

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'B' NEW DELHI)
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND**

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No. 3390/Del/2023 (A.Y. 2018-19)

ITA No. 3391/Del/2023 (A.Y. 2019-20)

ITA No. 3392/Del/2023 (A.Y. 2020-21)

Deepak Narang A-2/66, Top Floor, Paschim Vihar, West Delhi PAN: AAFPN6476N	Vs.	DCIT Central Circle-29, 318, Income Tax Building, E-2, ARA Centre, Jhandewalan Extension, Delhi
Appellant		Respondent

ITA No. 3947/Del/2023 (A.Y. 2020-21)

DCIT Central Circle-29, 318, Income Tax Building, E-2, ARA Centre, Jhandewalan Extension, Delhi	Vs.	Deepak Narang A-2/66, Top Floor, Paschim Vihar, West Delhi, Delhi PAN: AAFPN6476N
Appellant		Respondent

Assessee by	Shri Amit Goel, CA and Sh. Pranav Yadav, Adv	
Revenue by	Ms. Sita Shrivastava, CIT(DR)	
Date of Hearing	21/05/2025	
Date of Pronouncement	30/06/2025	

ORDER

PER YOGESH KUMAR, U.S. JM:

The captioned Appeals for Assessment Years 2018-19, 2019-20 and 2020-21 are filed by the Assessee challenging the order of the Commissioner of Income Tax (Appeals)-30, ('Ld. CIT(A)' for short) dated 18/10/2023. The Department of Revenue has also filed the Cross Appeal for Assessment Year 2020-21 challenging the order of the Ld. CIT(A) dated 18/10/2023.

2. The Ld. Counsel for the Assessee vehemently submitted that the additions made in all the three Assessment Years are based on the document seized during the search action conducted u/s 132(1) of the Income Tax Act, 1961 ('Act' for short) on M/s Era Infra Engineering Ltd. along with search action of Manoj Kumar Singh. Based on the incriminating material seized during the course of search conducted on the third person/other than the Assessee herein, the assessment proceedings u/s 153A of the Act has been initiated against the Assessee and the assessment has been framed in all the three Assessment Years u/s 153A of the Act. The Ld. Assessee's Representative submitted that when the incriminating materials found and seized during the course of search of other person, the assessment has to be framed u/s 153C of the Act on the Assessee and not u/s 153A of the Act. The Ld. Counsel relying on the plethora of judicial precedents, submitted that the entire assessment proceedings for the years under consideration are liable to be set aside. Thus, sought for allowing the Appeal.

3. The Ld. Department's Representative by relying on the orders of the Lower Authorities submitted that, the additions have been rightly made on its merit on all the three Assessment Years and above contention of the Assessee's Representative is devoid of merit. Therefore, sought for dismissal of the captioned Appeals of the Assessee.

4. We have heard both the parties and perused the material available on record. The issues involved in the Appeals of the Assessee as well as Revenue are tabulated as under:-

<i>A.Y</i>	<i>Issue involved in assessee's appeal</i>	<i>Issue involved in Department's Appeal</i>
2018-19	ITA No. 3390/DEL/2023 1. Rs. 1,43,508/ on account of alleged commission income on alleged bogus bills.	N.A
2019-20	ITA No. 3391/Del/2023 1.Rs. 27,461/- on account of alleged commission income on alleged bogus bills. 2. Rs. 1,18,011/- on account of alleged commission income in property transaction.	N.A
2020-21	ITA No. 3392/Del/2023 1.Rs. 16,05,228/- on account of alleged commission income on alleged bogus bills. 2.Rs. 5,41,210/- on account of alleged commission income on property transaction	ITA No. 3947/Del/2023 Rs. 1,40,86,090/- on account of alleged investment in property

5. It can be seen from the assessment order in all the above three Assessment Years, the impugned additions have been made by the A.O. based on the incriminating material found during the search of a third party, however, the assessment has been framed against the Assessee u/s 153A of the Act.

6. The Jurisdictional High Court in the case of PCIT (Central)-3 Versus Anand Kumar Jain (HUF) and ors, reported in 2021 (3) TMI 8 held that, material/statement found/recorded during the course of search in the case of third party cannot be used in the assessment made

u/s 153A in the case of Assessee and that the Assessing Officer was required to follow the mandatory/procedure u/s 153C of the Act. The relevant portion of the Judgment are as under:-

“10. Now, coming to the aspect viz the invocation of section 153A on the basis of the statement recorded in search action against a third person. We may note that the AO has used this statement on oath recorded in the course of search conducted in the case of a third party (i.e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of Section 153C, if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in Section 153A), then the only legal recourse available to the department was to proceed in terms of Section 153C of the Act by handing over the same to the AO who has jurisdiction over such person. Here, the assessment has been framed under section 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act). As noted above, the Assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under section 153C has not been followed. On this count alone, we find no perversity in the view taken by the ITAT. Therefore, we do not find any substantial question of law that requires our consideration.”

7. The Co-ordinate Bench of the Tribunal in the case of DCIT, Central Circle 2(3), Chennai Versus M/s BSR Builders Engineers & Contractors reported in (2025) 121 ITR (Trib) 626 (ITAT [Chen], vide order dated 27/03/2024 held as under:-

“5. We have heard rival contentions and gone through facts and circumstances of the case. Brief facts are that search and seizure operation was conducted [u/s.132](#) of the Act in the case of Dr. Murugu Sundaram and Dr. Raja Sundaram on 06.07.2015 from where unaccounted money in cash along with other incriminating evidences was found. Certain loose sheets were found and seized during the search operation which contained details of cash payments made by Dr. Murugu Sundaram and Dr. Raja Sundaram & C.O Nos.34 to 36/CHNY/2023 to assessee firm during financial years 2012-13 to

2015-16 relevant to assessment years 2013-14 to 2016-17 in aggregate to Rs.11.20 crores and in the relevant assessment year 2013-14, the amount received was Rs.3.20 crore. This amount was received by assessee in connection with sale of part of commercial building in BSR Mall which was admitted by Dr. Murugu Sundaram and Dr. Raja Sundaram vide their sworn statement u/s.132(4) of the Act on 06.07.2015 and also by the Managing Partner of the assessee firm Shri B. Raghavendra Reddy. Consequently search was also conducted on the assessee firm u/s.132 of the Act on 06.07.2015. Consequently, notice u/s.153A of the Act dated 15.11.2016 was issued and served on the assessee. The assessee now before us contended that the assessments framed u/s.153A of the Act in these three assessment years are bad in law, as no incriminating material was found from the search conducted on assessee's premises but the loose sheets were found and seized from the premises of Dr. Murugu Sundaram and Dr. Raja Sundaram in the course of search conducted in their cases and hence, according to ld.counsel for the assessee, assessments should have been framed u/s.153C of the Act. It was contended by ld.counsel that loose sheets found and seized from the premises of Dr. Murugu Sundaram and Dr. Raja Sundaram in the course of search conducted in their cases as per assessment framed u/s.153A of the Act makes it clear that no incriminating material was found during the course of search on the assessee's premises regarding the cash payments received from the said persons but the additions have been made purely on the basis of material found and seized during the course of search conducted in the case of Dr. Murugu Sundaram and Dr. Raja Sundaram. The ld.counsel also argued that the statement referred by the AO of Managing Partner Shri B. Raghavendra Reddy dated 06.07.2015 u/s.132(4) of the Act, wherein he admitted the receipt of cash to the extent of Rs.11.20 crores from the above said two persons only and pointed out that such admission was only on the basis of material found during the course of search in the case of above said two persons and deposition given by Dr. Murugu Sundaram and Dr. Raja Sundaram. The ld.counsel for the assessee drew our attention to the provisions of section 153A of the Act, which deal with assessment in the case of a search and are applicable for making assessment in the case of a person, in whose case, search was conducted u/s.132 of the Act. It was further argued that in case, where books of accounts or documents seized during the search pertain to or information contained therein relate to a person other than the person referred to in section 153A of the Act i.e., the

searched person, the seized books of account or documents are required to be handed over to the AO having jurisdiction over such 'other person' and if the said AO is satisfied that the same have a bearing on the determination of total income of such other person, he shall proceed against such 'other person' in term of [section 153C](#) of the Act and issue notice accordingly for assessing the income of that 'other person'. The ld.counsel for the assessee before us relied on the decisions of Hon'ble Delhi High Courts in the case of [PCIT vs. Anand Kumar Jain \(HUF\)](#) in ITA No.23 of 2021 and [PCIT vs. Subhash Khattar](#) in ITA No.60 of 2017. The ld.counsel also relied on the decision of Coordinate Bench of this Tribunal, Bangalore Bench in the case of [P. Shyammaraju and Co. India P. Ltd., vs. DCIT](#) in ITA No.978/Bang/2014.

6. We have gone through the decision of Hon'ble Delhi High Court in the case of [Anand Kumar Jain](#), supra, wherein the Hon'ble Delhi High Court has dealt with exactly identical issue and relying on the decision of [CIT vs. Kabul Chawla](#) reported in [2016] 380 ITR 573 has held as under:-

"7. The preliminary question under consideration before us is whether a statement under [Section 132\(4\)](#) constitutes incriminating material for carrying out assessment under [S. 153\(A\)](#) of the Act. A reading of the impugned order reveals that the statement of Mr. Jindal recorded under [Section 132\(4\)](#) forms the foundation of the assessment carried out under [Section 153A](#) of the Act. That statement alone cannot justify the additions made by the AO. Even if we accept the argument of the Revenue that the failure to cross-examine the witness did not prejudice the assessee, yet, we discern from the record that apart from the statement of Mr. Jindal, Revenue has failed to produce any corroborative material to justify the additions. On the contrary we also note that during the course of the search, in the statement made by the assessee, he denied having known Mr. Jindal. Since there was insufficient material to support the additions, the ITAT deleted the same. This finding of fact, based on evidence calls for no interference, as we cannot re-appreciate evidence while exercising jurisdiction under [section 260A](#) of the Act.

8. Next, we find that, the assessment has been framed under [section 153A](#), consequent to the search action. The scope and ambit of [section 153A](#) is well defined. This court, in [CIT v. Kabul Chawla](#), concerning the scope of assessment under [Section 153A](#),

has laid out and summarized the legal position after taking into account the earlier decisions of this court as well as the decisions of other High Courts and Tribunals. In the said case, it was held that the existence of incriminating material found during the course of the search is a sine qua non for making additions pursuant to a search and seizure operation. In the event no incriminating material is found during search, no addition could be made in respect of the assessments that had become final. Revenue's case is hinged on the statement of Mr. Jindal, which according to them is the incriminating material discovered during the search action. This statement certainly has the evidentiary value and relevance as contemplated under the explanation to [section 132\(4\)](#) of the Act. However, this statement cannot, on a standalone basis, without reference to any other material discovered during search and seizure operations, empower the AO to frame the block assessment. This court in [Principal Commissioner of Income Tax, Delhi v. Best Infrastructure \(India\) P. Ltd.](#), has inter-alia held that:

"38. Fifthly, statements recorded under [Section 132\(4\)](#) of the Act do not by themselves constitute incriminating material as has been explained by this Court in [Harjeev Aggarwal](#). "

9. In [Commissioner of Income Tax v. Harjeev Aggarwal](#), this Court had held as follows:

"23. In view of the settled legal position, the first and foremost issue to be addressed is whether a statement recorded under [Section 132\(4\)](#) of the Act would by itself be sufficient to assess the income, as disclosed by the Assessee in its statement, under the [Provisions of Chapter XIV-B of the Act](#).

24. In our view, a plain reading of [Section 158BB\(1\)](#) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the explanation to [Section 132\(4\)](#) of the Act. However, such statements on a standalone basis without reference to any

other material discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by the Assessee during search operation.

25. (...) However, as stated earlier, a statement on oath can only be recorded of a person who is found in possession of books of accounts, documents, assets, etc. Plainly, the intention of the Parliament is to permit such examination only where the books of accounts, documents and assets possessed by a person are relevant for the purposes of the investigation being undertaken. Now, if the provisions of [Section 132\(4\)](#) of the Act are read in the context of [Section 158BB\(1\)](#) read with [Section 158B\(b\)](#) of the Act, it is at once clear that a statement recorded under [Section 132\(4\)](#) of the Act can be used in evidence for making a block assessment only if the said statement is made in the context of other evidence or material discovered during the search. A statement of a person, which is not relatable to any incriminating document or material found during search and seizure operation cannot, by itself, trigger a block assessment. The undisclosed income of an Assessee has to be computed on the basis of evidence and material found during search. The statement recorded under [Section 132\(4\)](#) of the Act may also be used for making the assessment, but only to the extent it is relatable to the incriminating evidence/material unearthed or found during search. In other words, there must be a nexus between the statement recorded and the evidence/material found during search in order to for an assessment to be based on the statement recorded.

26. In [CIT v. Sri Ramdas Motor Transport Ltd.](#), (1999) 238 ITR 177 (AP), a Division Bench of Andhra Pradesh High Court, reading the provision of [Section 132\(4\)](#) of the Act in the context of discovering undisclosed income, explained that in cases where no unaccounted documents or incriminating material is found, the powers under [Section 132\(4\)](#) of the Act cannot be invoked. (...)

27. It is also necessary to mention that the aforesaid interpretation of [Section 132\(4\)](#) of the Act must be read with the explanation to [Section 132\(4\)](#) of the Act which expressly provides that the scope of examination under [Section 132\(4\)](#) of the Act is not limited only to the books of accounts or other assets or material found during the search. However, in the context of [Section 158BB\(1\)](#) of the Act which expressly restricts the computation of undisclosed income to

the evidence found during search, the statement recorded under [Section 132\(4\)](#) of the Act can form a basis for a block assessment only if such statement relates to any incriminating evidence of undisclosed income unearthed during search and cannot be the sole basis for making a block assessment.

28. If the Revenue's contention that the block assessment can be framed only on the basis of a statement recorded under [Section 132\(4\)](#) is accepted, it would result in ignoring an important check on the power of the AO and would expose assesseees to arbitrary assessments based only on the statements, which we are conscious are sometimes extracted by exerting undue influence or by coercion. Sometimes statements are recorded by officers in circumstances which can most charitably be described as oppressive and in most such cases, are subsequently retracted. Therefore, it is necessary to ensure that such statements, which are retracted subsequently, do not form the sole basis for computing undisclosed income of an assessee. In [Commissioner of Income Tax v. Naresh Kumar Aggarwal](#): (2014) 3699 ITR 171 (T & AP), a Division Bench of Telangana and Andhra Pradesh High Court held that a statement recorded under [Section 132\(4\)](#) of the Act which is retracted cannot constitute a basis for an order under [Section 158BC](#) of the Act. (...)"

10. Now, coming to the aspect viz the invocation of [section 153A](#) on the basis of the statement recorded in search action against a third person. We & C.O Nos.34 to 36/CHNY/2023 may note that the AO has used this statement on oath recorded in the course of search conducted in the case of a third party (i.e., search of Pradeep Kumar Jindal) for making the additions in the hands of the assessee. As per the mandate of [Section 153C](#), if this statement was to be construed as an incriminating material belonging to or pertaining to a person other than person searched (as referred to in [Section 153A](#)), then the only legal recourse available to the department was to proceed in terms of [Section 153C](#) of the Act by handing over the same to the AO who has jurisdiction over such person. Here, the assessment has been framed under [section 153A](#) on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act). As noted above, the Assessee had no opportunity to cross-examine the said witness, but that apart, the mandatory procedure under [section 153C](#) has not been followed. On this count alone, we find no perversity in the view taken by the ITAT. Therefore, we do not find any substantial question of law that requires our consideration."

6.1 Similarly, Co-ordinate Bench of Bangalore Tribunal in the case of *P. Shyammaraju and Co. India P Ltd.*, supra, has considered exactly identical issue and Tribunal vide para 6.6 held as under:-

"6.3 Further, the A.O. had made other additions (other than the claim of deduction u/s 80IA(4) of the I.T.Act) relying upon the materials marked as A/VSM/5,7,8,9,12,15,17 and a pen drive marked as A/VSM/16. It is an undisputed fact that those materials which were all found and seized was during the course of search carried out in the premises of one Sri.V.Shambamoorthy pursuant to a separate warrant of search. The A.O. is certainly entitled to use these materials to make addition in the hands of the assessee, provided, he had initiated proceedings u/s 153C of the I.T.Act and assessed the income u/s 153C r.w.s. 143(3) of the I.T.Act. There is no dispute that the A.O. in the instant case has not initiated proceedings u/s 153C of the I.T.Act. Now the question arises whether the incriminating material found and seized in the search of Sri.V.Shambamoorthy can be used in an assessment of the assessee in a proceedings u/s 153A of the I.T.Act without invoking the provisions of section 153C of the I.T.Act. The answer to the above question would be 'no'. The reason being that as per & C.O Nos.34 to 36/CHNY/2023 the provisions of section 153C of the I.T.Act. it is imperative that in order to use the material found and seized in a search of an another person other than the person who is subjected to assessment, such material cannot be used without invoking the provisions of section 153C of the I.T.Act. The proceedings u/s 153C of the I.T.Act ought to have been initiated in the case of the assessee when satisfaction was arrived at in the assessment proceedings of Sri.V.Shambamoorthy that material found and seized in the search of Sri.V.Shambamoorthy did not pertain to him, but instead pertains to the assessee.

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6.6 The learned Standing Counsel submitted that the decision of the Co- ordinate Bench in the case of Sri.Anil H Lad (supra) was per in curium inasmuch as the said order did not notice the judgment of the Hon'ble Karnataka High Court in the case of *Canara Housing*

Development Company (supra), and hence, the same ought to be ignored by this Bench. The order of the Co-ordinate Bench in the case of Sri.Anil H Lad (supra) does not in any way contradict the judgment of the Hon'ble High Court in the case of Canara Housing Development Co. (supra) and nor does the decision violate the proposition of law decided therein, by the Hon'ble High Court. The judgment of the Hon'ble High Court in the case of Canara Housing Development Co. (supra) which was rendered in the context of revisionary proceedings u/s 263 of the I.T.Act was considered, clarified and explained by the Hon'ble jurisdictional High Court rendered subsequently in the case of IBC Knowledge Park (supra) and once again considered and clarified in another recent decision rendered by it in the case of Pr.CIT v. Delhi International Airport Pvt. Ltd. (supra). Thus, the argument canvassed by the learned Standing Counsel, questioning the correctness of the decision of the Co-ordinate Bench in the case of Sri.Anil H Lad (supra) is not legally tenable. The learned Standing Counsel had also made one more argument that on the date of search conducted on Sri.V.Shambamoorthy, there was no proceeding pending u/s 153A of the I.T.Act in the case of the assessee and hence the material found in the search of Sri.V.Sambamoorthy ought to be considered as "any other material which comes to the knowledge of the AO" and can be used in the assessment proceedings u/s 153A of the I.T.Act, without invoking the provisions of section 153C of the I.T.Act. This argument of the learned Standing Counsel suffers from the basic flaw inasmuch as it is not the date of search of Sri.V.Sambamoorthy, & C.O Nos.34 to 36/CHNY/2023 which is to be reckoned to determine whether proceedings u/s 153A of the I.T. Act is initiated in the case of the assessee and is the same pending, but it is the date on which material, belonging / pertaining to the assessee, found in the search of Sri.V. Sambamoorthy, is handed over to the AO of the assessee, which is to be considered for determining whether proceedings u/s 153A of the I.T.Act is initiated and is pending on the date of receipt of such material. In the present case the date of initiation of proceedings u/s 153A of the I.T.Act definitely precedes the date on which material found in the search of Sri.V. Sambamoorthy is received for the purpose of assessing the same in the hands of the assessee. Thus, the AO ought to have initiated proceedings u/s 153C of the I.T. Act inasmuch as the proceedings u/s 153A of the I.T. Act had already commenced."

7. *After going through the judicial precedents and particularly the decision of Hon'ble Delhi High Court in the case of Anand Kumar Jain, supra, we are of the view that as per the mandate provided by the provisions of section 153C of the Act, the statement made by assessee cannot be a base for making assessment u/s.153A of the Act on the basis of alleged incriminating material (being the statement recorded u/s.132(4) of the Act) on the basis of which assessment was framed u/s.153A of the Act rather assessment should have been framed u/s.153C of the Act by recording a separate satisfaction. Hence, we find no infirmity in the order of CIT(A) and we affirm the order of CIT(A) on this legal issue.”*

8. By respectfully following the ratio laid down by the Hon'ble Jurisdiction High Court in the case of Anand Jain (HUF) (supra) and the decision of the Co-ordinate Bench of the Tribunal at Chennai in the case of M/s BSR Builders, Engineers and Contractors, we are of the considered opinion that no addition could be made in the hands of the Assessee u/s 153A of the Act on the basis of material found in the possession of third party and the A.O. was required to follow the mandatory procedure u/s 153C of the Act. Accordingly the assessment orders framed u/s 153A of the Act for Assessment Year 2018-19 to 2020-21 are here by quashed.

9. In the result, Appeals of the Assessee in ITA Nos. 3390/Del/2023, 3391/Del/2023 and 3392/Del/2023 are allowed.

10. Since, we have quashed the assessment order for Assessment Year 2020-21 on the ground that the assessment ought to have been framed u/s 153C and not u/s 153A of the Act and allowed the Appeal, the Revenue's Appeal in ITA No. 3947/Del/2023 for Assessment Year 2020-21 has become in-fructuous. Accordingly appeal of the Revenue in ITA 3947/Del/2023 is dismissed.

Order pronounced in the open court on 30th June, 2025

Sd/-

(M. BALAGANESH)

ACCOUNTANT MEMBER

Date 30.06.2025

R.N, Sr.P.S*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(YOGESH KUMAR U.S.)

JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI

