

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER,
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER

ITA NO. 790/Del/2021	
A.YR. : 2011-12	
DCIT, CIRLCE-10(1), C.R. BUILDING, I.P. ESTATE, NEW DELHI – 2	VS. ANJANI KUMAR GOENKA, N-86, CONNAUGHT PLACE, NEW DELHI – 1 (PAN: AAGPG6344M)
(APPELLANT)	(RESPONDENT)

Appellant by : Sh. Amit Goel, CA
Respondent by : Mr. Javed Akhtar, CIT(DR)

Date of hearing : 08.10.2024
Date of pronouncement : 15.10.2024

ORDER

PER SHAMIM YAHYA, AM :

The Revenue has filed the instant appeal against the order dated 03.02.2020 of the Ld. CIT(A)-4, New Delhi relating to assessment year 2011-12 on the following grounds:-

- 1. The Ld. CIT(A) erred in law in cancelling the assessment, ignoring the fact that, as per the ratio of decision of the Delhi High Court in the case of PCIT vs. Meeta Gutgutia (2017) 395 ITR 526, proceeding u/s. 153A could not be initiated u/s. 147 was not applicable.*
- 2. The Ld. CIT(A) erred in law in ignoring that, in view of the binding decision of the Delhi High Court, assessment u/s. 147 of the Act was*

not only permissible but the only permissible but the only course of action available for assessing the income which had escaped assessment in this case.

3. (a) *The Ld. CIT(A) is erroneous and not tenable in law and on facts.*
(b) *The appellant craves leave to add, amend any / all grounds of appeal before or during the course of hearing of appeal.*

2. Briefly stated facts are that the assessee filed his original return of income for the year under consideration on 26.09.2021 disclosing total income of Rs. 3,57,68,335/-. Later, the case of the assessee was reopened by issuing notice u/s. 148 of the Act dated 30.3.2018. In response thereto, the assessee filed his return of income on 08.10.2018 declaring the income of Rs. 3,57,68,340/-. In this case, a search operation was carried out u/s. 132 of the Act at the premises of the assessee on 26.07.2017. The reasons recorded before issue of notice u/s. 148 of the Act to the assessee on 17.10.2018 and notice u/s. 143(2) was also issued on 4.12.2018. It transpires from the reasons recorded before issue of notice u/s. 148 of the Act by the AO for assuming jurisdiction u/s. 147/148 of the Act and the assessment made is based upon the evidences found during search operation u/s. 132 of the Act. The said reasons were based on a statement recorded u/s. 132(4) during search operation. The AO made additions of Rs. 13,30,94,093/- and Rs. 1,32,03,892/-. The addition of Rs. 13,30,94,093/- has been made on account of investment in share of a company Unnati Vinimoy Pvt. Ltd. and another addition of Rs. 1,32,03,892/- has been made on account unexplained investment u/s. 69 of the Act which is related to the investment in shares and AO completed the assessment vide order dated 25.12.2018 passed u/s. 143(3) r.w.s. 147 of the Act by determining the total income at Rs. 18,20,66,320/-.

3. Against the aforesaid assessment order, assessee appealed before the Ld. CIT(A), who after considering the detailed submissions made by the assessee

before him, vide his order dated 03.02.2020 has allowed the appeal of the assessee by observing as under:-

“6.1 It flows out from the facts of the instant case that the reasons recorded before issue of notice u/s 148 of the Act by the AO for assuming jurisdiction u/s 147/148 of the Act and the assessment made is based upon the evidences found during search operation u/s 132 of the Act. It is seen that the said reasons are based on a statement recorded u/s 132(4) during search operations. The AO has made additions of Rs. 13,30,94,093/- and Rs. 1,32,03,892/-. The addition of Rs. 13,30,94,093/- has been made on account of investment in share of a company Unnati Vinimoy Pvt Ltd and another addition of Rs. 1,32,03,892/- has been made on account of unexplained investment u/s 69 of the Act which is also related to the investment in 'shares'.

6.2 The chronology of the events in the instant case is as follows. A search operation was carried out u/s 132 of the Act at the premises of the appellant (G.D. Goenka Group) on 26.07.2017. Notice u/s 148 of the Act for the instant assessment year was issued on 30.03.2018. Return of Income in response to the notice was filed on 08.10.2018. The reasons recorded before issue of notice u/s 148 were provided to the appellant on 17.10.2018. Notice u/s 143(2) was issued on 04.12.2018 and the assessment was completed on 25.12.2018.

6.3 It has been contended by the appellant that even if it is presumed that for the year under consideration, the AO was justified in initiating the reassessment proceedings and pass the reassessment order, then such reassessment proceedings/

reassessment order could have been u/s 153A of the Act alone and not u/s 148/147 of the Act. Thus the notice issued u/s 148 and the impugned assessment order passed are bad-in-law, without jurisdiction and non-est.

6.4 By a reference to the provisions of 2nd proviso to section 153A of the Act, it has been argued that once search has taken place, even the pending proceedings as on date of search for any of the ten assessment years specified in section 153A of the Act stand abated, leave alone the question of issuing fresh notice for assessment/reassessment for any of the aforesaid ten assessment years covered u/s 153A under any other section of the Act other than section 153A itself.

6.5 The appellant has placed reliance on the following judicial pronouncements -

- 1. STATE BANK OF INDIA VERSUS DEPUTY COMMISSIONER OF INCOME- TAX 2013 (12) TMI 187 - ITAT MUMBAI*
- 2. VASHDEV G. ADNANI VERSUS ACIT 2015 (1) TMI 1387 - ITAT MUMBAI*
- 3. Ramballabh Gupta (MP) 288 ITR 347*
- 4. Rajat Shubra Chatterji vs. ACIT (2016 (7) TMI 258 - ITAT DELHI)*
- 5. Shri NAVRATTAN KOTHARI VERSUS THE ACIT2017 (12) TMI 860 - ITAT JAIPUR*

6. *G. KOTESWARA RAO AND OTHERS VERSUS DCIT 2015 (12) TMI 1280 - ITAT VISAKHAPATNAM*

7. *SRI MOTI PANJABI, HUF& Others, V ACIT, 2012 (11) TMI 1114 - ITAT PUN*

6.6 *On the basis of ratios laid down in the aforesaid judgements, it has been forcefully argued that it is a settled law that once a search has taken place u/s 132 of the Act or requisition is made u/s 132A of the Act, then assessment proceedings in respect of the assessment years (earlier six years, now in material point in time ten years) specified in section 153A has to be mandatorily initiated and completed u/s 153A of the Act. The assessment proceedings cannot be initiated u/s 148/147 of the Act in respect of the assessment years covered u/s 153A of the Act.*

6.7 *In the light of the facts and circumstances of the case emanating from, the assessment order and judicial decisions cited above, i have considered the submissions and arguments advanced by the appellant in calling in question the jurisdiction of the AO. The Hon'ble M P High Court, in the case of Ramballabh Gupta 288 ITR 347 had an occasion to examine the provisions of section 148 and section 153A of the Act. The Hon'ble Court held that in order to decide the legality and validity of the notice issued under section 148 of the Act, it is necessary to see as to whether the conditions precedent provided in section 148 are satisfied or not. Once the conditions prescribed under section 148 are found present in the notice issued, in that event, the notice has to*

be upheld having been issued in conformity with the requirement of section 148. The only fetter put on the powers of the AO in taking recourse to section 148 is that it cannot be issued in relation to those assessment years which are defined in section 153A. In all other cases and for all other assessment years, section 148 can always be resorted to subject of course to the condition that it must satisfy the requirement specified in section 148 of the Act.

6.8 *Hon'ble ITAT, Mumbai in the case of State Bank of India versus Deputy Commissioner of Income-Tax (2013) 22 ITR 609, held that in view of the non obstante clause with which sub-section (1) of section 153A opens, the AO has no jurisdiction to issue notice under section 148 of the Act in respect of those assessment years which falls within the exclusive jurisdiction of section 153A of the Act and accordingly the AO was not justified in issuing notice under section 148 and in completing the assessment under section 143(3) r.w.s 147 of the Act. The AO instead of complying with the requirement of section 153A proceeded with the provisions of section 147/148 which are not applicable in the assessment under section 153A of the Act, therefore, the assessment completed under section 143(3) read with section 147 of the Act is a nullity and as such the assessment order passed u/s 143(3) read with section 147 of the Act is illegal, arbitrary, wholly without jurisdiction and, hence, the same is quashed.*

6.9 *Hon'ble ITAT, Mumbai in the case of in the case of Vashdev G. Adnani versus ACIT (supra) held that both the*

sections (section 148 and section 153A) deal with different situations and notice issued under one section cannot be treated notice under another section nor can be assessment made under a particular section can be treated as finalized under another section. Section 147-148 deal with re-assessing of income for a particular AY that escapes taxation because of the failure of the assessee or otherwise. Section 153A deals with the matters where action has been taken u/s.132 or 132A of the Act. Each and every section of the Act has been included in the statue with a specific intention and purpose. The Legislature in its wisdom has introduced various sections to regulate the tax collection. So, to assume that one section is replaceable by another is not a logical or legal conclusion. Each section, each phrase and each word of the Act has its own place and importance. If an AO commits a mistake while passing assessment orders, it cannot be cured by relying upon any other section, because such a mistake is not a clerical mistake-it relates to jurisdiction. The mistake/defect or omission "in notices issued by the AO u/s. 148 instead of section 153A of the Act is not 'in conformity with/ according' to the intent and purpose of the Act. Jurisdictional issues cannot fail in the category of clerical mistakes-they go the roots of the assessment. In these circumstances, we are of the opinion that orders passed by the AO are not valid.

6.10 In view of the above legal position and facts and circumstances of the case, respectfully following the judicial authorities cited above, I am of the considered view that

proper course of action available before the AO was notice u/s.153A and not 148. Therefore, I hold that the AO is not justified in issuing notice under section 148 and in completing the assessment under section 143(3) r.w.s 147 of the Act. The AO instead of complying with the requirement of section 153A of the Act proceeded with the provisions of section 147/148 which are not applicable in the assessment under section 153A of the Act, therefore, the assessment completed under section 143(3) read with section 147 of the Act is a nullity and as such the assessment order passed u/s 143(3) r.w.s. 147 of the Act is illegal and without jurisdiction. The legal ground raised by the appellant is, thus, allowed.”

4. Aggrieved with the aforesaid decision of the Ld. CIT(A), Revenue is in appeal before us.

5. We have heard both the parties and perused the relevant records.

6. At the time of hearing, Ld. DR relied upon the order passed by the AO and reiterated the grounds of appeal raised by the Revenue.

6.1 Per contra, at the outset, Ld. AR for the assessee submitted that in the instant case notice under section 148 of the Act was issued which is bad-in-law, without jurisdiction, and illegal and, therefore, the said notice along with the assessment order passed by the AO on the foundation of such notice are liable to be quashed. He further submitted that search u/s 132 of the Income Tax Act, 1961, was carried out in the case of assessee on 26/07/2017 and as per provisions of law, notice, if any, could have been issued u/s 153A of the Act only and not under section 148 of the Act. Hence, the notice u/s 148 of the Act issued in this case is bad-in-law and without jurisdiction. To support his

contention, he referred the provisions of section 153A of the Act. He further submitted that prior to amendment by Finance Act 2017 w.e.f 1.4.2017, the six assessment years covered for assessment in the case of search used to be the six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. However, in the present case of assessee, the date of search was 26.7.2017 and accordingly, the six assessment years covered are from A.Y 2012-13 to A.Y 2017-18. It was further submitted that by virtue of amendment by Finance Act 2017 w.e.f 1.4.2017, in section 153A the words and for the relevant assessment year or years referred to in clause (b), has been further inserted to include additional 4 years for assessment u/s 153A beyond the aforesaid six assessment years but not later than ten assessment years from the end of assessment year relevant to the previous year in which search is conducted. The definition of the word "relevant assessment year" has been given in Explanation 1 to section 153A. Hence, in accordance with the relevant provisions, the relevant four assessment years in the case of the assessee are A.Y 2008-09 to A.Y 2011-12. He further submitted that in the present case, the reasons recording/reopening of case u/s 147/148 and the assessment made is based upon so called evidence found during search and the impugned assessment order, the AO has made additions of Rs. 13,30,94,093/- and Rs. 1,32,03,892/- which are much more than the minimum threshold of Rs. 50 Lakhs required for mandatory proceedings u/s 153A of the Act. The addition of Rs. 13,30,94,093/- has been made on account of alleged income escaping assessment which is alleged to be represented by an 'asset' i.e investment in share of a company Unnati Vinimoy Pvt Ltd. It was the further contention that further addition of Rs. 1,32,03,892/- made by the AO on account of alleged unexplained investment u/s 69 of the Act is also related to the investment in 'shares'. The AO on Page no. 15 of the assessment order has himself held that *"it is clear that it is not a case of mere confession as made by the assessee as share transfer documents of M/s Unnati Vinimoy Pvt. Ltd. were*

found during the search and duly and annexurized and substantiated by modus operandi employed and which were further corroborated by the statement of entry operator and of the Dummy Director. The facts as discussed above clearly held at the assessee has made available excess amount which was paid from his unaccounted income.” Thus, it is evident that the AO has made the addition on the basis of documents found during the course of search. Accordingly, the AO was required to take recourse in provision of section 153A and not to section 148 of the Act. He further submitted that in view of the above, it is clearly established that even if it is presumed that for the year under consideration, the AO was justified in initiating the reassessment proceedings and pass the reassessment order, then such reassessment proceedings/reassessment order could have been u/s 153A of the Act alone and not u/s 148/147 of the Act. Thus the notice issued u/s 148 of the Act and the assessment order passed are bad-in-law, without jurisdiction and non-est. He further submitted that it is a settled law that once a search has taken place u/s 132 of the Act or requisition is made u/s 132A of the Act, then assessment proceedings in respect of the assessment years (earlier six years , now ten years) specified in section 153A has to be mandatorily initiated and completed u/s 153A of the Act. The assessment proceedings cannot be initiated u/s 148/147 of the Act in respect of the assessment years covered u/s 153A of the Act. To support his aforesaid contentions, he relied upon the following decisions:-

- i) Hon’ble Delhi High Court decision in the case of PCIT v. OJJUS Medicare Private Limited and others (20241(4) TMI 268.
- ii) The Hon’ble Rajasthan High Court in the case of Shyam Sunder Khandelwal V. ACIT 12024114) TMI 196
- iii). The Hon’ble Bombay High Court in the case of Aditi Constructions V. DCIT (2023) (5) TMI 281.
- iv). The Hon’ble Karnataka High Court in the case of Sri Dinakara Suvarna V. DCIT (2022) (7) TMI 800.

- v) Hon'ble Madhya Pradesh High Court in the case of Ramballabh Gupta V ACIT (2005) 149 Taxman 451 (MP)
- vi) State Bank of India. Vs. DCIT 2013 (12) TMI 187 - ITAT Mumbai.
- vii) Vashdev G. Adnani Vs. ACIT 2015 (1) TMI 1387 - IT AT Mumbai.
- viii) The Hon'ble M P High Court, in the case of Ramballabh Gupta (288 ITR 347)
- ix) In case of Raiat Shubra Chatterii vs. ACIT (2016 (7) TMI 258 - ITAT DELHI)
- x) In the case of SHRI NAVRATTAN KOTHARI VERSUS THE ACIT 2017 (12) TMI 860 – ITAT JAIPUR
- xi) G. KOTESWARA RAO AND OTHERS VERSUS DCIT 2015 (12) TMI 1280 - ITAT VISAKHAPATNAM.
- xii) SRI MOTI PANJABI, HUF & Others, V ACIT, 2012 (11) TMI 1114 - ITAT PUNE

6.2 Ld. AR for the assessee further submitted that some of the above decisions were referred in context of earlier provisions where the number of years covered in assessment u/s 153A were six assessment years. The above cases would squarely apply to the case of the assessee as in view of the amended provisions, in respect of search initiated on or after 1st April, 2017, the years covered are ten assessment years. In the end, Ld. AR submitted that in view of the aforesaid discussions and decisions, the notice issued u/s 148 and the consequent assessment order passed are liable to be quashed, hence, he submitted that Ld. CIT(A) has rightly annulled the assessment.

6.3 However, with regard to grounds of appeal filed by the revenue, reliance has been placed on the decision of Hon'ble Delhi High Court in the case of PCIT v. Meeta Gutgutia 2017 (5) TMI 1224. In this regard, it was submitted by the Ld. AR that in the said case the Hon'ble Delhi High Court held that

invocation of provisions of section 153 A for AY 2000-01 to AY 2003-04 was not justified because of following facts in the case of Meeta Gutgutia (Supra)

- The statement recorded was u/s 133A and not u/s 132(4) of the Act. Therefore, the decision of Meeta Gutgutia(supra) is not applicable to the case of the assessee because in the case of the assessee, the statement recorded was u/s 132(4) of the Act.
- In the case of PCIT v. Meeta Gutgutia, there was no incriminating material found during the course of search for AY 2000-01 to AY 2003-04. In the case of the assessee, the AO has himself mentioned that during the course of search share transfer document of Unnati Vinimoy Pvt Ltd were found.
- In the case of PCIT v. Meeta Gutgutia, there was no disclosure for the AY 2000-01 to AY 2003-04 and therefore, the Hon'ble High Court held that invocation of section 153 A was not justified. The addition for AY 2000-01 to AY 2003-04 was made by the AO on the basis of disclosure made for AY 2006-07 in the statement recorded u/s 133 A of the Act. It was held by Hon'ble Court that addition for AY 2000-01 to AY 2003-04 could not be made based on the disclosure in the statement u/s 133 A for AY 2000-01 to AY 2003-04. In the case of the assessee, the facts are entirely different. The AO has himself mentioned that during the course of search share transfer document of Unnati Vinimoy Pvt Ltd were found and in the statement recorded u/s 132(4) of the Act, the assessee has made disclosure/surrender for the year under consideration i.e AY 2011-12 . In view of the above, it was submitted that the CIT(A) has rightly allowed the appeal, which does not need any interference, therefore, the action of the Ld. CIT(A) may be affirmed by dismissing the appeal of the Revenue.

7. We have heard the rival contentions and perused the relevant records. Upon careful consideration, it is noted that the reasons recorded before issue of notice u/s 148 of the Act by the AO for assuming jurisdiction u/s 147/148 of the Act and the assessment made is based upon the evidences found during search operation u/s 132 of the Act and the said reasons are based on a statement recorded u/s 132(4) during search operations. The AO has made additions of Rs. 13,30,94,093/- and Rs. 1,32,03,892/- on account of investment in share of a company Unnati Vinimoy Pvt. Ltd. and on account of unexplained investment u/s 69 of the Act which is also related to the investment in 'shares' respectively. In this case a search operation was carried out u/s 132 of the Act at the premises of the assessee (G.D. Goenka Group) on 26.07.2017 and notice u/s 148 of the Act was issued on 30.03.2018 and in response to the same, return of income was filed on 08.10.2018. The reasons recorded before issue of notice u/s 148 were provided to the assessee on 17.10.2018. Later, notice u/s 143(2) was issued on 04.12.2018 and AO completed the assessment on 25.12.2018 by making additions in dispute. We further find that in the present case, the reasons recording/reopening of case u/s 147/148 and the assessment made is based upon so called evidence found during search. The addition of Rs. 13,30,94,093/- has been made on account of alleged income escaping assessment which is alleged to be represented by an 'asset' i.e investment in share of a company Unnati Vinimoy Pvt Ltd. Further addition of Rs. 1,32,03,892/- made by the AO on account of alleged unexplained investment u/s 69 of the Act is also related to the investment in 'shares'. The AO at Page no. 15 of the assessment order has himself held as under:-

“Hence, in view of the above, it is clear that it is not a case of mere confession as made by the assessee as share transfer documents of M/s Unnati Vinimoy Pvt. Ltd. were found during the search and duly and annexurized and substantiated by modus operandi

employed and which were further corroborated by the statement of entry operator and of the Dummy Director. The facts as discussed above clearly held at the assessee has made available excess amount which was paid from his unaccounted income.”

7.1 On perusal of the aforesaid, it is clear that the AO has made the addition on the basis of documents found during the course of search. Accordingly, the AO was required to take recourse in provision of section 153 A and not to section 148 of the Act. Even if it is presumed that for the year under consideration, the AO was justified in initiating the reassessment proceedings and pass the reassessment order, then such reassessment proceedings/reassessment order could have been u/s 153A of the Act alone and not u/s 148/147 of the Act. Thus in our considered view the notice issued u/s 148 and the assessment order passed are bad-in-law.

7.2 We find considerable cogency in the contention of the Ld. AR that it is settled law that once a search has taken place u/s 132 of the Act or requisition is made u/s 132A of the Act, then assessment proceedings in respect of the assessment years (earlier six years , now ten years) specified in section 153A has to be mandatorily initiated and completed u/s 153A of the Act. The assessment proceedings cannot be initiated u/s 148/147 of the Act in respect of the assessment years covered u/s 153 A of the Act.

7.3 The Hon'ble Delhi High Court in the case of PCIT v. OJJUS Medicare Private Limited and others (20241(4) TMI 268 held that “Sections 153A and 153C are provisions which are triggered by material that may be fortuitously recovered in the course of a search. Both those provisions override and are ordained to operate above and beyond the normal assessment or reassessment provisions. At the time when they were originally introduced in the statute in 2003, they enabled the AO to carry out an assessment exercise stretching over six AYs'. In 2017, the provisions came to be amended and the AO consequently came to conferred further power to reopen ten AYs'. We have already found that the power to initiate an assessment under Sections 153A and 153C is separate and distinct from the ordinary reassessment provisions comprised in Section 148. Both sets of provisions are intended to operate in separate silos. The power to assess over a larger period of ten years when introduced in the concerned provisions was made subject only to the

preconditions comprised in the Fourth Proviso to Section 153A. All that the Legislature deemed appropriate to provide was to restrict the application of that power to searches conducted on or after 01 April 2017 subject of course to the fulfilment of the other stipulations placed in the provisions and the existence of the jurisdictional prerequisites.

7.4 The Hon'ble Rajasthan High Court in the case of Shyam Sunder Khandelwal V. ACIT 12024114) TMI 196 held that assessment/reassessment in Section 153A, 153C in cases of search or requisition has an overriding effect to the regular provisions for assessment or reassessment under Sections 139, 147, 148, 149, 151 & 153.

7.5 The Hon'ble Bombay High Court in the case of Aditi Constructions V. DCIT (2023) (5) TMI 281 has held that the specific provisions of section 153C would prevail over the general provisions of section 147.

7.6. The Hon'ble Karnataka High Court in the case of Sri Dinakara Suvarna V. DCIT (2022) (7) TMI 800 has held that proceeding should have been initiated u/s 153C and not u/s 147 where it was based upon material found during the course of search in case of a third party.

7.7 The Hon'ble Madhya Pradesh High Court in the case of Ramballabh Gupta V ACIT (2005) 149 Taxman 451 (MP) has held that due to non- obstante clause in section 153 A notice u/s 148 cannot be issued in relation to those years which are defined in section 153A of the Act.

7.8 In the case of State Bank of India vs. DCIT 2013 (12) TMI 187 - ITAT Mumbai Tribunal has held that "Applying the ratio of the above decisions to the facts of the present case, we find that there is no dispute that the original assessment for the assessment year 2001-02 was completed under section 143(3) on February 13, 2004 determining the total income at Rs. 26,35,49,42,360. Thereafter, a search and seizure action was initiated in the assessee's case by the Department on July 2, 2005 on which date the assessment for the assessment year 2001-02 was not pending. Therefore, in view of the non obstante clause with which sub-section (1) of section 153A opens, the Assessing Officer has no jurisdiction to issue notice under section 148 of the Act in respect of those six assessment years which falls within the exclusive jurisdiction of section 153A of the Act and accordingly the Assessing

Officer was not justified in issuing notice under section 148 on August 28, 2006 and in completing the impugned assessment under section 143(3) read with section 147 of the Act on October 31, 2006. The Assessing Officer instead of complying with the requirement of section 153A proceeded with the provisions of section 147/148 which are not applicable in the assessment under section 153A of the Act, therefore, the impugned assessment completed under section 143(3) read with section 147 of the Act is a nullity and as such the assessment order dated October 31, 2006 passed under section 143(3) read with section 147 of the Act is illegal, arbitrary, wholly without jurisdiction and, hence, the same is quashed.”

7.9 In the case of VASHDEV G. ADNANI VERSUS ACIT 2015 (1) TMI 1387 - ITAT MUMBAI has held that “from the above, it clear that if any minor defect is there which does not militate against the intent and purpose of the Act then such defect can be cured u/s.292 B of the Act, but the section does not come to the assistance of the Revenue, where there is a fundamental infirmity in the assessment. It cannot confer jurisdiction, where jurisdiction has not been properly assumed. In the matter of Norton Motors(275ITR595),the Hon’ble P&H High court has held as under:

“To put it differently, section 292B can be relied upon for resisting a challenge to the notice, etc., only if there is a technical defect or omission in it. However, there is nothing in the plain language of that section from which it can be inferred that the same can be relied upon for curing a jurisdictional defect in the assessment notice, summons or other proceeding. In other words, if the notice, summons or other proceeding taken by an authority suffers from an inherent lacuna affecting his /its jurisdiction, the same cannot be cured by having resort to section 292B.”

If the facts of the case under appeal are considered in light of the above discussion, it becomes clear that the provisions of section 292B are not applicable. In the cross objections the AO wants us to treat us the assessment completed u/s.148 as assessment finalised u/s. 153 A of the Act. In our opinion, both the sections deal with different situations and notice issued under one section cannot be treated notice under another section nor can be assessment made under a particular section can be treated as finalised under

another section. Section 147-148 deal with re-assessing of income for a particular AY that escapes taxation because of the failure of the assessee or otherwise. Section 153A deals with the matters where action has been taken u/s.132 or 132A of the Act. Each and every section of the Act has been included in the statute with a specific intention and purpose. The Legislature in its wisdom has introduced various section to regulate the tax collection. So, to assume that one section is re-placable by another is not a logical or legal conclusion. Each section, each phrase and each word of the Act has its own place and importance. If an AO commits a mistake while passing assessment orders, it cannot be cured by reiving upon any other section, because such a mistake is not a clerical mistake- it relates to jurisdiction. The mistake/defect or omission "in notices issued by the AO u/s.148 instead of section 153A of the Act is not 'in conformity with /according' to the intent and purpose of the Act. Jurisdictional issues cannot fall in the category of clerical mistakes-they go the roots of the assessment. In these circumstances, we are of the opinion that orders passed by the AO for the AY.1999-2000.2001-01,2001-02 are not valid.

7.10 In the case of SHRI NAVRATTAN KOTHARI VERSUS THE ACIT 2017 (12) TMI 860 – ITAT, JAIPUR has held that "Therefore, in conjoint reading of provisions of section 153A, 153C and 147/148 of the Act as well as a consistent view taken by this Tribunal in a series of decision cited (supra) we hold that the assessment or reassessment of income of the person other than search persons based on seized material can be only be made u/s 153C r.w.s. 153A and the provisions of section 147/148 of the Act are not applicable in such cases. No contrary decision has been brought to our notice. Accordingly, we hold that initiation of proceedings u/s 147/148 by the AO to reassess the income is illegal being without jurisdiction and consequently the reassessment order passed u/s 147 r.w.s. 143(3) is also illegal and void ab initio and is liable to be quashed.

7.11 We find that in the grounds of appeal filed by the revenue, reliance has been placed on the decision of Hon'ble Delhi High Court in the case of PCIT v. Meeta Gutgutia 2017 (5) TMI 1224, it is noted that the facts of the present case are distinguished to that case, hence, the same is not applicable in the case in hand, because in that case the statement recorded was u/s 133A and

not u/s 132(4) of the Act and in Meeta Gutgutia (supra) case, there was no incriminating material found during the course of search for AY 2000-01 to AY 2003-04. However, in the present case the AO has himself mentioned that during the course of search share transfer document of Unnati Vinimoy Pvt Ltd were found.

7.12 Keeping in view of the aforesaid discussions and respectfully following the aforesaid binding precedents, the notice issued u/s 148 of the Act and the consequent assessment order passed by the AO deserve to be quashed being bad in law, because the appropriate course of action available before the AO was to issue notice u/s.153A and not u/s. 148 of the Act. Therefore, the AO was not justified in issuing notice under section 148 of the Act and in completing the assessment u/s 143(3) r.w.s 147 of the Act. The AO instead of complying with the requirement of section 153A of the Act proceeded with the provisions of section 147/148 which are not applicable in the present case, Ld. CIT(A) has rightly held that the assessment completed under section 143(3) read with section 147 of the Act is a nullity and as such the assessment order passed u/s 143(3) r.w.s. 147 of the Act is illegal and without jurisdiction. Thus, the Ld. CIT(A)'s order does not need any interference on our part, hence, we affirm the action of the Ld. CIT(A) and accordingly the grounds raised by the Revenue are rejected.

8. In the result, appeal by the Revenue is dismissed in the aforesaid manner.

Order pronounced on 15/10/2024.

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

SRB

Copy forwarded to:-

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar