

**THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER &
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER**

**ITA Nos.1819 to 1821/Del/2025
(Assessment Years: 2017-18 to 2019-20)**

Shri Ashok Kumar Bansal 46, Siris Road, DLF Phase-III, Gurgaon-122002 Haryana	Vs.	Pr.CIT (Central) Delhi-1 New Delhi
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AALPB4816E		
Appellant	..	Respondent

Appellant by :	Sh. Gautam Jain, Adv, Sh. Lalit Mohan, CA Sh. Ankit Kumr Adv. Sh. Parth Singhal, Adv.
Respondent by :	Sh. Mahesh Kumar, CIT, DR

Date of Hearing	13.08.2025
Date of Pronouncement	26.09.2025

ORDER

PER MADHUMITA ROY, JM:

These bunch of appeals filed by the assessee are directed against the common order dated 03.02.2025 passed by the Ld. PCIT (Central) Delhi-1 under Section 263 of the Income Tax Act, 1961 (hereinafter

referred to as ‘the Act’) arising out of the common Assessment Orders dated 31.05.2022 passed by the DCIT,CC-6, Delhi, for Assessment Years 2017-18 to 2019-20 respectively. Since, in all the appeals identical facts are involved and common grounds of appeal raised before us, these are heard analogously and are being disposed of by a common order.

ITA No. 1819/Del/2025 (AY: 2017-18)

2. The brief facts leading to the case is this that a search and seizure operation was carried out by the DDIT, Investigation Wing, Unit-4(2) under Section 132 of the Act in Khemka Group of cases on 14.01.2021 which was concluded on 17.01.2021 wherein residential premises of the appellant lying and situated at C-12/19, DLF Phase-1, Gurugram as well as vaults/bank lockers maintained by the appellant were also covered and searched upon. Satisfaction under Section 153C of the Act was recorded in the case of the assessee on 27.12.2021 by the Ld. AO of the searched person and on 31.12.2021 by the jurisdictional Assessing Officer and proceeding under Section 153C, thereafter, was initiated in the case of the assessee upon prior approval from the Ld. Addl. CIT, Central Range-2, New Delhi. During the course of search of Khemka Group documents/assets/money relating to and/or pertaining to the appellant found and seized and notice therefore, under Section 153C was issued on 31.12.2021, in response thereto the assessee filed its return of income on 18.01.2022 declaring income at Rs.6,75,980/-. Notices, thereafter, under Section 142(1) dated 13.05.2022 and 23.05.2022 along with detailed questionnaire were issued and served upon the assessee directing furnishing of details/documents mentioned therein against which the assessee made compliance.

3. The main issue under consideration and assessment made under Section 153C r.w.s 143(3) of the Act was long term capital gain on sale of loose diamonds being capital assets. In fact, such assessment was finalized upon making addition of Rs.21,03,426/- on account of undisclosed long term capital gains on sale of loose diamonds. Subsequently, against the said order passed by the Ld. AO making above addition, appeal was preferred by the assessee which is still pending before the Ld. CIT(A). In fact the appeal preferred before the Ld. CIT(A) against the order passed by the Ld. AO under Section 153C r.w.s 143(3) was filed on 27.06.2022 proof whereof are attached to the paper book at pages 82 to 92 before us and further that a written submission was duly filed by the appellant before the Ld. CIT(A) on 07.07.2023 as appearing at pages 93 to 110 of the said paper book. During the pendency of the appeal before the appellate forum a show cause notice for initiating revisionary proceeding under Section 263 of the Act against the assessment order dated 31.05.2022 was issued by the Ld. PCIT(Central) Delhi - 1 to the assessee on 12.01.2023 holding the assessment order dated 31.05.2022 erroneous and prejudicial to the interest of revenue, contents whereof is as follows:

“2. On perusal of the assessment records, it has been seen that during the course of search conducted at your premises situated at C-12/19, DLF Phase-1, Gurugram, various documents and loose papers were found and seized. On perusal of the seized documents it is seen that you have made following receipts and payments in cash.

Sr. No.	Nature of Receipt	Amount
1.	Cash from various persons	2,44,06,579
2.	The difference of the consideration as per the said ATS and the sale deed of property situated at B-162, Sushant Lok-III, Gurugram	2,08,50,000

	Total Receipts	4,52,56,579
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Sr. No.	Nature of payment	Amount
1	Construction expenses	2,24,94,359
2.	Personal Drawings	96,56,000
3.	Investment in D-33	40,00,000
4.	Expenditure incurred by Mr. Ramchandra (Contractor) on your behalf	2,17,62,325
5.	Cash paid for purchase of property situated at D-33, Sushant Lok-II, Gurugram	80,00,000
6	Part Brokerage paid to Mr. Rakesh Arora for facilitating sale of 3 & 4 th Floors of B-162 property	11,00,000
	Total payments	6,70,12,684

3. Also, the course of the above said search operation at your residence and lockers, following cash was found and seized.

Sr. No.	Premises/Locker	Name of the person from whose possession assets were found	Item found	Found value in Rs.	Seized Value in Rs.
1	C-12/19, DLF, Phase-1, Gurugram	Ashok Bansal	Cash	44,39,000	43,00,000

4. During the assessment proceedings in explanation regarding the above cash receipts and payments, you have submitted that these cash payments were made from sale of diamonds. You have submitted that you liquidated your business assets and consolidated them and purchased certain loose diamonds to the extent of 1655.53 cts having value of Rs. 2,49,00,849/- during F.Y. 2000-01. You are further submitted that you sold these diamonds for following sale consideration.

	A.Y. 2017-18	AY 2018-19	AY 2019-20	Total
Cash generated from sale of loose diamonds in cash	34,03,566	3,76,16,276	1,20,26,993	5,30,46,835

5. During the assessment proceedings you failed to provide following details/documents

- i. Proof of purchase of diamonds during F.Y. 2000-01.
- ii. The diamonds were in existence and you were in the possession of these diamonds for almost last 20 years.
- iii. Wealth tax return was filed by the assessee disclosing these diamonds.
- iv. Proof of sale of these diamonds for total amount of Rs. 5,30,46,835.
- v. Details of parties to whom these diamonds were sold.

6. The AO accepted the submission of the assessee regarding the above receipts and payments in cash without making any enquiry regarding genuineness of the above claim of the assessee.

7. In view of above facts, I am in opinion that Assessment order dated 31.05.2022 in your case for A.Y. 2017-18 is erroneous in so far as it is prejudicial to the interests of the revenue. Therefore, you are required to explain as to why proceedings under section 263 of the Income-tax Act, should not be initiated for revision of Assessment Order for A.Y. 2017-18. Further, you are required to show as to why cash expenditure and cash receipts discussed above should not be added as unexplained income.

8. You reply in this regard should reach this office by 19.01.2023 at 11:30 A.M. You may also personally or through AR attend to the hearing of the case. In case nothing is heard from you by 19.01.2023, then it will be presumed that you have nothing to say / submit in this matter and the matter will be decided on the basis of details available on record and merits of the issue, without any further opportunity to you.”

4. The assessee, thereafter, on 21.01.2023 duly replied against the said notice dated 12.01.2023 issued by the Ld. PCIT. Subsequent to this the assessee further replied by and under the representations dated 08.02.2023 and 10.12.2024 objecting initiation of the revisionary proceeding under Section 263 of the Act by the Ld. PCIT. However, on 03.02.2025 such revisionary proceeding was finalized by holding that the assessee failed to offer any satisfactory explanation regarding purchase and sale of diamonds amounting to Rs.34,03,566/- during the Financial

Year 2016-17. It was further alleged that the said amount has been credited in the cash flow statement prepared by the assessee for Assessment Year 2016-17 in order to justify the source of cash and other undisclosed investments found during the course of search. In the absence of any satisfactory explanation regarding the disputed amount of Rs.34,03,566/- credited in the cash flow statement of the assessee the same was found to be taxable in the hands of the assessee under Section 68 of the Act. Further that the Ld. AO was directed to recompute the total income and to issue notice of demand as the income to the tune of Rs.34,03,566/- has already been enhanced by the said order issued by the Ld. PCIT. Relevant to mention that the assessee is found to have replied elaborately on the issue itself by and under the two replies dated 08.02.2023 and 10.12.2024 appearing from pages 139 to 151 and 154 to 156 respectively in the paper book filed before us.

5. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee Mr. Gautam Jain submitted before us that no warrant of search in the name of the assessee was ever issued. The Ld. AR raised several grounds challenging the very jurisdiction of the Ld. PCIT in exercising the revisionary power under Section 263 of the Act. The order is made without satisfying the statutory preconditions envisaged in the Act and the same is therefore, without jurisdiction and thus, deserves to be quashed. The main thrust of the argument advanced by the Ld. AR against the impugned order issued under Section 263 of the Act is this that the Ld. PCIT failed to appreciate that once the Ld. AO upon examination of the facts on record and upon making all possible inquiries had accepted the claim of the appellant then such order of

assessment could not be regarded as erroneous inasmuch as prejudicial to the interest of revenue merely because the Ld. PCIT had a different opinion which even otherwise not been able to establish in any manner the assessment order was impossible or unsustainable in law. The jurisdiction exercised under Section 263 of the Act is otherwise too inapplicable on the factual matrix of the matter as it is neither the case of lack of inquiry or lack of investigation and therefore, invocation of the revisionary power under Section 263 of the Act is not in terms of the statutory provision. In this regard, he has drawn our attention to the procedure followed by the Ld. DCIT, Central Circle-6, Delhi from the very inception of issuance of notice under Section 153C(2), till conclusion of the reassessment proceeding; the notice under Section 143(2) of the Act dated 21.04.2022, notice under Section 142(1) of the Act dated 13.05.2022 issued upon the assessee, the reply thereto filed by the assessee the recording of satisfaction dated 27.12.2021 by the Ld. AO of the searched person and further the satisfaction recorded on 31.12.2021 by the Ld. AO of the assessee, the reply thereto filed by the assessee dated 27.05.2022, further approval obtained under Section 153D of the Act from the Addl. CIT Central Range-2 New Delhi dated 31.05.2022 and finally the assessment made under Section 153C r.w.s 143(3) dated 31.05.2022 being part of the paper book filed before us. He has further referred the corrigendum dated 01.06.2022 in respect of the order of assessment dated 31.05.2022 under Section 153C r.w.s 143(3) of the Act. In fact, all these were referred to justify the fact of sufficient enquiry having been conducted by the Ld. AO during the course of reassessment proceeding under Section 153C r.w.s 143(3) of the Act. It was further contended by him that evidences galore were duly placed during the course of assessment proceeding. It was submitted by the Ld. AR that

during the course of assessment proceeding the entire set of documents/proof in respect of purchase and sale of diamonds were furnished. The Ld. AO compared the sale of loose diamonds price with the price of gold. Doubting the cost of acquisition of such diamonds recomputed the long term capital gains after allowing benefit of indexation on such sale of loose diamonds at Rs.21,03,426/- on account of long term capital gains under Section 112 of the Act and addition made thereon in the hands of the assessee enhancing the income of the assessee by Rs.34,03,566/- under Section 68 of the Act.

6. Based on conjectures and surmises overlooking the evidences on record conclusion made by the Ld. PCIT that the sale on inherited loose diamonds by the appellant is neither supported by evidences nor verified by the Ld. AO holding the order passed by the Ld. PCIT under Section 153C r.w.s 143(3) of the Act erroneous and prejudicial to the interest of revenue does not and cannot arise. On the score alone the impugned revisionary order is liable to be quashed as was the main thrust of arguments made by Mr. Jain appearing for the appellant before us as the assessment order cannot be said to be an impact on lack of enquiry or lack of investigation made by the Ld. AO.

7. It is further argued that the assumption of jurisdiction under Section 263 of the Act by the Ld. PCIT is not permissible since the assessment order was passed upon due approval granted by the concerned authority under Section 153D of the Act. The order of assessment could not be validly revised under Section 263 of the Act and

thus, the impugned order is void-ab-initio and liable to be quashed. In this regard, he has relied upon the judgment passed by the ITAT Delhi Bench in ITA No. 1503/Del/2024 dated 23.07.2025 in the matter of Aditya Gupta Vs. PCIT. Once, the ADIT has applied his mind to the facts of the case the assessment order cannot be revised or set aside under Section 263 of the Act.

8. It was further argued that the source of cash found in the course of search is the issue which is an integral part of the computation of capital gains arising from the sale of loose diamonds and the said issue since the subject matter before the Ld. CIT(A), decision on the said issue is squarely out of the jurisdiction that the Ld. PCIT in terms of the mandatory provision of Clause C of Explanation 1 to Section 263 of the Act. In this regard, he has relied upon the judgment passed by the Bombay Bench in the case of CIT Vs. Slum Rehabilitation Authority.

9. Argument was also advanced by the Ld. Counsel for the assessee that the satisfaction recorded in all the years is a common one and therefore, assessment under Section 153C does not survive at all in view of the judgment passed by the Hon'ble Apex Court in the case of CIT-III, Pune Vs. Sinhgad Technical Education Society, in Civil Appeal No. 11080 of 2017 & Ors. As the root of the matter under Section 263 being 153C r.w.s 143(3) order is faulty, the fruit thereof, being the revisionary impugned order automatically fails.

10. On the other hand, the Ld. DR relied upon the order passed by the Ld. PCIT.

11. We have heard the rival submissions made by the respective parties and we have also perused the relevant materials available on record. Under this fact and circumstances of the matter we, therefore, proceed to deal with the jurisdictional ground raised by the Ld. AR of inquiry and/or proper examination as having been duly made by the Ld. AO during the course of reassessment proceedings under Section 153C r.w.s 143(3) of the Act on the necessary evidences furnished by the assessee in support of the acquisition and sale on diamonds proof whereof alleged to have been found during the course of search of locker the order impugned is liable to be quashed.

12. It appears on record that a notice dated 31.12.2021 under Section 153C was issued by the DCIT, CC-6, Delhi and served upon the assessee in response whereto the assessee duly filed his return of income on 18.01.2022 on 21.04.2022. A notice under Section 143(2) was issued by the said officer to the assessee followed by further notice dated 13.05.2022 under Section 142(1) of the Act against which the assessee duly filed its reply dated 17.05.2022. In further reply dated 27.05.2022 appearing at page 35 to 39 of the paper book filed before us, it is evident that the assessee categorically explained the source of cash along with documentary evidences for payment in cash for construction activities undertaken on various properties owned by the assessee and the family members to this effect that the cash was part of proceeds on sale of jewellery consisting of loose diamonds.

13. Thereafter, the assessee was served with the satisfaction recorded on 27.12.2021 by the Ld. AO of the searched person i.e. DCIT, CC-6

under Section 132 of the Act and further the satisfaction note recorded on 31.12.2021 by the Ld. AO of the assessee i.e. DCIT, CC-6. The satisfaction note recorded dated 31.12.2021 read as follows:

Satisfaction Note for proceedings u/s 153C of the Income Tax Act, 1961

1. A Search and seizure action u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as the Act) was carried out in the Khemka Group of cases on 14.01.2021.
2. A perusal of book of accounts and various documents seized during the search operation reveals that certain documents pertain to Sh. Ashok Bansal. Seized documents placed as per the following table pertain to Sh. Ashok Bansal. (PAN: AALPB4816E)

Sr. No.	Premises & name of searched person u/s 132 of the I.T. Act 1961	Annexure	Pages	Description
1.	C-12/19, DLF Phase-I, Gurugram 122002	A-06	77,78,82,84,85,87, Back of 88,89,90,94,95,95A, 96,96A & 97	Hand written Notes containing cash receipts amounting to Rs.4.2 crs. And cash payments amounting to Rs.3.21 cr. Pertaining to Sh. Ashok Bansal
2.	From Possession of Sh. Ramchander Singh Address: C-12/19, DLF Phase-I, Gurugram - 122002	A-09	1,3,5,6,7,8,9,10,12,13,14,15,16,17,18,19,20,21,22,23,24,25,26,27,28,29,30,31,,35,36,37,39,40,41,42,43,44,45,46,47,48,49,50,41,52,53,54,55,56,57,58,59,60,61,62,63,64,65,66,66	Hand Written Notes containing cash expenditure amounting to Rs.2.17 cr. Pertaining to Sh. Ashok Bansal
3.	C-12/19, DLF Phase-I, Gurugram 122002	A-16	5,11-14,33,47,49,50,51,52,53,54,55,56,57,58, 59,60 & 61	Hand written notes and ATS containing details of cash payment of Rs.85L pertaining to Sh. Ashok Bansal. Hand Written Notes and ATS containing details of cash receipts of Rs.2.08 cr

				<p>pertaining to Sh. Ashok Bansal.</p> <p>Hand written Notes and ATS containing details of cash payment commission of Rs.11.7 L pertaining to Sh. Ashok Bansal.</p>
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3. Further, the following jewellery was found and seized from the premises of Sh. Ashok Bansal during the search operation which pertains to Sh. Ashok Bansal.

Sr. No.	Premises & Name of searched person u/s 132 of the I.T Act 1961	Jewellery Found amounting to	Seized	Description
1.	C-12/19, DLF Phase-I, Gurugram 122002	2,12,13,302/-	1,39,80,991	Jewellery
2.	Locker No. 345, APS Vaults	81,90,920/-	81,90,920/-	Jewellery
3.	Locker No. 179, Canara Bank, Kamla Nagar, Delhi	4,01,760/-	4,01,760/-	Bullion
4.	C-12/19, DLF Phase-I, Gurugram 122002	44,39,000/-	43,00,000/-	Cash

4. After examination of such documents (refer to above table in para 2) and documents related to seizure of jewellery, I am satisfied that the above documents and seized jewellery have a bearing on the determination of the total income of Sh. Ashok Bansal.
5. Therefore, I am satisfied that Sh. Ashok Bansal is covered under section 153C of the Act. Accordingly, notices u/s 153C of the Act for AY 2015-16 to 2020-21 and notice u/s 143(2) for AY 2021-22 are being issued.”

14. It is found that during the course of assessment proceedings in respect of the sale of loose diamonds and the gain arises from it, was duly disclosed in the ITR for the AY 2017-18 and due tax was paid on the same. The Learned Assessing officer compared the sale of loose diamond price with the price of gold. Further the learned Assessing officer doubted the cost of acquisition of diamonds and recomputed the long-term capital gains after allowing benefit of indexation on sale of such loose diamonds at Rs. 21,03,426/- on account of long-term capital gains under Section 112 of the Income Tax Act, 1961, against which appellant filed an appeal

before CIT(A) - 24 on 07.07.2023, which is still pending adjudication. Copy of Form 35 and written submission filed before the Learned Commissioner of Income Tax (A)-24 is placed on record at pages 82-110 of Paper Book.

15. Further that it was duly clarified by and under the reply dated 27.05.2022 appearing at page 47 to 53 of the paper book filed before us that the assessee possessed some jewellery in the form of loose diamonds weighing 1655.33 carats, contents whereof is as follows:

“Office of the Dy. Commissioner of Income Tax
Central Circle 6
Delhi

Sub: Reply to show cause notice dated 23/05/2022 issued u/s 143(3) of the Income Tax Act 1961 ("the Act") for the A. Y. 2017-18 to AY 2019-20

Reg: Sh. Ashok Kumar Bansal ("the Assessee"); PAN: AALPB4816E

Sir,

In respect of the above said matter, under the instructions of the assessee and in continuation of our earlier replies, the following is submitted:

Question: -

“A search u/s 132 of the Income Tax Act 1961 was conducted on 14.01.2021 on the Khemka Group of Cases in which your residential premises as well as bank lockers were also covered. During the course of search at your residential premises situated at C-12/19, DLF Phase - I, Gurugram as well as locker maintained and operated by your family members, cash was found and seized, details of which are as under:

Sr. No.	Premises/Locker	Name of the person from whose possession assets were found	Cash Found	Cash seized
1.	C-12/19, DLF Phase-1, Gurugram	Ashok Bansal	44,39,000	43,00,000
2.	Locker No. 327, APS Vaults	Sonal Bansal	2,00,000	2,00,000

During the course of your statement as well as proceedings before the investigation wing and vide your reply dated 17/05/2022, you have categorically stated that the above said cash belonged to you. In your statement w/s 132(4) of the Act, you have stated that the said cash was your old savings as well as generated on sale of some jewellery.

During the course of above said search, certain loose papers & diaries were also found which had recorded the receipts & payments of construction activities in cash undertaken on various properties owned by you and your family member's which were admittedly supervised by you.

Further, during the course of above said search, certain agreements to seli were found & seized in respect of 4 floors of property situated at B-162, Sushant Lok-III, Gurugram (owned in the name of your daughter in law and admittedly supervised & sold by you). The above said agreements to sell revealed receipt of certain cash on sale of the impugned property.

Vice notice u/s 142(1) dated 13.05.2022, you were required to provide the source of the said cash along with documentary evidences as well as provide the explanation of loose papers / diaries and the agreements to sell.

In response, vide your letter dated 17/05/2022, you have submitted that the said cash was part of proceeds of sale of jewellery consisting of loose diamonds. Further you have claimed that you have received a sum of Rs. 5,30,46,835/- from the sale of diamonds as per details below:

Particulars	AY: 2017-18	AY: 2018-19	AY: 2019-20	Total
Sale Consideration	34,03,566	3,76,16,276	1,20,26,993	5,30,46,835

From the said reply, it is discernible that cash so generated from the sale of such loose diamonds was utilized for the construction activities of properties belonging to you and your family members which were categorically admitted being supervised by you with the assistance of your son Mr. Udit Bansal. On the basis of the same, it can be said that out of the said cash, you had aggregated Rs. 2,44,06,579 from sale of such loose diamonds which was used in construction activities.

Further, from the perusal of above said letter as well as documentary evidence found during the course of search and produced on record you have filed copy of a court order as per which you had shown higher consideration in the Agreement to Sell for the 4 floors of property situated at B-162, Sushant Lok-III, Gurugram to motivate your son. The difference of the consideration as per the said ATS and the sale deed comes to Rs. 2,08,50,000/- which you have claimed to be your own money generated from the same of such loose diamonds. This clearly establishes the fact that you were, at a point of time, in possession of minimum cash of Rs: 2,08,50,000.

In your above said reply dated 17/05/2022 as well as returns of income filed in response to notice w/s 153C, it was further found that the above used cash generated by you from the sale of loose diamonds extends to the tune of Rs. 5,30,46,835/- details of which are given below.

Computation of Capital Gain from sale of Jewellery				
Particulars	AY: 2017-18	AY: 2018-19	AY: 2019-20	Total
Sale Consideration	34,03,566	3,76,16,276	1,20,26,993	5,30,46,835

Computation of capital gain from Sale of jewellery				
Particulars	AY: 2017-18	AY: 2018-19	AY: 2019-20	Total
Indexed Cost of Acquisition	34,68,405	3,77,07,542	1,20,49,643	5,32,25,591
Capital Gain Chargeable u/s 112	-64,839	-91,266	-22,650	-1,78,756

From the above data, return of income read with the computation of income filed with this office, it is learnt that you have claimed cost of acquisition of the said loose diamonds which is apparently higher than the fair market value of such diamonds and had shown capital loss from such sale.

From the perusal of the documents found during the course of search and relied upon by you, it has been seen that the said loose diamonds were acquired by you before 01.04.2001 and therefore the fair market value of the loose diamonds shall be considered as its cost of acquisition for the purpose of computation of taxable capital gains. From the said submission, the following was observed:

Financial year in which loose diamonds are sold	Prices of Loose Diamonds		CBDT Prescribed Gold Rates (Per grams)	
	Cost of acquisition claimed (FY: 2000-01)	Sale Price in respective FY	As on 01.04.2002	For the FY in which sale is made
2016-17	15,050	40,923	419	2,895
2017-18	15,495	42,044	419	3,068
2018-19	15,546	43,447	419	3,164

From the above table, it can be seen that the per carat price of loose diamonds for FY 2016-17 rose to Rs. 40,923/- from Rs. 15,050/- in 16 years i.e. approx. 2.72 times only. As compared to this, the per gram gold price for FY 2016-17 rose by 6.91 times. Accordingly, the prices of loose diamonds rose by only 2.71 times and 2.79 times as against the price of gold which rose by 7.32 times and 7.55 times for the FY 2017-18 and FY 2018-19 respectively. Adopting the same methodology and inflation trends in gold prices, the fair market value of the loose diamonds as on 01.04.2001 should have been calculated at Rs: 5,923/- (being 40,923 x 419/2,895), Rs: 5,742/- (being 42,044 x 419/3,058) and Rs. 5,754/- (being 43,447 x 419/3,164) per carat for the FY 2016-17, FY 2017-18 and FY 2018-19 respectively.

Therefore, considering the above calculated FMV of loose diamonds, you are required to show cause as to why the aggregate fair market value of loose diamonds should not be

taken as per below mentioned table and taxable capital gains he recomputed accordingly:

Particulars	FY 2016-17 (AY: 2017-18)	FY: 2017-18 (AY: 2018-19)	FY 2018-19 (AY: 2019-20)
Sale Value	34,03,566	3,76,16,276	1,20,26,993
Quantity Sold (in carats)	83.17	894.68	276.82
FMV as on 01.04.2001	5,923	5,742	5,754
Cost of Acquisition for the purpose of computation of capital gains (COA)	4,92,606	51,37,247	15,92,703
Indexed Cost of Acquisition (ICOA)	13,64,979	1,39,73,311	44,59,568
Taxable Capital Gains	20,38,587	2,36,42,965	75,67,425S

In case you fail to provide any plausible explanation of the above show cause notice, amounts of Rs. 20,38,587/-, Rs. 2,36,42,965/- and Rs. 75,67,425/- shall be assumed as your taxable long term capital gain u/s 112 of the Act for AY 2017-18, AY 2018-19 and AY 2019-20 respectively.

Accordingly, amounts of Rs: 21,03,426/-, Rs. 2,37,34,231/- and Rs. 75,90,075/- shall be added to your taxable income u/s 112 of the Act for the AY 2017-18, AY 2018-19 and AY 2019-20 respectively.”

Our Reply: -

1). In respect of the captioned notice, we wish to reiterate our submissions made before the investigation wing on 05/07/2021 & 09/07/2021 and before office of your goodself on 17/05/2022, wherein it was clearly demonstrated that the assessee, Sh. Ashok Kumar Bansal possessed some jewellery in the form of loose diamonds weighing 1655.33 carats. It is already on record that the assessee acquired the said jewellery in the year 2000-01 out of its declared sources of income which was duly appearing in audited financial statements of the assessee for the said financial year. A copy of the said audited financial statements was found & seized during the course of search and marked as page 28 to 33 of Annexure A-I, Further, the assessee has clearly established with the help of documentary proofs that part of the said loose diamonds were liquidated during the period of FY 2016-17 to FY 2018-19 which resulted in a cash generation of Rs. 5.30 crores, part of which was also found & seized during the course of search and marked as page 14 & 15 of Annexure A-1.

2). Further, it is on record & duly explained vide above referred letters that the cash so generated by the assessee was ultimately utilised by him towards the funding of the construction activities carried out by him in and nearby areas of Sushant Lok, Gurugram. These funds were further used to trick Mr. Udit Bansal, younger son of the assessee, to keep him motivated towards the construction activities.

- 3). The assessee has duly disclosed the gains arose on sale of loose diamonds in the return of income filed on 17.01.2022 and 18.01.2022 for the assessment year 2017-18, 2018-19 and 2019-20. Due tax on such sale was also paid off at the time of filing the return of income.
- 4). However, your goodself has raised doubts regarding the cost of acquisition of the loose diamonds by the assessee and proposed that the value of the diamonds may be calculated backward in the ratio of the gold prices on respective dates/years.
- 5). In this regard, this is respectfully submitted that referring to the rise in prices of gold for the purpose of recomputing the price of diamonds is completely baseless, unreliable, fallacious and unsustainable. Following grounds may kindly be considered in this regard: -

Actual cost of acquisition to be considered for the purpose of computing capital gains

6). In order to compute the income taxable under the head income from capital gains u/s 45, the Income Tax Act 1961 requires determination of actual cost of acquisition of the capital asset to the assessee. Further, in case where the capital asset was purchased before the 1st April 2001 (or 1st April 1981 for AY 2016-17 and earlier assessment years), the assessee has an option to adopt either the actual cost of acquisition of the capital asset or the fair market value of the capital asset as on 1st April 2001 (or 1st April 1981, as the case maybe). In this regard, the provisions of section 55(2) of the Income Tax Act 1961 reads as under:

“(2) For the purposes of sections 48 and 49, "cost of acquisition", -
xxxx

(b) in relation to any other capital asset, -

(i) where the capital asset became the property of the assessee before the 1st day of April, 2001, means the cost of acquisition of the asset to the assessee or the fair market value of the asset on the 1st day of April, 2001, at the option of the assessee;”

7). As submitted supra in para 1, the loose diamonds weighing 1655.43 carats were acquired by the assessee in the FY 2000-01 i.e. before 1st April 2001 for Rs. 2,49,00,849/- which were duly accounted for in the audited financial statements of M/s Ramkishore Marketing Corporation (erstwhile sole proprietorship of Mr. Ashok Kumar Bansal) for the financial year ended 31st March 2001.

8). Accordingly, the assessee computed his taxable capital gains considering his actual cost of the loose diamonds to be the cost of acquisition for the purpose of section 48 and 49 of the Income Tax Act and paid taxes thereon. Hence such cost of acquisition should not be disregarded without proper reasoning and jurisdiction of law and then giving the assessee opportunity to rebut the same.

Documents found during the course of search

9). As submitted supra at point 1, on perusal of the audited financial statements of the assessee which were found & seized during the course of search and marked as page 28 to 33 of Annexure A-1, it is clearly discernible that the assessee acquired loose diamonds weighing 1655.43 carats during the financial year 2000-01 for an aggregated consideration of Rs.2,49,00,849/-.

10). It is a trite and settled law that where any document is found from the possession or control of a person during the search, then such documents and every part thereof is presumed to be true and correct in the absence of evidence which proves otherwise. Therefore, the sanctity and truthfulness of the documents found during the course of search in the form of the audited financial statements depicting the cost of acquisition of the loose diamonds weighing 1655.43 carats at Rs.2,49,00,849/- cannot be denied in this case.

Conclusion

11). It is believed that the assessee has produced sufficient documentary evidences, as stated supra, which corroborates the exactitude of the version of the assessee and depicts the true facts of the case. In the instant case, facts become amply clear, and it can be concluded that the assessee acquired the impugned loose diamonds which costed him Rs. 2,49,00,849. Therefore, calculation of fair market value of the capital asset to determine the cost of its acquisition and re-computation of capital gains thereto is highly unwarranted and without jurisdiction.

12). Hence, considering the above due facts and prepositions of the case, it is requested to your goodself that taking the market price of gold as base for determination of prices of loose diamonds is not warranted and should not be pressed upon.

We hope your goodself would find the above in order. In case any further information/document is desired by the office of your goodself, the same shall be furnished as per your goodself's direction.”

16. This was also on record that the assessee acquired the said jewellery in the year 2000-01 out of its declared sources of income which was duly appearing in the audited financial statement of the assessee for the said Financial Year. The said audited financial statement was found and seized during the course of search and marked as pages 28 to 33 of Annexure A-1. It was further reiterated by the assessee that the said loose diamonds were liquidated during the Financial Year 2016-17 to 2018-19 which were resulted in a cash generation of Rs.5.30 crores, such fact was established through corroborative documentary proof, part of which was also found and seized during the course of search and marked as pages 14 & 15 of Annexure A-1. It was repeated and reiterated by the assessee in the reply dated 27.05.2022 that the cash so generated by the assessee was ultimately utilized by him towards the funding of the

construction activities carried out by him in a nearby area of Sushant Lok, Gurgaon. These funds were further used to trick Mr. Udit Bansal (younger son of the assessee) to keep him motivated towards the construction activities. Apart from that the assessee duly disclosed the gains arose on sale of loose diamonds in the return of income filed on 17.01.2022 and 18.01.2022 for Assessment Year 2017-18, 2018-19& 2019-20 tax whereupon was also paid during the filing of return of income by the assessee.

17. So far as the actual cost of acquisition for the purpose of computing capital gains is concerned under Section 45 of the Act, the determination of actual cost of acquisition of the capital asset to the assessee is to be appreciated and in view of the provision of law where such capital asset was purchased before 01.04.2001 or 01.04.1981 for AY: 2016-17 and earlier assessment years the assessee had an option to adopt either the actual cost of acquisition of the capital asset or the fair market value of the capital asset as on 01.04.2001 or 01.04.1981 as the case may be and the same was further explained by the assessee in the said reply dated 27.05.2022. We note that the above facts has also been examined by us from the documents so furnished and annexing the same in the paper book and found to be correct. Taking into consideration this particular aspect of the matter when the loose diamonds weighing 1655.34 carats were acquired by the assessee in the Financial Year 2000-01 i.e. before the 01.04.2021 for Rs.2,49,00,849/- which was duly accounted for the audited financial year statements of M/s Ramkishore Marketing Corporation (erstwhile sole proprietorship of Mr. Ashok Kumar Bansal) the assessee before us for the Financial Year ended on 31.03.2021, the same is required to be considered in its proper

perspective as contended by the assessee before the Ld. AO during the reassessment proceeding under Section 153C of the Act, as the assessee computed his taxable capital gains considered his actual cost of loose diamonds to be the cost of acquisition for the purpose of Section 48 & 49 of the Act and paid tax thereon such cost of acquisition cannot be disregarded without proper reasoning as contended by the assessee in the said reply. The assessee therefore, had duly furnished documentary evidences which corroborates the exactitude of the version of the assessee and depicts the true facts of the case. As the assessee has been able to establish that the cost of acquisition of the loose diamonds was Rs.2,49,00,849/- calculation of fair market value of the capital asset to determine the cost of its acquisition and re-computation of the capital gains thereto was not warranted and without jurisdiction as was the crux of the submission made by the assessee before the Ld. AO and the same was found to have been considered.

18. It is the case of the assessee that the Ld. PCIT in the impugned order directed to enhancement of the income of the appellant by Rs.34,03,566/- under Section 68 of the Act passed on conjecture and surmises overlooking the evidences on record which were duly placed before the Ld. AO and also before him and erroneously concluded that the sale of inherited loose diamonds by the appellant neither supported by evidences nor verified by the Ld. AO holding the order under Section 153C r.w.s 143(3) erroneous and prejudicial to the interest of revenue. It is relevant to mention that considering the evidences placed on record by the assessee before the Ld. AO we found that the source of cash found in the course of search which is the issue in the order impugned was duly explained during the course of re-assessment proceeding under Section

153C r.w.s 143(3) of the Act and considering such explanation with corroborative evidences together with inquiries conducted during the assessment proceeding the Ld. AO has doubted the cost of acquisition of diamonds and compared it with the price of gold and further recomputed the cost of acquisition of loose diamonds and ultimately made addition of Rs.21,03,426/- towards sale of inherited loose diamonds in the order of assessment dated 31.05.2022 passed under Section 153C r.w.s 143(3) of the Act for Assessment Year 2017-18. Thus, when all possible inquiries is found to have been done by the Ld. AO it cannot be said to be a case of lack of inquiry or lack of investigation only when the Commissioner or PCIT is empowered to exercise his revisionary powers by calling for and examining the records of any proceedings under the Act and passing orders thereon. As the fact of inquiry conducted by the Ld. AO is found to be crystal clear from the entire set of documents on record pertains to the assessment done under Section 153C r.w.s 143(3) of the Act by the Ld. AO, exercising revisionary jurisdiction under Section 263 of the Act by the Ld. PCIT holding the same erroneous and prejudicial to the interest of Revenue is a changed opinion without there being any other supporting documents in his hands to justify the same, is found to be arbitrary exercise of power rather beyond his jurisdiction and therefore, liable to be quashed. With the above observation the impugned revisionary order under Section 263 of the Act is found to be void-ab-initio and therefore, quashed.

19. As the order is quashed on this ground, the other grounds raised by the assessee become academic and no order needs to be passed.

20. Having regard to the identical facts and circumstances involved in the other two appeals for Assessment Years 2018-19 & 2019-20 our this observation will apply mutatis mutandis.

21. Thus, all the appeals preferred by the assessee are allowed.

Order pronounced in the open court on 26.09.2025

Sd/-
(Naveen Chandra)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

Dated 26.09.2025
Rohit, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI