

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES, "SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष  
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 410/JP/2024  
निर्धारण वर्ष / Assessment Year : 2012-13

M/s. Gemco International 3950, Lal Haweli, MSB Ka Rasta Johari Bazar, Jaipur 302 003	बनाम Vs.	The ITO Ward 2(1) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAJFG 9238 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Vivek Bhargava, CA  
राजस्व की ओर से / Revenue by: Shri Gautam Singh Choudhary, JCIT-DR

सुनवाई की तारीख / Date of Hearing : 19/09/2024  
उदघोषणा की तारीख / Date of Pronouncement: 04/10/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the Id. Addl.CIT(A)-12, Mumbai dated 08-02-2024 for the assessment year 2012-13 raising therein following grounds of appeal.

"1. The Id. CIT (Appeals) erred in law and on facts in confirming the assumption of jurisdiction by the Id. AO u/s 147/148 whereas the assessment of other person other than the searched person based on seized material can be made u/s 153C read with section 153A.

2. The Id. CIT (Appeals) erred in law and on facts in confirming the issuance of notice u/s 148 by the Id. AO which was issued on the basis of information received from a different AO and without independent verification of the information and independent application of mind over the information

received. The Id. CIT (Appeals) dismissed the ground without considering the written submission and paper book.

3. The Id. CIT (Appeals) erred in law and on facts in holding that the issue of not providing the copy of approval of jurisdictional PCIT, copy of letter from investigation wing. Mumbai and other documents was not raised before the Id. AO and hence rejected the ground no. 2 of the appeal without considering the written submission of the assessee duly supported by paper book.

4. The id. CIT (Appeals) erred in law and on facts in confirming the rejection by the Id. AO of the objections against the reopening of assessment and issue of notice u/s 148.

5. (a) The Id CIT(Appeals) erred in law and on facts in confirming the disallowance of Rs. 2,63,245/- being 25% of alleged non verified and bogus purchase from following two suppliers-

1. M/s AVI Exports Rs. 1,37,278/-
2. M/s. Nazar Impex Pvt Ltd Rs. 9,15,702/-

(b) The Id. CIT (Appeals) erred in law and facts in confirming the rejection of books of accounts of the assessee.

6. The Id. CIT (Appeals) erred in law and on facts in not quashing the assessment order as the same was passed without providing opportunity to cross examine Shri Rajendra Jain Prop. M/s AVI Exports and Shri Sanjay Choudhary Director of M/s Nazar Impex Pvt. Ltd.

2.1 The brief facts of the case are that assessment in the case of assessee under section 147 read with section 143(3) was completed by making disallowance of bogus purchases debited in P & L account of Rs. 2,63,245/-.

2.2 Although appeal was filed by the assessee but remained unsuccessful as the Appeal of the assessee was dismissed.

2.3 Aggrieved by the order of Id. CIT(A), the assessee preferred the present appeal before me on the grounds mentioned hereinabove.

3.1 Ground No. 1 raised by the assessee relates to challenging the order of ld. CIT(A) in confirming the assumption of Jurisdiction by the AO under section 147/148 of the IT Act.

3.2 In this regard ld AR reiterated the same arguments as were raised by him before the revenue authorities and also relied upon his written submissions. The same is reproduced here in below.

**“Ground No. 1**

The ld. CIT (Appeals) erred in law and on facts in confirming the assumption of jurisdiction by the ld. AO u/s 147/148 whereas the assessment of other person other than the searched person based on seized material can be made u/s 153C read with section 153A.

**Order passed by ld. CIT (Appeals)**

2. Assessee raised this ground of appeal as ground no. 6 before the ld CIT (Appeals). The ld CIT (Appeals) dismissed this ground and commented as under:-

*“8. Ground No. 6 – In this ground, the appellant has contended that his assessment should have been made u/s 153C r.w.s. 153A rather than u/s 148. In this regard, it is stated that the basic objective and purpose of provision of section 153C is to address persons other than searched. As per the amended provisions of section 153C, this can be revoked on the basis of seized documents which “belongs to or belong to” has been substituted by the Parliament to “pertain to or pertains to”. In the instant case, the search was carried out in the case of Rajendra Jain and Shri Sanjay Chaudhary and Others. It was found that M/s Avi Exports and M/s Nazar Impex Limited were bogus concerns belonging to these two persons. The Department had busted the entire racket of person who were involved in providing bogus entries in lieu of commission. Therefore, on the basis of evidences gathered during the search and seizure, it was concluded that these persons floated many such paper concerns for providing*

*accommodation entries on commission basis. In the **shared information**, it was intimated that the appellant is **one of the beneficiaries** of bogus purchases from these two concerns. Therefore, the AO was well within his jurisprudence to reopen the case of the appellant u/s 148, having “reasons to believe” that some income has escaped assessment well within the meaning of section 148. Besides, the appellant **never raised these issues before the AO** and raising an academic issue like at the appellate stage **tantamounts to distracting the Department from the real issue**. In view of this, the Ground No. 6 is dismissed. “*

3. Thus according to the learned CIT (Appeals) four important reasons are there for dismissal of this ground of appeal:-

- i. Amendment in the Act (pertain to or pertains to in place of belongs to or belong to) and 153C can be invoked on the basis of seized document which belongs to or belong to search person.
- ii. In the shared information, Assessee is one of the beneficiaries of bogus purchases from these two concerns.
- iii. AO was well within his jurisprudence to reopen the case of the assessee u/s 148.
- iv. Appellant never raised these issues before the AO and raising an academic issue like this at appellant stage tantamounts to distracting the department from the real issue.

4. Now we will submit our submission on above observations of learned CIT (Appeals)

a. Learned CIT (Appeals) gave strength to the amendment in words “**belongs to or belong to**” by “**pertain to or pertains to**”. We agree to this change and Hon’ble Supreme Court has confirmed this amendment retrospectively on cases prior to 01.06.2015. **But this change is made to give power and strength to section 153C and it not gives power to assessing officer to proceed u/s 147-148.**

In the case of ITO vs Vikram Sujitkumar Bhatia [2023 TaxPub(DT) 2189(SC)] held:-

“Section 153C is a machinery provision and whole interpreting machinery provisions of a taxing statute, courts must give effect to its manifest purpose by construing it in such a manner so as to effectuate the object and purpose of the statute. If the submission on behalf of assessee’s that despite the fact that incriminating materials were found in the form of books of account or documents or assets pertaining to them from the premises of the searched person, still they might not be subjected to the proceedings under section 153C solely on the ground that search was conducted prior to the amendment was made, in that case, the very object and purpose of the amendment to section 153C, which was by way of substitution of the words 'belongs or belong to' by the words 'pertains or pertain to' would be frustrated. Accordingly, the amendment brought to section 153C vide Finance Act, 2015 is to be considered as retrospective in nature and, therefore, would be applicable to searches conducted under section 132 before 1-6-2015.”

Our case is framed on the basis of material belongs to or pertains to during search and seizure action u/s 132 and on statement of third party during the search and seizure action. The contention that Learned AO was well within his jurisprudence because assessee is one of the beneficiaries of the bogus bills is not correct when the case is made out of material seized during the search. It is also submitted that the specific provision of S. 153C would prevail over the general provisions of section 147 especially in the case of 3<sup>rd</sup> party.

Recently Hon’ble Rajasthan High Court In the matter of **Shyam Sunder Khandelwal vs ACIT, Central Circle-2, Jaipur** while allowing **DB civil writ petition no. 18363/2019** held-

*“The department has not set up a case that for initiating proceedings under section 148 it had material other than the material seized during the search of Manihar Group. The contention was that though the material with regard to unaccounted loan advanced to by the petitioner was received, the earning of interest on unaccounted loan was derivation of the AO from the material received. The submission is that the derived conclusion cannot be acted upon under section 153C.*

*The submission lacks merit and shall defeat the concept of single assessment order for each of relevant preceding years for assessing 'total income' in case of incriminating material found during search or requisition.*

Recently Delhi High Court while disposing batch of more than **90 writ petition, delivered a landmark judgment** vide its order dated 03.04.2024 in **Ojus Medicare (p) Ltd. [2024]taxmann.com 160** held that:-

“119.....

A...

B....

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

Further assessee places reliance on the decision of Bombay High Court in the case of M/s Aditi Constructions vs. Deputy Commissioner of Income Tax, WP no. 783/2016, wherein it was held

“9. We find that the jurisdictional conditions for invoking section 147-148 are not satisfied as there is no failure to disclose material facts fully and truly. It is not in dispute that by the letter dated 11<sup>th</sup> September 2015 (Exhibit H) the petitioner have submitted all the particulars along with supporting

*documents to the Respondent No. 1. Hence the reasons to believe and a presumption based on the statement of Shri Bhanwarlal Jain (a third party) in the course of a search, that the loans of the entities were bogus or accommodation entries was clearly dispelled. Moreover the specific provisions of S. 153C would prevail over the general provisions of section 147 in the case of search on 3rd Party.”*

**ITAT Jaipur Bench** in the case of Navrattan Kothari vs Asstt. CIT [2017 TaxPub (DT) 5604 (JP-Trib) took the view that when the entire decision of the AO to reassess the income of the assessee is based on the seized material and statement of M recorded under section 132(4) for which the specific remedy is provided under section 153C.

**ITAT Visakhapatnam Bench** in the case of G. Koteswara Rao & Ors. vs DCIT [2016 TaxPub (DT) 0070] held that:-

*“17. Considering the facts and circumstances of the case and also applying the ratios of the above mentioned decisions, we are of the considered opinion that the assessing officer, has no jurisdiction to issue notice under section 148 of the Act to reopen the assessments in respect of those six assessment years immediately preceding the assessment year in which search is conducted or requisition is made. **The period under consideration falls within the exclusive domain of section 153A. In the instant case, since the assessment is made consequent to search in another case, the assessing officer is bound to issue notice under section 153C and thereafter proceed to assess or reassess total income under section 153A of the Act. The assessing officer, instead of complying with the provisions of section 153C, proceeded with the reassessment under section 147/148 which is not applicable to search cases. Therefore, the impugned assessment order passed under section 143(3), read with section 147 of the Income Tax Act, 1961 is illegal, arbitrary and without any jurisdiction. Hence, the assessment order dated 31-12-2010 passed under section 143(3) read with section 147 is quashed.**”*

ITAT Jaipur Bench followed this decision in the case of Madho Lal Saini vs ITO [2023 Taxpub (DT) 4617] (Jp- Trib)

14. In the present case on hand, admittedly, the assessing officer has reopened the assessment based on a search conducted in a third party case. The assessing officer formed the opinion based on the statement recorded from the assessee, consequent to post search proceedings taken up by the DDIT(Inv), which shows undisclosed income which is the very basis of reopening the assessment. The search is conducted on 22-8-2008 which comes under the assessment year 2009-10. The assessing officer reopened the assessment year 2008-09, which is falling within those six assessment years immediately preceding the assessment year in which search is conducted. The assessee case falls within the provisions of section 153C, as the incriminating document seized in the case of search in another case. The assessing officer, on satisfying the above condition is under obligation to issue notice to the person requiring him to furnish the return for the six assessment years immediately preceding the assessment year in which search is took place. Thereafter, the assessing officer has to assess or reassess the total income of those six assessment years. The word 'shall' used in section 153A made it clear that the assessing officer has no option, but to issue notice and proceed thereafter to assess or reassess the total income. In the instant case, the assessing officer issued notice under section 148 to reopen the assessment. Therefore, in view of the non-obstante clause begin with section 153A, the assessing officer has no jurisdiction to issue notice under section 148 reopen the assessment of those six assessment year which falls within the exclusive jurisdiction of section 153A. Though, both provisions of the Act empowers the assessing officer to assess or reassess the income escaped from assessment, both sections are dealing with different situations. Section 147 comes into operation when, the assessing officer believes that there is an escapement of income chargeable to tax, either from the return already filed or through some external material evidence came to his knowledge, which shows the escapement of income. Whereas, section 153A comes into operation when there is search under section 132 or books of accounts, or any other asset or other documents requisitioned under section 132A. If assessing officer justified in proceeding with section 147 to reopen the assessment, then there would be no relevance to section 153A, which was inserted in to the Act to deal exclusively with search cases. **The legislators in their wisdom clearly spelt out the provisions of law applicable to search cases by using the word shall to begin with section 153A, made it mandatory that the assessing officer bound to issue notice under section 153A or 153C, thereafter proceed to assess or reassess the total income, where search is**

**conducted under section 132 or requisition is made under section 132A. Therefore, in our opinion, the assessing officer is not justified in reopening the assessment under section 147 and his order is illegal and arbitrary.**

- b. We have covered point (i) to (iii) of para 3 in (a) above and now we would like to reply to final observation of learned CIT(A) which says that assessee never raised these issues before the AO and raising an academic issue like this at the appellate stage tantamounts to distracting the Department from the real issue. We respectfully submit that assessee raised this issue in his final objection filed on 15.07.2019 **(PB-139-141)**. Further learned AO at the time of disposing the objection on 17.07.2019 discussed this issue and rejected the same **(PB-142-144 para 4)**

From the reply of learned AO in order dated 17/07/2019 it is clear **that learned CIT (Appeals) did not read the submission of the assessee and rejected the ground arbitrarily.**

- c. So far as submission of the learned AO is concerned we would like to submit that in the matter of **Madho Lal Saini (supra)** this bench clearly said that

*“ 14. In the present case on hand, admittedly, the assessing officer has reopened the assessment based on a search conducted in a third party case. The assessing officer formed the opinion based on the statement recorded from the assessee, **consequent to post search proceedings taken up by the DDIT (Inv)**, which shows undisclosed income which is the very basis of reopening the assessment. ....*

*..... Though, both provisions of the Act empowers the assessing officer to assess or reassess the income escaped from assessment, both sections are dealing with different situations. Section 147 comes into operation when, the assessing officer believes that there is an escapement of income chargeable to tax, either from the return already filed or through some external material evidence came to his knowledge, which shows the escapement of income. Whereas,*

*section 153A comes into operation when there is search under section 132 or books of accounts, or any other asset or other documents requisitioned under section 132A. If assessing officer justified in proceeding with section 147 to reopen the assessment, then there would be no relevance to section 153A, which was inserted in to the Act to deal exclusively with search cases. **The legislators in their wisdom clearly spelt out the provisions of law applicable to search cases by using the word shall to begin with section 153A, made it mandatory that the assessing officer bound to issue notice under section 153A or 153C, thereafter proceed to assess or reassess the total income, where search is conducted under section 132 or requisition is made under section 132A. Therefore, in our opinion, the assessing officer is not justified in reopening the assessment under section 147 and his order is illegal and arbitrary.***

- d. In view of above decisions statement of learned AO that no material is handed over is not correct. He received all the details in the name of Information and copy of recorded statements of Rajendra Jain & Sanjay Choudhary as is evident from reasons recorded by him. Recent decision of Jurisdictional High Court (Rajasthan High Court) in the matter of Shyam Sunder Khandelwal (Supra) also supports this view. Hon'ble Jaipur Bench of ITAT on material handed over by Investigation Wing, in the matter of Madho Lal Saini (supra) also supports this view.

**Relief Sought-**

We request you to quash the notice issued u/s 148 and the assessment order.”

It was also submitted that ld. CIT(A) erred in confirming the assumption of Jurisdiction by the AO under section 147 and 148 of the Income Tax Act where as the assessment of other person other than the search person based on seized material can be made only under section 153C read with section 153A of the

Income Tax Act. Therefore it was requested to quash the proceedings initiated by the AO under section 147 and 148 of the income tax Act. In this regard learner AR also relied upon judgements mentioned below:-

- 1, Shyam Sunder Khandelwal Vs. ACIT (Raj) DB CWP 18363/2019
- 2 PCIT Ojjus Medicare (2024) taxmann.com 160 ITA No. 52/2024
- 3 Aditi Constructions v ACIT WP no. 783/2016 (Mumbai HC)
- 4 Navrattan Kothari vs. Asstt. CIT 2017 TaxPub(DT) 5604(Jp-Trib)
- 5 G. Koteswara Rao & Ors. Vs. DCIT 2016 TaxPub(DT) 0070 (Visakhapatnam-Trib)
- 6 Madholal Saini v ITO (2023) Taxpub (DT) 4617 (Jp-Trib)
- 7 ITO v Vikram Sujit Bhatia (2023) TaxPub(DT) 2189(SC)
- 8 Shri Ram Mohan Rawat vs. The Income Tax Officer, Ward 2(1), Jaipur, ITA No. 1014/JP/2018
9. Amar Jewellers Ltd. vs. Dy. CIT, (2018) 405 ITR 0561 (Guj-HC)
10. Ambey Construction co v ACIT 2019 TaxPub(DT) 1681 Amritsar
- 11 Principal Commissioner of Income-tax-5 vs. Manzil Dinesh Kumar shah 101 taxmann.com 259 (SC)
- 12 CIT vs. RMG Polyvinyl (1) Ltd. (2017) 396 ITR 0005 (Del- HC)
- 13 Pr. CIT vs. Meenakshi Overseas (P) Ltd. (2017) 395 ITR 0677 (Del-HC)
- 14 DCIT v Shradha Tradelinks Pvt Ltd 2021 TaxPub (DT) 2132 (Mum-Trib)
15. Deepraj Hospital (P) Ltd. & Anr vs. ITO, (2018) 065 ITR (Trib) 0663 (Agra-Trib)

16 CIT vs. N.C. Cables Ltd. (2017) 391 ITR 0011 (Del-HC)

17. Holyfaith International P Ltd v DCIT 069 ITR (Trib) 0687 (Amritsar)

18.

18 Phool Chand Bajrang Lal vs. ITO, (1993) 203 ITR 0456 (SC)

19 GKN Driveshafts (India) Ltd. vs. ITO, (2003) 259 ITR 0019 (SC)

20 Sabh Infrastructure Ltd. vs. Asstt. CIT, (2017) 398 ITR 0198 (Del-HC)

21 Kachwala Gems vs. Jt. CIT, (2007) 288 ITR 0010 (SC)

22. Sanjay Oilcake vs. CIT, (2009) 316 ITR 0274 (Guj-HC)

23 M/S G-Tech Industries vs Union of India and another CWP 12747 of 2016 dated 22/06/2016 (P&H)

24 Kishinchand Chellaram vs. CIT, Bombay City-II, (1980) 125 ITR 0713 (SC)

25 Kalra Glue Factory vs. Sales Tax Tribunal & Ors., (1987) 167 ITR 0498 (SC)

26 PS Abdul Majeed v Agri Income Tax and Sales Tax Officer (1994) 209 ITR 821 (Kerla)

27 Commissioner of Income Tax vs. Eastern Commercial Enterprises, (1994) 210 ITR 0103 (Cal-HC)

28 Andaman Timber Industries vs. CCE, (2015) 281 CTR 0241 (SC)

3.3 On the other hand LD DR relied upon the orders passed by the revenue authority. It was submitted that this ground was not taken by the assessee at the stage of assessment and now in order to deviate the attention from the main issue, the assessee has raised this ground which is not sustainable in the eyes of law, as the AO has rightly invoked the reopening of assessment by initiating proceedings under section 147 and 148 of the income tax Act. Dr also relied upon the decisions of different courts.

1. 45 ITR 206(SC) SUPREME COURT OF INDIA C. Vasantat and Co vs Commissioner of Income-tax
2. M/S Home Finders Housing Ltd vs Income Tax Officer MADRAS HIGH COURT
3. [2018] 94 taxmann.com 333 (Gujarat) HIGH COURT OF GUJARAT Amit Polyprints (P) Ltd. v. Deputy Commissioner of Income tax
4. [2018] 89 taxmann.com 45 (Rajasthan) HIGH COURT OF RAJASTHAN Ankit Agrochem (P) Ltd. Joint Commissioner of income-tax, Range-1, Bikaner
5. [2003] 132 TAXMAN 629 (RAJ) HIGH COURT OF RAJASTHAN Rameshwar Lal Mali v. Commissioner of Income-tax
6. Shailesh S Patel vs ITO, Ward-5, Palanpur [2018] 97 taxmann.com 570 (Ahd. Trib)

3.4 I have heard the Counsel for both the parties and have also perused the material placed on record, judgements cited before me and also the orders passed by the revenue authorities. From the records, I noticed that the assessee is a residential firm and the year under consideration is the first year of business of the assessee firm. The case of the assessee was reopened on the basis of information received from Investigation Wing, Mumbai, on the basis of search and seizure action under section 132 of the Income Tax Act was carried out in the case of Rajendra Jain, Sanjay Chaudhary, and Shri Dharmendra Jain. During the course of search and seizure action, statements of Shri Rajendra Jain, Shri Sanjay Chaudhari, and Shri Surendra Jain and other key persons of Rajendra Jain group were recorded wherein they have admitted that all the concerns controlled and operated and managed by them are not doing any real trading but in paper transactions only.

They have further admitted that Avi Exports and Nazar Impex Private Limited are the two of such concerns. It was further mentioned that the assessee is one of the beneficiaries of firms M/s. Avi Exports and Nazar Impex Private Limited, which were bogus concerns of Rajendra Jain Group. Accordingly notice under section 147 of the Income Tax Act was issued for initiating proceedings of reopening in the case of assessee. However during the course of assessment, assessee denied allegations and sought details and information and also sought opportunity to cross examine the department's witnesses but the AO completed assessment under section 147/148 of the Income Tax Act. Now the question for me to determine under this ground of appeal is as to whether the AO was right in initiating proceedings and assuming jurisdiction under section 147 and 148 of the Income Tax Act or the assessment of other person other than searched person based on seized material can be made under section 153 C read with section 153A of the Income Tax Act. On analysing the orders passed by the revenue authorities, I found that Id. CIT(A) dismissed this ground raised by the assessee by mentioning that Assessee was one of the beneficiary of bogus purchases and AO was well within his jurisdiction to reopen the case of the assessee and it was also mention that the assessee has not raised this issue before AO.

3.5 I have gone through the entire records placed before me and the factual position mentioned therein. From the records I noticed that Honourable Supreme

Court in the case of ITO versus Vikram Sujit Kumar Bhatiya (2023) TaxPub 2189

(SC) has confirmed that the amendment carried out in section 153C is to be retrospectively effective and thus this amendment rather strengthen section 153C of the income tax Act but at the same time does not empowers AO to proceed under section 147 read with section 148 of the Income Tax Act. The decision of Hon'ble Supreme Court is enumerated as under:-

“Section 153C is a machinery provision and whole interpreting machinery provisions of a taxing statute, courts must give effect to its manifest purpose by construing it in such a manner so as to effectuate the object and purpose of the statute. If the submission on behalf of assessee's that despite the fact that incriminating materials were found in the form of books of account or documents or assets pertaining to them from the premises of the searched person, still they might not be subjected to the proceedings under section 153C solely on the ground that search was conducted prior to the amendment was made, in that case, the very object and purpose of the amendment to section 153C, which was by way of substitution of the words 'belongs or belong to' by the words 'pertains or pertain to' would be frustrated. Accordingly, the amendment brought to section 153C vide Finance Act, 2015 is to be considered as retrospective in nature and, therefore, would be applicable to searches conducted under section 132 before 1-6-2015.”

It is undisputed fact that the basis of reopening in the present case is on the basis of material belongs to or pertains to the assessee, found during the search and seizure, action under section 132 of the Income Tax Act and also on the basis of statements of third party recorded during search. Even AO has categorically held that Assessee is one of the beneficiary of the bogus bills. Since the assessee is a third party and in my view the specific provisions of section 153 C would prevail upon

the general provision of action 147 specially in the case of third party and this proposition has already been upheld by the Hon'ble Jurisdictional High Court in the case of Shyam Sundar Khandelwal versus ACIT (Supra) in DB civil writ Petition No. 18363 of 2019. After having gone through the entire facts, circumstances and the legal proposition as discussed before me in the present case, I am of the consider view that in the instant case since the entire decision of the AO to reassess the income of the assessee is based on seized material and statement recorded under section 132(4) for which specific remedy is provided under section 153C of the Act. Even otherwise since the assessment is made consequent to search in another case, the AO is bound to issue notice under section 153C and thereafter proceeded to assess or reassess total income under section 153A of the Act. But the AO instead of complying with the provision of section 153C, proceeded with the reassessment under section 147 and 148 of the income tax Act which is not applicable to search cases. Therefore, the impugned assessment order passed under section 143 (3) read with section 147 of the Income Tax Act 1961 is illegal, arbitrary and without any jurisdiction. Hence, the assessment order passed under section 143(3) read with section 147 is hereby quashed. Therefore this ground raised by the assessee stands allowed.

4.0 Since I have already quashed the assessment order passed under section 143(3) read with section 147 of the Income Tax Act, therefore, now there is no

need to adjudicate the other Grounds raised by the assessee in the present appeal as the same are academic in nature.

5. In the result, the appeal filed by the assessee stands partly allowed with no order as to cost.

Order pronounced in the open court on 04/10/2024.

Sd/-

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 04/10/2024

\*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- M/s. Gemco International, Jaipur
2. प्रत्यर्था / The Respondent- The ITO, Ward 2(1), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 410/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar