

**IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH (SMC),  
RANCHI**

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 101 & 102/Ran/2023 (Assessment Year 2016-17 & 2018-19)

Luxmi Hard Coke Mfg. Co., 7, Rani Sati Market, Jharia, Dhanbad-828111 <b>PAN No. AAFL 5944 Q</b>	Vs.	I.T.O., Ward 1(1), Dhanbad.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri Devesh Poddar, Adv.
Department represented by	Shri Khubchand T. Pandya, Sr.DR
Date of hearing	09/01/2025
Date of pronouncement	05/02/2025

**ORDER**

**PER: PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER:**

1. Both these appeals preferred by the assessee emanate from the separate orders of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) [in short, the Id. CIT(A)] both dated 24/03/2023 for the Assessment Year (AY) 2016-17 and 2018-19 respectively as per the grounds of appeal on record. Facts and circumstances of both these appeals are common. Grounds of appeal raised by the assessee in both these appeals are identical, therefore, with the consent of parties, both these appeals were clubbed and heard together and are being decided by this common order.
2. In these appeals, the assessee has preferred both the grounds on merit as well as legal ground. One of the legal ground that has been assailed in these appeals are that a search had taken place in a third party premises and certain incriminating materials were found there which pertains to the assessee which formed the basis for reason to believe for the Assessing Officer that income has

escaped assessment and therefore starting proceedings under Section 147/148 of the Act. It is the contention of learned Authorised Representative (Id. AR) of the assessee that a search had taken place in a third party premises and therein certain incriminating documents pertaining to the assessee were found, in such scenario, the assessment order should have been passed under Section 153C of the Act and not under Section 147/148 of the Act. The Id. AR of the assessee further submitted that if this ground is answered in favour of assessee, all other grounds becomes academic in nature.

3. The Id. A.R of the assessee referred to paper book page No. 9 wherein the reasons recorded for issuance of notice under Section 148 of the Act has been provided and therein it is clear that search and seizure operation were carried out in the premises of one Shri Rohit Sharma on 16/11/2017 and whereas the assessee i.e. Luxmi Hard Coke Manufacturing Company, no search action had taken place in the premises of assessee. It is only during the search operation in the premises of Rohit Sharma that incriminating materials were found pertaining to the assessee.
4. In the similar facts and circumstances, the Hon'ble High Court of Rajasthan Jodhpur Bench in D.B. Civil Writ Petition No. 17651/2022 connected with D.B. Civil Writ Petition No. 17523/2022 dated 21/03/2024 observed and held as follows:

*"14. In view of above, it is clear that the entire basis for reopening the assessment is nothing but the material and information collected during search conducted in the premises of another assessee. Collection of details relating to search would not mean collection of new incriminating material and information, independent of the incriminating material and information collected during search proceedings.*

15. *Learned counsel for the petitioner is correct in submitting that in fact, search was carried out in the year 2016 and the respondents had the authority to reopen the assessment by invoking the powers under Section 153C of the Act of 1961 and draw reassessment proceedings under Section 153A of the Act of 1961. That was not done within the period of limitation prescribed under Section 153B of the Act of 1961. The respondent-authority was fully aware of the fact that proceedings under Section 153C of the Act of 1961 would be barred by limitation, therefore, recourse was taken to the provisions contained in Section 148 and Section 148A of the Act of 1961 which has no application in the present cases."*

Similarly in another decision of Hon'ble High Court of Rajasthan in the case of Shyam Sunder Khandelwal Vs ACIT (2024) 161 taxmann.com 255 (Raj) which has been observed and held as follows:

*"In cases of the person other than on whom search was conducted but material belonging or relating such person was seized or requisition, the Assessing Officer has to proceed under Section 153C. The two pre-requisites are that the Assessing Officer dealing with the assessee on whom search was conducted or requisition made, being satisfied that seized material belongs or relates to other assessee shall handover it to Assessing Officer having jurisdiction of such assessee. Thereafter, the satisfaction of Assessing Officer 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 Assessing Officer shall proceed in accordance with the provisions of Section 153A."*

5. Reverting to the facts of the present case, admittedly, there was no search and seizure in the premises of assessee, the search had taken place in the premises of one Rohit Sharma wherein incriminating material pertaining to the assessee was found and that formed the basis for the department to proceed against the assessee under Section 147/148 of the Act. However, in such cases, as per aforestated judicial pronouncements as mandated by the provisions of the Act, the appropriate procedure is Section 153C proceedings and not Section 147/148 of the Act. Thus, legal ground is answered in favour of assessee.

Accordingly the reassessment order is declared bad in law and void ab-initio and all the subsequent proceedings thereafter, therefore, becomes nonest. Since this legal ground has been answered in favour of assessee, therefore, all other grounds of appeal becomes academic in nature and needs no adjudication separately. As per above terms, both the appeals of the assessee are allowed.

6. In the result, both appeals of the assessee are allowed

Order announced in open court on 05th February, 2025.

Sd/-  
(PARTHA SARATHI CHAUDHURY)  
JUDICIAL MEMBER

Ranchi, Dated: 05/02/2025

*\*Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi