

| आयकर अपीलिय अधिकरण न्यायापीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
&
SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 3042/Mum/2025
Assessment Year: 2018-19

DCIT	Vs	Mahipatray V. Shah, HUF 23f, Akruti, Doongarshi Road Walkeshwar Mumbai - 400006 [PAN: AAFHM0519R]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

C.O. No. 140/Mum/2025
Assessment Year: 2018-19

Mahipatray V. Shah, HUF 23f, Akruti, Doongarshi Road Walkeshwar Mumbai - 400006 [PAN: AAFHM0519R]	Vs	DCIT
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Pavan Ved, A/R (appeared virtually)
Revenue by :	Shri Vivek Perampurna, CIT D/R

सुनवाई की तारीख/Date of Hearing : 28/07/2025
घोषणा की तारीख /Date of Pronouncement: 30/07/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 3042/Mum/2025 & C.O. No. 140/Mum/2025, are appeals and the cross objection by the assessee preferred against the

order of Id. CIT(A)-48, Mumbai dated 28/02/2025 pertaining to AY 2018-19.

2. The grievance of the revenue reads as under:-

"i. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 100,99,62,585/- made under section 68 of the Income Tax Act on account of bogus Long-Term Capital Gains, without properly considering the evidence indicating price manipulation of shares, which facilitated the conversion of unaccounted money into tax-free capital gains.

ii. Whether on the facts and circumstances of the case and in law, the Ld CIT(A) has failed to adequately appreciate the incriminating material discovered during the search and seizure action conducted on the Hubtown Group, which clearly indicated that the share prices of Hubtown Ltd. were manipulated by entities involved in the facilitation of bogus Long-Term Capital Gains entries.

iii. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,02,63,082/- made under Section 69C for unexplained commission expenses, without appreciating that such payments were made Jar obtaining accommodation entries in the form of bogus Long-Term Capital Gains rather than legitimate brokerage service."

3. Grounds of cross-objections raised by the assessee are as under:-

"1. The whole assessment is invalid and liable to be annulled as no notice u/s 143(2) of the Income Tax Act, 1961 (the Act') was issued as admitted by LAO himself in para 4 page 1 of assessment order.

2. The whole assessment is invalid on the ground that neither the AO of searched person, nor the AO of assessee had recorded any satisfaction before issue of notice u/s 153C of the Act as observed by Ld. CIT(A) himself in para 6.3 page 55 and para 6.3.5 para 69 of appeal order.

3. Assessment u/s 153C is invalid as it was a completed assessment and there was no incriminating material for this AY as per assessment order itself.

4. The whole assessment is invalid and liable to be annulled as approval given by Ld. JCIT u/s 153D of Act was without application of mind for various reasons and also on the ground that it does not bear mandatory DIN as per assessment order itself.

5. The assessment order is u/s 144 of the Act which is invalid as there was no non-compliance of any notice by LAO justifying for invoking section 144 of the Act.

6. *It was observed in the assessment order that the assessee was searched. Hence either assessment u/s 1530 of the Act is invalid as it should have been u/s 153A of the Act; or in the alternative, approval u/s 153D of the Act is invalid.*

7. *The respondent reserves the right to add amend or alter or all the ground of cross objection as above."*

4. Since the cross-objection goes to the root of the matter, we decided to adjudicate it first. The cross objection is barred by limitation. The assessee has requested for condonation of delay. The reasons for delay are mentioned in the application supported by an affidavit on record. The delay is condoned.

5. Briefly stated the facts of the case are that a search and seizure action u/s 132 of the Act was conducted in the Hubtown Group of cases on 30/07/2019 and the family of the assessee are the major promoters of Hubtown Group. The assessee had electronically filed his return of income on 28/08/2018 declaring total income at ₹21,52,740/-. Subsequent to the search operation, notice u/s 153C of the Act was issued to the assessee on 02/09/2021. Though at paragraph 4 of his order, the AO has mentioned that no return pursuant to notice u/s 153C of the Act is available on ITBA portal, but at the time of hearing the assessee has displayed the screenshot of the return filed pursuant to the notice u/s 153C of the Act. Therefore, to this extent the assessment order is factually incorrect and since the AO proceeded with the assumption that no return was filed, no notice u/s 143(2) of the Act was issued and served upon the assessee and the assessment order was framed u/s 144 of the Act.

6. Be that as it may, a perusal of the orders of the authorities below show that neither the AO of searched person nor the AO of the assessee

had recorded any satisfaction before issuing notice u/s 153C of the Act. This fact has also been accepted by the Id. CIT(A) in his order. Further the entire assessment is devoid of any incriminating material pertaining to the year under consideration.

7. The fact relating to no satisfaction, has been captured by the Id. CIT(A) at paragraph 6.3.5 of his order where he has mentioned that a remand report was called for to provide copy of satisfaction report along with copy of incriminating material but the same was not sent by the AO.

8. In the considered opinion of the Bench, recording of satisfaction is a statutory requirement before initiating proceedings against a third party u/s 153C of the Act. The AO must record a clear and specific satisfaction note. This is a jurisdictional requirement. If such satisfaction is not properly recorded any consequent assessment is rendered invalid and liable to be quashed. The satisfaction note should explicitly mention the relevant material found during the search, establish that it pertains to the assessee in question and specify the assessment year concerned. The satisfaction note forms the foundation for assuming jurisdiction u/s 153C of the Act. Thus, recording of satisfaction is not mere procedural formality but a substantive, mandatory and jurisdictional requirement before invoking Section 153C of the Act. As this mandatory requirement has not been complied by the AO, the assessment order is liable to be quashed. As the assessment order is quashed, we do not find it necessary to delve into the other issues. Accordingly, the cross objection

filed by the assessee is allowed and the appeal by the revenue is dismissed.

9. In the result, the cross objection filed by the assessee is allowed and the appeal by the revenue is dismissed.

Order pronounced in the Court on 30th July, 2025 at Mumbai.

Sd/-

**(SAKTIJIT DEY)
VICE PRESIDENT**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated 30/07/2025

S.S.P.

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

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

आदेशानुसार/ BY ORDER
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai