unexplained investment. The background to this addition was that a search was conducted on the Surendra Kumar Jain Group and as is evident from copy of reasons recorded made available at Page No. 21-38 of the Paper Book, an assessment in the present case was framed u/s 147 of the Act in the case of the assessee on the basis of material found during the course of search of the Surendra Kumar Jain Group.

3. The Ld. Counsel appearing for the assessee, at the outset has raised the issue of illegal exercise of jurisdiction u/s 147 of the Act instead of Section 153C of the Act.

4. In this context, we find that the Additional Ground No. 11 has been raised as follows:-

*"11. On the facts and circumstances of the case, the AO as well as the Id. CIT(A) has erred both on facts and in law in ignoring the settled position of law that if any material found during the course of search, belongs to a person other than the person in whose case search was conducted, then assessment of such person shall be computed u/s 153C of the Act & not u/s 148 of the Act."*

5. The Ld. Counsel has submitted that due to non-obstante clause in Section 153A coupled that the principle of abatement the mechanism contained in the provisions of search assessments, the assessment can be concluded in case of incriminating material relied u/s 153C only. The Ld. Counsel has relied following Judgments:-

- *“WARM FORGINGS P. LTD. VERSUS DCIT CIRCLE 27 (1), NEW DELHI., 2024 (4) TMI 259 - ITAT DELHI, Dated.- April 3, 2024.*
- *M/S. MAH IMPEX PRIVATE LTD. VERSUS ITO, WARD-16 (1), DELHI, 2024 (1) TMI 411 - ITAT DELHI, Dated.- October 31, 2023.*
- *SRI DINAKARA SUVARNA PROP. BALAJI CONSTRUCTIONS SHESHAPPA COMPOUND VERSUS DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE MANGALORE, 2022 (7) TMI 800-KARNATAKA HIGH COURT, Dated.- July 8, 2022.*
- *DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE VERSUS SRI DINAKARA SUVARNA, 2023 (6) TMI 1175-SC ORDER, Dated.- March 27, 2023.*

- *M/S. ADITI CONSTRUCTIONS VERSUS DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-1 (3) MUMBAI ASST. COMMISSIONER OF INCOME TAX 24 (1), MUMBAI, UNION OF INDIA, 2023 (5) TMI 281-BOMBAY HIGH COURT, Dated.- May 4, 2023.*
- *KARTI P. CHIDAMBARAM VERSUS THE PRINCIPAL DIRECTOR OF INCOME TAX (INVESTIGATION) INCOME TAX INVESTIGATION WING BUILDING, THE DEPUTY DIRECTOR OF INCOME TAX, (INVESTIGATION) UNIT 3 (2), CHENNAI, THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE, 2 (1), CHENNAI, 2021 (7) TMI 393-MADRAS HIGH COURT, Dated.- July 5, 2021.*
- *M/S RAVI NIRMAN NIGAM LIMITED VERSUS DCIT-CIRCLE-13 (3) (1) MUMBAI, 2022 (6) TMI 256-ITAT MUMBAI, Dated.- April 27, 2022.*
- *ACIT CIRCLE-45 (1) NEW DELHI. VERSUS M/S. K.S. CHAWLA & SONS [HUF] AND (VICE- VERSA), 2021 (5) TMI 586-ITAT DELHI, Dated.- May 18, 2021.*
- *INCOME-TAX OFFICER VERSUS ARUN KUMAR KAPOOR, 2012 (6) TMI 403-ITAT AMRITSAR, Dated.- June 21, 2011.*
- *SHRI SANJAY SINGHAL (HUF) VERSUS THE DCIT CENTRAL CIRCLE-1 CHANDIGARH, 2020 (9) TMI 338-ITAT CHANDIGARH, Dated.- June 19, 2020.*
- *SHRI ADARSH AGRAWAL VERSUS THE INCOME TAX OFFICER, WARD-61 (1), NEW DELHI, 2020 (1) TMI 620-ITAT DELHI, Dated.- January 14, 2020*
- *SAMBHAVNATH INFRABUILD AND FARMS PVT. LTD., (SUCCESSOR TO LODHA CONSTRUCTION PVT. LTD., } VERSUS ASST. CIT- CENTRAL CIRCLE - 7 (3), MUMBAI, 2022 (1) TMI 735 - ITAT MUMBAI. Dated.- January 6, 2022.*

6. The Ld. Counsel specifically relied the Judgment of this Bench itself in the case **of M/s Mah Impex Pvt. Ltd Vs. ITO, Ward-16(1)**

**in ITA No. 279/Del/2019 order dated 31/10/2023** to contend that assessment should have been completed u/s 147.

7. On the contrary, the Ld. Departmental Representative has relied the Judgment in the case of **Saloni Kumar Prakash Vs. ITO the Hon'ble Madras High Court reported in 2023-153 Taxman.com 432 Madras**, and contended the AO was justified to complete the assessment u/s 147 of the Act, considering the information found during search.

8. We have given a thoughtful consideration to the matter and are of considered view that the Judgment which the Ld. Departmental Representative has relied of Hon'ble Madras High Court has been considered by Hon'ble Rajasthan High Court in the case of **Nishit Gupta son of Shri Ramesh Gupta Vs. ACIT order dated 19/03/2024 in DB Civil Writ Petition No. 18363/2019** and other connected matters. Hon'ble Rajasthan High Court has considered the issue involved in the bunch of writ petitions about the applicability of Section 153C and Section 148 of the Act in the case of seizure of material in search or requisition of

books/documents relating to Assessee other than on whom the search was conducted or requisition made and after taking into consideration the history of special provisions in search cases and various judicial pronouncements including the Hon'ble Supreme Court Judgment in the case of **Principal Commissioner of Income Tax, Central-3 Vs. Abhisar Buildwell P. Ltd. reported in [(2023)454 ITR 212 (SC)]** has held as follows:-

*“CONCLUSION:-*

*23. The reasons supplied in case in hand for initiation of proceedings under Section 147/148 are based on the incriminating material and documents including Pen Drives seized during the search carried out of the Manihar Group and the statements recorded during proceedings. From the information received the AO noticed that the loan advanced and interest earned thereon were unaccounted. In other words the basis for initiation of Section 148 proceedings is the material seized relating to or belonging to the petitioner, during the search conducted of Manihar Group.*

*24. In the case where search or requisition is made, the AO under Section 153A mandatorily is required to issue notices to the assessee for filing of income tax return for the relevant preceding years. The AO assumes jurisdiction to assess/reassess 'total income' by passing separate order for each assessment.*

*25. In cases of the person other than on whom search was conducted but material belonging or relating such person was seized or requisition, the AO has to proceed under Section 153C. The two*

*pre-requisites are that the AO dealing with the assessee on whom search was conducted or requisition made, being satisfied that seized material belongs or relates to other assessee shall hand over it to AO having jurisdiction of such assessee. Thereafter, the satisfaction of AO receiving the seized material that the material handed over has a bearing for determination of total income of such other person for the relevant preceding years. On fulfillment of twin conditions the AO shall proceed in accordance with the provisions of Section 153A.*

*26. Special procedure is prescribed under Section 153A to 153D for assessment in cases of search and requisition. There cannot be a quibble with the proposition that the special provision shall prevail over the general provision. To say it differently the provisions of Section 153A to 153D have prevalence over the regular provisions for assessment or reassessment under Section 143 & 147/148.*

*27. Section 153A and 153C starts with non-obstante clause. The procedure for assessment/reassessment in Section 153A, 153C in cases of search or requisition has an overriding effect to the regular provisions for assessment or reassessment under Sections 139, 147, 148, 149, 151 & 153.*

*28. The language of explanation 2 to new Section 148 is akin to Section 153A and Section 153C. Corollary being that after seizing of operational period of Section 153A to 153D, the cases being dealt there under were circumscribed in the scope of newly substituted Section 148.*

29. *The Department has not set up a case that for initiating proceedings under Section 148 it had material other than the material seized during the search of Manihar Group. The contention was that though the material with regard to unaccounted loan advanced by the petitioner was received, the earning of interest on unaccounted loan was derivation of the AO from the material received. The submission is that the derived conclusion cannot be acted upon under Section 153C. The submission lacks merit and shall defeat the concept of single assessment order for each of relevant preceding years for assessing 'total income' in case of incriminating material found during search or requisition.*

30. *The argument that by enactment of Section 153A to 153D has not eclipsed Section 148 does not enhance the case of respondent to initiate the proceedings under Section 148. On fulfillment of two conditions for invoking Section 153C the proceeding in accordance with Section 153A are to be initiated. The operating field of and Section 153A to 153D and Section 148 are different. Applicability of Section 153C in cases where the seized material related to or belonged to person other than on whom search is conducted or requisition made does not render Section 148 otiose. Section 148 shall continue to apply to the regular proceedings and also in cases where no incriminating material is seized during the search or requisition.*

31. *The other aspect of the matter is that under Section 153A and 153C, 'the total income' is to be assessed. The total income includes returned income (if any), undisclosed income unearthed during the search or requisitioning and information possessed from the other sources. For Illustration:- An assessee had returned income of*

*Rs.100, undisclosed income of Rs.200 is unearthed during search and there is information from annual information statement of non-disclosure of income of Rs.150/-. The AO under Section 153A and 153C shall pass order dealing with income of Rs.100+Rs.200+Rs.150, the total income being Rs.450/-. In cases where there is no unearthing of undisclosed income of Rs.200/-, the department can resort to proceeding under Section 147/148.*

*32. The argument that Section 153C can be invoked in case there is incriminating material for all the relevant preceding years and otherwise Section 148 is to be resorted to, is misplaced. On satisfaction of the twin condition for proceedings under Section 153C, the AO has to proceed in accordance with Section 153A. Notice is to be issued for filing of the returns for relevant preceding years and thereupon proceed to assessee or reassessee the 'total income'. It is not [2024:RJ-JP:14106-DB] (48 of 50) [CW-18363/2019] obligatory on the AO to make assessment for all the years, the earlier orders passed may be accepted. But once there is incriminating material seized or requisitioned belonging or relatable to the person other than on whom search was conducted, Section 153C is to be resorted to.*

*33. Before concluding, it would be fair to deal with the case law cited by both the parties.*

*34. Reliance of respondents on decision of M/s. M.R. Shah Logistics Pvt. Limited (supra) is of no avail. The issue of interplay of provisions of Section 147/148 vis-a-vis Section 153C in the case of seized material relating or belonging to the person other than on whom the search was conducted or requisition made was not the issue before the Supreme Court.*

35. *The Supreme Court in the case of Abhisar Buildwell P. Ltd. (supra) while dealing with the provisions of Section 153A held that in case of absence of incriminating material seized during the search, the department is not remediless for reassessing the unabated assessment on the basis of material received from the other sources and can proceed under section 148. The decision does not support the contentions raised that Section 148 is rendered redundant if Section 153C is to be resorted to in the facts of the present case.*

36. *The Single Bench of this Court in the case of Vijay Kumar Mehta (supra) held that if the Department has chosen not to proceed under Section 153C, no right is created to the petitioner for getting the notice under Section 148 quashed. Moreover, learned Single Judge was not having the benefit of the decision of the Supreme Court in the case of Abhisar Buildwell P. Ltd. (supra). The appeal against the order was dismissed having rendered infructuous in view of the subsequent developments that the assessment order was passed.*

**37. The decision of the Madras High Court in the case of Saloni Prakash Kumar (supra) is of no help to the respondents. The High Court held that Section 153C does not preclude issuance of notice under Section 148. The field of applicability of two sections was not the issue before the Court.**

38. *The petitioner relied upon the decision of the Karnataka High Court in the case of Sri Dinakara Suvarna (supra). It would be relevant to quote Para-10:-*

*“10. Admittedly no proceedings were initiated under Section 153C of the Act. Thus, there is patent non-application of mind. It is relevant to note that the author of the diary Smt. Soumya Shetty had passed away prior to the date of search. It was argued on behalf of the Revenue that Shri. Ashok Kumar Chowta had offered tax on lump-sum income.”*

*39. Further reliance was placed upon the decision of the Bombay High Court in the case of M/s. Aditi Constructions (supra). The para-9 is quoted:-*

*"9. We find that the jurisdictional conditions for invoking section 147 - 148 are not satisfied as there is no failure to disclose material facts fully and truly. It is not in dispute that by the letter dated 11th September 2015 (Exhibit H) the Petitioner have submitted all the particulars along with supporting documents to the Respondent No.1. Hence the reasons to believe and a presumption based on the statement of Shri Bhanwarlal Jain (a third party) in the course of a search, that the loans of the entities were bogus or accommodation entries was clearly dispelled. Moreover, the specific provisions of S. 153C would prevail over the general provisions of section 147 in the case of search on 3rd party."*

*40. In view of above discussion the notices issued under Section 148 and the impugned orders are quashed.”*

9. Thus, the findings of this Bench in the case of **M/s Mah Impex Pvt. Ltd Vs. ITO (supra)** which also involved the case of search conducted in Surendra Kumar Jain Group squarely applies to the case of the assessee before us.

10. As a consequence, the Additional Ground as raised stands allowed and the Appeal of the assessee is allowed.

Order pronounced in the open court on 27<sup>th</sup> AUGUST, 2024.

**Sd/-**

**( M. BALAGANESH )  
ACCOUNTANT MEMBER**

Dated : 27/08/2024

*R.N, Sr. PS\**

**Sd/-**

**(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

Copy forwarded to :

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI