

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.108 & 109/Nag./2025
(Assessment Year : 2016-17 & 2017-18)

Vishal Kishorilal Jain
107, Surya Nagar
Kalamana Market Road
Nagpur 440 008 PAN – AHAPJ7632G

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-4, Nagpur

..... Respondent

Assessee by : Shri Mukesh Agrawal
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 02/04/2025

Date of Order – 14/05/2025

ORDER

PER K.M. ROY, A.M.

The instant appeals by the assessee challenging the impugned orders of even date 08/01/2025, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2016-17 and 2017-18 respectively.

2. The core issue raised by the assessee in these appeals is common, except variation in figures, on identical set of facts and circumstances. Therefore, as a matter of convenience, we first proceed to adjudicate the appeal being ITA no.108/Nag./2025, for the assessment year 2016-17, the decision of which shall mutatis mutandis apply to other appeal for the assessment year 2017-18 as well.

ITA no.108/Nag./2025
Assessee's Appeal – A.Y. 2016-17

3. The grounds raised by the assessee are as under:-

"1. The Ld. CIT(A) erred in upholding reassessment u/s 148, relying on borrowed satisfaction without independent application of mind, rendering the notice invalid and bad in law.

2. The Ld. CIT(A) erred in upholding reassessment u/s 148, overlooking the fact that copy of reasons recorded were not supplied to the assessee in spite of specific request by the assessee.

3. The Ld. CIT(A) failed to note that the AO invoked Section 68 but made the final addition u/s 69 without providing the opportunity to the appellant to respond, violating natural justice.

4. The Ld CIT(A) erred in confirming the addition of Rs. 1,49,00,285/- u/s 69 of the Act, without proper consideration of the explanations and documentary evidence submitted by the appellant.

5. The Ld CIT(A) erred in sustaining the addition made by the AO without conducting a proper inquiry into the nature and source of the deposits and without appreciating the supporting evidence providing to substantiate the transactions.

6. The appellant craves leave to amend, alter, or raise additional grounds of appeal at the time of hearing."

4. Facts in Brief:- the assessee filed his return of income under section 139(1) Income Tax Act, 1961 ("*the Act*") on 21/12/2016, declaring income of ₹ 3,74,171, comprising of income from salary and income from other sources. On 26/05/2017, a search and seizure action under section 132 of the was conducted on M/s. Shri Renuka Mata Multi State Urban Co-operative Credit Society Ltd. ("*SRMSCS*"). The Investigation Wing of the Department discovered that multiple accounts were opened in the name of the society and a huge cash deposits were made at both the Home Branches and remote Branches. These deposits were made through cash deposits at Home

Branches, cash deposits at remote branches, and transfers from other customers of the SRMSCS. According to the Investigation Report, it is stated that the amounts credited were withdrawn by the depositors through cash withdrawals from home and remote branches, withdrawals by other customers, and transfers to other accounts or withdrawals as cash via online methods like RTGS/NEFT. The money was then used for remitting abroad with falsified documentation, payment of customs duty, purchasing bullion, transferring to other parties, or withdrawing by beneficiaries. Physical verification by the Investigation Wing of the Department revealed that many account holders were untraceable, with most notices returning un-served and limited compliance. The account holders' creditworthiness could not be established, with the accounts often operated under the knowledge of account holders on commission.

5. The assessee, Shri Vishal Kishorilal Jain, maintained an account with Co-operative Credit Society and filed his return of income for the year under consideration on 12/12/2016, declaring a total income of ₹ 3,07,960, which included income from salary and other sources, but did not reflect the transactions made. No assessment was made under section 2(40) of the Act, and the return of income was processed under section 143(1). As per clause (b) of explanation 2 to section 147, the assessment year was deemed to have income chargeable to tax that has escaped assessment. The case was reopened under section 147 of the Act and notice under section 148 was issued on 27/03/2021, in response to which the assessee filed his return. The depositor was identified as potentially being a mere name-lender. During the

assessment proceedings, despite multiple notices and opportunities to explain, the assessee failed to provide satisfactory evidence for the cash deposits and his business activities. Consequently, an addition of ₹ 1,49,00,285, was made to the income of the assessee which resulted in an assessed income of ₹ 1,52.08.245. Since the assessee did not respond to the various statutory notices issued by the Assessing Officer, hence, the Assessing Officer passed ex-parte order under section 147 r/s section 144.

6. On appeal, the learned CIT(A) dismissed the assessee's appeal by holding as under:-

"6.1.6 Assessing Officer noted in the case of the appellant that Appellant did not disclose the relevant transactions in his ITR and found that income declared by the appellant did not commensurate with the transactions done by the appellant during the year under consideration. Therefore, AO was in possession of credible information and had reason to belief that income was escaped during the year under consideration. Reopening was not done solely on the basis of information available on the Insight portal but with proper application of mind. No legal and procedural defect is found in the reopening the case of the appellant.

6.1.7 In respect of addition u/s 69, it is seen from the assessment order and submission made by the appellant that appellant maintained that he was not carrying out any business and he was not under obligation to maintain regular books of accounts. Assessing Officer established with the reasoning to add the same under the provisions of section 69 of Income Tax Act, 1961. Relevant part of the assessment order is reproduced as under:

"Assessee reply has been considered carefully but the same is not acceptable for the following reasons:

1. Initially the assessee maintained that he is not carrying out any business and he is not under obligation to maintain regular books of accounts. THA DE

2. Later the assessee filed a cash book and a balance sheet wherein he states The Balance Sheet as on 31.03.2016 submitted in previous submission is a tentative balance sheet wherein personal cash and bank balances are not incorporated.

3. Hence the assessee himself states that there is no books account. Moreover considering the turnover, even if the books of accounts maintained that ought to have been audited. Hence the claim of existence of so called book (tentative)s prepared later without any audited financials is not at all

acceptable. Hence the assessee's argument on the books of accounts are not rejected is not valid. The fact is there is no books of accounts at all.

4. Assessee has submitted incorrect statement and alleging that he is maintaining books of accounts, there were no books of accounts and in the return of income filed by the assessee in response to the notice u/s 148 he has declared income from salary, interest and Misc receipts only, No commission receipts is offered."

6.1.8 It is noted that appellant himself kept changing the stance in his responses in respect of his business activities and maintenance of books of accounts. AO conclusively established that addition shall be made under the provisions of 69 of income tax act, 1961 in his assessment order. Therefore, there is no legal defect found in the reassessment done by the AO. On examining the peculiar facts and circumstances of the case in the light of the material available on record and submissions of the appellant, no merit is found in the contention of appellant.

In view of the above, Ground no.1, 2 & 3 are hereby dismissed."

Consequent upon issuance of the impugned order passed by the learned CIT(A), the assessee is in further appeal before the Tribunal.

7. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. Before us, the learned Authorised Representative for the assessee vehemently assailed the assessment by pointing out the provisions of section 153C of the Act and submitted that such provisions should have been invoked the invocation of provisions of section 147 / 148 of the Act is illegal, arbitrary and without jurisdiction. In support of his contention, the learned A.R. relied on the decision of the Co-ordinate Bench of the Tribunal, Visakhapatnam Bench, rendered in G. Koteswara Rao v/s DCIT, [2015] 64 taxmann.com 159 (Vizag) wherein, one of the Members (Shri V. Durga Rao, J.M.) was a party to that Coram has decided identical issue in favour of the assessee and against the

Revenue. While deciding the issue, the Co-ordinate Bench has held as under:-

"The question came up for consideration is (i) whether the Assessing Officer is right in reopening the assessment under section 147, where the Assessing Officer is satisfied that any money, bullion, jewellery or valuable article or thing or books of account or documents seized or requisitioned belongs to a person other than the person referred to in section 153A. The Act, by sections 153A, 153B and 153C provides for new scheme of assessment of cases, where the search is taken place on or after 31-5-2003. Until, insertion of sections 153A to 153C, the search assessment was governed by separate provisions of block assessment under section 158BC and as per the said provisions, the concept of block assessment was in force.

The amendment brought into the statute with effect from 1-6-2003, replaces the existing provisions with the new sections, ie. 153A to 153C which govern the new scheme of search assessments, which abundantly makes it clear that search assessment governed by these sections is independent from any other provisions of the Act. [Para 8]

Section 153C deals with cases of persons other than the persons referred to in section 153A. As per the provisions of section 153C, where the Assessing Officer is satisfied that any money, bullion, jewellery or valuable article or thing or books of account or other documents seized or requisitioned belongs to a person other than the person referred to in section 153A, then the books of account or documents shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed in accordance with the provisions of section 153A. The CBDT issued a circular No.7 of 2003 dated 5-9-2003, explaining the new scheme of assessment procedure. [Para 10]

A careful study of sections 153A to 153C and also the circular issued by the CBDT explaining the procedure of assessment in search cases 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 sections 158BC to 158BE which governs the search assessments which is popularly known as block assessment.

The earlier provisions provide 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 upto the date of search was also included in the block period. After the introduction of new sections, i.e. sections 153A to 153C, the single block assessment concept was done away with and 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 under section 132 or requisition was made under section 132A. [Para 11]

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 escapement of income. The Assessing Officer 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 of 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 sections 153A to 153C these hurdles are cleared by using the non obstante clause in the said section. In other words, under the new provisions of section 153A, the Assessing Officer is not required to satisfy these conditions before issue of notice. The only requirement is that there should be a search action under section 132 or books of account, other documents or any other asset are requisitioned under section 132A. Therefore, though, the Assessing Officer from both sections empowered to tax the income escaped from tax, both work in a different situations, te, section 147 comes into operation where there is an escapement of income chargeable to tax and section 153A comes into operation where there is search under 132. [Para 12]

Under the provisions of section 153A, the Assessing Officer is bound to issue notice to the assessee to tumish 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 provides wide powers to the Assessing Officer in respect of assessments already completed under section 143(1) or 143(3). If such orders are 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 under section 147 have been removed by the non obstante clause used in section 153A. [Para 13]

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 Assessing Officer 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's 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 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 under section 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 under section 148 to reopen the assessment of those six assessment year which fall within the exclusive jurisdiction of section 153A. Though, both provisions of the Act empower 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 under section 132 or books of account, or any other asset or other documents requisitioned under section 132A. If Assessing Officer is justified in proceeding with section 147 to reopen the assessment, then there would be no relevance to section 153A, which was inserted into the Act to deal 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's bound to issue notice under section 153A or 153C, thereafter proceed to assess or reassess the total income, where search is conducted under section 132 or requisition is made under section 132A. Therefore, the Assessing Officer is not justified in reopening the assessment under section 147 and his order is illegal and arbitrary. [Para 14]

Considering the facts and circumstances of the case, it is held that the Assessing Officer has no jurisdiction to issue notice under section 148 of the Act to reopen the assessments in respect of those six assessment years immediately preceding the assessment year in which search is conducted or requisition is made. The period under consideration falls within the exclusive domain of section 153A.

In the instant case, since the assessment is made consequent to search in another case, the Assessing Officer is bound to issue notice under section 153C and thereafter proceed to assess or reassess total income under section 153A of the Act. The Assessing Officer, instead of complying with the provisions of section 153C, proceeded with the reassessment under section 147/148 which is not applicable to search cases. Therefore, the impugned assessment order passed under section 143(3), read with section 147 is illegal, arbitrary and without any jurisdiction. Hence, the assessment order passed under section 143(3) read with section 147 is quashed. [Para 17]"

8. We further place reliance on the judgment of the Hon'ble Jurisdictional High Court in *Sejal Jewellery & Anr. v/s Union of India*, W.P. no.3057 of 2019, vide judgment dated 18/02/2025, and connected matters, wherein the Court, on identical issue, held as under:—

"14. Thus, on the perusal of such reasons, it is quite clear that the provisions of Section 153A providing for "Assessment in case of search or requisition" and the provisions of Section 153C, which provide for "Assessment of income of any other person", which ordain that recourse be taken to the provisions of Section 153A stand attracted for an assessment to be undertaken.

15. As the controversy revolves around the applicability of Section 153A and more particularly, as to whether Section 153A read with Section 153C vis- a-vis the provisions of Section 147 of the I.T. Act, it will be appropriate to extract the said provisions, which reads thus:

"147. Income escaping assessment.--If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss 18 February, 2025 WP3057_2019.DOC or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall

be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.--Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.--For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:--

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;]

(c) where an assessment has been made, but--

(i) income chargeable to tax has been underassessed; or

(ii) such income has been assessed at too low a rate; or

*(iii) such income has been made the subject of excessive relief under this Act ;
 or*

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;

(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the

income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.--For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub- section (2) of section 148.

Explanation 4.--For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012 (23 of 2012), shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

153A. Assessment in case of search or requisition.

(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 [but on or before the 31st day of March, 2021], 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 and for the relevant assessment year or years referred to in clause (b), in 18 February, 2025 WP3057_2019.DOC 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 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 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 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 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 and for the relevant assessment year or years:

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 18 February, 2025 WP3057_2019.DOC 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."

153C. Assessment of income of any other person.

(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 18 February, 2025 WP3057_2019.DOC

(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 :

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 and for the relevant assessment year or years as referred to in sub-section (1) of section 153A 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. (3) Nothing contained in this section shall apply in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of April, 2021.

16. On a plain reading of Section 153A, it is clear that it begins with a ' non-obstante' clause, when it provides that 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 31st May, 2003 but on or before 31 March, 2021, the Assessing Officer shall have jurisdiction to issue notice to such person to furnish the return of income as specified in the notice or assess or reassess the total income as provided by the provision. Section 153C also begins with a non-obstante 18 February, 2025 WP3057_2019.DOC clause, when it provides that notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, to provide that, in a situation which may fall under Section 153C insofar as assessment of income of any other person is concerned, the Assessing Officer shall proceed against such other person and issue notice and assess or reassess the income of other persons in accordance with the provisions of Section 153A, if he is satisfied that the books of account or document or assets seized or requisitioned have a bearing on the determination of the total income of such person for a period as specified in the said provision and after compliance of other provisions as mandated. On the other hand, Section 147 provides for "Income escaping assessment", can be invoked when any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year. In such situation, the Assessing Officer may subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year and for which a prior notice under Section 148 would be required to be issued. Section 147 does not contemplate an eventuality which Section 153A or Section 153C contemplates, the basis of which is inter alia a search action under Section 132 being resorted as noted hereinabove. Thus, both these provisions are quite compartmentalized although the deeming effect 18 February, 2025 WP3057_2019.DOC of both the provisions, may be the same. However, the situations in which such provisions operate are required to be invoked are completely different. This is clear from the bare reading of the provisions, hence would not warrant any elaborate discussion.

*17. The purport and effect of these provisions had fell for consideration of the Supreme Court in *Abhisar Buildwell P. Ltd. (supra)*, wherein the scope of assessment under Section 153A of the I.T. Act was considered. In this case, the Revenue's contention was to the effect that the Assessing Officer was*

competent to consider all the materials which were available on record, including the materials found during search so as to make an assessment of the total income. Some of the High Courts had accepted such propositions. However, the assessee had contended that there were also decisions of the High Courts to the effect that if assessment proceedings were not pending on the date of initiation of the search, the Assessing Officer needs to consider only the incriminating material found during the search, and was precluded from considering any other material derived from any other source. It is in such context, the Supreme Court considering the purport of the provisions of Section 153A of the I.T. Act, vis a vis its applicability qua the provisions of Section 147, and the applicability of Section 132, 132A and notably the 18 February, 2025 WP3057_2019.DOC decision of the Delhi High Court in Commissioner of Income Tax, Central-III vs. Kabul Chawla⁶ inter alia held that the provisions of Section 153A(1) need to be mandatorily resorted once a search takes place. The Supreme Court held as under:

"7.1 In the case of Kabul Chawla (supra), the Delhi High Court, while considering the very issue and on interpretation of Section 153A of the Act, 1961, has summarised the legal position as under
Summary of the legal position

38. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material." v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be (2015) 61 taxmann.com 412 (Delhi) 18 February, 2025 WP3057_2019.DOC made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e., those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one.

Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."

18. The Supreme Court held that it was in complete agreement with the view taken by the Delhi High Court in Kabul Chawla (supra) and of the Gujarat High Court in Principal Commissioner of Income Tax-4 vs. Saumya Construction taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

19. Insofar as the present proceedings are concerned, the following observations made by the Supreme Court in the context of Section 147 and 148 of the I.T. Act need to be noted:

"11. 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. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, (2016) 387 ITR 529 (Guj.) 18 February, 2025 WP3057_2019.DOC 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.

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. 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. 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. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under Section 132 or requisition under Section 132A and during the search 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 fulfillment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be

left with no remedy. Therefore, even in case of block assessment under section 153A 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.

12. 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. At the cost of repetition, it is observed that the assessment under Section 153A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during 18 February, 2025 WP3057_2019.DOC the course of search or pursuant to search or requisition. 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. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and sub-section (2) of Section 153A would be redundant and/or re-writing the said provisions, which is not permissible under the law."

20. It is thus clear that in the event any incriminating material is found during the search, the Revenue necessarily would be required to take recourse to the provisions of Section 153A and in the event no incriminating material found during the search, then the power of the Revenue to have the reassessment under Sections 147/148 of the I.T. Act stands saved, failing which, the Revenue would be left without remedy. It is on such observations the conclusions as rendered by the Supreme Court and which are relevant to the case in hand, are required to be noted, which reads thus:

"14. In view of the above and for the reasons stated above, it is concluded as under:

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 18 February, 2025 WP3057_2019.DOC 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 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.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs."

21. The Rajasthan High Court in Shyam Sunder Khandelwal s/o. Late Damodar Lal Khandelwal vs. Assistant Commissioner of Income Tax, Central Circle-2, Jaipur8 (supra) also had taken a similar view when the issue which had arisen before the Court was in regard to the notice issued under Section 148 of the I. T. Act, the basis of issuance of such notice was the material seized during search. The contention of the assessee was to the effect that in the said circumstances, the proceedings ought to have been initiated under Section 153C of the I.T. Act. The Division Bench referring to the decision of Supreme Court in Abhisar Buildwell P. Ltd. (supra) as also the decision of Karnataka High Court in Sri Dinakara Suvarna (supra) allowed the petitions observing that the department had not set up a case, that for initiating proceedings under Civil Writ Petition No. 18363/2019 dated 19.03.2024 18 February, 2025 WP3057_2019.DOC Section 148, it had material other than the material seized during the search of a related party. The relevant observations of the Division Bench are required to be noted, which reads thus:

"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 fulfilment 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 u/s 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 18 February, 2025 WP3057_2019.DOC period of Section 153A to 153D, the cases being dealt thereunder were circumscribed in the scope of newly substituted Section 148."

We are in complete agreement with the view taken by the Division Bench of Rajasthan High Court in the aforesaid decision.

*22. Applying the principles of law as discussed hereinabove, we are of the clear opinion that the foundation of the present case was certainly a search action which was undertaken by the Revenue against one Shilpi Jewellers Pvt. Ltd. and in such search and seizure action, materials were seized and such materials were further explored and enquired. Such enquiry revealed significant information in regard to M/s. Green Valley Gems Pvt. Ltd., which according to the Revenue had provided accommodation entries to the petitioner, in which it was also revealed that Green Valley Gems Pvt. Ltd. was a shell company. We do not find that the record would indicate something which is not on the basis of such new materials gathered under the search and seizure action under Section 132. If this be the case, then certainly the provisions of Section 153C read with Section 153A would be applicable, as held by the Supreme Court in *Abhisar Buildwell P. Ltd. (supra)* when the Court interpreted the effect and purport of Section 153C and 153A, as also held by the Rajasthan High Court in *Shyam Sunder Khandelwal (supra)*.*

*23. Insofar as Mr. Suresh Kumar's contention supporting the proceedings under Section 147 and 148 of I.T. Act are concerned, for the aforesaid reasons, such contention would in fact go contrary to the intention of the legislature as depicted by the provisions of Section 153A and 153C of the I.T. Act. There would not be any difficulty in accepting the proposition as canvassed by Mr. Suresh Kumar, referring to the decision of the Supreme Court in *Phool Chand Bajrang Lal (supra)*, however, the facts in the present case are distinct. There cannot be any doubt on the position in law when the Revenue intends to proceed purely on materials relevant for an action under Section 148 read with Section 147. We have already observed that the provisions of Sections 147, 148 vis-a-vis Section 153A and Section 153 are quite compartmentalized. To avoid any overlapping of these provisions, the legislature in its wisdom has thought it appropriate to provide for an independent effect, to be given under Section 153A read with Section 153C by incorporating the " non-obstante" clause, in these provisions, which carves out an exception to any normal/regular action being resorted under Section 147.*

24. In this view of the matter, we are of the clear opinion that the impugned notice under Section 147 of the I.T. Act and all actions consequent thereto are required to be held to be without jurisdiction and bad in law. The petition is 18

February, 2025 WP3057_2019.DOC accordingly allowed in terms of prayer clauses (a) and (b)."

9. In this case, the bank account pertains to the assessee and information contained there relates to him. Relying on the above judicial precedents, we hold that provisions of section 153C of the Act ought to have been invoked instead of section 147/148 of the Act. The defect is non-curable and strikes at the root. The learned Departmental Representative failed to controvert the legal issue which is apposite to the jurisprudence cited assailing the jurisdiction under section 148. Since the assessee succeeds in ground no.1, the rest of the grounds have become academic in nature. Thus, the assessment order is hereby quashed.

10. In the result, assessee's appeal for A.Y. 2016-17 is partly allowed.

ITA No.109/Nag./2025
Assessee's Appeal – A.Y. 2017-18

11. In this appeal, the assessee has raised following grounds:-

"1. The Id. CIT(A) erred in upholding reassessment u/s 148, relying on borrowed satisfaction without independent application of mind, rendering the notice invalid and bad in law.

2. The Id. CIT(A) erred in upholding reassessment u/s 148, overlooking the fact that copy of reasons recorded were not supplied to the assessee in spite of specific request by the assessee.

3. The Id. CIT(A) failed to note that the AO invoked Section 68 but made the final addition u/s 69 without providing the opportunity to the appellant to respond, violating natural justice.

4. The id CIT(A) erred in confirming the addition of Rs. 1,43,25,720/- u/s 69 of the Act, without proper consideration of the explanations and documentary evidence submitted by the appellant.

5. *The Id CIT(A) erred in sustaining the addition made by the AO without conducting a proper inquiry into the nature and source of the deposits and without appreciating the supporting evidence providing to substantiate the transactions.*

6. *The appellant craves leave to amend, alter, or raise additional grounds of appeal at the time of hearing."*

12. Since the issue arose out of the aforesaid grounds of appeal for our adjudication being identical and on similar set of facts and circumstances, except variation in figures, which we have decided in favour of teha ss and against the Revenue vide Para-7 to 9 of this order, consistent with the view taken therein and respectfully following the findings given therein, the assessment year order passed by the Assessing Officer for the assessment year 2017-18 is also hereby quashed. Since ground no.1, is allowed, hence other grounds became academic in nature.

13. In the result, assessee's appeal for A.Y. 2017-18 is partly allowed.

14. To sum up, assessee's appeals for A.Y. 2016-17 and 2017-18 are partly allowed.

Order pronounced in the open Court on 14/05/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 14/05/2025

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur