IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI

Before Justice (Retd.) C V Bhadang, Hon'ble President &
Shri B R Baskaran, Hon'ble Accountant Member

IT(SS)A No.60/Mum/2004 for Block Assessment 01.04.1990 to 15.09.2000

| DCIT Cent. Circle 21,<br>Mumbai | | India Containers, Ltd.,<br>157 Maker Chamber, IV,<br>Nariman Point, Mumbai 400 021.<br><br>PAN AAACI2557H |
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| (Appellant) | | (Respondent) |

IT(SS)A No.62/Mum/2004 for Block Assessment 01.04.1990 to 14.09.2000

| DCIT Cent. Circle 21,<br>Mumbai | | Jyoti Records Mfg. Ltd.,<br>157 Maker Chamber, IV,<br>Nariman Point, Mumbai 400 021.<br><br>PAN AAACJ1352M |
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| (Appellant) | | (Respondent) |

IT(SS)A No.63/Mum/2004 for Block Assessment 01.04.1990 to 15.09.2000

| DCIT Cent. Circle 21,<br>Mumbai | | General Can Pvt. Ltd.,<br>157 Maker Chamber, IV,<br>Nariman Point, Mumbai 400 021.<br><br>PAN AAACG1852B |
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| (Appellant) | | (Respondent) |

IT(SS)A No.64/Mum/2004 for Block Assessment 01.04.1990 to 14.09.2000

| DCIT Cent. Circle 21,<br>Mumbai | | Shamvik Agrotech Pvt. Ltd.,<br>157 Maker Chamber, IV,<br>Nariman Point, Mumbai 400 021.<br><br>PAN AAACS7869L |
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| (Appellant) | | (Respondent) |

IT(SS)A No.65/Mum/2004 for Block Assessment 01.04.1990 to 15.09.2000

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| DCIT Cent. Circle 21,<br>Mumbai | | Ainamid Engg & Metal Works Pvt. Ltd.,<br>157 Maker Chamber, IV,<br>Nariman Point, Mumbai 400 021.<br><br>PAN AAACA5227A |
| (Appellant) | | (Respondent) |

IT(SS)A No.70/Mum/2004 for Block Assessment 01.04.1990 to 15.09.2000

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| DCIT Cent. Circle 21,<br>Mumbai | | Shamvik Containers P. Ltd.,<br>157 Maker Chamber, IV,<br>Nariman Point, Mumbai 400 021.<br><br>PAN AAACS7138J |
| (Appellant) | | (Respondent) |

IT(SS) No.166/Mum/2004 for Block Assessment 01.04.1990 to 15.09.2000

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| Madhu Goel,<br>305 Vimal Apartments,<br>Parshwanath Nagar, Nahur Road,<br>Mulund (W), Mumbai 400 080<br>PAN AEJPG9318J | | DCIT Cent. Circle 21,<br>Mumbai |
| (Appellant) | | (Respondent) |

IT(SS)A No.90/Mum/2004 for Block Assessment 01.04.1990 to 14.09.2000

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| DCIT Cent. Circle 21,<br>Mumbai | | Shri Vikram Munshi.,<br>157 Maker Chamber, IV,<br>Nariman Point, Mumbai 400 021.<br><br>PAN AACPM5429P |
| (Appellant) | | (Respondent) |

IT(SS)A No.851/Mum/2003 for Block Assessment 01.04.1990 to 23.10.2000
IT(SS)A No.03/Mum/2004 for Block Assessment 01.04.1990 to 23.10.2000

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| Shamvik Glasstech Pvt. Ltd.,<br>157 Maker Chamber, IV,<br>Nariman Point, Mumbai 400 021.<br><br>PAN AABCS7896J | | Addl. CIT Cent. Range 5/ Dy CIT<br>Central Circle 21,<br>Mumbai |
| (Appellant) | | (Respondent) |

IT(SS)A No.98/Mum/2004 for Block Assessment 01.04.1990 to 23.10.2000
IT(SS)A No.99/Mum/2004 for Block Assessment 01.04.1990 to 23.10.2000
IT(SS)A No.104/Mum/2004 for Block Assessment 01.04.1990 to 23.10.2000
IT(SS)A No.264/Mum/2004 for Block Assessment 01.04.1990 to 23.10.2000
ITA No.3794/Mum/2005 for Assessment Year 2000-2001

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| Dy CIT Central Circle 21,<br>Mumbai | | Shamvik Glasstech Pvt. Ltd.,<br>157 Maker Chamber, IV,<br>Nariman Point, Mumbai 400 021.<br><br>PAN AABCS7896J |
| (Appellant) | | (Respondent) |

IT(SS)A No.298/Mum/2004 for Block Assessment 01.04.1990 to 23.10.2000

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| Dy CIT Central Circle 21,<br>Mumbai | | Vijay Goel,<br>305 Vimal Apartments,<br>Parshwanath Nagar, Nahur Road,<br>Mulund (W), Mumbai 400 080<br>PAN AADPG3425E |
| (Appellant) | | (Respondent) |

IT(SS)A No.850/Mum/2003 for Block Assessment 01.04.1990 to 23.10.2000
ITA No.4779/Mum/2006 for Assessment Year 1996-97

| General Glass Co. Pvt. Ltd.<br>157 Maker Chamber, IV,<br>Nariman Point, Mumbai 400 021.<br><br>PAN AAACG3666P | | Dy CIT Central Circle 21,<br>Mumbai |
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| (Appellant) | | (Respondent) |

IT(SS)A No.66/Mum/2004 for Block Assessment 01.04.1990 to 23.10.2000

| Dy CIT Central Circle 21,<br>Mumbai | | General Glass Co. Pvt. Ltd.<br>157 Maker Chamber, IV,<br>Nariman Point, Mumbai 400 021.<br><br>PAN AAACG3666P |
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| (Appellant) | | (Respondent) |

IT(SS)A No.89/Mum/2004 for Block Assessment 01.04.1990 to 15.09.2000

| DCIT Cent. Circle 21,<br>Mumbai | | Shri Kalpana Munshi.,<br>157 Maker Chamber, IV,<br>Nariman Point, Mumbai 400 021.<br><br>PAN AACPM5428M |
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| (Appellant) | | (Respondent) |

For the assessees : Shri Rakesh Joshi
For the Revenue : Dr K R Subhash (CIT-DR)

| Date of Hearing : 21.11.2024 | | Date of Pronouncement. 31.12.2024 |
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**O R D E R**

**Per Justice (Retd.) C V Bhadang, President :**

This order shall dispose of the following twenty appeals.

| S.No. | IT(SS)A/ITA No. | Assessee | Search Dt. concluded | Assessment Order Dt. |
|---|---|---|---|---|
| 1 | 60/M/2004 (Dept) | India Containers Ltd. | 15.09.2000 | 27.09.2002 |
| 2 | 62/M/2004 (Dept) | Jyoti Records Mfg. Co. Ltd. | 15.09.2000 | 27.09.2002 |
| 3 | 63/M/2004 (Dept) | General Can Pvt. Ltd. | 15.09.2000 | 27.09.2002 |
| 4 | 64/M/2004 (Dept) | Shamvik Agrotech Pvt. Ltd. | 15.09.2000 | nil |
| 5 | 65/M/2004 (Dept) | Ainamid Engg & Metal Works P. Ltd | 15.09.2000 | 27.09.2002 |
| 6 | 70/M/2004 (Dept) | Shamvik Containers Pvt. Ltd. | 15.09.2000 | 27.09.2002 |
| 7 | 166/M/2004 (Assessee) | Madhu Goel | 21.09.2000 | 27.09.2002 |
| 8 | 90/M/2004 (Dept) | Vikram Munshi | 13.10.2000 | 22.10.2002 |
| 9 | 851/M/2003 (Assessee) | Shamvik Glasstech Pvt. Ltd. | 23.10.2000 | 22.10.2002 |
| 10 | 3/M/2004 (Assessee) | Shamvik Glasstech Pvt. Ltd. | 23.10.2000 | 22.10.2002 |
| 11 | 98/M/2004 (Dept) | Shamvik Glasstech Pvt. Ltd | 23.10.2000 | 22.10.2002 |
| 12 | 99/M/2004 (Dept) | Shamvik Glasstech Pvt. Ltd. | 23.10.2000 | 22.10.2002 |
| 13 | 104/M/2004 (Dept) | Shamvik Glasstech Pvt. Ltd. | 23.10.2000 | 22.10.2002 |
| 14 | 264/M/2004 (Dept) | Shamvik Glasstech Pvt. Ltd. | 23.10.2000 | 22.10.2002 |
| 15 | 3794/M/2005(Dept) | Shamvik Glasstech Pvt. Ltd. | | 25.03.2003 |
| 16 | 298/M/2004 (Dept) | Vijay Goel | 23.10.2000 | 22.10.2002 |
| 17 | 850/M/2003 (Assessee) | General Glass Co. Pvt. Ltd. | 23.10.2000 | 27.09.2002 |
| 18 | 66/M/2004 (Dept) | General Glass Co. Pvt. Ltd. | 23.10.2000 | 27.09.2002 |
| 19 | 4779/M/2006 (Assessee) | General Glass Co. P. Ltd. | | 29.03.2004 |
| 20 | 89/M/2004 (Dept) | Kalpana Munshi | 13.11.2000 | 22.10.2002 |

2. All the aforesaid appeals arise out of Search & Seizure proceedings u/s. 132 of the Income Tax Act, 1961 (Act for short) and the consequently assessments made u/s. 158BC of the said Act. The said search by the department was conducted on the Munshi Group of Companies and relate parties/entities. The record discloses that the assessee had filed an application seeking to raise an additional ground challenging the legality of warrant of assessment on the ground that necessary pre-condition viz. satisfaction for issue of search warrant u/s. 132 of the Act has not been complied with. The Bench on such an application had directed the Revenue to produce the record pertaining to the satisfaction note by an order dated 19.11.2008. It appears that inspite of seeking time repeatedly, the satisfaction note was not produced and, eventually, vide order sheet entry dated 18.04.2011 final opportunity was granted to the Revenue to produce the record

putting the parties to notice that in absence thereof adverse inference would be drawn.

3. The Revenue challenged the said order before the Bombay High Court in Writ Petition Nos. 2433 of 2011, 2434 of 2011, 1257 of 2012, 1383 of 2012 and 1326 of 2013. The said petitions have been disposed of by High Court on 01.09.2023 in the following terms :

> *"1. The counsels appearing for the respective Petitioners state that the Revenue does not have the satisfaction note and hence the situation will be similar to that covered by the order that this Court passed on 28th July 2023 in Writ Petition No.2849 of 2008 and another. For completion of record, Counsels state that they will file an affidavit confirming the same.*
>
> *2. Even if the search is held to be invalid, the information or material gathered during the course thereof may be relied upon by Revenue for making adjustment to assessee's income in an appropriate proceeding, if so advised, and Revenue may utilize the information or material in such proceeding, as is permissible in law.*
>
> *3. The Income Tax Appellate Tribunal ("ITAT") is directed to dispose the pending Appeals in terms of this order within a period of twelve weeks from the date this order is filed in the Registry of ITAT.*
>
> *4. Petitions disposed."*

4. It can thus be seen that the High Court placing reliance on its earlier decision in the case of Marico Industries Ltd. & Anr & Ors in WP Nos. 2849 of 2008 and 745 of 2009, which arose on similar factual matrix has held that the Search and Seizure action was itself illegal for want of the satisfaction note as required u/s. 132 of the Act.

5. We have heard the parties in the context of the order passed by the High Court and it was fairly submitted on behalf of the Revenue that the Search and Seizure action itself having been held to be invalid nothing survives in the appeals filed by the Revenue.

6. On 18.11.2024, the respective assessees mentioned below have raised certain additional grounds as detailed below:-

(a) M/s Shamvik Glasstech Pvt Ltd in ITA No.851/Mum/2003 :

> *"1) The order passed by the Additional CIT under Section 271D, predicated upon the satisfaction recorded in the assessment order issued under Section 153BC, is devoid of jurisdictional authority as the aforementioned assessment order is itself untenable owing to the illegality of the search and seizure operation."*

(b) M/s India Containers Ltd – Under Rule 27 in ITA No.60/Mum/2004:-

> *"1) Hon'ble ITAT is requested to kindly direct the Learned Assessing Officer to restate income as per return filed u/s 139(1) of the Income tax Act, 1961 as the return filed in response to notice u/s 158BC/158BD is a nullity."*

(c) The additional ground mentioned in (b) above has also been raised by the following assessees:-

(i) M/s General Glass Co Pvt Ltd in ITA No.66/Mum/2004 & 850/Mum/2003

(ii) M/s Shamvik Glass tech Pvt Ltd in ITA No. 3/Mum/2004 & 104/Mum/2004

We have considered the same.

7. This group of twenty appeals, comprises of fifteen appeals filed by the Revenue and five appeals by the assessees. In view of the fact that the search

and seizure action, which was the basis for passing of the assessment orders, itself is held to be illegal, the consequent assessment orders are rendered invalid. In such circumstances, the additional ground as raised, which is reproduced above, has also to succeed and the appeals filed by the Revenue are liable to be dismissed and those filed by the assessee are required to be allowed. Consequent thereto, the returns of income filed in pursuance of notices issued in those proceedings will become infructuous. Consequently, the tax and interest paid by the assessee in the above said returns are liable to be refunded, as the collection of said tax and interest is not authorized by the law. However, the Assessing Officer is at liberty to use the incriminating materials, if any, collected during the search proceedings in other appropriate proceedings, as may be permissible in law. We order accordingly.

8. In the result, the appeals filed by the Revenue are hereby dismissed and those filed by the assessee are allowed as prayed.

Pronounced accordingly on 31.12.2024.

| Sd/- | Sd/- |
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| [B R Baskaran] | [Justice (Retd.) C V Bhadang] |
| ACCOUNTANT MEMBER | PRESIDENT |

Mumbai, Dated : 31st December, 2024.
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**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The PCIT, Mumbai.
4. The CIT
5. The DR, 'A' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai