



आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 301/JP/2025  
निर्धारण वर्ष / Assessment Year : 2016-17

DCIT, Central Circle-01, Jaipur	बनाम Vs.	Sh. Vaibhav Banka Aakarshan, Shahpura Road, Neem Ka Thana, Sikar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ANAPB5274A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO. No. 02/JP/2025  
(Arising out of ITA. No. 301/JP/2025)  
निर्धारण वर्ष / Assessment Year : 2016-17

Sh. Vaibhav Banka Aakarshan, Shahpura Road, Neem Ka Thana, Sikar	बनाम Vs.	DCIT, Central Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ANAPB5274A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 290/JP/2025  
निर्धारण वर्ष / Assessment Year : 2016-17

DCIT, Central Circle-01, Jaipur	बनाम Vs.	Sh. Animesh Agarwal C/o Shri Raj Kumar Agarwal Shahpura Road, Neem Ka Thana, Sikar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: APYPA3310A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO. No. 03/JP/2025  
(Arising out of ITA. No. 290/JP/2025)  
निर्धारण वर्ष / Assessment Year : 2016-17

Sh. Animesh Agarwal C/o Shir Raj Kumar Agarwal Shahpura Road, Neem Ka Thana, Sikar	बनाम Vs.	DCIT, Central Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: APYPA3310A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA Nos. 297 & 298/JP/2025  
निर्धारण वर्ष / Assessment Year : 2014-15 & 2016-17

DCIT, Central Circle-01, Jaipur	बनाम Vs.	Smt. Snehlata Agarwal Snehill, Venus Colony Shahpura Road, Neem Ka Thana Sikar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABEPA9029J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO. Nos. 04 & 05/JP/2025  
(Arising out of ITA. No. 297 & 298/JP/2025)  
निर्धारण वर्ष / Assessment Year : 2014-15 & 2016-17

Smt. Snehlata Agarwal Snehil, Venus Colony Shahpura Road, Neem Ka Thana Sikar	बनाम Vs.	DCIT, Central Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABEPA9029J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA Nos. 289 & 288/JP/2025  
निर्धारण वर्ष / Assessment Years : 2014-15 & 2016-17

DCIT, Central Circle-01, Jaipur	बनाम Vs.	Priya Dewan Aakash Ganga, Venus Colony Shaapura Road, Neem Ka Thana, Sikar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AIVPG1329B		

अपीलार्थी / Appellant		प्रत्यर्थी / Respondent
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CO. Nos. 06 & 07/JP/2025  
(Arising out of ITA. No. 289 & 288/JP/2025)  
निर्धारण वर्ष / Assessment Year : 2014-15 & 2016-17

Priya Dewan Aakash Ganga, Venus Colony Shaapura Road, Neem Ka Thana, Sikar	बनाम Vs.	DCIT, Central Circle-01, Jaipur
स्थायी लेखा सं. / जीआईआर सं. / PAN/GIR No.: AIVPG1329B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 293 & 294/JP/2025  
निर्धारण वर्ष / Assessment Year : 2014-15 & 2016-17

DCIT, Central Circle-01, Jaipur	बनाम Vs.	Sh. Subhash Chandra Banka Aakarshan, Venus Colony Shahpura Road, Neem Ka Thana, Sikar
स्थायी लेखा सं. / जीआईआर सं. / PAN/GIR No.: ABPPB2205E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO. Nos. 08 & 09/JP/2025  
(Arising out of ITA. No. 293 & 294/JP/2025)  
निर्धारण वर्ष / Assessment Year : 2014-15 & 2016-17

Sh. Subhash Chandra Banka Aakarshan, Venus Colony Shahpura Road, Neem Ka Thana, Sikar	बनाम Vs.	DCIT, Central Circle-01, Jaipur
स्थायी लेखा सं. / जीआईआर सं. / PAN/GIR No.: ABPPB2205E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos. 295 & 296/JP/2025  
निर्धारण वर्ष / Assessment Years : 2014-15 & 2016-17

DCIT, Central Circle-01, Jaipur	बनाम Vs.	Smt. Usha Banka Aakarshan, Venus Colony, Shahpura Road, Neem Ka Thana, Sikar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABRPB7368N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO. Nos. 10 & 11/JP/2025  
(Arising out of ITA. No. 295 & 296/JP/2025)  
निर्धारण वर्ष / Assessment Year : 2014-15 & 2016-17

Smt. Usha Banka Aakarshan, Venus Colony, Shahpura Road, Neem Ka Thana, Sikar	बनाम Vs.	DCIT, Central Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABRPB7368N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA Nos. 291 & 292/JP/2025  
निर्धारण वर्ष / Assessment Years : 2014-15 & 2016-17

DCIT, Central Circle-01, Jaipur	बनाम Vs.	Vipul Banka Industrial Area, Neem Ka Thana, Sikar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AJAPB3954D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO. Nos. 12 & 13/JP/2025  
(Arising out of ITA. Nos. 291 & 292/JP/2025)  
निर्धारण वर्ष / Assessment Years : 2014-15 & 2016-17

Vipul Banka Industrial Area, Neem Ka Thana, Sikar	बनाम Vs.	DCIT, Central Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AJAPB3954D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA Nos. 302 & 303/JP/2025  
निर्धारण वर्ष / Assessment Years : 2014-15 & 2016-17

DCIT, Central Circle-01, Jaipur	बनाम Vs.	Trilok Dewan Neem Ka Thana, Sikar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABIPD4875D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO. Nos. 14 & 15/JP/2025  
(Arising out of ITA. Nos. 302 & 303/JP/2025)  
निर्धारण वर्ष / Assessment Year : 2014-15 & 2016-17

Trilok Dewan Neem Ka Thana, Sikar	बनाम Vs.	DCIT, Central Circle-01, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABIPD4875D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA Nos. 299 & 300/JP/2025  
निर्धारण वर्ष / Assessment Years : 2014-15 & 2016-17

DCIT, Central Circle-01, Jaipur	बनाम Vs.	Smt. Sarita Dewan Aakash Ganga Venus Colony, Shahpura Road, Neem Ka Thana, Sikar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABKPD6733C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO. Nos. 16 & 17/JP/2025  
(Arising out of ITA. Nos. 299 & 300/JP/2025)  
निर्धारण वर्ष / Assessment Years : 2014-15 & 2016-17

Smt. Sarita Dewan Aakash Ganga Venus Colony, Shahpura Road, Neem Ka Thana, Sikar	बनाम Vs.	DCIT, Central Circle-01, Jaipur
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स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABKPD6733C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Rajeev Sogani, CA &  
Sh. Rohan Sogani, CA  
राजस्व की ओर से / Revenue by : Smt. Runi Pal, CIT (Th. VC)

सुनवाई की तारीख / Date of Hearing : 26/06/2025  
उदघोषणा की तारीख / Date of Pronouncement: 08/07/2025

आदेश / ORDER

PER BENCH:

The present bunch of appeals were filed by the revenue and cross objections to those appeals so filed by the revenue were preferred by the assessee. Since the issue raised by the revenue and that of the assessee are similar in all the assessee, we have heard these bunch together with the consent of parties.

2. As agreed by the parties the lead case of revenue is considered in ITA no. 301/JP/2025 and the connected cross objection of assessee on it numbered as CO/2/JP/2025 is taken up.

3. Revenue feeling dissatisfied with the order of Commissioner of Income Tax, Appeal, Jaipur – 4 [ for short CIT(A) ] dated 31.12.2024 preferred the present appeal and thereby the assessee preferred the cross objection which arise from that order of the Id. CIT(A). The dispute relates to the assessment year 2016-17. That order of the Id. CIT(A) arise because the assessee has challenged the order of assessment passed on 21.09.2021 as per provision of section 153A of the Income Tax Act 1961 [ for short Act ] by DCIT, Central Circle-1, Jaipur [ for short AO].

4. Before moving towards the facts of the case we would like to mention that the revenue has assailed the appeal for assessment year 2016-17 in ITA No. 301/JP/2025 on the following grounds;

1. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs.40,15,061/- made by the Assessing Officer disallowing the exemption of Long Term Capital Gains on account of unexplained credits u/s 68 of the IT Act 1961.

2. Whether on facts and in circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of 2,05,753/- made by the AO on account of unexplained expenditure for commission to acquire such accommodation entries.

3. The applicant craves leave to add, amend or withdraw any of the ground of appeal during the course of appeal proceedings.

4.1 In the connected cross objection the assessee has raised the following ground:-

*“1. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in giving directions to AO to implement judgment of Honorable Supreme Court in the case of Abhisar Buildwell 2023 149 taxmann.com and the CBDT Instruction No. 1 of 2023 dated 23.8.2023 on the subject Implementation of the judgment of the Honorable Supreme Court in the case of Abhisar Buildwell (Supra). The action of the Id. CIT(A) is illegal, unjustified, arbitrary, and against the facts of the case. Relief may please be granted by quashing the directions of the Id. CIT(A).”*

5. Succinctly, the fact as culled out from the records is that a search & seizure operation under section 132(1) of the Act was carried out on 13-06-2019 at the various premises of Dewan Group. The assessee derives income from Business or Profession and Other Source during the year under consideration. Consequent to search action, notice u/s. 153A of the Act was issued to the assessee on 04-03-2021 which was duly served. In response to a notice issued u/s 153A, the assessee furnished Return of Income on 24-03-2021 declaring total income of Rs. 31,63,250/-. Earlier the assessee had filed his regular return u/s 139 of the Act on 14-10-2016 declaring total income of Rs. 31,63,250/-, Hence, there is no additional income disclosed by the assessee in the Return of Income filed u/s 153A of the Act.

Thereafter notice u/s 143(2) of Act was issued on 25-06-2021 which was duly served. Further notice u/s 142(1) of the Act was issued on 11-08-2021 and certain details/explanations were called for. In response to these

notices, the assessee submitted requisite details/explanation, which have been examined.

6. While search and seizure action u/s. 132 of the Act 1961 in the case of various persons of Dewan Group, various bunch of documents and loose papers related to shares were found and seized. These documents/loose papers were seized from the residence of Shri Raj Kumar Agarwal, Snehil, Venus Colony, Shahpura Road, Neem Ka Thana, Sikar as per Annexure-AS(Exhibit no.1 to 21). Exhibit no. 4 to 20 of the Annexure-AS contain loose papers / contract bills/ledger statements etc. all of which are related to share transactions. Ld. AO alleged that these were the details of bogus share purchases / sales which were arranged by the assessee to convert its undisclosed income in the shape of LTCG, which is in fact bogus LTCG. Ld. AO noted that in search and post search proceedings, thorough examination was carried out and it was observed that the members of Dewan/Banka/Agarwal Group have taken accommodation entries by way of earning Long Term Capital Gain in A.Y. 2013-14 to 2016-17 by primarily using BSE scripts like Yamini Investments (Anax Trade Com Limited), Risa International, TTK Prestige, Indian Infotech etc. Ld. AO noted that the

assessee one of the member of "Dewan Group had claimed Long Term Capital Gain u/s 10(38) of Act for an amount of Rs. 40,15,061.29.

Ld. AO went on examination that various persons of "Dewan Group" had initially purchased the shares of M/s. Anax Com Trade Ltd., and then the company was amalgamated/merged with M/s Yamini Investment, which is a BSE listed penny stock company. Recording this fact ld. AO went on discussing the methodology and analysis of the Yamini Investment he issued a show cause notice to the assessee requiring him to show cause as to why the exempt income claimed u/s. 10(38) of the Act may not be treated as income of the assessee under the grab of accommodation entry. He also asked the assessee as to why the commission payment @ 5 % should not considered for such accommodation entries. In response to the show-cause notice, the assessee, vide reply filed on 18.08.2021, submitted as there was no incriminating evidence has been found. It is a settled proposition of law that a concluded assessment cannot be disturbed if no incriminating material is found during search. In support he relied upon the decision of Hon'ble Delhi High Court in the case of CIT vs Kabul Chawla reported in (2016) 380 ITR 573 (Del) even the SLP filed by the revenue was dismissed by the apex court as reported in 380 ITR (St.) 4 (SC). He also contended that there was no ban in purchasing & selling shares of

'Anax.com' / 'Yamini Investments' at the time when the assessee entered in purchases & sales transactions. The assessee submitted that on 1.10.2012, the assessee applied for 10000 shares of 'ANAX COM TRADE LIMITED' for the value of Rs. 1,00,000/- and was allowed. That the purchase was made through cheque no. 16042 issued on 1.10.2012 and the same amount has been deducted from the bank account on 17.10.2012 when the shares were allotted to the assessee. The fact that share of ANAX COM was split into ten shares each, therefore, the assessee had 100000 shares. Eventually 'ANAX COM' amalgamated into Yamini Investments and the assessee was allotted 80000 shares of Yamini Investments'. That merger process was approved by Hon'ble Bombay High Court vide order dated 9.05.2014. This fact confirms that the company is not bogus and the investment of the assessee in the company was genuine. The assessee sold the above referred shares through SEBI registered broker, B. Lodha Securities Ltd., vide their bill no. V78/BB095 dt. 13.08.2015, bill no. V78/BB096 dt. 14.08.2015, bill no. V78/BB097 dt. 17.08.2015, bill no. V78/BB100 dt. 20.08.2015, bill no. V78/BB109 dt. 02.09.2015, and bill no. V78/BB110 dt. 03.09.2015. Copies of bills were placed on record. Based on the facts, evidence and considering the fact the assessee hold the shares for more than required months the claim u/s.

10(38) cannot be denied to the assessee as those shares were sold by the assessee after more than 12 months. Transaction was made through SEBI registered broker. The broker issued bills of sale to the assessee. The shares were sold on the prices of Bombay Stock Exchange Limited of the particular date & particular time. The assessee paid security transaction tax, service tax, etc, and thereby the assessee justify his claim u/s 10 (38) of the Act. He also claimed that payments of purchases & sales were made / received through banking channel and in support of the claim he filed the following documents ;

1. Allotment Certificate
2. Copy of Bank Account showing purchase receipts
3. Sale bill cum contract note (Annexure A/5)
4. Copy of Demat Account
5. Copy of Bank Account showing the sale receipts
6. Copy of Return of Income for AY 2016-17 where assessee has declared income of Rs.45,14,780/- under the head LTCG exempt under section 10(38) of the Act. (Annexure A/1)

He also based on the MCA master data submitted that the company has filed its balance sheet with ROC up to 31/03/2020 & last AGM of company was held on 24/12/2020. The share is also traded on BSE. Based on that set of facts and decision relied upon he supported his claim.

7. Ld. AO noted that the reply furnished by the assessee in response to the show-cause notice has been examined and after giving thoughtful consideration, the same is not found to be acceptable as the assessee has tried to launder black money through accommodation entries and to support that contention he discussed various preponderance of probability placing reliance on the decision of apex court in the case of P Mohankala and Sumati Dayal he hold that the amount of Rs. 40,15,061.29 introduced / credited by the assessee out of these share sale receipts treated as unexplained as per section 68 of the Act and he also added commission@ 5 % on it for an amount of Rs. 2,05,753/- and thereby added a sum of Rs. 42,20,814/-.

8. Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

5.4 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the order and the report. The contentions/submissions of the appellant are being discussed and decided as under:-

The brief facts of the case on the issue as per the assessment order that a Search and Seizure operation under section 132(1) of the Income Tax Act, 1961 was carried out on 13.06.2019 at the various premises of Dewan Group.

Assessment in the case of assessee was completed u/s 153A of the I.T. Act, 1961 on 21.09.2021 and from the perusal of the assessment order it is seen that the following additions have been made:-

(i) Addition on account of bogus Long Term Capital Gain claimed by the assessee of Rs.40,15,061.29/-

(ii) Addition on account of commission expenses of Rs.2,05,753/- for obtaining accommodation entry @ 5% of Sale consideration

In the appeal in this ground the appellant has challenged the addition on the technical ground that regarding the addition made in the assessment order no incriminating material was unearthed during the course of search and seizure action on the appellant i.e. the addition has been made without the basis / source of incriminating material unearthed from the search action of the appellant.

The appellant has contended that the assessee, for A.Y. 2016-17 i.e. year under consideration, filed his return of income on 14.10.2016 declaring total income of Rs. 3163250/-. The case of the assessee was not taken up for scrutiny assessment. The time, available to department, for issue of notice u/s 143(2) expired on 30.09.2017 i.e. six months from the end of the financial year in which return was furnished. Certain documents pertaining to the assessee were seized from the premises of Raj Kumar Agarwal (Uncle of the assessee). Such documents were related to sale of shares on recognized stock exchange by the assessee. The appellant has contended that these are not incriminating documents. The documents nowhere suggest that the assessee originally misrepresented the facts or presented non-existent facts. From the documents it cannot be even suggested that the claim of exempt LTCG of the assessee was bogus. Since the assessment of the year under consideration stood completed and since no incriminating material was seized during the course of search, no addition can be made in the proceedings completed u/s 153A. The appellant has contended that hence, the disallowance made u/s 10(38) and the resultant additions made u/s 68 and 69C are without jurisdiction.

In the assessment order, with respect to the first addition, the learned AO has referred to the following material in support of the conclusion drawn regarding the addition made in the assessment order: (i) Report of Compliance Officer, Bombay Stock Exchange, Mumbai regarding details of Counter Parties/Exit Operators (Para No.5.3.2 of assessment order), (ii) Order of SEBI and other details available with the department (Para No.5.3.2 of assessment order), (iii) ADJUDICATION ORDER NO: Order/KS/VC/2019-20/5692-5696 dated November 22, 2019 in

respect of: 1. Aplaya Creations Ltd. (PAN: AAACG1479J) 2. ShriRamawtar Gupta (PAN: AGEPG2765Q0) 3. ShriPramod Kumar Gupta (PAN: ABRPG4589Q) 4. Maheswari Financial Services Pvt. Ltd. (PAN:AAACM9185B) 5. VemuriFinvest Pvt. Ltd. (PAN: AAACV3615M) (Para No.5.3.3 of assessment order), (iv) Surrender of bogus LTCG by assessee earned in script "India Infotech" in IDS-2016. (Para No.5.3.4 of assessment order)& Recommendation of the SIT on black Money (Para No.5.4.2 of assessment order); and other information including from the inquiry during assessment. (v)

From the perusal of the assessment order there is no finding in the assessment order that these documents were found from the search and seizure action on the appellant. In response to the contention of the appellant that no incriminating material was unearthed during the course of search and seizure action, a letter was issued to the learned AO requesting, on the addition made in the assessment order, for the copy of the incriminating material unearthed during the course of search and seizure action of the appellant. The learned AO has provided the copies of documents. In the remand report whereby the incriminating material seized from the search on appellant have been provided these above referred documents are not forming part of annexed documents.

The Id. AO has provided the documents of Exhibit No.-16 (Party A-3) (i) Copy of transaction statement maintained with Stock Holding Corporation of India Page No.1 to 15 (ii) Copy of bills issued by B. Lodha Securities Ltd Page No. 16 to 18 (iii) Copy of Contract Note cum bill issued by M/s Vishal Vijay Shah Page No. 19 to 20 (iv) Copy of bills issued by B. Lodha Securities Ltd Page No.21 (v) Copy of bill issued by Artline Vinimay Pvt. Ltd. Page No.22 (vi) Copy of bills issued by B. Lodha Securities Ltd Page No.23 to 24 (vii) Copy of Contract Note issued by Creative Financial Services Pvt. Ltd Page No.25 to 26 (viii) Copy of bills issued by B. Lodha Securities Ltd Page No.27 (ix) Copy of Contract Note issued by Tushar (India) Pvt Ltd Page No.28 (x) Copy of bills issued by B. Lodha Securities Ltd Page No.29 to 33 (xi) Copy of Contract Note issued by Natraj Capital and Credit Pvt. Ltd. Page No.34 (xii) Copy of bills issued by B. Lodha Securities Ltd Page No.35 to 44 (xiii) Copy of allotment advice and acknowledgement slip issued by Anax Com Trade Ltd Page No. 45 to 46 (xiv) Data in excel sheet table Page No.47 to 48 (xv) Table of profit Page No.49 (xvi) Ledger A/c of Share app. with M/s Anax Com Trade Limited Mumbai appearing in books of Vaibhav Banka Page No.50 (xvii) Ledger A/c of M/s Tushar (India) Pvt. Ltd. appearing in books of Vaibhav Banka Page No.51 (xviii) Ledger A/c of Creative Financial Services Pvt. Ltd. appearing in books of Vaibhav Banka Page No.52 (xix) Ledger A/c of M/s Tushar (India) Pvt. Ltd. appearing in books of Vaibhav Banka Page No.53 (xx)

Ledger A/c of Creative Financial Services Pvt. Ltd. appearing in books of Vaibhav Banka Page No.54 (xxi) Ledger A/c of Mis Vishal Vijay Shah appearing in books of Vaibhav Banka Page No.55 (xxii) Ledger A/c of M/s B. Lodha Securities Ltd. appearing in books of Vaibhav Banka Page No.56 (xxiii) Ledger A/c of M/s Natraj Capital and Credit Pvt. Ltd. appearing in books of Vaibhav Banka Page No.57 (xiv) Ledger A/c of M/s Artline Vinimay Pvt. Ltd. appearing in books of Vaibhav Banka Page No.58

The documents provided by the Id. AO are e.g. contract notes, bills, calculation of the disclosed transaction, ledger accounts from books of accounts, etc. and are in the nature of underlying documents of the disclosed transaction. In the assessment order, these documents are neither held to be forged nor contrary to the ITR, and by themselves do not suggest taking of accommodation entry or bogus capital gains. In the assessment order also these documents have not formed the basis of reasoning of arriving at the finding that the LTCG is bogus. Such conclusion has been arrived at on the basis of other material as discussed in the paragraphs above.

From the above it is noted that the documents considered as incriminating by the learned AO are not incriminating in nature and also such documents cannot be considered as having been unearthed in the nature of new information during the course of search and seizure action of the appellant as the documents are in the nature of already on record of the relevant authorities and supportings of disclosed transactions. These documents pertain to the "form" of the transaction. The addition has been made by arriving at the "substance" of the transaction arrived at on the basis of material other than the material unearthed from the search action on the appellant.

In the assessment order, with respect to the second addition, the addition has been made with respect to the commission for obtaining accommodation entry and such addition is consequential in nature and is based on the same material on which the primary addition has been made and which has been discussed in the earlier paragraphs. Thus this addition is also found to be have been made without the basis of with the incriminating material from the search action of the appellant.

On the date of Search i.e. 13.06.2019, the assessment for the year under appeal was not pending as there is no reference in this regard neither in the assessment order nor in the submission of the appellant; also in remand report there is no reference to anything in this regard. The original ITR was filed on 14.10.2016 as

mentioned in the assessment order. The time to issue regular scrutiny notice expired on 30.09.2017. Hence the year falls under the unabated/completed category.

In the judgement in the case of Principal Commissioner of Income-tax, Central-3 v. AbhisarBuildwell (P.) Ltd. [2023] 149 taxmann.com 399 (SC)/[2023] 293 Taxman 141 (SC)/[2023] 454 ITR 212 (SC)(24-04-2023), the Hon'ble Supreme Court in para 14 has held as under:-

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

(iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

(iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved."

(emphasis supplied)

On the issue there is similar judgement of Hon'ble Supreme Court in the case of Deputy Commissioner of Income-tax v. U. K. Paints (Overseas) Ltd. [2023] 150 taxmann.com 108 (SC)/[2023] 454 ITR 441 (SC)[25-04-2023]. The judgement has been carefully considered. In para 1 and 3 the Hon'ble Supreme Court has held as under:-

1. In this batch of appeals, the assessments in case of each assessee were under section 153-C of the Income-tax Act, 1961 (for short, 'the Act'). As found by the High Court in none of the cases any incriminating material was found during the search either from the Assessee or from third party. In that view of the matter, as such, the assessments under section 153-C of the Act are rightly set aside by the High Court. However, Shri N Venkataraman, learned ASG appearing on behalf of the Revenue, taking the clue from some of the observations made by this Court in the recent decision

in the case of Pr. CIT v. AbhisarBuildwell (P) Ltd. [2023] 149 taxmann.com 399 (SC), more particularly, paragraphs 11 and 13, has prayed to observe that the Revenue may be permitted to initiate re-assessment proceedings under section 147/148 of the Act as in the aforesaid decision, the powers of the re-assessment of the Revenue even in case of the block assessment under section 153-A of the Act have been saved.

.....

3. However, so far as the prayer made on behalf of the Revenue to permit them to initiate the reassessment proceedings is concerned, it is observed that it will be open for the Revenue to initiate the re-assessment proceedings in accordance with law and if it is permissible under the law.

In para 11 of the order in case of Principal Commissioner of Income-tax, Central-3 v AbhisarBuildwell (P.) Ltd. (Supra), the Hon'ble Supreme Court inter-alia has held as under:-

"11. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under sections 147/48 of the Act. subject to fulfilment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy."

The assessment order and submissions of the appellant in the appeal and the remand report on the issue and the rejoinder reply of the appellant on the remand report, all have been duly and carefully considered. Neither in the assessment order nor in the remand report there is any reference to incriminating material unearthed during the course of search and seizure action in the case of the assessee appellant for the year under appeal w.r.t. the addition made in the assessment order. The status of assessments before issuance of notice u/s 153A has been discussed in pre-paragraphs. There was no pending/abated assessment on the date search and seizure action took place and the time to issue notice u/s 143(2) of the Act had expired already.

Accordingly, the judgement of Hon'ble Supreme Court in the case of Abhisar Buildwell (supra) and U. K. Paints (supra) are squarely applicable to the facts of the case. Accordingly, following the judgment of honorable Supreme Court it is held that the Id. AO rightly issued notices u/s 153A of the Act and at the same time the impugned addition made in assessment order u/s 153A cannot be

sustained and is hereby deleted as the same is without basis of incriminating material unearthed during the search action on the appellant and impugned addition could have been done by the learned assessing officer in re-assessment proceedings by issuance of notice under section 147/148. The Id. AO is directed to take necessary action in this regard for issuance of notice u/s 148. Further, the CBDT (ITJ Section) has issued Instruction No. 1 of 2023 dated 23-08-2023 vide F.No. 279/Misc./M-54/2023-ITJ on the subject "Implementation of the judgment of the Hon'ble Supreme Court in the case of Pr.CIT (Central-3) v/s AbhisarBuildwell Pvt. Ltd. (Civil Appeal No. 6580 of 2021)-Instruction regarding". The learned assessing officer is directed to implement the law and ratio of the judgement of Abhisar Buildwell (supra) and the said Instruction No. 1 of 2023 dated 23-08-2023 and section 150 of the Act, in the case of the appellant appropriately as per the facts of the case and as per above findings.

Accordingly this ground of appeal is adjudicated in above terms. For statistical purposes this ground is hereby treated as allowed.

6.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

In the earlier part of this order it has already been held that the additions done by the learned assessing officer in the assessment order is not sustainable on the technical ground that the addition is not based on any incriminating material unearthed during the search and seizure action on the appellant. Since the additions do not survive on technical ground, the other grounds of appeal on the merits of such addition are rendered only academic and do not warrant detailed adjudication. In view of this discussion, the subject grounds of appeal raised by the appellant are treated as disposed off.

7.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

In the earlier part of this order it has already been held that the additions done by the learned assessing officer in the assessment order is not sustainable on the technical ground that the addition is not based on any incriminating material unearthed during the search and seizure action on the appellant. Since the

additions do not survive on technical ground, the other grounds of appeal on the merits of such addition are rendered only academic and do not warrant detailed adjudication. In view of this discussion, the subject ground of appeal raised by the appellant is treated as disposed off.

8.1 The appellant has added and modified ground of appeal which has been discussed and adjudicated by me in the above paras. Accordingly such mention by the appellant in its ground is treated as disposed off.

9. In the result, the appeal of the appellant is partly allowed.”

9. The Id. DR is heard he vehemently argued that the Id. AO made the addition based on the evidence collected in search operation and thereby the Id. CIT(A) without considering that fact merely on technical ground directed to delete the addition and therefore, he prayed that considering the detailed finding recorded in the order of the Id. AO the order of the Id. CIT(A) is required to be set aside and that of the Id. AO be restored.

10. Per contra, Id. AR of the assessee relied upon the finding recorded in the order of the Id. CIT(A) so far as it relates to the appeal of the revenue. As regards the cross objection he submitted that Id. CIT(A) should refrain from giving direction. In support of the arguments advanced before us he mainly repeated what is submitted by way of written submission which reads as under :

- I. In the present case, Shri Vaibhav Banka, (hereinafter referred to as “the assessee”), originally filed his return of income under Section 139 of the Income-tax Act, 1961 (“the Act”) on 14.10.2016, declaring a total income of Rs. 31,63,250.
- II. A search operation under Section 132 of the Act was conducted on 13.06.2019 in the case of Dewan Group. As the assessee is associated with the Dewan Group, a simultaneous search was also carried out at his premises. However, no incriminating material of any nature was found or seized during the course of the search.
- III. Subsequently, the Id. Assessing Officer (AO) issued a notice under Section 153A of the Act on 04.03.2021, in response to which the assessee once again filed his return of income declaring Rs. 31,63,250. The assessment was completed under Section 153A vide order dated 21.09.2021, determining the total income at Rs. 73,84,060. This resulted in an addition of Rs. 42,20,814, which included:
  - a. Disallowance of long-term capital gains exemption of Rs. 40,15,061.29 by treating the sale of listed equity shares as a bogus transaction; and
  - b. Addition of Rs. 2,05,753 (being 5% of Rs. 40,15,061.29) towards alleged undisclosed expenditure under Section 69C on account of commission purportedly paid to obtain such capital gains.
- IV. Aggrieved by the assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), Jaipur-4 “CIT(A)”. The appeal was allowed *vide* order dated 31.12.2024. The Id. CIT(A) deleted the addition made under Section 153A on the ground that the assessment for the said year had already attained finality and no incriminating material was found during the search, relying upon the judgment of the Hon’ble Supreme Court in the case of PCIT v. Abhisar Buildwell Pvt. Ltd. (2023) 454 ITR 212 (SC) (Case law compilation “CLC” 01-29) and DCIT v. U.K. Paints (Overseas) Ltd. (2023) 454 ITR 441 (SC) (CLC 30-31).
- V. However, after granting relief on this ground, the CIT(A) further directed the AO to initiate appropriate proceedings under Section 147/148 of the Act, relying on the same judgment of *Abhisar Buildwell (supra)*, CBDT Instruction No. 1/2023 (CLC 35-40), and the provisions of Section 150 of the Act.
- VI. The Department, being aggrieved by the deletion of the addition, has filed the present appeal before the Hon'ble Tribunal.
- VII. The assessee, while supporting the ultimate relief granted, is aggrieved by the directions given by the Id. CIT(A) in his order suggesting the AO initiate proceedings under Section 147/148 of the Act. The assessee is therefore filing the present Cross-Objection to challenge these adverse directions and to raise other legal and factual grounds in support of the deletion of the addition.

## 1. BRIEF FACTS

- 1.1. The Id. CIT(A) vide order dt. 31.12.2024, while concluding the decision in the case of assessee (at page 36 of order) held as under:

*“Accordingly, the judgement of Hon'ble Supreme Court in the case of Abhisar Buildwell (supra) and U. K. Paints (supra) are squarely applicable to the facts of the case. Accordingly, following the judgment of honorable Supreme Court it is held that the Id. AO rightly issued notices u/s 153A of the Act and at the same time the impugned addition made in assessment order u/s 153A cannot be sustained and is hereby deleted as the same is without basis of incriminating material unearthed during the search action on the appellant and impugned addition could have been done by the learned assessing officer in re-assessment proceedings by issuance of notice under section 147/148. The Id. AO is directed to take necessary action in this regard. Further, the CBDT (ITJ Section) has issued Instruction No. 1 of 2023 dated 23-08- 2023 vide F.No. 279/Misc./M-54/2023-ITJ on the subject “Implementation of the judgment of the Hon'ble Supreme Court in the case of Pr.CIT (Central-3) v/s AbhisarBuildwell Pvt. Ltd. (Civil Appeal No. 6580 of 2021)-Instruction regarding”. The learned assessing officer is directed to implement the law and ratio of the judgement of AbhisarBuildwell (supra) and the said Instruction No. 1 of 2023 dated 23-08-2023 and section 150 of the Act, in the case of the appellant appropriately as per the facts of the case and as per above findings.*

*Accordingly this ground of appeal is adjudicated in above terms. For statistical purposes this ground is hereby treated as allowed”*

*[Emphasis Supplied]*

- 1.2. The assessee respectfully submits that while the Id. CIT(A) correctly deleted the impugned addition under Section 153A (due to lack of incriminating material), however, the Id. CIT(A) gravely erred in issuing direction to initiate reassessment proceedings under Section 147/148, invoking Section 150 and relying on CBDT Instruction No. 1/2023, exceeding his statutory appellate jurisdiction under Sections 250/251 of the Act and accordingly, these directions are legally *non-est* and ought to be expunged/quashed.

## 2. SUBMISSIONS:

- 2.1. The entire submissions, set out *infra*, based on the legal and procedural arguments, are urged in support of deleting the impugned direction. The main contentions are listed hereunder:

Contentions <i>apropos</i> wrongful directions given by Id. CIT(A).	Reference
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1.	The law settled by the Hon'ble Supreme Court: Abhisar Buildwell & U.K. Paints	Para 2.2
2.	Miscellaneous Application filed by Revenue before the Hon'ble Supreme Court	Para 2.3
3.	CBDT Instruction No. 1/2023 is Administrative in nature – Not binding on CIT(A).	Para 2.4
4.	Observations of the Hon'ble Supreme Court do not constitute a "finding/direction".	Para 2.5
5.	CIT(A) exceeded his appellate jurisdiction (Section 250/251)	Para 2.6
6.	Impermissible review/substitution of the AO's authority	Para 2.7
7.	Conclusion	Para 2.8

## 2.2. THE LAW SETTLED BY THE HON'BLE SUPREME COURT: ABHISAR BUILDWELL & U.K. PAINTS

2.2.i. The foundation of the issue stems from two landmark rulings of the Hon'ble Supreme Court:

- Hon'ble Supreme Court in the case of PCIT v. Abhisar Buildwell Pvt. Ltd. (supra) (CLC 01-29) vide judgment dated 24.04.2023 has held as under:

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

*i.) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;*

*ii.) all pending assessments/reassessments shall stand abated;*

*iii.) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and*

*iv.) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any*

*incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.”*

- Hon'ble Supreme Court in the case of DCIT v. U.K. Paints (Overseas) Ltd. (supra) (CLC 30-31) vide judgment dated 25.04.2023 dismissed the SLP in light of judgment in the case of Abhisar Buildwell and held as under:

*“However, so far as the prayer made on behalf of the Revenue to permit them to initiate the reassessment proceedings is concerned, it is observed that it will be open for the revenue to initiate the reassessment proceedings in accordance with law and if permissible under the law.”*

2.2.ii. It is crucial to highlight that the observations made by the Hon'ble Supreme Court in the landmark decisions of PCIT v. Abhisar Buildwell Pvt. Ltd. (supra) and DCIT v. U.K. Paints (Overseas) Ltd. (supra), recognizing the possibility for Assessing Officers to initiate reassessment proceedings under Sections 147/148 in cases where additions under Section 153A/153C were struck down for absence of incriminating material, were expressly qualified by the Hon'ble Apex Court.

2.2.iii. The Court clearly and explicitly emphasized that such reassessment proceedings could only be undertaken subject to the strict fulfilment of the specific statutory conditions and safeguards laid down in Sections 147 and 148 of the Act. This embedded stipulation by the Hon'ble Supreme Court serves as an essential rider, emphasizing that the Assessing Officer must independently and meticulously satisfy himself and comply strictly with all other procedural and jurisdictional prerequisites prescribed by law.

2.2.iv. Thus, the Hon'ble Apex Court's observations do not and cannot be interpreted as a blanket authority or carte blanche for reassessment, nor as a direction empowering appellate authorities, including the Id. CIT(A), to direct or compel the initiation of such proceedings.

### 2.3. MISCELLANEOUS APPLICATION FILED BY REVENUE BEFORE THE HON'BLE SUPREME COURT

2.3.i. Against the judgment dated 24.04.2023 passed by the Hon'ble Supreme Court in Abhisar Buildwell Pvt. Ltd. (supra) the revenue filed Misc. Application before the Hon'ble Supreme Court on 26.04.2023 seeking following reliefs:

*“(a) This Hon'ble Court may clarify that the waiver of limitation as stipulated in section 150(2) is to be read in respect of the date of issue of*

*notice for reassessment under section 148 (i.e.) if as on the date the assessment under section 153A or section 153C was passed, a notice under section 148 could have been issued as per the law then in force, then fresh proceedings for reassessment of such income not arising from the incriminating material found in search can now be initiated pursuant to the findings of this Hon'ble Court in the present appeals/application and may further clarify as follows:*

*(i) That the findings in para 11 and 14 would apply to all the proceedings pending in all the forums including before this Hon'ble Court.*

*(ii) That even though the appeals of the Revenue are dismissed in respect of assessments passed under 153A and 153C, in the absence of incriminating material found during the search, in respect of such income which was found to have escaped assessment other than through incriminating material, the assessing officers would be entitled to reassess such income in terms of Section 147/148 read with section 150.*

*(iii) That the Assessing Officer, may if found necessary initiate fresh proceedings within 60 days from date of disposal of this application following the procedure stipulated in section 147-151 of the Act as is in force now."*

- 2.3.ii. The Hon'ble Supreme Court vide its order dated 12.05.2023 titled as PCIT v. Abhisar Buildwell Pvt. Ltd. [2023] 294 Taxman 70 (SC) (CLC 32-34) dismissed the Revenue's Misc. Application by observing as under:

*"2. Having gone through the averments made in the application and the prayers, we are of the opinion that the prayers sought can be said to be in the form of review which requires detail consideration at length looking into the importance of the matter. Therefore, the present application in the form of clarification is not entertained and we relegate the Revenue to file an appropriate review application for the relief sought in the present application and as and when such review application is filed the same can be heard in the open court.*

*3. In view of the above and without further entering into the merits of the application and/or expressing anything on merits on the prayers sought in the present application, the present application is not entertained and we relegate the Revenue to file an appropriate review application seeking the reliefs which are sought in the present application and as and when such review application is filed the same be heard and decided and disposed of in the open court.*

*At the cost of repetition, we observe that as we have not entered into the merits of the present application and we relegate the Revenue to file an*

*appropriate review application, the review application be decided and disposed of in accordance with law and on its own merits.”*

- 2.3.iii. Following the dismissal of the Revenue’s Miscellaneous Application in PCIT v. *Abhisar Buildwell Pvt. Ltd.* (supra), wherein the Hon’ble Supreme Court expressly relegated the Department to file a formal review petition—no such review was pursued. Instead, the CBDT issued Instruction No. 1/2023 dated 23.08.2023, which provided internal guidance to Assessing Officers regarding the course of action in cases where assessments under Section 153A/153C have failed due to lack of incriminating material.
- 2.3.iv. The instruction outlines procedural steps for invoking reassessment under Sections 147/148 read with Section 150. However, the nature, scope, and legal force of this instruction remain subject to statutory limitations and judicial precedent, as discussed below.
- 2.4. CBDT INSTRUCTION NO. 1/2023 IS ADMINISTRATIVE IN NATURE – NOT BINDING ON CIT(A).
- 2.4.i. It is submitted that Instruction No. 1/2023 (CLC 35-40), issued by the Central Board of Direct Taxes “CBDT” on 23.08.2023, is an internal administrative directive intended solely for operational guidance of Assessing Officers. It attempts to clarify the post-*Abhisar Buildwell* (supra) reassessment landscape, specifically in situations where additions under Section 153A/153C were struck down due to absence of incriminating material.
- 2.4.ii. However, such administrative instructions are not binding on quasi-judicial authorities like the CIT(A). It is a settled principle of law, as held by the Hon’ble Supreme Court in *UCO Bank v. CIT* [(1999) 237 ITR 889 (SC)] (CLC 41-49), that CBDT circulars or instructions cannot override, supplement, or expand the scope of statutory provisions.
- 2.4.iii. In the present case, the Id. CIT(A) has erroneously construed Instruction No. 1/2023 as enabling or empowering appellate authorities to direct initiation of reassessment proceedings. This is a fundamental misapplication of the Instruction, which neither authorizes appellate intervention in reassessment matters nor vests any such power in the Id. CIT(A).
- 2.4.iv. The Instruction cannot substitute the independent statutory preconditions under Sections 147/148 read with Section 149, which provides the timelines for issuance of notice of reopening. Provision of such section must be satisfied by the Id. AO at any given point of time, when the jurisdiction is assumed for reopening a particular assessment year.
- 2.5. OBSERVATIONS OF THE HON’BLE SUPREME COURT DO NOT CONSTITUTE A “FINDINGS / DIRECTION”

- 2.5.i. It is respectfully submitted that the Hon'ble Supreme Court in *PCIT v. Abhisar Buildwell Pvt. Ltd. (Supra)* (CLC 01-29) and *DCIT v. U.K. Paints (Overseas) Ltd. (Supra)* (CLC 30-31) did not provide any specific finding / direction, as was wrongly interpreted by Id. CBDT in the Instruction and thereafter taken cognizance by the Id. CIT(A) in the present case.
- 2.5.ii. These rulings clarify the permissible legal framework under which reassessment proceedings may be initiated by the Assessing Officer, subject to fulfilment of statutory conditions under Sections 147/148 read with Section 150.
- 2.5.iii. At no point, do these judgments direct or authorize any appellate authority, including the Id. CIT(A), to issue a specific direction under Section 150 to initiate reassessment.
- 2.5.iv. In *U.K. Paints (supra)*, the Hon'ble Supreme Court merely observed that it would be *"open to the Revenue to initiate reassessment proceedings in accordance with law, if permissible."* This is a conditional observation, contingent on statutory compliance—not a binding directive or judicial mandate. Such general remarks cannot be elevated to the status of a *"finding"* or *"direction"* within the meaning of Section 150(1) of the Act.
- 2.5.v. The legal concept of a *"direction"* under Section 150(1) requires that the appellate or revisional authority explicitly directs reassessment of a particular income or issue. As held by the Hon'ble Supreme Court in *Rajinder Nath v. CIT [(1979) 120 ITR 14 (SC)]* (CLC 50-54), mere observations or findings do not amount to a *"direction"* unless they are specific, clear, and mandatory in nature. The Court stated:
- "A direction by a statutory authority is a positive command which requires some action to be taken in accordance with it. A mere observation or finding recorded without any specific direction does not constitute a 'direction' under Section 150(1)."*
- 2.5.vi. Hon'ble Bombay High Court, in *Pavan Morarka v. ACIT [2022] 136 taxmann.com 2 (Bom.)* (CLC 55-64) has clarified that a *"finding"* must be essential to the resolution of the case, while a *"direction"* must explicitly mandate a specific course of action. The court relied on the Apex Court's judgment in *Rajinder Nath v. CIT (supra)*, which held that a *direction* by a statutory authority must require positive compliance. If the AO retains discretion in whether to act, it cannot be considered a *"direction."*

- 2.5.vii. Hon'ble Delhi High Court, in PCIT v. Sumitomo Corporation India (P) Ltd. [2024] 166 taxmann.com 55 (Delhi) (CLC 137-179) has explained the scope of Section 150 as under:

*"56. More fundamentally, a direction, in terms as commended for our consideration by learned counsels appearing for the Revenue, would also not be a finding or direction as contemplated therein. Mr. Vohra, in this context, invited our attention to the judgment of the Constitution Bench in Income Tax Officer, A Ward, Sitapur v. Murlidhar Bhagwan Das where the expression "finding" and "direction" was explained in the following words:—*

*"9. Now, let us scrutinize the expressions on which strong reliance is placed for the contrary conclusion. The words relied upon are "section limiting the time", "any person", "in consequence of or to give effect to any finding or direction". Pointing out that before the amendment the word "sub section" was in the proviso but it was replaced by the expression "section", it is contended that this particular amendment will be otiose if it is confined to the assessment year under appeal, for it is said that under no circumstances the Incometax Officer would have to initiate proceedings for the said year pursuant to an order made by an Appellate Assistant Commissioner. This contention is obviously untenable. The Appellate Assistant Commissioner or the Appellate Tribunal may set aside the notice itself for one reason or other and in that event the Income-tax Officer may have to initiate the proceedings once again in which case Section 34(1) will be attracted. The expression "finding or direction", the argument proceeds, is wide enough to take in at any rate a finding that is necessary to dispose of the appeal or directions which Appellate Assistant Commissioners have in practice been issuing in respect of assessments of the years other than those before them in appeal.*

*What does the expression "finding" in the proviso to subsection (3) of Section 34 of the Act mean? "Finding" has not been defined in the Income-tax Act. Order 20 Rule 5 of the Code of Civil Procedure reads:*

*"In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit."*

*Under this Order, a “finding” is, therefore, a decision on an issue framed in a suit. The second part of the rule shows that such a finding shall be one which by its own force or in combination with findings on other issues should lead to the decision of the suit itself. That is to say, the finding shall be one which is necessary for the disposal of the suit. The scope of the meaning of the expression “finding” is considered by a Division Bench of the Allahabad High Court in Pt. Hazari Lal v. Incometax Officer, Kanpur. There, the learned Judges pointed out:*

*“The word ‘finding’, interpreted in the sense indicated by us above, will only cover material questions which arise in a particular case for decision by the authority hearing the case or the appeal which, being necessary for passing the final order or giving the, final decision in the appeal, has been the subject of controversy between the interested parties or on which the parties concerned have been given a hearing.”*

*We agree with this definition of “finding”. But a Full Bench of the same High Court in Lakshman Prakash v. CIT construed the word “finding” in a rather comprehensive way. Desai, C.J., speaking for the Court, observed:*

*“A finding is nothing but what one finds or decides and a decision on a question even though not absolutely necessary or not called for is a finding.”*

*If that be the correct meaning, any finding on an irrelevant or extraneous matter would be a finding. That certainly cannot be the intention of the Legislature. The Madras High Court also in A.S. Khader Ismail v. Income-tax Officer, Salem gave a very wide interpretation to that word, though it did not go so far as the Full Bench of the Allahabad High Court. Ramachandra Iyer J., as he then was, speaking for the Court, observed that the word “finding” in the proviso must be given a wide significance so as to include not only findings necessary for the disposal of the appeal but also findings which were incidental to it. With respect, this interpretation also is inconsistent with the well-known meaning of that expression in the legal terminology. Indeed, learned counsel for the respondent himself will not go so far, for he concedes that the expression “finding” cannot be any incidental finding, but says that it must be a conclusion on a material question necessary for the disposal of the appeal, though it need not necessarily conclude the appeal. This concession does not materially differ from the definition we have given, but the difference lies in the*

*application of that definition to the finding given in the present case. A “finding”, therefore, can be only that which is necessary for the disposal of an appeal in respect of an assessment of a particular year. The Appellate Assistant Commissioner may hold, on the evidence, that the income shown by the assessee is not the income for the relevant year and thereby exclude that income from the assessment of the year under appeal. The finding in that context is that that income does not belong to the relevant year. He may incidentally find that the income belongs to another year, but that is not a finding necessary for the disposal of an appeal in respect of the year of assessment in question. The expression “direction” cannot be construed in vacuum, but must be collated to the directions which the Appellate Assistant Commissioner can give under Section 31. Under that section he can give directions, inter alia, under Section 31 (3) (b), (c) or I or s. 31 (4). The expression “directions” in the proviso could only refer to the directions which the Appellate Assistant Commissioner or other tribunals can issue under the powers conferred on him or them under the respective sections. Therefore, the expression “finding” as well as the expression “direction” can be given full meaning, namely, that the finding is a finding necessary for giving relief in respect of the assessment of the year in question and the direction is a direction which the appellate or revisional authority, as the case may be, is, empowered to give under the sections mentioned therein. The words “in consequence of or to give effect to” do not create any difficulty, for they have to be collated with, and cannot enlarge, the scope of the finding or direction under the proviso. If the scope is limited as aforesaid, the said words also must be related to the scope of the findings and directions”*

57. *As is manifest from the above, a finding was explained to mean a conclusion arrived at on a material question necessary for the disposal of a cause laid before an appellate authority and essential for according relief in an assessment year. A direction was defined as one which the appellate authority was empowered to issue under the Act.*

58. *However, a direction in terms as suggested by the respondents would clearly not fall within either of those two expressions since what we are essentially invited to do is to extend the period of limitation that otherwise stands prescribed under the Act. The finding that we have arrived at is that it was imperative for the AO to frame an order in draft as opposed to a final order of assessment. Any consequential direction that could be framed would have to be in consonance with the aforesaid finding. That direction would additionally and necessarily have to be in*

*accordance with the scheme of the Act and the statutory prescriptions comprised therein. The same would clearly not warrant or justify the Court enlarging the period of limitation as statutorily prescribed. As is well settled, while courts may, where legally permissible, consider condonation of delay, they are not entitled to expand or enlarge a period of limitation as statutorily prescribed.”*

*[Emphasis Supplied]*

2.5.viii. Accordingly, observation made by the Hon'ble Supreme Court in the case of *PCIT v. Abhisar Buildwell Pvt. Ltd.* (supra) and *DCIT v. U.K. Paints (Overseas) Ltd.* (supra) cannot possibly be read or construed as a *carte blanche* enabling the Income Tax Department to overcome and override the restrictions that otherwise provided in Section 149 of the Act. In every case, the Id. AO must satisfy the jurisdictional preconditions, which remain subject to judicial scrutiny. The Hon'ble Supreme Court merely observed that reassessment may be initiated in accordance with the law.

2.5.ix. Hon'ble Delhi High Court in *ARN Infrastructures India Ltd. v. ACIT* [2024] 469 ITR 333 (Delhi) (CLC 65-110) under identical facts has held that the Hon'ble Supreme Court's decision in *Abhisar Buildwell* (supra) does not grant the Revenue an unrestrained right to reassess. While search assessments being annulled does not preclude reassessment, any such action must comply with statutory provisions, particularly the restrictions under Section 149. The Hon'ble Court has observed:

*“38. It is pertinent to note that a reference to Sections 147 and 148 of the Act in Abhisar Buildwell firstly appears in paragraph 33 of the report and where the Supreme Court observed that in cases where a search does not result in any incriminating material being found, the only remedy that would be available to the Revenue would be to resort to reassessment.*

*39. However, the Supreme Court caveated that observation by observing that the initiation of reassessment would be “.....subject to fulfilment of the conditions mentioned in Sections 147/148, as in such a situation, the Revenue cannot be left with no remedy”. This sentiment came to be reiterated with the Supreme Court observing that the power of the Revenue to initiate reassessment must be saved failing which it would be left with no remedy. It was thereafter observed in paragraph 36.4 of the report that insofar as completed or unabated assessments were concerned, they could be reopened by the AO by invocation of Sections 147/148 of the Act, subject to the fulfillment of the conditions “.....as envisaged/mentioned under Sections 147/148 of the Act and those powers are saved”.*

40. *It thus becomes apparent that the liberty which the Supreme Court accorded and the limited right inhering in the Revenue to initiate reassessment was subject to that power being otherwise compliant with the Chapter pertaining to reassessment as contained in the Act. The observations of the Supreme Court cannot possibly be read or construed as a carte blanche enabling the respondents to overcome and override the restriction that otherwise appear in Section 149 of the Act. The observations of the Supreme Court in Abhisar Buildwell (supra) were thus intended to merely convey that the annulment of the search assessments would not deprive or denude the Revenue of its power to reassess and which independently existed. However, the Supreme Court being mindful of the statutory prescriptions, which otherwise imbue the commencement of reassessment, qualified that observation by providing that such an action would have to be in accordance with law. This note of caution appears at more than one place in that judgment and is apparent from the Supreme Court observing that the power to reassess would be subject to the fulfilment of the conditions mentioned in Sections 147 and 148 of the Act.*

52. *The respondents despite the clear enunciation of the legal position with respect to search assessments in terms of our judgements in Kabul Chawla (supra), RRJ Securities (supra) and a host of others that followed neither chose to initiate any remedial action nor did they adopt a course correction. Nothing fettered the right of the respondents to commence reassessment if they were of the opinion that, notwithstanding absence of incriminating material, escapement of income had occurred. It was open for the respondents to establish that an action for reassessment was warranted independently and irrespective of no adverse material having been found in the course of a search. We thus find ourselves unable to hold in their favour. Consequently, and for all the aforesaid reasons, we find ourselves unable to sustain the reassessment action.*

- 2.5.x. This judgment's ratio has been explicitly reiterated and followed by the Delhi High Court in subsequent judgments, notably:
- Naveen Narang HUF v. ACIT, W.P.(C) 5055/2025, dt 22.05.2025.
  - Mansi Narang v. ACIT, W.P.(C) 3678/2025, dt.15.05.2025.
  - Meera Gupta v. ACIT, W.P.(C) 5780 & 5781/2025, dt 02.05.2025.
  - Balar Marketing Private Limited v. ACIT, W.P.(C) 6558/2024, dt. 01.05.2025.
  - Manan Narang v. ACIT, W.P.(C) 3561/2025, dt. 29.04.2025.
  - Jainco Ltd. v. ACIT, W.P.(C) 15379/2024, dt. 04.11.2024.
  - Lokesh Sachdeva v. ACIT, W.P.(C) 252/2025, dt.22.05.2025.
- 2.5.xi. Therefore, the consistent judicial interpretation emerging from the Delhi High Court—beginning with *ARN Infrastructures* and reaffirmed in the above-cited

decisions—makes it abundantly clear that the Supreme Court’s ruling in *Abhisar Buildwell* does not confer any unqualified or automatic authority upon the Revenue to initiate reassessment.

- 2.5.xii. Any such action must strictly adhere to the statutory framework prescribed under Sections 147 to 151 of the Act, including the bar of limitation under Section 149. Consequently, interpreting *Abhisar Buildwell* as conferring power upon the appellate authorities (such as the CIT(A)) to direct reassessment proceedings under Section 150 would amount to a fundamental misreading of the judgment, amounting to judicial overreach and a clear violation of statutory limits.
- 2.5.xiii. Accordingly, it is respectfully submitted that the Id. CIT(A) has misconstrued the observations of the Hon’ble Supreme Court as constituting a “direction” under Section 150, which they manifestly are not. Any reliance on such observations to justify reassessment lacks legal validity and deserves to be set aside.

## 2.6. CIT(A) EXCEEDED HIS APPELLATE JURISDICTION (SECTION 250/251)

- 2.6.i. Under the specific scheme of Income Tax Act, 1961 the CIT(A)’s role is appellate which is confined to adjudicating the subject matter of the appeal before him (i.e. the contested additions/disallowances for that assessment year) – and his powers are circumscribed by Section 251 of the Act. Relevant extract of provisions is hereunder:

Section 251: Powers of the [Joint Commissioner (Appeals) or the] Commissioner (Appeals).

*“(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers—*

*(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment: ...”*

- 2.6.ii. Accordingly, in an appeal against an assessment order, the Id. CIT(A) may
- i.) confirm, or
  - ii.) reduce, or
  - iii.) enhance, or
  - iv.) annul the assessment;

but he has no power to issue directions to initiate a new assessment or reassessment for a different year or under a different provision.

- 2.6.iii. The appellate jurisdiction is thus limited to the assessment year in question and matters arising from the assessment order. By directing the Id. AO to commence reassessment proceedings (whether for the same year under a different section, or for any other year), the CIT(A) ventured beyond the scope of the appeal and beyond his powers vested under Section 251.
- 2.6.iv. The jurisdiction and powers of the CIT(A) are explicitly defined and strictly governed by the provisions of Section 251 of the Act. Historically, prior to the year 2001, the CIT(A) possessed powers to *set aside* an assessment and remit the matter back to the Assessing Officer in certain specified cases. However, with effect from 01.06.2001, the legislature explicitly removed these powers of *set-aside* from the CIT(A), mandating that appellate authorities adjudicate matters conclusively without remitting them back for fresh consideration. Significantly, a partial restoration of the set-aside power was introduced again *vide* Finance Act (No.2),2024 w.e.f. 01.10.2024 , but strictly limited to cases where assessments are made by the AO under Section 144 (i.e. only limited to Best Judgment Assessments).
- 2.6.v. Beyond these clearly delineated boundaries, the CIT(A) has no authority whatsoever to issue any direction or remand any matter, including instructions for initiation of reassessment proceedings under Sections 147/148. Thus, the Id. CIT(A) must function strictly within the statutory confines of Section 251, and any exercise of power beyond such statutory limits—such as the impugned direction in the present case—is clearly *ultra vires* and legally unsustainable.
- 2.6.vi. In the present case, the Id. CIT(A) essentially attempted to do indirectly what he cannot do directly; having deleted the addition in the Section 153A proceeding, he “substituted” a different route (i.e Section 147) to tax that income. This exceeded the mandate of Section 250/251.
- 2.6.vii. Further, the present case of assessee squarely falls within the ratio of ITO v. Murlidhar Bhagwan Das [1964] 52 ITR 335 (SC) (CLC 111-128) wherein Hon’ble Supreme Court underscored that the appellate provisions (Section 33(4) of the 1922 Act, analogous to Section 250/254 of the 1961 Act) do not confer on the appellate authority a power to make any direction on matters not arising in the appeal, especially as the Act provides separate mechanisms (like Section 34 of 1922 Act, now Section 147) to deal with escaped income. Accordingly, the Apex Court held that

*“It was not contended, nor was it possible to contend, that by reason of the reference to the said provisions the powers and jurisdiction conferred on the respective authorities, tribunals or courts referred to therein were enlarged or modified by a reference in the proviso or that the proviso*

*could be read or construed as amending those sections conferring on those bodies wider or different powers or jurisdiction. Learned counsel for the department expressly disclaimed any such submission. Therefore, the scope of the proviso cannot ordinarily exceed the scope of the jurisdiction conferred on an authority under the said provisions.”*

- 2.6.viii. In other words, a CIT(A) cannot broaden the scope of the appeal decision to “advise” or “compel” the AO to take actions in a different proceeding.
- 2.6.ix. Thus, applying these principles in the present case, the Id. CIT(A) was tasked with deciding whether the addition under Section 153A was sustainable given the specific facts and circumstance of the case. Ld. CIT(A) rightfully found it was not (for want of incriminating material) and deleted it. At that point, Id. CIT(A)’s authority ended. Ld. CIT(A) should have simply allowed the appeal on that issue. By proceeding to direct the AO to consider re-opening under Section 147, the Id. CIT(A) acted *ultra vires*. This extraneous direction was not part of adjudicating the appeal but an attempt to influence future proceedings, which is beyond the scope of Section 250.
- 2.6.x. The power to issue directions in the manner exercised by the Id. CIT(A) in the present case is clearly unwarranted and impermissible under the scheme of Act. If such power to issue binding directions for reassessment proceedings under Sections 147/148 read with Section 150 were to be vested in the hands of the CIT(A), it would lead to a situation where, irrespective of statutory time-limits prescribed under Section 149, the Id. AO could indefinitely reopen completed assessments.
- 2.6.xi. In other words, any jurisdictional error committed by an AO in issuing a notice under a wrong section or due to incorrect invocation of powers could not be subsequently rectified through a direction from the Id. CIT(A) at any future point in time—without any statutory limitation whatsoever.
- 2.6.xii. To illustrate the grave implications, consider a hypothetical scenario where an appeal remains undecided before the CIT(A) for an extended period, say until the year 2030, as Section 250 of the Act does not prescribe a mandatory time limit for disposal of appeals. If the power claimed by the CIT(A) in the present case were valid, he could pass directions in the year 2030 instructing the AO to initiate reassessment proceedings for the present assessment year. Such a direction would enable the AO to reopen assessments long after statutory limitation periods had elapsed, effectively rendering statutory limits meaningless. This scenario clearly cannot represent the legislative intent behind the provisions governing appellate proceedings.
- 2.6.xiii. In essence, the Id. CIT(A), through the impugned direction, has improperly attempted to confer upon the AO an indefinite and unlimited jurisdiction to

reopen completed assessments. The Id. CIT(A), acting in appellate jurisdiction under Section 251, cannot revive or rectify jurisdictional mistakes made by the AO through such directions.

- 2.6.xiv. Therefore, the impugned direction not only exceeds statutory authority but also fundamentally undermines the core principles of certainty, finality, and predictability that form the bedrock of the taxation framework. Such a construction is impermissible and must be struck down by the Hon'ble Tribunal.

## 2.7. IMPERMISSIBLE REVIEW/SUBSTITUTION OF THE AO'S AUTHORITY

- 2.7.i. It is further submitted that, the impugned direction by Id. CIT(A) also amounts to an unwarranted usurpation of the Id. AO's statutory authority to assess or reassess income. The Income Tax Act clearly demarcates the roles of the AO and appellate authorities. Initiation of reassessment (Section 147/148) is an executive act that lies in the AO's domain, subject to strict timelines provided under Section 149.
- 2.7.ii. The Id. CIT(A) has no role in the initiation of such proceedings – indeed, if an assessment is found to be erroneous and prejudicial to the interest of Revenue, for missing an issue, the law empowers the Commissioner (administratively, under Section 263), not the CIT(A) in an appellate order.
- 2.7.iii. By instructing the AO to issue notice under Section 147, the Id. CIT(A) essentially reviewed the assessment in a manner beyond his remit and substituted his judgment for that of the Id. AO with respect to the necessity of reopening. This is not permitted.
- 2.7.iv. In the present case, the Id. CIT(A)'s action is akin to an improper *suo-motu* revision of the assessment order – effectively advising the AO on how to “fix” a perceived lapse (the addition not made under the correct procedure) by starting a new proceeding. This encroaches on the statutory scheme. If the Revenue believed that income had escaped assessment because the addition was knocked out on technical grounds, the proper course was for the AO/Department to independently evaluate the conditions of Section 147 and act if legally permissible.
- 2.7.v. The Id. CIT(A) stepping in to dictate this course compromises the AO's independent satisfaction and creates a procedural irregularity. The Id. AO might feel bound and even compelled by the appellate order to issue a notice,

even if his own reason to believe is marginal – thus the CIT(A) direction could prejudice or bias a matter that the law leaves to the AO's jurisdiction.

- 2.7.vi. In sum, the CIT(A) cannot *don the mantle* (to take role) of the Id. AO. His powers are appellate (judicial), not investigative or supervisory over future assessments. By directing a reassessment, the CIT(A) went beyond adjudication and into administration – a clear illegality.
- 2.7.vii. In other words, an appellate order's findings are limited to matters considered by the AO; new sources of income or new proceedings must be dealt with under Sections 147/148 or 263 if at all, and in the presence of such specific provisions, a similar power is not available to the first appellate authority. Thus, Id. CIT(A)'s direction in question squarely violates this principle and hence should be set aside.
- 2.7.viii. Hon'ble Income Tax Appellate Tribunal Kolkata in the case of ITO Wd-1(2) Hgl. Vs. Sh. Biswajit Chatterjee (*ITA No.565/Kol/2013 dt.10.11.2017* (CLC 129-136) held that

*"The Income Tax Act provides different schemes wherein the AO is empowered to assess or re-assess the income which has escaped assessment. So at the most, if the Revenue wishes to tax the escapement of income then it has followed the scheme provided under the Act. The relevant provisions for taxing the escape income are given u/s 147/263 of the Act. In holding so, we find support and guidance from the judgment of Hon'ble Supreme Court in the case of ITO vs. Murlidhar Bhaghubabu reported in 52 ITR 335 (SC). The relevant extract of the judgment is reproduced below:-*

*"Section 33(4) of 1922 Act only refers to a finding or direction made by an appellate authority and does not itself confer any power on an appellate authority to make a finding or direction. Indeed, section 34 of 1922 Act deals with entirely a different aspect, that of empowering an ITO to bring to assessment escaped income, and has no concern with the powers of an appellate authority. The provision which deals with the powers of an appellate authority is section 31 of 1922 Act."*

*Respectfully following the judgment of Hon'ble Supreme Court in the case of Murlidhar Bhaghubabu (supra) we conclude that Ld. CIT(A) has no power under the provision of law for giving any direction to AO for reopening of assessment. The appeal before Ld. CIT(A) is confined to the particular assessment year which is before him. Thus, in view of the above proposition, we dismiss the ground of Revenue's appeal. Consequently, Revenue's ground is dismissed."*

3. In light of the detailed legal submissions hereinabove, it is most respectfully submitted that the direction issued by the Id. CIT(A) to initiate reassessment proceedings under Section 147/148 of the Act—by invoking Section 150 and relying on CBDT Instruction No. 1/2023—is ex-facie without jurisdiction, contrary to binding judicial precedent, and violative of the appellate framework under Sections 250/251 of the Act.
4. It is therefore humbly prayed that this Hon'ble Tribunal, in exercise of its plenary powers under Section 254, be pleased to expunge/quash the said direction from the appellate order dated 31.12.2024, and thereby uphold the relief granted to the assessee without permitting any overreach or illegal consequence to flow from an otherwise just appellate decision.

11. To support the contention so raised in the written submission reliance was placed on the following decisions:

S. No.	Particulars	Page No.
1.	Copy of the order of Hon'ble Supreme Court in the case of PCIT v. Abhisar Buildwell Pvt. Ltd., (2023) 454 ITR 212 (SC)	1-29
2.	Copy of the order of Hon'ble Supreme Court in the case of DCIT v. U.K. Paints (Overseas) Ltd., (2023) 454 ITR 441 (SC)	30-31
3.	Copy of the Rejection Order dated 12.05.2023 in Miscellaneous Application No. 680 of 2023 filed by Revenue in the case of PCIT v. Abhisar Buildwell Pvt. Ltd. (Civil Appeal No. 6580 of 2021)	32-34
4.	Copy of CBDT Instruction No. 1 of 2023 dated 23.08.2023	35-40
5.	Copy of the order of Hon'ble Supreme Court in the case of UCO Bank v. CIT, [1999] 237 ITR 889 (SC)	41-49
6.	Copy of the order of Hon'ble Supreme Court in the case of Rajinder Nath v. CIT, [(1979) 120 ITR 14 (SC)]	50-54
7.	Copy of the order of Hon'ble High Court of Bombay in the case of Pavan Morarka v. ACIT, [2022] 136 taxmann.com 2 (Bombay)	55-64
8.	Copy of the order of Hon'ble High Court of Delhi in the case of ARN Infrastructures India Ltd. v. ACIT, [2024] 469 ITR 333 (Delhi)	65-110
9.	Copy of the order of Hon'ble Supreme Court in the case of ITO v. Murlidhar Bhagwan Das, [1964] 52 ITR 335 (SC)	111-128
10.	Copy of the order of Hon'ble ITAT Kolkata Bench in the case of ITO v. Sh. Biswajit Chatterjee (ITA No. 565/Kol/2013) dated 10.11.2017	129-136
11.	Copy of the order of Hon'ble High Court of Delhi in the case of PCIT vs Sumitomo Corporation India (P.) Ltd. [2024] 166 taxmann.com 55 (Delhi)	137-179

12. We have heard the rival contentions and perused the material placed on record. As is evident from the grounds of appeal filed by the revenue that ground no. 1 relates to the decision of Id. CIT(A) directing to delete the addition of Rs. 40,15,061 made by the Id. AO being the amount of Long Term Capital gain claimed by him in his return of income and ground no. 2 relates to the estimation of commission at 5 % on the said income offered by the assessee as charges for the accommodation entry. The facts related to these two additions were already discussed herein above the same are not repeated.

Record reveals that a Search and Seizure operation under section 132(1) of the Income Tax Act, 1961 was carried out on 13.06.2019 at the various premises of Dewan Group. Pursuant to that action notice u/s. 153A of the Act was issued to the assessee because the assessee was one of the persons in the group where search operation was conducted. The assessee filed the return of income pursuant that notice issued u/s. 153A of the Act and thereby the assessment was also completed on on 21.09.2021 wherein the Id. AO made the following two addition

- (i) Addition on account of bogus Long Term Capital Gain claimed by the assessee of Rs.40,15,061.29/-

(ii) Addition on account of commission expenses of Rs.2,05,753/- for obtaining accommodation entry @ 5% of Sale consideration

The assessee challenged that action of the Id. AO making the above addition which is already declared in the original return of income which was based on the set of facts has already been considered. The assessee contended that the addition made while making the assessment has no reference to any incriminating material unearthed while search and seizure action on the appellant and therefore, the addition has been made without the basis / source of incriminating material unearthed from the search action.

The bench noted that the assessee has supported the transaction by stating that there was no ban in purchasing & selling shares of 'Anax.com' / 'Yamini Investments' at the time when the assessee entered in purchases & sales transactions. The assessee submitted that on 1.10.2012, the assessee applied for 10000 shares of 'ANAX COM TRADE LIMITED' for the value of Rs. 1,00,000/- and was allowed. That the purchase was made through cheque no. 16042 issued on 1.10.2012 and the same amount has been debited to his bank account on 17.10.2012 when the shares were allotted to the assessee. The fact that share of ANAX COM was split into ten shares each, therefore, the assessee had 100000 shares. Eventually

'ANAX COM' amalgamated into Yamini Investments and the assessee was allotted 80000 shares of Yamini Investments'. That merger process was approved by Hon'ble Bombay High Court vide order dated 9.05.2014. This fact confirms that the company is not bogus and the investment of the assessee in the company was genuine. The assessee sold the above referred shares through SEBI registered broker, B. Lodha Securities Ltd., vide their bill no. V78/BB095 dt. 13.08.2015, bill no. V78/BB096 dt. 14.08.2015, bill no. V78/BB097 dt. 17.08.2015, bill no. V78/BB100 dt. 20.08.2015, bill no. V78/BB109 dt. 02.09.2015, and bill no. V78/BB110 dt. 03.09.2015. Copies of bills were placed on record. Based on the facts, evidence and considering the fact the assessee hold the shares for more than required months the claim u/s. 10(38) cannot be denied to the assessee as those shares were sold by the assessee after more than 12 months. Transaction was made through SEBI registered broker. The broker issued bills of sale to the assessee. The shares were sold on the prices of Bombay Stock Exchange Limited of the particular date & particular time. The assessee paid security transaction tax, service tax, etc, and thereby the assessee justify his claim u/s 10 (38) of the Act. He also claimed that payments of purchases & sales were made / received through banking channel and in support of the claim he filed the following documents ;

1. Allotment Certificate
2. Copy of Bank Account showing purchase receipts
3. Sale bill cum contract note (Annexure A/5)
4. Copy of Demat Account
5. Copy of Bank Account showing the sale receipts
6. Copy of Return of Income for AY 2016-17 where assessee has declared income of Rs.45,14,780/- under the head LTCG exempt under section 10(38) of the Act. (Annexure A/1)

He also based on the MCA master data submitted that the company has filed its balance sheet with ROC up to 31/03/2020 & last AGM of company was held on 24/12/2020. The share is also traded on BSE. Based on that set of facts and decision relied upon he supported his claim on the merits. Thus, based on the supporting evidence placed on record it is clear that the transaction which revenue dispute has already been recorded.

Record also reveals that Id. AO in the assessment order, not proved that the evidence that has been relied upon were forged nor contrary to the ITR already filed. Going further in the search revenue did not place on record to suggest taking of accommodation entry or bogus capital gains and thereby the evidence on it. In the assessment order also these documents have not formed the basis of reasoning of arriving at the finding that the LTCG is bogus based on the evidence found in search. Such conclusion has been arrived at based on other material as discussed in the order of the Id. AO.

Be that it may the bench also noted that the case of the assessee was subjected to the assessment pursuant to search and the notice u/s. 153A of the Act was issued to the assessee. Thus, as it is settled that in the proceeding-initiated u/s. 153A addition can only be made qua incriminating material. The bench noted that the document which are placed on record cannot be considered as incriminating and there is no other material placed on record having the nature of incriminating documents which were unearthed during the course of search and seizure action. Thus, these documents which were already available on record in the one form. Thus, we are of the considered view that without bringing anything contrary to that evidence no addition can be made in the proceeding u/s 153A of the Act. This view is finally decided by the apex court in the case of Principal Commissioner of Income-tax, Central-3 Vs. Abhisar Buildwell (P.) Ltd [ 149 taxmann.com 399 (SC) ]. The apex court in this case held that ;

**12.** If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under section 153A of the Act is linked with the search and requisition under sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only

pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and sub-section (2) of Section 153A would be redundant and/or rewriting the said provisions, which is not permissible under the law.

**13.** For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in the case of *Kabul Chawla (supra)* and the Gujarat High Court in the case of *Saumya Construction (supra)* and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

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

- (i) that in case of search under section 132 or requisition under section 132A, the AO assumes the jurisdiction for block assessment under section 153A;
- (ii) all pending assessments/reassessments shall stand abated;
- (iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and
- (iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

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

*Civil Appeal Nos.7738-7739/2021, 7736-7737/2021, 7732-7735/2021 and 7740-7743/2021*

**15.** Insofar as the aforesaid Civil Appeals preferred by the assessee – M/s Kesarwani Zarda Bhandar Sahson, Allahabad are concerned, these appeals have

been preferred against the impugned judgment and order dated 6-9-2016 passed in ITA Nos. 270/2014, 269/2014, 15/2015, 16/2015, 268/2014 and 17/2015, as also, against the order dated 21-9-2017 passed in the review applications.

It is required to be noted that the issue before the Allahabad High Court was, whether in case of completed/unabated assessments, the AO would have jurisdiction to re-open the assessments made under section 143(1)(a) or 143(3) of the Act, 1961 and to reassess the total income taking notice of undisclosed income even found during the search and seizure operation.

**15.1** In view of the discussion hereinabove, once during search undisclosed income is found on unearthing the incriminating material during the search, the AO would assume jurisdiction to assess or reassess the total income even in case of completed/unabated assessments. Therefore, the impugned judgment(s) and order(s) passed by the High Court taking the view that the AO has the power to reassess the return of the assessee not only for the undisclosed income, which was found during the search operation but also with regard to material that was available at the time of original assessment does not require any interference. Under the circumstances, the aforesaid appeals preferred by the assessee – M/s Kesarwani Zarda Bhandar, Sahson, Allahabad deserve to be dismissed and are accordingly dismissed. In the facts and circumstances of the case, no costs.

Based on these set of facts and respectfully following the finding of the apex court holding that in the proceeding u/s. 153A of the Act in case no incriminating material is unearthed, the AO cannot assessee or reassess taking into consideration the other material in respect of completed / unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the search and thus, considering that set of facts and following the judicial precedence we do not find any infirmity in the finding of the Id. CIT(A) in directing the Id. AO to delete the addition of Rs. 40,15,061/- made by the Assessing Officer disallowing the exemption of Long-Term Capital Gains on account of unexplained credits

u/s 68 of the Act based on these observations ground no. 1 raised by the revenue is dismissed.

Since we have confirmed the action of the Id. CIT(A) in directing the deletion of addition vide ground no. 1 the ground no. 2 being consequential to ground no. 1 the addition of alleged commission is also rightly directed to be deleted by the Id. CIT(A) and therefore, ground no. 2 raised by the revenue also failed based on that observation.

In the result the appeal filed by the revenue in ITA No. 301/JP/2025 stands dismissed.

13. Now coming to the cross objection filed by the assessee against the appeal filed by the revenue. As the appeal of the assessee was allowed by the Id. CIT(A) on technical ground but while allowing that appeal of the assessee on technical ground he directed the Id. AO to implement judgment of Hon'ble Supreme Court in the case of *Abhisar Buildwell* 2023 149 taxmann.com and the CBDT Instruction No. 1 of 2023 dated 23.8.2023. This direction is challenged by the assessee in cross objection filed stating that the action of the Id. CIT(A) is illegal, unjustified, arbitrary, and against the facts of the case.

As is evident from the order of the Id. CIT(A) that after granting relief on technical ground Id. CIT(A) further directed the Id. AO to initiate

appropriate proceedings under Section 147/148 of the Act, relying on the same judgment of Abhisar Buildwell (supra), CBDT Instruction No. 1/2023 (CLC 35-40), and the provisions of Section 150 of the Act.

The assessee, while supporting the ultimate relief granted, is aggrieved by the directions given by the Id. CIT(A) in his order suggesting the AO initiate proceedings under Section 147/148 of the Act. The assessee therefore before us by preferring the present Cross-Objection to challenge the directions and to raise other legal and factual grounds in support of the deletion of the addition. Record reveals that Id. CIT(A) vide page 36 while dealing with the appeal of the assessee has issued direction to the Id. AO which reads as under :

“Accordingly, the judgement of Hon’ble Supreme Court in the case of Abhisar Buildwell (supra) and U. K. Paints (supra) are squarely applicable to the facts of the case. Accordingly, following the judgment of honorable Supreme Court it is held that the Id. AO rightly issued notices u/s 153A of the Act and at the same time the impugned addition made in assessment order u/s 153A cannot be sustained and is hereby deleted as the same is without basis of incriminating material unearthed during the search action on the appellant and impugned addition could have been done by the learned assessing officer in re-assessment proceedings by issuance of notice under section 147/148. The Id. AO is directed to take necessary action in this regard. Further, the CBDT (ITJ Section) has issued Instruction No. 1 of 2023 dated 23-08- 2023 vide F.No. 279/Misc./M-54/2023-ITJ on the subject “Implementation of the judgment of the Hon’ble Supreme Court in the case of Pr.CIT (Central-3) v/s AbhisarBuildwell Pvt. Ltd. (Civil Appeal No. 6580 of 2021)- Instruction regarding”. The learned assessing officer is directed to implement the law and ratio of the judgement of AbhisarBuildwell (supra) and the said Instruction No. 1 of 2023 dated 23-08-2023 and section 150 of the Act, in the case of the appellant appropriately as per the facts of the case and as per above findings.

Accordingly this ground of appeal is adjudicated in above terms. For statistical purposes this ground is hereby treated as allowed”

[Emphasis Supplied]

Before us the Id. AR of the assessee submitted that the appeal of the assessee has decided considering the two landmark judgment of apex court in the case of Abhisar Buildwell and U. K. Paints. Thus, the issue before us is to be decided considering the following records placed on record:

1. Decision of the apex court in the case of Abhisar Buildwell & U. K. Paints.
2. Miscellaneous Application filed by Revenue before the apex court
3. CBDT's Instruction No. 1 of 2023 dated 23-08-2023

As is evident the cross objection of the assessee hinges on the provision of section 150, 251, Miscellaneous application filed by the revenue before the apex court and CBDT's instructions. The provision of section 150 deals as under :

**Provision for cases where assessment is in pursuance of an order on appeal, etc.**

**150.** (1) Notwithstanding anything contained in [section 149](#), the notice under [section 148](#) may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.

Section 251 reads as follows :

**Powers of the<sup>70</sup>[Joint Commissioner (Appeals) or the] Commissioner (Appeals).**

**251.** (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers—

(a)	in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment:
	<sup>71</sup> [ <b>Provided</b> that where such appeal is against an order of assessment made under <a href="#">section 144</a> , he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment;]
(aa)	in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under <a href="#">section 245HA</a> , he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;
(b)	in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;
(c)	in any other case, he may pass such orders in the appeal as he thinks fit.

<sup>70</sup>[(1A) In disposing of an appeal, the Joint Commissioner (Appeals) shall have the following powers—

(a)	in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;
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(b)	in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;
(c)	in any other case, he may pass such orders in the appeal as he thinks fit.]

(2) The <sup>72</sup>[Joint Commissioner (Appeals) or the] Commissioner (Appeals) <sup>72</sup>[, as the case may be,] shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

*Explanation.*—In disposing of an appeal, the <sup>72</sup>[Joint Commissioner (Appeals) or the] Commissioner (Appeals), may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the <sup>72</sup>[Joint Commissioner (Appeals) or the] Commissioner (Appeals) <sup>72</sup>[, as the case may be,] by the appellant.

The law is settled by the decision of the apex court in the case of Abhisar Buildwell and U. K. Paints and the revenue's Miscellaneous application was disposed off by observing as under

4.1.i. Against the judgment dated 24.04.2023 passed by the Hon'ble Supreme Court in Abhisar Buildwell Pvt. Ltd. (supra) the revenue filed Misc. Application before the Hon'ble Supreme Court on 26.04.2023 seeking following reliefs:

*“(a) This Hon'ble Court may clarify that the waiver of limitation as stipulated in section 150(2) is to be read in respect of the date of issue of notice for reassessment under section 148 (i.e.) if as on the date the assessment under section 153A or section 153C was passed, a notice under section 148 could have been issued as per the law then in force, then fresh proceedings for reassessment of such income not arising from the incriminating material found in search can now be initiated pursuant to the findings of this Hon'ble Court in the present appeals/application and may further clarify as follows:*

*(i) That the findings in para 11 and 14 would apply to all the proceedings pending in all the forums including before this Hon'ble Court.*

*(ii) That even though the appeals of the Revenue are dismissed in respect of assessments passed under 153A and 153C, in the absence of incriminating material found during the search, in respect of such income which was found to have escaped assessment other than through*

*incriminating material, the assessing officers would be entitled to reassess such income in terms of Section 147/148 read with section 150.*

*(iii) That the Assessing Officer, may if found necessary initiate fresh proceedings within 60 days from date of disposal of this application following the procedure stipulated in section 147-151 of the Act as is in force now.”*

4.1.ii. The Hon'ble Supreme Court vide its order dated 12.05.2023 titled as PCIT v. Abhisar Buildwell Pvt. Ltd. [2023] 294 Taxman 70 (SC) (CLC 32-34) dismissed the Revenue's Misc. Application by observing as under:

*“2. Having gone through the averments made in the application and the prayers, we are of the opinion that the prayers sought can be said to be in the form of review which requires detail consideration at length looking into the importance of the matter. Therefore, the present application in the form of clarification is not entertained and we relegate the Revenue to file an appropriate review application for the relief sought in the present application and as and when such review application is filed the same can be heard in the open court.*

*3. In view of the above and without further entering into the merits of the application and/or expressing anything on merits on the prayers sought in the present application, the present application is not entertained and we relegate the Revenue to file an appropriate review application seeking the reliefs which are sought in the present application and as and when such review application is filed the same be heard and decided and disposed of in the open court.*

*At the cost of repetition, we observe that as we have not entered into the merits of the present application and we relegate the Revenue to file an appropriate review application, the review application be decided and disposed of in accordance with law and on its own merits.”*

4.1.iii. Following the dismissal of the Revenue's Miscellaneous Application in PCIT v. *Abhisar Buildwell Pvt. Ltd.* (supra), wherein the Hon'ble Supreme Court expressly relegated the Department to file a formal review petition—no such review was pursued. Instead, the CBDT issued Instruction No. 1/2023 dated 23.08.2023, which provided internal guidance to Assessing Officers regarding the course of action in cases where assessments under Section 153A/153C have failed due to lack of incriminating material.

4.1.iv. The instruction outlines procedural steps for invoking reassessment under Sections 147/148 read with Section 150. However, the nature, scope, and legal force of this instruction remain subject to statutory limitations and judicial precedent, as discussed below.

We also take note of the facts that CBDT's instructions is an internal administrative directive intended solely for operational guidance of Assessing Officers. It attempts to clarify the post-*Abhisar Buildwell (supra)* reassessment landscape, specifically in situations where additions under Section 153A/153C were struck down due to absence of incriminating material. This administrative instructions are not binding on quasi-judicial authorities like the CIT(A). It is a settled principle of law, as held by the Hon'ble Supreme Court in *UCO Bank v. CIT* [(1999) 237 ITR 889 (SC)] (CLC 41-49), that CBDT circulars or instructions cannot override, supplement, or expand the scope of statutory provisions. Thus, taking shelter of Instruction No. 1/2023 as enabling or empowering appellate authorities to direct initiation of reassessment proceedings is a fundamental misapplication of the Instruction, which neither authorizes appellate intervention in reassessment matters nor vests any such power in the Id. CIT(A). Even other wise the Instruction cannot substitute the independent statutory preconditions under Sections 147/148 read with Section 149, which provides the timelines for issuance of notice of reopening. Provision of such section must be satisfied by the Id. AO at any given point of time, when the jurisdiction is assumed for reopening a particular assessment year. Even the power vested with Id. CIT(A) are limited wherein he may

- i.) confirm, or
- ii.) reduce, or
- iii.) enhance, or
- iv.) annul the assessment;

Thus, he has no power to give any direction that what is prescribed in law.

The issue related to the power of the commissioner of income has already been dealt with in a decision in the case of ITO v. Murlidhar Bhagwan Das [1964] 52 ITR 335 (SC) (CLC 111-128) wherein Hon'ble Supreme Court underscored that the appellate provisions (Section 33(4) of the 1922 Act, analogous to Section 250/254 of the 1961 Act) do not confer on the appellate authority a power to make any direction on matters not arising in the appeal, especially as the Act provides separate mechanisms (like Section 34 of 1922 Act, now Section 147) to deal with escaped income.

Accordingly, the Apex Court held that;

“It was not contended, nor was it possible to contend, that by reason of the reference to the said provisions the powers and jurisdiction conferred on the respective authorities, tribunals or courts referred to therein were enlarged or modified by a reference in the proviso or that the proviso could be read or construed as amending those sections conferring on those bodies wider or different powers or jurisdiction. Learned counsel for the department expressly disclaimed any such submission. Therefore, the scope of the proviso cannot ordinarily exceed the scope of the jurisdiction conferred on an authority under the said provisions.”

We also take note that the apex court has dealt with the provision of section 150 i.e. Provision for cases where assessment is in pursuance of an order on appeal and section 149 i.e. Time limit for notices under section

148 of the Act. While dealing with that provision the apex court in the case of K. M. Sharma Vs. Income Tax Officer [122 Taxmann 426 (SC) ] while dealing with the judgment of the land revenue case and thereby the reopening of the case has in detailed analysis the provision for cases where assessment is in pursuance of an order of an appeal and time limit. The relevant finding is reproduced in full because this will clarify the issue on hand with that of the case decided by apex court;

In this appeal, which is filed after obtaining special leave, the order dated 24-5-1996 of the Delhi High Court has been assailed. The main question involved is on the application and interpretation of the provisions of section 150 of the Income-tax Act, 1961 ('the Act').

The relevant facts necessary for deciding the legal question raised are as under :

1. The appellant's lands were acquired under section 6 of the Land Acquisition Act, 1894, and an award was passed on 2-12-1967 by the Chief Commissioner of Delhi granting compensation in favour of the appellant. The Additional District Judge by the judgment dated 20-5-1980 held the appellant entitled to 1/32 share of the compensation awarded under various awards and the appellant was granted total compensation in the sum of Rs. 1,18,810 approximately in the year 1981.
2. On a reference under section 18 of the Land Acquisition Act, the learned Additional District Judge, Delhi *vide* his judgment dated 31-7-1991 awarded a sum of Rs. 1,10,20,624. The amount was paid to the appellant between 15-10-1992 and 26-5-1993. The amounts paid represented principal sum of compensation of Rs. 41,96,496 and interest in the sum of Rs. 76,84,829 up to 18-5-1992. Before making the above payments, tax was deducted at source amounting to Rs. 8,60,701.
3. Since the lands acquired were agricultural lands and were acquired prior to 1-4-1970, capital gains tax was not leviable but tax was leviable on interest earned on the amount awarded on year to year basis.
4. The appellant through counsel sent a letter dated 17-9-1993 informing the ITO that he had received interest amount of Rs. 76,84,829 and interest accrued from year to year was assessable in each year. Year-wise break up of the interest was also given in the letter. According to the appellant, no tax was leviable on interest

accruing up to 31-3-1982 as assessment for it had become barred by time. The appellant, therefore, requested that necessary action be taken under section 147 of the Act to enable the appellant as assessee to file his income-tax return and pay tax accordingly.

5. On 31-3-1994, the appellant was served with impugned notices under section 148 of the Act for 16 assessment years, *i.e.*, 1968-69 to 1971-72 and the assessment years 1981-82 to 1992-93.

6. The appellant, in the High Court, assailed the notices issued under section 148 for reassessment for the assessment years 1968-69 to 1971-72 and for the year 1982-83 on the ground that the proposed reassessment for those assessment years had already become barred by time under section 149 of the Act, for which in the relevant periods maximum period of four years or seven years limitation was prescribed depending upon the quantum of liability towards tax.

7. The High Court by the impugned judgment accepted the contention of the department that the provisions of section 150(1) of the Act, as amended with effect from 1-4-1989, could be resorted to for reassessment to levy tax on the increased amount of interest earned by the appellant in the relevant assessment years. It was held that bar of limitation prescribed under section 149 of the Act was not attracted by virtue of the provisions of section 150(1) because notices for such reassessments are based on the awards passed in the land acquisition proceedings by the Court of the Additional District Judge on a reference under section 18 of the Land Acquisition Act. Upholding the validity of the assessment proceedings initiated by the department under section 148, the High Court rejected the contention of the assessee that sub-section (2) of section 150 is an *Explanation* to sub-section (1) and proceedings for reassessment, which had already become barred by time under section 149 before 1-4-1989, could not have been commenced on the amended provisions of sub-section (1) of section 150.

8. To appreciate the contentions advanced by the learned counsels for the parties and the decision of the High Court, it is necessary to reproduce for critical examination the provisions of section 150(1) and (2). The provisions read as under :

*"Provision for cases where assessment is in pursuance of an order on appeal, etc.—(1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision [or by a Court in any proceeding under any other law].*

*[The portion bracketed and italicised above is inserted by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1-4-1989].*

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken."

**9.** Section 149 prescribes maximum period of four or seven years depending upon the quantum of tax as mentioned in the said section for initiating reassessment proceedings. Section 150(1) states that the period of limitation prescribed in section 149 is not applicable, if the reassessment is proposed on the basis of any order passed by any 'authority in any proceedings under the Act by way of appeal, reference or revision' or 'by Court in proceedings under any other law'. Sub-section (2) of section 150, however, makes it clear that reassessment permissible under sub-section (1) of section 150 would not be available to the department where the period of limitation for such assessment or reassessment has expired at the time it is proposed to be reopened. In sub-section (1) of section 150, by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1-4-1989, the words 'or by a Court in any proceeding under any other law' were inserted which are shown in bracket with underline in the section reproduced above.

**10.** The main question that has been raised on behalf of the learned counsels appearing for the parties is whether the provisions of sub-section (1) of section 150 as amended can be availed for reopening assessments, which have attained finality and could not be reopened due to bar of limitation, that was attracted at the relevant time to the proposed reassessment proceedings under the provisions of section 149.

**11.** The submission made on behalf of the appellant is that neither the provisions of sub-section (1) nor sub-section (2) can be read as giving more than intended operation to the said provision. The provisions, it is argued, do not permit the authorities to reopen assessments, which have become final and reassessment of which had become barred by time before 1-4-1989 when section 150(1) was amended. Reliance is placed on the decision of this Court in *S.S. Gadgil v. Lal & Co.* [\[1964\] 53 ITR 231](#) .

**12.** The learned counsel appearing on behalf of the department has made an effort to persuade this Court to accept his construction of the provisions of section 150(1) and (2). It is argued that it is for the specific purpose of assessing income, which might accrue on the basis of any decision of any Court in any proceeding in any other law, that the provision has been amended to lift bar of limitation for reassessment.

**13.** Fiscal statute, more particularly a provision such as the present one regulating period of limitation must receive strict construction. The law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to litigant for indefinite period on future unforeseen events. Proceedings,

which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality. The amendment to sub-section (1) of section 150 is not expressed to be retrospective and, therefore, has to be held as only prospective. The amendment made to sub-section (1) of section 150 which intends to lift embargo of period of limitation under section 149 to enable authorities to reopen assessments not only on the basis of orders passed in proceedings under the Act but also on order of a Court in any proceedings under any law, has to be applied prospectively on or after 1-4-1989 when the said amendment was introduced to sub-section (1). The provision in sub-section (1), therefore, can have only prospective operation to assessments, which have not become final due to expiry of period of limitation prescribed for assessment under section 149.

**14.** To hold that the amendment to sub-section (1) would enable the authorities to reopen assessments, which had already attained finality due to bar of limitation prescribed under section 149 as applicable prior to 1-4-1989, would amount to give sub-section (1) a retrospective operation which is neither expressly nor impliedly intended by the amended sub-section.

**15.** On behalf of the assessee before the High Court and in this Court reliance has been placed on the provisions contained in sub-section (2) of section 150. It is submitted that the provision contained in sub-section (2) of section 150 is in the nature of clarification or *Explanation* to sub-section (1). Sub-section (2) makes it clear that the embargo of period of limitation lifted under sub-section (1) for proposed reassessments based on order in proceedings under appeal, reference or revision, as the case may be, would not apply to assessments which have attained finality due to bar of limitation applicable at the relevant time.

**16.** The High Court rejected the above contention of the assessee on the ground that on the amendment introduced with effect from 1-4-1989 in sub-section (1), which enables reopening of assessment based on any order of 'Court in any proceedings in any law', there is no corresponding amendment made in sub-section (2) of section 150 to bar reassessment based on order of court passed in any proceedings in any law in cases where prescribed period of limitation for reassessment had already expired.

**17.** We do not find that the above reasoning of the High Court is sound. The plain language of sub-section (2) of section 150 clearly restricts application of sub-section (1) to enable the authority to reopen assessments which have not already become final on the expiry of prescribed period of limitation under section 149. As is sought to be done by the High Court, sub-section (2) of section 150 cannot be held applicable only to reassessments based on orders 'in proceedings under the Act' and not to orders of Court 'in proceedings under any other law'. Such an interpretation would make the whole provision under section 150 discriminatory in its application to assessments sought to be reopened on the basis of orders under the Act and other assessments proposed to be reopened on the basis of orders

under any other law. Interpretation, which creates such unjust and discriminatory situation, has to be avoided. We do not find that sub-section (2) of section 150 has that result. Sub-section (2) intends to insulate all proceedings of assessments, which have attained finality due to the then existing bar of limitation. To achieve the desired result it was not necessary to make any amendment in sub-section (2) corresponding to sub-section (1), as is the reasoning adopted by the High Court.

**18.** Sub-section (2) aims at putting embargo on reopening assessments, which have attained finality on expiry of prescribed period of limitation. Sub-section (2) in putting such embargo refers to whole of sub-section (1) meaning thereby to insulate all assessments, which have become final and may have been found liable to reassessments or recomputation either on the basis of orders in proceedings under the Act or orders of courts passed under any other law. The High Court, therefore, was in error in not reading whole of amended sub-section (1) into sub-section (2) and coming to the conclusion that reassessment proposed on the basis of order of the court in proceedings under the Land Acquisition Act could be commenced even though the original assessments for the relevant years in question have attained finality on expiry of period of limitation under section 149. On a combined reading of sub-section (1) as amended with effect from 1-4-1989 and sub-section (2) of section 150 as it stands, in our view, a fair and just interpretation would be that the authority under the Act has been empowered only to reopen assessments, which have not already been closed and attained finality due to the operation of the bar of limitation under section 149.

**19.** This Court took similar view in the case of *S.S. Gadgil (supra)* in somewhat comparable situation arising from the retrospective operation given to section 34(1) of the Indian Income-tax Act, 1922 as amended with retrospective effect from 1-4-1956 by the Finance Act, 1956. In the case of *S.S. Gadgil (supra)* admittedly under clause (iii) of the proviso to section 34(l), as it then stood, a notice of assessment or reassessment could not be issued against a person deemed to be an agent of a non-resident under section 43, after the expiry of one year from the end of the year of assessment. The section was amended by section 18 of the Finance Act, 1956, extending this period of limitation to two years from the end of the assessment year. The amendment was given retrospective effect from 1-4-1956. On 12-3-1957, the ITO issued a notice calling upon the assessee to show cause as to why, in respect of the assessment year 1954-55, the assessee should not be treated as an agent under section 43 in respect of certain non-residents. The case of the assessee, *inter alia*, was that the proposed action was barred by limitation as right to commence proceedings of assessment against the assessee as an agent of non-resident for the assessment year 1954-55 ended on 31-3-1956, under the Act before it was amended in 1956. This Court in the case of *S.S. Gadgil (supra)* accepted the contention of the assessee and held as under :

". . . The Legislature has given to section 18 of the Finance Act, 1956, only a limited retrospective operation, *i.e.*, up to April 1, 1956 only. That provision must be read subject to the rule that in the absence of an express provision or clear

implication, the Legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorise the Income-tax Officer to commence proceedings which before the new Act came into force had by the expiry of the period provided become barred." (p. 240)

**20.** On a proper construction of the provisions of section 150(1) and the effect of its operation from 1-4-1989, we are clearly of the opinion that the provisions cannot be given retrospective effect prior to 1-4-1989 for assessments which have already become final due to bar of limitation prior to 1-4-1989. Taxing provision imposing a liability is governed by normal presumption that it is not retrospective and settled principle of law is that the law to be applied is that which is in force in the assessment year unless otherwise provided expressly or by necessary implication. Even a procedural provision cannot in the absence of clear contrary intendment expressed therein be given greater retrospectivity than is expressly mentioned so as to enable the authorities to affect finality of tax assessments or to open up liabilities, which have become barred by lapse of time. Our conclusion, therefore, is that sub-section (1) of section 150, as amended with effect from 1-4-1989, does not enable the authorities to reopen assessments, which have become final due to bar of limitation prior to 1-4-1989 and this position is applicable equally to reassessments proposed on the basis of orders passed under the Act or under any other law.

**21.** As a result of the discussion aforesaid, the appeal is allowed. The judgment of the Delhi High Court dated 24-5-1996 is hereby set aside. As prayed in the petition, the impugned notices issued by the respondent of the Income-tax Department under sections 148 and 142 against the appellant for the assessment years 1968-69 to 1971-72 and 1981-82 are hereby quashed. The appeal stands allowed with costs.

The above view is also get support by a decision of Nagpur Bench of this ITAT in the case of M B Traders Vs. ACIT [ 132 TTJ 490 ] wherein the coordinate bench held that ;

**9.** After an in-depth study of the entire case record, on a patient hearing of both the sides and after reading the case law cited at length, our observations and findings on the matter are as follows.

Before giving our observation and finding, it has been deemed proper to quote ss. 150 and 151 as it is, as under :

"150. (1) Notwithstanding anything contained in s. 149 the notice under s. 148 may be issued at any time of the purpose of making an assessment or reassessment or

recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

(2) The provisions of sub-s. (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.

151. (1) In a case where an assessment under sub-s. (3) of s. 143 or s. 147 has been made for relevant assessment year, no notice shall be issued under s. 148 by an AO, who is below the rank of Asstt. CIT or Dy. CIT unless the Jt. CIT is satisfied on the reasons recorded by such AO that it is a fit case for the issue of such notice.

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief CIT or CIT is satisfied, on the reasons recorded by the AO aforesaid, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-s. (1), no notice shall be issued under s. 148 by an AO, who is below the rank of Jt. CIT, after the expiry of four years from the end of the relevant assessment year, unless the Jt. CIT is satisfied, on the reasons recorded by such AO, that it is a fit case for the issue of such notice.

*Explanation* : For the removal of doubts, it is hereby declared that the Jt. CIT, the CIT or the Chief CIT, as the case may be, being satisfied on the reasons recorded by the AO about fitness of a case for the issue of notice under s. 148, need not issue such notice himself."

Sec. 149 deals as quoted above with regard to time-limit for notice. Sec. 150 deals with regard to provision for cases where assessment is in pursuance of an order on appeal. In our considered view there is no bar for issuing notice under s. 148 by the AO on the direction of the first appellate authority. At the same time, reassessment proceeding must be based on the belief of the AO and not of the CIT or appellate authority or that of the Tribunal as had been meant and interpreted from a perusal of s. 147 of the IT Act. The direction of higher authority should not be interpreted as a blanket direction by the AO. But that should be accompanied by the direct satisfaction of the AO with regard to the escapement of income. The appellate authorities or higher authorities cannot interfere on this power of the AO. It means the direction of the higher authorities and that of the appellate authorities must be acted upon by the AO with utter satisfaction. Taking initiation of reassessment proceeding without satisfaction of the AO, simply on the

basis of the blanket direction, will not justify the action of initiation of reopening proceeding. In this particular case as has been rightly pointed out by the learned Authorised Representative from p. 13 of the paper book filed, the AO has simply acted upon, i.e., initiated reopening proceeding on the basis of the direction of the CIT(A) and has totally ignored his part of the job i.e., his satisfaction, as is evident from p. 13 of the paper book filed by the learned counsel which is quoted below for better appraisal of facts :

"Assessee filed the return of income of Rs. 39,720 on 25th Jan., 1993. Assessment under s. 143(3) was completed on a total income of Rs. 15,55,579 on 29th March, 1996 making addition of Rs. 15,15,859.

The order under s. 143(3) was contested before CIT(A) who cancelled the order of the AO and directed as under :

'It is held that assessment proceedings are bad in law and hence cancelled. The AO should take remedial action under s. 147 or any other provisions of the Act to tax the income escaping assessment.'

Accordingly notice under s. 148 of the IT Act, 1961 was issued and sent by RPAD on 27th March, 1998, but assessee denied about the receipt of notice vide his letter dt. 12th Jan., 1999.

Considering the legal aspect at the initial stage and considering the large amount of income to be taxed, an approval under s. 147 may kindly be granted.

Sd/-

Asstt. CIT,

Circle-1(3), Nagpur."

**10.** Direction of the higher authority including that of the CIT(A) will not confer power to assume jurisdiction to the AO to initiate reassessment proceeding. With this considered view, on a total in-depth study of the case laws and considering the rival submissions, we allow the assessee's appeal and cancel the order of the CIT(A). Before parting with the order it is to be pointed out that the notice issued under s. 143(2) was also barred by time in this case and since the root of the matter had been dealt at length as above, we did not feel it proper to again deal with ground No. 5 in detail. Howsoever it is treated to have been considered and decided in favour of the assessee.

**11.** In the result, the assessee's appeal is allowed.

Even the co-ordinate bench of Kolkata vide dealing with the appeal of the revenue in the case of ITO Vs. Sri Biswajit Chatterjee ITA no. 565/Kol/2023 has also held that “ *CIT(A) has not power under the provision of law for giving any direction to AO for re-opening of assessment*”. Respectfully following the finding as discussed herein above we are of the considered view that Id. CIT(A) will not confer power to assume jurisdiction to the AO to initiate reassessment proceeding. Even otherwise the apex court has also while dealing with the provision of section 147/148 of the Act in the case of Parashuram Pottery Works Co. Ltd Vs ITO [ 1977] 106 ITR 1 held that;

“According to section 148 of the Act of 1961, before making the assessment, reassessment or recomputation under section 147, the Income-tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 139; and the provisions of the Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section. The Income-tax Officer has also, before issuing such notice, to record his reasons for doing so. Section 149 prescribes the time limit for the notice. The time limit in a case not falling under clause (ii) of sub-section (1) of section 149, with which we are not concerned, shall be eight years from the end of the relevant assessment year. Incases falling under clause (b) of section 147, however, the time limit for the notice is four years from the end of the relevant assessment year. Clause (a) of section 147 of the Act of 1961 corresponds to clause (a) of sub-section (1) of section 34 of the Act of 1922. The language of clause (a) of section 147 read with sections 148 and 149 of the Act of 1961 as also the corresponding provisions of the Act of 1922 makes it plain that two conditions have to be satisfied before the Income-tax Officer acquires jurisdiction to issue notice under section 148 in respect of an assessment beyond the period of four years but within a period of eight years from the end of the relevant year, viz., (i) the Income-tax Officer must have reason to believe that income chargeable to tax has escaped assessment, and (ii) he must have reason to believe that such income has escaped assessment by reason of the omission or failure on the part of the assessee (a) to make a return under section 139 for the assessment year to the Income-tax Officer, or (b) to disclose fully and truly material facts necessary for his assessment for that year. Both these conditions

must co-exist to confer jurisdiction on the Income-tax Officer. It is also imperative for the Income-tax Officer to record his reasons before initiating proceedings as required by section 148(2). Another requirement is that before notice is issued after the expiry of four years from the end of the relevant assessment years, the Commissioner should be satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice. The duty which is cast upon the assessee is to make a true and full disclosure of the primary facts at the time of the original assessment. Production before the Income-tax Officer of the account books or other evidence from which material evidence could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure contemplated by law. The duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts. Once he has done that his duty ends. It is for the Income-tax Officer to draw the correct inference from the primary facts. It is no responsibility of the assessee to advise the Income-tax Officer with regard to the inference which he should draw from the primary facts. If an Income-tax Officer draws an inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not justify initiation of action for reopening assessments: See *Income-tax Officer v. Lakhmani Mewal Das* [\[1976\] 103 ITR 437 \(SC\)](#).

The words "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year" postulate a duty on the assessee to disclose fully and truly all material facts necessary for his assessment. What facts are material and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority has to draw inference as regards certain other facts; and ultimately from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable: See *Calcutta Discount Co. v. Income-tax Officer* [\[1961\] 41 ITR 191, 201 \(SC\)](#). As further observed in that case:

**"Does the duty, however, extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative,** Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else—far less the assessee—to tell the assessing authority what inferences, whether of facts or law, should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences—whether of facts or law—he would draw from the primary facts."

Keeping in view the principles enunciated above, we may deal with the contention advanced on behalf of the appellant that the present is not a case in which action could be taken under section 147(a) of the Act of 1961. This contention has been controverted by the learned counsel for the respondent who has canvassed for the correctness of the view taken by the High Court in the judgment under appeal.

It would appear from what has been discussed above that one of the essential requisites for proceeding under clause (a) of section 147 of the Act of 1961 is that the income chargeable to tax should escape assessment because of the omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. The present is not a case where the assessee had omitted or failed to file the return. Question then arises as to what has been omission or failure on the part of the assessee to make a full and true disclosure. There is nothing before us to show that in the return filed by the assessee-appellant the particulars given were not correct. Form C under rule 19 of the Indian Income-tax Rules, 1922, at the relevant time gives the form of return which had to be filed by the companies. Part V of that form deals with depreciation. The said part requires a number of columns to be filled in by the assessee. It has not been suggested that any of the information furnished or any of the particulars given in those columns by the appellant-company were factually incorrect. Nor is it the case of the revenue that the appellant failed to furnish the particulars required to be inserted in those columns. Indeed, the copy of the return has not been filed and consequently no argument on that score could be or has been addressed before us. Part V of the form no doubt requires the assessee to state the written down value in column No. (2). Such written down value had to be specified without taking into account the initial depreciation because such depreciation in terms of clause (vi) of section 10(2) of the Act of 1922 could not be deducted in determining the written down value for the purpose of that clause. The case of the appellant is that in determining the amount of depreciation at the time of the original assessment for the two assessment years in question, the Income-tax Officer relied upon the written down value of the various capital assets as obtaining in the records of the department. This stand has not been controverted. When an Income-tax Officer relies upon his own records for determining the amount of depreciation and makes a mistake in doing so, we fail to understand as to how responsibility for that mistake can be ascribed to an omission or failure on the part of the assessee. It also cannot be disputed that initial depreciation in respect of items of capital assets in the shape of new machinery, plant and building installed or erected after the 31st day of March, 1945, and before the 1st day of April, 1956, is normally claimed and allowed. It seems that the Income-tax Officer in working the figures of depreciation for certain items of capital assets lost sight of the fact that the aggregate of the depreciation, including the initial depreciation, allowed under different heads could not exceed the original cost to the assessee of those items of capital assets. The appellant cannot be held liable because of this remissness on the part of the Income-tax Officer in not applying the law contained in clause (c) of the proviso to section 10(2)(vi) of the Act of 1922. As observed by Shah J. in *Commissioner of Income-tax v. Bhanji Lavji* [\[1971\] 79 ITR 582 \(SC\)](#),

section 34(1)(a) of the Act of 1922 (corresponding to section 147(a) of the Act of 1961) does not cast a duty upon the assessee to instruct the Income-tax Officer on questions of law.

It may also be mentioned that so far as the assessment for the assessment year 1957-58 is concerned, the assessment order was once rectified and at another time revised. Despite such rectification and revision, the above mistake in the calculation of the depreciation remained undetected. It was only in October, 1965, that the Income-tax Officer realised that higher amount of depreciation had been allowed to the appellant than was actually due. A letter to that effect was consequently sent to the assessee on October 5, 1965. It was, however, nowhere mentioned in that letter that the higher amount of depreciation had been allowed and the income as such had escaped assessment because of the omission or failure on the part of the assessee to disclose truly and fully all material facts. Reference to such omission or failure came only in a subsequent communication. The submission made on behalf of the appellant is not without force that reference was made to the assessee's omission or failure to disclose truly and fully all material facts because it was realised that after the expiry of four years from the end of the relevant assessment year, no action for reopening of assessment could be taken on the basis of detection of mistake alone unless there was also an allegation that the income had escaped assessment because of the omission or failure of the appellant to disclose fully and truly material facts. Looking to all the facts, we are of the opinion that it cannot be said that the excess depreciation was allowed to the appellant-company and its income as such escaped assessment because of its omission or failure to disclose fully and truly all material facts.

It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realising that price should familiarise themselves with the relevant provisions and become well-versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, ***we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage*** and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. So far as the income-tax assessment orders are concerned, they cannot be reopened on the score of income escaping assessment under section 147 of the Act of 1961 after the expiry of four years from the end of the assessment year unless there be omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. As already mentioned, this cannot be said in the present case. The appeal is consequently allowed, the judgment of the High Court is set aside and the impugned notices are quashed."

Thus, what is not permitted directly cannot be permitted indirectly and therefore, the Id. CIT(A) cannot broaden the scope of the appeal decision to “advise” or “compel” another round of litigation again and again and as held by the apex court that we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage. Thus, looking to the provision of the law, decided case and facts of the present case we are of the considered view that Id. CIT(A) was tasked with deciding whether the addition under Section 153A was sustainable given the specific facts and circumstance of the case. Ld. CIT(A) rightfully found it was not (for want of incriminating material) and deleted it. At that point, Id. CIT(A)’s authority ended. Ld. CIT(A) should have simply allowed the appeal on that issue. By proceeding to direct the AO to consider re-opening under Section 147, the Id. CIT(A) acted ultra vires and thereby we allow the cross objection of the assessee.

In the result, the appeals of the revenue in ITA No. 301/JP/2025 stands dismissed and the cross objection in CO No. 02/JP/2025 of the assessee is allowed.

14. The facts of the case in ITA No. 288 to 303/JP/2025 and CO Nos. 03 to 17/JP/2025 are similar to the case in ITA No. 301/JP/2025 and CO No. 02/JP/2025 and we have heard both the parties and persuaded the materials available on record. The bench noticed that the issues raised by the revenue and the assessee in this appeal No. ITA No. 288 to 303/JP/2025 and CO Nos. 03 to 17/JP/2025 are equally similar on set of facts and grounds as that of with the appeal of the revenue in ITA No. 301/JP/2025 and cross objection to the assessee in CO No. 02/JP/2025. Therefore, it is not imperative to repeat the facts and various grounds raised by the revenue and arguments of both the parties. Hence, the bench feels that the decision taken by us in ITA No. 301/JP/2025 and CO No. 02/JP/2025 for Assessment Year 2016-17 shall apply mutatis mutandis in ITA Nos. 288 to 303/JP/2025 and CO Nos. 03 to 17/JP/2025 for the Assessment Years 2014-15 & 2016-17.

In the result, the appeals of the revenue stands dismissed, and the cross objection of the assessee are allowed.

Order pronounced in the open court on 08/07/2025.

Sd/-

( डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

( राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 08/07/2025

\*Ganesh Kumar, Sr. PS

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

1. The Appellant- DCIT, Central Circle-01, Jaipur
2. प्रत्यर्थी / The Respondent- Vaibhav Banka, Sikar  
Animesh Agarwal, Sikar  
Smt. Snehlata Agarwal, Sikar  
Priya Dewan, Sikar,  
Sh. Subhash Chandra Banka, Sikar  
Smt. Usha Banka, Sikar  
Vipul Banka, Sikar  
Trilok Dewan, Sikar  
Smt. Sarita Dewan, Sikar
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 288 to 303/JP/2025 & CO Nos. 02 to 17/JP/2025)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar