

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH MUMBAI**

**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

ITA No.	A.Y	Applicant	Respondent
3347/Mum/2023	2016-17	M/s Index Logistics Pvt Ltd, 105, Ascot Centre, Sahara Airport Road, Andheri (E), Mumbai PAN - AABCI3631H	ACIT, CC-1(2) Room No. 906, 9 th Floor, Pratishta Bhavan MK Road, Mumbai
3346/Mum/2023	2017-18		
3362/Mum/2023	2018-19		
3361/Mum/2023	2019-20		
3360/Mum/2023	2020-21		
4267/Mum/2023	2011-12	Ismail Muhammed Khan H. No. 53, "C" Wing, Rustamji Central Park, Chakala, Andheri (East), Mumbai, Maharashtra-400093. PAN - ADQPK3620B	ACIT, CC-1(2) Room No. 906, 9 th Floor, Pratishta Bhavan MK Road, Mumbai
4273/Mum/2023	2016-17		
4272/Mum/2023	2017-18		
4289/Mum/2023	2018-19		
4288/Mum/2023	2019-20		
4286/Mum/2023	2020-21		

Assessee by	Shri Rahul Hakani
Revenue by	Mr. R.A. Dhyani, CIT DR

Date of Hearing	15.04.2025
Date of Pronouncement	27.06.2025

आदेश / ORDER

PER BENCH:

The present appeals have been filed by the different assessees challenging the different impugned orders passed u/s 250 of the Income Tax Act, 1961 ('the Act'), by the Commissioner of Income Tax (Appeals) -47, Mumbai. for the A.Ys 2011-12, 2017-18 to 2020-21.

Since all the issues involved in these appeals are common and identical, therefore, they have been clubbed,

heard together and consolidated order is being passed for the sake of convenience and brevity. We shall take ITA No. 3361/Mum/2023, A.Y 2019-20 as lead case and facts narrated therein.

ITA No. 3361/Mum/2023, A.Y 2019-20

The assessee has raised the following grounds of appeal:

1. *That on the facts and in the circumstances of the case, the Learned Commissioner of Income-tax (Appeals)-47, Mumbai (hereinafter referred to as the "Ld.CIT(A)") erred in passing the impugned order dated 26.07.2023 in Appeal No. CIT(A)-47, Mumbai/10291/2018-19 dismissing the appeal filed by Appellant and confirming the order dated 06.09.2022 passed by the Assistant Commissioner of Income-tax, Central Circle-1(2), Mumbai [hereinafter referred to as the "AO"] under section 153A of the Income-tax Act, 1961 [hereinafter referred to as the "Act"], whereby the total income of the Appellant was assessed at ₹42,19,34,450 as against the total income of ₹12,21,38,550 declared by the Appellant in its return of income.*

2. *That on the facts and in the circumstances of the case, the Ld.CIT(A) erred in passing the impugned order dated 26.07.2023 in Appeal No. CIT(A)-47, Mumbai/10291/2018-19 dismissing the appeal filed by the Appellant and confirming the order dated 06.09.2022 passed by the AO, because the assessment order is barred by limitation and is therefore invalid and non est.*

3. *That on the facts and in the circumstances of the case, the Ld.CIT(A) erred in passing the impugned order dated 26.07.2023 in Appeal No. CIT(A)-47, Mumbai/10291/2018-19 dismissing the appeal filed by the Appellant and confirming the addition of ₹12,37,17,677 made by the AO on account of suppressed business income, because the impugned addition has been confirmed without proper and independent application*

of mind and without appreciating that the addition had been made on mere surmises and conjectures without rebutting the explanation given by the Appellant and without realizing that the impugned addition results in astronomical profit rate not commensurate with the industry.

4. *That on the facts and in the circumstances of the case, the Ld.CIT(A) erred in passing the impugned order dated 26.07.2023 in Appeal No. CIT(A)-47, Mumbai/10291/2018-19 dismissing the appeal filed by the Appellant and confirming the addition of ₹37,73,848 made by the AO under section 69C r.w.s. 115BBE of the Income-tax Act, 1961 (hereinafter referred to as the "Act") on account of unexplained expenses/payments to M/s. Transx, because the impugned addition has been confirmed on the basis of incorrect assumptions and even when the provisions of sections 69C and 115BBE are not applicable in the case.*

5. *That on the facts and in the circumstances of the case, the Ld.CIT(A) erred in passing the impugned order dated 26.07.2023 in Appeal No. CIT(A)-47, Mumbai/10291/2018-19 dismissing the appeal filed by the Appellant and confirming the addition of ₹1,98,99,165 made by the AO under section 68 r.w.s. 115BBE of the Act on account of unexplained cash credits from M/s. M.A. Logistics, Pune, because the impugned addition has been confirmed without proper and independent application of mind, and even when the provisions of sections 68 and 115BBE are not applicable in the case.*

6. *That on the facts and in the circumstances of the case, the Ld.CIT(A) erred in passing the impugned order dated 26.07.2023 in Appeal No. CIT(A)-47, Mumbai/10291/2018-19 dismissing the appeal filed by the Appellant and confirming the addition of ₹5,00,000 made by the AO under section 69C r.w.s. 115BBE of the Act on account of unexplained cash payments to "Rose", because the addition has been confirmed on mere surmises and conjectures and even when the provisions of sections 69C and 115BBE are not applicable in the case.*

7. *That on the facts and in the circumstances of the case, the Ld.CIT(A) erred in passing the impugned order dated 26.07.2023 in Appeal No. CIT(A)-47, Mumbai/10291/2018-19*

dismissing the appeal filed by the Appellant and confirming the addition of ₹2,76,85,351 made by the AO under section 68 r.w.s. 115BBE of the Act on account of unexplained cash credits, because the addition has been confirmed based on incorrect assumptions and relying upon the statements of persons who are not independent witnesses and have every motive to harm the Appellant and even when the provisions of sections 68 and 115BBE are not applicable in the case.

8. *That on the facts and in the circumstances of the case, the Ld.CIT(A) erred in passing the impugned order dated 26.07.2023 in Appeal No. CIT(A)-47, Mumbai/10291/2018-19 dismissing the appeal filed by the Appellant and confirming the addition of ₹2,98,78,540 made by the AO under section 69C r.w.s. 115BBE of the Act on account of unexplained cash payments, because the addition has been confirmed based on incorrect assumptions and relying upon the statements of persons who are not independent witnesses and have every motive to harm the Appellant and even when the provisions of sections 69C and 115BBE are not applicable in the case.*

9. *That on the facts and in the circumstances of the case, the Ld.CIT(A) erred in passing the impugned order dated 26.07.2023 in Appeal No. CIT(A)-47, Mumbai/10291/2018-19 dismissing the appeal filed by the Appellant and confirming the addition of ₹12,25,000 made by the AO under section 68 r.w.s. 115BBE of the Act on account of cash received from Baljit Sangwan (Neta Ji), because the addition has been confirmed on mere assumptions and without any corroborative evidence on record and even when the provisions of sections 68 and 115BBE are not applicable in the case.*

10. *That on the facts and in the circumstances of the case, the Ld.CIT(A) erred in passing the impugned order dated 26.07.2023 in Appeal No. CIT(A)-47, Mumbai/10291/2018-19 dismissing the appeal filed by the Appellant and confirming the addition of ₹3,05,77,827 made by the AO under section 68 r.w.s. 115BBE of the Act on account of unexplained cash credits from walk-in customers, because the addition has been confirmed without appreciating the facts and even when the sales pertaining to walk-in customers amounting to Rs. 3,09,04,775/- had duly been included in income and offered for*

taxation and even when the provisions of sections 68 and 115BBE are not applicable in the case.

11. That on the facts and in the circumstances of the case, the Ld.CIT(A) erred in passing the impugned order dated 26.07.2023 in Appeal No. CIT(A)-47, Mumbai/10291/2018-19 dismissing the appeal filed by the Appellant and confirming the addition of ₹6,25,38,493 made by the AO under section 68 r.w.s. 115BBE of the Act on account of unexplained cash credits from other clients. because the addition has been confirmed in general terms without appreciating the facts and even when the provisions of section 68 and 115BBE are not applicable in the case.

12. The Appellant craves leave to add, amend, delete or alter any of the grounds of appeal.

2. First of all, we take up legal ground regarding challenging the order of assessment on the ground that the same is barred by limitation.

3. In this regard Ld. AR & Ld. DR relied upon their respective written submissions and the same are reproduced here in below:

Ld. AR's Submission

I. The submissions on the point of limitation are for A.Y. 2016-2017 to A.Y. 2020-2021 in the case of Index Logistics Pvt Ltd and A.Y. 2011-2012 and A.Y. 2016-2017 to A.Y. 2020-2021 in the case of Ismail Muhammed Khan.

The issue of limitation is not raised w.r.to A.Y. 2021-2022. The ground of limitation is raised as Ground No 2 in the Original Grounds of Appeal for AY 2016-17 to 2021-22 in the case of Index Logistics Pvt Ltd. The ground of Appeal No 2 for AY 2016-2017 in the case of Index Logistics Pvt Ltd reads as under:

"That on the facts and in the circumstances of the case, the Ld CIT(A) erred in passing the impugned order dated 26/7/2023

in Appeal No. CIT(A)-47, Mumbai/10739/2015-16 dismissing the appeal filed by the Appellant and confirming the order dated 06.09.2022 passed by the AO because the assessment order is barred by limitation and is therefore invalid and non est."

The facts relevant for determination of this issue is in the case of Index logistics Private Limited is as as under:

1) In the present case a Search was authorised on the Assessee vide warrant of authorisation dated 23/3/2021.

2) Accordingly, Search in the case of Assessee commenced on 24/3/2021 and ended on 26/3/2021 on which day a Panchnama was prepared recording the details of search as well as the list/inventory of A/C Books etc found and seized. It may be noted that diary, loose papers, back up of emails, pen drives. Hard-disk, desktop computers etc were seized. [Pg 104-110 is the copy of the Panchnama). The Panchnama records that search was temporarily concluded.

3) On the same day i.e. 26/3/2021, on the conclusion of the Search, a restraint order u/s 132(3) [Pg 111] based on authorisation of 23/3/2021 was passed w.r.to one desktop, 2 CPU's, loosed papers and SIM cards possessed in the cabin of one Prakash Nair.

4) Thereafter, on 24/05/2021, the search team visited the premises of the Assessee based on earlier warrant of authorisation dated 23/3/2021. The SIM cards and data back from CP11 were seized statement of Mr Ismail Khan was recorded. Panchnama was drawn dated 24/05/2021 and it stated that the search has concluded.

5) As per Section 153B(1)(a) which provides for time limit to complete Assessment u/s 153A, as per the third proviso, the last date to pass the Assessment order for Search taking place after 1/4/2019 is 12 months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed. As per Section 153(2), the authorisation referred to in 153(1)(a) shall be deemed to have been executed on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued.

6) As per the Assessee, the last drawn Panchnama is of 26/3/2021 when the Search ended. Hence the limitation for passing the Assessment order commences on 1/4/2021 and end on 31/3/2022. The restraint order u/s 21 132(3) dated 26/3/2021 and the consequent visit on it on 24/5/2022 wherein a panchnama was drawn cannot be taken as a last drawn Panchnama so as to extend the limitation to pass the Assessment order As the Assessment orders are passed on 6/9/2022/8/9/2022 i.e. beyond 31/3/22, same are time barred. As per the department, the last drawn Panchnama is of 24/5/2022 and thus the last date to pass Assessment order is 31/3/2023.

III Based on above factual matrix, the legal submissions of the Assessee are asunder:

A Restraint Order u/s 132(3) does not extend the time limit to complete Assesment.

1. In *C. Ramaiah Reddy v ACIT (2011) 339 ITR 210 (Karn)(HC)* [Pg 38-69] it is held as under:

Para 71 and 72 states that Search has to be continuous. It comes to an end when the Search party leaves the premises carrying with them the seized material. Authorisation for search is fully implemented once the search party leaves the premises.

Para 75 states that restraint order u/s 132(3) can be passed when there is practical difficulty in seizing the material liable to be seized. If there is no such practical difficulty then officer has no option but to seize the material if it represents undisclosed income. By passing a restraint order, the time limit available for framing of the Assessment order cannot be extended.

Para 76 states that in law officer is entitled to enter the search premises again with the earlier authorisation for the purpose of inspection of the subject matter of restraint order. When he enters again he has no jurisdiction to look into any new material. After inspection he can seize the incriminating material. Merely because one more panchnama is drawn evidencing seizure of any material in the course of such inspection that cannot be construed as a last Panchama.

Para 77 states that Section 132 has no reference to entering and searching premises which are subject matter of restraint order. Order u/s 132(3) itself authorises inspection and seizure. Panchnama drawn after such inspection is the last panchnama in respect of said premises But for the purpose of limitation u/s 158BE it would not be the last panchnama.

Para 80 states that search commences pursuant to an authorisation and comes to an end with the drawing of panchnama. Panchnama drawn w.r.to visit for the subject matter of restraint order is not a panchnama which is relevant for the purposes of computation of limitation. The word seizure is missing in Section 158BE. Thus, even if there is seizure pursuant to restraint order, it will not extend the period of limitation.

Para 82 concludes "The period of limitation starts on the date on which the last of authorisation has been executed and not when the authorised officer-states that the search is finally concluded. Putting a prohibitory order under section 132(3) does not elongate the starting point of limitation."

2) In CIT vs Sandhya P Naik [2002] 124 Taxman 384 (Bombay) [Pg 1-5] it is held as under:

Para 3 & 4 state that ITAT took up issue of limitation first as it felt that if Assessee succeeded on that then other issues would become academic.

Para 10 states there was only one search warrant which was issued on 16-10-1996, and executed between 16-10-1996, and 20-10-1996, and which expired, thus, on 20-10-1996. The warrant was issued on 7-10-1996, and the search was conducted continuously between 16-10-1996 and 20-10-1996. In between, the search was suspended only during the late hours of the night. On 20-10-1996, having seized all the relevant materials and valuables, the search party obviously had come to the conclusion that there was no further material to be seized and no more search operation to continue. The search comes to an end when the search party leaves the premises after carrying with it the seized material and, thus, authorisation for search is fully implemented and execution is complete.

There was no practical impediment to seizure of the said 45 kgs, of silver, if it was considered by the authorised officer as

necessary. The contention of the learned counsel for the department that it was not practical to seize huge quantity of silver at odd hours, was rightly held to be untenable by the Tribunal, because at the same odd hour, the search party seized and removed from the premises of the assessee 5,729 gms. of gold ornaments, cash of Rs. 1,69,000 and books of account, weighing nearly 500 kgs.

Indeed, by simply stating in the panchanama that the search is temporarily Suspended, the authorised officer cannot keep the search proceedings in operation by passing a restraint order under section 132(3).

Action under section 132(3) can be resorted to only if there is any practical difficulty in seizing the item which is liable to be seized. When there is no such practical difficulty, the officer is left with no other alternative but to seize the item, if he is of the view that it represented undisclosed income.

Power under section 132(3), thus, cannot be exercised so as to circumvent the provisions of section 132(3), read with section 132(5). The position has become much more clear after the insertion of the Explanation to section 132(3) effective from 1-7-1995, that a restraint order does not amount to seizure. Therefore, by passing a restraint order, the time-limit available for framing of the order cannot be extended.

3) PEIT v PPC Business & Products (P) Ltd (2017) 84 taxmann.com 19(Del) (HC)[Pg 70-801]

Para 15 & 16 states that a restraint order was passed u/s 132(3) on the first-day of the search. On the second visit there was no fresh material found A formal seizure order was passed.

Para 24 states that merely because panchnama drawn after the visit due to restraint order says that Search is finally concluded, the period of limitation will not be postponed.

Para 26 states that merely visiting the premises on the pretext of concluding the Search but not actually finding anything new for being seized cannot give rise to a second panchnama. Such panchnama cannot postpone the period of completion of assessment.

3.1) In this case also, in the visit pursuant to the restraint order, there was a seizure. However, nothing new was found so as to constitute the visit as a Search. The facts recorded in

the Panchnama clearly exhibit that there was no search conducted on 24.05.2021. This is because everything had already been searched out and found and there was nothing further to be searched and found. On 24.05.2021, the search team merely visited the premises, went straight to the Prakash Nair cabin, wherein they had put the things and locked it on 26.03.2021 on the strength of a restraint order issued under section 132(3) of the Act.

4) Hence, in light of the above decisions, the restraint order u/s 132(3) and the consequent Panchnama dated 24/5/2021 will not extend the limitation.

B) The Restraint Order u/s 132(3) is bad in law as same is in violation of the provisions of Section 132(3).

1) Section 132(3) provides that a restraint order can be passed if it is not practicable to seize something, for reasons other than those mentioned in the second proviso to section 132(1). This means that the decision to seize has already been taken, only it is not practicable to seize. In the case of the Appellant, the order passed under section 132(3) does not specify any reason why the things could not be seized on 26.03.2021. Out of 4 things placed under restraint, 200 SIM Cards were seized and backup of one server was taken on 24.05.2021. Such an order does not extend the search.

2) In Om Parkash Jindal vs Union of India [1976] 104 ITR 389 (P&H) [Pg 6-13] it is held as under:

[Rel Pg 10-11]. Restraint order u/s 132(3) can be passed only when the authorised officer can reasonably believe that the bullion, jewellery etc represented undisclosed property. But if he is not so satisfied or has doubts then he cannot have recourse to Section 132(3).

The stand that the restraint order is passed to avoid seizure till the statements u/s 132(4) are verified is untenable. S.132(3) order is to be passed only in case of impracticability of seizure due to nature, location or peculiar circumstance.

3) In Dr C. Balkrishnan Nair v CIT (1999) 237 ITR 70 (Ker)(HC)[Pg 14-19]

It is held that Order u/s 132(3) cannot be passed on the ground that scrutiny could not be completed. At Para 11 it is held that Search has to be continuous.

4) *In Maa Vaishnavi Sponge Ltd v DGIT (2012) 21 taxmann.com 512(Ori)(HC)[Pg 20-25][Para 9 & 11] it is held as under:*

Recourse to Section 132(3) can be taken only when the authorised officer believes that particular asset found during Search represent undisclosed asset.

Section 132(3) order cannot be passed to ascertain whether any transaction made in the accounts represent undisclosed income.

Also did not accept contention of the department that order u/s 132(3) for the period prescribed u/s 132(8A) is automatic.

5) *CIT v S.K.Katyal (2009) 308 ITR 168(Del)(HC) [Pg 26-37]*

This case deals with the period of limitation.

At Para 15 the concept of panchnama is explained. At Para 16 it is held that Panchanama must reveal that a Search was carried out. At Para 18 it is held that mere inspection does not amount to Search. At Para 19 it is explained that for a Search one has to look for, there has to be quest for something hidden. Merely writing search is temporarily concluded will not extend the Search. At para 21 it is stated that Search has to be continuous and there has to be cogent and plausible reason for splitting of Search. Gap has to be explained.

6) *In the present case, no reason has been recorded that ingredients of Section 132(3) are satisfied. No reason has been given for the gap in the search from 26/3/2021 till 24/5/2021. Hence, the Panchnama dated 24/5/2021 cannot be accepted as a last drawn Panchnama so as to extend the period of limitation.*

C. As the restraint order u/s 132(3) is not lifted within one month of the date of passing of the order as required by CBDT Instruction F.No 286/57/2002-IT(Inv-II) dated 3/7/2022, the Panchnama dated 24/5/2021 lifting the restraint order is invalid in law

1) *Polisetty Somasundaram v DCIT (2023) 153 taxmann.com 591 (Vishakapatnam) (Trib) [Pg 81-103]*

Para 22-27 (Rel Paras 26-27) holds that release of a prohibitory order after 30 days is contrary to CBDT Circular dated 3-7-2002 [Pg 134-136] which is binding on the revenue and thus the release of PO and the resultant Panchnama becomes invalid in law.

Clause (xi) in Explanation to Section 153B providing exclusion of period from commencement of Search till handing over of seized materials to the Assessing Officer for computing the period of limitation u/s 153B is not applicable to the present case.

1) Clause (xi) in Explanation 153B is introduced by Finance Act, 2022 w.r.e.f 1/4/2021.

2) The applicability of same is squarely covered by the decision of Madras High Court in Agni Estates and Foundations (P.) Ltd. vs. DCIT (2023) 459 ITR 44(Mad)(HC)[Pg 137-144] wherein it is held as under:

"23. Insofar as the assessments for the period 2011-12, 2012-13 and 2019-20 are concerned, no writ petitions have been filed by the petitioner at the original instance. Thus, and applying the limitation under section 153B, the date for statutory time limit for assessment would expire on 30-9-2020, though extended upto 30-9-2021 by virtue of the TOLA and subsequent extensions.

24. The question of any period available thereafter to the revenue would not arise seeing as no writ petitions have been filed at the original instance, and hence, the last date for completion of assessments for the period 2011-12, 2012-13 and 2019-20 would be 30-9-2021. The impugned assessments have been framed on 29.01.22, beyond the stipulated time and are hence barred by time.

25. As far as the defence of the revenue based upon clause (xi) to Explanation to section 153B is concerned, that clause relates to exclusion of the period taken for handing over seized material the assessing officer. The clause has been inserted with effect from 1-4-2021 and hence operates prospectively only, being a substantive provision. The benefit of the exclusion under that clause thus, would not be available to the revenue in the present assessments. The impugned orders of assessment passed on 28-1-2022 in respect of AYs 11-12, 12-13 and 19-20 are hence held to be barred by limitation qua

these three assessment years and are set aside. The writ petitions challenging those notices, orders of assessment and penalties are allowed."

The similarity in facts is demonstrated as under:

<i>Agni Estates and Foundations (P)Ltd v DCIT (Supra)</i>	<i>Present case.</i>
<i>Assessment Year involved is prior to AY 2021-2022</i>	<i>Assessment Year involved is prior to AY 2021-2022.</i>
<i>Search had taken place on 5/7/2018 i.e. before 1/4/2021</i>	<i>Search has taken place before 1/4/2021</i>
<i>Last date to pass the Assessment order was 30/9/2021 i.e. after 1/4/2021.</i>	<i>Last date to pass the Assessment order is 31/3/2022 i.e. after 1/4/2022.</i>
<i>Assessment order dated 28-1-2022 passed w.r.to search prior to 1/4/2021 and passed after 1/4/2022.</i>	<i>Assessment order dated 28-1-2022 passed w.r.to search prior to 1/4/2021 and passed after 1/4/2022.</i>

It is respectfully submitted that the period of limitation is crystallised when the search ends. The exclusions as prevailing on that day can only apply. Thus a vested right to obtain the Assessment order by a particular date is created at the end of Search. In the facts of the present case as Search commenced and concluded prior to 1/4/2021 and also Asst Year 2021-2022 is not involved, clause (xi) in Section 153B cannot be applied.

In light of the above submissions, it is humbly prayed that the Appeals of the Assessee may be allowed on the ground of limitation. Other grounds of appeal now becoming academic may be kept open.

In the case of Ismail Khan, the Panchnama dated 25/3/2021 states that the Search is concluded. [Pg 130-131]. There is no

restraint order passed u/s 132(3). Hence, the last date to pass the Assessment Order is 31/3/2022. Hence, the Assessment orders passed are barred by limitation.

DR Submission

1. The search and seizure action was initiated u/s. 132 of the 1.T. Act, 1961 in the case of M/s. Index Logistics Pvt. Ltd. and related persons.

2. The search commenced on 24.03.2021 and the proceedings were closed as temporarily concluded on 26.03.2021 as recorded in the Panchnama dated 26.03.2021.

3. Thereafter Restraint Order u/s 132(3) of the 1.T. Act, 1961 in respect of the sealed premises of Prakash Nair Cabin i.e. 2nd Cabin from Ismail M. Khan's cabin

4. Subsequently, in continuance of the proceedings initiated on 24.03.2021 search was undertaken with respect to the premises sealed mentioned hereinabove and pursuant to the action undertaken, last Panchnama was executed/drawn on 24.05.2021

5. The seized material and books of accounts in this case were received by the DCIT Cent.Cir. 1(4), Mumbai from the DDIT (Inv)-1(2), Mumbai on 20.09.2021.

6. Subsequently, the case was transferred to the charge of DCIT Central Circle1 (2), Mumbai. The assessment orders u/s. 153A for AYs 2016-17, 2017-18, 2018-19, 2019-20, 2020-21, 2021-22 in the case of M/s. Index Logistics Pvt. Ltd. were passed on 06.09.2022, 06.09.2022, 06.09.2022, 06.09.2022, 08.09.2022, 06.09.2022 respectively.

STATUTORY FRAMEWORK:

Time limit to complete assessment u/s 153A is provided u/s 153B(1)(a) of the IT Act, 1961. The third proviso u/s 153B(1)(a) states that in the case where the last of the authorization for search under section 132 or for requisition under section 132A was executed during the financial year

commencing on or after the 1 day of April, 2019, last date to pass Assessment Order would be 12 months from the end of the financial year in which last of the authorizations for the search under section 132 or the requisition under section 132A was executed. As per section 153(2) the authorization referred to in section 153(1)(a) shall be deemed to have been executed on conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorization has been issued.

ISSUE:

Assessee's contention: Last drawn panchnama is of 26.03.2021 hence limitation for passing assessment order would be 31.02.2022 and therefore all the assessment orders passed in case of Index Logistics Group in the month of September 2022 are barred by limitation and hence bad in law.

Department's contention: Last drawn panchnama is of 24.05.2021 hence limitation passing assessment order would be 31.03.2023 and therefore all the assessment orders passed in case of Index Logistics Group in the month of September 2022 are within limitation period and hence valid and good in law.

ARGUMENTS FROM THE SIDE OF DEPARTMENT:

A. VALIDITY OF THE PANCHNAMA DATED 24.05.2021 IN CONTEXT OF RESTRAINT ORDER ISSUED DATED 26.03.2021

At the outset attention is invited to Section 132(8A) (Amended w.e.f. 1st June 2002) which is stated as follows:

An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order.

Section prior to the amendment stood as follows:

An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order, except where the authorized officer for the reasons to be recorded by him in writing, extends the period of operation of the order beyond 60 days, after obtaining the approval of the Director or as the case may be, Commissioner for such extension.

In the case under consideration, Restraint Order was issued on 26.03.2021. Hence the said Restraint Order was in force for a period of sixty days from the date of such order (Le. till 25.05.2021). Therefore, Panchnama under which proceedings were closed as finally concluded executed on 24.05.2021 is valid in law and hence can be considered as the last drawn panchnama for the purpose of considering the limitation period.

Assessee has placed reliance on the CBDT Instruction F.No. 286/57/2002-Πτην II) dated 03.07.2022 wherein it has been stated as follow

ii. Search and seizure work should be completed as early as possible and restraint order u/s 132(2) should be lifted within one month from the date of passing such order..... (emphasis supplied)

Attention is invited to the decision of Hon'ble SC in the case of Kerala Financial Corporation v CIT (1994) AIR 2416 wherein it held as under:

The fact that the circular to which Shri Salve has referred is one which had been issued in exercise of powers conferred by Section 1 19 of the Act has no significance insofar as the point under consideration, namely, whether the circular can override or detract from the provisions of the Act, is concerned, inasmuch as what Section 1 19 has empowered is to issue orders, instructions or directions for the "proper administration of the Act or for such other purposes specified in sub-section (2) of the section. Such an order, instruction or direction cannot override the provisions of the Act, that would be destructive of all the known principles of law as the same would really amount to giving power to a delegated authority to even amend the provision of law enacted by Parliament. Such a contention cannot seriously be even raised (Para 14)

The said ratio was reiterated by Hon'ble Kerala High Court in the case of K.V. Produce v. CIT (1992) 196 ITR 293 (Kerala) wherein it was held that although circulars issued under section 119 of the Income Tax Act, 1961 have force of law, they do not override the law itself.

Therefore, it is pleaded that circular/instructions issued by CBDT cannot override the Parent legislation i.e. Income Tax Act, 1961 to the extent they are contrary to the Act. Section

132(8A) clearly lays down the period for which restraint order u/s 132(3) can be in force. Hence instruction of the CBDT limiting the said period statutorily provided by the Act is ultra vires and bad in law.

Hence reliance placed by the assessee on the CBDT Circular qua time limit is legally untenable and cannot be accepted thereof. As pointed out hereinbefore the S.132(8A) of the Income Tax Act, 1961 (Amended w.e.f. 1 June 2002) clearly states that the time limit for which Restraint Order passed u/s 132(3) shall be in force is up to 60 days. Hence the provision will have an overriding effect on any direction/instruction passed by CBDT thereof and will not have binding effect on the revenue. Hence Panchnama drawn on 24.05.2021 pursuant to the Restraint Order issued u/s 132(3) is valid and good in law.

B. TIME LIMIT TO CALCULATE THE LIMITATION PERIOD:

Attention is invited to the decision of Hon'ble SC in the case of VLS Finance Ltd. v. CIT (2016) 68 taxmann.com 368 (SC) wherein it was held as under:

As noticed above, the revenue authorities visited and searched the premises of the appellants for the first time on 22nd June, 1998. In the panchnama drawn on that date, it was remarked temporarily concluded, meaning thereby, according to the revenue authorities, search had not been concluded. For this reason, the respondent authorities visited many times on subsequent occasions and every time panchnama was drawn with the same remarks, le temporarily concluded It is only on 5th August, 1998 when the premises were searched fast, the panchnama drawn on that date recorded the remarks that the search was finally concluded. Thus, according to the respondents, the search had finally been completed only on 5th August, 1998 and panchnama was duly drawn on the said date as well. The appellants, in the writ petition filed, had nowhere challenged the validity of searches on the subsequent dates raising a plea that the same was illegal in the absence of any fresh and valid authorization. On the contrary, the appellants proceeded on the basis that search was conducted from 22nd June, 1998 and finally concluded on 5th August, 1998. (Para 30)

On the aforesaid facts and in the absence of any challenge laid by the appellants to the subsequent searches, we cannot countenance the arguments of the appellants that limitation

period is not to be counted from the last date of search when the search operation completed, ie. 5th August, 1998. Therefore, this issue is also decided in favour of the respondents (Para 31)

The Review Petition filed by the assessee in the above case was also dismissed vide citation [2017] 81 taxmann.com 358 (SC)

Similarly, in the case of Anil Minda v. CIT [2023] 148 taxmann.com 407 (SC) Hon'ble SC reiterated the ratio laid down in the case of VLS Finance and held as under:

In the present case, the first authorization was issued on 13-3-2001 which ultimately and finally concluded and/or culminated into Panchnama on 11-4-2001. However, in between there was one another authorization dated 26-3-2001 with respect to one locker and the same was executed on 26-3-2001 itself and Panchnama for the same was drawn on 26-3-2001. However, Panchnama drawn with respect to authorization dated 13-3-2001 was lastly drawn on 11-4-2001. As observed and held by this Court in the case of VLS Finance Limited (supra), the relevant date would be the date on which the Panchnama is drawn and not the date on which the authorization/s is/are are issued. It cannot be disputed that the block assessment proceedings are initiated on the basis of the entire material collected during the search/s and on the basis of the respective Panchnama/s drawn. Therefore, the date of the Panchnama last drawn can be said to be the relevant date and can be said to be the starting point of limitation of two years for completing the block assessment proceedings. (Para 7)

If the submission on behalf of the respective assesseees that the date of the last authorization is to be considered for the purpose of starting point of limitation of two years, in that case, the entire object and purpose of Explanation 2 to section 158BE would be frustrated. If the said submission is accepted, in that case, the question which is required to be considered is what would happen to those material collected during the search after the last Panchnama. It cannot be disputed that there may be number of searches. Thus, the view taken by the High Court that the date of the Panchnama last drawn would be the relevant date for considering the period of limitation of two years and not the last date of authorization, we are in

complete agreement with the view taken by the High Court (Para 8)

Also, assessee has mainly relied on the decision of the Commissioner of Income Tax v. Sandhya P. Naik (2002) 124 Taxman 384 (Bom) wherein it was held that by passing restraint orders, time limit available for framing of the order cannot be extended.

The facts of the case are distinguishable from the current case as under:

1. In the above case restraint orders u/s 132(3) were issued on 26.10.1996 and subsequently on 13.12.1996. Hence restraint orders issued under the law as it existed prior to amendment w.e.f. 1.6.2002. Whereas in the given case restraint orders are issued under the amended law (Para 6)

2. Restraint Order passed by ACIT who was not one of the authorized officers mentioned in the search warrant. However no such fact is brought on record in this case.

3. Department itself admitted that there were many defects in panchnama. Department has not admitted/brought out any such defects in the Panchnama issued. (Para 12)

Hence observation of the Hon'ble Bombay High Court in the above mentioned case was in context of the law as it existed prior to amendment w.e.f 1.6.2002 where by using the provision pertaining to approval department could keep extending the time for which restraint order was in force even beyond 60 days. The said ratio will not be applicable in the given case as post 1.6.2002 as statutory limit for which restraint order u/s 132(3) can be in force is restricted to 60 days.

Hence assessee's contention that since restraint order u/s 132(3) is not lifted within one month the panchnama issued dated 24.05.2021 lifting the restraint order is invalid in law is not tenable.

PRAYER:

Hence in light of the facts and circumstances of the case and legal proposition put forward it is humbly prayed that ground

raised by assessee pertaining to limitation period be dismissed and appeal shall be heard on merits.”

3. We have heard the counsels for both the parties, perused the material placed on record, judgements cited before us and the orders passed by the revenue authorities

4. From the records, we noticed that as per the facts of the present case a search and seizure action u/s 132 of the Act was conducted by DDIT (Inv) Mumbai, in the case of appellant i.e M/S Index logistics Private Limited on 24/03/2021. In this regard, the search was authorized vide warrant of Authorisation dated 23/03/2021. Accordingly search was commenced on 24/03/2021 and ended on 26/03/21, Regarding which a Punchnama was prepared thereby recording the details of search as well as the list/inventory of Account Books, etc. found and seized. The items which were seized were the diaries, loose papers, backup of emails, pen drives, hard disk, desktop, computers etc. The details of which are already at Paper Book page number 104 to 110. It was also recorded in the Punchnama that the search was *temporarily concluded*.

5. Even on the same day, i.e. 26/03/2021, on the conclusion of the search, a restraint order u/s 132(3) of the Act based on authorisation of 23/03/2021 was passed with regard to one desktop, two CPUs, loose papers, and

SIM cards possessed in the cabin of one Prakash Nair. Copy of restraint order is at paper book page No. 111.

6. Thereafter, again on 24/05/2021, approximately after two months, the search team again visited the premises of the assessee based on earlier warrant of authorisation dated 23/03/2021 and seized the SIM cards and data backup from CPU. Apart the statement of Mr Ismail Khan was recorded and in this regard Punchnama dated 24/05/2021 was drawn, which stated that the search has been *concluded*.

7. Now, the point before us for consideration is that as to whether the assessment order passed in this case is barred by limitation or not.

8. In this regard, we have to first of all analyse the relevant provisions u/s 153 of the Act.

9. As per the provisions of section 153B(1)(a) of the Act, the time limit to complete the assessment u/s 153A, as per third proviso, for the search taken place after 01/04/2019 is 12 months from the end of the financial year in which the last of the authorisation for search u/s 132 or for requisition u/s 132A was executed. And as per section 153(2) the authorisation referred to in Sec. 153(1)(a) Shall be deemed to have been executed on the conclusion of the search as recorded in the last Punchnama drawn in

relation to any person, in whose case, the warrant of Authorisation has been issued.

10. As per the assertion of the assessee, the last drawn Punchnama is of 26/03/2021, when the search ended. Therefore, the limitation for passing the assessment order commences on 01/04/2021 and ended on 31/03/2022. And the restraint order u/s 132(3) of the Act dated 26/03/2021 and consequential visit on 24/05/2021, wherein a Punchnama was drawn cannot be taken as a last drawn Punchnama, so as to extend the limitation to pass the Assessment Order.

11. Whereas on the contrary, Ld DR stressed upon the point that as per section 153B(1)(a) of the Act, the time barring date for completion of assessment is to be determined from the date of last authorisation for search u/s 132 of the Act. And in this case, the date of last Punchnama drawn is 24/05/2021 and since the search got concluded on 24/05/2021 as per the Punchnama therefore, the assessment order was well within limitation. Even as per Ld. DR, the prohibitory orders passed u/s 132(3) of the Act dated 26/03/2021 and Punchnama dated 24/05/2021 narrates the whole proceedings, proves that assessee had not cooperated and left the premises. Therefore, the team examined the premises, recorded the

statement of Ismail Khan, took back up and seized a substantial volume of digital data.

12. Now, the crucial questions for adjudication before us is as to whether the search was concluded on 26/03/2021 or on 24/05/2021 and whether the prohibitory orders passed u/s 132(3) of the act extends the time limit to complete the assessment.

13. After analysing the factual and legal proposition, our answer to above question is that as per the facts of the present case, admittedly only one warrant of authorisation dated 23/03/2021 was issued for authorising search and on the basis of said authorisation search in the case of assessee commenced on 24/03/2021 and ended on 26/03/2021 on which day, a Punchnama was prepared, thereby recording the details of search as well as the list/inventory of account, books etcetera found and seized. The details are at paper book page number 104-110. And on the same day i.e 26/03/2021 a restraint order u/s 132(3) of the Act, was passed which is at paper book page No.111. On the basis of authorisation dated 23/03/2021, with regard to one desktop, two CPUs, loose papers, and SIM card possessed in the cabin of Mr Prakash Nair which were seized on 24/05/2021.

14. In our view, passing of restraint order u/s 132(3) of the Act does not extend the time limit to complete

assessment as held in the case of **C. Ramaiah Reddy Vs ACIT [2011] 339 ITR 210 Karnataka**, which is at paper book page No. 38 to 69 wherein it has been held at para number 71 and 72 and the same is reproduced here in below

Para 71 and 72 states that Search has to be continuous. It comes to an end when the Search party leaves the premises carrying with them the seized material. Authorisation for search is fully implemented once the search party leaves the premises.

Para 75 states that restraint order u/s 132(3) can be passed when there is practical difficulty in seizing the material liable to be seized. If there is no such practical difficulty then officer has no option but to seize the material if it represents undisclosed income. By passing a restraint order, the time limit available for framing of the Assessment order cannot be extended.

Para 76 states that in law officer is entitled to enter the search premises again with the earlier authorisation for the purpose of inspection of the subject matter of restraint order. When he enters again he has no jurisdiction to look into any new material. After inspection he can seize the incriminating material. Merely because one more panchnama is drawn evidencing seizure of any material in the course of such inspection that cannot be construed as a last Panchama.

Para 77 states that Section 132 has no reference to entering and searching premises which are subject matter of restraint order. Order u/s 132(3) itself authorises inspection and seizure. Panchnama drawn after sucg inspection is the last panchnama in respect of said premises But for the purpose of limitation u/s 158BE it would not be the last panchnama.

Para 80 states that search commences pursuant to an authorisation and comes to an end with the drawing of panchnama. Panchnama drawn w.r.to visit for the subject matter of restraint order is not a panchnama which is relevant for the purposes of computation of limitation. The word seizure

is missing in Section 158BE. Thus, even if the is seizure pursuant to restraint order, it will not extend the period of limitation.

15. Therefore, in our view, the search was commenced pursuant to an authorisation and comes to an end with the drawing of Punchnama on 26/03/2021 for all practical purposes as the search party left the premises carrying with them the seized material. The Authorisation for search stands fully implemented, once the search party leaves the premises.. However, the Punchnama drawn with regard to the visit on 24/05/2021 for the subject matter of restraint order dated 26/03/2021 is not a Punchnama, which is relevant for the purpose of computation of limitation and we are also of the view that the restraint order u/s 132(3) of the Act only be passed, when there is practical difficulty in seizing the material liable to be seized. And if there is no such practical difficulty, then the officer has not option, but to seize the material, if it represents undisclosed income. Therefore by passing a restraint order, the time limit available for framing assessment order cannot be extended. Although the word seizure is missing in section 158BE, thus, even if there is seizer pursuant to restrain order, even then it will not extend the period of limitation.

16. In this way as has been held in the case of **C Ramaiah Reddy (supra)** the period of limitation starts on the date on which the last authorisation has been

executed, in this case on 23/03/2021 and not when the authorised officer states that the search is finally concluded. Thus, in this way putting a prohibitory order u/s 132(3) of the Act does not elongate the starting point of limitation.

17. Even otherwise by passing a restraint order u/s 132(3) of the act, the authorised officer cannot keep the search proceedings in operation, when there was no practical impediment to seizure of desktop, two CPUs, loose papers, SIM cards, incase those were considered by the authorised officer as necessary, more particularly when other material of the same nature was seized on that day itself.

18. In our considered view, the provisions of section 132(3) of the Act can be resorted to only, if there is any *practical difficulty* in seizing the item, which are liable to be seized. When there is no such practical difficulty, then the officer is left with no other alternative but to seize the item, if he is of the view that it represented undisclosed income. Power under section 132(3), thus, cannot be exercised so as to circumvent the provisions of section 132(3), read with section 132(5). The position has become much more clear after the insertion of the Explanation to section 132(3) effective from 1-7-1995, that a restraint order does not amount to seizure. Therefore, in this way by

passing a restraint order, the time-limit available for framing of the order cannot be extended.

19. On this proposition, reliance is also being placed on the decision in the case of **CIT Vs. Sandhya P Nair (2002) 124 Taxman, 384(Bombay)** wherein it was held as under

Para 3 & 4 state that ITAT took up issue of limitation first as it felt that if Assessee succeeded on that then other issues would become academic.

*Para 10 states there was only one search warrant which was issued on 16-10-1996, and executed between 16-10-1996, and 20-10-1996, and which expired, thus, on 20-10-1996. The warrant was issued on 7-10-1996, and the search was conducted **continuously** between 16-10-1996 and 20-10-1996. In between, the search was suspended only during the late hours of the night. On 20-10-1996, having seized all the relevant materials and valuables, the search party obviously had come to the conclusion that there was no further material to be seized and no more search operation to continue. The search comes to an end when the search party leaves the premises after carrying with it the seized material and, thus, authorisation for search is fully implemented and execution is complete.*

There was no practical impediment to seizure of the said 45 kgs, of silver, if it was considered by the authorised officer as necessary. The contention of the learned counsel for the department that it was not practical to seize huge quantity of silver at odd hours, was rightly held to be untenable by the Tribunal, because at the same odd hour, the search party seized and removed from the premises of the assessee 5,729 gms. of gold ornaments, cash of Rs. 1,69,000 and books of account, weighing nearly 500 kgs.

*Indeed, by simply stating in the panchanama that the search is **temporarily Suspended**, the authorised officer cannot keep the search proceedings in operation by passing a restraint order under section 132(3).*

*Action under section 132(3) can be resorted to only if there is any **practical difficulty** in seizing the item which is liable to be seized. When there is no such practical difficulty, the officer is left with no other alternative but to seize the item, if he is of the view that it represented undisclosed income.*

Power under section 132(3), thus, cannot be exercised so as to circumvent the provisions of section 132(3), read with section 132(5). The position has become much more clear after the insertion of the Explanation to section 132(3) effective from 1-7-1995, that a restraint order does not amount to seizure. Therefore, by passing a restraint order, the time-limit available for framing of the order cannot be extended.

20. It is important to mention here that all the material which was to be seized, was found on the first visit by the search party i.e. on 24/03/2021 to 26/03/2021 and no new fresh material was found on the second visit i.e. on 24/05/2021. Therefore merely because Punchnama drawn after the visit, due to restrain order mentioned that search is finally concluded, in that eventuality, the period of limitation will not be postponed. As in our view, merely visiting the premises on the pretext of concluding the search, but not actually finding anything new for being seized cannot give rise to a second Punchnama and even otherwise such a Punchnama cannot postpone the period of completion of assessment. On this proposition reliance is being placed on the decision of **PCIT Vs. PPC Business and Products Private Limited (2017) 84 taxman.com, 10 Delhi**, wherein it was held as under:

Para 15 & 16 states that a restraint order was passed u/s 132(3) on the first-day of the search. On the second visit there was no fresh material found A formal seizure order was passed.

Para 24 states that merely because panchnama drawn after the visit due to restraint order says that Search is finally concluded, the period of limitation will not be postponed.

Para 26 states that merely visiting the premises on the pretext of concluding the Search but not actually finding anything new for being seized cannot give rise to a second panchnama. Such panchnama cannot postpone the period of completion of assessment.

21. In this case also, in the visit pursuant to the restraint order, *there was a seizure*. However, *nothing new* was found so as to *constitute the visit as a Search*. The facts recorded in the Panchnama clearly exhibit that there was no search conducted on 24.05.2021. This is because everything had already been searched out and found and there was nothing further to be searched and found. On 24.05.2021, the search team merely visited the premises, went straight to the Prakash Nair cabin, wherein they had put the things and locked it on 26.03.2021 on the strength of a restraint order issued under section 132(3) of the Act.

22. Even The Restraint Order u/s 132(3) is bad in law as the same is in violation of the provisions of Section 132(3) of the Act. As Section 132(3) provides that a restraint order can be passed *if it is not practicable to seize something*, for reasons other than those mentioned in the second proviso to section 132(1). This means that the

decision to seize has already been taken, only it is not practicable to seize. In the case of the Appellant, the order passed under section 132(3) does not specify any reason why the things could not be seized on 26.03.2021. Out of 4 things placed under restraint, 200 SIM Cards were seized and backup of one server was taken on 24.05.2021. Thus such an order does not extend the search, thus has been held in the case of **Om Parkash Jindal vs Union of India [1976] 104 ITR 389 (P&H)** [Pg 6-13] the relevant portion is as under:

Restraint order u/s 132(3) can be passed only when the authorised officer can reasonably believe that the bullion, jewellery etc represented undisclosed property. But if he is not so satisfied or has doubts then he cannot have recourse to Section 132(3).

The stand that the restraint order is passed to avoid seizure till the statements u/s 132(4) are verified is untenable. S.132(3) order is to be passed only in case of impracticability of seizure due to nature, location or peculiar circumstance.

In the case of **Dr C. Balkrishnan Nair v CIT (1999) 237 ITR 70 (Ker)(HC)**, wherein it has been held as under:

It is held that Order u/s 132(3) cannot be passed on the ground that scrutiny could not be completed. At Para 11 it is held that Search has to be continuous.

In the case of **Maa Vaishnavi Sponge Ltd v DGIT (2012) 21 taxmann.com 512(Ori)(HC)**, it has been held as under:

Recourse to Section 132(3) can be taken only when the authorised officer believes that particular asset found during Search represent undisclosed asset.

Section 132(3) order cannot be passed to ascertain whether any transaction made in the accounts represent undisclosed income.

Also did not accept contention of the department that order u/s 132(3) for the period prescribed u/s 132(8A) is automatic.

In the case of ***CIT v S.K.Katyal (2009) 308 ITR 168(Del)(HC)***

This case deals with the period of limitation.

At Para 15 the concept of panchnama is explained. At Para 16 it is held that Panchanama must reveal that a Search was carried out. At Para 18 it is held that mere inspection does not amount to Search. At Para 19 it is explained that for a Search one has to look for, there has to be quest for something hidden. Merely writing search is temporarily concluded will not extend the Search. At para 21 it is stated that Search has to be continuous and there has to be cogent and plausible reason for splitting of Search. Gap has to be explained.

23. And even in the present case, no reason has been recorded that ingredients of Section 132(3) are satisfied. No reason has been given for the gap in the search from 26/3/2021 till 24/5/2021. Hence, in our considered view the Panchnama dated 24/5/2021 cannot be accepted as a last drawn Panchnama so as to extend the period of limitation.

24. As the restraint order u/s 132(3) is not lifted within one month of the date of passing of the order as required

by CBDT Instruction F.No 286/57/2002-IT(Inv-II) dated 3/7/2022. Therefore the Panchnama dated 24/5/2021 lifting the restraint order is invalid in law

1) In this regard, reliance is being placed upon the decision in the case of ***Polisetty Somasundaram v DCIT (2023) 153 taxmann.com 591 (Vishakapatnam) (Trib)***

Para 22-27 (Rel Paras 26-27) it holds that release of a prohibitory order after 30 days is contrary to CBDT Circular dated 3-7-2002 [Pg 134-136] *which is binding on the revenue and thus the release of PO and the resultant Panchnama becomes invalid in law.*

Moreover Clause (xi) in Explanation to Section 153B providing exclusion of period from commencement of Search till handing over of seized materials to the Assessing Officer for computing the period of limitation u/s 153B is not applicable to the present case.

1) As the Clause (xi) in Explanation 153B is introduced by Finance Act, 2022 w.r.e.f 1/4/2021.

2) And The applicability of same is squarely covered by the decision of Madras High Court in ***Agni Estates and Foundations (P.) Ltd. vs. DCIT (2023) 459 ITR 44(Mad)(HC)***[Pg 137-144] wherein it is held as under:

25. Insofar as the assessments for the period 2011-12, 2012-13 and 2019-20 are concerned, no writ petitions have been filed by the petitioner at the original instance. Thus, and applying the limitation under section 153B, the date for statutory time limit for assessment would expire on 30-9-2020, though extended upto 30-9-2021 by virtue of the TOLA and subsequent extensions.

26. The question of any period available thereafter to the revenue would not arise seeing as no writ petitions have been filed at the original instance, and hence, the last date for completion of assessments for the period 2011-12, 2012-13 and 2019-20 would be 30-9-2021. The impugned assessments have been framed on 29.01.22, beyond the stipulated time and are hence barred by time.

27. As far as the defense of the revenue based upon clause (xi) to Explanation to section 153B is concerned, that clause relates to exclusion of the period taken for handing over seized material the assessing officer. The clause has been inserted with effect from 1-4-2021 and hence operates prospectively only, being a substantive provision. The benefit of the exclusion under that clause thus, would not be available to the revenue in the present assessments. The impugned orders of assessment passed on 28-1-2022 in

respect of AYs 11-12, 12-13 and 19-20 are hence held to be barred by limitation qua these three assessment years and are set aside. The writ petitions challenging those notices, orders of assessment and penalties are allowed."

28. Since the similarity in the facts of the present case, with that of the ***Agni Estates and Foundation (supra)*** is demonstrated as under:

<i>Agni Estates and Foundations (P)Ltd v DCIT (Supra)</i>	Present case.
Assessment Year involved is prior to AY 2021-2022	Assessment Year involved is prior to AY 2021-2022.
Search had taken place on 5/7/2018 i.e. before 1/4/2021	Search has taken place before 1/4/2021
Last date to pass the Assessment order was 30/9/2021 i.e. after 1/4/2021.	Last date to pass the Assessment order is 31/3/2022 i.e. after 1/4/2022.
Assessment order dated 28-1-2022 passed w.r.to search prior to 1/4/2021 and passed after 1/4/2022.	Assessment order dated 28-1-2022 passed w.r.to search prior to 1/4/2021 and passed after 1/4/2022.

29. Therefore taking into consideration, the entire facts and circumstance and also the decisions as discussed by us above the period of limitation is *crystallised* when the search ends. The exclusions as prevailing on that day can

only apply. Thus a vested right to obtain the Assessment order by a particular date is created at the end of Search. Thus in the facts of the present case as Search commenced and concluded prior to 1/4/2021 and also Asst Year 2021-2022 is not involved, therefore clause (xi) in Section 153B cannot be applied.

30. Even in the case of Ismail Khan, the Panchnama dated 25/3/2021 states that the Search is concluded. [Pg 130-131]. There is no restraint order passed u/s 132(3). Therefore the last date to pass the Assessment Order is 31/3/2022. Hence, the Assessment orders passed are barred by limitation.

31. Although Ld. DR has argued that CBDT Circular purportedly overrides Section 132(8A) of the Act (which prescribes a maximum duration of sixty days for a restraint order) and contended that circulars cannot override statutory provisions. He relies on:

Kerala Finance Corporation v. CIT (1994) 210 ITR 129 (Ker), erroneously cited as a Supreme Court decision, and K.V. Produce and Ors v. CIT (1992) 196 ITR 293 (Ker).

32. However, we found that both the cases relied upon by the Ld. DR stand overruled as Kerala Finance Corporation

was *overruled* by the Supreme Court in the case of **UCO Bank v. CIT (1999) 237 ITR 889 (SC)**;

And in the case of K.V. Produce was *overruled* by a Division Bench of the **Kerala High Court in K.V. Produce v. CIT (2001) 252 ITR 17 (Ker)**.

Therefore the argument of the Ld. DR has no judicial basis.

33. Even, we noticed that on this issue, the decision of the co-ordinate bench in **Polisetty Somasundaram v DCIT (2023) 153 taxmann.com 591 (Vishakapatnam) (Trib)** [Pg 81-103] is being followed, *wherein at Paras 22-27, it is held that the release of a prohibitory order after a period of one month from the date of the order is contrary to CBDT Circular dated 3-7-2002 [Pg 134-136] which is binding on the revenue and thus the release of Prohibitory Order and the resultant Panchnama becomes invalid in law.* This decision is rendered after considering the ratio of the **Supreme Court in UCO Bank v/s CIT (1999) 237 ITR 889 (SC)** w.r.to binding nature of benevolent circulars or circulars which reduce the rigours of law.

34 As a result, in the facts of the present case, the last drawn Panchnama shall be that which was drawn on 26/3/2021 and thus the impugned assessment orders are barred by limitation.

35 Although Ld. DR has placed reliance on Panchnama dated 24.05.2021 to compute the limitation. And in this regard Ld. DR relied upon the decision in the case **of VLS Finance Ltd v CIT (2016) 68 taxmann.com 368 (SC)** and **Anil Minda v CIT (2023) 148 taxmann.com 407 (SC)**.

36 In this regard it has been pointed out by Ld. AR that the decision in the case **VLS Finance Ltd v CIT (2016) 68 taxmann.com 368(SC)** affirming the decision of Delhi High Court in **VLS Finance Ltd v CIT (2007) 159 Taxman 102 (Del)(HC)** is distinguishable on facts and thus not applicable for the following reasons:

(i) In this case there was a Search Warrant dated 19/6/1998 which was executed on 22/6/1998 and thereafter from time to time till 5^a August 1998. The issue was whether Search concluded on 23 June 1998 or 5^a August 1998.

(ii) The Hon'ble Supreme Court in Para 29 has clearly stated that the issue of limitation was decided on the facts of said case only. In Para 30, the Supreme Court had held that 5^a August 1998 will be the last date of Search as the Assessee had not challenged the validity of search on subsequent dates raising the

plea that same was illegal in absence of fresh and valid authorization.

37 Thus, the issue dealt with by the Supreme Court was only whether fresh authorization was required for each visit during search period.

38. However In the facts of the present case, Assessee has clearly challenged the validity of Search on 24/5/2021 by submitting that said visit cannot be construed as a search. Further, said visit was pursuant to a restraint order u/s 132(3) which itself was unreasoned and bad in law as it was passed in respect of articles for which there existed *no impracticability* to seize on the day of Search. Therefore, the restraint order u/s 132(3) in the facts of the present case was a *ruse*. The Hon'ble Supreme Court has not dealt with the issue of validity of restraint order in the facts of the case.

39. Moreover In this case Hon'ble Supreme Court has not interpreted the scope of Section 153B(2) or scope of Explanation (2) to Section 158BE. As pointed out in paragraph no. 29, Hon'ble Supreme Court had specifically observed that *without going into legal nicety that the judgment is on the facts of that case.*

40. In **VLS Finance (supra)** during the search period from 22/6/1998 till 5/8/1998 there was a continuous search with 16 panchnamas and more than 5000 documents had to be gone through during search. Thus, it was a *continuous search*.

The Delhi High Court in Commissioner of Income-tax, Delhi-VIII, New Delhi vs. S.K. Katyal [2009] 308 ITR 168 (Delhi) had distinguished the decision of Delhi High Court in **VLS Finance Ltd v CIT (2007) 159 Taxman 102 (Del)(HC)** and also concluded that the **VLS Finance Ltd** is a case on its own facts. It was held as under:

"30. The decision in VLS Finance Ltd.'s case (supra) also rests on a factual basis which is different from that of the present appeal. First of all. VLS Finance Ltd.'s case (supra) is a decision rendered in a writ petition under article 226 of the Constitution of India. In exercise of its writ jurisdiction a High Court decides cases on the basis of affidavits. It is open to the High Court to arrive at conclusions of fact (as well as of law) based upon the affidavits. The present case is an appeal from the order of the Tribunal, which is the final fact finding authority under the income-tax regime. The facts, as determined by the Tribunal, unless they are held to be perverse, form the basis of the substantial questions of law which are to be determined by High Court's in appeals under section 260A of the said Act. It ought to be remembered that the Tribunal was of the view that the search and seizure, in the present case, was completed on 17-11-2000. The Tribunal also held that the panchnama of 3-1-2001 was 'merely a release order. Secondly, in VLS Finance Ltd.'s case (supra), the search and seizure operations commenced on 22-6-1998 and continued till 5-8-1998. As many as 16 panchnamas were

drawn upon in respect of the visits made to the assessee's premises. There was a mass of documents which were searched and seized from time to time. The court found that the search concluded on 5-8-1998 and not on 22-6-1998. The court also found that the search was also not unduly prolonged. The court held:-

"Consequently, we are of the opinion that the respondents did not complete the search on 22-6-1998, as alleged by the petitioners, nor did they unduly prolong it. The search concluded on 5-8-1998, and so in terms of Explanation 2 to section 158BE of the Act the period of limitation would begin from the end of August, 1998, that is, 31-8-1998 onwards..." (p. 297)

31. The factual basis of the decision in VLS Finance Ltd.'s case (supra) is entirely different to that of the present case. On law, there is nothing in VLS Finance Ltd.'s case (supra) which contradicts what we have explained above. If the search concluded on 5-8-1998, as held by the court, and the panchnama of that date was the last of the string of 16 panchnamas, obviously this would be the date on which the search was concluded and the date on which the warrant of authorization for search was executed. But, in the present appeal, no search whatsoever was conducted on 3-1-2001. Hence, the panchnama drawn up on 3-1-2001 cannot be regarded as a document evidencing the conclusion of a search. If that be so, 3-1-2001 cannot be regarded as the date on which the warrant of authorization was executed. Moreover, while in VLS Finance Ltd.'s case (supra), the court held that the search was not unduly prolonged, in the present case the gap between 17-11-2000 and 3-1-2001 is unexplained."

41. The above distinction of facts made by Hon'ble Delhi High Court is applicable to the present case also. Hence the decision in **VLS Finance Ltd v CIT (2016) 68 taxmann.com 368(SC)** is not applicable to the facts of the present case.

Further Hon'ble Supreme Court decision in **VLS Finance Ltd (Supra)** has also been distinguished in **Principal Commissioner of Income-tax (Central) vs. Hitesh Ashok Vaswani [2023] 156 taxmann.com 200 (Gujarat)/[2023] 459 ITR 610 (Gujarat)** wherein the distinction made by Delhi High Court decision in **S.K. Katyal** has been accepted and the restraint order u/s 132(3) has not been considered for the purpose of calculating period of limitation.

42. In-fact the Hon'ble Delhi High court in **VLS Finance Ltd** considered the Bombay High court decision in **CIT v. Mrs. Sandhya P. Naik [2002] 253 ITR 534 (Bom.)** and held that same was not applicable in the facts before it. Thus the law laid down in **CIT v Mrs Sandhya P. Naik(Supra)** was not challenged and same continues to hold the field.

Even the decision of Hon'ble Supreme Court in **Anil Minda v CIT (2023) 148 taxmann.com 407 (SC)** is not applicable to the facts of the present case for the following reasons:

- (i) The contention of the Assessee in that case as recorded in Para 3.2 of the decision was that the date

of last authorization i.e. 26-3-2001 should be taken as the starting point of limitation and not the last date of Search i.e. 11-4-2001 pertaining to first authorization dated 13-3-2001. Thus, the findings at Para 7 and Para 8 of the said order clearly state that the relevant date for computing the period of limitation shall be the date of last panchnama and not the date of last authorisation.

Hence, the issue before the Hon'ble Supreme Court was different than that involved in the present case.

(ii) Further the Supreme Court was not concerned with the impact of restraint order u/s 132(3) on the point of limitation. In-fact Assessee had not challenged the Search which had taken place on 11-4-2001.

(iii) Hence, the decision of the Supreme Court is not applicable in the facts of the present case.

Further Hon'ble Supreme Court in **Commissioner of Income-tax vs. Sun Engineering Works (P.) Ltd. [1992] 198 ITR 297 (SC)** has held that:

"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Court, divorced from the

context of the question under consideration and treat it to be the complete 'law' declared by the Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court. A decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a latter case, the Courts must carefully try to ascertain the true principle laid down by the decision of the Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by the Court, to support their proceedings."

43. After having gone through the entire arguments and submissions put fourth before us, we found that Ld. JCIT in his submissions, has not provided any explanation or justification as to why the items such as SIM cards, 2 CPUs, 1 desktop, and loose papers could not be seized on 26.03.2021 itself. On that day, several items including diaries, loose papers, pen drives, hard disks, and computers were already seized. There was *no impracticability to seize the remaining items*. As it is apparent that the sole purpose of issuing the restraint order on 26/3/2021 was to delay the completion of the search to a later date April or May 2021 so that the Revenue could effectively extend the time limit for assessment by one additional year, ie., from 31.03.2022 to 31.03.2023, which is clearly impermissible in law.

44. We also noticed that the visit on 24.05.2021 was '**not a search**' as at paras 5 to 7 of the written submission it is explained that there was a Search on 24/5/2021. For same it is submitted that on 24/5/2021 premises were examined, statement of Ismail khan was recorded, back-ups were taken and there was some actual seizure. From the panchnama it is clear that entire office premises was not searched but the officers went directly to the office cabin where items against which prohibitory orders were passed were kept. Hence, there was no search whatsoever. In-fact no fresh material was found on 24/5/2021. The statement of Mr Ismail Khan was recorded w.r.to sim cards. Statement on sim card was already recorded on 26/3/2021 and what was asked on 24/5/2021 was only clarification on what was already stated by Ismail Khan on 26/3/2021. Thus, sim cards were already examined on 26/3/2021 itself. Even no addition is made w.r.to items on which prohibitory orders were passed which clearly demonstrates that all purported incriminating materials were seized during search from 23/3/2021 to 26/3/2021. At 3 Para of Para 7 it is stated that "**Loose papers found at the premises were examined and having been found unfit for seizure, were not seized.**" This statement clearly shows that the restraint order u/s 132(3) was a *ruse or formality*. A bare reading of Section 132(3) and also at Para 72 of the decision of Karnataka High court in

C.Ramaiah Reddy v ACIT (2011) 339 ITR 210 (Karn)(HC)

it is stated that prohibitory orders are passed against items *which are liable to be seized but are impracticable to seize*. However, whether the items are liable to be seized was not decided at the time of passing restraint orders. Thus, as stated in ***C. Ramaiah Reddy (supra)***, the visit on 24/5/2021 was mere inspection pursuant to restraint order u/s 132(3) and cannot be equated with a search. Further as held in ***CRamaiah Reddy ACIT (2011) 339 ITR 210 (Karn)(IC)*** and such restraint orders will not postpone the counting of period of limitation.

45. We also noticed that the revenue has misplaced reliance on the 2002 amendment to Section 132(8A) as at Paras 8 and 9 of the written submission it is contended that no reasons are required to be recorded while passing prohibitory order u/s 132(3) in view of the amendment u/s 132(8A) by Finance Act, 2002.

46. However this argument is completely misplaced as the amendment has only done away with recording of reasons for extension of time as the provision for extension of time itself was removed. However, nowhere the requirement to record reasons for issuing order u/s 132(3) is taken away.

47. In-fact the argument of the department is contrary to the ratio laid down by the Karnataka High court in **C. Ramaiah Reddy v ACIT (2011) 339 ITR 210 (Karn)(HC)** wherein at Para 82 it is recorded "**(3) The power to put prohibitory order under section 132(3) is under law but the reasons for doing so has to recorded in writing and has to be justiciable.**".

48. As far as the applicability of the decision of the Hon'ble Bombay High Court in the case of **CIT v. Mrs. Sandhya P. Naik [2002] 253 ITR 534 (Bom)** is concerned, in our view the said decision is fully applicable in the facts of the present case. However, Ld DR has tried to distinguish the decision of the Bombay High Court in the case of **CIT v. Mrs. Sandhya P. Naik [2002] 253 ITR 534 (Bom.)** on the ground that department in that case admitted that Panchnama had defects and the Assistant comraissioner who removed the restraint order was not authorized by the Search warrant. Further it was decided prior to 2002 amendments. However, the Ld DR and has completely ignored the following observations made by the Hon'ble Bombay High Court which are directly applicable in the facts of the present case:

(i) There was no practical impediment to seizure of the said 45 kgs. of silver, if it was considered by the authorised officer as necessary. The contention of the learned counsel for the

department that it was not practical to seize huge quantity of silver at odd hours, was rightly held to be untenable by the Tribunal, because at the same odd hour, the search party seized and removed from the premises of the assessee 5,729 gms. of gold ornaments, cash of Rs. 1,69,000 and books of account, weighing nearly 500 kgs.

(31) Indeed, by simply stating in the panchanams that the search is temporarily suspended, the authorised officer cannot keep the search proceedings in operation by passing a restraint order under section 132(3)

(in) Action under section 132(3) can be resorted to only if there is any practical difficulty in seizing the item which is liable to be seized. When there is no such practical difficulty, the officer is left with no other alternative but to seize the item, if he is of the view that it represented undisclosed income.

(iv) Power under section 132(3), thus, cannot be exercised so as to circumvent the provisions of section 132(3), read with section 132(5). The position has become much more clear after the insertion of the Explanation to section 132(3) effective from 1-7-1995, that a restraint order does not amount to seizure. Therefore, by passing a restraint order, the time-limit available for framing of the order cannot be extended.

49. Therefore taking into consideration the entire facts and circumstances of the present case and also the principles laid down by different judicial authorities as discussed by us in detail, we conclude that the search in the present case was in fact concluded on 26.03.2021 and the restraint order dated 26.03.2021 was in valid and the panchanama dated 24.05.2021 was not a valid panchanama evidencing the conclusion of search u/s 132 of the Act, but was taken to inspection, therefore we are of

the view that restraint order passed in the present case will not extent the period of limitation for completing the assessment. As the last valid panchanama is dated 26.03.2021 and consequently the impugned assessment orders are barred by limitation u/s 153B of the Act. Thus we allow this ground raised by the assessee and quashed the assessment as being time barred.

50. Since we have quashed the assessment itself, therefore there is no need to adjudicate other grounds as the same are academic.

ITA No. 3347/Mum/2023, 2016-17
ITA No. 3346/Mum/2023, 2017-18
ITA No. 3362/Mum/2023, 2018-19
ITA No. 3360/Mum/2023, 2019-20
ITA No. 4267/Mum/2023, 2011-12
ITA No. 4273/Mum/2023, 2016-17
ITA No. 4272/Mum/2023, 2017-18
ITA No. 4289/Mum/2023, 2018-19
ITA No. 4288/Mum/2023, 2019-20
ITA No. 4286/Mum/2023, 2020-21

51. As the facts and circumstances in these appeals are identical to ITA No 3361/Mum/2023 for the A.Y 2019-20 (except variance in figures) and the decision rendered in above paragraph would apply *mutatis mutandis* for these appeals also. Accordingly, the grounds of appeal of the present appeals also stands allowed.

52. In the result all the appeals filed by both the assesseees are stands allowed.

Order pronounced in the open court on 27.06.2025.

Sd/-

Sd/-

(PRABHASH SHANKAR)
JUDICIAL MEMBER

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 27/06/2025

KRK, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai