

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER  
AND  
SHRI MANISH AGARWAL, ACCOUNTANT MEMEBR**

**ITA No. 715, 716 & 717/DEL/2023  
Asstt. Yrs. 2009-10, 2011-12 & 2012-13**

<b>Om Parkash Singla, 13/7, G.D. Industrial Complex, Main Mathura Road, Faridabad-121001.</b>	<u>Vs</u>	DCIT, Central Circle-1, Faridabad.
<b>PAN- AAAAO 1221 A</b>		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Shri Suraj Bhan Nain, Adv. & Ms. Anisha Garg, CA	
<b>Department represented by</b>	Shri Virender Kumar Singh, Sr. DR	
<b>Date of hearing</b>	07.05.2025	
<b>Date of pronouncement</b>	25.06.2025	

**ORDER**

**PER MS. MADHUMITA ROY, JM:**

These instant appeals, filed by the assessee, are directed against consolidated order dated 27.01.2023, passed by the learned Commissioner of Income-tax (Appeals)-3, Gurgaon, arising out of separate assessment orders dated 23.12.2016, 25.12.2018 & 24.12.2018 for A.Yrs. 2009-10, 2011-12 & 2012-13 respectively passed by the DCIT, Central Circle-I, Faridabad under Section 147 read with Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

Facts and issues involved for adjudication in the impugned assessment years being identical (excepting quantum of addition) all these appeal were heard together and are being disposed of by a common order for the sake of convenience. ITA No. 715/Del/2023 for A.Y. 2009-10 is made the lead case and our finding therein shall follow mutatis mutandis in ITA Nos. 716 & 717/Del/2023 for A.Yrs. 2011-12 & 2012-13.

ITA No. 715/Del/2023 (A.Y. 2009-10):

2. Grounds of appeal raised by the assessee read as under:

*“1. That having regard to the facts & circumstances of the case and in law, the Ld. Assessing Officer erred in initiating assessment proceedings under section 147 of the Income Tax Act, 1961 and completing the assessment under section 147 r.w.s. 143(3) of the Income Tax Act, being not in accordance with the requirements of provisions of sections 147 to 151 of the Income Tax Act, 1961.*

*2. That having regard to the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) erred in confirming the addition of Rs. 1,00,89,836/- made by the Ld. Assessing Officer on account of alleged higher amount of rebate and discount allowed by M/s Jagatjit Industries Ltd to the appellant on the purchases made from the said company, without properly appreciating the facts of the case.*

*3. That having regard to the facts and circumstances of the case and in law, the Ld. Commissioner of Income-tax (Appeals) erred in upholding on merit the addition of Rs. 20,00,000/- inferring that the appellant has shown bogus expenditure of Rs. 20,00,000/- on account of purchases corresponding to the payments made to M/s Alfa India, ignoring the fact that the appellant has not claimed any expenses for such payments, which were made on the instructions and on behalf of M/s Jagatjit Industries Ltd and debited to their account against the genuine purchases made from the company, though the*

*Ld. CIT (Appeals) has deleted this addition observing that it amounts to double disallowance as it is covered by the disallowance of Rs. 1,00,89,836/- made on account of excess rebate on purchases allowed by M/s Jagatjit Industries Ltd.*

*4. The appellant craves leave to add, alter, amend, modify, or withdraw any ground or grounds of appeal before or at the time of hearing during appellate proceedings.*

3. Facts in brief are that for Assessment Year 2009-10 original assessment was completed under Section 153A(1)(b) read with Section 143(3) of the Act on the basis of search and seizure action under Section 132(1) conducted on Mapsko Group of cases on 10.03.2010 at an income of Rs. 2,17,76,480/-. Later on, action under Section 132 was taken on 29.12.2015 including action u/s 133A of the Act in the case of the Mapsko Group of cases.

3.1 During search under Section 132(1) against MAPSKO Group it was gathered that M/s Om Prakash Singla AOP and M/s Sohan Lal Singla AOP were making payment to M/s Alfa India against outstanding purchase obligation of M/s Jagatjit Industries Limited (JIL). Subsequently, a survey under Section 133A was conducted at different premises of M/s Jagatjit Industries Limited, as it was found in the initial enquiry that the receipts of M/s Alfa India was not recognized in the books of JIL. On the basis of information gathered in the case of Sh. Arun Duggal Prop. M/s Alfa India, Faridabad u/s 133A of the I.T. Act, the case of the assessee

was reopened u/s 148 of the I.T. Act with the prior approval of Pr. CIT(Central),

Gurgaon after recording the following reasons:-

*"Information was received from Asstt. Director of Income-tax(lnv.)-II, Faridabad and as per information the following bank account number investigated and pertained to an entity by the name of M/s Alfa India. The account was in the name of Sh. Arun Duggal 3E-42, NIT, Faridabad. Another bank account pertaining to M/s Alfa India was also found. The details of the account are as under:-*

<i>Account Number</i>	<i>Branch with its Address</i>
<i>041907300000213</i>	<i>Plot No. 97, SCO, Sec-31, Main road, Gurgaon.</i>
<i>0358073000002431</i>	<i>Door No. B-103, Ground Floor, Chittrnjan Park New Delhi.</i>

*The deposit in the accounts of M/s Alfa India was followed by funds transfer to other accounts from where funds were withdrawn generally in cash. M/s Alfa India is a dummy concern managed and controlled by Sh. Arun Duggal and Sanjay Duggal from a residential address. M/s Alfa India is not engaged in the business of liquor trade. There is no genuine business activity performed by M/s Alfa India.*

*Perusal of record of M/s Om Parkash Singla (AOP) for the assessment year 2009-10 shows that no TCS credit is seen in the account of M/s Om Parkash Singla (AOP) who is a liquor contractor and it is prove that if the payment has been made by the M/s Om Parkash Singla (AOP) to M/s Alfa India for purchase of liquor than TCS was to be deducted and could be seen in the accounts of the M/s Om Parkash Singla (AOP).*

*The transaction made by M/s Om Parkash Singla (AOP) with M/s Alfa India are not for business transaction and for purchase the material but only to booking the expenses and routed in its hand back from M/s Alfa India in the shape of cash. M/s Alfa India has not provided any goods/services to these parties. The above two accounts has received credits amounting to Rs.20,00,000/- during assessment year 2009-10 from M/s Om Parkash Singla (AOP) liquor distributors.*

*In view of the above facts, I have reason to believe that the assessee has escaped the particulars of its income to the extent of Rs. 20,00,000/- chargeable to tax and also any other income which comes to the notice subsequently in the course of the proceedings under this section by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the assessment year 2009-10."*

3.3 In response to statutory notice issued under Section 148 of the Act, the assessee submitted that the original return filed under Section 139 on 29.09.2009 be treated as a return filed in response to notice under Section 148. Further, statutory notices issued under Section(s) 143(2)/ 142(1) of the I.T. Act dated 15.09.2016 were duly responded by the assessee. The AO completed the assessment at Rs. 3,38,66,316/- as against returned income of Rs. 2,17,76,480/- by disallowing Rs. 1,00,89,836/- and Rs. 20,00,000/- under Section 37 on account of inflated purchases. In appeal the Ld. CIT(A) partly allowed the appeal by deleting addition of Rs. 20,00,000/- and sustained the addition of Rs. 1,00,89,836/-. Aggrieved against the sustenance of disallowance of Rs. 1,00,89,836/-, now the assessee is in appeal before this Tribunal.

4. At the very threshold of the matter the Ld. Senior Counsel appearing for the assessee submitted before us that the reopening has been initiated under Section 147 of the Act on the basis of search action taken under Section 132 of the Act in the case of one MAPSKO Group on 29.12.2015 including action under Section 133A of the Act wherein details in regard to the disputed bogus expenditure on

account of purchases corresponding to the payment made to one M/s Alfa India and alleged higher amount of rebate and discount allowed by M/s Jagatjit Industries Ltd. were found. It was further found that in the year under consideration no TCS credit in the account of the assessee before us who is a liquor contractor was found. The reopening, if at all, could have been made under Section 153C of the Act and not under Section 147 of the Act as the provision of Section 153C is applicable and in this particular case in hand excludes the applicability of the provision of Section 147 of the Act. The reassessment made under Section 147 read with Section 143(3) of the Act is, thus, invalid void abinito and therefore liable to be quashed on the facts and circumstances of the matter as submitted by the Ld. AR. In support of his argument the has relied upon the judgment passed by the Hon'ble Rajasthan High Court in the case of Kushal Daga daughter of Shri Ladu Singh v. ACIT dated 19 March, 2024 and contended that the Hon'ble High Court has deleted the initiation of reassessment proceedings under Section 147/148 of the Act instead of 153C of the Act on the identical facts of the matter.

5. The Ld. DR has not been able to controvert this particular submissions made by the Ld. AR having regard to the identical facts of the matter.

6. We have heard rival submissions made by the respective parties and perused the materials available on record. We find that while quashing the assessment in

the above case the Hon'ble Rajasthan High Court has been pleased to observe as follows:

*“25. In cases of the person other than on whom search was conducted but material belonging or relating such person was seized or requisition, the AO has to proceed under Section 153C. The two pre-requisites are that the AO dealing with the assessee on whom search was conducted or requisition made, being satisfied that seized material belongs or relates to other assessee shall hand over it to AO having jurisdiction of such assessee. Thereafter, the satisfaction of AO receiving the seized material that the material handed over has a bearing for determination of total income of such other person for the relevant preceding years. On fulfillment of twin conditions the AO shall proceed in accordance with the provisions of Section 153A.*

*26. Special procedure is prescribed under Section 153A to 153D for assessment in cases of search and requisition.*

*There cannot be a quibble with the proposition that the special provision shall prevail over the general provision. To say it differently the provisions of Section 153A to 153D have prevalence over the regular provisions for assessment or reassessment under Section 143 & 147/148.*

*27. Section 153A and 153C starts with non-obstante clause. The procedure for assessment/reassessment in Section 153A, 153C in cases of search or requisition has an overriding effect to the regular provisions for assessment [2024:RJ-JP:14106-DB] (46 of 50) [CW-18363/2019] or reassessment under Sections 139, 147, 148, 149, 151 & 153.*

*28. The language of explanation 2 to new Section 148 is akin to Section 153A and Section 153C. Corollary being that after seizing of operational period of Section 153A to 153D, the cases being dealt thereunder were circumscribed in the scope of newly substituted Section 148.*

*29. The Department has not set up a case that for initiating proceedings under Section 148 it had material other than the material seized during the search of Manihar Group.*

*The contention was that though the material with regard to unaccounted loan advanced by the petitioner was received, the earning of interest on unaccounted loan was derivation of the AO from the material received. The submission is that*

*the derived conclusion cannot be acted upon under Section 153C. The submission lacks merit and shall defeat the concept of single assessment order for each of relevant preceding years for assessing 'total income' in case of incriminating material found during search or requisition.*

*30. The argument that by enactment of Section 153A to 153D has not eclipsed Section 148 does not enhance the case of respondent to initiate the proceedings under Section 148. On fulfillment of two conditions for invoking Section 153C the proceeding in accordance with Section 153A are to be initiated. The operating field of and Section 153A to 153D and Section 148 are different. Applicability of Section 153C in cases where the seized material related to or belonged to [2024:RJ-JP:14106-DB] (47 of 50) [CW-18363/2019] person other than on whom search is conducted or requisition made does not render Section 148 otiose. Section 148 shall continue to apply to the regular proceedings and also in cases where no incriminating material is seized during the search or requisition.*

*31. The other aspect of the matter is that under Section 153A and 153C, 'the total income' is to be assessed.*

*The total income includes returned income (if any), undisclosed income unearthed during the search or requisitioning and information possessed from the other sources.*

*For Illustration:- An assessee had returned income of Rs.100, undisclosed income of Rs.200 is unearthed during search and there is information from annual information statement of non-disclosure of income of Rs.150/-.*

*The AO under Section 153A and 153C shall pass order dealing with income of Rs.100+Rs.200+Rs.150, the total income being Rs.450/-. In cases where there is no unearthing of undisclosed income of Rs.200/-, the department can resort to proceeding under Section 147/148.*

*32. The argument that Section 153C can be invoked in case there is incriminating material for all the relevant preceding years and otherwise Section 148 is to be resorted to, is misplaced. On satisfaction of the twin condition for proceedings under Section 153C, the AO has to proceed in accordance with Section 153A. Notice is to be issued for filing of the returns for relevant preceding years and thereupon proceed to assessee or reassessee the 'total income'. It is not [2024:RJ-JP:14106-DB] (48 of 50) [CW-18363/2019] obligatory on the AO to make assessment for all the years, the earlier orders passed may be accepted. But once there is incriminating material seized or requisitioned belonging or relatable to*

*the person other than on whom search was conducted, Section 153C is to be resorted to.*

*33. Before concluding, it would be fair to deal with the case law cited by both the parties. 34. Reliance of respondents on decision of M/s. M.R. Shah Logistics Pvt. Limited (supra) is of no avail. The issue of interplay of provisions of Section 147/148 vis-a-vis Section 153C in the case of seized material relating or belonging to the person other than on whom the search was conducted or requisition made was not the issue before the Supreme Court. 35. The Supreme Court in the case of Abhisar Buildwell P. Ltd. (supra) while dealing with the provisions of Section 153A held that in case of absence of incriminating material seized during the search, the department is not remediless for reassessing the unabated assessment on the basis of material received from the other sources and can proceed under section 148. The decision does not support the contentions raised that Section 148 is rendered redundant if Section 153C is to be resorted to in the facts of the present case.*

*36. The Single Bench of this Court in the case of Vijay Kumar Mehta (supra) held that if the Department has chosen not to proceed under Section 153C, no right is created to the petitioner for getting the notice under Section [2024:RJ-JP:14106-DB] (49 of 50) [CW-18363/2019] 148 quashed. Moreover, learned Single Judge was not having the benefit of the decision of the Supreme Court in the case of Abhisar Buildwell P. Ltd. (supra). The appeal against the order was dismissed having rendered infructuous in view of the subsequent developments that the assessment order was passed.*

*37. The decision of the Madras High Court in the case of Saloni Prakash Kumar (supra) is of no help to the respondents. The High Court held that Section 153C does not preclude issuance of notice under Section 148. The field of applicability of two sections was not the issue before the Court.*

*38. The petitioner relied upon the decision of the Karnataka High Court in the case of Sri Dinakara Suvarna (supra). It would be relevant to quote Para-10:-*

*“10. Admittedly no proceedings were initiated under Section 153C of the Act. Thus, there is patent non-application of mind. It is relevant to note that the author of the diary Smt. Soumya Shetty had passed away prior to the date of search. It was argued on behalf of the Revenue that Shri. Ashok Kumar Chowla had offered tax on lump-sum income.”*

*39. Further reliance was placed upon the decision of the Bombay High Court in the case of M/s. Aditi Constructions (supra). The para-9 is quoted:-*

*"9. We find that the jurisdictional conditions for invoking section 147 - 148 are not satisfied as there is no failure to disclose material facts fully and truly. It is not in dispute that by the letter dated 11th September 2015 (Exhibit H) the Petitioner have submitted all the particulars along with supporting documents to the [2024:RJ-JP:14106-DB] (50 of 50) [CW-18363/2019] Respondent No.1. Hence the reasons to believe and a presumption based on the statement of Shri Bhanwarlal Jain (a third party) in the course of a search, that the loans of the entities were bogus or accommodation entries was clearly dispelled. Moreover, the specific provisions of S. 153C would prevail over the general provisions of section 147 in the case of search on 3rd party."*

*40. In view of above discussion the notices issued under Section 148 and the impugned orders are quashed. However, the respondents shall be at liberty to proceed against the petitioners in accordance with law.*

*41. The first ground of challenge to initiation of proceedings under Section 148 is being accepted and there is no need to dilate upon other grounds raised for challenging the notice issued under Section 148 of the Act.*

*42. It would be appropriate to mention that during the pendency of the writ petitions there was interim protection in favour of the petitioners.*

*43. The writ petitions are allowed accordingly."*

6.1 Thus, having regard to the entire aspect of the matter, in view of the ratio laid down by the Hon'ble Rajasthan High Court which is found to be applicable in the case in hand as reopening under Section 147 of the Act admittedly has been initiated on the basis of documents seized during the course of search action in the case of MAPSKO Group on 29.12.2015 the applicability of the provision of Section 147 is found to be absolutely wrong; the reopening ought to have been initiated by invoking the provisions of Section 153C of the Act particularly

keeping in view the ratio laid down by the Hon'ble Rajasthan High Court. Thus, the reassessment framed is found to be not sustainable in the eyes of law. We, therefore, quash the assessment made under Section 147/143(3) of the Act.

7. Facts of the case in A.Y. 2011-12 and 2012-13 are identical to the facts as in A.Y. 2009-10. Therefore, following our finding and conclusion in A.Y. 2009-10 mutatis mutandis, the assessments for A.Y. 2011-12 & 2012-13, framed under Section 147/143(2) of the Act are also quashed. Consequently, assessee's appeals in ITA Nos. 715/Del/2023, 716/Del/2023 & 717/Del/2023 for A.Yrs. 2009-10, 2011-12 & 2012-13 respectively are allowed in above terms.

Order pronounced in open court on 25.06.2025.

**Sd/-**  
**(MANISH AGARWAL)**  
**ACCOUNTANT MEMEBR**  
**\*MP\***

Copy forwarded to:

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

**Sd/-**  
**(Ms. MADHUMITA ROY)**  
**JUDICIAL MEMBER**

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**