

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

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एव श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA No. 82 & 83/JP/2024
निर्धारण वर्ष / Assessment Year : 2013-14 & 2014-15

Shri Pooran Mal Kanwat Plot No. 42-B, Shiv Sahay Colony Behind Archana Hospital, Airport Sanaganer, Jaipur 302 029	बनाम Vs.	The DCIT Central Circle-2 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADIPK 4543 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rohan Sogani, CA
Ms. Zeeba Mohammadi, CA
राजस्व की ओर से / Revenue by: Ms. Alka Gautam, CIT-DR

सुनवाई की तारीख / Date of Hearing : 18/11/2024
उदघोषणा की तारीख / Date of Pronouncement: 28 /11/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Both these appeals have been filed by the assessee against two separate orders dated 30.11.2023, passed by Id. CIT(A)-4, Jaipur dated 30-11-2023.

2. **Vide first mentioned order**, appeal filed by the assessee challenging the assessment, pertaining to the assessment year 2013-14, framed on 30.12.2019, under section 144 read with section 153C of the Income Tax Act, 1961(hereinafter referred to as “the Act”) stands dismissed. And, thereby, the assessment computing total income of the assessee at Rs. 26,17,66,850/-has been upheld.

It was a protective assessment qua the assessee, **making first addition** on account of unexplained investment under section 69 of the Act, to safe guard the interest of Revenue. The substantive assessment was made against two companies, namely, M/s Macro Township Pvt. Ltd., and M/s Macro Properties Pvt. Ltd., who were found to be the actual owner of the lands under consideration, and the assessee being only namesake lender.

It was also a protective assessment qua the assessee, **making second addition** on account of undisclosed Short Term Capital Gain on sale of property by adopting value u/s 50C of the Act in his hand, and that too in order to safe guard the interest of the revenue. The substantive assessment was made against the above said two companies, who were found to have earned Short Term Capital Gain in the transaction pertaining to land under reference.

3. **By second mentioned order**, appeal filed by the assessee challenging the assessment order relating to the assessment year 2014-15 passed on 30.12.2019 under section 143(3) read with section 153C of the Act, stands dismissed. As a result, the assessment computing total income of the assessee at Rs. 4,72,54,120/- has been upheld.

It was a protective assessment qua the assessee, **making first addition** of Rs. 4,28,96,664/- in view of provisions of section 50C of the Act, on account of unexplained Short Term Capital Gain in the immovable property. Protective assessment came to be made in order to safe guard the interest of Revenue. The substantive assessment was made against two companies, namely, M/s Macro Township Pvt. Ltd., and M/s Macro Properties Pvt. Ltd., who were found to be the actual owner of the lands under consideration, and the assessee being only namesake lender.

Protective assessment **by way of second addition** of Rs. 40 lacs on account of unexplained investment under section 69 of the Act, to safe guard the interest of Revenue. The substantive assessment was made against M/s Udai Buildhome Pvt. Ltd., in view of payment of alleged cash made to the seller of the land as regards sale agreement between said seller and the assessee.

4. It may be mentioned here that both the assessment orders came to be passed after a search and seizure action under section 132 of the Act and survey action under section 133A of the Act. Said actions were conducted on 02.08.2017 by the Department on the members of Kiran Fine Jewellers Group, including the assessee.

The actions are stated to have led to discovery of certain sale agreements in respect of purchase and sale of immovable properties.

5. Feeling dis-satisfied due to dismissal of his two appeals, the assessee is in appeals before this Appellate Tribunal.

6. Arguments heard. File perused.

Discussion

7. First of all, we take up the appeal of the assessee for the assessment year 2013-14.

As regards assessment for the assessment year 2013-14, appellant has challenged the impugned order and the impugned assessment on the following grounds:

ITA NO. 82/JP/2024 A.Y. 2013-14

"1. The Ld. CIT(A) has erred on facts and in law in upholding the order passed by AO u/s 153C of IT Act ignoring that the additions made by AO are protective addition whereas section 153C can be invoked only when AO is satisfied that documents seized from search party has a bearing on determination of total income of other person.

2 The Ld. CIT(A) has erred on facts and in law in confirming the protective addition of Rs. 13,73,55,249/- made u/s 69 of IT Act on account of alleged unexplained investment in properties without taking into consideration the fate of such addition made in case of M/s Macro Properties Pvt. Ltd. and M/s Macro Townships Pvt. Ltd. where substantive additions has been made even when AO has considered the assessee as benamidar.

3 The Ld. CIT(A) has erred on facts and in law in confirming the protective addition of Rs. 12,40,54,144/- on account of alleged undisclosed short term capital gain on sale of property by adopting value u/s 50C of the Act without taking into consideration the fate of such addition made in case of M/s Macro Properties Pvt. Ltd. and M/s Macro Townships Pvt. Ltd. where substantive additions has been made.”

4 The appellant craves to alter, amend and modify any ground of appeal.

5 Necessary cost be awarded to the assessee.”

8 While dealing with Ground No. 1 to 3 of the assessee, Id. CIT(A) has dismissed the appeal by observing as under:-

“Ground No. 1

“6. Ground of appeal No. 1, the appellant has raised purely a legal ground viz.a viz. the assessment completed u/s 153C.

6.1 I have considered the facts of the case and observations / findings of the AO in the assessment order for the year under consideration. During the appellate proceedings, no response or submission has been made by the appellant and the appellant has not been able to rebut the findings of the AO. It is specifically observed here that in spite of giving many opportunities being heard to the appellant as, detailed above, the appellant has chosen not to make any submission or furnish any information to substantiate and plead the grounds of appeal. Based on material available on file, I do not find any infirmity in the assessment made as per the Section 153C of the Act. This ground of appeal is dismissed.”

“Ground No. 2

7. The Ground of Appeal No. 2 to 2.3 are inter related hence they are clubbed together for adjudication and is with respect to the addition on a/c of unexplained investment u/s 69 of the Act amounting to Rs.13,73,55,249/-

7.1

7.2 I have considered the observations / findings of the AO in the assessment order for the year under consideration. During the appellate proceedings, the appellant has not furnished any information/ evidences to rebut the findings of the AO. It is specifically observed here that in spite of giving many opportunities being heard to the appellant as, detailed above, the appellant has chosen not to make any submission or furnish any information to substantiate and plead the grounds of appeal. There is substantial evidence on record in support of the assessment order. Based on the material is available on file and in absence of any new submission/ finding and any other material for which the appellant was provided so many opportunities, I do not find any infirmity in the addition of the Id AO. Accordingly, these grounds of appeal are dismissed.

Ground No. 3

8. The Ground of appeal No. 3 to 3.3 are inter related hence they are clubbed together for adjudication and is with respect to the protective addition on account of undisclosed short term capital gain earned on sale of land situated at Ajayrajpura & Mathurawala, Tehsil- Sanganer, Jaipur amounting to Rs.12,40,54,144/-

8.1

8.2 I have considered the observations / findings of the AO in the assessment order for the year under consideration. During the appellate proceedings, the appellant has not furnished any information/ evidences to rebut the findings of the AO. It is specifically observed here that in spite of giving many opportunities being heard to the appellant as, detailed above, the appellant has chosen not to make any submission or furnish any information to substantiate and plead the grounds of appeal. There is substantial evidence on record in support of the assessment order. Based on the material is available on file and in absence of any new submission/ finding and any other material for which the appellant was provided so many opportunities, I do not find any infirmity in the addition of the Id AO. Accordingly, these grounds of appeal are dismissed.”

9. It is significant to mention here that in the course of hearing, on behalf of the appellant, only one ground has been pressed into service, and that is that this Appellate Tribunal having already set aside the substantive assessments as regards the above-named companies, thereby deleting all

the additions, same additions made by the AO by way of protective assessments qua the assessee-appellant herein, and confirmed by the Id. CIT(A) deserve to be deleted.

In support of his contentions, Id. AR for the assessee has filed following documents :

S.N.	Particulars
1.	Copy of the satisfaction note recorded by the Id.AO for assuming jurisdiction of the assessee u/s 153C
2.	Copy of order in case of M/s. Macro Township Pvt. Ltd. ITA No. 397/ to 399 & 367/JP/2023
3.	Copy of order in case of M/s. Macro Properties Pvt. Ltd. ITA No. 174 to177/JP/2023
4.	Copy of order in case of Udai Build Home Pvt. Ltd. passed by Id.CIT(A) dated 27-09-2024

10. Per contra, Ld. DR simply submitted that she relied on the orders of the Id. CIT(A) and AO.

Thereupon, we raised a specific question to Id. DR as what, according to her, would be the basis to sustain the additions made by way of protective assessments, when the additions made by way of substantive assessments against the above-named companies have been deleted. In response, Ld. DR did not respond to the query except by simply submitting that she reclined against the orders of the lower authorities and

she requested give one week to support the contention of the revenue submit any contrary decision. The bench did not find any submission after 8 days and therefore, we proceeded based on the material available.

11. Ground no.1 raised by the assessee before Learned CIT(A) was that the Assessing Officer had erred in passing the impugned order under section 153C of the Act, without recording proper satisfaction, and as such the order was bad in law and deserved to be quashed.

12. In the impugned order, we do not find any discussion on the ground raised by the assessee i.e. as regards the satisfaction note. While dealing with this ground, Learned CIT(A) should have referred to the incriminating material, if any, against the assessee. But, we do not find any reference in the relevant paragraphs of the impugned order.

We have gone through the satisfaction note dated 08-08-2019 issued by the DCIT, Central Circle-2, Jaipur u/s 153C of the Act, 1961 in the case of the assessee Shri Pooran Mal Kanwat for the Assessment year 2012-13 to 2017-18 which reads as under:-

Satisfaction note as required u/s 153C of the I.T. Act, 1961 in the case of Shri Pooran Mal Kanwat (PAN ADIPK 4543 R), A.Y. 2012-13 & 2018-19

A search & seizure action u/s 132(1) of the I.T. Act, 1961 was carried out at the residential premises of Shri Charan Singh Khangarot s/o Shri Mukut Singh Khangarot, situated at M-28, Income Tax Colony, Durgapura, Tonk Road, Jaipur on dated 02-08-2017 wherein certain documents were found and seized and inventorized as Annexure AS, Exhibit 1 to 06. Exhibit AS-3 contains 102 pages. Page No. 21 to 28 is a duly notarized sale agreement dated 25-05-2012 executed between Shri Tofan, Kalia S/o Shri Mahadev, Shri Foolchand, Shri Mangilal, Shri Babulal, Shri Chhotu S/o Shri Jagannath Meena, Smt. Naina Devi W/o Shri Jagannath Meena R/o Vill. Nagaliya Manpur, Dhani Bainada, Tehsil- Sanganer, Jaipur (Sellers) and Shri Pooran Mal Kanwat S/o Shri Mahtab Singh Kanwat (Purchaser) for sale of immovable property of 26 Khasra No. having total area 3.87 hectare in village Ajayrajpuria & Mathurawala, Tehsil-Sanganer, Jaipur at the sale consideration of Rs.17,10,70,000/- for the land situated at aforementioned. These lands were purchased by Shri Pooran Mal Kanwat through three sale deeds duly registered with SR-Sanganer-1, Jaipur on 11-07-2012

During the course of search proceedings at residence of Shri Ashok Singh situated at M-21. Income Tax Colony, Durgapura, Jaipur 3 sale deeds of these aforesaid land as mentioned in sale agreement were found and seized as page no, no. 17-24, 25-33 & page no. 14-41 of Exhibit-4 of Annexure-AS, which reveals that sale consideration reported in these sale deeds is shown at much below the actual consideration reported in sale agreement. Details of these sale deeds are as under:-

(a) 1st Registered Deed: Property admeasuring .80 hectares of land purchased from Shri Tofan, Shri Kalyan s/o Shri Mahadev, Shri Foolchand, Shri Mangilal, Shri Babulal, Shri Chhotu s/o Shri Jagannath, Smt Naina Devi w/o Shri Jagannath, Vill. Nangaliya Manpur, Dhani Bainada, Sanganer, Jaipur by Shri Pooran Mal Kanwat on 11/07/2012 for total sale consideration of Rs. 1,18,40,000/- out of land located at Village Mathurawala, Tehsil Sanganer. District Jaipur. However, the actual sale consideration of the land as per the duly notarized sale agreement dated 25.05.2012 is at Rs 3,53,63,307/- whereas in the registered sale deed sale consideration reported to have been paid to the sellers at Rs 1,18,40,000/-, thus there is difference in sale consideration amounting to Rs. 2,35,23,307/- between sale agreement and registered sale deed which has been paid to the sellers in cash by the purchaser out of his unaccounted income.

(b) 2nd registered deed: A property admeasuring 2.56 hectares of land was purchased by Shri Pooran Mal Kanwat on 11-07-2012 from Shri Tofan, Shri Kalyan s/o Shri Mahadev, Shri Foolchand Shri Mang Lal Shri Babulal, Shri Chhotu s/o Shri Jagannath, Smt Naina Devi w/o Shri Jagannath, Vill Nangaliya Manpur, Dhani Bainada, Sanganer, Jaipur out of land located at Village Mathurawala, Tehsil Sanganer, District Jaipur. For the consideration of Rs. 2,76,48,000/- However, the actual sale consideration of the land as per aforesaid duly notarized sale agreement is at Rs. 11,31,62,583/- thus there is a difference in sale

consideration amounting to Rs. 8,55,14,583/- between sale agreement and registered sale deed which has been paid to the sellers in cash by the purchaser out of his unaccounted income.

(c) 3rd registered sale deed: A property admeasuring 0.51 hectares of land purchased by Shri Pooran Mal Kanwat on 11-07-2012 from Shri Tofan, Shri Kalyan s/o Shri Mahadev, Shri Foolchand Shri Mang Lal Shri Babulal, Shri Chhotu s/o Shri Jagannath, Smt Naini Devi w/o Shri Jagananth, Vill Nangaliya Manpur, Dhani Bainada, Sanganer, Jaipur out of land located at Village at Ajayrajpura, Tehsil Sanganer, District Jaipur for sale consideration of Rs. 35,70,000/-. However, the actual sale consideration of the land as per aforesaid duly notarized sale agreement is at Rs. 2,25,44,209/-. Thus there is a difference in sale consideration amounting to Rs. 1,89,74,109/- between sale agreement and registered sale deed which has been paid to the sellers in cash by the purchaser out of his unaccounted income.

2. I am therefore, satisfied that the document seized belong to Shri Pooran Mal Kanwat (PAN AD4543 R) other than the search person and have bearing on the determination of his total income. Hence notice u/s 153C of the IT Act, for the AYs 2012-13 to 2017-18 and notice u/s 142(1)/143(2) for AY 2018-19 are to be issued for the purpose of assessment and reassessment of income of Shri Pooran Mal Kanwat in accordance with provision of Section 153A”

From the decision in M/s. Macro Properties Pvt Ltd. ITA No. 174 to 177/JP/2023, vide order dated 17-07-2023, cited by learned AR for the appellant, while dealing with the substantive additions/assessments, it was observed as under:-

“17. On going through the satisfaction note so presented by the Id. DR, the bench noted that looking to the satisfaction note bench observed that there is finding of the assessing officer so as to material relied upon and thereby also the same is in the nature of incriminating in nature or not so far as it relates to the assessee company. Thus, in **this case section 153 C plays a vital role whether it is applicable on the assessee or not.** Here in the case, on perusal of the satisfaction note of the assessing officer though not provided to the assessee nor discussed in the order of the assessment. But when the record called for by the bench, we note that the recording of the satisfaction note does not speak to any incriminating material related to the assessee company. The transaction mentioned in the said satisfaction note are duly recorded in the books of the assessee company. Not only that the alleged deed mentioned as in the nature of

incriminating in nature is already cancelled and thereafter whatever transaction referred in the order of the assessment are duly recorded transaction and for that the Id. AO is not permitted to assessee the same u/s 153C of the Act for the year under consideration. Therefore, *here it the important question as to whether the revenue consequent to the search make the de novo assessment* regardless of any incriminating material found during the course of search. The issue is no longer *res integra* as the same has already been decided **by a Division Bench of the Hon'ble Supreme Court in the case of CIT v. Sinhgad Technical Education Society [2017] 84 taxmann.com 290/250 Taxman 225/397 ITR 344**. In the case of *Sinhgad (supra)*, the disputed questions for adjudication were primarily two fold :-

Whether the additional ground raised for the first time before the Hon'ble Income-tax Appellate Tribunal ("ITAT") questioning the validity of the notice u/s [153C](#) of the Act (in the case of a person other than that searched) on the ground that satisfaction was not properly recorded and also that the said notice was time barred in respect of AYs 2000-01 to 2003-04, could be permitted or not?

Whether as per the provisions of section 153C of the Act, the incriminating material which was seized had to pertain to the assessment years (*i.e.* completed assessments for the AYs 2000-01 to 2003-04) in question and the same constituted a jurisdictional requirement which is essential for assessment under the provisions of section 153C of the Act?

In respect of the first question, the Hon'ble Supreme Court **at para-19** of their order concluded that the ITAT had correctly permitted the additional ground to be raised and correctly dealt with the same on merits as well. As regards the second question, the Hon'ble Supreme Court held, *inter alia*, that the existence of incriminating material for interfering with completed assessments on the date of search was a jurisdictional fact failing which, no assessment was possible for those years u/s 153C of the Act. It was further affirmed that the incriminating material had to pertain to the four assessment years in question *i.e.* A.Ys 2000-01 to 2003-04 and since the finding of the facts **at para-9 of the order of ITAT** revealed that the material as per the satisfaction note belonged to A.Y. 2004-05 or thereafter which were not the four assessment years in question, no addition could be made in respect of the said assessment years. The *ratio decidendi* of the Hon'ble Supreme Court's judgement appears **at para-18** of their order and the same is reproduced as under :-

"18. The Income-tax Appellate Tribunal (ITAT) permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the Income-tax Appellate Tribunal (ITAT) that as per the provisions of section 153C of the Act, incriminating material which was seized had to

pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of section 153C of the Act. Para 9 of the order of the ITAT reveals that the Income-tax Appellate Tribunal (ITAT) had scanned through the satisfaction note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred."

As it is evident from the provision of section 153C, which provides for assessment/ reassessment to be made as per section 153A of the Act. The requirement of the existence of incriminating material to interfere and assess or reassess the income of the assessment years that stand completed/are not pending on the date of search, is a mandatory requirement as per the provisions of section 153A of the Act and this mandatory requirement comes into play under section 153C of the Act due to the provision of sub-section (1) of section 153C according to which once the initial requirements for the invocation of section 153C have been complied with, the assessment u/s 153C shall be made in accordance with the provisions of section 153A of the Act. Section 153C of the Act comes into play when any money, bullion, jewellery or other valuable article or thing or any books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A of the Act. This implies that if a person is searched u/s 132(1) of the Act and there are documents found on him which lead to the inference that the **same belong to** any other person, the provisions of section 153C of the Act would be invoked for making an assessment on such other person. Drawing of a satisfaction note by the Assessing Officer of the person searched by listing and describing the documents belonging to the other person is a pre-condition for initiation of the proceedings u/s 153C of the Act. After having recorded the satisfaction, as per the requirement of section 153C(1) of the Act, the books of account or documents or assets seized shall be handed over to the Assessing Officer having jurisdiction over the other person and **the said officer shall issue notice and assess or re-assess the income of the other person in accordance with the provisions of section 153A of the Act.** It will thus be seen that once the requirement of satisfaction wherein the Assessing Officer of the searched person records that documents **belong to** the other person is met, the assessment or re-assessment of the income of the other person shall have to take place in accordance with section 153A of the Act. Various high courts have that the existence of incriminating material, in respect of the assessment

years whose assessment stood completed on the date of the search, is a mandatory requirement to assess or reassess those years. Now the issue is finally decided by the apex court so far as the section 153A of the Act in the case of **Pr. Commissioner Of Income Tax ... vs AbhisarBuildwell P. Ltd. and so far as regards the issue of section 153C is concerned same is decided in the case of DCIT Vs. M/s. U. K. Paints (Overseas) Limited**

18. Thus, as it has been observed that the Id. AO did not bring anything on record stating the fact that there exist any document found in the search and seizure operation conducted so as to prove that how the transaction recorded in the seized material with that of the transactions already recorded are in the nature of incriminating in nature. Merely the company has advanced the money which is lying the books of account and the person to whom money paid by the assessee has entered into agreement for sale and there is no reference of cash trail flowing to or from the assessee company. The finding are purely based on the presumptions and assumptions basis and against the real transaction that has been taken place between the buyer and seller and the same are already registered as per the Transfer of Property of Act and bench observed that neither in the Transfer of Property Act nor in the Income Tax concept of beneficial owner and that too without bringing any evidence on record. In view of the above facts and circumstances of the case, the Bench is of the view that in absence of a valid satisfaction note recorded clearly justifying the material that the same are in the nature of incriminating in nature qua the assessee, we are of the considered view that the notice issued u/s 153C of the I.T. Act 1961 is bad in law and consequently whole proceedings including the assessment order passed u/s 143(3) r.w.s. 153C of the Act is void ab initio and liable to be quashed. To this effect, we rely upon the decision of Hon'ble Supreme Court in the case of DCIT vs M/s. U.K. Paints (Overseas) Ltd. (Civil Appeal No. 6634 of 2021 dated 25-04-2023 wherein the Hon'ble Supreme Court held as under:-

“In this batch of appeals, the assessments in case of each Assessee were under Section 153-C of the Income Tax Act, 1961 (for short, ‘the Act’). As found by the High Court in none of the cases any incriminating material was found during the search either from the Assessee or from third party. In that view of the matter, as such, the assessments under Section 153-C of the Act are rightly set aside by the High Court. However, Shri N Venkataraman, learned ASG appearing on behalf of the Revenue, taking the clue from some of the observations made by this Court in the recent decision in the case of Principal Commissioner of Income Tax, Central -3 Vs. AbhisarBuildwell P. Ltd., Civil Appeal No. 6580/2021, more particularly, paragraphs 11 and 13, has prayed to observe that the Revenue may be permitted to initiate re-assessment proceedings under Section 147/148 of the Act as in the aforesaid decision, the powers of the re-assessment of the Revenue even in case of the block assessment under Section 153-A of the Act have been saved.

As observed hereinabove, ***as no incriminating material was found in case of any of the Assessee either from the Assessee or from the third party and the assessments were under Section 153-C of the Act, the High Court has rightly set aside the Assessment Order(s). Therefore, the impugned judgment and order(s) passed by the High Court do not require any interference by this Court.*** Hence, all these appeals deserve to be dismissed and are accordingly dismissed.”

19. In view of the above discussion and for the reasons stated above and considering the binding decisions of the apex court resting the issue that no addition can be made de hors the incriminating material in the proceeding u/s. 153C of the Act and thus by considering the totality of the facts, circumstances of the case and the decisions cited supra, we do not concur with the findings of the Id. CIT(A). Thus the appeal of the assessee for the assessment year 2013-14 is allowed.”

As per the two decisions of the Co-ordinate Benches, in ITA No.397 to 399 and 367/JP/2023 and ITA No.174 to 177/JP/2023, cited on behalf of the assessee, the transactions recorded were the bank transfers recorded as loan and the properties referred to were in fact sold subsequently to the third party by the real owner of the property and therein it could not be established that there was any incriminating material against said companies, and as a result, those substantive additions/assessments made in three companies were finally deleted considering the decision of the Hon'ble Apex court in the case of U. K. Paints (Overseas) Ltd., holding that the addition u/s. 153C can only be invoked if the incriminating material found in the search.

This fact has not disputed by the Id. DR in the course of arguments.

Revenue has not pointed out from record any material so as to establish that protective additions/assessments are based on any incriminating material as regards the assessee.

13. Since the substantive assessments made qua the 2 companies i.e. Macro Properties Private Limited and Macro Township Private Limited admittedly, stand set aside by co-ordinate Benches of this Appellate Tribunal, and in case of Udai Build Home Private Limited Id. CIT(A) considering that decision of the apex court allowed that appeal, thus, matters have attained finality, and Id. DR has not countered the only argument advanced by Id. AR of the assessee that when substantive assessments have been set aside, the protective assessments cannot stand.

Conclusion

14. As a result of the above discussion and findings, the appeal- ITA no. 82/JP/2024 deserves to be allowed.

ITA No.83/JP/2024

15. Appellant has raised following grounds in ITA NO. 83/JP/2024 A.Y. 2014-15 to challenge the impugned order:

“1.The Ld. CIT(A) has erred on facts and in law in upholding the order passed by AO u/s 153C of IT Act ignoring that the additions made by AO are protective addition whereas section 153C can be invoked only when AO is satisfied that documents seized from search party has a bearing on determination of total income of other person.

2 The Ld. CIT(A) has erred on facts and in law in confirming the protective addition of Rs.4,28,96,664/- on account of alleged undisclosed short term capital gain on sale of property by adopting value u/s 50C of the Act without taking into consideration the fate of such addition made in case of M/s Macro Properties Pvt. Ltd. and M/s Macro Townships Pvt. Ltd. where substantive additions has been made.

3 The Ld. CIT(A) has erred on facts and in law in confirming the protective addition of Rs.40,00,000/- made u/s 69 of IT Act on account of alleged unexplained investment in properties without taking into consideration the fate of such addition made in case of M/s Uday Buildhome Pvt. Ltd. where substantive addition has been made even when AO has considered the assessee as benamidar.

4 The appellant craves to alter, amend and modify any ground of appeal.

5 Necessary cost be awarded to the assessee.”

As noticed above, as regards this appeal of the assessee, same grounds of appeal have been raised, as the ones raised in ITA No.82/JPR/2024, with the only difference being in the amount(s) of the additions and the total income(s) computed.

Ld. CIT(A) having dismissed the appeal of the assessee recording almost same observations and findings, having regard to the findings recorded in ITA No. 82/JP/2024, the impugned order passed by learned

CIT(A) resulting in filing of ITA No.83/JP/2024, this appeal also deserves to be allowed.

16. Admittedly, the substantive addition/assessment made in the case of **M/s. Macro Properties Private Limited and Macro Township Private Limited** were deleted by this Appellate Tribunal, vide orders dated 17.7.2023 and 5.12.2023 respectively, whereas the substantive addition in the case of **M/s. Uday Buildhome Private Limited** was deleted by Id. CIT(A) vide order dated 27.9.2024 based on the decision of the apex court followed by the two cases of the **M/s. Macro Properties Private Limited and Macro Township Private Limited**.

Conclusion

17. Thus, when the substantive additions stand deleted on its merits and as we have considered that aspect of the matter while dealing with the appeal of the assessee in ITA no. 82/JP/2024, the issue being identical, we do not deem it fit to discuss the arguments afresh, and hold that the decision taken in ITA no. 82/JP/2024, as noticed above, shall apply mutatis mutandis in the case of the assessee for the assessment year 2014-15. Thus, the appeal ITA No.83/JP/2024 of the assessee deserves to be allowed.

Result

18. As a result, both the appeals of the assessee are allowed and the impugned orders passed by Learned CIT(A), and impugned assessments framed by Assessing Officer, are set aside.

Pronounced in open Court on 28 -11-2024.

Sd/-

(नरेन्द्र कुमार)
(Narinder Kumar)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 28 /11/2024

*Mishra

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

1. The Appellant- Shri Pooran Mal Kanwat, Jaipur
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle-2, Jaipur .
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 82 & 83/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar