IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI

BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.2935/DEL/2023
(Assessment Year: 2014-15)

ITA No.2936/DEL/2023
(Assessment Year: 2015-16)

ITA No.2937/DEL/2023
(Assessment Year: 2016-17)

ITA No.2938/DEL/2023
(Assessment Year: 2017-18)

ITA No.2939/DEL/2023
(Assessment Year: 2018-19)

ITA No.2940/DEL/2023
(Assessment Year: 2019-20)

Shri Anil Chaudhary, 10210, Library Road, Azad Market, Central Delhi, Delhi – 110 006.	vs.	ACIT, Central Circle 17, New Delhi.

(PAN : ACCPC9165C)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri Gautam Jain, Advocate
Shri Lalit Mohan, CA
REVENUE BY : Ms. Amisha Gupt, CIT DR

Date of Hearing : 11.07.2024
Date of Order : 30.08.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

1 These appeals arise from consolidated order dated 24.8.2023 for assessment years 2014-15 to 2019-20, passed by learned Commissioner of Income Tax (Appeals)-27, New Delhi.

2 At the time of hearing, Ld. AR of the assessee brought to our notice the relevant chronological sequence of events, the same is reproduced below:

<table>
<tr><th>Sr. No.</th><th>Date</th><th>Particulars
(pages of Paper Book)</th></tr>
<tr><td>i)</td><td>12.5.2019</td><td>That search was conducted in the case of M/s Pragati Glass (P) Ltd. (hereinafter referred to as “PGPL”)</td></tr>
<tr><td>ii)</td><td>10.3.2021</td><td>Satisfaction note of the learned Assessing Officer of the searched party/person covered u/s 153A of the Act for initiation of assessment proceedings u/s 153C of the Act (23-38)</td></tr>
<tr><td>iii)</td><td>30.3.2021</td><td>Satisfaction note of the learned Assessing Officer of the appellant
<u>Satisfaction note in the case of M/s Pragati Glass (P) Ltd. for dissemination of information for taking action u/s 153C of the Act</u>(41-54)</td></tr>
<tr><td>iv)</td><td>30.3.2021</td><td>Notices issued for assessment year 2014-15 to 2019-20 by learned Assistant Commissioner of Income Tax, Circle61(1), Delhi u/s 153C of the Act</td></tr>
<tr><td>v)</td><td>12.4.2021</td><td>Return of income filed by appellant in response to notice u/s 153C of the Act
<table>
<tr><th>Sr. No.</th><th>Assessment year</th><th>Income declared in 12.4.2021 Return</th></tr>
<tr><td>i)</td><td>2014-15</td><td>26,09,730</td></tr>
<tr><td>ii)</td><td>2015-16</td><td>18,09,080</td></tr>
<tr><td>iii)</td><td>2016-17</td><td>23,80,900</td></tr>
<tr><td>iv)</td><td>2017-18</td><td>26,30,151</td></tr>
<tr><td>v)</td><td>2018-19</td><td>37,46,910</td></tr>
<tr><td>vi)</td><td>2019-20</td><td>63,28,050</td></tr>
</table></td></tr>
<tr><td>vi)</td><td>7.7.2021</td><td>Order u/s 127 passed by learned Pr. Commissioner of Income Tax-12, New Delhi</td></tr>
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<tr><td></td><td></td><td></td></tr>
<tr><td>vii)</td><td>7.3.2022</td><td>Show cause notice issued by learned Assistant Commissioner of Income Tax, Central Circle 17, Delhi</td></tr>
<tr><td>viii)</td><td>15.3.2022</td><td>After the Show cause, notice has been issued u/s 143(2) of the Act</td></tr>
<tr><td>ix)</td><td>23.3.2022</td><td>Approval u/s 153D of the Act vide Common letter F. No. Addl/CIT/C.R.-5/153D/2021-22/1326 for all captioned assessment years</td></tr>
<tr><td>x)</td><td>24.3.2022 For assessment years 2015-16 to 2017-18

And 25.3.2022 For assessment years 2014-15, 2018-19 and 2019-20</td><td>Orders of assessment framed u/s 153C/143(3) of the Act wherein identical additions representing alleged cash purchases made by appellant from M/s Pragati Glass (P) Ltd. were made as tabulated hereunder:
(Amount in Rs.)
<table>
<tr><th>Sr. No.</th><th>Assessment year</th><th>Income declared in 12.4.2021 Return</th><th>Addition made u/s 69C of the Act</th><th>Income Assessed</th></tr>
<tr><td>i)</td><td>2014-15</td><td>26,09,730</td><td>2,49,26,243</td><td>2,75,35,970</td></tr>
<tr><td>ii)</td><td>2015-16</td><td>18,09,080</td><td>2,61,94,514</td><td>2,80,13,590</td></tr>
<tr><td>iii)</td><td>2016-17</td><td>23,80,900</td><td>3,03,70,379</td><td>3,27,51,280</td></tr>
<tr><td>iv)</td><td>2017-18</td><td>26,30,151</td><td>2,34,55,383</td><td>2,60,85,530</td></tr>
<tr><td>v)</td><td>2018-19</td><td>37,46,910</td><td>3,02,30,766</td><td>3,39,77,680</td></tr>
<tr><td>vi)</td><td>2019-20</td><td>63,28,050</td><td>3,34,21,765</td><td>3,97,49,820</td></tr>
</table></td></tr>
<tr><td>xi)</td><td>24.8.2022</td><td>Learned Commissioner of Income Tax (Appeals), dismissed the appeal of the appellant.</td></tr>
</table>

3 The brief facts of the case are, assessee is proprietor of M/s Chaudhary Trading Company and, is engaged in the business of trading of glass bottles.

3.1 It is submitted that trading result of assessee as per audited books of accounts of assessee, which has been accepted by learned Assessing Officer and assessed in orders of assessment is as under:

Sr. No.	Assessment Year (page of Paper Book)	Sales (inRs.)	Purchases (inRs.)	Gross Profit (inRs.)	Gross Profit (in %)
i)	2014-15 **(18)**	6,56,14,007	5,54,78,280	66,32,741	10.11
ii)	2015-16	5,93,17,385	4,63,69,207	63,02,797	10.63
iii)	2016-17	6,82,10,408	6,26,08,382	72,71,655	10.55
iv)	2017-18	8,04,05,296	6,53,52,116	84,55,803	10.66
v)	2018-19	12,01,83,894	9,15,38,363	1.17,39,943	9.77
vi)	2019-20	19,96,30,263	15,58,82,182	1,87,59,133	9.40

3.2 It is submitted that transaction of assessee with M/s PGPL (entity under consideration) is as under:

Sr. No.	Assessment Year	Opening Balance	Purchases	Remittance via Banking Channel	Closing Balance	Addition made in hands of assessee u/s 69C of the Act
i)	2014-15	46,28,493	4,53,50,226	4,27,50,931	93,31,825	2,49,26,243
ii)	2015-16	93,31,825	4,18,24,445	4,29,00,000	72,17,526	2,61,94,514
iii)	2016-17	72,17,526	3,93,71,184	3,41,00,000	1,14,76,672	3,03,70,379
iv)	2017-18	1,14,76,672	3,33,64,357	3,27,00,000	88,04,411	2,34,55,383
v)	2018-19	88,04,411	5,26,42,713	4,52,37,375	1,56,40,904	3,02,30,766
vi)	2019-20	1,56,40,904	6,20,47,551	5,96,24,756	1,47,24,813	3,34,21,765

4 It is submitted that learned Assessing Officer in show cause notice dated 7.3.2022 (reproduced in pages 4 to 12 of order of assessment) has relied upon the following:

i) documents quoted as "Annexure –A (pg1)"found in the possession of the MD of PGPL at the Airport;**(page 3 of order of assessment for assessment year 2014-15)**

ii) part statement dated 12.5.2019 of Sh. Dinesh S Gupta**(pages 3-5 of order of assessment for assessment year 2014-15)** and,

iii) part statement dated 12.5.2019 of Sh. Hari Om Goel, accountant of the PGPL during the course of **survey** proceedings conducted at the premises of Pragati Glass (P) Ltd., ONGC Road, Kharach,

Bharuch.(pages 6-11 of **order of assessment for assessment year 2014-15)**

It is further submitted that apart thereof, there is one another statement dated **14.5.2019 of** Sh. Dinesh S Gupta, when he was confronted with the statements given by Sh. Hari Om Goel, the accountant of PGPL; which has not been relied upon by learned Assessing Officer as is evident from page 11 of order of assessment year 2014-15 which reads as under:

> "The statement of the accountant Shri Hari Om Goel along with the supporting ledgers submitted by him show that the document is not a just a piece of paper but is suitably supported by different records maintained by PGPL. The Director of PGPL Shri Dinesh S Gupta was again confronted on 14.05.2019 with the statements given by Shri Hari Om Goel, the accountant. He in his reply, has referred to the fact that the entry shown in row numbers. 7, 8, 9 & 10 of the table given above is the total sale including invoice and under billing of all parties related to CTC, GTC, LOCAL & Mumbai, he claims, as the records are available and would be submitted in due course, however no such documents have been submitted till date. He has confirmed the rest of the statement and agreed with all the facts mentioned in the statement of Shri Hari Om Goel."

4.2 It is submitted that learned Assessing Officer has rejected the contentions made by assessee during the course of assessment proceedings, had made the aforesaid addition by holding as under:

> "6. I have gone through the reply of the assessee and same is not found tenable on the following grounds:
>
> On perusal of seized material it is M/s. Pragati Glass Private Limited has made cash sales, which has not been recorded in books of account of the assessee. The cash sales has been duly admitted by the MD and accountant of M/s. Pragati Glass Private Limited at the time of recording statement. Copy of the relevant extract of the statement recorded of MD and accountant of M/s Pragati Glass Private Limited have been confronted to the assessee and he has failed to provide any documentary evidence in contradiction of the same. The assessee in his reply has admitted that he has made purchases from stated party

which are recorded in his books which proves that the assessee knows the above stated party. The assessee has submitted that the stated party has filed bogus recovery case against the assessee. However he has failed to provide any documentary evidence/petition copy in this regard. Further, the assessee has also failed to explain the nature of suit filed, reason for the suit filed, how the same is related to cash purchase. The assessee has requested to cross examine the MD and accountant of M/s Pragati Glass Limited with the only objective to delay the proceedings as the assessee knows the stated person and has admitted to purchase goods from it. The copy of statement of M.D. was duly given and assessee failed to furnish any evidence/proof to support his version.

In view of the above, it is evident that the assessee has made cash purchase amounting to Rs. 2,49,26,243/- from M/s Pragati Glass Private Limited in the year under consideration for which the assessee has failed to provide any documentary evidence for source of expense. Therefore, the same is added to the income of the assessee as unexplained expenditure under section 69C of the income Tax Act, 1961."

5 At the time of hearing, Ld AR submitted that in respect of Ground 1 of grounds of appeal is the issue of assumption of jurisdiction u/s 153C of the Act and, framing of assessment u/s 153C/143(3) of the Act.

5.1 It is submitted that Assessment Years 2014-15 and 2015-16 is beyond the period of six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted in the case of assessee herein.

5.2 It is submitted that as per proviso to section 153C for taking action u/s 153C the date of search would be substituted by the date of receiving the books of account or documents or the assets allegedly pertaining or information contained therein relates to the assessee by the Assessing Officer of assessee i.e. **10.3.2021**, which were seized in the course of search of the searched person i.e. **12.5.2019**. It is therefore submitted that notice under section 153C for

Assessment Years 2014-15 and 2015-16 is clearly barred by limitation. In this regard, Reliance is placed on the following judgments:

i) **458 ITR 437 (SC) CIT vs. Jasjit Singh (pages 243-248 of JPB)**

> "**9.** It is evident on a plain interpretation of Section 153C(1) that the Parliamentary intent to enact the proviso was to cater not merely to the question of abatement but also with regard to the date from which the six year period was to be reckoned, in respect of which the returns were to be filed by the third party (whose premises are not searched and in respect of whom the specific provision under Section 153-C was enacted. The revenue argued that the proviso [to Section 153(*c*)(1)] is confined in its application to the question of abatement.
>
> **10.** This Court is of the opinion that the revenue's argument is insubstantial and without merit. It is quite plausible that without the kind of interpretation which SSP Aviation adopted, the A.O. seized of the materials– of the search party, under section 132 – would take his own time to forward the papers and materials belonging to the third party, to the concerned A.O. In that event if the date would virtually "relate back" as is sought to be contended by the revenue, (to the date of the seizure), the prejudice caused to the third party, who would be drawn into proceedings as it were unwittingly (and in many cases have no concern with it at all), is dis-proportionate. For instance, if the papers are in fact assigned under Section 153-C after a period of four years, the third party assessee's prejudice is writ large as it would have to virtually preserve the records for at latest 10 years which is not the requirement in law. Such disastrous and harsh consequences cannot beat tributed to Parliament. On the other hand, a plain reading of section 153-C supports the interpretation which this Court adopts.
>
> **11.** For the foregoing reasons, the Court finds no merit in these appeals; they are accordingly dismissed, without order on costs."

ii) **465 ITR 101 (Del) PCIT vs. Ojjus Medicare (P) Ltd. (pages 459-545 of JPB-II)**

iii) **380 ITR 612 (Del) CIT vs. RRJ Securities Ltd. (pages 33-48 of JPB)**

iv) ITA No. 1685/D/2023 Rakesh Bansal vs. ACIT **(pages 260-270 of JPB)**

v) ITA No. 3095/D/2013 dated 30.5.2024 Esha Securities (P) Ltd. vs. DCIT

6 With regard to Ground 1.1 and 1.3 of grounds of appeal, Ld AR submitted in respect of issue that notice issued u/s 153C of the Act and assessment framed u/s 153C of the Act were without satisfying the statutory preconditions contained in the Act and therefore without jurisdiction and therefore deserves to be quashed as such.

6.1 It is submitted that satisfaction note recorded by the AO of searched person does not satisfy the statutory preconditions u/s 153C of the Act and is therefore illegal, invalid and without jurisdiction;

6.2 It is submitted that learned Assessing Officer of searched person in satisfaction note has stated as under:**(page 37 of Paper Book)**

> "4. Based on the details submitted by Pragati Glass Private Limited, Shri Dinesh S Gupta and analysis done, beneficiaries have been identified. As the parties (Chaudhary Trading Company) involved are making part payment in cash for the purchase of goods from the company M/s Pragati Glass Pvt. Ltd. same has to be taxed in their hands. I am satisfied that the incriminating documents found during the search as discussed above relates to the assessee Chaudhary Trading Company (CTC), PAN-ACCPC9165C. Therefore, you are requested to take necessary action as per the provision of section 153C of the Act as deemed fit in the case which pertains to your jurisdiction."

6.3 It is submitted that section 153C of the Act provides as under:

> "Assessment of income of any other person.
>
> 153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

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

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

6.4 It is submitted that on perusal of aforesaid it is evident that section starts with heading namely "**Assessment of income of any other person" a**nd further provides that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, **where the Assessing Officer is satisfied that,—** (*a*) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or (*b*) any books of account or documents, seized or requisitioned, **pertains or pertain to**, or any information contained therein, **relates** to, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and **that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A,** if, that Assessing Officer is satisfied that the books of account or

documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person.

6.5 It is therefore submitted that it is evident that from perusal of section 153C of the Act, that satisfaction of learned Assessing Officer of searched person in context of **documents, seized** or requisitioned should be **pertains or pertain to**, or any information contained therein, **relates** to, a person other than the person referred to in section 153A of the Act. It is submitted that it is evident from satisfaction note recorded by learned Assessing Officer of searched person (**pages 41-54 of Paper Book for assessment year 2014-15**) that he states that incriminating documents found during the search as discussed above relates to the assessee Chaudhary Trading Company (CTC), PAN-ACCPC9165C. It is thus submitted that satisfaction required as per law is that documents should be **pertains or pertain to**, or any information contained therein, **relates** to, a person other than the person referred to in section 153A of the Act; therefore satisfaction recorded by learned Assessing Officer does not satisfy the **statutory preconditions u/s 153C of the Act and is therefore illegal, invalid and without jurisdiction.**

6.6 It is further submitted that in absence of disclaimer by searched persons no proceedings can be validly initiated u/s 153C of the Act. It is also submitted that it is all the more necessary for the revenue to arrive at the satisfaction that income or materials or documents does not belong or pertain to the searched person and indeed belongs to third person i.e. assessee herein. It is submitted that admittedly such a satisfaction note is absent in the case of assessee. Reliance is placed upon judgment of Hon'ble Delhi bench of Tribunal in case of Alchemist Technology vs. ACIT in ITA No. 1689/D/2022 placed at **pages 376-386 of JPB**; wherein it has been held as under:

"10. We find that from perusal of the records, there is no evidence to prove that the "amounts sent" shown in the hard disk is actually amounts sent by assessee company in hawala route which had ultimately found its way in the form of share capital and share premium under FDI route. The revenue had completely addressed this issue and made an addition purely on suspicion and surmise without any basis thereby making the addition totally unsustainable in the eyes of law. On the contrary, the assessee had stated that LGF had sent 19500000 USD from Cyprus and after deduction of LC charges and other overseas bank charges , the assessee could ultimately receive only 18621973.93 USD equivalent to Rs 100 crores in India under FDI route as share capital and share premium. In support of this, the assessee had duly provided all the necessary documents as listed above. The assessee from the inception had always taken the stand that it had not sent any monies abroad in hawala route. The assessee cannot be asked to prove the negative. It is for the revenue to prove the same with cogent evidences, which is not done in the instant case. We find that the revenue had merely proceeded to make the addition on suspicion. It is trite law that suspicion howsoever strong would not partake the character of legal evidence and hence a greater onus is casted on the revenue to bring on record cogent evidences to justify its suspicion, which is conspicuously absent in the instant case. The only material that is relied upon by the revenue is the hard disk seized during search which only contained the details of „amounts sent" and "amounts received". Nowhere the said material even suggested that the amounts were sent by assessee company in illegal route which in turn had surfaced back in the form of share capital and premium under FDI route from Cyprus. Though the presumption u/s 292C of the Act would go in favour of the revenue, it cannot be brushed aside that the said presumption is a rebuttable presumption and assessee had duly discharged its onus on the same. Moreover, the present assessee herein is an assessee proceeded u/s 153C of the Act and hence it is all the more necessary for the revenue to arrive at the satisfaction that income or materials or documents does not belong or pertain to the searched person and indeed belongs to third person (i.e 153C presumption u/s 292C of the Act would apply only to the person proceeded u/s 153A of the Act and not for the assessee u/s 153C of the Act."

7 Further Ld AR Submitted that no satisfaction has been recorded by AO of assessee that the seized documents have any bearing on income of assessee:

7.1 It is submitted that learned Assessing Officer of assessee has recorded the satisfaction as under: (**pages 41-54 of Paper Book at page 54**)

> **"4. Based on the details submitted by Pragati Glass Private Limited, Shri Dinesh S Gupta and analysis done, beneficiaries have been identified. As the parties (Chaudhary Trading Company) involved are making part payment in cash for the purchase of goods from the company M/s Pragati Glass Pvt. Ltd. same has to be taxed in their hands. I am satisfied that the incriminating documents found during the search as discussed above relates to the assessee Chaudhary Trading Company (CTC), PAN-ACCPC9165C. Therefore, it is a fit case for action as per provisions of section 153C of the Income Tax Act, 1961 in the case of Sh. Anil Chaudhary Prop. of M/s Chaudhary Trading Company (PAN- ACCPC9165C) for the A.Y. 2014-15 A.Y. 2019-20."**

7.2 It is submitted that even the satisfaction recorded by the Assessing Officer of assessee does not satisfy the rigor of section 153C of the Act, as in view of provisions of section 153C(1) of the Act once the AO of searched person handed over the books of account, documents, assets seized or requisitioned to Assessing Officer having jurisdiction over such other person, and then that Assessing Officer shall proceed against such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A**, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person** for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made.

7.3 It is submitted that as it is evident from aforesaid relevant extract of satisfaction note of learned Assessing Officer of assessee; there is no

satisfaction that the **documents seized or requisitioned have a bearing on the determination of the total income of such other person. i.e. assessee** for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. **It is therefore submitted that as the condition precedent as stated in section 153C of the Act has not been fulfilled, the notices issued under Section 153C are not in accordance with law.**

7.4 Reliance is placed upon following judicial pronouncements:

i) **451 ITR 371 (Del)Pr. CIT v. Prominent Real Tech (P) Ltd. (pages 387-391 of JPB)**

"6. Further, in the present case, the Assessing Officer in the satisfaction note has recorded that the documents found during the search pertained to assessee and therefore it is a fit case for initiation of proceedings under section 153C of the Act. However, the Assessing Officer failed to record as to how the documents found during search reflected any undisclosed income of the assessee. The Assessing Officer, without even demonstrating/or drawing any nexus of the seized documents with the undisclosed income of the assessee, merely on the ground that the seized documents belong to the assessee initiated proceedings under section 153C of the Act, which is against the settled position of law in several decisions of this Court. Some of the relevant cases referred to by the ITAT are as under:-

(*i*) *CIT* v. *RRJ Securities Ltd.* [2015] 62 taxmann.com 391/[2016] 380 ITR 612/282 CTR 321 (Delhi)/2015 SCC Online Delhi 13085

ii) **464 ITR 1 (Del) Saksham Commodities Ltd. vs. ITO (pages 409-437 of JPB-II)**

"E. DISTINCTION BETWEEN SECTION 153A AND SECTION 153C

37. Having noticed the rival contentions which were addressed, we firstly take note of the evident distinction that exists between Section 153A and Section 153C. They are clearly

couched in language which is dissimilar. When we turn our gaze upon Section 153A, it becomes apparent that where a search is initiated or documents and books requisitioned, the AO is mandated to issue notice calling upon the searched person to submit a ROI in respect of each AY falling within the six AYs' and for the "relevant assessment year". Upon submission of that ROI, the AO stands empowered statutorily to assess or reassess the total income of six AYs' immediately preceding the assessment year corresponding to the year of search and for the "relevant assessment year". The expression "relevant assessment year" has been duly defined by Explanation 1 placed in Section 153A and is explained to include those years which fall beyond the six AYs' spoken of earlier but not later than ten AYs' from the end of the AY relevant to the FY in which the search was conducted.

38. As was held in **SSP Aviation Ltd v. Deputy Commissioner of Income Tax**[17], the AO of the searched person while proceeding to transmit the material gathered in the course of the search to the AO of the "other person" is not obliged to form any opinion with respect to escapement of income or for that matter the material likely to have an impact on the total income of the non-searched entity. At the stage of transmission of material, the AO of the searched person is only required to be satisfied that the material or documents unearthed pertain to a person or entity other than the one searched. The relevant extracts of the decision in SSP Aviation Ltd are reproduced hereinbelow:

..

39. The principle that the AO of the searched person is only required to be satisfied that the documents or materials pertain to the "*other person*" at the stage of transmission of material or documents to the jurisdictional AO of the non-searched entity was reiterated in *RRJ Securities*. We deem it apposite to extract the following passages from that decision:

….

40. It is thus apparent that it is only when the transmitted documents and material reaches the desk of the jurisdictional AO that it becomes empowered to initiate action under Section 153C of the Act. This is evident from a plain textual reading of that provision and which speaks of the commencement point being the handing over of documents or assets seized or

requisitioned to the AO of the "*other person*" and it in turn proceeding to issue notice to assess or reassess the income of the non-searched entity in accordance with Section 153A. **However, the initiation of action under Section 153C is significantly premised upon the AO being satisfied that the books of account or documents and assets seized or requisitioned having "*a bearing on the determination of the total income of such other person*". This is manifest from the provision employing the expression "*if, that Assessing Officer is satisfied*.....". It would therefore necessarily follow that the issuance of a notice under Section 153C is clearly not intended to be an inevitable consequence to the receipt of material by the jurisdictional AO. That the AO before commencement of action under Section 153C is also obliged to be satisfied that the material so received would "*have a bearing on the determination of the total income of such other person*" is an aspect of significance and constitutes a fundamental point of distinction between Section 153A and Section 153C.** This distinguishing element of the two provisions would become further apparent from the discussion which ensues.

41. Firstly, and from a historical perspective of the legislation itself, we find that one of the significant amendments which came to be introduced in Section 153C was ushered in 2014. The Finance (No. 2) Bill, 2014, while seeking to explain the objective of the amendments which were proposed to be incorporated declared as follows:

> **"Assessment of income of a person other than the person who has been searched**
>
> Section 153C of the Act relates to assessment of income of any other person. The existing provisions contained in sub-section (1) of the said section 153C provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to any person, other than the person referred to in section 153A, then the books of account or

documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A.

It is proposed to amend section 153C of the Act to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to any person, other than the person referred to in section 153A, then books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A **if he is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A.**
The amendment will take effect from 1st October, 2014."

42. It would also be apposite to notice the Notes on Clause 53 of the Finance Bill, 2014, which sought to amend Section 153C and which is reproduced hereinbelow:

"Clause 53 of the Bill seeks to amend section 153C of the Income-tax Act relating to assessment of income of any other person.

The existing provisions contained in sub-section (1) of the aforesaid section provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the

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

It is proposed to amend the said sub-section so as to provide that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person, other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, **if, such Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section *(1)* of section 153A**.

This amendment will take effect from 1st October, 2014."

43. It was consequent to the passing of the aforesaid Act that Section 153C came to incorporate provisions relating to the AO being satisfied that the books of accounts, documents or assets seized or requisitioned must **"*have a bearing on the determination of the total income of such other person*"** for the six preceding AYs' or the "*relevant assessment year*" as referred to in Explanation 1 to Section 153A. Prior to the

promulgation of these amendments, the AO of the non-searched party was not obliged to form an opinion that the material received by it was likely to impact the estimation of income of that person. Significantly, although this prerequisite came to be incorporated in Section 153C, no such corresponding precondition was included in Section 153A. This, although the legislative history of the search assessment provisions placed in the Act would indicate that they were amended from time to time in order to constitute a complete and homogeneous code. This becomes apparent from the legislative mandate of those two provisions being applicable to searches undertaken in a particular time period, the principles of abatement being replicated and the search assessment power being available to be invoked for the "*relevant assessment year*", and which extended the power to be exercised over a ten year block, being simultaneously introduced in those provisions. The Legislature clearly intended both these provisions to form part of a cohesive scheme and to be complementary to each other. However, the aspects of satisfaction and of the material likely to implicate or influence were not added in Section 153A. The fact that any additions that may be ultimately made upon a culmination of assessment under Section 153A being indelibly founded on the material gathered in the course of the search is a separate issue all together.

44. The usage of the expression "*have a bearing*" would necessarily lead one to conclude that the mere discovery of books, documents or assets would not justify the initiation of proceedings under that provision. Upon receipt of that material, the jurisdictional AO must additionally be satisfied that those are likely to have an impact on "*the determination of the total income*". The **Shorter Oxford English Dictionary[18]** assigns the following meaning to the word "*bearing*":

> "1. The action of BEAR verb: carrying, bringing; supporting, sustaining, enduring; giving birth, producing; thrusting, pressing.
>
> 2. Manner of carrying oneself, bodily attitude; demeanour.
>
> 3. A material support; a supporting surface.

> 4. A heraldic charge or device: in pl., that which is depicted on a coat of arms; a heraldic achievement, a coat of arms.
>
> 5. The direction in which a place, object, etc., lies; direction of movement, orientation; in pl., (knowledge of) relative position.
>
> 6. sing. & (freq.) in pl. Part of a machine which bears friction, esp. between a rotating part and its housing.
>
> 7. Practical relation or effect (up)on; influence, relevance"

As is manifest from the aforesaid extract, "*bearing*" would include something which would lend support or credence. It has also been defined to mean something which may have a practical relation or effect upon, influence or relevance.

45. The **Major Law Lexicon**[19], authored by P. Ramanatha Aiyar explains "*Bearing on, Having*" as referring to something having a relation with. For ease of reference, the meaning assigned to the aforesaid expression is reproduced hereinbelow:

> "**Bearing on, Having**. Having relation with"

46. The New Lexicon Webster's Dictionary[20] defines the word "*bearing*" as follows:

> "The action of carrying // carriage, deportment// (heraldry) a single charge // relevancy, that has no bearing on the matter // endurance, the capacity to tolerate, behaviour past all bearing // (pl.) position in relation to some reference point // (pl/) grasp of one's situation, to find one's bearings // a part of a machine that bears the friction set up by a moving part. Sliding friction is reduced by making the bearing of Babbitt metal, and by separating it and its moving part by a thin film of lubricant. By the introduction of ball bearings (or roller bearings) sliding friction is replaced by rolling friction, which is must less in effect// an angle measured from true

> north, magnetic north, or from some given survey line to lose one's bearings to be lost// to be puzzled."

47. This too speaks of "*relevancy*" as one of the meanings one may gather where that particular expression is used. This leads us to the inevitable conclusion that the initiation of action under Section 153C would have to be founded on a formation of opinion by the jurisdictional AO that the material handed over and received pursuant to a search is likely to influence the "*determination of the total income*" and would be of relevancy for the purposes of assessment or reassessment.

F. INCRIMINATING MATERIAL- CASCADING EFFECT?

48. In terms of the Second Proviso to Section 153A, all assessment or reassessment proceedings relating to the six AYs' or the "*relevant assessment year*" pending on the date of search are statutorily envisaged to abate. Abatement is envisioned to be an inevitable consequence of the initiation of action under Section 153A. Neither issuance of notice nor abatement are predicated upon a formation of opinion by the AO of the searched person that the material is likely to impact the total income of that assessee. However, the spectre of abatement insofar as the "*other person*" is concerned would arise only after the jurisdictional AO has formed the requisite satisfaction of the material having "*a bearing on the determination of the total income of such other person*" and having formed the opinion that proceedings under Section 153C are liable to be initiated. It would be pertinent to bear in mind that *Kabul Chawla* was a decision rendered in the context of Section 153A. It was in the aforesaid backdrop that the Court significantly observed that once a search takes place under Section 132 of the Act, notice under Section 153A(1) would mandatorily issue. The abatement of assessment and reassessment pending on that date would, in the case of a Section 153A assessment, be a preordained consequence. However, and in light of what has been observed hereinabove, it is apparent that Section 153C constructs a subtle and yet significant distinction insofar as the question of commencement of proceedings or assumption of jurisdiction is concerned.

49. That takes us to the principal question and which pertains to the nature of the incriminating material that may be obtained and the years forming part of the block which would merit being thrown open. Regard must be had to the fact that while Section 153C enables and empowers the jurisdictional AO to commence assessment or reassessment for a block of six AYs' or the "*relevant assessment year*", that action is founded on satisfaction being reached that the books of accounts, documents or assets seized "*have a bearing on the determination of the total income of such other person*". We in this regard bear in mind the well settled distinction which the law recognizes between the existence of power and the exercise thereof. Section 153C enables and empowers the jurisdictional AO to assess or reassess the six AYs' or the "*relevant assessment year*". The Act thus sanctions and confers an authority upon the AO to exercise the power placed in its hands for up to a maximum of ten AYs'. Despite the conferral of that power, the question which would remain is whether the facts and circumstances of a particular case warrant or justify the invocation of that power. It is the aforesaid aspect which bids us to reiterate the distinction between the existence and exercise of power.

50. What we seek to emphasise is that merely because Section 153C confers jurisdiction upon the AO to commence an exercise of assessment or reassessment for the block of years which are mentioned in that provision, the same alone would not be sufficient to justify steps in that direction being taken, unless the incriminating material so found is likely to have an impact on the total income of a particular AY forming part of the six AYs' immediately preceding the AY pertaining to the search year or for the "*relevant assessment year*".

51. Ultimately Section 153C is concerned with books, documents or articles seized in the course of a search and which are found to have the potential to impact or have a bearing on an assessment which may be undergoing or which may have been completed. The words "*have a bearing on the determination of the total income of such other person*" as appearing in Section 153C would necessarily have to be conferred pre-eminence. Therefore, and unless the AO is satisfied that the material gathered could potentially impact the

determination of total income, it would be unjustified in mechanically reopening or assessing all over again all the ten AYs' that could possibly form part of the block of ten years.
….

G. CONCLUSIONS

63. On an overall consideration of the structure of Sections 153A and 153C, we thus find that a reopening or abatement would be triggered only upon the discovery of material which is likely to "have a bearing on the determination of the total income" and would have to be examined bearing in mind the AYs' which are likely to be impacted. It would thus be incorrect to either interpret or construe Section 153C as envisaging incriminating material pertaining to a particular AY having a cascading effect and which would warrant a mechanical and inevitable assessment or reassessment for the entire block of the "relevant assessment year".

64. In our considered view, abatement of the six AYs' or the "relevant assessment year" under Section 153C would follow the formation of opinion and satisfaction being reached that the material received is likely to impact the computation of income for a particular AY or AYs' that may form part of the block of ten AYs'. Abatement would be triggered by the formation of that opinion rather than the other way around. This, in light of the discernibly distinguishable statutory regime underlying Sections 153A and 153C as explained above. While in the case of the former, a notice would inevitably be issued the moment a search is undertaken or documents requisitioned, whereas in the case of the latter, the proceedings would be liable to be commenced only upon the AO having formed the opinion that the material gathered is likely to inculpate the assessee. While in the case of a Section 153A assessment, the issue of whether additions are liable to be made based upon the material recovered is an aspect which would merit consideration in the course of the assessment proceedings, under Section 153C, the AO would have to be prima facie satisfied that the documents, data or asset recovered is likely to "have a bearing on the determination of the total income". It is only once an opinion in that regard is formed that the AO would be legally justified in issuing a notice under that provision and which in turn would

culminate in the abatement of pending assessments or reassessments as the case may be.

65. We would thus recognize the flow of events contemplated under Section 153C being firstly the receipt of books, accounts, documents or assets by the jurisdictional AO, an evaluation and examination of their contents and an assessment of the potential impact that they may have on the total income for the six AYs' immediately preceding the AY pertaining to the year of search and the "relevant assessment year". It is only once the AO of the non-searched entity is satisfied that the material coming into its possession is likely to "have a bearing on the determination of the total income" that a notice under Section 153C would be issued. Abatement would thus be a necessary corollary of that notice. However, both the issuance of notice as well as abatement would have to necessarily be preceded by the satisfaction spoken of above being reached by the jurisdictional AO of the non-searched entity.

66. Therefore, and in our opinion, abatement of the six AYs' or the "relevant assessment year" would follow the formation of that opinion and satisfaction in that respect being reached.

67. On an overall consideration of the aforesaid, we come to the firm conclusion that the "incriminating material" which is spoken of would have to be identified with respect to the AY to which it relates or may be likely to impact before the initiation of proceedings under Section 153C of the Act. A material, document or asset recovered in the course of a search or on the basis of a requisition made would justify abatement of only those pending assessments or reopening of such concluded assessments to which alone it relates or is likely to have a bearing on the estimation of income. The mere existence of a power to assess or reassess the six AYs' immediately preceding the AY corresponding to the year of search or the "relevant assessment year" would not justify a sweeping or indiscriminate invocation of Section 153C.

68. The jurisdictional AO would have to firstly be satisfied that the material received is likely to have a bearing on or impact the total income of years or years which may form part of the block of six or ten AYs' and thereafter proceed to place the assessee

on notice under Section 153C. The power to undertake such an assessment would stand confined to those years to which the material may relate or is likely to influence. Absent any material that may either cast a doubt on the estimation of total income for a particular year or years, the AO would not be justified in invoking its powers conferred by Section 153C. It would only be consequent to such satisfaction being reached that a notice would be liable to be issued and thus resulting in the abatement of pending proceedings and reopening of concluded assessments."

iii) **386 ITR 680 (Del) Pr. CIT v. Nikki Drugs & Chemicals (P) Ltd.**

"16. It is apparent from the above that the first step for initiation of proceedings under Section 153C of the Act is for the assessing officer of the searched person to be satisfied that the assets or documents seized do not belong to the searched person but to the assessee sought to be assessed under Section 153C of the Act. Once the assessing officer of the searched person is so satisfied, he is required to transfer the assets or documents, which he believes belongs to the assessee, to the assessing officer having jurisdiction over that assessee. **The assessing officer of the assessee on receipt of such asset or document seized would have jurisdiction to commence proceedings under Section 153C of the Act. The assessing officer has, thereafter, to apply his mind as to whether the assets and documents received have a bearing on the determination of the total income of the Assessee and if he is so satisfied that the same have a bearing on the determination of the income of the assessee, he has to issue notice and assess or reassess the income of the assessee in accordance with the provisions of Section 153A of the Act.** Section 153A of the Act requires that a notice be issued to the person sought to be assessed, calling upon the said assessee to file his return of income in respect of each year falling within the specified six AYs. It is further specified that the provisions of the Act shall, so far as may be, applied as if such returns were returns required to be furnished under Section 139 of the Act. Thus, the assessing officer has to, thereafter, proceed with the assessment/reassessment in accordance with the provisions of the Act; that is, accept the return with or without such

adjustments as permissible under Section 143(1) of the Act or if the claims made by the assessee are considered as inadmissible and/or it is considered necessary and expedient to subject the returns to further scrutiny, issue the requisite notice under Section 143(2) of the Act and frame the assessment in accordance with the Act."

iv) **380 ITR 612 (Del) CIT v. RRJ Securities (pages 33-48 of JPB)**

"33. The record slip belongs to the Assessee and, therefore, the action of the AO of the searched persons recording that the same belongs to the Assessee cannot be faulted. **However, the question then arises is whether the AO of the Assessee was justified in taking further steps for reassessing the income of the Assessee in respect of the assessment years for which the assessments were concluded and in respect of which the seized document had no bearing**. **In our view, the same would be clearly impermissible as the seized material now available with the AO, admittedly, had no nexus with those assessments and was wholly irrelevant for the purpose of assessing the income of the Assessee for the years in question**. Merely because a valuable article or document belonging to an Assessee is seized from the possession of a person searched under Section 132 of the Act, does not mean that the concluded assessments of the Assessee are necessarily to be re-opened under Section 153C of the Act. **In our view, the concluded assessments cannot be interfered with mechanically and solely for the reason that a document belonging to the Assessee, which has no bearing on the assessments of the Assessee for the years preceding the search, was seized from the possession of the searched persons.**

37. As expressly indicated under Section 153C of the Act the assessment or reassessment of income of a person other than a searched person would proceed in accordance with the provisions of Section 153A of the Act. The concluded assessments cannot be interfered with under Section 153A of the Act unless the incriminating material belonging to the Assessee has been seized.

> 38. As indicated above, in the present case, the **documents seized had no relevance or bearing on the income of the Assessee for the relevant assessment years and could not possibly reflect any undisclosed income. This being the undisputed position, no investigation was necessary. Thus, the provisions of section 153C, which are to enable an investigation in respect of the seized asset, could not be resorted to; the AO had no jurisdiction to make the reassessment under Section 153C of the Act.:**

v) The appellant also seeks to place reliance on the decision of **Kolkata Bench of Hon'ble Tribunal in the case of IQ City Foundation vs ACIT reported in 186 ITD 555** wherein it has been held as under:

> 7. According to us, the aforesaid exercise which has been discussed has to be carried out by the AO of the searched person and the condition precedent as discussed are sine qua non before the AO of the other person(third party) gets jurisdiction u/s. 153C of the Act to issue notice u/s. 153C f the Act to the third party. However, **it has to be taken note that an additional requirement/ satisfaction of AO has been brought in Finance Act, 2014w.e.f. 1-10-2014 which is an additional conditional precedent inserted by the Parliament which also need to be complied before the AO of the other persons** (third party, the assessee in this case) **before he issues notice to assess or reassess income of such "other persons".** By this amendment in section 153C of the Act, the following part of the earlier provision/section has been substituted (pre-amendment) which reads "and that Assessing Office shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A". And this part of Section 153C was substituted by insertion by the Finance (No.2) Act, 2014 with the following amendment w.e.f 1-10-2014 which reads "and that assessing officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, **if, that Assessing officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination**

of the total income of such other person ". **[Emphasis given by us]**

8. Thus, we note that by the aforesaid amendment brought in section 153C of the Act, the Parliament has stipulated another condition-precedent before the Assessing Officer of the third party, (i.e., the assessee in this case) can resort to issue notice u/s 153C read with 153A of the Act only when he (AO) **is satisfied from a perusal of the books of account or documents or assets seized or requisitioned have a bearing in the determination of the total income of the such other person** (third party, the assessee in this case) then he should proceed as per sec. 153C (2) of the Act and assess or reassess the total income of such other person, (the assessee in this case)in the manner provided in section 153A of the Act. So in this case before us, since the AO of the searched person as well as that of the other/third party/assessee foundation are the same, **he/AO of assessee can issue notice u/s 153C of the Act only after satisfaction of this condition precedent also in addition to the requirement of Satisfaction of searched person** of AO as discussed supra. [Emphasis given by us]

vi) ITA No. 684/D/2020 dated 5.4.2024 M/s Bhanvi Buildtech (P) Ltd. vs. DCIT (**pages 546-557 of JPB-II**)

8 It is also submitted that satisfaction note alone can be looked into, has to read as such and, cannot be supported by any supplementary or additional material. Reliance is placed on the following judgments:

i) 359 ITR 106 (Del) CIT vs. Living Media India Ltd. **(pages 90-96 of JPB)**

ii) 439 ITR 333 (Bom) Hindustan Lever Ltd. v. DCIT **(pages 112-114 of JPB)**

iii) 355 ITR 102 (Bom) Dynacraft Air Controls vs. Sneha Joshi and Ors

iv) 324 ITR 154 (Bom) Prashant S. Joshi vs. ITO**(pages 82-89 of JPB)**

v) 455 ITR 286 (Bom) Tumkur Minerals (P) Ltd. v. JCIT

vi) 456 ITR 261 (Bom) Survival Technologies (P) Ltd. v. DCIT

vii) 69 ITR 461 (All) Jamna Lal Kabra v. ITO

viii) 189 ITR 786 (Pat) CIT v. Agarwalla Brothers

ix) 272 ITR 154 (Raj) BanswaraSyntex Ltd. v. ACIT

x) 174 ITR 741 (Cal) Equitable Investment Co. (P) Ltd.

xi) W.P. NO. 2192/2009 dated 20.8.2011 (Uttarakhand) M/s National Petroleum Construction Co. vs. UOI

xii) 319 ITR 282 (Guj) Gujarat Fluorochemicals Ltd. v. DCIT

xiii) 455 ITR 539 (Jhar) Naveen Kumar Jaiswal v. ITO

xiv) 456 ITR 316 (Kar) CIT v. Canara Bank

8.1 Similar view has been expressed in the context of section 153C of the Act in the following judicial pronouncements:

i) 439 ITR 154 (Bom) Jainam Investments v. ACIT **(115-224 of JPB)**

ii) 439 ITR 168 (Bom) Ananta Landmark (P) Ltd. v. DCIT **(pages 125-137 of JPB)**

iii) 459 IR 100 (Bom) Ashok Commercial Enterprises v. ACIT **(pages 350-375 of JPB)**

iv) ITA No. 1973/D/2022 dated 30.11.2023 Decent Realtech (P) Ltd. vs. DCIT (**pages 280-305 of JPB**)

9 Ground 3 to 3.7 of grounds of appeal is in respect of issue of addition representing alleged cash payment to PGPL by the appellant and erroneously held as unexplained expenditure u/s 69C of the Act.

10 It is submitted that an undated, unverified, loose paper is dumb document **(page 3 of Order of assessment for assessment year 2014-15)**and could not be relied as such to make addition u/s 69C of the Act.

10.1 It is submitted that only document as relied upon by learned Assessing Officer is admittedly an unsigned, undated, unverified and loose paper is a dumb document. It is submitted that it is not a speaking document; which indicates that appellant has paid any amount in cash as alleged by learned Assessing Officer in order of assessment. It is submitted that mere mentioning of figure and supposedly year, could not in any manner speaks that appellant had actually paid cash to the person from whose premises said dumb document is found. Reliance is placed upon following judgments:

i) 394 ITR 220 (SC) Common Cause (A Registered Society) and Others v. UOI **(pages 138-146 of JPB)** following the judgment in the case of CBI v. V.C. Shukla reported in 3 SCC 410

ii) 296 ITR 619 (Del) CIT vs. Girish Chaudhary**(pages 392-394 of JPB)**

iii) 305 ITR 245 (Del) CIT vs. Ved Parkash Chaudhary

iv) 308 ITR 230 (Del) CIT vs. D.K. Gupta**(pages 201-203 of JPB)**

v) 322 ITR 391 (Del) CIT vs. Anil Bhalla

vi) 212 Taxman 1 (Del) CIT vs. Jai Pal Aggarwal **(pages 184-189 of JPB)**

> **9.** On appeal the Tribunal examined the seized document and found that the figures did not co-relate with any date or details nor was the document signed. It also referred to the details of the fixed deposit receipts given in page 10 of Annexure A4, which was the seized document, and noted that except for mentioning the figure of Rs. 27,50,000/-, no details for the said figure were given. However, in respect of the fixed deposits with Karnataka Bank, the seized paper showed that the source for the same was the maturity proceeds of earlier fixed deposits. The Tribunal ultimately cancelled the addition by observing as under:
>
> > "65. On going through page 463 of the paperbook, which is copy of page 10 of annexure A-4, it is found that on these documents, some figure has been noted. From the noting on this paper, the details of FDRs cannot be detected. The

> assessee has denied this to be in his handwriting. The entries do not correlate any date or the signatures. The Assessing Officer did not collect any other evidence from banks or post office to correlate investment of the assessee in any other FDRs except the FDRs of Rs. 12,25,000/-, the source of which has been duly disclosed by the assessee.
> 66. Keeping in view of the above facts and also after taking to account the nature of entry on the seized document which is to be treated as dumb document, the addition of Rs. 27,50,000/- cannot be justified in block assessment year. In this view of the matter, the addition is deleted and the ground is allowed."

It may be noted that the Tribunal saw the seized paper as a "dumb document" which meant that nothing could be understood from it. The document, according to the Tribunal, merely noted a figure of Rs. 27,50,000/-without any details whereas details of other fixed deposits made with Karnataka Bank were given including the interest figure. The Tribunal also felt difficulty in gathering the details of fixed deposits for Rs. 27,50,000/-from the seized paper; there was no date or signature therein. On these facts the Tribunal has drawn the conclusion that the addition is without any basis. We are unable to say that the inference is unreasonable or is of such nature that no person, properly instructed on facts and law, would have come to. The Tribunal has properly taken note of the evidence; it has not ignored any relevant piece of evidence. Its conclusion cannot therefore be said to be perverse. We therefore, answer the question (c) in the negative, in favour of the assessee and against the revenue."

vii) 165 TTJ 145 (Del-Trib.) ACIT vs. Sharad Chaudhary**(pages 171-183 of JPB)**

viii) ITA No. 1643/D/2019 Rishi Aggarwal vs. DCIT**(pages 190-200 of JPB)**

13. It can be seen from the above paper found during the search placed at page 30 of the Paper Book that: It is neither dated nor signed/stamped, there is no head note on the paper which could suggest the purpose for which it was created, the loose paper contained list of many other property transaction which were related neither to the assessee nor to Sh. Buti Singh (seller) which

demonstrates that neither the assessee nor the seller was the author of the document. The loose paper did not belong to the assessee or to the seller, there is no description or comment explaining the hand written jottings-whether it represented a proposal for purchase or construction by the builder or payment between assessee and right seller, there is no date of receipt or payment mentioned against any figure, the content of the paper was incorrect as the total sales consideration did not match to the sales consideration as per the agreement. Further, the sales consideration as per the loose paper did not even match to the handwritten jottings which raise serious doubts on its validity and accuracy.

14. Thus, the above said loose paper was not speaking document and it is a dumb document which can be used as a basis for making the addition u/s 69 of the Act in the absence of any substantive enquiry to validate the content of the paper with any supportive and corroborative material and evidence. The evidentiary value of loose paper which is unsigned, undated and unverified has been held to be highly questionable and has not been accepted by the Hon'ble Supreme Court and various High Courts in following judgments.

CBI vs. VC Shukla 3 SCC 410 (SC)
CIT vs. GirishChaudhary (2008) 296 ITR 619 (Delhi)
CIT vs. Anil Bhalla (2010) 322 ITR 191 (Delhi)
CIT vs. Atam Valves (P.) Ltd. 184 Taxman 6 (P&H)
Atul Kumar Jain vs. DCIT (1999) 64 TTJ (Delhi) 786

15. In the case of CIT vs. Jaipal Aggarwal [2013] 212 Taxman 1 (Delhi)- wherein it was held that Dumb documents seized, i.e., from which nothing could be clearly understood, cannot form a justified base for making additions to income of the assessee. Decision of the hon'ble Delhi ITAT in the case of ACIT vs. Sharad Choudhary [2014] 165 TTJ 145 (Delhi-Trib.) wherein it has been held that "a charge can be levied on the basis of document only when the document is a speaking one. The document should speak either out of itself or in the company of other material found on investigation and/or in the search. The document should be clear and unambiguous in respect of all four components of charge of tax. If it is not so, the document is only a dumb document and no charge of tax can be levied on the assessee on the basis of a dumb document." Further it has been held that in absence of any supportive and corroborative material and evidence, a loose paper

found during search containing rough notings of proposals/offers could not be a basis for making addition u/s 69 of the Act. 16. It is further observed that the Ld. AO did not consider the need to summon the seller or the person searched, or to record the statement of the author/searched person/seller by giving an opportunity to assessee to cross examine the said person. The AO has not even made any enquiry about the value of the property purchased by the assessee. Considering the above facts and circumstances, we find merit in the Ground Nos. 2, 5 to 10 and, accordingly, we delete the addition of Rs.76,75,000/- made u/s 69 of the Act."

11 It is submitted the third party documents without corroborative evidence in law has no evidentially value. Reliance is placed on the following judgments:

i) **394 ITR 220 (SC) Common Cause (A Registered Society) and Others v. UOI (pages following the judgment in the case of CBI v. V.C. Shukla reported in 3 SCC 410**

"18. This Court has further laid down in V.C. Shukla (Supra) that meaning of account book would be spiral note book/pad but not loose sheets. The following extract being relevant is quoted hereinbelow :-

"14. In setting aside the order of the trial court, the High Court accepted the contention of the respondents that the documents were not admissible in evidence under Section 34 with the following words: "An account presupposes the existence of two persons such as a seller and a purchaser, creditor and debtor. Admittedly, the alleged diaries in the present case are not records of the entries arising out of a contract. They do not contain the debits and credits. They can at the most be described as a memorandum kept by a person for his own benefit which will enable him to look into the same whenever the need arises to do so for his future purpose. Admittedly the said diaries were not being maintained on day-to-day basis in the course of business. There is no mention of the dates on which the alleged payments were made. In fact the entries there in are on monthly basis. Even the names of the persons whom the alleged payments were made do not find a mention in full. They have been shown in abbreviated form. Only certain 'letters' have been written against their names which are within the

knowledge of only the scribe of the said diaries as to what they stand for and whom they refer to."

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17. From a plain reading of the Section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above Section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence to charge any person with liability.

It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfill the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed.

18. "Book" ordinarily means a collection of sheets of paper or other material, blank, written, or printed, fastened or bound together so as to form a material whole. Loose sheets or scraps of paper cannot be termed as "book" for they can be easily detached and replaced. In dealing with the word "book" appearing in Section 34 in Mukundram v. Dayaram1 a decision on which both sides have placed reliance, the Court observed:-

"In its ordinary sense it signifies a collection of sheets of paper bound together in a manner which cannot be disturbed or altered except by tearing apart. The binding is of a kind which is not intended to the moveable in the sense of being undone and put together again. A collection of papers in a portfolio, or clip, or strung together on a piece of twine which is intended to be untied at will, would not, in ordinary English, be called a book. ... I think the term 'book' in Section 34 aforesaid may properly be taken to signify, ordinarily, a collection of sheets of paper bound together with the intention that such binding shall be permanent and the papers used collectively in one volume. It is easier however to say

what is not a book for the purposes of Section 34, and I have no hesitation in holding that unbound sheets of paper, in whatever quantity, though filled up with one continuous account, are not a book of account within the purview of Section 34."

We must observe that the aforesaid approach is in accord with good reasoning and we are in full agreement with it. Applying the above tests it must be held that the two spiral note books (MR 68/91 and MR 71/91) and the two spiral pads (MR 69/91 and MR 70/91) are "books" within the meaning of Section 34, but not the loose sheets of papers contained in the two files (MRs 72/91 and 73/91).

x xxxxxxxxxxxxxxxxx

20. Mr. Sibal, the learned counsel for the Jains, did not dispute that the spiral note books and the small pads are "books" within the meaning of Section 34. He, however, strongly disputed the admissibility of those books in evidence under the aforesaid section on the ground that they were neither books of account nor they were regularly kept in the course of business. he submitted that at best it could be said that those books were memoranda kept by a person for his own benefit.

According to Mr. Sibal, in business parlance "account" means a formal statement of money transactions between parties arising out of contractual or fiduciary relationship. Since the books in question did not reflect any such relationship and, on the contrary, only contained entries of monies received from one set of persons and payment thereof to another set of persons it could not be said, by any stretch of imagination that they were books of account, argued Mr Sibal.

He next contended that even if it was assumed for argument's sake that the above books were books of account relating to a business still they would not be admissible under Section 34 as they were not regularly kept. It was urged by him that the words "regularly kept" mean that the entries in the books were contemporaneously made at the time the transactions took place but a cursory glance of the books would show that the entries were made therein long after the purported transactions took place. In support of his contentions

he also relied upon the dictionary meanings of the words 'account' and 'regularly kept'."
(Emphasis added by us)

19. With respect to evidentiary value of regular account book, this Court has laid down in V.C. Shukla, thus;

"37. In Beni v. BisanDayal it was observed that entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another.

In Hira Lal v. Ram Rakha the High Court, while negativing a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the Court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability.

It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts."

20. It is apparent from the aforesaid discussion that loose sheets of papers are wholly irrelevant as evidence being not admissible under Section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by this Court.

21. We are constrained to observe that the Court has to be on guard while ordering investigation against any important constitutional functionary, officers or any person in the absence of some cogent

legally cognizable material. When the material on the basis of which investigation is sought is itself irrelevant to constitute evidence and not admissible in evidence, we have apprehension whether it would be safe to even initiate investigation. In case we do so, the investigation can be ordered as against any person whosoever high in integrity on the basis of irrelevant or inadmissible entry falsely made, by any unscrupulous person or business house that too not kept in regular books of accounts but on random papers at any given point of time.

There has to be some relevant and admissible evidence and some cogent reason, which is prima facie reliable and that too, supported by some other circumstances pointing out that the particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period, which may have co-relations with the random entries.
In case we do not insist for all these, the process of law can be abused against all and sundry very easily to achieve ulterior goals and then no democracy can survive in case investigations are lightly set in motion against important constitutional functionaries on the basis of fictitious entries, in absence of cogent and admissible material on record, lest liberty of an individual be compromised unnecessarily. We find the materials which have been placed on record either in the case of Birla or in the case of Sahara are not maintained in regular course of business and thus lack in required reliability to be made the foundation of a police investigation.

22. In case of Sahara, in addition we have the adjudication by the Income Tax Settlement Commission. The order has been placed on record along with I.A.No.4. The Settlement Commission has observed 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 disk and pen drive etc. do not comply with the requirement of the Indian Evidence Act and are not admissible evidence.

It further observed that the department has no evidence to prove that entries in these loose papers and electronic data were kept regularly during the course of business of the concerned business house and the fact that these entries were fabricated, non-genuine

was proved. It held as well that the PCIT/DR have not been able to show and substantiate the nature and source of receipts as well as nature and reason of payments and have failed to prove evidentiary value of loose papers and electronic documents within the legal parameters. The 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.

23. It is apparent that the Commission has recorded a finding that transactions noted in the documents were not genuine and thus has not attached any evidentiary value to the pen drive, hard disk, computer loose papers, computer printouts.

24. Since it is not disputed that for entries relied on in these loose papers and electronic data were not regularly kept during course of business, such entries were discussed in the order dated 11.11.2016 passed in Sahara's case by the Settlement Commission and the documents have not been relied upon by the Commission against assessee, and thus such documents have no evidentiary value against third parties. On the basis of the materials which have been placed on record, we are of the considered opinion that no case is made out to direct investigation against any of the persons named in the Birla's documents or in the documents A-8, A-9 and A- 10 etc. of Sahara."

ii) 39 STC 478. (SC) State of Kerala vs. K.T. Shaduli Yusuff (Three Judge's Bench)

iii) 294 ITR 49 (SC) CIT vs. P.V. Kalyansundaram affirming the decision of Hon'ble Madras High Court reported in 282 ITR 259

iv) 97 ITR 696 (Bom) Addl. CIT vs. Miss Lata Mangeshkar

v) 163 ITR 249 (Guj) CIT vs. M.K. Brothers

vi) 300 ITR 426 (All.) CIT vs. Salek Chand

vii) 209 ITR 821 (Kerala) P.S. Abdul Majeed vs. Agricultural Income Tax and Sales Tax Officer

viii) 220 Taxman 168 (Del.) CIT vs. Prem Prakash Magpal

ix) ITA 984/2019 dated 4.3.2024 PCIT vs. Rashmi Rajiv Mehta (**pages 404-408 of JPB-II**)

x) 148 TTJ 517 (Hyd) Smt. K.V. Lakshmi Savitri Devi vs. ACIT

xi) ITA No. 208 of 2011 dated 12.09.2012 Commissioner of Income Tax vs. M/s Khosla Ice & General Mills

xii) ITA No. 507/2009 dated 27.04.2010 CIT vs. Samrat Builders

xiii) 52 TTJ 533 (Ahd) ACIT vs. Prabhat Oil Mills

xiv) 63 ITD 203 (TM) (Mad) ITO vs. M. A. Chidambaram

xv) 86 ITD 13 (Del.) (TM) Amarjit Singh Bakshi (HUF) vs. ACIT

xvi) ITA No. 5516 & 5517/D/2012 ACIT vs. Anil Khandelwal

xvii) ITA Nos 336/D/2012 and 5515/D/2013 dated 29.11.2016 SamtaKhinda v. ACIT

xviii) ITA No. 1314/D/2023 dated 7.3.2024;Surender Kumar Jain vs. ACIT **(pages 395-403 of JPB)**

> "7. The Ld. AR submitted that the assessee did not enter into any cash transaction with M/s. JBL, the entity searched under section 132 of the Act. <u>According to him, all transactions made by the assessee with M/s. JBL were through banking channel and has been found to be recorded in the books of the assessee. Apart from the ledger account in Hajir Johri which is not maintained by the assessee</u>, the Ld. AO relied on the statement of Ms. Parul Ahluwalia, Director and former employee of M/s. JBL but in her statement she nowhere identified that the cash transactions related to the assessee and no specific questions were put to her in this regard. Since the Hajir Johri ledger account was neither maintained by the assessee nor was found from him, presumption under section 292C does not apply to the assessee.
>
> …..
>
> 9. We have given our careful thought to the submission of the parties and perused the records. The facts are not in dispute. During assessment proceedings the common plea of the assessee in both the AY(s) was <u>that merely entries found in the Hajir Johri ledger of M/s. JBL supposedly in the name of M/s. S.K. Impex, the proprietary concern of the assessee does not tantamount to actual transactions having taken place in the absence of any corroborative evidence such as bills, invoices, challans etc</u>. There is no linking in the order of the Ld. AO/CIT(A) that the alleged cash transactions are substantiated by any supporting evidence as claimed by the

> assessee. On the contrary, the impugned additions are based purely on conjectures and surmises solely relying on the statement of Ms. Parul Ahluwalia, Director and former employee of M/s. JBL, the entity subjected to search operation during which her statement was recorded. The Ld. AR submitted before us that Ms. Parul Ahluwalia nowhere in her statement identified that alleged cash transactions related to the assessee. No specific questions in this regard were asked from her. Nothing is forthcoming from the side of the Revenue to controvert the above pleadings of the assessee.
> ….
>
> 9.3 Perusal of the assessment orders would show that whereas the Ld. Assessing Officer has used his imagination in applying the provision of section 69C for making the impugned addition in both the years treating the alleged cash transactions as expenditure incurred by the assessee towards purchase of gold/bullion from M/s. JBL, the Ld. CIT(A) was in a fix. So he confirmed the impugned addition in AY 2016-17 under section 69C as unexplained expenditure and in AY 2017-18 under section 69A as unexplained money. In our view the impugned addition made by the Ld. AO in both the AY(|s) is not sustainable because it is based on mere suspicion, surmise and conjectures and not on legally sound footing and the Ld. CIT(A) admittedly confirmed the addition based alone on facts which emerges from the details and findings made by the Ld. AO (para 6.5 of appellate orders refers).
>
> 9.4 For the reasons set out above and on the facts and in the circumstances of the case, we allow the appeals of the assessee and direct the Ld. AO to delete the impugned addition in both the AY(s).”

12 It is also submitted that statements recorded/material relied and gathered behind the back of the assessee and without any opportunity for cross examination despite specific request made during the course of assessment proceedings, cannot be relied upon as it has no evidentiary value. Reliance is placed on the following judicial pronouncements:

i) **418 ITR 315 (SC) CIT v. Odeon Builders (P) Ltd. (231-232 of JPB)**

However, on **going through the judgments of the CIT, ITAT and the High Court, we find that on merits a disallowance of Rs.19,39,60,866/- was based solely on third party information, which was not subjected to any further scrutiny**. Thus, the CIT (Appeals) allowed the appeal of the assessee stating:

"**Thus, the entire disallowance in this case is based on third party information gathered by the Investigation Wing of the Department, which have not been independently subjected to further verification by the AO who has not provided the copy of such statements to the appellant**, thus denying opportunity of cross examination to the appellant, who has prima facie discharged **the initial burden of substantiating the purchases through various documentation including purchase bills, transportation bills, confirmed copy of accounts and the fact of payment through cheques, & VAT Registration of the sellers & their Income Tax Return.** In view of the above discussion in totality, the purchases made by the appellant from M/s Padmesh Realtors Pvt. Ltd. is found to be acceptable and the consequent disallowance resulting in addition to income made for Rs.19,39,60,866/-, is directed to be deleted."

The ITAT by its judgment dated 16th May, 2014 relied on the selfsame reasoning and dismissed the appeal of the revenue. Likewise, the High Court by the impugned judgment dated 5th July, 2017, affirmed the judgments of the CIT and ITAT as concurrent factual findings, which have not been shown to be perverse and, therefore, dismissed the appeal stating that no substantial question of law arises from the impugned order of the ITAT.

ii) **62 taxmann.com 3 (SC) Andaman Timber Industries vs. CCE (233-236 of JPB)**

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 ex-factory prices remain static. It was not for the Tribunal to have guesswork as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

7. As mentioned above, the 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. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

8. In view the above, we are of the opinion that 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."

iii) **125 ITR 713 (SC) Kishnichand Chellaram vs. CIT**

iv) **288 ITR 345 (Del.) CIT vs. SMC Share Broker Limited**

v) **293 ITR 43 (Del) CIT vs. S.M. Aggarwal**

vi) **295 ITR 105 (Del) CIT vs. Dharam Pal Prem Chand Ltd.**

vii) **303 ITR 95 (Del) CIT vs. Pradeep Kumar Gupta**

viii) **322 ITR 396 (Del) CIT vs. Ashwani Gupta**

ix) **379 ITR 367 (Del) CIT v Sunil Aggarwal**

x) **382 ITR 639 (Del) Roger Enterprise Ltd vs. CIT**

xi) 2024 SCC Online Del 4012 PCIT vs. Pavitra Realcon (P) Ltd. (**pages 438-451 of JPB-II**)

13 THAT STATEMENTS HAS BEEN RECORDED UNDER SECTION 131 OF THE ACT HAS NO EVIDENTIARY VALUE AND THEREFORE, CANNOT BE RELIED UPON TO DRAW ANY ADVERSE OPINION.

13.1 It is submitted that it is evident from page 42 of Paper Book, that the statements were recorded u/s 131 of the Act. It is submitted that statements have been recorded under section 131 of the Act has no evidentiary value and therefore, cannot be relied upon to draw any adverse opinion. Reliance is placed on the following judgments:

i) 328 ITR 384 (Del) CIT v. Dhingra Metal Works

ii) 300 ITR 157 (Mad) CIT v. S. Khader Khan Son affirmed by the Apex Court in the case of CIT v. S Khader Khan Son reported in 352 ITR 480

iii) 263 ITR 101 (Ker) Paul Mathews and Sons v. CIT

iv) 2 SOT 402 (Coch) Kurunnem Velil Financiers (P) Ltd. v. DCIT

v) 394 ITR 383 (Raj) CIT vs. ARL Infratech Ltd.

vi) 256 ITR 730 (Raj) CIT v. Mool Chand Salecha

vii) 97 ITD 361 (Ahd) Ashok Manilal Thakkar v. ACIT

14 <u>THAT EVEN OTHERWISE ONCE THE STATEMENT WAS RETRACTED NO FURTHER ADDITIONS CAN BE MADE</u>

RELYING ON STATEMENT OF SUCH PERSON IN ABSISNCE OF SOME MORE SUPPORT TO THE STATEMENT:

It is submitted that in the statement of third parties i.e. statement of Sh. Dinesh S Gupta and Sh. Hariom Goyal, relied upon by learned Assessing Officer, has been retracted by them as is evident from **pages 88-97 of Paper Book**.

14.1 It is further submitted that once the statement is retracted, no additions can be made relying on statement of such person further assessing authority has to gather some more support to the statement for passing an order of assessment. Reliance is placed on the judgment of Hon'ble Andhra Pradesh and Telagana High Court in the case of **Gajjam China Yellappa v. ITO reported in 370 ITR 671** it was held as under:

> "The Act empowers the Assessing Officers or other authorities to record the statements of the assesses, whenever a survey or search is conducted under the relevant provisions of law. The statements so recorded are referable to Section 132 of the Act. Sub-section 4 thereof enables the authorities not only to rely upon the statement in the concerned proceedings but also in other proceedings that are pending, by the time the statement was recorded.
>
> If the statement is not retracted, the same can constitute the sole basis for the authorities to pass an order of assessment. **However, if it is retracted by the person from whom it was recorded, totally different considerations altogether, ensue. The situation resembles the one, which arises on retraction from the statement recorded under Section 164 Cr.P.C. The evidentiary value of a retracted statement becomes diluted and it loses the strength, to stand on its own. Once the statement is retracted, the Assessing Authority has to garner some support, to the statement for passing an order of assessment.**
>
> In I.T.A.No.112 of 2003, this Court dealt with the very aspect and held that a retracted statement cannot constitute the sole basis for fastening liability upon the assessee.

In the instant case, the appellants specifically pleaded that the statements were recorded from them by applying pressure, till midnight, and that they have been denied access outside the society. The Assessing Officer made an effort to depict that the withdrawal or retraction on the part of the appellants is not genuine. We do not hesitate to observe that an Assessing Officer does not have any power, right or jurisdiction to tell, much less to decide, upon the nature of withdrawal or retraction. His duty ends where the statement is recorded. If the statements are retracted, the fate thereof must be decided by law meaning thereby, a superior forum and not by the very authority, who is alleged to have exerted force.

It is not as if the retraction from a statement by an assessee would put an end to the procedure that ensued on account of survey or search. The Assessing Officer can very well support his findings on the basis of other material. If he did not have any other material, in a way, it reflects upon the very perfunctory nature of the survey. We find that the appellate authority and the Tribunal did not apply the correct parameters, while adjudicating the appeals filed before them. On the undisputed facts of the case, there was absolutely no basis for the Assessing Officer to fasten the liability upon the appellants. Our conclusion find support from the Circular dated 10.03.2003 issued by the Central Board of Direct Taxes, which took exception to the initiation of the proceedings on the basis of retracted statements."

14.2 The Hon'ble Andhra Pradesh High Court in the case of **CIT vs. Naresh Kumar Aggarwal reported in 369 ITR 171** has held that a statement is not a limited licence to script the financial obituary of an assessee. It was held as under:

"The circumstances under which a statement is recorded from an assessee, in the course of search and seizure, are not difficult to imagine. He is virtually put under pressure and is denied of access to external advice or opportunity to think independently. A battalion of officers, who hardly feel any limits on their power, pounce upon the assessee, as though he is a hardcore criminal. The nature of steps, taken during the course of search are sometimes frightening. Locks are broken, seats of sofas are mercilessly cut and opened. Every possible item is forcibly dissected. Even the pillows are not spared and their acts are backed by the powers of an investigating officer

under Section 94 of Cr.P.C by operation of sub-section (13) of Section 132 of the Act. The objective may be genuine, and the exercise may be legal. However, the freedom of a citizen that transcends, even the Constitution cannot be treated as non- existent.

At the cost of repetition, we observe that if the statement made during the course of search remains the same, it can constitute the basis for proceeding further under the Act, even if there is no other material. If, on the other hand, the statement is retracted, the Assessing Officer has to establish his own case. The statement that too, which is retracted from the assessee, cannot constitute the basis for an order under Section 158BC of the Act.

This, in turn, is referable to a time-tested right of an individual which is recognised under Article 20(3) of the Constitution of India which mandates no person, accused of any offence, shall be compelled to be a witness against himself. The citing of a statement of an individual as the only evidence, in the penal proceedings initiated against him, is never treated as part of a developed and mature legal system. Section 31 of the Evidence Act, 1872 also assumes significance in this regard. It reads: Admissions not conclusive proof, but, may estop : Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained."

Parliament never intended to place the proceedings under the Income Tax Act on a higher pedestal than those under the criminal enactments.

Though this Circular was not available when the adjudication vis--vis the respondent was taking place at various stages, it is not difficult to take note of the fact that the Circular has only made manifest, what was already hidden in the provision. The provision is deemed to have carried the same purport, all through.

This Court in Commissioner of Income Tax v. Shri Ramadas Motor Transport dealt with the question and held as under: A plain reading of sub-section (4) shows that the authorised officer during the course of raid is empowered to examine any person if he is found to be in possession or control of any undisclosed books of account, documents, money or other valuable articles or things, elicit information from such person with regard to such account books or money which are in his possession and can record a statement to that effect. Under this provision, such statements can be used in evidence

in any subsequent proceeding initiated against such person under the Act. Thus, the question of examining any person by the authorised officer arises only when he found such person to be in possession of any undisclosed money or books of account. But, in this case, it is admitted by the Revenue that on the dates of search, the Department was not able to find any unaccounted money, unaccounted bullion nor any other valuable articles or things, nor any unaccounted documents nor any other valuable articles or things, nor any unaccounted documents nor any such incriminating material either from the premises of the company or from the residential houses of the managing director and other directors. In such a case, when the managing director or any other persons were found to be not in possession of any incriminating material, the question of examining them by the authorised officer during the course of search and recording any statement from them by invoking the powers under section132(4) of the Act, does not arise. **Therefore, the statement of the managing director of the assessee, recorded patently under Section 132(4) of the Act, does not have any evidentiary value. This provision embedded in sub-section (4) is obviously based on the well established rule of evidence that mere confessional statement without there being any documentary proof shall not be used in evidence against the person who made such statement. The finding of the Tribunal was based on the above well settled principle.**

Learned counsel for the appellant is not able to point out any differentiating factors. The precedent covers the facts of the present case."

14.3 Reliance has been further placed on below mentioned Judicial pronouncements:

i) **328 ITR 384 (Del) CIT vs. Dhingra Metal Works**
In any event, it is settled law that though an admission is an extremely important piece of evidence, it cannot be said to be conclusive and it is open to the person who has made the admission to show that it is incorrect.

ii) ITA 1426/2018 (Del) dated 20.2.2024 PCIT vs. Vir Sen Sindhu (**pages 452-458 of JPB-II**)

iii) **339 ITR 192 (Chennai) M. Narayanan and Bros vs. ACIT**

12. In the decision reported in (2006) 287 ITR 209 (P R Metrani V. Commissioner of Income-Tax), dealing with the scope of Section 132(4A), the Supreme Court considered the conclusive character of the statement made in a search operation. The Apex Court held that Section 132 is a complete code by itself. Under Section 132(4), in the case of search, the authorised officer can examine any person who is found to be in possession or control of any books of accounts, documents, money, jewellery or other valuable article and any statement made by such person during the examination may thereafter be used in evidence in any proceedings. Sub section (4A) enables an Assessing Officer to raise a rebuttable presumption that such books of accounts, money, jewellery, etc., belonged to such person that the contents of books of accounts and the documents are true and the signature found therein are in the handwriting of the particular person. The Supreme Court held that the presumption is rebuttable and is available only in regard to the proceedings for search and seizure and for the purpose of Section 132(5) and 132B. However, the presumption under sub-section (4A) to Section 132 of the Income Tax Act would not be available for the purpose of framing a regular assessment. However, retention of books etc., can be used as a piece of evidence for the purposes of framing of the regular assessment. **Thus going by the above-said decision, while the statement rendered at the time of search under Section 132(4) may be used in evidence in any proceeding, yet, that by itself, does not become the sole material to rest the assessment more so when the assessee seeks to withdraw the same by producing material evidence in support of such retraction.**

13. Thus going by the said decision of the Supreme Court, as well as the law declared in the decision reported in (1973) 91 ITR 18 (Pullangode Rubber Produce Co. Ltd. V. State of Kerala and another) **that it is always open to a person, who made the admission, to show that the statement to offer income is incorrect and had material to substantiate so, we hold that the Tribunal is not justified in placing undue emphasis on the confession statements made by the assessee**

iv) **225 Taxman 28 (Guj)(Mag) CIT vs. Agew Steel Mfg. (P) Ltd.**

v) **221 Taxman 47 (Guj) (Mag) CIT vs. Sun Builders**

vi) **201 Taxman 95 (Jhar) (Mag) CIT vs. Ravindra Kumar Jain**
Section 132 of the Income-tax Act, 1961 - Search and seizure - Assessment year 1994-95 - During course of search operation, assessee first stated that he had no undisclosed income and thereafter he surrendered a sum of Rs. 7 lakhs as his undisclosed income - Out of said amount Rs. 4 lakhs was stated to have been invested as stock of 'H' and amount of Rs. 3 lakhs was stated to have been deposited in different saving bank accounts - Assessing Officer made addition on basis of assessee's statement - **On appeal, Commissioner (Appeals) deleted addition on ground that assessee later on retracted his statement and surrender was not corroborated by independent evidence** - Tribunal upheld order of Assessing Officer - Whether when amount, which assessee stated to have been deposited in bank, was not found in any bank and, thus, part of alleged admission of assessee was not found correct, Assessing Officer was duty bound to collect more evidence in respect of undisclosed income of assessee - Held, yes - Whether, therefore, Tribunal was justified in deleting addition - Held, yes

vii) **107 Taxman 124 (Jpr) Sohan Lal Jain vs. ACIT**
It is also a well-settled law that an admission by a party is the best evidence of a point in issue and, though not conclusive, is decisive of the matter unless successfully withdrawn or proved erroneous. Such admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the assessee who makes the admission to show that it is incorrect and the assessee should be given a proper opportunity to show that the books of account do not show the correct state of facts.

viii) 63 TTJ 236 (Del) Rishabh Kumar Jain v ACIT

ix) 68 TTJ 789 (Chd) Karam Chand vs. ACIT
Section 132 of the Income-tax Act, 1961 - Search and seizure - Assessment year 1988-89 - Assessee surrendered certain amount in his statement under section 132(4) but, later, having found on going through seized documents that income kept away was much more and that related to preceding years also,

partly offered same for settlement before Settlement Commission and balance shown in return filed - Whether, on the facts, reasons given by assessee for showing lower figure in return were valid, cogent and plausible and, therefore, addition made representing difference between declared income and income shown in return had to be deleted - Held, yes - **Whether assessee can retract after making statement under section 132(4) read with Explanation 5 to section 271(1)(c) as admission under one provision of law cannot have a different status under any other provision of law, whether of same Act or any other enactment, unless specifically so provided or capable of being accorded such extraordinary status by interpretation - Held, yes**

x) 50 ITD 524 (Ahd) ACIT v Mrs. Sushila Devi S. Aggarwal

A search operation, particularly under the Income-tax Act is a lawful invasion on the privacy, life and property of a citizen which may affect him/ her mentally also, causing several other inconveniences, hardships, embarrassment and harassment. There is every likelihood of a statement tendered to or recorded by the search officers on the search day being incoherent or at variance with subsequent statements tendered to or recorded in any further or collateral proceedings, but to make addition to the returned income or to put such person to sufferance or to adverse consequence on such statement is not justified in law. All that is stated by any deponent on the search day should not be taken as the truth, the whole truth and nothing but the truth. Such statements indubitably have evidentiary value and credibility in law, but the same should be viewed with great caution, particularly when the same is denied, varied or retracted or established by the defendant to have been obtained or given under mental stress, coercion, undue influence or due to any other abnormal condition and circumstances when such statement was given, **if a person at later stage retracts from the statement given on the search day, then the court or Tribunal should try to ascertain the reasons or circumstances from such person for doing so and, if satisfied, not to place heavy reliance on such earlier statement which has subsequently been denied and retracted.**

xi) **139 ITD 10 (Pune) Jyotichand Bhaichand Saraf & Sons (P) Ltd. vs. DCIT**
Section 132 of the Income-tax Act, 1961 - Search and Seizure - **Whether admission made under section 132(4), though important piece of evidence, is not conclusive - Held, yes - Whether assessee can retract from it showing that it was made under mistaken belief of fact or law** - Held, yes [Paras 14 to 20] [In favour of assessee]

xii) **103 ITD 1 (Mum) (TM)(SB) Uttamchand P.Jaiin vs. ITO**

xiii) **52 SOT 62 (Chd) Rajdeep Builders vs. ACIT**

xiv) **ITA No. 1502/D/2013 dated 27.6.2014 G. K. Consultants Ltd. vs. ITO**

14.4 Reliance is placed on the following judgments:

i) **247 ITR 448 (Bom) CIT vs. Vinod Danchand Ghodawat**

ii) **185 Taxman 18 (Chd) Jagdish Chander Bajaj vs. ACIT**

iii) **I.T.A. Nos. 4520, 4521, 4522, 4523, 4524& 4525/Del/ 2010 Sh. Prem Arora vs ACIT**

iv) **ITA No(s) 802 TO 806/Chd/2012, dated 27.11.2012 Naresh Kumar Verma vs. ACIT**

8. The AO, in the present case made the impugned addition, on the foundation of bare husk of the statement of the appellant, made in the course of search operation, without there being any material for its collaboration. A bare reading of the said deposition of the appellant, reveals that the appellant he has not stated that he earned income from job work during the earlier asstt. years, including the asstt. year in question. The revenue has failed to demonstrate, by way of any material, brought on record, that the assessee appellant had earned job work, for the asstt. year in question.

8. (*i*) The general rule is that 'onus of proof' is always on the party, who asserts a proposition or fact, which is not self-evident. In the present case, the AO presumes and asserts that the appellant has earned income, from job work, therefore, onus lies upon him, to prove the same, by

bringing relevant corroborative and credible material, on record, before making the impugned addition. The assessee appellant has not made any surrender, in respect of income from job work and no document has been adduced by the revenue, to support its finding that assessee has earned income from job work, in the past asst. years.

9. It is categorically held by the Hon'ble Apex Court in a plethora of decisions, that it is a well settled principle of law that revenue cannot decide, an issue, without proper facts and law, supporting its decision. A decision based on mere surmises, guess work or conjectures or irrelevant material and evidence is liable to be quashed. The Hon'ble Apex Court, in plethora of decisions has often frowned upon the tendency of Assessing Officers, to frame assessment orders or make additions purely on surmises. In the present case, a bare perusal of the finding of the AO and the CIT (Appeals), as reproduced above, clearly reveals that no material has been brought on record, to support the impugned additions. The AO as well as CIT (Appeals), being quasi-judicial authority must not base their findings, on no-material or no-evidence. This is a fundamental rule of justice and established legal proposition that there may be something more than bare suspicion, to support the findings, in the assessment order, as held by the Hon'ble Supreme Court, in the case of *Dhirajlal Girdharilal* v. *CIT* [1954] 26 ITR 736; *Omar Salay Md. Sait* v. *CIT* [1959] 37 ITR 151 (SC), *Dhakeswari Cotton Mills Ltd.*v. *CIT* [1954] 26 ITR 775 (SC); *Lal Chand Bhagat Ambica* v. *CIT* [1959] 37 ITR 288 (SC). **In the present case, AO had not made any enquiry except quoting Question No. 10 and reply thereto. The AO, further, failed, to bring any material on record, even prima-facie to suggest earning of income from job work, by the appellant. Therefore, the AO, being quasi-judicial authority is not competent, to draw inferences in vacuum, without the base of foundational material, evidence and relevant provisions, as has been done, in the present case. The AO is required to act in a judicial manner while framing asst order.**

v) 339 ITR 192 (Mad) **M. Narayanan & Bros. Vs. ACIT, Special Investigation Circle, Salem**

"13. Thus going by the said decision of the Supreme Court, as well as the law declared in the decision in *Pullangode Rubber Produce Co. Ltd's.* case (*supra*) that it is always open to a person, who made the admission, to show that the statement to offer income is incorrect and had material to substantiate so, we hold that the Tribunal is not justified in placing undue emphasis on the confession statements made by the assessee.

14. As rightly pointed out by the learned counsel appearing for the assessee, when the assessee had explained the statement made on the second day of the search with materials, that the amounts offered were the loans taken from the relatives who were already assessed on the said amount; apart from this, even otherwise, the transactions relating to pawn broking, related to years prior to the date of assessment and had no relevance to the year under consideration, rightly the Commissioner of Income-tax (Appeals) accepted the case of assessee to cancel the assessment on Rs. 4 lakhs. Thus when the assessee had explained his statement as not correct in the context of the materials produced, as held by the Apex Court in the decision in *Pullangode Rubber Produce Co. Ltd.'s* case (*supra*), we do not think that the Tribunal would be justified in its conclusion that the statement made would clothe the assessment with legality. Quite apart from that, the case of the assessee also stands supported by the Circular dated 10-3-2003 of the Central Board of Direct Taxes, which has given categorical directions to the officers, who are entrusted with the job of assessment that undue emphasis should not be placed on the statements recorded. In fact, it had given a mandate not to obtain confession as to the undisclosed income. Thus applying the Circular dated 10-3-2003 to the facts of the case, which is binding on the revenue, we have no hesitation in setting aside the order of the Tribunal. As already pointed out that except for the statements referred to by the Tribunal, it had not adverted its attention to the materials produced by the assessee before the Commissioner of Income-tax (Appeals) explaining the claim that the said amount could not be included in the hands of the assessee.

vi) **148 taxman 35 (Ahd.) (Mag) ACIT Vs. Jorawar Singh M. Rathod**

6.We have heard the learned Representatives of the parties and perused the record. After considering the facts of the case, we find that the AO had made the addition merely on the basis of statement recorded under section 132(4) at the time of search. **We find that at the time of search no evidence or material or assets, immovable or movable properties were found which supports the disclosure of Rs. 16 lakhs. The assessee had retracted from the said disclosure which has not been accepted by the Department. It is true that simple denial cannot be considered as a denial in the eyes of law but at the same time, it is also to be seen (that) the material and valuable and other assets are found at the time of search. The evidence ought to have been collected by the Revenue during the search in support of the disclosure statement.** The decision cited by learned Departmental Representative is distinguishable on facts. In the said case, the disclosure was of Rs. 7 lakhs which was supported by investment in house property, unaccounted cash, unaccounted investment in furniture and unaccounted in gold ornaments, etc., whereas in the case under consideration no such assets or valuables were supported to the disclosure. **It is settled position of the law that authorities under the Act are under an obligation to act in accordance with law. Tax can be collected only as provided under the Act. If an assessee, under a mistake, misconception or on not being properly instructed, is over assessed, the authorities under the Act are required to assist him and ensure that only legitimate taxes due are collected** [S.R. Koshti v. CIT (2005) 193 CTR (Guj) 518]. The ITO is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment or addition. [Dhakeswari Cotton Mills Ltd. v. CIT (1954) 26 ITR 775 (SC)]. It is true that an apparent statement must be considered real until it was shown that there were reasons to believe that the apparent was not the real. Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal. Therefore, the Courts and Tribunals have to judge the evidence before them by applying the test of human probabilities [CIT v. Durga Prasad More 1973 CTR (SC) 500 : (1971) 82 ITR 540 (SC)]. In the light of above discussion, we apply the ratio of Apex Court in the case of

Durga Prasad (supra), i.e., test of human probabilities, **we do not find any material on record on which basis it can be said that the disclosure of the assessee for Rs.16 lakhs is in accordance with law and in spirit of section 132(4). Under the circumstances, we find that the CIT(A) has correctly deleted the addition.**

vii) **ITA No.671/Del/2012 dated 20.06.2013 ACIT v. Sh. Dharam Pal Gulati**

In the assessee's case also, this admission of additional income is not based upon any credible evidence and the same has been retracted within 6 days from the search. Non-asking any question regarding seized papers/documents from the premises of the assessee clearly shows that there was no focus and consideration of the search party on the collection of evidence of income which lead to information on what has been disclosed or is not likely to be disclosed before the revenue authorities. There is no evidence found and seized that assessee has carried out speculation trading during the relevant period. No document in this regard was seized from the premises of the assessee. The documents seized from the residence of Shri Prem Arora was related to the financial year 2003-04 and the income earned in those transactions has been received by the assessee through banking channels and not by cash and the same has been duly accounted for. In such a situation, the presumption that assessee might have carried out speculation business during the year on the basis of such document seized is completely untenable and unsustainable and additions based on such presumption cannot be sustained. The inference that Shri Prem Arora was in possession of the cash and being the close person of the assessee, assessee might have been indulging in the speculation business of the commodity trading is also unsustainable presumption. No adverse inference can be drawn about the assessee on such presumption. The Assessing Officer's reliance that assessee has also narrated about the investment of the undisclosed speculative income in the purchase of gold and jarau jewellery, investment in shares and investment in vaida bazaar and advances given to the parties trading in agricultural field is also not supported by any document. Nothing has been found during the search and no such assets had been recovered. Therefore, such additions made

only on the basis of a statement which has been retracted immediately thereafter are not sustainable. The pattern of the questions put to the assessee during the search of the premises shows that whatever recorded in these statements is not true. Only on the basis of presumption that large scale construction was going on at the school building of the trust and hospital of the trust cannot be made a basis for addition. The Assessing Officer should have ascertained the investment by way of referring the case to the DVO if he has any doubt in this regard. No evidence regarding any anonymous donation by the trust was found and seized and nothing has been made out by the Assessing Officer in the assessment. The other assessments u/s 153A of the Act in assessee's case for Assessment Year 2001-02 to 2006-07 have been made without any addition. Thus, in our considered view, no incriminating evidence was found against the assessee which could suggest or show that unexplained investment has been made to the tune of Rs.15 crores and such income has been utilized or invested as stated by the assessee in the retracted statement. **Nothing of such sort borne out of the facts. In our considered view, no addition can be made merely on the basis of surrender without existence of any corroborative evidence found against the assessee**

15 THAT ADDITION MADE MECHANICALLY IN DISREGARD OF THE MATERIAL ON RECORD BY FOLLOWING DIKTATS OF INVESTIGATION REPORT IS OTHERWISE TOO UNTENABLE:

Reliance is placed on the following judicial pronouncements:

i) 178 ITD 823 (Delhi - Trib.) Smt. Karuna Gargvsf. ITO (pages 340-346 of JPB) affirmed by Hon'ble High Court of Delhi reported in 457 ITR 591 (Del)

19……..

20. **There is no dispute that the shares of the two companies were purchased online, the payments have been made through banking channel, and the shares were dematerialized and the sales have been routed from de-mat account and the consideration has been received through banking channels**.

21. A perusal of the assessment order clearly shows that the Assessing Officer was carried away by the report of the Investigation Wing Kolkata. It can be seen that the entire assessment has been framed by the Assessing Officer without conducting any enquiry from the relevant parties or independent source or evidence but has merely relied upon the statements recorded by the Investigation Wing as well as information received from the Investigation Wing. It is apparent from the Assessment Order that the Assessing Officer has not conducted any independent and separate enquiry in the case of the assessee. Even, the statement recorded by the Investigation Wing has not been got confirmed or corroborated by the person during the assessment proceedings.

……..

31. We accordingly direct the Assessing Officer to accept the long term capital gains declared as such.

ii) **I.T.A. No.1691/Del/2019 dated 07.10.2019 in Reeshu Goelvs ITO**

18. …….. **Simply relying upon the general modus operandi and statement of some brokers recorded by the Kolkata Investigation Wing does not mean that all the transactions undertaken of the scrip M/s. CCL International Ltd. through the country by millions of subscribers are bogus. Thus, in absence of any material or evidence against the assessee, we do not find any reason as to why the claim of Long Term Capital Gain from sale of such share should be denied**. Consequently, the addition on account of commission is also deleted. Accordingly, we delete the addition made by the Assessing Officer.

The aforesaid decision affirmed by the Hon'ble Delhi High Court in the case of **Pr. CIT v. Reeshu Goel in ITA No. 173/2021 (Del) dated 14.12.2021**

7. This Court is of the view that there is no perversity in any of the findings given by the Tribunal.

8. The Supreme Court in the case of Ram Kumar Aggarwal &Anr. vs. Thawar Das (through LRs), (1999) 7 SCC 303 has reiterated that under Section 100 of the Code of Civil

Procedure, the jurisdiction of the High Court to interfere with the orders passed by the Courts below is confined to hearing on substantial question of law and interference with finding of the fact is not warranted if it involves re-appreciation of evidence. The Supreme Court in Hero Vinoth (Minor) vs. Seshammal, (2006) 5 SCC 545 has also held that "in a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible." It has also held that there is a difference between question of law and a "substantial question of law". Consequently, this Court finds that there is no perversity in the findings of the ITAT.

iii) 431 ITR 361 (Del) PCIT vs. Smt. Krishna Devi

iv) 200 Taxmann 186 (Del) (Mag)CIT v. Vishal Holding & Capital (P) Ltd.

15.1 **THAT NO ADDITION CAN BE MADE ON THE BASIS OF SURMISES, SUSPICION AND CONJECTURES:** It is also settled law that no addition can be made on the basis of surmises, suspicion and conjectures, as has been held by following cases:

i) **37 ITR 271 (SC) Uma Charan Shaw & Bros. Co. v. CIT**
Taking into consideration the entire circumstances of the case, we are satisfied that there was no material on which the Income-tax Officer could come to the conclusion that the firm was not genuine. There are many surmises and conjectures, and the conclusion is the result of suspicion which cannot take the place of proof in these matters.

ii) **37 ITR 151(SC) Omar Salay Mohammad Sait v CIT**
The conclusions reached by the Tribunal should not be coloured by any irrelevant considerations or matters of prejudice and if there are any circumstances which required to be explained by the assessee, the assessee should be given an opportunity of doing so. On no account whatever should the Tribunal base its findings on suspicious, conjectures or surmises nor should it act on no evidence at all or on improper rejection of material and relevant evidence or partly on evidence and partly on

suspicions, conjectures or surmises and if it does anything of the sort, its findings, even though on questions of fact, will be liable to be set aside by this Court.

iii) **26 ITR 736 (SC) Dhirajlal Girdharilal v CIT, Bombay**
When a Court of fact acts on material, partly relevant and partly irrelevant, it is impossible to say to what extent the mind of the Court was affected by the irrelevant material used by it in arriving at its finding. Such a finding is vitiated because of the use of inadmissible material

iv) **26 ITR 775 (SC) Dhakeshwari Cotton Mills Ltd. v CIT**
The estimate of the gross rate of profit on sales, both by the Income-tax Officer and the Tribunal, seems to be based on surmises, suspicions and conjectures. It is somewhat surprising that the Tribunal took from the representative of the department a statement of gross profit rates of other cotton mills without showing that statement to the assessee and without giving him an opportunity to show that that statement had no relevancy whatsoever to the case of the mill in question. Both the Income-tax Officer and the Tribunal in estimating the gross profit rate on sales did not act on any material but acted on pure guess and suspicion.

v) **37 ITR 288 (SC) Lal Chand Bhagat Ambica Ram v CIT**
The Tribunal in arriving at the conclusion it did in the present case indulged in suspicions, conjectures and surmises and acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, or the finding was, in other words, perverse and the Court is entitled to interfere.

vi) **91 ITR 8 (SC) CIT v Calcutta Discount Company Ltd.**

16 **Inconsistent and contradictory conclusions formed by learned Assessing Officer in the order of assessment since once the books of accounts so maintained by the appellant were not rejected by the learned Assessing Officer by invoking section 145(3) of the Act and,**

profit declared stands accepted as such. Thus addition made is not in accordance with law:

It is submitted that it is undisputed that, it is submitted appellant is regularly assessed to tax. It is submitted that the books of accounts of the appellant have been regularly maintained and also duly audited both under the Income Tax Act' 1961 and under the Companies Act' 2013. It is submitted that no defect has been pointed out in such books of accounts maintained by the appellant company even in the entire order passed u/s 153C/143(3) of the Act. In other words, the books of accounts so maintained by the appellant were not rejected by the learned Assessing Officer by invoking section 145(3) of the Act and, profit declared stands accepted as such. It is emphasized here that it is well settled law that in absence of rejection of books of accounts, **no addition can be made by assuming that assessee has made unaccounted receipts or made unaccounted payments in the instant year**. Reliance is placed on the following judgments:

i) **315 ITR 185 (P&H) CIT vs. OM Overseas**

ii) **320 ITR 116 (All) CIT vs. Mascot India Tools & Forgings (P) Ltd.**

iii) **64 DTR 409 (Jai) Asstt. CIT vs. Shankar Exports**

iv) **325 ITR 13 (Del) CIT vs. Paradise Holidays**

"6 The AO has not pointed out any specific defect or discrepancy in the account books maintained by the assessee. Admittedly, the assessee had been maintaining regular books of accounts, which were duly audited by an independent chartered accountant. As noted by CIT(A), the financial results were fully supported by the assessee with vouchers and the books of account were complete and correct in all respects. The accounts which are regularly maintained in the course o business and are duly audited, free from any qualification by the auditors, should normally be taken as correct unless there are adequate reasons to indicate that they are incorrect or unreliable. The onus is upon the Revenue to show that either the books of accounts maintained by the assessee were incorrect

or incomplete or method of accounting adopted by him as such that true profits of the assessee cannot be deducted therefrom."

v) **ITA No. 999/2010 dated 03.08.2010 (Del)CIT vs. M/s Rice India Exports Pvt. Ltd.**
"3 It is settled law that in revenue matters, the onus of proof is not a static one. Though the initial burden of proof lies on the assessee yet when it files purchase bills and affidavits, the onus shifts to the Revenue. One must not forget that it is Revenue which has powers regarding discovery, inspection, production and calling for evidence as well as survey, search, seizure and requisition of books of accounts."

vi) **ITA No. 165/2010 dated 04.05.2017 CIT vs. M/s Pashupati Nath Agro Food Products (P) Ltd**
"In view of the above, the Tribunal formed an opinion where once the account books are expected to be maintained in the prescribed accounting standard, the assessing officer could not have made any additions towards the sale of rice treating it to be outside the books of accounts or towards investing in stock of rice and wheat outside the books of accounts. In view of the above, the controversy as raised above in this appeal stands duly covered by the Tribunal and it cannot be said that any investment was done beyond the books of accounts."

17 It is submitted that section 69C of the Act reads as under:

"69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the [57][Assessing] Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year :]

Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.]"

17.1 It is submitted that it is evident from plain reading from aforesaid provision that where in any financial year an assessee has incurred any

expenditure and he offers no explanation about **the source of such expenditure or part thereof**, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year. It is thus submitted that focus under section 69C of the Act, is on source of expenditure and not on expenditure, therefore amount of expenditure must be paid by assessee during the year under consideration.

17.2 It is thus submitted that under section 69C of the Act; burden is on revenue to establish that assessee has **actually incurred expenditure** (must be paid in cash)and then only revenue can ask for explanation from assessee. It is submitted that It is submitted that in the instant case such burden has not been discharged by revenue and in absence thereof addition made is not in accordance with law. Reliance is also placed on the following judicial pronouncements:

i) **131 ITR 597 (SC) K.P. Varghese v. ITO**

ii) **159 ITR 71 (SC) CIT v. Shivakami Co. (P) Ltd.**

iii) **237 ITR 570 (SC) CIT vs. Smt. P. K. Noorjahan**

> "The appeals relate to the asst. yrs. 1968-69 and 1969-70. The assessee is a Muslim lady who was aged about 20 years during the previous year relevant to the asst. yr. 1968-69. On 15th November, 1967, she had purchased 16 cents of land in Ernakulam and the amount spent by her, inclusive of stamp and registration charges, for this purchase of Rs. 34,628. On 27th November, 1968, she purchased another 12 cents of land at Ernakulam and the total investment for this purchase was Rs. 25,902. The explanation of the assessee regarding the source of the purchase money for these investments was that the same were financed from out of the savings from the income of the properties which were left by her mother's first husband. The said explanation offered by the assessee was rejected except to the extent of Rs. 2,000 by the ITO who made an addition of Rs.

32,628 as income from other sources in the asst. yr. 1968-69 and an addition of Rs. 25,902 in the asst. yr. 1969-70. The said orders were affirmed in appeal by the AAC. The Tribunal, however, held that even though the explanation about the nature and sources of the purchase money was not satisfactory but in the facts and circumstances of the case it was not possible for the assessee to earn the amount invested in the properties and that by no stretch of imagination could the assessee be credited with having earned this income in the course of the assessment year or was even in a position to earn it for a decade or more. The Tribunal took the view that although the explanation of the assessee was liable to be rejected, s. 69 of the Act conferred only a discretion on the ITO to deal with the investment as income of the assessee and that it did not make it mandatory on his part to deal with the investment as income of the assessee as soon as the latter's explanation happened to be rejected. On that view, the Tribunal allowed the appeals of the assessee and cancelled the assessment made by the ITO."

iv) **107 ITR 938 (SC) Roshan Di Hatt vs. CIT**

v) **328 ITR 513 (SC) Sargam Cinema vs. CIT**

vi) **131 ITR 597 (SC) K.P. Varghese vs. ITO**

vii) **261 ITR 664 (Del) CIT vs. Naresh Khattar (HUF)**

viii) **328 ITR 516 (Del) CIT vs. Naveen Gera**

ix) **316 ITR 46 (Del.) CIT vs. Shakuntala Devi**

x) **335 ITR 572 (Del.) CIT vs. Bajrang Lal Bansal**

xi) **ITA no. 610/2012, Dated 19.10.2012 (Del) CIT vs Dinesh Jain HUF**

xii) **ITA No. 176/204 dated 25.4.2014 (Del) CIT v. Agile Properties (P) Ltd.**

xiii) **81 taxmann.com 257 (Bom) CIT v. Devesh Agarwal,**

xiv) **64 taxmann.com 332 (Del) ACIT *v.* Rakesh Narang,**

xv) **22 SOT 174 (Mum) Rupee Finance & Management (P.) Ltd. v ACIT**

17.3 In view of the above it is submitted that additions made are not in accordance with law.

18 In view of the aforesaid it is submitted that, the proceedings initiated by invoking the provisions of section 153C of the Act is non-est in law and without jurisdiction and therefore the orders passed u/s 153C read with section 143(3) of the Act deserves to be quashed as such.

19 It is therefore, prayed that, it be held that assessment made by the learned Assessing Officer and sustained by the learned Commissioner of Income Tax (Appeals) be quashed. It be further held that addition made and sustained by the learned Commissioner of Income Tax (Appeals) alongwith interest levied be deleted and appeals of the appellant be allowed.

20. On the other hand, Ld DR submitted that AO has to make detailed investigation, for that he has to issue notice u/s 153C. The AO also mentioned the same in the notice itself that this case falls u/s 153C of the Act, hence this is complete compliance as far as initiation of proceedings in the case of the assessee is concern. He submitted that the initiation of proceedings u/s 153C is just and proper and he supported the findings of lower authorities in this regard.

21. Considered the rival submissions and material placed on record. We observed from the record that the proceedings initiated in the case of the assessee on the basis of documents found during search in the case of PGPL (Annexure A), statement of Sh. Dinesh S Gupta and statement of Sh. Hari Om Goel (during Survey proceedings). By relying on the above statements, AO proceeded to make additions in the hands of the assessee. The Ld AR has submitted before us with regard to AY 2014-15 and 2015-16 that the assessment orders passed by AO is beyond the period of 6 assessment years immediately preceding AY relevant to the previous year in which search is conducted in the case of the assessee. After considering the submission of the rival parties, in order to initiate the proceedings u/s 153C, as per the provisions of the Act, the

preceding assessment year for the other person in whose hand proceedings u/s 153A to be initiated **depends** upon the receipt of books of account or documents or the assets allegedly pertain to the other person by the AO of the other person. It is fact on record that the AO of the assessee received the seized material only on 10.03.2021. Therefore, the relevant searched AY for the assessee is AY 2021-22. The six years prior to the AY 2021-22 starts from AY 2015-16. Therefore, the relevant period for reassessment would be from AY 2015-16 to AY 2020-21. Therefore, the AY outside the jurisdiction would be AY 2014-15. Hence, the assessment made for AY 2014-15 is outside the jurisdiction . Accordingly, the grounds raised by the assessee in this regard is partly allowed and the AY 2015-16 is within the jurisdiction. The above findings is determined based on the following ratio of the Hon'ble High Court decision in the case of RRJ Securities Ltd (supra), for the sake of brevity, the ratio of the decision is reproduced below:

> "24. As discussed hereinbefore, in terms of proviso to Section 153C of the Act, a reference to the date of the search under the second proviso to Section 153A of the Act has to be construed as the date of handing over of assets/documents belonging to the Assessee (being the person other than the one searched) to the AO having jurisdiction to assess the said Assessee. Further proceedings, by virtue of Section 153C(1) of the Act, would have to be in accordance with Section 153A of the Act and the reference to the date of search would have to be construed as the reference to the date of recording of satisfaction. It would follow that the six assessment years for which assessments/reassessments could be made under Section 153C of the Act would also have to be construed with reference to the date of handing over of assets/documents to the AO of the Assessee. In this case, it would be the date of the recording of satisfaction under Section 153C of the Act, i.e., 8th September, 2010. In this view, the assessments made in respect of assessment year 2003-04 and 2004-05 would be beyond the period of six assessment years as reckoned with reference to the date of recording of satisfaction by the AO of the searched person. It is contended by the Revenue that the relevant six assessment years would be the assessment years prior to the assessment year relevant to the previous year in which the search was

> conducted. If this interpretation as canvassed by the Revenue is accepted, it would mean that whereas in case of a person searched, assessments in relation to six previous years preceding the year in which the search takes place can be reopened but in case of any other person, who is not searched but his assets are seized from the searched person, the period for which the assessments could be reopened would be much beyond the period of six years. This is so because the date of handing over of assets/documents of a person, other than the searched person, to the AO would be subsequent to the date of the search. This, in our view, would be contrary to the scheme of Section 153C(1) of the Act, which construes the date of receipt of assets and documents by the AO of the Assessee (other than one searched) as the date of the search on the Assessee. The rationale appears to be that whereas in the case of a searched person the AO of the searched person assumes possession of seized assets/documents on search of the Assessee; the seized assets/documents belonging to a person other than a searched person come into possession of the AO of that person only after the AO of the searched person is satisfied that the assets/documents do not belong to the searched person. Thus, the date on which the AO of the person other than the one searched assumes the possession of the seized assets would be the relevant date for applying the provisions of Section 153A of the Act. We, therefore, accept the contention that in any view of the matter, assessment for AY 2003-04 and AY 2004-05 were outside the scope of Section 153C of the Act and the AO had no jurisdiction to make an assessment of the Assessee's income for that year."

Respectfully, following the above decisions, we hold that the assessment completed u/s 153C in AY 2014-15 is beyond jurisdiction and accordingly, the ground raised by the assessee is partly allowed.

22. With regard to other AYs are concerned, we observe that the AO of the assessee recorded the following satisfaction note, for the sake of brevity, it is reproduce below:

> **"4. Based on the details submitted by Pragati Glass Private Limited, Shri Dinesh S Gupta and analysis done, beneficiaries have been identified. As the parties (Chaudhary Trading Company) involved are making part payment in cash for the purchase of goods from the company M/s Pragati Glass Pvt. Ltd. same has to be taxed in their hands. I am satisfied that the**

> **incriminating documents found during the search as discussed above relates to the assessee Chaudhary Trading Company (CTC), PAN-ACCPC9165C. Therefore, it is a fit case for action as per provisions of section 153C of the Income Tax Act, 1961 in the case of Sh. Anil Chaudhary Prop. of M/s Chaudhary Trading Company (PAN- ACCPC9165C) for the A.Y. 2014-15 A.Y. 2019-20."**

23. In our view, the proceedings u/s 153C can be initiated only upon recording of satisfaction by the AO of the other person on receipt of the seized material from the AO of the searched person and then Assessing Officer shall proceed against such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. We observe that the satisfaction note recorded by the AO of the assessee, he has not recorded how the documents seized have a bearing on the determination of the total income of the assessee for six assessment years immediately preceding the assessment year. It clearly shows that the satisfaction note recorded are not as per the provisions of section 153C of the Act. We observe from the decision of Saksham Commodities Ltd (Delhi) (Supra), in which it is held as under:

> **"63.** On an overall consideration of the structure of Sections 153A and 153C, we thus find that a reopening or abatement would be triggered only upon the discovery of material which is likely to "have a bearing on the determination of the total income" and would have to be examined bearing in mind the AYs' which are likely to be impacted. It would thus be incorrect to either interpret or construe Section 153C as envisaging incriminating material pertaining to a particular AY having a cascading effect and which would warrant a mechanical and inevitable assessment or reassessment for the entire block of the "relevant assessment year".

64. In our considered view, abatement of the six AYs' or the "relevant assessment year" under Section 153C would follow the formation of opinion and satisfaction being reached that the material received is likely to impact the computation of income for a particular AY or AYs' that may form part of the block of ten AYs'. Abatement would be triggered by the formation of that opinion rather than the other way around. This, in light of the discernibly distinguishable statutory regime underlying Sections 153A and 153C as explained above. While in the case of the former, a notice would inevitably be issued the moment a search is undertaken or documents requisitioned, whereas in the case of the latter, the proceedings would be liable to be commenced only upon the AO having formed the opinion that the material gathered is likely to inculpate the assessee. While in the case of a Section 153A assessment, the issue of whether additions are liable to be made based upon the material recovered is an aspect which would merit consideration in the course of the assessment proceedings, under Section 153C, the AO would have to be prima facie satisfied that the documents, data or asset recovered is likely to "have a bearing on the determination of the total income". It is only once an opinion in that regard is formed that the AO would be legally justified in issuing a notice under that provision and which in turn would culminate in the abatement of pending assessments or reassessments as the case may be.

65. We would thus recognize the flow of events contemplated under Section 153C being firstly the receipt of books, accounts, documents or assets by the jurisdictional AO, an evaluation and examination of their contents and an assessment of the potential impact that they may have on the total income for the six AYs' immediately preceding the AY pertaining to the year of search and the "relevant assessment year". It is only once the AO of the non-searched entity is satisfied that the material coming into its possession is likely to "have a bearing on the determination of the total income" that a notice under Section 153C would be issued. Abatement would thus be a necessary corollary of that notice. However, both the issuance of notice as well as abatement would have to necessarily be preceded by the satisfaction spoken of above being reached by the jurisdictional AO of the non-searched entity.

> **66.** Therefore, and in our opinion, abatement of the six AYs' or the "relevant assessment year" would follow the formation of that opinion and satisfaction in that respect being reached.
>
> **67.** On an overall consideration of the aforesaid, we come to the firm conclusion that the "incriminating material" which is spoken of would have to be identified with respect to the AY to which it relates or may be likely to impact before the initiation of proceedings under Section 153C of the Act. A material, document or asset recovered in the course of a search or on the basis of a requisition made would justify abatement of only those pending assessments or reopening of such concluded assessments to which alone it relates or is likely to have a bearing on the estimation of income. The mere existence of a power to assess or reassess the six AYs' immediately preceding the AY corresponding to the year of search or the "relevant assessment year" would not justify a sweeping or indiscriminate invocation of Section 153C.
>
> **68.** The jurisdictional AO would have to firstly be satisfied that the material received is likely to have a bearing on or impact the total income of years or years which may form part of the block of six or ten AYs' and thereafter proceed to place the assessee on notice under Section 153C. The power to undertake such an assessment would stand confined to those years to which the material may relate or is likely to influence. Absent any material that may either cast a doubt on the estimation of total income for a particular year or years, the AO would not be justified in invoking its powers conferred by Section 153C. It would only be consequent to such satisfaction being reached that a notice would be liable to be issued and thus resulting in the abatement of pending proceedings and reopening of concluded assessments."

24. Respectfully following the above decision and we observe from the satisfaction recorded in this case, the AO failed to record the satisfaction as per the provisions of the Act and failed to record the assessment of the potential impact on the income not declared by the assessee earlier and the impact that may have on the total income for the six AYs immediately preceding the AY, in this case AY 2021-22. Therefore, non recording of proper satisfaction to initiate the proceedings u/s 153C of the Act, the proceeding initiated in the present case

is without proper jurisdiction. Accordingly, the ground raised by the assessee is allowed.

25. We observe that the assessee also raised several issue relating the jurisdictional issues on initiation of proceedings u/s 153C of the Act, since we already decided the issue on non recording the satisfaction on the basis of bearing on or impact on the total income of years or block of years to initiate the proceedings u/s 153C is bad in law. Hence other jurisdictional issues are not adjudicated and also the assessee has elaborately submitted the issues on merit, since we already decided the issue on the improper recording of satisfaction, we have not adjudicated the same on merits also. These issues are kept open at this stage.

25.1 Accordingly, the grounds raised by the assessee are partly allowed and set aside other assessment years viz, AY 2014-15 to 2019-20.

26. In the result, appeals filed by the assessee are allowed.

Order pronounced in the open court on this 30th day of August, 2024.

Sd/-	**sd/-**
(ANUBHAV SHARMA)	**(S.RIFAUR RAHMAN)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 30.08.2024
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-24, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI