IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND SHRI SOUNDARAJAN K, JUDICIAL MEMBER

ITA Nos. and Assessment Year	Appellant	Respondent
45, 46, 47, 48/Bang/2020 2007-08 to 2010-11	DCIT, Central Circle – 1(4), Bengaluru.	Shri. D. K. Shivakumar, No.252, "Kenkkeri" 18th Cross, Upper Palace Orchards, Sadashivanagar, Bengaluru – 560 080. **PAN : AKKPS 1306 F**
205/Bang/2022 2006-07	Shri. D. K. Shivakumar, Bengaluru – 560 080. **PAN : AKKPS 1306 F**	DCIT, Central Circle – 1(4), Bengaluru.

Assessee by	:	Shri. Chandrasekhar, AR.
Revenue by	:	Shri. Y. V. Raviraj, Sr. Standing Counsel.

Date of hearing	:	27.11.2024
Date of Pronouncement	:	31.01.2025

O R D E R

Per Laxmi Prasad Sahu, Accountant Member

These four appeals are filed by the Revenue against separate Orders of CIT(A) dated 17.10.2019 for Assessment Years 2007-08 to 2010-11 and assessee against the Order of CIT(A) [DIN and Order No.ITBA/REC/M/154/2021-22/1039114500(1)] dated 27.01.2022 for Assessment Year 2006-07.

2. The Revenue has filed common grounds of appeal for all the Assessment Years which are reproduced as under:

Grounds of appeal for Assessment Year 2007-08:

1. The order of the Ld. CIT(A) is opposed to law and facts of the case.
2. The Ld.CIT(A) erred in not appreciating the fact that the prevailing law at the time of reopening, required the seized document to belong to the person other than the searched person referred to in Section 153A for issue of notice u/s 153C in the case of the other person and it was not sufficient if it pertained to the other person.
3. The Ld.CIT(A) failed to appreciate that the assessee himself affirms that the seized material marked as A2/DJPL/4 dated 2.9.2010 do not belong to him.
4. The Ld.CIT(A) erred in not appreciating the fact that the seized material A2/DJPL/4 has not been found to be the material belonging to the assessee but pertaining to the assessee.
5. The Ld.CIT(A) erred in not appreciating the fact that there was no seized material found during the course of the search and seizure proceedings in the case of M/s Davanam Group on the basis of which notice u/s 153C could have been issued.
6. The Ld.CIT(A) erred in not distinguishing between information in the possession of the Assessing Officer as against the possession of material seized during the course of search which belonged to the assessee but was seized from the premises of another person.
7. The Ld. CIT(A) erred in not appreciating the fact that the assessee had admitted that Sri D.V. Harish had been requested by him to procure the 20 shops at Madivala Commercial Plaza.
8. For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order to be restored.

Grounds of appeal for Assessment Year 2008-09:

1. The order of the learned CIT(A) is opposed to law and facts of the case.
2. The CIT(A) erred in not appreciating the fact that the prevailing law at the time of reopening, required the seized document to belong to the person other than the searched person referred to in Section 153A for issue of notice u/s 153C in the case of the other person and it was not sufficient if it pertained to the other person.
3. The Ld.CIT(A) erred in not appreciating the fact that there was no seized material found during the course of the search and seizure proceedings in the case of M/s Davanam Group on the basis of which notice u/s 153C could have been issued.
4. The CIT(A) erred in not distinguishing between information in the possession of the Assessing Officer as against the possession of material seized during the course of search.
5. The CIT(A) erred in not appreciating the fact that the Development Right Certificate continued to be in the name of M/s Davanam Constructions Pvt. Ltd.
6. For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order to be restored.

Grounds of appeal for Assessment Year 2009-10:

1. The order of the learned CIT(A) is opposed to law and facts of the case.
2. The CIT(A) erred in not appreciating the fact that the prevailing law at the time of reopening, required the seized document to belong to the person other than the searched person referred to in Section 153A for issue of notice u/s 153C in the case of the other person and it was not sufficient if it pertained to the other person.
3. The Ld.CIT(A) erred in not appreciating the fact that there was no seized material found during the course of the search and seizure proceedings in the case of M/s Davanam Group on the basis of which notice u/s 153C could have been issued.
4. The CIT(A) erred in not distinguishing between information in the possession of the Assessing Officer as against the possession of material seized during the course of search.
5. The CIT(A) erred in not appreciating the fact that the Development Right Certificate continued to be in the name of M/s Davanam Constructions Pvt. Ltd.
6. For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order to be restored.

Grounds of appeal for Assessment Year 2010-11:

1. The order of the learned CIT(A) is opposed to law and facts of the case.
2. The CIT(A) erred in not appreciating the fact that the prevailing law at the time of reopening, required the seized document to belong to the person other than the searched person referred to in Section 153A for issue of notice u/s 153C in the case of the other person and it was not sufficient if it pertained to the other person.
3. The Ld.CIT(A) erred in not appreciating the fact that there was no seized material found during the course of the search and seizure proceedings in the case of M/s Davanam Group on the basis of which notice u/s 153C could have been issued.
4. The CIT(A) erred in not distinguishing between information in the possession of the Assessing Officer as against the possession of material seized during the course of search.
5. The CIT(A) erred in not appreciating the fact that the Development Right Certificate continued to be in the name of M/s Davanam Constructions Pvt. Ltd.
6. For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order to be restored.

3. Since the Revenue has raised common issues for all the four Assessment Years, therefore, for the sake of convenience and brevity, we are taking the facts for Assessment Year 2007-08 and facts taken in ITA No. 45/Bang/2020 for Assessment Year 2007-08 shall apply mutatis mutandis for appeals in ITA Nos.46, 47 and 48/Bang/2020 for the Assessment Years 2008-09 to 2010-11.

4. Briefly stated the facts of the case are that assessee filed return of income on 21.04.2008 declaring income of Rs.1,19,06,720/- and agricultural income of Rs.2,50,650/-. The return was processed under section 143(1) of the Act on 10.11.2009. A search was carried out in the case of M/s. Davanam Group on 02.09.2010 and during the course of search, the material indicating that the assessee has sold development rights to Dinasty Developers in the previous years relevant to Assessment Years 2006-07, 2007-08, 2009-10 and 2010-11 was found and seized which were marked as 13 to 16 containing details like, date of agreement, sale price, 80% payment, premium etc.. The said page numbers 13 to 16 of A2/BJPL/4 and 15 of A/DJPL/10 were scanned by the AO in his order. Consequent upon the search, the case was centralized vide Order dated 03.07.2012 under section 127(2) of the Act passed in F.No.6A/Centralisation/CIT-IV/2012-13 dated 03.07.2012. While this assessment proceeding was in progress, another search under section 132 of the Act in the case M/s. Sobha Developers took place on 10.10.2013 wherein material which indicated

that assessee had undisclosed income for Assessment Year 2008-09 was found and seized and the same resulted in reopening of the Assessment for Assessment Year 2008-09. The observations made by the AO (Assessing Officer) for the AY 2007-08 are as under:-

3. During the course of Search, it was gathered that that the assessee who is closely associated with Davanam group had purchased shops at Madiwala Commercial Plaza by paying huge premium and these premium amounts have not been accounted by the assessee. The Investigation Wing found documents in respect of the above transactions and the same were seized. The seized material marked as A2/BJPL/4 show that the assessee had paid an amount of Rs. 3.48 crores as additional amount known as Premium for various shops purchased.

3.2 On the basis of the above information received from the Investigation Wing and perusal of the seized documents, the AO had reason to believe that income chargeable to tax has escaped assessment for the assessment year 2007-08 and hence the provisions of section 147 were invoked on 20.03.13. The Assessing Officer recorded the reasons and obtained the necessary approval of the Joint Commissioner of Income tax Central Range-1, Bangalore u/s. 151 of the Act on 22.03.13. The assessment was reopened by issue of notice u/s 148 dt. 22.03.13. Further the assessee had sought reasons vide letter filed on 30.01.14 for issue of notice u/s 148 and the same were supplied on 30.01.14.

3.3 The assessee filed objection to the proceedings u/s 148 of the Act vide assessee's letter filed 17.3.2014 and the said objection has been disposed vide this office letter dt. 18.3.2014 and supplied on 18.3.14.

3.4 In response to notice u/s 148 of the Act, the assessee filed a letter dt.30.1.2014 stating that the return filed on 21.4.2008 may be treated as return in response to notice u/s 148.

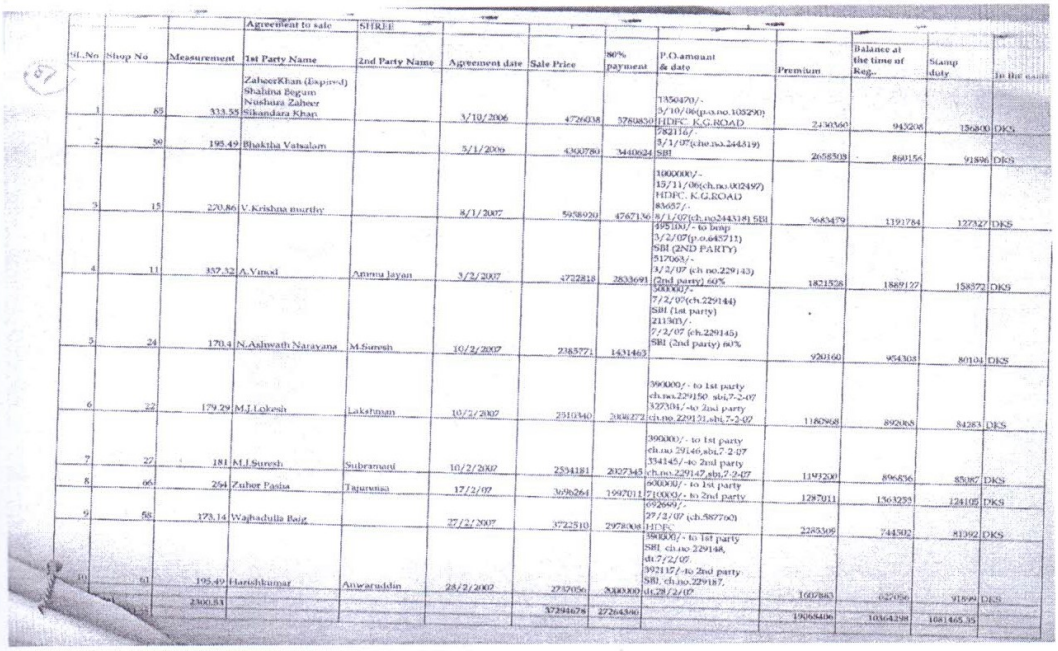
3.5 Statutory notice u/s 143(2) was issued on 10.3.2014, served on 13.3.14 posting the case for hearing on 14.3.2014. Further notice u/s 142(1) was also issued from time to time calling for the details.

5. In response to the statutory notices, the Authorized Representative of the assessee appeared time to time with supporting material for verification. After examining, the AO noted as under:

4. The assessee had requested Mr. D V Harish to procure for him 20 shops bearing No.85,15,11,24,22, 27,66,58,61,21, 29,30,57,56, 81,20, 46,19,63 & 59 at Madiwala Commercial Plaza during the F Y 2006-07 at a consideration of Rs.5001/- per sft.

4.2 During the search u/s 132 of the Act, the documents marked as A2/DJPL/4 were seized from the premises of M/s Davanam Jewellerrs Pvt Ltd No. 8 Kamaraj Road, Bangalore which reflected a chart containing the details of shops purchased. The pages marked as 13 to 16 contains details like, date of agreement ,sale price, 80% payment, premium etc. The above said page numbers. 13 to 16 of A-2/DJPL/4 and 15of A/DJPL/10 are scanned and

appended below.



			Agreement to sale	SHREE						Balance at			
Sl.No	Shop No	Measurement	1st Party Name	2nd Party Name	Agreement date	Sale Price	80% payment	P.O.amount & date	Premium	the time of Reg..	Stamp duty	In the name of
1	85	333.55	ZaheerKhan (Expired) Shahina Begam Noshara Zaheer Sikandara Khan		3/10/2006	4726038	3780830	1356470/- 3/10/06(p.o.no.105290) HDFC K.G.ROAD	2430360	943208	136800	DKS
2	50	195.49	Bhaktha Vatsalam		5/1/2006	4300780	3440624	782116/- 5/1/07(che.no.244819) SBI	2658308	869156	91896	DKS
3	15	270.86	V.Krishna murthy		8/1/2007	5958920	4767136	1000000/- 15/11/06(ch.no.002497) HDFC K.G.ROAD 83657/- 8/1/07(ch.no2443181 SBI	3683479	1391784	127327	DKS
4	11	357.32	A.Vasal	Ammu Jayan	3/2/2007	4722818	2833691	495180/- to benp 3/2/07(p.o.645711) SBI (2ND PARTY) 517063/- 3/2/07 (ch no.229143) (2nd party) 60%	1821558	1869127	158372	DKS
5	24	170.4	N.Ashwath Narayana	M.Suresh	10/2/2007	2385771	1431463	980000/- 7/2/07(ch.229144) SBI (1st party) 211301/- 7/2/07 (ch.229145) SBI (2nd party) 60%	920160	954303	80104	DKS
6	22	179.29	M.J.Lokesh	Lakshman	10/2/2007	2510340	2008272	990000/- to 1st party ch.no.229150 sbi,7-2-07 327041/-to 2nd party ch.no.229121,sbi,7-2-07	1180968	892068	84283	DKS
7	27	181	M.J.Suresh	Subramani	10/2/2007	2534181	2027345	990000/- to 1st party ch.no.229146,sbi,7-2-07 354145/-to 2nd party ch.no.229147,sbi,7-2-07	1193200	896856	85087	DKS
8	66	264	Zuber Pasha	Tanvima	17/2/07	3696264	1997011	900000/- to 1st party 270000/- to 2nd party	1297011	1363293	124105	DKS
9	58	173.14	Wajhadulla Baig		27/2/2007	3722510	2978008	692669/- 27/2/07 (ch.587760) HDFC	2285309	744302	81392	DKS
10	61	195.49	Harishkumar	Anwaruddin	28/2/2007	2737056	2000000	590000/- to 1st party SBI, ch.no.229144, dt.7/2/07 392157/-to 2nd party SBI, ch.no.229187, dt.28/2/07	1607883	627056	91899	DKS
		2300.83				37294678	27264346		19068406	10364298	1681465.35	

Sl.No	Shop No	Measurement	Less Amount 1st Party Name	SHREE 2nd Party Name	Agreement date	Sale Price	80% payment	P.O.amount & date	Premium	Balance at the time of Reg..	Stamp Duty	In the name of
1	21	179.29	Suresh kumar (s/o Rama murthy)		31/8/2006	2510239	2008191	717303/- 24/8/06(p.o.no.336394)SBI.	1290888	502048	84283	DKS
2	29	175.94	Raheem Khan	Fairoz Basha	3/10/2006	2463336	1970669	250000/- 3/10/06(p.o.no.105291)HDFC.K.G.ROAD 453901/- 3/10/06(p.o.no.105288)HDFC. K.G.ROAD	1266768	492667	82708	DKS
3	30	187.66	Mohammed Shafi Phasa	Habibur Rahaman & Chand pasha	9/10/2006	2627427	2101941	750790/- 9/10/06(p.o.no.002753)HDFC. K.G.ROAD	1351151	525486	88218	DKS
4	57	185	M.Thangavalu	L.Mohan	16/8/06	2590185	2072148	740148/- 14/8/06(p.ono.541762)Andhra Bank	1332000	518037	86967	DKS
5	56	180	P.P.Karunan		30/8/06	2525920	2020736	721784/- 24/8/06(p.o.no.336399)SBI	1298952	505184	84617	DKS
	Total	907.89				12717107	10173685		6539759	2543422	426794	
	2970216											

			SBI KPPL	SHREE								
Sl..No	Shop No	Measurement	1st Party Name	2nd Party Name	Agreement date	Sale Price	80% payment	P.O.amount & date	Premium	Balance at the time of Reg..	Stamp duty	In the name of
1	72	164.95	Raniamma		3/10/2006	2309465	1847572	659932/- 3/10/06(p.o.no.105289) HDFC, K.G.ROAD	1187640	461893	77542.005	DVH
2	78	363.67	B.Lakshminarayana adiga		4/1/2007	8000740	6400592	1000000/- 7/10/06(chq.no.612746) HDFC. K.G.ROAD 454970/- 4/1/07(chq.no.244314) SBI	4945622	1600148	170960.97	DVH
3	79	321.87	K.M.Amanulla		9/10/2006	4828050	3862440	1287737/- 9/10/06(p.o.no.002752) HDFC. HALASURU.	2574703	965610	151310.1	DVH
4	54	180.41	A.S.Vishuvumurthy	M.S.Manjunath Adiga	31/8/2006	2525920	2020736	721784/- 24/8/06(p.o.no.336396) SBI	1298952	505184	84810	DVH
5	16	140.92	B.S.Bhaskar		31/8/2006	1973000	1578400	563787/- 24/8/06(p.o.no.336395) SBI,	1014613	394600	66245	DVH
6	81	337.55	T.K.Shabbir ahmed		25/8/06	4726000	3780830	1350470/- 24/8/06(p.o.no.336398) SBI	2430360	945208	158678.82	DKS
7	20	180.41	S.Kalavathi		25/8/06	2525850	2020680	751764/- 24/8/06(p.o.no.336397) SBI	1268916	505170	84807	DKS
	Total					26889025	21511250		14720806	5377813	794353.6	
	6172167											

			Ready for registration (BBMP)	SHREE								
Sl..No	Shop No	Measurement	1st Party Name	2nd Party Name	Agreement date	Sale Price	80% payment	P.O.amount & date	Premium	Balance at the time of Reg..	Stamp duty	In the name of
1	46	184.27	Basheer Ahmed Khan		19/1/2007	3408995	2727196	737227/- 19-1-07(p.o.no.006467) HDFC. K.G.Road	1989969	681799	86624	DKS
2	19	190.78	M.Narasimha Setty		12/1/2007	2314785	1851828	661452/- 11/1/07 (ch.no244324) SBI, kppl A/c.	1190376	462957	89685	DKS
3	63	253.5	Aswath Kumar		10/2/2007	4200000	3360000	1014203/- 7/2/07 (ch. 229152) SBI	2345796	840000	119169	DKS
	Total	628.55				9923780	7939024		5526141	1984756	295478	
	2280234											

4.3 The chart at the above page No.15 describes the details of 20 shops at Madiwala Commercial Plaza, bearing Numbers 85,59,15,11,24,22,27,58,61,21,29,30,57,56,81,20,46,19, and 63which were purchased by the assessee after making the sale agreements in the F.Y-2006-07.

4.4 The chart at above page No.13 to 16 under the column "Sale Price" indicates the "Purchase Value" of the shops and also describes the premium paid in respect of shop numbers 46, 19, 63.In the chart at page No.15 "Sale Price" of the shops is mentioned as "Purchase value". The following chart illustrates that the "Sale Price" mentioned in the chart at page No.13 to 16 tantamount to "Purchase Value" mentioned at page No.20 of the seized material mentioned above.

Shop No	"Sale price" as per page No.13 to 16 of seized material No. A2/DJPL/4	Premium amount paid as per page No.13 to 16 of seized material No. A2/DJPL/4	'In the name of 'as per page No.13 to 16 of seized material No. A2/DJPL/4
85	4726038	2430360	DKS
59	4300780	2658508	DKS
15	5958920	3683479	DKS
11	4722818	1821528	DKS
24	2385771	920160	DKS
22	2510340	1180968	DKS
27	2534181	1193200	DKS
66	3696264	1287011	DKS
58	3722510	2285309	DKS
61	2737056	1607883	DKS
21	2510239	1290888	DKS
29	2463336	1266768	DKS
30	2627427	1351151	DKS
57	2590185	1332000	DKS
56	2525920	1298952	DKS
81	4726000	2430360	DKS
20	2525850	1268916	DKS
46	3408995	1989969	DKS
19	2314785	1190376	DKS
63	4200000	2345796	DKS
Total;		3,48,33,582	DKS

4.5 The assessee was furnished the seized documents marked as A2/DJPL, page no. 11 to 16 to the assessee, vide order sheet noting dated 14.3.14 and was asked to show cause why the premium amount of Rs.3.48,33,582/- mentioned in the document seized and copy furnished to the assessee should not be treated as unaccounted investment. The assessee filed written submissions on 17.3.14.

4.6 It was stated that the assessee do not know anything about the noting in the seized material and that it does not represent any income belonging to him. The assessee further stated that he had requested Sri D V Harish to procure 20 shops at Madivala Commercial Plaza and Sri D V Harish was doing the negotiations in this regard. It was also stated that the shops mentioned above were not registered in his till date. The assessee contended the sum of Rs.3.48 crores by way of premium was neither paid by him nor was payable by him.

4.7 As per the seized document **A2/DJPL/4, at page No. 15**, it described that the "Premium" was paid in respect of the shops. The "Premium" is the additional amount over and above the purchase cost. In fact, the above "Premium" has been paid towards purchase of shops at Madiwala Commercial Plaza as exemplified by the chart of comparison of "Sale Price" and "Purchase value" given above. Further, the premium has been paid on the sale agreements entered during the current year for purchase of the shops. Hence, the "premium" paid towards purchase of the shops represents the unaccounted investment of the assessee for the current year. Therefore, premium paid mentioned in respect of 20 properties mentioned above is treated as paid from the unaccounted sources.

4.8 The Hon'ble Supreme Court in re CIT vsDurga Prasad More, 82ITR540 has observed that tribunal etc. should consider the theory of human probabilities and surrounding circumstances. Further it held Tribunal etc. are entitled to disbelieve any story which is prima facie fantastic and which does not accord with human probabilities,taxing authorities are not required to put blinkers while looking into documents produced before them and they are entitled to look into surrounding circumstances.

6. With the above observation the AO completed assessment, the AO relying on the judgment of Hon'ble High Court of Madras in the case of CIT Vs. Krishna Veni Amma (1986) 158 ITR 826 and the premium money noted of Rs.3,48,33,582/- was treated as additional income received at the time of entering into purchase agreement in respect of 20 shops at Madiwala Commercial Plaza during the Assessment Year 2006-07 and the said premium was added as unexplained income for this AY in terms of section 69 of the Act and added into the total income of the assesse, and assessed income at Rs.4,67,40,302/-.

7. Aggrieved from the above Order, the assessee filed appeal and detailed written submissions were also submitted. The CIT(A), after considering the entire written submissions and documents available before him allowed the appeal of the assessee observing that the notice issued by the AO under section 148 of the Act for reopening the case is bad in the eyes of law and the assessment should have been completed

under section 153C instated of section 148 the Act. The observations of the CIT(A) are as under:

7. After careful consideration of the grounds of appeal, statement of facts and written submissions, and legal position, and after considering all materials available on record, the appeal is decided as follows.

8. The appellant has raised a legal issue whether the provisions of section 147 of the Act can be initiated on the facts of the case instead of initiating proceedings under section 153C of the Act which would have been the correct thing to do. The appellant submits that since the reasons for initiation of proceedings u/s 147 is that certain incriminating material was found during the course of a search u/s 132 in the case of M/s Davanam Constructions Pvt Ltd & its group, proceedings ought to have been necessarily initiated u/s 153C & not u/s 147 and this initiation of proceedings u/s 147 under the facts & circumstances of the case renders the very initiation bad in law and the entire proceeding is void ab initio.

9. In this context, the relevant portions of section 153C is reproduced as under:-

'Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A...'

10. It is seen from the above that Section 153C starts with a non obstante clause, which actually prohibits initiation of proceedings under any section other than Section 153C under the facts and circumstances as prevalent in the present case. The AO mentions in the assessment order that *"A search u/ s 132 was carried out in the case of M/S Davanam group on 2.09.2010. Shri. DK Shivakumar and his father Shri. DK Kempegowda are connected with M/s Davanam Constructions Pvt Ltd group opf cases. The case of the assessee was centralized to this Circle vide order u/ s 127 (2) passed in F.No.6A/ Centralisarion /CIT-IV/2012-13 dt.3.7.2012 of CIT, Bangalore-IV, Bangalore.*

During the course of Search, several documents relating to grant of Development Rights Certificate (DRC)/TDR to DCPL and subsequent sale of DRC/TDR to various parties were found. It was found that the assessee has sold Development Rights Certificates (DRC) to M/S Dynasty Developers in respect of rights relating to property known as Minerva Mills Property, Bangalore.

The capital gains / income from other sources from the said sale has not been offered to tax. On the basis of the above information received from the Investigation Wing and perusal of the seized documents, the AO had reason to believe that income chargeable to tax has escaped assessment for the assessment year 2006-07 and hence the provisions of section 147 were invoked. The Assessing Officer recorded the reasons and obtained the necessary approval of the Commissioner of Income Tax Karnataka (Central) Bangalore u/s 151 of the Act on 28.08.2012. The assessment was reopened by issue of notice u/s 148 dt. 28.8.2012 and served on the assessee on 27.11.2012."

11. From the above reading it is clear that since re-assessment in the case of the appellant is being proceeded on the basis of materials found during search proceedings in the case of of M/s

Davanam Group, the learned Assessing Officer ought to have issued notice under section 153C of the Act and not under section 148 of the Act, as the impugned material found during the course of search in the residence of a person referred to in section 153 A does not belong to that person but belongs to a person other the person searched.

12. The appellant placed reliance on the following decisions, which includes a decision of the Hon'ble jurisdictional ITAT Bangalore:-

(a) ITAT Delhi Bench in ITA 2430/DEL/2015 in the case of Rajat Shubra Chatterjee vs ACIT;

(b) ITAT Amritsar Bench in ITA 147/ASR/2010 in the case of ITO vs Arun Kumar Kapoor;

(c) ITAT Bangalore Bench in ITA Nos 1154 & 1155 / Bang / 2015, vide order dated 27/02/2018 in the case of Shri. Srinivas Rao Hoskote.

13. In may be noted that in the case of Shri. Srinivas Rao Hoskote, the Hon'ble ITAT Bangalore held as under :-

06. In our view the scope of Section 153C and 148 are clear from the bare reading of the two provisions insomuch as Section 153C it starts with 'Notwithstanding nothing containing in Section 139, 147, 148, 149, 151 and 153'. Thus if there is any contradiction between Sections 153C and 148 ,in that eventuality, Section 148 shall give way to Section 153C. There is a reason for saying so because if a notice u/s.153C is issued to the third party (assessee), then the AO may assess or reassess the income of the assessee for a period of six years whereas this is not the position in case of Section 148. Further u/s.153C of the Act, the assessment / reassessment can only be made based on the satisfaction recorded by the AO or the searched person as well as of the third party and further addition can only be made by the AO in respect of the assessment year for which the incriminating documents were found with the search person belonging to the third party. Therefore in our view the finding of the CIT(A) is in accordance with law, as the proceeding should have been initiated under section 153C of the Act, as it were based on material found during the search from the premises of searched person other than assessee and not under section 148 of the Act. Further we are of the opinion that this issue raised by the parties is ITA.1154 & 1155/Bang/2015 Page - 9 no more res integra as the coordinate bench in the matter of G. Koteshwara Rao v. DCIT [(2015) 64 taxmann.com 159] in para 11 to 14 has held as under :

11. A careful study of section 153A to 153C and also the circular issued by the CBDT explaining the procedure of assessment in search cases, it shows that these are separate provisions independent of other provisions relating to reassessment, because of the non obstante clause begins with the said sections. The language used in these sections, i.e. 'notwithstanding anything contained' in section 139, section 147, section 148, section 149, section 151 and section 153 made it clear that provisions of these sections are not made applicable to the assessments covered by the provisions of section 153A. Prior to the introduction of these three sections, there was a separate chapter XIV -B of the Act, by section 158BC to 158BE which governs the search assessments which is popularly known as Block assessment. The earlier provisions provides for single assessment to be made in respect of undisclosed income of Block period consisting of 10 assessment years immediately preceding the assessment year in which search took place and the broken period of up to the date of search was also included in the block period. After the introduction of new sections, i.e. section 153A to 153C, the single block assessment concept was done way with the new scheme of assessment of search cases where the Assessing Officer is to assess or reassess the total income of each of the assessment years falling within the period of six assessment years immediately preceding the assessment year in which the search is conducted.

Therefore, under the new scheme, the Assessing Officer is required to exercise the normal assessment powers in respect of the previous year in which the search took place. From these facts, one thing is clearly emerged that both i.e. earlier concept of

Block assessment and the new scheme of assessment is separate provisions created for assessment of search cases where the search is conducted u/s 132 or requisition was made u/s 132A of the Act. 12. Under the provisions of section 147, the Assessing Officer is having power to re-open the assessment, if he is of the opinion that the income chargeable to tax has escaped assessment. Before doing so, the Assessing Officer should satisfy himself that, there is material which suggests that there is an ITA.1154 & 1155/Bang/2015 Page - 10 escapement of income. The AO can exercise these powers with a reasonable belief coupled with some material which suggest the escapement of income. Once the conditions precedent for assumption of jurisdiction to commence the reassessment proceedings, he has to cross the hurdles attached with reassessment by way reasons for reopening of assessment, time limit for issue of notice and provision for obtaining sanction of higher authority in certain circumstances. Under the provisions of section 153A to 153C these hurdles are cleared by using the non abstante clause in the said section. In other words, under the new provisions of section 153A, the AO is not required to satisfy these conditions before issue of notice. The only requirement is that there should be a search action u/s 132 or books of account, other documents or any other asset are requisitioned under section 132A. Therefore, we are of the opinion that though, the Assessing Officer from both sections empowered to tax the income escaped from tax, both are works in a different situations, i.e. section 147 comes in to operation

where there is an escapement of income chargeable to tax and section 153A comes in to operation where there is search u/s 132. 13. Under the provisions of section 153A, the Assessing Officer is bound to issue notice to the assessee to furnish the returns of income for each assessment years falling within the six assessment years immediately preceding the assessment year in which search or requisition is made. Another significant feature of this section is that the Assessing Officer is empowered to assess or reassess the total income of the aforesaid period which includes disclosed and undisclosed income. Therefore, the new provisions has given wide powers to the Assessing Officer to assess or reassess the total income of six assessment years falling within the period of those six assessment years immediately preceding the assessment year in which search is conducted. Under the new provisions of section 153A, the statute is provides wide powers to the Assessing Officer in respect of assessments already completed u/s 143(1) or 143(3). If such orders is already in existence prior to the initiation of search, the Assessing Officer is empowered to reopen those proceedings and reassess the total income taking note of the undisclosed income, if any, found during the course of search. For this purpose, the restrictions imposed on the Assessing Officer by way of sections 148 to 153 to reopen the assessment ITA.1154 & 1155/Bang/2015 Page - 11 u/s 147 has been removed by the non abstante clause used in section 153A. 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 AO 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 u/s 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 u/s 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 u/s 132 or books of accounts, or any other asset or other documents requisitioned u/s 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 ITA.1154 & 1155/Bang/2015 Page - 12 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 u/s 153A or 153C, thereafter proceed to assess or reassess the total income, where search is conducted u/s 132 or requisition is made u/s 132A. Therefore, in our opinion, the AO is not justified in reopening the assessment u/s 147 and his order is illegal and arbitrary. In view of the above and in view of the decision relied upon by the assessee, we do not find any merit in the appeals filed by Revenue.'

14. In the case of N Suryanarayana , the Hon'ble ITAT Bangalore vide its order ITA Nos 1708 & 1709 /Bang/2017 AYs 2010-11 & 2011-12 dated 01/12/2017 held as under :

'6. In the present case also, this is noted by the AO in the assessment order that during the course of search operation carried out u/s. 132 of the Act in the case of ARPL on 03.12.2010, seized material marked as A/NSN/1 was found which reflected that there was unexplained investment of Rs. 9,90,145/- made by the assessee. On the basis of this evidence found in the course of search, the AO invoked the provisions of section 147 after duly recording the reasons for reopening of the assessment and a notice u/s. 148 of the Act was issued on 16.04.2012 which was duly served on the assessee. Hence it is seen that the search in the present case was carried out on 03.12.2010 and therefore, for Assessment Year 2010-11, section 153C can be invoked but for Assessment Year 2011-12 being the year of search, section 153C cannot be invoked and therefore, in respect of Assessment Year 2010-11,these Tribunal orders cited by ld. AR of assessee are applicable and respectfully following the same, I hold that the assessment order framed by the AO u/s. 147 for Assessment Year 2010-11 is bad in law because the same should have been made by the AO u/s. 153C. Since in AY 2010 – 11, the assessment order itself is quashed, the issue on merit do not call for any adjudication. Accordingly the assessment order in Assessment Year 2010-11 is quashed.'

15. It may be noted that the three ITAT benches have categorically held that where an assessment /reassessment is sought to be made on the basis of incriminating material found in the search of third party, provisions of 153C ought to be invoked and are applicable and further such circumstances exclude application of section 147 and hence

notice issued u/s 148 and proceedings u/s 147 are illegal and void ab initio and AO not having followed procedure u/s 153 C, order under 147 is to be rightly quashed.

16. In the light of the above judicial decisions of Hon'ble jurisdictional ITAT Bangalore in the case of N. Suryanarayana in ITA Nos 1708 & 1799 /Bang/2017 AYs 2010-11 & 2011-12 dated 01/12/2017 and in the case of Shri. Srinivas Rao Hoskote in ITA Nos 1154 & 1155 / Bang / 2015 dated 27/02/2018 which is squarely applicable in the instant appeal, and in view of the fact that the decisions are binding, and since judicial discipline requires that wisdom of higher authorities prevail, one is constrained to hold initiation of proceedings u/s 147 for the assessment year under consideration and consequent assessment order passed for AY 2007-08 as unsustainable .

8. From the order of the learned CIT(A) the revenue filed appeal before the Income Tax Appellate Tribunal.

9. The learned Departmental Representative (DR) relied on the order of the AO and submitted that on the basis of seized documents the AO has correctly issued notice under section 148 for completing assessment under section 147 of the Income Tax Act. 1961. The assessment orders are passed before the amendment to section 153C which comes into effect from 01/06/2015. Prior to the amendment the Act mandated that Section 153C is to be pressed into action only if the seized material found, belongs to the Other Person i. e. a person other than the searched person'. It is only post amendment that the Act, mandates, that Section 153C is to be pressed into action even if the seized material may not belong to the Other Person, but, relates or pertains to him. The AO is not expected to do what he was not

permitted to do under the Act, as it stood then, and hence, he was correct in initiating action under section 147 of the Act. He relied on the following judgments and gist of the judgements countering by the learned Authorised Representative (AR) are as under:-

(i). CIT Vs. Singhad Technical Education Society reported in 84 taxmann.com 290 (Supreme Court) -The learned Standing Council for the Revenue submitted that in this case the proposition dealt & approved by the Hon'ble Supreme Court is that initiation of proceeding under section 153C of the Act in respect of an assessment year can be done only if there was seized material, pertaining to such assessment year & not otherwise.

The learned AR contented that this case law is not relevant to the issue on hand in as much as the Supreme Court, in this cited case, has held that incriminating seized material pertaining to one year does not give jurisdiction to reopen an assessment under section 153C of another assessment year.

(ii). CIT vs Renu Constructions reported in 99 taxmann.com 426 (Delhi):- The learned Standing Council for the Revenue submitted that in this case the Delhi High Court, following the decision of its coordinate bench in the case of Pepsico India Holdings (P) ltd vs ACIT 370 ITR 295 held that the amendment to section 153C of the Act,

carried out w.e.f. 01/06/2015, was prospective in nature and the same cannot be applied to searches conducted prior to the amendment.

The learned AR contented that this decision of the Delhi High Court is no longer good law in view of the decision of the Hon'ble Supreme Court in the case of ITO vs Vikram Sujitkumar Bhatia reported 149 taxmann.com 123, which has been explained in detail in the later part of these submissions.

(iii). Kamaleshbhai Dharamshibhai Patel Vs. CIT (Gujarat High Court) – 31 taxmann.com 50 (Gujrat):- The learned Standing Council for the Revenue submitted that in this case the Gujarat High Court held that the Term 'Belong to', not being defined, the impugned document, relied upon to initiate proceedings under section 153C of the Act, pertained to or related to the person in whose case the proceeding under section 153C of the Act was initiated and the said proceeding was in order.

The learned AR contented that in this case the Gujarat High Court expanded the meaning of 'Belong To' to include "Have relation or reference to' and held in favour of the Revenue. This case law actually supports the assessee in the present case.

(iv). Goodwill Housing Ltd Vs. ITO, 45 taxmann.com 144 (Kar). The learned Standing Council for the Revenue submitted that in this case the Jurisdictional Karnataka High Court held that the provisions of section 158BD does not preclude the AO from initiating action under section 147 to bring to tax material found in a search.

The learned AR contented that this case law cannot be applied in as much as the present section 153C starts with a non obstante clause which clearly prevails over section 147 unlike the erstwhile section 158BD which did not start with a non obstante clause. This decision does not help the cause of the Revenue in the present case of this assessee.

(v). Amar Jewellers Ltd vs ACIT, [2022] 137 taxmann.com 249 (Gujarat) :- The learned Standing Council for the Revenue submitted that in this case the Gujarat High Court held that an order which is passed under section 153A of the Act can be subjected to a reopening under section 147, if the preconditions for reopening under section 147 of the Act is satisfied.

The learned AR contended that this proposition was also upheld by the Jurisdictional Karnataka High Court in the case of CIT Vs. Rinku Chakraborty 242 CTR 425, which decision was reversed by the Full Bench of the Karnataka High Court in Dell India Pvt Ltd Vs. CIT in

432 ITR 212. In any case this proposition is not the subject matter for consideration in the present case of this appellant.

(vi). Shailesh S Patel Vs. ITO [2018] 97 taxmann.com 570 (Ahmedabad – Trib) The learned Standing Council for the Revenue submitted that in this case the Tribunal relied upon the decision of the Delhi High Court in Pepsico India Holdings (P) Ltd vs ACIT 370 ITR 295, held that in order to bring to tax the income arising out of an incriminating material found in a search proceeding, in the hands of person, other than the person searched, it is not necessary to invoke the provisions of section 153C of the Act, but recourse can be had to section 147 as well, to tax the same. In this case the Tribunal also gave a finding that the time limit to initiate proceeding under section 153C of the Act having expired also justified the initiation of proceedings under section 147 of the Act.

The learned AR Contended that the decision of the Delhi High Court in the case of Pepsico India Holdings (P) Ltd, referred to in this decision, is no longer good law in view of the decision of the Hon'ble Supreme Court in the case of ITO Vs. Vikram Sujitkumar Bhatia 149 taxmann.com 123.

(vii). Pr.CIT Vs. Abhisar Buildwell (P) Ltd [2023] 149 taxmann.com 399 (SC) The learned Standing Council for the Revenue submitted that

in a case where the Revenue has material indicating income having escaped taxation, which is not forming part of material found and seized in a search proceeding, the Revenue can take recourse to initiating proceeding under section 147 of the Act, to bring the same to tax, provided the preconditions for reopening under section 147 are satisfied.

The learned AR contented that this case does not help the Revenue in the present case of this appellant, in as much as the facts of the case reveals that the material relied upon to initiate proceedings under section 147 of the Act, was found and seized in searches conducted on 02/09/2010 & 10/10/2013. Consequently, the case of the assessee came to be centralized on 03/07/2012. The AO has issued a notice under section 148 after the date of centralization. The time limit to initiate proceedings under section 153C for each of the assessment years from Assessment Year 2006-07 to Assessment Year 2010-11 had not expired as on the date on which notice under section 148 of the Act was issued for these respective assessment years. Thus, the AO was not precluded from initiating proceedings under section 153C of the Act. This Proposition relied upon by the Revenue, in fact, supports the present case of this assessee.

(viii). CIT Vs. Abhyudhaya Builders (P) Ltd [2012] 20 taxmann.com 851(Allahabad) The learned Standing Council for the Revenue

submitted that in this case the Allahabad High Court upheld the action of the AO in resorting to reopening under section 147 of the Act as the time limit to initiate proceedings under section 158BD of the Act had expired.

The learned AR contented that this case law does not help the Revenue in the present case of this Assessee as it was noticed in an earlier case, Section 153C of the Act starts with a non obstante clause, whereas section 158 BD of the Act, did not.

(ix). Janaki Exports International vs Union of India [2005] 145 taxman.82 (Delhi). The learned Standing Council for the Revenue submitted that in this case the Delhi High Court upheld the action of the AO in resorting to reopening under section 147 of the Act as the time limit to initiate proceedings under section 158BD of the Act had expired.

The learned AR contended that this case law does not help the Revenue in the present case of this assessee as submitted supra

(x). Anil Kumar Gopikishan Agrawal vs ACIT [2019] 106 taxmann. Com 137 (Gujarat) The learned Standing Council for the Revenue submitted that in this case the Gujarat High Court held that the amendment to section 153C of the Act, carried out w.e.f. 01.06.2015,

was prospective in nature & the same cannot be applied to searches conducted prior to the amendment.

The learned AR contended that this decision of the Gujarat High Court is no longer good law in view of the decision of the Hon'ble Supreme Court in the case of ITO vs Vikram Sujitkumar Bhatia [2023] 149 taxmann.com 123(SC).

(xi). ITO vs Vikram Sujitkumar Bhatia [2023] 149 taxmann.com 123 (SC) The Learned DR has placed reliance on para 10.3, 10.8 and other paras of this order where the Hon'ble Supreme Court observes that in the case of this particular assessee i.e. Vikram Sujithkumar Bhatia, the books of accounts or documents or assets were seized by the AO of the non searched person only on 25/04/2017, which is after the amendment to section 153C, which is w.e.f. 01/06/2015. It is to be noted that the case of Vikram Sujitkumar Bhatia was one among the many cases disposed off by the Hon'ble Supreme Court, by a common order and not the only case. The facts of these cases would certainly be different to one another. The learned DR further contends that this factual observation fortifies the proposition that the amendment is prospective & not retrospective and does not apply to searches conducted before 01/06/2015.

The learned AR of the assessee submited that this proposition canvassed by the learned DR is entirely wrong and is opposed to the decision of the Hon'ble Supreme Court. The learned AR draws the attention of the Bench to Paras 9, 10, 10.1, 10.4, 10.5, 10.6, 10.7, 10.8 and 11 of the said judgement. The learned AR further submitted that what is important is the fact that the Hon'ble Supreme Court did not end their judgement with this observation made in para 10.3, which is relied upon by the revenue. They proceeded further and following several earlier judgments rendered by it over a span of several years, and held that the amendment carried out to Section 153C w.e.f 01/06/2015, is by way of substitution & hence it is retrospective & not prospective. In Para 10.4 of the said Judgement the Hon'ble Supreme Court refers to its land mark decision in the case of Shamrao.V.Parulekar vs District Magistrate (1952) 2 SCC 1/1952 SCR 683, to hold that amendment by way of substitution wipes out the earlier provision from the statute as if it never existed on the statute & that the provision which is brought into the statute by way of substitution is deemed to have been on the statute ever since section 153C came into existence. The Hon'ble Supreme Court in Para 10.8 of this order states that the amendment to Section 153C by substituting the words 'Belongs or Belong To' with the words 'Pertains or Pertain to', was done to remedy the mischief that was noted pursuant to the decision of the Delhi Court in the Pepsico case cited supra. The Court goes on to observe that if the amendment provision is held to be

prospective, it would then frustrate the very object of substitution and the very object and purpose of section 153C shall be frustrated. In Para 11 of the order the Hon'ble Supreme Court holds that the amendment to section 153C would apply to searches conducted before 01/06/2015. One important aspect which is to be taken note of, is that this decision is rendered on the applicability of the amended provisions of Section 153C to searches conducted before 01/06/2015 also. The Proviso to section 153C clearly specifies that the date on which search is conducted on a person, other than the searched person, shall be the date on which the assessing officer of such other person receives the seized material that pertains to/relates to such other person. Thus, by virtue of this decision, the amended provision of section 153C would necessarily apply to all cases where the AO of such other person has received such material before 01/06/2015. There was no need for the Supreme Court to adjudicate in a case where such material is received after 01/06/2015, as the amended provision, if applied prospectively, would suffice to ensure applicability of Section 153C. It was only because there was a need to adjudicate cases whether the amended provision ought to be applied retrospectively, where such material is received before 01/06/2015, that the Hon'ble Supreme Court felt the need to adjudicate on the same. The Hon'ble Apex Court discussed the issue involved in depth and after considering several relevant judicial pronouncements held that the amendment is by way of substitution

which has the effect that the amendment introduced is deemed to have existed on the statute ever since section 153C came to be on the statute.

10. The learned AR during the course of hearing further submitted that the learned Standing Council for the Revenue has urged that the information about the seized material was received from the investigation department & not from the AO of the person searched & hence the AO of this assessee could not have initiated proceedings under section 153C of the Act, in absence of a satisfaction being recorded by the AO of the searched person which was a sine qua non to initiate proceeding under section 153C of the Act & thus, the AO was justified in initiating proceeding under section 147 of the Act.

10.1 In the above arguments of the learned Standing Council for the Revenue, the learned AR submitted that the Revenue needs to be trashed for the following reasons:

(a). The assessee who was regularly assessed to tax in the Salary Circle was brought under the jurisdiction of this AO after centralisation of his file on & from 03/07/2012. The centralisation has taken place after almost a period of two years from the date of search i.e., 02/09/2010 in the case of Davanam Group. The AO who has passed the impugned assessment orders for the Assessment Years 2006-07, 2007-08, 2009-10 & 2010-

11, is the same AO who has passed assessment orders in the case of the searched persons also. There was no requirement from the investigation authorities to separately notify this AO about the assessee having undisclosed income. The seized material was very well available with this AO itself. The notice under section 148 has been issued by this AO after centralisation of the assessee's file.

(b). As regards A.Y. 2008-09, even though the assessment order is passed by ACIT Circle - (6)(3)(1) Bangalore, which is after decentralization of the assessee's file, the notice under section 148 was issued on 27/03/2015, by the AO in the Central Circle, prior to decentralization. The Date of Search in the case of Sobha Group being conducted on 10/10/2013, and the notice under section 148 issued on 27/03/2015, after a gap of more than 17 months, indicates that the AO was in possession of the seized material when he issued notice under section 148 of the Act.

(c). That apart, the Investigation wing cannot act as a post office & distribute seized material to the different assessing officers who have jurisdiction over different persons who are in some way or other connected to the person searched. In all such cases, despite their being incriminating material found & seized in a search, no notice need be issued under section 153C of the Act

& all cases can be covered by section 147 of the Act. If this practice is encouraged & given a stamp of approval, the very object and purpose of introducing Section 153C on the statute would be frustrated & rendered otiose & any such action of the executive should not be countenanced.

(d). The Hon'ble Supreme Court in para 10.8 of its order in the case of Vikram Sujitkumar Bhatia have clearly held that it has always been the duty of the courts to ensure that the object & purpose of a statute should not be allowed to get frustrated. When such is the duty cast on courts, the executive has no business to frustrate the intent & purpose of a statute.

11. The learned Counsel for the assessee has contended that the non obstante clause present in both sections 153A and 153C reads thus; "Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153……". It has been contended that the non obstante clause starts with the words "notwithstanding anything contained", as opposed to the words "notwithstanding anything to the contrary contained", which, according to the learned Counsel, changes diametrically, the nature of the clause as it is and as it would have been had there existed the words "to the contrary" in the clause. The learned Counsel has stated that the Legislature, it is trite, chooses its words with utmost caution and that

no words so chosen by the Legislature can be said to have been frivolously chosen. It has been contended that the non obstante clause as it exists, contemplates a complete over-ride over the sections mentioned therein, from which, there is no escape. It has been stated that if the clause had been worded containing the words "to the contrary", there would have been only a partial over-ride, i.e., except to the extent specifically provided in the section, the specified provisions would have been operative.

12. In view of the above, these arguments of the Revenue needs to be rejected outright.

13. The learned Standing Council for the Revenue also urged that the AO only had information from the Investigation authority & was not in possession of seized material & hence he was correct in initiating proceedings under section 147 as he only relied upon information.

13.1 In the above arguments of the learned Standing Council for the Revenue, the learned AR submitted that contention of the learned Standing Council for the Revenue is patently false. It is important to take notice of the fact that in the Assessment orders passed for all the assessment years from 2006-07 to 2010-11, the AO in each one of those assessment orders mentions that reopening under section 147 of

the Act, by issue of notice under section 148 of the Act is based on material seized in the search proceedings. In view of this averment by the AO in the assessment orders it is not correct on the part of the Revenue to take a stand that reopening under section 147 was based on information received & not on the basis of material seized in a search. The Reasons Recorded for the Issue of notice under section 148, for each of these impugned assessment years, also has reference to seized material. This defense of the Revenue is against the admitted facts of the case & needs to be rejected outright.

13.2 The assessee strongly relies upon the decision of the Hon'ble Supreme Court noted above in the case of Vikram Sujitkumar Bhatia which clearly has ruled that the amendment is retrospective in nature & applies to all cases right from the date on which section 153C was brought on the statute.

13.3 The learned AR also relies upon the following decisions and submitted that these are binding upon this Tribunal:

13.3.1 The decision of the coordinate 'B" bench of this Income Tax Appellate Tribunal in the case of M/s Ickon Projects vs ITO in ITA No's 771 & 772/Bang/2017, where the ITAT held that the decision of the Supreme Court in the case of Vikram Sujitkumar Bhatia clearly mandates that the amended Section 153C is deemed to have been on

the statute since the very inception of that section & thus, if any material which is seized in a search conducted u/ 132 is to be used to assess a person who is not searched, the AO would have to necessarily initiate proceedings under section 153C of the Act, in order to do the same & proceeding, if initiated under section 147, to assess the same is bad in law. The coordinate bench has relied upon para 10.8 of the Supreme Court order to come to its conclusion.

13.3.2 It is also important to take note of the fact that it was the stand of the Revenue in the case of Vikram Sujitkumar Bhatia that the amendments to section153C, by way of substitution was to be given effect retrospectively and that the same is to be treated as having been on the statute ever since the section was introduced on the statute. The Hon'ble Supreme Court agreed with this proposition of the Revenue and decided the case in favour of the Revenue, overturning several decisions of various High Courts, who had all held that the amendments were prospective.

13.4 The Revenue cannot now take a stand that the amendment is prospective in the case of this assessee.

13.5 Another important fact to be noticed is that all decisions which are cited by the Revenue in support of its case are all rendered prior to the decision of the Hon'ble Supreme Court in the case of Vikram

Sujitkumar Bhatia & hence need to be ignored as they stand overturned by this decision of the Apex Court. The learned AR has also relied upon the decision of a coordinate bench in the case of Ickon Projects cited supra which is after the decision of the Supreme Court in the case of Vikram Sujitkumar Bhatia and which follows the law laid down therein.

14. Considering the rival submissions, the ITA Nos.45 to 48/Bang/2020 are appeals filed by the Income Tax Department on three common following grounds for all the years which are needs to be adjudication on the contention of the Revenue that the AO was correct in assuming jurisdiction under section 147 of the Act and issue notice under section 148 of the Act, for all the assessment years, which are before us, are as under:

(i) The Learned CIT A erred in not appreciating the fact that the prevailing law at the time of reopening, required the seized document to belong to the person other than, the searched person referred to in section 153A, for issue of notice under section 153C in the case of the other person, and it was not sufficient that it pertained to the other person.

(ii) The Learned CIT A erred in not appreciating that the seized material relied upon to reopen the assessments has not been found to be the material belonging to the assessee but pertaining to the assessee.

(iii) The Learned CIT A erred in not distinguishing between information in the possession of the assessing officer as against possession of material seized during the course of a search.

15. We find from the orders of the learned CIT(A) for all four Assessment Years i.e., 2007-08, 2008-09, 2009-10 & 2010-11, that the First appellate authority, allowed the appeals of the assessee that assessment proceeding had to be initiated under section 153C and not under section 147 of the Act, relying on decisions of two coordinate Bangalore benches of the ITAT in the case of N. Suryanarayana in in ITA Nos.1708 & 1799/Bang/2017, Assessment Years 2020-11 & 2011-12 dated 01/12/2017 and in the case of Shri Srinivas Rao in ITA Nos.1154 & 1155/Bang/2015, Order dated 27/02/2018. The learned Standing Council for the Revenue was unable to prove that both these orders travel to the Hon'ble High Court. Here it is necessary to examine the Provisions of Sub section (1) of Section 153C, before & after the amendment w.e.f. 01/06/2015.

Sub Section (1) of Section 153C as it was before the amendment:

153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the

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

Sub Section (1) of Section 153C after the amendment:

153C. (1) Notwithstanding anything contained in section 139, section 147, section 148*, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—*

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

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, ***relates to,***

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

16. From the above provisions of section 153C(1) in the light of judgment relied upon by both the parties in the case of Vikram Sujit Kumar Bhatia cited supra, it is seen that if the AO of the searched

person is satisfied that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to a person other than the searched person then the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A. Hence it is seen that even in the case of proceedings initiated on a person other than the searched person also, notice has to be issued by the AO to the other person under section. 153A of IT Act although such AO gets the jurisdiction under section. 153C of IT Act. Now we also reproduce the provisions of section 153A of IT Act which are as under.—

> *"153A. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—*
>
> *(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years [9][and for the relevant assessment year or years] referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;*

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made [9][and for the relevant assessment year or years] :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years [9][and for the relevant assessment year or years] :
Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years [9][and for the relevant assessment year or years] referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate :

Provided also that the Central Government may by rules[10] made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made [11][and for the relevant assessment year or years]:
[11][Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.-For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later

than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.
Explanation 2.- For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.]
(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner:
Provided that such revival shall cease to have effect, if such order of annulment is set aside.
Explanation.-For the removal of doubts, it is hereby declared that,—

(i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

16.1 From the above provisions of section 153A, it is seen that in this section, it is provided that in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A of IT Act then the AO shall issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years immediately preceding the Assessment Year relevant to the previous Assessment Year in which such search is conducted and addition is made. Hence it is seen that in section 153A, there is no such

requirement that anything else is required to be satisfied other than conducting of search in the case of the concerned assessee for issuing notice under section. 153A of IT Act whereas under section. 153C of IT Act, the requirements are different. In that section i.e. section 153C of the IT Act, it is seen that it is primary requirement that the AO of the search person should satisfy that any money, bullion, jewelry or other valuable article or thing, seized or requisitioned, belongs to; or any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to a person other than the searched person and then only he has to hand over the assets or documents to the AO having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A of the Act if that AO is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person. Hence it is seen that in the cases covered by section 153C of the Act notice has to be issued to other person under section. 153A of the Act but before issuing such notice, he has to satisfy that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six Assessment Years immediately preceding the Assessment Year relevant to previous year in which search is conducted and requirement is made. Hence it is seen that for issuing

notice under section 153A of the Act in the case of a person other than the searched person, the AO issuing such notice has to record satisfaction that books of accounts or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person. But in the case of searched person, there is no such requirement prescribed under section. 153A of the Act. Since even in the case of a person other than the searched person, notice has to be issued by AO to such other person under section. 153A of the Act.

16.2 In the case of the assesse was centralized on 03.07.2012, whereas search was conducted on 02.09.2010 and in case of search conducted on 10.10.2013 in case of Shobha Group the notice was issued on 27.03.2015 after of 17 months. The period for issue of notice under section 153C was not expired. In this case prima-facie appears that the revenue officers have not properly followed the Instruction No, 1927 dated 21.07.1995 specifically in this point **(vi) The seized material shall be handed over to the Assessing Officer at the earliest.** The AO was the same person for the searched person and the assesse, he could have issue notice under section 153C after following the procedure laid down therein. The AO has choosing to issue notice under section 148 instead of 153C since there were incriminating materials were found and seized. The very basis of reason for reopening the case is on the basis of Seized materials unearthed during

the course of searched person. On examination of the documents handed over by the Investigation Wing to the AO has a bearing for determination of total income of such other person for the relevant preceding years. In view of the above the case is covered under section 153C of the Act but not under section 147/148 of the Act.

17. The learned Standing Council for the Revenue has relied on the judgment of Hon'ble Apex Court in the case of Abhisar Buildwell P. Ltd. (supra) and other connected appeals, therein, their Lordships of the Supreme Court have held that prior to insertion of section 153A in the statute, the relevant provision for block assessment was under section 158BA of the Act, 1961; that the erstwhile scheme of block assessment under section 158BA of the Act envisaged assessment of 'undisclosed income' for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime, i.e., (i) block assessment under section 158BA to assess the 'undisclosed income' and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income; that secondly, the 'undisclosed income' was chargeable to tax at a special rate of 60% under section 113, whereas income other than 'undisclosed income' was required to be assessed under the regular assessment procedure and was taxable at the normal rate; that therefore, section 153A came to be inserted and brought on the Statute; that under the section 153A regime, the intention of the legislation was

to do away with the scheme of two parallel assessments and tax the 'undisclosed' income too at the normal rate of tax, as against at any special rate; that thus, after introduction of section 153A and in case of search, there shall be block assessment for six years; that search assessments/block assessments under section 153A are triggered by conducting of a valid search under section 132 of the Act, 1961; that the very purpose of search, which is a prerequisite/trigger for invoking the provisions of sections 153A/153C is detection of undisclosed income by undertaking extraordinary power of search and seizure, i.e., the income which cannot be detected in the ordinary course of regular assessment; that thus, the foundation for making search assessments under sections 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search; that on a plain reading of section 153A of the Act, 1961, it is evident that once search or requisition is made, a mandate is cast upon the AO to issue notice under section 153 of the Act to the person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and assess or reassess the same; that as per the provisions of section 153A, in case of a search under section 132 or requisition under section 132A, the AO gets the jurisdiction to assess or reassess the 'total income' in respect of each assessment year falling within six assessment years;

that however, it is required to be noted that as per the second proviso to section 153A, the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate; that as per sub-section (2) of section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner; that therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for the entire six years period/block assessment period; that the intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search; that therefore, on a true interpretation of section 153A of the Act, if in case of a search under section 132 of the Act or a requisition under section 132A of the Act, any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to

assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income, however, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/148 of the Act, subject to fulfilment of the conditions mentioned in sections 147/148 of the Act, as in such a situation, the Revenue cannot be left with no remedy; that therefore, even in case of block assessment under section 153A of the Act and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy; that if the submission on behalf of the Revenue, that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material, is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law; that the assessment under section 153A of the Act is linked with the search and requisition under sections 132 and 132A of the Act; that the object of section 153A of the Act is to bring under tax the undisclosed income which is found

during the course of search or pursuant to search or requisition; that therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years' block assessment period even in case of completed/unabated assessment; that as per the second proviso to section 153A of the Act, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessment; that it does not provide that all completed/unabated assessments shall abate; that if the submission on behalf of the Revenue is accepted, in that case, the second proviso to section 153A of the Act and sub-section (2) of section 153A of the Act would be redundant and/or it would amount to re-writing the said provisions, which is not permissible under the law.

17.1 While holding as above, their Lordships observed that they were in complete agreement with the view taken by the Hon'ble Delhi High Court in the case of "Kabul Chawla" and that in the case of "Saumya Construction" and the decisions of the other High Courts taking the view that no addition can be made in respect of completed assessments in absence of any incriminating material.

17.2 As such, their Lordships concluded :

(*i*) that in case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for block

assessment under section 153A;

(*ii*) all pending assessments/reassessments shall stand abated;

(*iii*) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

(*iv*) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under section 147 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under section 147/148 of the Act and those powers are saved.

17.2 It was in view of the conclusion so arrived at, that the appeals and Review Petition filed by the Department were dismissed by the Hon'ble Supreme Court in "Abhisar Buildwell (P.) Ltd.".

18. Now coming to the case of the assessee the search was conducted on 02/09/2010 & 10/10/2013 in the case of Davanam

Jewellers and Sobha Developers and incriminating materials were found and seized and it was marked as A2/DJPL/4 Page No. 13 to 16 and AO has quantified totaling to Rs. 3,48,33,582/- which is clear from the AO's order at Para No. 4.2 to 4.4. noted supra. During the search it was found and seized by the Investigation Wing in respect of transactions carried out for purchase of the Madiwala Commercial Plaza and noted that huge premium have been paid by the assesse and it was not recorded by the assessee . Consequently, the case of the assessee came to be centralized on 03/07/2012. The AO has received information and perused the seized documents thereafter the AO has issued a notice under section 148 after the date of centralisation. The time limit to initiate proceedings under section 153C for each of the assessment years from Assessment Year 2006-07 to Assessment Year 2010-11 had not expired as on the date on which notice under section 148 was issued for these respective assessment years. Thus, the AO was not precluded from initiating proceedings under section 153C of the Act, since, in the case of the assessee, there were incriminating materials unearthed during the course of search, therefore the AO has to follow the procedure as per sections 153A/153C of the Act. In the above judgment, the Hon'ble Apex Court has analyzed to the submissions of the assesse and observed the applicability of sections 143, 153A, 147 & 263 of the Act which are as under:-

***"4.1** The submissions on behalf of the assessees in a tabulated form thus are as under:*

S. No..	*Particulars*	*Assessment under section 143(3) pending and abated*	*Reassessment under section 147 pending and abated*	*Unabated assessments*
i.	*No Incriminating found in material search.*	*AO entitled to assess entire income, a pending regular assessment stood abated.*	*Scope of assessment under section 153A must be restricted to grounds of reopening of assessment, which was pending on date of search and stood abated as a result of search. AO not entitled to go beyond scope of pending assessment.*	*No assessment under section 153A in absence of any incriminating material. Originally concluded assessment which has attained finality cannot be disturbed more so when no material found in search.*
ii.	*No incriminating material found in search. Information/document from sources other than search available with AO*	*AO entitled to assess entire income, as pending regular assessment stood un abated.*	*Scope of assessment under section 153A must be restricted to: (a) grounds on which proceedings reopened; and (b)additional specific information coming to knowledge AO through modes other than search. AO not entitled to reopen entire assessment and undertake roving/fishing enquiries.*	*Assessment under section 153A in absence of any incriminating material may be dropped. Post dropping of proceedings under section 153A, Revenue may, basis other information, proceed under section 147 and/or 263 subject to satisfaction of jurisdictional*

				conditions under the said provisions.
iii.	*Incriminating material found during search only on issue 'A'. No other information/material available or found from any external sources.*	*AO entitled to assess entire income, as pending regular assessment stood abated. AO also entitled to assess entire income and not just issue A.*	*Scope of assessment under section 153A must be restricted to: (a) grounds on which proceedings reopened; and (b) issue A detected during search. AO not entitled to reopen entire assessment and undertake roving/fishing enquiries.*	*Assessment under section 153A to be restricted to Issue A relating to which incriminating material is found during search. Original concluded assessment which has attained finality cannot be disturbed, in context of issues in relation to which no documents are found in search.*
iv.	*Incriminating material found during search only on Issue 'A' Other information/material available or found from any external sources (not in search) in respect of Issue 'B'.*	*AO entitled to assess entire income including Issue A and/or Issue B.*	*Scope of assessment under section 153A must be restricted to: (a) grounds on which proceedings reopened; and (b) issue A detected during search; and (c) issue B for which information available. AO not entitled to reopen entire assessment and undertake roving/fishing*	*Assessment under section 153A could only be done in respect of issue A relating to which incriminating material is found during search. On conclusion of assessment under section 153A, Revenue may, basis other information,*

			enquiries.	*proceed under section 147 and/or 263.*

From the above table it is also clear that the case of the assessee does not fall under section 147 of the Act, since the materials were unearthed and seized during the course of search. In view of this the arguments of the learned Standing Council for the Revenue are not acceptable.

19. During the course of hearing the learned Standing Council for the Revenue relied in the judgement of the Hon'ble Supreme Court, in the case of ITO vs Vikram Sujit Kumar Bhatia, order dated 06.04.2023, reported in 453 ITR 417, The relevant part of the judgment are as under:-

> "9. In light of the aforesaid facts, the question of law, which arises for consideration of this Court is, "Whether amendment brought to section 153C of the Income-tax Act, 1961 vide Finance Act, 2015 would be applicable to searches conducted under section 132 of the Act, 1961 before 1-6-2015, i.e., the date of amendment", is required to be considered.
>
> 10. While considering the aforesaid question, the reason and the object and purpose of the amendment to section 153C introduced vide Finance Act, 2015 w.e.f. 1-6-2015 is required to be considered.
>
> 10.1 As observed hereinabove, in the pre-amended section 153C, the words used were "belongs or belong to" a person other than the searched person. In the case of Pepsico India Holdings (P.) Ltd. (supra), the Delhi High Court interpreted the expression "belong to" and observed and held that there is a difference and distinction between "belong to" and "pertain to". It was observed and held that on the basis of the registered sale deed seized

from the premises of the searched person, it cannot be said that it "belongs to" the vendor. Therefore, the High Court view gave a very narrow and restrictive meaning to the expression/word "belongs to" and held that the ingredients of section 153C have not been satisfied. To remove the basis of the observation made by the Delhi High Court in the case of Pepsico India Holdings (P.) Ltd. (supra), now, section 153C came to be amended w.e.f. 1-6-2015 by substituting the words "belongs or belong to" with the words "pertains or pertain to" insofar as the books of account and documents are concerned. Thus, having found that the observation made by the Delhi High Court in the case of Pepsico India Holdings (P.) Ltd. (supra) led to a situation where, though incriminating material pertaining to third party was found during the search proceedings under section 132, the Revenue could not proceed against the third parties, it was observed that the said observation made by the Delhi High Court in the aforesaid decision was coming in the way of suppressing the very mischief which the legislature intended to suppress, which necessitated the amendment in section 153C. Thus, it is a case of substitution of the words by way of amendment.
10.2 .

10.3 .

10.4 As observed hereinabove, section 153C has been amended by way of substitution whereby the words "belongs or belong to" have been substituted by the words "pertains or pertain to". As observed and held by this Court in the case of Shamrao V. Parulekar (supra) that amendment by substitution has the effect of wiping the earlier provision from the statute book and replacing it with the amended provision as if the unamended provision never existed. In the subsequent decision in the case of Zile Singh (supra), it is observed in paras 24 and 25 as under:—

> *"24. The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. "Substitution" has to be distinguished from "supersession" or a mere repeal of an existing provision.*
>
> *25. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (see Principles of Statutory Interpretation, ibid., p. 565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. v. State of U.P. [(2002) 2 SCC 645] , State of Rajasthan v. Mangilal Pindwal [(1996) 5 SCC 60] , Koteswar Vittal Kamath v. K. Rangappa Baliga and Co. [(1969) 1 SCC 255] and A.L.V.R.S.T. Veerappa Chettiar v. S. Michael [AIR 1963 SC 933] . In West U.P. Sugar Mills*

Assn. case [(2002) 2 SCC 645] a three-Judge Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centring around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal case [(1996) 5 SCC 60] this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case [(1969) 1 SCC 255] a three-Judge Bench of this Court emphasised the distinction between "supersession" of a rule and "substitution" of a rule and held that the process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place."

10.5 In the said decision, in paragraphs 14, 15, 18 and 20 with respect to the presumption against retrospective operation, it is observed and held as under:—

"14. The presumption against retrospective operation is not applicable to declaratory statutes…. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended…. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pp. 468-69).

15. Though retrospectivity is not to be presumed and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the

legislature had sufficiently expressed that intention giving the statute retrospectivity. Four factors are suggested as relevant: (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the legislature contemplated. (p. 388) The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right. (p. 392)

** ** **

18. In a recent decision of this Court in National Agricultural Coop. Marketing Federation of India Ltd. v. Union of India [(2003) 5 SCC 23] it has been held that there is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. Every legislation whether prospective or retrospective has to be subjected to the question of legislative competence. The retrospectivity is liable to be decided on a few touchstones such as: (i) the words used must expressly provide or clearly imply retrospective operation; (ii) the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional; (iii) where the legislation is introduced to overcome a judicial decision, the power cannot be used to subvert the decision without removing the statutory basis of the decision. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment. A validating clause coupled with a substantive statutory change is only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent.

** ** **

20. In Bengal Immunity Co. Ltd. v. State of Bihar [(1955) 2 SCR 603 : AIR 1955 SC 661] , Heydon case [(1584) 3 Co Rep 7a : 76 ER 637] was cited with approval. Their Lordships have said: (SCR pp. 632-33)

"It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon case [(1584) 3 Co Rep 7a : 76 ER 637] was decided that —

'... for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered—

1st. What was the common law before the making of the Act.

2nd. What was the mischief and defect for which the common law did not provide.

3rd. What remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth, and
4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico.' "

10.6 It is the case on behalf of the Revenue that section 153C is a machinery provision, which has been inserted with the purpose of carrying out the assessment of persons other than the searched person under section 132 of the Act, 1961. Even, in the impugned judgment and order, the High Court has, at paragraph 19.4 recorded that section 153C of the Act is a machinery provision. As per the settled position of law, the Courts, while interpreting machinery provisions of a taxing statute, 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. In the case of Calcutta Knitwears (supra), while interpreting section 158BD (which has been replaced by section 153C), this Court has observed in paras 18, 32 and 34 as under:—

"18. Sections 158-BC and 158-BD of the Act are machinery provisions. Section 158-BC of the Act provides the procedure for block assessment and section 158-BD of the Act provides for assessments in the case of an undisclosed income of any other person. The said sections are relevant for the purpose of this case and, therefore, they are extracted. They read as under:
"158BC. Procedure for block assessment.—Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132-A, in the case of any person, then—
(a) the assessing officer shall —

(i) in respect of search initiated or books of accounts or other documents or any assets requisitioned after the 30th day of June, 1995 but before the 1st day of January, 1997 serve a notice to such person requiring him to furnish within such time not being less than fifteen days;

(ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997 serve a

notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days, as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under clause (i) of sub-section (1) of section 142, setting forth his total income including the undisclosed income for the block period:

Provided *that no notice under section 148 is required to be issued for the purpose of proceeding under this Chapter:*

Provided further *that a person who has furnished a return under this clause shall not be entitled to file a revised return;*

(b) the assessing officer shall proceed to determine the undisclosed income of the block period in the manner laid down in section 158-BB and the provisions of section 142, sub-sections (2) and (3) of section 143, section 144 and section 145 shall, so far as may be, apply;

(c) the assessing officer, on determination of the undisclosed income of the block period in accordance with this Chapter, shall pass an order of assessment and determine the tax payable by him on the basis of such assessment;

*(d) the assets seized under section 132 or requisitioned under section 132-A shall be dealt with in accordance with the provisions of section 132-B. ****

158BD. Undisclosed income of any other person.—Where the assessing officer is satisfied that any undisclosed income belongs to any person other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132-A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the assessing officer having jurisdiction over such other person and that assessing officer shall proceed under section 158-BC against such other person and the provisions of this Chapter shall apply accordingly."

** ** **

32. It is also trite that while interpreting a machinery provision, the courts would interpret a provision in such a way that it would give meaning to the charging provisions and that the machinery provisions are liberally

construed by the courts. In Mahim Patram (P.) Ltd. v. Union of India [(2007) 3 SCC 668] this Court has observed that: (SCC p. 680, paras 25-26)

> *"25. A taxing statute indisputably is to be strictly construed. (See J. Srinivasa Rao v. State of A.P. [(2006) 12 SCC 607]) It is, however, also well settled that the machinery provisions for calculating the tax or the procedure for its calculation are to be construed by ordinary rule of construction. Whereas a liability has been imposed on a dealer by the charging section, it is well settled that the court would construe the statute in such a manner so as to make the machinery workable.*

26. In J. Srinivasa Rao [(2006) 12 SCC 607] this Court noticed the decisions of this Court in Gursahai Saigal v. CIT [(1963) 48 ITR 1 (SC)] and Ispat Industries Ltd. v. Commr. of Customs [(2006) 12 SCC 583].

'17. In Gursahai Saigal [(1963) 48 ITR 1 (SC)] the question which fell for consideration before this Court was construction of the machinery provisions vis-à-vis the charging provisions. The Schedule appended to the Motor Vehicles Act is not machinery provision. It is a part of the charging provision.

18. By giving a plain meaning to the Schedule appended to the Act, the machinery provision does not become unworkable. It did not prevent the clear intention of the legislature from being defeated. It can be given an appropriate meaning.'"

** ** **

34. It is the duty of the court while interpreting the machinery provisions of a taxing statute to give effect to its manifest purpose. Wherever the intention to impose liability is clear, the courts ought not be hesitant in espousing a commonsense interpretation to the machinery provisions so that the charge does not fail. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same (Whitney v. IRC [1926 AC 37 (HL)] , CIT v. Mahaliram Ramjidas [(1939- 40) 67 IA 239 : (1940) 52 LW 234 : (1940) 8 ITR 442] , Indian United Mills Ltd. v. Commr. of Excess Profits Tax [(1955) 27 ITR 20 (SC)] and Gursahai Saigal v. CIT [(1963) 48 ITR 1 (SC)]; CWT v. Sharvan Kumar Swarup & Sons [(1994) 6 SCC 623]; CIT v. National Taj Traders [(1980) 1 SCC 370]; Associated Cement Co. Ltd. v. CTO [(1981) 4 SCC 578]). Francis Bennion in Bennion on Statutory Interpretation, 5th Edn., Lexis Nexis in support of the aforesaid proposition put forth as an illustration that since charge made by the legislator in procedural provisions is excepted to be for the general benefit of litigants and others, it is presumed that it applies to pending as well as future proceedings."

10.7 In the case of Girdhari Lal (supra), it is observed and held by this Court that once the primary intention is ascertained and the object and purpose of the legislation is known, it then becomes the duty of the Court to give the statute a purposeful or a functional interpretation. It is further observed that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the Court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. It is further observed that the ascertainment of the legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred which advances the purpose and object of a legislation and that though the construction, according to the plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities. On interpretation of the statute, it is observed in paras 17 to 21 in the case of Hindustan Bulk Carriers (supra) as under:—

"17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See Nokes v. Doncaster Amalgamated Collieries [(1940) 3 All ER 549 : 1940 AC 1014 : 109 LJKB 865 : 163 LT 343 (HL)] referred to in Pye v. Minister for Lands for NSW [(1954) 3 All ER 514 : (1954) 1 WLR 1410 (PC)] .) The principles indicated in the said cases were reiterated by this Court in Mohan Kumar Singhania v. Union of India [1992 Supp (1) SCC 594 : AIR 1992 SC 1].

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See R.S. Raghunath v. State of Karnataka [(1992) 1 SCC 335 : AIR 1992 SC 81].) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See Sultana Begum v. Prem Chand Jain [(1997) 1 SCC 373 : AIR 1997 SC 1006] .)

20. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.

21. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a "useless lumber" or "dead letter" is not a harmonised construction. To harmonise is not to destroy."

10.8 Insofar as the submission on behalf of the respective respondents - assessees that by way of amendment to section 153C by Finance Act, 2015, it brings into its fold, the assessees - persons, who were not so far covered by it and, therefore, it affects the substantive rights of the assessees and, hence, it should not be made applicable retrospectively, is concerned, the submission seems to be attractive but deserves to be rejected. As observed hereinabove, even the unamended section 153C pertains to the assessment of income of any other person. The object and purpose of section 153C is to address the persons other than the searched person. Even as per the unamended section 153C, the proceeding against other persons (other than the searched person) was on the basis of the seizure of books of account or documents seized or requisitioned "belongs or belong to" a person other than the searched person. However, it appears that as in the case of Pepsico India Holdings (P.) Ltd. (supra), the Delhi High Court interpreted the words "belong to" restrictively and/or narrowly and which led to a situation where, though incriminating material pertaining to a third party/person was found during search proceedings under section 132, the Revenue could not proceed against such a third party, which necessitated the legislature/Parliament to clarify by substituting the words "belongs or belong to" to the words "pertains or pertain to" and to remedy the mischief that was noted pursuant to the judgment of the Delhi High Court. Therefore, if the submission on behalf of the respective respondents - assessees that despite the fact that the incriminating materials have been found in the form of books of account or documents or assets relating to them from the premises of the searched person, still they may not be subjected to the proceedings under section 153C solely on the ground that the search was conducted prior to the amendment is accepted, in that case, the very object and purpose of the amendment to section 153C, which is by way of substitution of the words "belongs or belong to" to the words "pertains or pertain to" shall be frustrated. As observed hereinabove, any interpretation, which may frustrate the very object

and purpose of the Act/Statute shall be avoided by the Court. If the interpretation as canvassed on behalf of the respective respondents is accepted, in that case, even the object and purpose of section 153C namely, for assessment of income of any other person (other than the searched person) shall be frustrated.

11. In view of the above and for the reasons stated above, the impugned common judgment and order passed by the High Court is held to be unsustainable and the question, i.e., "Whether the amendment brought to section 153C of the Income-tax Act, 1961 vide Finance Act, 2015 would be applicable to searches conducted under section 132 of the Act, 1961 before 1-6-2015, i.e., the date of amendment?", is answered in favour of the Revenue and against the assessees and is answered accordingly. Therefore, it is observed and held that the amendment brought to section 153C of the Act, 1961 vide Finance Act, 2015 shall be applicable to searches conducted under section 132 of the Act, 1961 before 1-6-2015, i.e., the date of the amendment. The impugned common judgment and order passed by the High Court, therefore, deserves to be quashed and set aside and is accordingly quashed and set aside. However, as before the High Court respective assessment orders were challenged mainly on the aforesaid issue, which is now answered in favour of the Revenue as above, we reserve the liberty in favour of the respective assessees to challenge the assessment orders before CIT (A) on any other grounds which may be available and it is observed that if said appeals are preferred within four weeks from today, the same be considered in accordance with law and on their own merits, on any other grounds.

19.1 In this case of Vikram Sujit Kumar Bhatia, being the lead case & other related cases, which were all disposed off by a common order, the Income Tax Department had initiated reassessment proceedings by issuing notice under section 153C of the Act against the respective assessees therein. The Assessees took the stand that reassessment proceedings under section 153C was bad in law in as much the seized material, relied upon to come to a satisfaction that income had escaped assessment, did not actually belong to the assessees. The contention of

the assessees was upheld by the respective High Courts, who held that in order to initiate proceedings under section 153C of the Act in the case of any person, the seized material relied upon to come to a satisfaction that income of such person has escaped assessment, must necessarily belong to such person and it is not enough that the material relates to or pertains to such person. The Department challenged the decision of the High Court taking the stand that it is not necessary that incriminating seized material must belong to such person on whom proceeding under section 153C of the Act is initiated & proceeding initiated under section 153C of the Act would be valid even if the material does not belong to such person but is relating or pertaining to such person & where material pertains to or relates to such person initiation of proceeding under section 153C of the Act is mandatory. The Hon'ble Supreme Court upheld the contention of the Revenue & overturned the decisions of the respective High Courts on the ground that the amendment was made by way of substitution & thus is deemed to have been on the statute, ever since the Section was brought on the Statute. In view of this the above judgment does not help to the Revenue but supports the arguments of the learned AR of the assesse.

19.2 The Judgment of the Jurisdictional Karnataka High Court in the case of Dinakar Suvarna vs DCIT Central Circle in ITA No.16 of 2015 relied by the learned AR also supports the case of the assessee, where the Hon'ble High Court held that when material which is seized in a

search proceeding, is to be used to assess a person, other than the searched person, the AO has to necessarily initiate proceedings under section 153C of the Act & cannot initiate proceedings under section 147 of the Act, relying on such material. It is important to note that in this case the assessment had been completed before the amendment to section 153C of the Act was carried out and even before the Judgement in the case of Vikram Sujithkumar Bhatia was rendered.

19.3 The Judgment of the Jurisdictional Karnataka High Court in the case of PCIT Vs. VSL Mining Company (P) Ltd in ITA No. 32 of 2020, order dated 20/09/2024 relied by the learned AR, where the Hon'ble High Court, following the decision of its coordinate bench in the case of Dinakar Suvarna vs DCIT Central Circle in ITA No.16 of 2015, held that when material, which is seized in a search proceeding, is to be used to assess a person, other than the searched person, the AO has to necessarily initiate proceedings under section 153C of the Act & not assess the same in a regular scrutiny assessment under section 143(3) of the Act, even for an assessment year which does not abate. It is to be noted that in this case also the assessment had been completed before the amendment to section 153C was carried out. The relevant assessment year is 2008-09 and AO issued notice under section 148 of the Act. The Hon'ble High Court has held as under:-

> ***12.*** *It is relevant to note that Chapter VI of the IT Act contemplates the procedure for assessment, wherein various stipulations are provided in terms of Sections 136 to 153 of the IT Act. Section 153A, 153B and 153C*

have been inserted by the Finance Act, 2003 w.e.f., 1.6.2003, which specifically contemplates assessments in cases of search or requisition. Section 153A of the IT Act contains various stipulations with regard to the person searched and Section 153C of the IT Act contains various stipulations with regard to such other person, other than the person searched.

13. *A coordinate Bench of this Court in the case of Sri Dinakar Suvarna v. Dy CIT [8] while considering an appeal of the assessee, in a fact situation wherein an assessment was re-opened under Section 147 of the IT Act based on a search conducted and the procedure under Section 153 of the IT Act was not followed was under consideration. It was held as follows:*

> *"10. Admittedly no proceedings were initiated under Section 153C of the Act. Thus, there is patent nonapplication of mind. It is relevant to note that the author of the diary Smt. Soumya Shetty had passed away prior to the date of search. It was argued on behalf of the Revenue that Shri. Ashok Kumar Chowta had offered tax on lump-sum income.*
>
> *11. Further, the Assessing Officer has not recorded his satisfaction with regard to escapement of income. On the other hand, he has based Revenue's case entirely on the statement of assessee....."*
>
> *(emphasis supplied)*

14. A Division Bench of the Rajasthan High Court in the case of Shyam Sunder Khandelwal v. Asstt. CIT [2024] 161 taxmann.com 255 has held as follows:

> *"24 . In the case where search or requisition is made, the AO under Section 153A mandatorily is required to issue notices to the assessee for filing of income tax return for the relevant preceding years. The AO assumes jurisdiction to assess/reassess 'total income' by passing separate order for each assessment.*
>
> *25. In cases of the person other than on whom search was conducted but material belonging or relating such person was seized or requisition, the AO has to proceed under Section 153C. The two pre-requisites are that the AO dealing with the assessee on whom search was conducted or requisition made, being satisfied that seized material belongs or relates to other assessee shall hand over it to AO having jurisdiction of such assessee. Thereafter, the satisfaction of AO receiving the seized material that the material handed over has a*

bearing for determination of total income of such other person for the relevant preceding years. On fulfillment of twin conditions the AO shall proceed in accordance with the provisions of Section 153A.

26. Special procedure is prescribed under Section 153A to 153D for assessment in cases of search and requisition. There cannot be a quibble with the proposition that the special provision shall prevail over the general provision. To say it differently the provisions of Section 153A to 153D have prevalence over the regular provisions for assessment or reassessment under Section 143 & 147/148.

27. Section 153A and 153C starts with non-obstante clause. The procedure for 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.

32. The argument that Section 153C can be invoked in case there is incriminating material for all the relevant preceding years and otherwise Section 148 is to be resorted to, is misplaced. On satisfaction of the twin condition for proceedings under Section 153C, the AO has to proceed in accordance with Section 153A. Notice is to be issued for filing of the returns for relevant preceding years and thereupon proceed to assessee or reassessee the 'total income'. It is not obligatory on the AO to make assessment for all the years, the earlier orders passed may be accepted. But once there is incriminating material seized or requisitioned belonging or relatable to the person other than on whom search was conducted, Section 153C is to be resorted to. "

(emphasis supplied)

15. In view of the settled position of law as noticed above, once material pursuant to a search is relied upon, the AO is required to follow the procedure as contemplated under Section 153A, 153B and 153C of the IT Act and it is impermissible for the AO to continue the regular assessment.

20. The Judgment of the Rajasthan High Court in the case of Shyam Sunder Khandelwal vs ACIT, 161 taxmann.com 255 (Rajasthan), order dated 19/03/2019 relied by learned AR, wherein the Rajasthan High Court concurring with the view taken by the Karnataka High Court in

the case of Dinakar Suvarna. This case is related to the assessment year 2014-15 prior to amendment in section 153C of the Act w.e.f. 01.06.2015. On the similar facts the AO issued notice under section 148 of the Act and completed the assessment under section 147 of the Act, there was incriminating materials were found during the search conducted under section 132 of the Act at the premises of 'Manihar' Group. During the course of search, certain documents including pen drives were seized. On writ filled by the assseee the Hon'ble High Court held as under:-,

> *23. The reasons supplied in case in hand for initiation of proceedings under section 147/148 are based on the incriminating material and documents including Pen Drives seized during the search carried out of the Manihar Group and the statements recorded during proceedings. From the information received the AO noticed that the loan advanced and interest earned thereon were unaccounted. In other words the basis for initiation of section 148 proceedings is the material seized relating to or belonging to the petitioner, during the search conducted of Manihar Group.*
>
> *24. In the case where search or requisition is made, the AO under section 153A mandatorily is required to issue notices to the assessee for filing of income-tax return for the relevant preceding years. The AO assumes jurisdiction to assess/reassess 'total income' by passing separate order for each assessment.*
>
> *25. In cases of the person other than on whom search was conducted but material belonging or relating such person was seized or requisition, the AO has to proceed under section 153C. The two pre-requisites are that the AO dealing with the assessee on whom search was conducted or requisition made, being satisfied that seized material belongs or relates to other assessee shall hand over it to AO having jurisdiction of such assessee. Thereafter, the satisfaction of AO receiving the seized material that the material handed over has a bearing for determination of total income of such other person for the relevant preceding years. On fulfillment of twin conditions the AO shall proceed in accordance with the provisions of section 153A.*

26. Special procedure is prescribed under section 153A to 153D for assessment in cases of search and requisition. There cannot be a quibble with the proposition that the special provision shall prevail over the general provision. To say it differently the provisions of section 153A to 153D have prevalence over the regular provisions for assessment or reassessment under section 143 & 147/148.

27. Section 153A and 153C starts with non-obstante clause. The procedure for 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.

28. The language of explanation 2 to new section 148 is akin to section 153A and section 153C. Corollary being that after seizing of operational period of section 153A to 153D, the cases being dealt thereunder were circumscribed in the scope of newly substituted section 148.

29. 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 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.

30. The argument that by enactment of section 153A to 153D has not eclipsed section 148 does not enhance the case of respondent to initiate the proceedings under section 148. On fulfillment of two conditions for invoking section 153C the proceeding in accordance with section 153A are to be initiated. The operating field of and section 153A to 153D and section 148 are different. Applicability of section 153C in cases where the seized material related to or belonged to person other than on whom search is conducted or requisition made does not render section 148 otiose. Section 148 shall continue to apply to the regular proceedings and also in cases where no incriminating material is seized during the search or requisition.

31. The other aspect of the matter is that under section 153A and 153C, 'the total income' is to be assessed. The total income includes returned income (if any), undisclosed income unearthed during the search or requisitioning and information possessed from the other sources.

For Illustration:- An assessee had returned income of Rs.100, undisclosed income of Rs.200 is unearthed during search and there is information from annual information statement of non-disclosure of income of Rs.150/-.

The AO under section 153A and 153C shall pass order dealing with income of Rs.100+Rs.200+Rs.150, the total income being Rs.450/-. In cases where there is no unearthing of undisclosed income of Rs.200/-, the department can resort to proceeding under section 147/148.

32. The argument that section 153C can be invoked in case there is incriminating material for all the relevant preceding years and otherwise section 148 is to be resorted to, is misplaced. On satisfaction of the twin condition for proceedings under section 153C, the AO has to proceed in accordance with section 153A. Notice is to be issued for filing of the returns for relevant preceding years and thereupon proceed to assessee or reassessee the 'total income'. It is not obligatory on the AO to make assessment for all the years, the earlier orders passed may be accepted. But once there is incriminating material seized or requisitioned belonging or relatable to the person other than on whom search was conducted, section 153C is to be resorted to.

21. The decision of the coordinate ‘B” bench of this Income Tax Appellate Tribunal in the case of M/s. Ickon Projects vs ITO in ITA Nos.771 & 772/Bang/2017, where the ITAT held that the decision of the Supreme Court in the case of Vikram Sujitkumar Bhatia clearly mandates that the amended in Section 153C is deemed to have been on the statute since the very inception of that section & thus, if any material which is seized in a search conducted under section 132 of the Act is to be used to assess a person who is not searched, the AO would have to necessarily initiate proceedings under section 153C of the Act, in order to do the same & proceeding initiated under section 147 of the Act to assess the same is bad in law.

22. To sum up, going through the arguments advanced by both the sides and considering the case laws noted supra. we find that the learned CIT (A) has done good reasoned order and there is no any infirmity. The AO should not have issued notice under section 148 of the Act. In the result the appeals filed by the Revenue are dismissed in above terms.

23. <u>ITA No 205/B/2022:</u>

This appeal filed by the Assessee pertains to the Assessment Year 2006-07. The assessee challenged the Assessment Order on the ground of jurisdiction stating that reopening under section 147 of the Act was bad in law and the correct way to do the same was by initiating proceeding under section 153C of the Act. The assessee succeeded before the CIT(A). The Revenue, did not file appeal on the order of the CIT(A) before the ITAT, filed an application under section 154 of the Act before the CIT(A) on the ground that CIT(A) had not considered certain important facts on record while passing the Appellate Order and requesting the CIT(A) to rectify the error and pass a fresh order after rectification. The CIT(A) after hearing both sides passed an order dated 30/07/2021, in ITA No.387/CIT(A)-11/BNG/2014-15, dismissing the rectification application, by categorically holding that there was no mistake apparent on record and that all facts were duly considered before passing the order. The

CIT(A) also went on to hold that the issue raised by the revenue was debatable in nature and the same was not amenable to rectification under section 154 of the Act. The Revenue, after a change in incumbent in the office of the CIT(A), filed one more application for rectification under section 154 of the Act, on the ground that the previous CIT(A) had erred in dismissing the rectification application under section 154 by overlooking certain important facts on record. This time the application under section 154, filed by the AO, came to be allowed.

24. Aggrieved by the Order of the CIT(A), in allowing the rectification application, the Assessee has filed this appeal before this Tribunal on the following grounds.

1. *The order passed by the learned Commissioner of Income-tax [Appeals] – 11, Bengaluru dated 27/01/2022, in so far as it is against the Appellant, is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the appellant's case.*

2. *The learned Commissioner of Income-tax [Appeals] erred in recalling the original appellate order passed by his predecessor dated 17/10/2019, which is not in accordance with law, on the facts and circumstances of the case.*

3. *The learned Commissioner of Income-tax [Appeals] is not justified in entertaining a second application for rectification filed by the learned assessing officer under section 154 of the Act, which amounts to reviewing the appellate order passed by the predecessor's original appellate order and also disposing off the*

first rectification application filed by the learned assessing officer under section 154 of the Act dated 30/07/2021, on the facts and circumstances of the case.

4. *The learned Commissioner of Income-tax [Appeals] failed to appreciate that the first application filed by the learned assessing officer under section 154 of the Act before the then learned Commissioner of Income-tax [Appeals] having been considered and dismissed, a second application for the rectification of very same mistake was not maintainable and ought to have dismissed the second rectification application filed by the assessing officer as not maintainable, on the facts and circumstances of the case,*

5. *The learned Commissioner of Income-tax [Appeals] failed to appreciate that the issues sought to be rectified under section 154 of the Act by the learned assessing officer, against the original appellate order passed by the predecessor Commissioner of Income-tax [Appeals], is bad in law in as much as the issue sought to be rectified, required a long drawn process of verification and debatable issue, consequently the learned Commissioner of Income-tax [Appeals] did not have jurisdiction or power to review the original appellate order passed by his predecessor, on the facts and circumstances of the case.*

6. *The impugned order of recalling passed by the learned Commissioner of Income-tax [Appeals] is bad in law as he has traversed beyond his scope and consequently passed a perverse order by recalling the original appellate order passed by his predecessor, on the facts and circumstances of the case.*

7. *The order of rectification passed by the learned Commissioner of Income-tax [Appeals], is in haste and not affording sufficient and reasonable opportunity to the appellant and further has not provided the submissions made by the learned assessing officer during the second rectification proceedings, which is in grave violation of the principles of natural justice and hence the order passed by the learned Commissioner of Income-tax [Appeals],*

requires to be set aside as bad in law, on the facts and circumstances of the case.

8. *The Appellant craves leave to add, alter, amend, delete or substitute any of the grounds urged above.*

9. *In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed and appropriate relief may be granted in the interest of justice and equity.*

25. We note the fact that the CIT(A), being the very same person who passed the first appellate order, while dismissing the first application for rectification has analyzed the issue, the facts and the judicial decisions relied upon to give relief to the assessee in the original appellate order, which is the subject matter of rectification and the ld. CIT(A) holds that there is no error, much less an error which is amenable to rectification under section 154 of the Act. Further the CIT (A), relying upon the decision of the jurisdictional Karnataka High Court in the case of one K.S. Venkatesh, has held that issue whether the substitution to the section 153C of the Act brought about in the statute was prospective or being clarificatory, is retrospective, being debatable in nature, the same cannot be a subject matter of rectification under section 154 of the Act.

26. In the second application under section 154 of the Act, which came to be allowed, the new incumbent CIT(A) has relied upon the order of the Supreme Court in the case of CIT Vs. Sinhgad Technical

Education Society 84 Taxmann 290 (SC) & held that the original appellate order suffered from Mistake Apparent On Record & needs to be rectified & allowed the appeal of the Revenue.

27. We find that the incumbent CIT(A) was not correct in allowing this appeal for the reason that the proposition dealt with & approved by the Hon'ble Supreme Court is that initiation of proceeding under section 153C of the Act in respect of an assessment year can be done only if there was seized material, pertaining to such Assessment Year and not otherwise. This case law is not relevant to the issues raised in the rectification application under section 154. The actual proposition approved by the Supreme Court, in this cited case, has held that incriminating Seized material pertaining to one year does not give jurisdiction to reopen an assessment under section 153C of another assessment year.

28. No doubt the Hon'ble Supreme Court has made a reference to the order of the Gujarat High Court in the case of Kamleshbhai Dharamshibai Patel Vs. CIT 31 taxmann.com 50 and observed that the Gujarat High Court has rendered that decision correctly, holding that the documents seized belonged to the assessee in that case and initiation of proceeding under section 153C of the Act was in order.

29. The CIT(A) concluded that initiation of proceedings under section 153C of the Act can be done only if the seized material belongs to the assessee and not otherwise even if it were to relate to or pertain to the assessee. The CIT(A) concluded incorrectly in as much as the Gujarat High Court held that the Term 'Belong to', not being defined, the impugned document, relied upon to initiate proceedings under section 153C of the Act, pertained to or related to the person in whose case the proceeding under section 153C of the Act was initiated & the said proceeding was in order. In this case the Gujarat High Court expanded the meaning of 'Belong To' to include "Have Relation or Reference To" and held in favour of the Revenue that it was correct in initiating proceeding under section 153C of the Act. Thus, the decision of the Gujarat High Court in this case actually supports the case of this assessee and the second rectification application under section 154 of the Act also, ought to have been dismissed. The incumbent CIT(A) has also relied upon the decisions rendered in the case of CIT Vs. Renu Constructions 99 taxmann.com 426 and Anil Kumar Gopikishan Agrawal Vs. ACIT 106 taxmann.com 137 in support of his decision to allow the application under section 154 of the Act.

30. It is important to take note of the fact that these decisions are no longer good law in view of the decision of the Hon'ble Supreme Court in Vikram Sujitkumar Bhatia noted supra. Considering the rival submissions, assessee has filed appeal against the second time

rectification order passed by the CIT(A). The very same issue was also involved in the Assessment Year 2007-08 to 2010-11 and facts are also same. Only the Revenue has taken recourse against the first Order passed by the CIT(A) dated 17.10.2019 and which was dismissed and again the Revenue filed rectification application which was accepted. We noted that in the case of assessee, the notice has been issued under section 148 of the Act on the basis of information received from DDIT (Inv.) and resorted to section 148 of the Act for the Assessment Years 2006-07 to 2010-11. The Hon'ble Apex Court has decided the issue in the case of Vikram Sujitkumar Bhatia (supra) and held that amendment made in section 153C of the Act is retrospective as we have held above in appeals for Assessment Years 2007-08 to 2010-11 in favour of the assessee. Since the issues involved in this case are also similar, therefore, the CIT(A) has wrongly decided the issue against the assesse and allowed the rectification application in favor of revenue. Accordingly, we set aside the Order passed by the CIT(A) dated 27.01.2022 vide DIN and Order No.ITBA/REC/M/154/2021-22/1039114500(1). In the result, we allow appeal filed by the assessee.

31. In the Result, the appeals of the Revenue in ITA Nos.45 to 48/Bang/2020 are dismissed and the appeal filed by the Assessee in ITA No.205/Bang/2022, stands allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(SOUNDARARAJAN K.)	**(LAXMI PRASAD SAHU)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Bangalore,
Dated : 31.01.2025.
/NS/*

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.