

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.6191/Mum/2024 to 6196/Mum/2024
(Assessment Year :2012-13 & 2014-15 to 2018-19)**

Mrs. Rupal Kashyap Mehta 26/27, A Wing Ahuja Towers Rajabhau Desai Road Prabhadevi Mumbai – 400 025	Vs.	DCIT CC 4(1) Mumbai
PAN/GIR No.AGRPM5338E		
(Appellant)	..	(Respondent)

Assessee by	Shri Vinod Kumar Bindal (Hybrid) / Shri Satish Kumar Gupta
Revenue by	Smt. Sanyogita Nagpal, CIT DR
Date of Hearing	20/02/2025
Date of Pronouncement	27/02/2025

आदेश / O R D E R

PER BENCH:

The aforesaid appeals have been filed by the assessee against the appellate orders dated 18/10/2024 passed by the CIT (A) for the AYs 2012-13, 2014-15 to 2018-19, whereby the respective assessment orders passed on 28/12/2019 u/s 153A of the Act were confirmed. There was an income-tax search in the premises of the assessee on 06/10/2017 having a joint

search warrant as per the panchnama placed on record in the name of the assesseees Kashyap Kanaiyalal Mehta, Rupal Kashyap Mehta, Sunshine Housing & Infrastructure (P) Ltd, Zenith Barter (P) Ltd only.

2. The grounds of appeal taken by the assessee in brief are as below:

Firstly, addition made in absence of any incriminating material found during the course of search in the premises of the assessee where the material relied was found in income-tax searches with no common search / joint warrant in searches.

Secondly, no mandatory DIN on the body of the assessment orders.

Thirdly, incompetent and mechanical approval u/s 153D of the Act by the Addl CIT.

Lastly, illegal jurisdiction of the AO based on a void ab initio assessment jurisdictional order passed u/s 127(2) of the Act.

3. Brief facts are that during the course of the search, statements of the assessee and her husband, Mr Kashyap Kanaiyalal Mehta were recorded u/s 132(4) of the Act. The assessee categorically stated therein that her all financial matters are handled by her husband. It is also an admitted fact, that no material or information qua the additions made in all the assessment orders in appeal were found during the course of search as the AO has also not mentioned any such material

having being detected during the search action in the premises of the assessee. Whatever material has been referred to in the assessment order as confronted to the husband of the assessee during the course of search, was available with the Authorised Officers at the relevant time having being procured from extraneous sources in income-tax searches elsewhere at different times and in none of those search warrants, the name of the assessee was appearing as per panchnamas or information of those searches placed on record. Thus, those searches were independent income-tax searches. AO's main reliance is based on the statement of her husband Mr Kashyap Kanaiyalal Mehta.

4. In the statement recorded u/s 132(4) of the Act on 10/10/2017, the husband of the assessee was shown the statements recorded u/s 132(4) of the Act elsewhere to rebut while recording the statement of the husband in respect of the additions made to reject the claim of Long term capital gains as exempt u/s 10(38) of the Act for the period relevant to the **AY 2012-13**, the husband of the assessee was asked the following questions:

Q.25 Please state whether you or any of your family members have invested in the shares of D. B. (International) Stock Brokers Limited?

Ans. Sir, I confirm that the following persons have invested in D. B. (International) Stock Brokers Limited:

S.No.	Name of person	Years
1.	Kashyap K. Mehta (self)	A.Y. 2011-12
2.	Rupal K. Mehta (wife)	A.Y.s 2011-12, 2012-13
3.	Kashyap K. Mehta HUF	A.Y.s 2011-12, 2012-13

Q.26 Please state whether you or any of your family members have invested in the shares of Shree Nath Commercial & Finance Limited?

Ans. Sir, I confirm that the following persons have invested in Shree Nath Commercial & Finance Limited:

S.No.	Name of person	Years
1.	Kashyap K. Mehta (self)	A.Y. 2011-12
2.	Rupal K. Mehta (wife)	A.Y.s 2011-12

Q.29 What do you know about the business activity of D. B. (International) Stock Brokers Limited and Shree Nath Commercial & Finance Ltd?

Ans. Sir, I am not aware about the same. I have invested in the shares of D. B. (International) Stock Brokers Limited and Shree Nath Commercial & Finance Ltd on the recommendation and advice of Lt. Mr. Nagin Goradia.

Q.30 Who are the directors of D. B. (International) Stock Brokers Limited and Shree Nath Commercial & Finance Ltd?

Ans. Sir, I am not aware about the same. I have invested in the shares of D. B. (International) Stock Brokers Limited and Shree Nath Commercial & Finance Ltd on the recommendation and advice of Lt. Mr. Nagin Goradia.

Q.31 I am showing you the statement recorded u/s 132(4) of the I.T.Act, 1961 of Shri Raj Kumar Kedia at P-12, 2nd Floor, Hauz Khas Enclave, New Delhi. In the said statement in answer to Q.No. 11 he has stated that the D. B. (International) Stock Brokers Limited is a paper company controlled and managed by various accommodation entry operators. Please offer your comments for this observation and state why the long term capital gain claimed as exempt u/s 10(38) by you, your wife Smt. Rupal K. Mehta and Kashyap K. Mehta HUF should not be treated as bogus long term capital gain and why the exemption claimed by you, your wife Smt. Rupal K. Mehta and Kashyap K. Mehta HUF should not be disallowed and taxed accordingly in the relevant years?

Ans. Sir, I am not aware that D. B. (International) Stock Brokers Limited is a paper company or not. All documentary evidences including demat statement and contract notes pertaining to D. B. (International) Stock Brokers Limited within a week's time.

5. Further, as is mentioned in the relevant para 5.22 of the assessment orders for the **AYs 2014-15 to 2018-19**, the husband of the assessee was asked as below:

“5.2 Statement of the assessee’s husband Mr. Kashyap Mehta:

During the search action, statement of the assessee has been recorded, wherein she stated that she is not aware about any financial transaction carried out on his PAN and stated that her husband Mr. Kashyap K Mehta will furnish the details related to her.

It is clear from the deposition of assessee that her husband Mr. Kashyap K Mehta takes the financial decision on behalf of him. Thus Mr. Kashyap K Mehta, Husband of the assessee were confronted with the cash loan ledger found at the premise of M/s Evergreen Enterprises. The relevant part of the statement recorded on 10.10.2017 is reproduced below:

Q.30 I am showing you the copy of Page No. 50 and 51 of Annexure A-4, which is seized from the premise, 12, Sharda Sadan, 7, SG Marg, Dadar East, Mumbai office of M/s Evergreen Enterprises during the course of search action u/s 132 of the Income-tax Act. This seized document is confronted to Ashwin Rathod, employee in M/s Evergreen Enterprises. In his statement u/s 132(4) of the IT Act on 09.10.2017, he has admitted that this document contains the details of cash loan advanced to Nilesh Bharani, partner in M/s Evergreen Enterprises and finance broker, from Sunshine Group and cash loan repaid to Sunshine Group.

Please offer your comments in this respect.

Ans: I have seen this page. I admit that I have been giving cash loan to Nilesh Bharani, partner in M/s Evergreen Enterprises, which are recorded in this page as SS. I have also received interest in cash from Nilesh Bharani. I am unable to recollect the exact details of cash loan transactions. I have to check the facts regarding this with my records which are not with me. Please give me three days time by the end of which I will file the details of these cash transactions with Nilesh Bharani.

Q.31 I am showing you the copy of Page No. 328 of Annexure A-1, which is seized from the premise 12, Sharda Sadan, 7, SG Marg, Dadar East, Mumbai office of M/s Evergreen Enterprises during the course of search action u/s 132 of the Income-tax Act. This seized document is confronted to Ashwin Rathod, employee in M/s Evergreen Enterprises. In his statement u/s 132 of the IT Act on 09.10.2017, he has admitted that this document contains the details of cash loan outstanding in the name of Kashyap K. Mehta and Roopal Mehta.

Ans. As stated above, I used to do cash loan transactions with Nilesh Bharani I am unable to recollect the exact details of cash loan transactions.

I have to check the facts regarding this with my records which are not with me. Please give me three days time

by the end of which I will file the details of these cash transactions with Nilesh Bharani.

It is clearly evident from the above deposition that assessee has provided cash loan to Mr. Nilesh Bharani and earned interest income on the same.

6. The Ld. Counsel of the assessee submitted that all these questions and answers relevant to the additions made in the hands of the assessee in the respective AYs clearly demonstrate and confirm the contention of the assessee that no such evidence much less incriminating the assessee in any manner was found during the course of search in the premises of the assessee searched u/s 132 of the Act and therefore, by following the judgment of the Apex Court in **PCIT vs Abhisar Buildwell (P) Ltd [2023] 149 taxmann.com 399 (SC)**, no addition at all could be made in any assessment order passed u/s 153A of the Act.

7. The ld. CIT (DR) relied on the orders of the lower authorities and vehemently stressed that since the assessee was confronted with the said information, though admittedly not found during the course of search in the premises of the assessee but was sourced by the Authorised Officers from somewhere else, the said statements recorded u/s 132(4) of the Act become part of the incriminating evidence so as to justify the addition based on the directions of the Hon'ble Apex Court in *Abhisar Buildwell (supra)*. However, the learned CIT DR could not controvert the facts as above but her only strenuous arguments were that since in the statements recorded u/s 132(4) of the Act, the said

information was confronted to the assessee, the same amounts to detection of incriminating material during the course of search.

8. In rebuttal Mr Bindal the ld. counsel of the assessee stated that on this issue, the judicial pronouncements on existence of the law are clear which stipulate that to make any addition u/s 153A of the Act, any material relied should have been found during the course of search in the premises of the assessee only and nowhere else. He categorically stated that if anything was found during the course of search in the premises of some other assessee where the name of the assessee did not figure at all, then the course of reassessment available with the Revenue Authorities have been specifically designed in the statute u/s 153C of the Act which is also *para-materia* and non obstante section as is the section 153A of the Act. These two sections were applicable at the relevant time only in respect of income-tax searches conducted either in the premises of the assessee or in the premises of someone else allegedly detecting incriminating material in respect of an assessee not searched.

9. If the Revenue really wanted to take cognizance of the said material in any manner in the hands of the assessee, then the course of the said reassessment lied elsewhere and not u/s 153A of the Act which in terms of the mandate of the Hon'ble Apex Court in *Abhisar Buildwell* (supra) is unambiguously defined as below in para 14 (iv):

14.(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.*

10. Mr Bindal also referred to the decision of the coordinate Bench in the case of **Nilesh Bharani vs DCIT** in appeal no. **ITA/612/Mum/2020** dated **28/02/2023** where the Bench held as below:

91. We have already observed in our earlier paragraphs that the entire procedure to make an assessment or reassessment of income of the alleged escaped income either u/s 148 or section 153C of the Act practically is the same except the jurisdiction and root cause which are different. The legislature has specifically carved out scope of assessment / reassessment of income of a person not searched of such alleged escaped income based on some incriminating information found during a search on some other person searched by taking recourse to the section 153C of the Act. The AO has not been empowered to extend the scope of an assessment/ reassessment u/s 153A read with the section 153C of the Act beyond the alleged incriminating material found during the

course of search in the case of some other person, because assessment / reassessment in such case is specifically restricted to the income based on the said incriminating information only. Whereas, in the proceedings initiated u/s 148 of the Act, the AO may extend the scope of the assessment / reassessment on other amounts also if any information about those is on his record over and above the alleged escaped income as per the reasons recorded. The purpose of restriction of assessment for amount of income by taking recourse to the provisions u/s 153C of the Act to alleged incriminating material and not on suspicion has been upheld by the Hon'ble Supreme Court in the case of *Sinhgad Technical Education Society (supra)*.

92. Accordingly, we hold that any incriminating information of any undisclosed income of the person not searched which was found during the course of a search having taken place up to 31/03/2021 on some other assessee, can only be taken into consideration for an assessment / reassessment in the hands of the said person not searched through the domain of the section 153C of the Act. Thus, any assessment / reassessment proceedings-initiated u/s 148 of the Act in respect of the said incriminating information found during the course of a search up to 31/03/2021 on some other assessee is illegal and is ab initio as the same can be considered only by taking recourse to the

provisions of the section 153C r.w.s. 153A of the Act.
Thus, the assessment of the said amount of LTCG, which was claimed to be exempt u/s 10(38) of the Act by the assessee, made u/s 147 of the Act is beyond the scope of section 147, albeit it can be roped in only u/s 153C.

93. If on overall appreciation of the scheme of assessment / reassessment of income after the income-tax searches on the assessee searched and also for the persons not searched based on detection of some incriminating information during the said searches conducted upto 31/03/2021, the following legal course of action is open for the AOs, which can be summed up, in the following manner:

- (i) It is mandatory for the AO of the person searched to make an assessment / reassessment of income of the said assessee u/s 153A of the Act for the 6 assessment years prior to the date of search and also for the extended 4 relevant assessment years, subject to fulfillment of the prescribed conditions for the same, on the basis of an income-tax search conducted on him.
- (ii) However, in the assessment / reassessment orders passed within the scope of section 153A of the Act, the AO cannot consider any undisclosed income detected by way of an incriminating information pertaining / relating to the said assessee, during an income-tax search conducted in the premises of some other assessee(s), even conducted at the same time or in

some connected matter. In such a case where AO gets any information or material about any assessee from the search of some other person, he can, make assessment of the undisclosed income/ amount emanating from such information or material for the assessment / re assessment vide separate assessment / reassessment orders to be passed u/s 153A by taking recourse to the provisions of the section 153C of the Act. Because the cause of action for the said incriminating information for different amounts had originated in different search(es) in the different premises of other assessees and for the same, the mandatory route legislated u/s 153C of the Act must be followed.

- (iii) *Further, an assessee can also be assessed multiple times u/s 153C r.w.s 153A of the Act, despite having already been assessed u/s 153A of Act on the basis of an income-tax search in his premises, where the incriminating information has been received u/s 153C of the Act by the AOs of the searched person as well as of the person not searched, which information originates in different searches at different times on different persons as well.*

11. Besides the same, necessary reliance was placed on the following legal judicial pronouncements:

- i. PCIT vs Abhisar Buildwell (P.) Ltd (2023) 149 taxmann.com 399 (SC) (DOD- 24.04.2023)

- ii. PCIT vs Jay Ace Technologies Ltd. (2023) taxmann.com 45 (SC) (DOD-28.07.2023)
- iii. Atul Bharani vs DCIT – ITA No2021/M/2023 – DOD 20.11.2023
- iv. Poonam Promoters and Developers Pvt Ltd vs ACIT – ITAT Delhi ITA No. 4785/Del/2015- (DOD- 23.01.2024)
- v. Mr. Ritesh Rai vs DCIT – ITAT Chennai – ITA No. 811 & 812/Chny/2022 – (DOD- 19.07.2023)
- vi. PCIT vs Meera Gupta – ITAT Delhi – ITA No. 403/2023 (DOD- 27.07.2023)
- vii. PCIT vs Kaushik Devjibhai Patel – (2023) 152 taxmann.com 462 (Gujarat) (DOD-04.05.2023)
- viii. PCIT vs Jay Ambey Aromatics – (2023) 156 taxmann.com 691 (SC) (DOD- 24/11/2023)
- ix. PCIT vs Oxygen Business Park (P) Ltd – (2023) 157 taxmann.com 175 (Delhi) (DOD- 08/12/2023)
- x. Saksham Commodities Ltd vs ITO (2024) 161 taxmann.com 485 (Delhi) confirmed by the Apex Court in SLP no. 51947/2024 vide order dated 16/12/2024.
- xi. PCIT vs Pavitra Realcom Pvt Ltd (2024) 120 CCH 0035 (Delhi HC)
- xii. Hon'ble ITAT Mumbai "D" Bench in the case of Rajeshkumar Ramesh chandra Shah vs DCIT in ITA No. 5568 to 5573/Mum/2024 for AYs 2013-14 to 2018-19 DoD-31.01.2025. the judgment arising from the same search and on identical facts (as in the case of assessee)

has directed the AO to delete the additions in all the years under dispute (para 12 to 14, page no. 8 to 10)

12. We find that In respect of the addition made for the AY 2012-13 by rejecting the LTCG, claimed exempt u/s 10(38) of the Act by the assessee in her return of income though in the assessment order by the same charge AO, and on the identical set of facts as was in the case of **Atul Shamji Bharani vs DCIT**, the Coordinate Bench of the ITAT, Mumbai in **appeal no. 2022/Mum/2023** vide order **dated 09/08/2024** for the AY 2013-14, has held as below:

39. We have considered the submissions of both sides and perused the material available on record. In the present case, undisputedly the addition is made under section 68 and section 69C of the Act on account of alleged accommodation entries of bogus long-term capital gain. From the perusal of the assessment order, it is discernible that the said addition is not based on any material or document found during the course of search/survey action under section 132/133A of the Act conducted at the residential premises of the assessee. It is further evident that the AO has placed reliance upon the findings of the Investigation Wing, Kolkata, wherein the scrip M/s Shree Nath Commercial & Finance Ltd. was included in the list of 84 companies whose share prices were manipulated by a syndicate of entry operators. The AO from pages 4-12 of the assessment order discussed the findings of the Investigation Wing, Kolkata, wherein the modus operandi of providing bogus accommodation entry, players on the scheme, role of the operator, role of the promoters of the penny stock companies, role of shareholders and exit providers has been discussed. fluctuation, the history of the company, and the financials of the scrip M/s D.B. (International) Stock Brokers Ltd. From pages 18-27, the AO has analysed the statements of the

entry providers in the scrip of M/s D.B. (International) Stock Brokers Ltd. It is pertinent to note that these statements were recorded under section 132(4) of the Act on 13/06/2014 during the course of the search action at their premises. Thus, it is worth noting that none of the statements were pursuant to search/survey action under section 132/133A of the Act conducted at the residential premises of the assessee on 06/10/2017 and are much prior to the search in the case of the assessee. From the perusal of the statements, it is further pertinent to note that though the entry operator has agreed that they have arranged investments in the shares in M/s D.B. (International) Stock Brokers Ltd. on behalf of some of the beneficiaries, however there is no allegation against the assessee. Similarly, from pages 27-36, the AO analysed the financials and price fluctuation in the scrip M/s Shree Nath Commercial & Finance Ltd. Identical to M/s D.B. (International) Stock Brokers Ltd., the statement of entry operators relied upon by the AO, who admitted to have provided accommodation entry in M/s Shree Nath Commercial & Finance Ltd., were recorded in the year 2015, i.e. much prior to the search/survey conducted at the residential premises of the assessee. Therefore, from afore-noted factual position, it is evident that the entire addition is based on the information received during the search carried out in case of some other persons. Further, from para-7.10 of the assessment order, it is also evident that the statement of the assessee was also recorded under section 132(4) of the Act pursuant to the information received during the search carried out in case of some other persons. In view of the aforesaid peculiar factual matrix of the present case, it is the plea of the assessee that the assessment should have been done under section 153C of the Act instead of the assessment order being passed under section 153A of the Act.

40. We find that a similar controversy came up for consideration before the coordinate bench of the Tribunal in Anoop Kumar Gupta v/s ACIT, in ITA no. 454/Del./2020, for the assessment

year 2015-16, wherein despite the large no. of incriminating documents being found and impounded during the search, no addition was made by the AO in the assessment proceedings, as the AO was convinced with the explanation given by the taxpayer for those documents. However, in another search based on any independent warrant of authorisation, certain incriminating documents were found. Accordingly, the issue arose that whether the taxpayer needs to be questioned based on those incriminating documents only by taking recourse to section 153C of the Act and not under section 153A of the Act irrespective of the fact whether the assessment is abated or not. The coordinate bench of the Tribunal while deciding this issue in favour of the assessee, vide order dated 05/10/2023, held that any addition on the basis of some incriminating material found elsewhere could not be assessed in the assessment order passed under section 153A of the Act, but it could be considered only in a separate assessment order by taking recourse to the mandatory and special non obstante provisions of section 153C of the Act and then to pass a separate assessment order under section 153A r/w section 153C of the Act. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as follows:-

"23. It is pertinent to note that though the ld. AO had stated that large number of incriminating documents were found and impounded during the search, we find that ultimately no addition was made based on the same by the ld. AO in the assessment proceedings, as the ld. AO was convinced with the explanations given by the assessee for those documents. The fact of assessee claiming exemption u/s 10(38) of the Act for sale of shares of MARL was duly disclosed in the return of income filed on 29.11.2015 prior to the search itself. No document whatsoever was found and seized from the premises of the assessee during his search representing any incriminating document qua the issue of claim of exemption u/s 10(38) of the Act. The only document which

fall within the ambit of incriminating nature is the forged signature of Shri Koteswar Rao in the documents pertaining to allotment of preferential shares submitted to Ministry of Corporate Affairs (MCA), which was also not seized from the premises of the assessee. The investigation wing of Income Tax Department had gathered those informations from MCA and had confronted Shri Koteswar Rao during the course of search. Shri Koteswar Rao denied having affixed his signature thereon as he had resigned from the post of Director of MARL in the year 2012. However, from the statements recorded by the investigation wing of income tax department from various persons involved , it is evident that the signature of Shri Koteswar Rao was indeed forged in the documents pertaining to allotment of preference shares to various persons including the assessee and his family members. At this juncture, it would be relevant to note that both Shri Koteswar Rao as well as the assessee in their individual sworn statements had categorically denied having known each other. Hence it becomes evident that assessee was never involved in any of the forgery acts that had been carried out in the allotment of preference shares of MARL. But we find that the assessee was confronted by the revenue with those very same forged signed documents in order to draw adverse inference on the claim of exemption u/s 10(38) of the Act on the assessee. Hence the said forged signed documents become incriminating documents found during the course of search of third parties (which include MARL and Shri Koteswar Rao). Accordingly, if at all the assessee need to be questioned based on those incriminating documents, as per the scheme of provisions of Chapter XIV (sections 153A to 153C) of the Act , it could be done only by taking recourse to section 153C of the Act and not u/s 153A of the Act irrespective of the fact whether the assessment is abated or not. This is so because , the provisions of Sections 153A and 153C of the Act are special provisions starting with non-obstante clause thereon which

had been introduced in the statute only for the limited purpose of framing assessments pursuant to search actions carried out and information / materials surfaced therein.

24. We find that the assessment for this assessment year was not completed as the time limit to issue any notice u/s 143(2) of the Act was still available to the ld. AO and undoubtedly, as per the law as existed then, no addition in an assessment order passed u/s 153A of the Act in the case of the assessee was possible on the basis of some alleged incriminating information/ material seized / statements from / of the alleged entry providers as no incriminating material in any manner at all depicting bogus LTCG was found during the course of search in the premises of the assessee or on the strength of any search warrant in the name of the assessee in any premises anywhere. Thus, the only course available to the revenue was to initiate proceedings u/s 153C of the Act as has been held by the Hon'ble Supreme Court in *Vikram Sujitkumar Bhatia vs ITO* reported in 149 taxmann.com 123 (SC). We find that the Hon'ble Supreme Court in the case of *Abhisar Buildwell Pvt Ltd* reported in 149 taxmann.com 399 (SC) had not overruled / could not at all overrule the special provisions u/s 153C of the Act mandated by the legislature for the purpose. The directions therein by the Hon'ble Apex Court to consider material available with the ld. AO in pending assessments which was gathered by the ld. AO in normal course and not flowing from any search action for which the mandatory recourse is the route provided in section 153C of the Act only and there could be several assessments of the same assessee in addition to the single assessment u/s 153A of the Act for the relevant period on search on him. This is so because the cause of action u/s 153C of the Act can arise upto 10 years when some incriminating information pertaining to the assessee is detected in searches elsewhere at different times which were not accessible to the revenue earlier. The assessment procedures under the two specific situations have, therefore,

been categorically mandated by the legislature without any fetters and need to be followed by all the courts including the Hon'ble Supreme Court being a jurisdictional issue as has been held by the Hon'ble Supreme Court in S S Con Build Pvt Ltd reported in 293 Taxman 491 (SC) dated 4.5.2023 by following the earlier Apex Court judgment in Kanwar Singh Saini vs High Court of Delhi reported in (2012) 4 SCC 307. We find that undisputedly section 153C of the Act starts with a non obstante clause and both the AOs involved were bound to act as per this provision as term deployed therein is "shall". Accordingly, as per the law, no addition in an assessment order passed u/s 153A of the Act without following the mandatory route of section 153C of the Act in the case of the assessee was possible on the basis of some alleged material seized / statements from / of the alleged entry providers as no incriminating material in any manner at all depicting bogus LTCG was found during the course of search in the premises of the assessee or on the strength of any search warrant in the name of the assessee in any premises anywhere. Thus, the only course available for the revenue was to initiate proceedings u/s 153C of the Act on the assessee whereby the AO of the entry provider was statutorily required, (and not the officers of the investigation unit of the department under any circumstance on the basis of the seized material) if he was satisfied that the seized material/information from the searched entry provider had some bearing etc. on the determination of the assessable income of the assessee by sending the same to the AO of the assessee and then the AO of the assessee should have proceeded to assess the same by a separate assessment order u/s 153A read with the section 153C of the Act. Undisputedly, section 153C of the Act is a non obstante section and a complete code by itself and both the AOs involved were bound to act as per this provision as term deployed therein is "shall". No option was available with the AOs to act otherwise overruling the law at their whims.

Therefore, if the material found and seized from an entry provider 'pertains or pertain to, or any information contained therein, relates to the assessee, then the ld. AO of the said entry provider must have initiated the assessment process u/s 153C of the Act. It is in his exclusive domain to be satisfied whether 'pertains or pertain to, or any information contained therein, relates to' or not and the statute in an unambiguous language has not bestowed this power on any other authority, which admittedly here has been completely misunderstood to be with the Investigation Unit of the income-tax department by the ld. AO while completing the assessment.

25. For the sake of convenience, the provisions of section 153C of the Act as it stood at the relevant point of time are reproduced hereunder:-

"Assessment of income of any other person u/s 153C of the Act

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 the relevant assessment year or years referred to in sub-section (1) of section 153A:

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, 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 except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year--

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section

143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or (c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A."

(emphasis supplied by us)

26. It would not be out of place to refer to the Notes on Clauses of the Finance Bill 2015 when the legislature thought it fit to amend the provisions of section 153C of the Act w.e.f. 01.06.2015.

"Clause 36 of the Bill seeks to amend section 153C of the Income-tax Act relating to assessment of income of any other person. The existing provisions contained in section 153C provide that in the course of an assessment proceeding, in the case of a person in whose case search action under section 132 or action under section 132A have been conducted, and whether the Assessing Officer is satisfied that the assets or books of account or documents seized belong to another person, then, the assets or books of account or documents seized shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person, if he is satisfied that the books of accounts or documents or assets seized have a bearing on determination on the total income of such other person.

It is proposed to amend sub-section (1) of the said section so as to provide that 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 the relevant assessment year or years referred to in sub-section (1) of section 153A.

This amendment will take effect from 1st June, 2015."

27. On perusal of the above provision read with relevant Notes on Clause to the Finance Bill 2015, it is clear that any information or entry found in any document seized pertaining / relating to a person other than the person searched from the searched premises as was referred u/s 153A of the Act was to be handed over by the investigation wing to the AO of such other person (searched) and then that AO of the searched person shall handover the same to the AO of the person not searched who thereafter was to proceed against such other non-person by issuing a notice u/s 153C of the

Act and then to assess / re-assess income of such other not searched person.

28. Further on perusal of the proviso to section 153C of the Act , it is very clear that the first proviso as it existed then, the deemed date of search for initiation of proceeding u/s 153C of the Act in the case of a non-searched person (assessee here) was the date of receiving the documents by the AO of the assessee. It is pertinent to note that the panchanama was finally closed in the hands of the assessee on 31.3.2016 at 8.40 P.M. The case of the assessee got centralised only on 5.9.2016, which means the AO could have received any information relating to bogus LTCG based on entry operators statements only on or after 5.9.2016 and certainly not before that date. This is so because absolutely no documents of incriminating nature was found and seized in the premises of the assessee during the course of search on 30.3.2016 which got concluded on 31.3.2016 at 8.40 P.M. Hence even if 5.9.2016 is construed as the date of receipt of information by the AO of the assessee, then that would become the date of search on the assessee in order to proceed on the assessee in terms of section 153C of the Act. This view of ours is fortified by the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs RRJ Securities Ltd reported in 380 ITR 612 (Del) followed in Pr. CIT vs Raj Buildworth (P) Ltd reported in 113 taxmann.com 600 (Delhi) and the SLP of the revenue dismissed by the Hon'ble Apex Court which is reported in 113 taxmann.com 601 (SC). Consequently, the period relevant to the Asst Year 2015-16 herein, when the impugned incriminating material was found in a search of a third person, got shifted from the scope of an assessment u/s 153A of the Act to the provisions of the sections 153C of the Act being one of the six assessment year preceding the date of search in the case of the other person.

29. Thus, it could be safely concluded that in addition to the assessment order passed u/s 153A of the Act on the basis of an income-tax search conducted on the assessee, the impugned amount assessed in this assessment order as undisclosed / unexplained income, allegedly based on some incriminating material found elsewhere, with respect to the long term capital gain already declared in the return of income filed on 29/11/2015 could not be assessed in the said assessment order passed u/s 153A of the Act but it could be considered for the purpose only and only in a separate assessment order by taking recourse to the mandatory and special non obstante provisions of the section 153C of the Act and then to pass a separate assessment order u/s 153A r.w.s. 153C of the Act. Had recourse to section 153C of the Act been adopted by the revenue, then it would be in accordance with the decision of the Hon'ble Supreme Court in the case of ITO vs Vikram Sujitkumar Bhatia (supra). Hence the consideration of denial of exemption u/s 10(38) of the Act for the long term capital gain on sale of shares of MARL could not be done by the revenue legally in the proceedings u/s 153A of the Act on the assessee.”

41. Therefore, respectfully following the aforesaid decision of the coordinate bench of the Tribunal, we are of the considered view that any addition under section 68 and section 69C of the Act in the facts of the present case cannot be done by taking recourse to the provisions of section 153A of the Act. Accordingly, the additional grounds and ground no. 1 raised by the assessee are allowed.

13. Thus, respectfully following the above findings and directions of coordinate bench of the ITAT which applies squarely on the facts of the present case also, the addition of Rs 1,26,85,229/- made in respect of an already declared LTCG,

claimed exempt u/s 10(38) of the Act in the original return of income in the assessment order passed u/s 153A of the Act for the AY 2012-13 is hereby deleted as it is beyond the scope of assessment u/s 153A as not based on any seized or incriminating material.

14. Consequently, the addition of Rs 3,80,557/- made u/s 69C of the Act alleging unexplained expenditure incurred to earn the said LTCG is also deleted.

AY 2014-15 to AY 2018-19

15. Further, similarly **for the AY 2014-15 to 2018-19**, the additions were made by the AO by working out the unexplained cash loan given by the assessee to one Mr Nilesh Bharani relying on some information found in a different search and premises of Mr Nilesh Bharani where the name of the assessee was not there in any panchnama by stating that since Mr Nilesh Bharani had admitted in his statement recorded u/s 132(4), receipt of such cash loan from the assessee outside the declared sources in the return of income of the assessee. The said fact was not admitted by the assessee and which was also retracted by Mr Nilesh Bharani later vide his letter addressed to the Investigation Unit on 14/10/2017 when the husband of the assessee also retracted his statement recorded on 10/10/2017 as mentioned in foregoing paragraphs separately. The charts of the additions made are given below:

Para 5.31 for alleged cash loan given

5.31. In the light of the above discussion, the cash loans given by the assessee to Shri Nilesh Bharani are assessed as undisclosed investment in loans amounting to **Rs. 56,00,000/-** for AY 2014-15 to 2018-19, u/s 69 of the IT Act as detailed below.

Assessment year	Opening Balance	Cash loan given during the year	Cash loan received back during the year	Balance outstanding cash loan
	Amt in '000	Amt in '000	Amt in '000	Amt in '000
2012-13				0
2013-14	0			0
2014-15	0	4200		4200
2015-16	4200	1400		5600
2016-17	5600		3100*	2500
2017-18	2500			2500
2018-19	2500			2500
Total		5600	3100	

Para 5.33 for estimated interest earned on the above loans

5.33. Further the interest earned / receivable on cash loan lent by you amounting to **Rs. 25,28,582/-** for AY

2014-15 to 2018-19, is to added to the total income of the assessee AY wise as detailed below:

Assessment year	Interest of Current Year Loans	Interest of earlier year loans	Total Interest for the year
	Amt in Rs.	Amt in Rs.	Amt in Rs.
	A	B	C
2012-13			0
2013-14			0
2014-15	2,34,167		2,34,167
2015-16	1,59,833	6,38,750	7,98,583
2016-17		7,35,416	7,35,416
2017-18		3,80,208	3,80,208
2018-19		3,80,208	3,80,208
Total	3,94,000	21,34,582	25,28,582

16. Thus, the additions were made by the AO in the above five AYs and also estimated the interest income having been earned thereon in cash outside the declared sources of income in her return of income by the assessee on the said amounts allegedly lent by the assessee to Mr Nilesh Bharani, though there was no such evidence in the alleged material relied upon as per the above chart.

17. For such additions in respect of the cash loans lent, the learned counsel of the assessee also placed reliance on the

decision dated 31/01/2025 of the coordinate bench of the ITAT Mumbai in the case of **Rajesh kumar Rameshchandra Shah** in appeal nos. ITA 5568 to 5573/Mum/2024 where the facts were identical based on an income-tax search on Mr Nilesh Bharani as in this case, except to the extent that there the assessee denied any knowledge of any such transactions rather knowledge of Evergreen Enterprises but here Mr Kashyap K Mehta, the husband of the assessee on confrontation admitted to have undertaken some transactions in cash with Nilesh Bharani / Evergreen Enterprises but also in the same breath categorically stated that he is not aware of the quantum and would respond in 3 days thereafter, after looking into his records.

18. In respect of these additions, the learned counsel of the assessee submitted that the search in the premises of the assessee continued for 6 days from 06/10/2017 till 11/10/2017, including the residential and business premises of the assessee as well as other associates when no such records or books of account were found and no material in any manner was also found from the assessee having been made any investment or having earned any interest income. He also said that these questions were raised on the husband of the assessee on the 5th day of the search, i.e., on 10/10/2017 when the alleged material / information had already been found in an independent income-tax search conducted in the premises of Mr Nilesh Bharani in the afternoon of 06/10/2017. The ld. counsel also said that no other material has been referred to in the assessment orders which

could suggest any such undisclosed income. He also stated that physical presence of many Revenue Officers as per the Panchnamas for the 6 days (from 06/10/2017 to 11/10/2017) in the premises of the assessee without having found any material needing examination and confrontation with the assessee itself during the said search, demonstrate the clear mental pressure and harassment exerted to the husband of the assessee to pressurise him to sign on the dotted lines as recorded by the Revenue Officers on the 5th day of the search in their residence. Admittedly, the statement was also retracted by the assessee at the earliest thereafter on 23/10/2017 proves that the said statement was not at all voluntary and where words were allegedly put in the mouth of the husband of the assessee.

19. The Id. Counsel also stated that no question at all, which must have been asked, as a corollary to the answer given by the husband of the assessee, as to where those records which were not available with him at that time, were kept to surface the truth. He stated that the Revenue Officers were duty bound to take consequent action u/s 132 r.w.s. 133A to find the said record and if the assessee was not forthcoming with such information, he could have been confronted about it then and there only and not later. However, the same was also not done later including on 03/11/2017 when another panchnama was drawn to vacate the prohibited order in continuation to the search proceedings undertaken on 06/10/2017 in the premises of the assessee and admittedly by the said date Mr Kashyap K

Mehta, the husband of the assessee, had already retracted his earlier statement dated 10/10/2017 vide letter dated 23/10/2017, a fact not denied by the Revenue. The learned counsel of the assessee also drew the attention of the bench to the said statement of the husband of the assessee, which interestingly was not signed at all on any page by the Authorised Officer Mr Ashwini Prasad, the then DDIT, Unit 5(4), Mumbai, as is placed on PB page no. 19-33 with annexures thereto from PB page no. 34-57 dated 20/01/2025. He also drew the attention of the bench to the copy of the statement of the husband of the assessee to Q. No. 31 on Page no.10 and 32 of the PB showing that the said statement was resumed on 07/10/2017 at 12:00 pm with Q. No. 21 and closed on 07/10/2017 at 10:00 pm at Q. No. 33 as per Page 18 of the PB, being another statement recorded by Mr Raghav Gupta, DDIT Investigation. Thereafter, another statement dated 10/10/2017 allegedly recorded by Mr Ashwani Prasad u/s 132(4), though not signed by him nor his any stamp is there, commenced with Q. No. 1. and which does not mention time of its commencement on 10/10/2017 nor mentions time of closure on 10/10/2017.

20. The ld. Counsel also demonstrated that Q. Nos. 30 and 31 were practically the last questions in the entire said proceedings wherein the statement had total 36 questions and Q. No. 32 to Q. No. 36 were just confirmatory questions about the seizure and return devices and cash etc. The entire statement has been typed in a chronological manner of different issues and not in a

manner the information found or is found and confronted. Such types of statements are typed after assimilating the alleged information in one serial form and then typed. This in entirety shows that the statement of the husband of the assessee relied by the Revenue is not a legal statement u/s 132(4) of the Act as was not tendered under the normal circumstances, was also not authenticated by the authorised officer before whom it was allegedly recorded so the Revenue is completely barred to take cognizance of the same against anybody including the deponent Kashyap K Mehta nor the assessee.

21. The contention of assessee also finds support from the legal pronouncements in CIT vs Lavanya Land (P) Ltd [2017] 83 taxmann.com 161 (Bombay), Aurum Platz (P) Ltd vs DCIT [2023] 152 taxmann.com 85 (Mumbai), CIT vs. Harjeev Aggarwal (2016) 70 taxmann.com 95 (Delhi) and PCIT vs Agson Global (P) Ltd [2022] 134 taxmann.com 256 (Delhi) holding that a statement recorded u/s 132(4) of the Act per se not at all evidence, unless it is supported with any material gathered during the course of said search.

22. After considering the rival submissions and on perusal of the facts on record and the decisions of the coordinate bench as mentioned above, we agree with the contention of the Ld. Counsel that the additions made on an uncorroborated statement of the husband of the assessee cannot be sustained at least within the scope of assessment under section 153A as the

statement is not corroborated with any other material found from the search and statement per se cannot be reckoned as incriminating material.

23. It is a well settled proposition by various High Courts that addition cannot be made only on the basis of admission made by the assessee in the absence of any incriminating material. The Hon'ble Delhi High Court in the case of PCIT vs. Pavitra Realcon Pvt. Ltd. and others in ITA No.579/2018, 587/2018 and 590/2018 vide judgment dated 29/05/2024 had referred to various decisions which are as under:-

“20. However, it is an undisputed fact that the statement recorded under Section 132(4) of the Act has better evidentiary value but it is also a settled position of law that addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the content of the statements.

21. In the case of Kailashben Manharlal Chokshi v. CIT, the Gujarat High Court held that the additions could not be made only on the basis of admissions made by the assessee, in the absence of any corroborative material. The relevant paragraph no. 26 of the said decision has been reproduced hereinbelow: -

26. In view of what has been stated hereinabove we are of the view that this explanation seems to be more convincing, has not been considered by the authorities below and additions were made and/or confirmed merely on the basis of statement recorded under section 132(4) of the Act. Despite the fact that the said statement was later on retracted no evidence has been led by the Revenue authority, We are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission, We are also of the

view that from the statement recorded at such odd hours cannot be considered to be a voluntary statement, if it is subsequently retracted and necessary evidence is led contrary to such admission. Hence, there is no reason not to disbelieve the retraction made by the Assessing Officer and explanation duly supported by the evidence. We are, therefore, of the view that the Tribunal was not justified in making addition of Rs. 6 lakhs on the basis of statement recorded by the Assessing Officer under section 132(4) of the Act. The Tribunal has committed an error in ignoring the retraction made by the assessee.

[Emphasis supplied]

22. Further, the position with respect to whether a statement recorded under Section 132(4) of the Act could be a standalone basis for making assessment was clarified by this Court in the case of *CIT v. Harjeev Aggarwal*, wherein, it was held that merely because an admission has been made by the assessee during the search operation, the same could not be used to make additions in the absence of any evidence to corroborate the same. The relevant paragraph of the said decision is extracted herein below:

"20. In our view, a plain reading of section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the Explanation to section 132(4) of the Act. However, such statements on a stand alone basis without reference to any other material discovered during search and seizure operations would not empower the Assessing Officer to make a block assessment merely because any admission was made by the assessee during search operation,

[Emphasis supplied]

23. In our opinion, the Act does not contemplate computing of undisclosed income solely on the basis of statements made during a search. However, these statements do constitute information, and if they relate to the evidence or material found during the search, they can be used in proceedings under the Act, as specified under Section 132(4) of the Act. Nonetheless, such statements alone, without any other material discovered during the search which would corroborate said statements, do not grant the AO the authority to make an assessment.

24. Coming to the findings of the ITAT with respect to incriminating material in the case of M/s Pavitra Realcon Pvt. Ltd and M/s Delicate Real Estate Pvt. Ltd, it is seen that the ITAT has explicitly held in paragraph no. 18 that no addition has been made on the basis of any incriminating material found during the course of search. Further, the ITAT relied on the decision of the Supreme Court in the case of CIT v. Sinhgad Technical Education Society and held as follows: -

"18. Further, while writing the order it has come to our notice that the Hon'ble Apex Court in the case of Sinhgad Technical Education Society has held that section 153C can be invoked only when incriminating materials assessment year-wise are recorded in satisfaction note which is missing here. Therefore, the proceedings drawn u/s 143(3) as against 153C are invalid for want of any incriminating material found for the 19. In view of the above, the additional grounds raised by the assessee in the case of M/s Pavitra Realcon Pvt. Ltd. And Mis Delicate Real Estate Pvt. Ltd. are accepted. Since the assessee succeeds on this legal ground, we refrain ourselves from adjudicating the issue on merit as far as these two cases are concerned."

25. Also, the Supreme Court in the case of CIT v. Abhisar Buildwell (P) Ltd., has clarified that in case no incriminating material is found during the search conducted under Section 132 of the Act, the AO will have no jurisdiction to make an assessment. The relevant paragraph is reproduced herein below: -

"36.4. 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 132-A of the 1961 Act. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under Sections 147/148 of the Act and those powers are saved."

[Emphasis supplied]"

24. Similarly, the Hon'ble Delhi High Court in the case of PCIT vs. Anand Kumar Jain (HUF) in ITA No.23/2021 and other appeals vide judgment and order dated 12/02/2021 had held that statement u/s.132(4) does not construe incriminating material for carrying out the assessment u/s.153A of the Act and statement cannot justify the additions made by the ld. AO. Similarly other judgments which have been referred and relied upon by the ld. Counsel which are not repeated but underlying principle is that for making the addition within the scope and ambit of Section 153A for unabated assessment years, statement alone cannot be treated as incriminating material and here in this case this statement is not of the assessee but of her husband and here it is not a case of assessment u/s.153C that any material or document found from search of other person has been made the basis for addition. Albeit in case of assessment u/s.153A (searched person) wherein the addition for unabated

assessment has to be confined on the basis of incriminating material found during the course of search.

25. It is undisputed fact that no material much less incriminating material was found during the course of search from the premises of the assessee in support of the additions, made for the quantum amounts of the alleged cash loans given and the estimated interest thereon in all the AYs as per chart herein above is deleted. We direct accordingly to delete the additions as above.

26. Since, all the above appeals have been decided on the above grounds by deleting the additions, other grounds taken by the assessee have become academic and not adjudicated for any of the above assessment years.

27. In the result, all the appeals filed by the assessee are allowed.

Order pronounced on 27th February, 2025.

**Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

Mumbai; Dated 27/02/2025
KARUNA, *sr.ps*

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Mumbai