

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री गगन गोयल लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI GAGAN GOYAL, AM

आयकर अपील सं./ITA No. 959/JPR/2025
निर्धारण वर्ष/Assessment Year : 2011-12

The ACIT Central Circle-4 Jaipur	बनाम Vs.	Shri Damodar Prasad Parwal 24, Sangram Colony, C-Scheme Jaipur – 302 001
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ACLPP 3583 G		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

राजस्व की ओरसे/Revenue by: Mrs. Anita Rinesh, JCIT-DR
निर्धारिती की ओरसे/Assesseeby : Shri Rohan Sogani, CA (Thru:VC)

सुनवाई की तारीख/Date of Hearing : 20/08/2025
उदघोषणा की तारीख/Date of Pronouncement: 23/09/2025

आदेश/ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal filed by the Revenue is directed against the order of Id. CIT(A), Jaipur-5 dated 08-04-2025 for the assessment year 2011-12 wherein the Revenue has raised the following grounds of appeal.

“(i) Whether the Learned CIT(A) erred in quashing the assessment proceedings based solely on the High Court judgment in DBCWP 18363/2019, without considering the unique facts and circumstances of the present case.

(ii) Whether on the facts and circumstances of the case and in law, the Hon. CIT (A) is justified in holding that notice u/s 148 is not sustainable legally relying upon the order of Hon'ble Rajasthan High Court's order dated 19.03.2024 in D.B. Civil Writ Petition No. 18363/2019 and several other linked petitions wherein wrongly held that once there is incriminating material seized or requisitioned belonging or relatable to the person other than on whom search was conducted, Section 153C is to be resorted to without giving any finding that issuance of notice under section 148 was incorrect. Thus, the CIT (A) is not justified in quashing notice issued u/s 148 of the Act.

(iii) Whether the Learned CIT(A) erred in overturning the issuance of a notice under Section 148 of the Income Tax Act, 1961, despite the precedent set by the Hon. Supreme Court of India in Deputy Commissioner of Income Tax (Central) Circle 1(2) V/s. M/s. M.R. Shah Logistics Private Limited (2022) 14 SCC 101. In light of the Supreme Court's ruling in the aforementioned case, the Learned CIT (A) should have upheld the issuance of the notice under Section 148, unless there were compelling reasons to deviate from the established legal precedent.

2.1 Apropos to grounds of appeal of the Revenue, it is noticed that the ld. CIT(A) has allowed the appeal of the assessee by observing as under:-

‘‘4.2 Conclusion:

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:-

4.2.1 A search & seizure action u/s132 of the Income Tax Act. 1961 was carried out in the case of Ramesh Manihar Group on 07.01.2016. The information revealed that the group was indulged in cash loan finance on large scale. During the course of search voluminous data

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comprising of excel sheets in 18 pen-drives seized from the main office of the Ramesh Manihar Group at 303, Ratna Sagar, MSB Kaa Rasta, Johan Bazar, Jaipur, which consisted details of cash loans financed by the Ramesh Marihar Group. The information further revealed that the persons, of the Ramesh Manihar Group, being Shri Ramesh Chand Maheshwan and Shri Manmohan Krishan Baga were engaged as finance brokers for arranging cash loans between various borrowers and lenders which were not reflected in the books of accounts and that the brokerage received for such unrecorded cash transactions was also not offered for taxation by the group. As per the information, investigation wing carried out an investigation and names of lender were identified out of the names which were recorded in the said data and it was established that the appellant was associated with the above group and had paid cash loans from undisclosed Income and received interest income on these loans.

4.2.2 The information in respect of the appellant was forwarded by DCIT, Central Circle-3, Jaipur to the jurisdictional AO. On receiving the information, AO has recorded reasons for escaped assessment within the meaning of section 147 of the I.T.Act, 1961 for issuance of notice u/s 148 of the IT Act 1961 and notice u/s 148 of the IT Act 1961 was issued to the assessee after taking the necessary approval of the competent authority.

4.2.3 Considering the facts of the case, the AO had passed an order u/s 143(3)/147 of the I.T. Act, 1961 vide order dated 24-12-2018 at the total income of Rs.5,77,11,705/- considering the undisclosed cash loans of Rs.5,00,00,000/- and interest earned of Rs.17,33,425/- on these loans.

4.2.4 During the course of appellate proceedings the appellant has objected the Validity of notice issued u/s 148 of the I.T.Act, 1961 and the order passed u/s 147 of the IT Act, 1961 and making additions on account of alleged cash loans and interest on cash loans. Appellant in his reply has also raised a question on issuance of notice under Section 148 of the I.T.Act, 1961 where the case was re-opened on the basis of seized material during the search conducted on Ramesh Manihar Group and submitted that the proceedings should have to be initiated under Section 153C of the IT. Act, 1961.

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4.2.5 In the above decision dated 19.03.2024 in D.B. Civil Writ Petition No. 18363/2019 and several other linked petitions, the Hon'ble High Court, Rajasthan has quashed the notices issued under Section 148 and the resultant assessment orders.

4.2.6 The findings of Hon'ble High Court, Rajasthan in the above order dated 19.03.2024 in D.B. Civil Writ Petition No. 18363/2019 and several other linked petitions are as under

'23. The reasons supplied in case in hand for initiation of proceedings under Section 147/148 based on the incriminating material and documents including Pen Drives seized during the search carried out of the Manihar Group and the statements recorded during proceedings. From the information received the AO noticed that the loan advanced and interest earned thereon were unaccounted. In other words the basis for initiation of Section 148 proceedings is the material seized relating to or belonging to the petitioner, during the search conducted of Manihar Group.

2.4. In the case where search or requisition is made, the AO under Section 153A mandatorily is required to issue notices to the assessee for filing of income tax return for the relevant preceding years. The AO assumes jurisdiction to assess/reassess total income by passing separate order for each assessment.

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

26. Special procedure in prescribed under Section 153A to 153D for assessment in cases of search and requisition. There cannot be a quibble with the proposition that the special provision shall prevail over the general provision. To say a differently the provisions of Section 153A to 153D have prevalence over the regular provisions for assessment or reassessment under Section 143 & 147/148

27. Section 153A and 153D starts with non-obstante clause. The procedure for assessment / reassessment in Section 153A, 153C in cases of search or requisition has an overriding effect to the regular provisions for assessment or reassessment under Sections 139 147, 148, 149, 151 & 153

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

29. *The Department has not set up a case that for initiating proceedings under Section 148 had material other than the material seized during the search of Manihar Group. The contention was that though the material with regard to unaccounted loan advanced by the petitioner was received, the earning of interest on unaccounted loan was derivation of the AO from the material received. The submission is that the derived conclusion cannot be acted upon under Section 153C. The submission lacks merit and shall defeat the concept of single assessment order for each of relevant preceding years for assessing 'total income' in case of incriminating material found during search or requisition.*

30. *The argument that by enactment of Section 153A to 153D has not eclipsed Section 148 does not enhance the case of respondent to initiate the proceedings under Section 148. On fulfillment of two conditions for invoking Section 153C the proceeding in accordance with Section 153A are to be initiated. The operating field of and Section 153A to 153D and Section 148 are different Applicability of Section 153C in cases where the seized material related to or belonged to person other than on whom search is conducted or requisition made does not render Section 148 Section otiose. Section 148 shall continue to apply to the regular proceedings and also in cases where no Incriminating material is seized during the search or requisition.*

31. *The other aspect of the matter is that under Section 153A and 153C, 'the total income' is to be seized. The total income includes returned income (if any), undisclosed income unearthed during the search or requisitioning and information possessed from the other sources. For Illustration:- An assessee had returned income of Rs. 100, undisclosed income of Rs.200 is unearthed during search and there is information from annual information statement of non-disclosure of income of Rs. 150/-. The AO under Section 153A and 153C shall pass order dealing with income of Rs. 100+Rs. 200+Rs. 150, the total income being Rs. 450/- in cases where there is no unearthing of undisclosed income of Rs 200/- the department can read to proceeding under Section 147/148*

32. *The argument that Section 153C can be invoked in case there is incriminating material for all the relevant preceding years and otherwise Section 148 is to be resorted to, is misplaced. On satisfaction of the twin condition for proceedings under Section 153C, the AO has to proceed in accordance with Section 153A. Notice is to be issued for filing of the returns for relevant preceding years and thereupon proceed to assess or reassess the total income. It is not obligatory on the AO to make assessment for all the years, the earlier orders passed may be accepted. But once there is incriminating material is seized or requisitioned*

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

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

4.2.7 In the above order Hon'ble High Court, Rajasthan has quashed the notices issued under Section 148 and the resultant assessment orders. As per the above judgement, in cases of the person other than on whom search was conducted but material belonging or relating such person was seized or requisition, the AO has to proceed under Section 153C of the Act instead of section 147/148 of the Act, as the proceedings in the relevant cases were initiated based on the incriminating material and documents including Pen Drives seized during the search carried out of in the case of Ramesh Manihar Group and the statements recorded during proceedings. Further, as per the order of the Hon'ble High Court, Rajasthan, applicability of Section 153C in cases where the seized material related to or belonged to person other than on whom search is conducted or requisition made does not render Section 148 otiose. Section 148 shall continue to apply to the regular proceedings and also in cases where no incriminating material is seized during the search or requisition.

4.2.8 As per decision of Hon'ble High Court, Rajasthan in the above writ petition, it is clear that the notice issued u/s 148 of the IT Act, 1961 and the assessment order in the cases which were reopened on the basis of incriminating documents seized during the course of search in the case of Ramesh Manihar Group are quashed

4.2.9 Considering the facts of the present case, it is noticed that the case of the appellant was also reopened u/s 148 of the IT Act 1961 by the Id. AO on the basis of information of advancing of unaccounted cash loans by the appellant through the broker Sh. Ramesh Chand Maheshwari and on the basis of seized material during the course of search proceedings in the Ramesh Manihar Group

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4.2.10 In the light of the above decision, as the facts of the present case are similar, hence the above judgement of Hon'ble High Court is squarely applicable in the present case of the appellant.

4.2.11 Accordingly, the order passed by the AO u/s 147 of the IT Act 1961 has become ineffective as on date as the Hon'ble High Court Rajasthan has quashed the notice u/s 148 of the I.T.Act, 1961 and impugned orders in the cases which were re-opened on the basis of seized material during the course of search proceedings in the Ramesh Manihar Group.

4.2.12 in these circumstances, the assessment order u/s 147 of the IT Act 1961 under challenge in present appeal does not survive, the assessment order passed by the AO has become infructuous. Hence the ground of appeal challenging the legality of notice issued u/s 148 of the Act is hereby allowed.

In view of the above discussion and the facts of the case, the argument of the appellant is acceptable. Thus, the Additional Ground of Appeal and Grounds of Appeal No. 1 & 2 are hereby allowed.’’

2.2 During the course of hearing, the ld. DR objected to the order of the ld. CIT(A) (supra) and also relied upon the assessment order.

2.3 During the course of hearing, the ld. AR of the assessee relied upon the order of the ld. CIT(A) and submitted that similar issue had also been decided by the ITAT, Jaipur Bench in the case of Shri Gordhar Das Maheshwari for the assessment year 2013-14.

2.4 We have heard both the parties and perused the materials available on record. In this case, the Bench noticed that similar type of issued had been decided by the Bench vide order dated 02-07-2025 in the case of JCIT (OSD), Central

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for the assessment year 2013-14. The relevant findings as made by the Bench relating to Shri Gordhan Das Maheshwari appeal (and other appeals also) is reproduced as under:-

“9. While referring to the above said decision by our own Hon’ble High Court, Learned CIT(A) observed that in the case of a person, other than on whom search was conducted, the material belonging or relating to such person was seized or requisitioned, the AO had to proceed u/s 153C of the Act, instead of section 147/148 of the Act, the reason being that the proceedings were initiated on the basis of incriminating material in the form of documents including pen-drives seized during search at the premises of the group, named therein, as well as statements recorded during said proceedings.

10. It may be mentioned here that today when all these appeals have been taken up for hearing, it has been brought to our notice that notices u/s 153C of the Act have been issued by the department to the above named assessee(s), in respect of the above said respective assessment years, requiring them to prepare true and correct return for their total income of the said assessment years.

Ld. DR for the department admits issuance of said notices u/s 153C of the Act to the assesses.

11. In the given situation, from the factum of issuance of notices under section 153 C of the Act, it can safely be said that the department has given effect to the abovesaid decision by our own Hon’ble High Court, even though the department is stated to have challenged said decision before Hon’ble Apex Court.

Result

12. As a result, we find that all these 7 appeals filed by the department have become infructuous. Accordingly, same are hereby dismissed. "

Since the ITAT Jaipur Bench in the case of JCIT (OSD), Central Circle -4, Jaipur vs Shri Gordhan Das Maheshwari (supra) has dismissed the appeal of the Department, therefore, the same analogy shall apply mutatis mutandis in the case of the assessee for the assessment year 2011-12. Thus the Appeal of the Department is dismissed.

3.0 In the result, the appeal of the Revenue is dismissed as indicated hereinabove.

Order pronounced in the open court on 23 /09/2025

Sd/-

(गगन गोयल)

(Gagan Goyal)

लेखा सदस्य / Accountant Member

Sd/-

(डा० एस. सीतालक्ष्मी)

(Dr. S. Seethalakshmi)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 23 /09/2025

*Mishra

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

1. The Appellant- The ACIT, Central Circle-4, Jaipur
2. प्रत्यर्थी / The Respondent- Shri Damodar Prasad Parwal, Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA Nos. 959/JPR/2025)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar