

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
Visakhapatnam Bench

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री एस. बालकृष्णन, माननीय लेखा सदस्य
SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI BALAKRISHNAN. S, HON'BLE ACCOUNTANT MEMBER,

आयकर अपीलसं./I.T.A.No.354/Viz/2025
(निर्धारण वर्ष/ Assessment Year: 2016-17)

Deputy Commissioner of Income Tax (IT) Visakhapatnam	Vs.	Apparao Mukkamala PAN : BCKPM4796A
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

CO No.29/Viz/2025
(Arising out of आयकर अपीलसं./I.T.A.No.354/Viz/2025)
(निर्धारण वर्ष/ Assessment Year: 2016-17)

Apparao Mukkamala USA PAN : BCKPM4796A	Vs.	Deputy Commissioner of Income Tax (IT) Visakhapatnam
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri V.Naga Prasad, Advocate, AR
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri MN Murthy Naik, CIT(DR)
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	19.08.2025
घोषणा की तारीख/Dt. of Pronouncement	:	30.09.2025

ORDER

प्रति रवीश सूद, जे.एम./PER RAVISH SOOD, J.M.

The present appeal by the Revenue is directed against the order passed by the Commissioner of Income-tax (Appeals)-10, Hyderabad dated 05.07.2023, which in turn arises from the order passed by the A.O under section 147 r.w section 144C(3) of the Income-tax Act, 1961 (for short, "Act") dated 05.07.2023 for the assessment year 2016-17. The revenue has assailed the impugned order on the following grounds of appeal:

- "1. The CIT(Appeals) erred both in law and on facts of the case in granting relief to the assessee.
2. On the facts and in the circumstances of the case, and in law, whether the CIT(Appeals) is justified in holding that the assessment order passed u/s.147 rws 144C(3) is arbitrary and illegal and needs to be quashed for not invoking the provisions of Sec.153C, without appreciating the fact that the assessee never raised such objections during the assessment proceedings?
3. On the facts and in the circumstances of the case, and in law, whether the CIT(Appeals) is justified in holding that the assessment order passed u/s.147 rws 144C(3) is arbitrary and illegal and needs to be quashed for not invoking the provisions of Sec.153C, without appreciating that the recourse to section 148 is not ousted if the AO does not assume jurisdiction to proceed u/s.153C?
4. On the facts and in the circumstances of the case, and in law, whether the CIT(Appeals) is justified in ignoring the fact that Section 148 covers 'any income' that has escaped assessment and hence, there is no bar on initiating the same as can be derived from the judgement of Hon'ble Supreme Court in the case of Abhisar Buildwell (P) Ltd (454 ITR 212)?
5. On the facts and in the circumstances of the case, and in law, whether the CIT(Appeals) justified in treating the fixable procedural lacuna of cross

examination as the basis holding the assessment as arbitrary and illegal when in context of principles of natural justice, the Hon'ble Supreme Court has held in the case of State Bank of Patiala Vs. S.K. Sharma AIR 1996 SC 1669 that violation of any and every procedural provision cannot be said to automatically vitiate proceedings?

6. On the facts and in the circumstances of the case, and in law, whether the CIT(Appeals) is justified in holding the proceedings illegal when the right of cross examination is not a vested right of hearing as held by the Hon'ble High Court of Kolkata in the case of PCIT Vs. Swati Bajaj (ITA No.06 of 2022) and Hon'ble Supreme Court in the case of State of J&K Vs. Bakshi Ghulam Mohammad 967 AIR 122?

7. On the facts and in the circumstances of the case, and in law, whether the CIT(Appeals) is justified in holding that Section 69A is not applicable without considering the merits of the evidence, only because assessee was not found in possession, whereas the provisions of the section are based on ownership?

8. Any other ground of appeal that may be raised with the prior approval of the Hon'ble ITAT during the appellate proceedings.”

On the other hand, the assessee is before us as a cross-objector on the following grounds:

1. The Id. CIT(A) has rightly deleted the addition made on account of alleged cash receipts in India by Mr. Apparao Mukkamala (NRI) while he was not in India.
2. The Id. AO failed to address the issue that there is no way the Respondent could have received cash in India as he was away in USA during the relevant period and did not authorise anyone to deal on his behalf and the Id. CIT(A) has rightly taken cognisance of the same in deleting the addition.
3. The Id. AO failed to appreciate that what was seized was only an 'image of handwritten scribbling' and he made the addition solely based on such an image and he did not have the original of the same and as such failed to provide or show the original or copy of it raising serious objections about authenticity of the imaged paper and credibility of the entries found therein.
4. The Id. AO failed to provide details regarding author of the seized 'image of handwritten scribbling', statement, if any recorded from him and opportunity to provide cross-examination of the said person, in spite of making specific request and as such Id. AO could not have made addition.

5. The assessment order is based on the alleged report of inquiry made by the investigation wing of the Department as held by the Id. AO at para 5 on page 2 of the order and the order was passed without making any other independent investigation by the Id. AO and without due application of mind. Even the alleged report of investigation wing was not provided to the respondent for making appropriate submission and properly defence.

6. The Id. AO was specifically requested to provide opportunity to cross examine the author of the 'image of handwritten scribbling', but he failed to provide the same making the order invalid as held by Hon'ble Supreme court of the in the case of Andaman Timber Industries Ltd. (2015) 62 taxmann.com 3 (SC)

7. The Id. AO made the addition without bringing any corroborative evidence on record other than the 'image of handwritten scribbling' and could not have fastened any liability on the Respondent as held by Hon'ble Supreme court in the case of CBI v. V. C. Shukla & Ors. (1998 3 SCC 410).

8. The Id. AO failed to appreciate that a challenge to jurisdiction (like invoking section 148 instead of 153C of the Act when the entire proceedings was solely based on incriminating material seized in the case of a third party search) goes to the very root of the matter and can be raised at any stage of the case as held by the Hon'ble Supreme Court in the case of NTPC Ltd (1998) 229 ITR 382 (SC).

9. The Id. AO erred in making addition under section 69A of the Act, which has no application to the facts and circumstances of the case.

2. Succinctly stated, the assessee, a non-resident individual, had filed his return of income for A.Y 2016-17 on 28.12.2017, declaring an income of Rs. 6,09,06,180, which, inter alia, included long-term capital gains (LTCG) on sale of shares of M/s Sunbeam Hospitality Pvt. Ltd. The return of income filed by the assessee was initially processed as such under section 143(1) of the Act.

3. On 26.02.2019, search and seizure proceedings were conducted in the case of M/s Sandhya Hotels Pvt. Ltd. During the course of the search proceedings, a copy of the share purchase agreement dated 02.09.2015 and an image of a handwritten scribbling were seized. The “agreement” recorded the transfer of 1,06,900 shares by the assessee at Rs. 657 per share for a total consideration of Rs. 7,02,33,300.

4. On the other hand, the seized scribbling contained entries which the department construed as cash payments to certain persons, including the assessee. The noting in the seized scribbblings mentioned, viz. “18/08/2015 – 100 cash Appa Rao” and “27/08/2015 – 275 cash USA Appa Rao a/c.” The A.O. held a firm conviction that the contents of the seized scribbblings referred to the cash payments of Rs. 1 crore and Rs. 2.75 crore respectively, aggregating to Rs. 3.75 crore that was received by the assessee over and above the disclosed consideration on the sale of shares of M/s Sunbeam Hospitality Pvt. Ltd.

5. The A.O., based on the contents of the aforesaid seized material, held a *bonafide* belief that the income of the assessee chargeable to tax had escaped assessment, initiated proceedings u/s 147 of the Act. Notice under section 148 of the Act, dated 15.06.2021, was issued by the A.O. calling

upon him to file his return of income. In compliance, the assessee requested that his original return of income be treated as having been filed in response to the notice issued under Section 148 of the Act.

6. During the course of the reassessment proceedings, the A.O. confronted the assessee with the seized handwritten scribbling. In reply, the assessee denied receipt of any cash consideration. In fact, the assessee to fortify his aforesaid claim produced before the A.O. his passport entries, which revealed that he was abroad on the relevant dates, and asserted that he had not authorised anyone to receive cash on his behalf.

7. However, the A.O. rejected the explanation of the assessee. The A.O. observed that as the cheque entries tallied with part of the notings in the handwritten scribbles, therefore, the cash entries must also be genuine. Accordingly, the A.O. added Rs. 3,75,00,000/- as the assessee's unexplained money under section 69A and determined his income vide order passed under section 147 r.w section 144C(3) of the Act, dated 05.07.2023 at Rs. 9,84,06,180.

8. Aggrieved, the assessee carried the matter in appeal before the Commissioner of Income-tax (Appeals). The assessee assailed the validity

of the jurisdiction that was assumed by the A.O. for framing the assessment, vide the order passed by him under section 147 r.w section 144C(3) of the Act, dated 05.07.2023. It was contended that the reopening under section 147 was without jurisdiction since the material emanated from a search conducted on a third party, and the proceedings, if any, could have been initiated only under section 153C of Act. Apart from that, the assessee assailed the impugned addition of Rs. 3.75 crore (supra) based on multi-facet grounds, viz. (i). that the seized scribbling was a dumb document of no evidentiary value; (ii). that no corroborative evidence to substantiate the impugned addition was brought on record; (iii). that opportunity to cross-examine the alleged author of the seized document/scribbling was denied; and (iv). that section 69A had no application as no money or valuable article or thing was found in the assessee's possession.

9. The CIT(Appeals), after examining the record, held that the initiation of proceedings under section 147 was invalid. The CIT(A) relied on the decisions of, viz. (i). "Special Bench" of the ITAT, Mumbai in All Cargo Global Logistics Ltd. Vs. DCIT, ITA Nos. 5018-5022 & 5059/Mum/2010; (ii). G. Koteswara Rao & Ors. Vs. DCIT, ITA Nos. 400-407/Viz/2014; (iii) Sri

Suryadevara Avinash Vs. DCIT, Central Circle 2(4), ITA Nos. 496-498; and (iv). Smt. Samanthapudi Lavanaya Vs. ACIT, Central Circle, Vijaywada (2021) 127 taxmann.com 188, wherein it was held that where incriminating material is found during the course of search proceedings conducted on a third party, the assessment was statutorily required to be made under section 153C and not under section 147 of the Act.

10. On merits, the CIT(A) observed that as the loose handwritten scribbling seized from a third party was found to be undated, unsigned, and anonymous, and without corroborative evidence, thus, the same had no evidentiary value. The CIT(A) observed that the department had failed to discharge the onus that was cast upon it to prove to the hilt, based on irrefutable material that the assessee had received on-money on the sale of shares. It was further observed by him that the denial of copies of the statements and the refusal of cross-examination constituted a violation of the principles of natural justice. Also, the CIT(A) took cognizance of the fact that the assessee's passport evidenced that he was abroad on the dates of the alleged cash receipts, and the same was not rebutted by the department. Accordingly, the CIT(A), based on his aforesaid deliberations,

vacated the addition of Rs. 3.75 crore (supra) that was made by the A.O under section 69A of the Act.

11. The Revenue being aggrieved with the CIT(A) order has carried the matter in appeal before us. Also, the assessee is before us as a cross-objector.

12. The learned Departmental Representative (for short, "D.R") supported the assessment order. The Ld. D.R. submitted that as the handwritten scribbling seized in the course of the search proceedings conducted on M/s Sandhya Hotels Pvt. Ltd., revealed cash payments to the assessee, viz. "18/08/2015 – 100 cash Appa Rao" and "27/08/2015 – 275 cash USA Appa Rao a/c." therefore, the A.O. based on the same, had rightly held that the assessee had received cash payments of aggregating to Rs. 3.75 crore (supra) over and above the disclosed consideration on the sale of shares. The Ld. DR based on his aforesaid contention, supported the addition of Rs. 3.75 crore (supra) made u/s 69A of the Act by the A.O. The Ld. D.R submitted that the CIT(A) had grossly erred in law and facts of the case in vacating the addition of Rs. 3.75 crore (supra) made by the A.O.

13. Per Contra, the Ld. Authorised Representative ("A.R", for short) supported the order of the CIT(Appeals), and reiterated that as the A.O.

based on certain incriminating material that was found during the course of search proceedings conducted on a third party, viz. M/s Sandhya Hotels Pvt. Ltd., had, instead of framing the assessment u/s 153C of the Act, wrongly assumed jurisdiction and framed the impugned assessment vide his order passed u/s 147 r.w section 144C(3) of the Act, dated 05.07.2023, therefore, the CIT(A) had rightly struck down the said assessment for want of a valid assumption of jurisdiction on his part. The Ld. A.R., to support his contention, had relied on a host of judicial pronouncements. Apart from that, the Ld. A.R submitted that as the A.O had grossly erred in law and facts of the case in declining the assessee's request for cross-examination of the author of the seized document, viz. handwritten scribbling based on which impugned addition was made in the hands of the assessee, therefore, the CIT(A) had rightly observed that the same being in gross violation of the basic principles of natural justice cannot be sustained, and on the said count also was liable to be vacated. The Ld. A.R., to buttress his said contention, had taken us through certain judicial pronouncements. Further, the Ld. A.R submitted that the CIT(A) had rightly observed that as the assessee was not found to be the owner of any money, valuable article or thing, therefore, the impugned addition based on the handwritten scribbling found during the course of the search proceedings conducted in the case

of M/s Sandhya Hotels Pvt. Ltd. could not have been made u/s 69A of the Act. The Ld. AR had further drawn our attention to a host of judicial pronouncements that were pressed into service by him to drive home his aforesaid respective contentions.

14. We have considered the rival submissions and perused the record. Admittedly, it is a matter of fact borne from record that the impugned reassessment proceedings in the case of the assessee were initiated based on the handwritten scribblings that were found and seized during the course of the search proceedings conducted in the case of the third party, viz. M/s Sandhya Hotels Pvt. Ltd. Section 153C of the Act provides a special procedure for such cases and begins with a non-obstante clause overriding section 147 of the Act. We, thus, concur with the CIT(A) that if the A.O. was satisfied that the incriminating material, i.e., handwritten scribbling, seized during the course of the search proceedings conducted on M/s Sandhya Hotels Pvt. Ltd. (supra), pertained to or related to the assessee, which would have a bearing on the determination of his total income, inter alia, for any of the six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted, then he was statutorily obligated to assess or reassess total income of such other

person of such assessment year in the manner provided in section 153A of the Act. We are of the firm conviction that, as Section 153C specifically contemplates an overriding effect on Section 147 of the Act, therefore, the A.O had wrongly assumed jurisdiction and framed the impugned assessment in the case of the assessee, vide his order passed under Section 147 r.w section 144C(3) of the Act, dated 05.07.2023. Our aforesaid view is fortified by the recent judgment of the **Hon'ble Supreme Court** in the case of **ACIT Vs. Pramod Jain (2025) 176 taxmann.com 762 (SC)**. The Hon'ble Apex Court had dismissed the "Special Leave Petition" ("SLP") against the order of the **Hon'ble High Court of Rajasthan** in **Shyam Sunder Khandelwal Vs. ACIT (2024) 161 taxmann.com 255 (Rajasthan)**. The Hon'ble High Court of Rajasthan in Shyam Sunder Khandelwal Vs. ACIT (Supra), had held, that where there is incriminating material seized or requisitioned belonging or relatable to person other than on whom search is conducted, then Section 153C and not Section 148 is to be resorted to. For the sake of clarity, we deem it apposite to cull out the observations of the Hon'ble High Court of Rajasthan the case of Shyam Sunder Khandelwal Vs. ACIT (2024) 161 taxmann.com 255 (Rajastha), which thereafter had been approved by the Hon'ble Supreme Court, as under:

“ISSUE:-

7. The question involved is of applicability of Sections 153C and 148 of the Act in case of seizure of material in search or requisition of books-documents relating to assessee other than on whom the search was conducted or requisitioned made.

History of special provisions:-

8. Before proceeding further it would be necessary to trace the history of the extant special provisions for assessment in the cases of search and requisition.

9. The Finance Act, 1995 inserted Section 158B to 158BG, stipulating special procedure for assessment in cases where search were initiated after 30.06.1985 but before 1.1.1997. Prior to this, the assessment and reassessment in search cases were dealt under regular provisions of Section 143, 147 and 148. The Assessing Officer (for short 'AO') under the special provisions had to assess only the undisclosed income with regard to the block period (which prior to 01.06.2001 was ten years and after 01.06.2001 was six years) preceding the financial year in which search was conducted, by passing a single order. The undisclosed income was to be taxed at special rate specified under Section 113.

The block assessment was independent of the regular assessment, resulting in parallel proceeding for assessment of regular income and the undisclosed income.

10. Finance Act, 2003 introduced Section 153A to 153D, laying down the special procedure for assessment in cases of search or requisition made on or after 1st June, 2003. Under the new provisions following deviations were made from the earlier regime:-

(i) the assessment /reassessment of 'total income' was to be made for each of relevant preceding year by passing separate order for each assessment year, instead of initiation of parallel proceedings for the undisclosed and regular income.

(ii) The concept of assessment for broken period i.e. from 1 st April to the date when the search was conducted, was no longer there.

(iii) The normal rates of the tax applicable in each year were to be applied.

(iv) The pending assessment or reassessment proceedings, on date of initiating of search or requisition, abated. In case of annulment of the assessment/reassessment under Section 153A the abated assessment or reassessment revived.

(v) The provisions of Section 153A to 153D brought within its ambit not only the cases of assessee on whom the search was conducted or requisition made but also assessee to whom the seized material related to or belonged to.

11. The Finance Act of 2021 amended Section 153A restricting its applicability to search and requisition made on or before 31.03.2021. Simultaneously for bringing assessment of search and requisition cases within ambit of Section 148 new provision was substituted. The procedure to be followed before issuance of notice u/s 148 was laid down in Section 148A. Both the provisions were effective from 1.4.2021.

12. As per the explanation 2 of new Section 148, the AO shall be deemed to have information suggesting escapement of tax on income chargeable to tax (i) in case initiation of search or requisition made or survey conducted of the assessee on or after 1st April 2021; (ii) where AO with prior approval of prescribed authority is satisfied that material seized from other person, belongs to assessee or information contained in seized or requisitioned books of account documents from other person relates to assessee. The proviso to Section 148A makes an exception for such cases for the applicability of procedure laid down for issuance of notice u/s 148.

ANALYSIS:-

13. The heading of Section 153A is Assessment in Case of Search or Requisition. Section 153A notwithstanding Sections 139, 147, 148, 149, 151 and 153, obligates the AO to issue notices for furnishing income tax returns in a prescribed form and manner, for relevant year or years and for each of six assessment years preceding the assessment year relevant to previous years in which search is conducted (hereinafter referred to 'relevant preceding years') in cases of search and requisition.

14. As per first proviso total income is to be assessed or reassessed in respect of each of the assessment year. The second proviso provides that pending assessment or reassessment relating to the relevant preceding year on the date of initiation of search or requisition shall abate. Under the third proviso the Central Government may by Rules specify the class or classes of cases where the AO shall not issue notice for assessment or reassessment for the relevant preceding years. The exception being abated assessment or reassessment as per proviso (2). Under clause (a) of fourth proviso no notice for assessment or reassessment shall be issued in case escaped assessment amount revealed by the books of account or documents or evidence in possession of the AO is less than Rs.50 Lakh in the relevant year or in aggregate of the relevant assessment years. Clause (b) provides

that income or part of it referred to Clause (a) should have escaped the assessment for such year or years.

Clause (c) provides that the search or requisition should have been initiated on or after 01.04.2017.

Explanation (1) explains the relevant assessment year. Explanation (2) provides that the 'asset' in the fourth proviso shall be inclusive of immovable property, land or building or both, shares and securities, loans and advances, financial deposits in Bank.

Sub-section (2) deals with eventuality of annulment of assessment or reassessment made under sub-Section (1), in appeal or other legal proceedings. In such event the abated assessment or reassessment shall stand revived with effect from the date of receipt of order of such annulment by the Commissioner. As per the proviso on setting aside of annulment order the revival shall cease.

15. Section 153B deals with time limit for completion of assessment under Section 153A.

16. The heading of Section 153C is Assessment of Income of any other person. Proceedings under Section 153C are notwithstanding provisions of Sections 139, 147, 148, 149, 151 & 153. On satisfaction of the AO dealing with seized money, bullion, jewellery or valuable article or thing, seized or requisitioned books of account or document (for brevity 'seized material') that information contained in it belongs to or relates to person other than on whom search was conducted, shall hand over the seized material to the AO having jurisdiction of such other person. The AO on receiving the seized material and being satisfied that it has bearing on [2024:RJ-JP:14106-DB] (41 of 50) [CW-18363/2019] the determination of total income of relevant preceding years shall issue notice to assess or reassess the 'total income' of relevant preceding years and proceed in accordance with Section 153A.

17. Under first proviso the date of initiation of search or requisition in Sub-section (1) of Section 153A shall be the date of receiving of seized material by the AO having jurisdiction over the other person. Under second proviso the Central Government can frame Rules for the class or classes of cases of other persons to whom AO is not required to issue notice for assessing or reassessing for the relevant preceding years. The exception being abated assessment or reassessment.

18. Under Sub-Section (2) in case of receipt of seized material after the due date for furnishing the income tax return of assessment year in which the search was conducted or requisition made, the AO having the jurisdiction on such other

persons shall issue notice for assessing or reassessing total income in manner and for the assessments years provided under Section 153A. Notice shall be issued even if no return was furnished by such persons and no notice was issued under Section 142(1) or where the return was furnished but no notice under Section 143(2) was served and the limitation had expired or where the assessment or reassessment was made.

19. As per Sub-section (3) the Section 153C shall not apply to the search or requisition made on or after 01.04.2021.

20. Section 153D provides that no order of assessment or reassessment shall be passed by the Officer below the rank of Joint Commissioner except with the prior approval of the Joint Commissioner. Proviso precludes the application of Section in cases where assessment or reassessment as per Section 144BA (12) is to be passed with prior approval of the Principal Commissioner or Commissioner.

CASE LAW:-

21. The Supreme Court in the case of *Abhisar Buildwell P. Ltd.* (supra) while dealing with the scope of assessment under Section 153A dealt with the following question. Para 11 is quoted:-

"11. The question which is posed for consideration in the present set of appeals is, as to whether in respect of completed assessments/unabated assessments, whether the jurisdiction of AO to make assessment is confined to incriminating material found during the course of search under Section 132 or requisition under Section 132A or not, i.e., whether any 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 132 A of the Act, 1961 or not."

22. It was held that on a search or requisition of an assessee it is mandatory to issue notice under Section 153A [2024:RJ-JP:14106-DB] (43 of 50) [CW-18363/2019] for filing returns in respect of relevant preceding years. The AO assumes jurisdiction to assess or reassess 'total income' of the relevant preceding years. The pending assessment and reassessment abate by operation of the provision of Section 153A. The completed and unabated assessments could not be reopened in absence of an incriminating seized material relating to the concerned assessment years. The assessment and reassessment under Section 153A has to be of the 'total income', taking into consideration the returned income (if return is filed), incriminating material result of search or requisition and other material. In case no incriminating material was found in search, the department can reopen

completed/unabated assessment under Sections 147 & 148 of the Act. The para-23 of the judgment is quoted:-

"23. 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."

CONCLUSION:-

23. The reasons supplied in case in hand for initiation of proceedings under Section 147/148 are 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.

24. 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 it to AO having jurisdiction of such assessee. Thereafter, the satisfaction of AO receiving the seized material that the material handed over has a bearing for determination of total income of such other person for the relevant preceding years. On fulfillment of twin conditions the AO shall proceed in accordance with the provisions of Section 153A.

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

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

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

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

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

The contention was that though the material with regard to unaccounted loan advanced by the petitioner was received, the earning of interest on unaccounted loan was derivation of the AO from the material received. The submission is that the derived conclusion cannot be acted upon under Section 153C. The submission lacks merit and shall defeat the concept of single assessment order for each of relevant preceding years for assessing 'total income' in case of incriminating material found during search or requisition.

30. The argument that by enactment of Section 153A to 153D has not eclipsed Section 148 does not enhance the case of respondent to initiate the proceedings

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

31. The other aspect of the matter is that under Section 153A and 153C, 'the total income' is to be assessed. The total income includes returned income (if any), undisclosed income unearthed during the search or requisitioning and information possessed from the other sources.

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

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

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

33. Before concluding, it would be fair to deal with the case law cited by both the parties.

34. Reliance of respondents on decision of M/s. M.R. Shah Logistics Pvt. Limited (supra) is of no avail. The issue of interplay of provisions of Section 147/148 vis-a-vis Section 153C in the case of seized material relating or belonging to the person other than on whom the search was conducted or requisition made was not the issue before the Supreme Court.

35. The Supreme Court in the case of *Abhisar Buildwell P. Ltd. (supra)* while dealing with the provisions of Section 153A held that in case of absence of incriminating material seized during the search, the department is not remediless for reassessing the unabated assessment on the basis of material received from the other sources and can proceed under section 148. The decision does not support the contentions raised that Section 148 is rendered redundant if Section 153C is to be resorted to in the facts of the present case.

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

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

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

10. Admittedly no proceedings were initiated under Section 153C of the Act.

Thus, there is patent non-application of mind. It is relevant to note that the author of the diary *Smt. Soumya Shetty* had passed away prior to the date of search. It was argued on behalf of the Revenue that *Shri. Ashok Kumar Chowta* had offered tax on lump-sum income.

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

"9. We find that the jurisdictional conditions for invoking section 147 - 148 are not satisfied as there is no failure to disclose material facts fully and truly. It is not in dispute that by the letter dated 11th September 2015 (Exhibit H) the Petitioner have submitted all the particulars along with supporting documents to the Respondent No.1. Hence the reasons to believe and a presumption based on the statement of *Shri Bhanwarlal Jain* (a third party) in the course of a search, that the loans of the entities were bogus or accommodation entries was clearly dispelled. Moreover, the

specific provisions of S. 153C would prevail over the general provisions of section 147 in the case of search on 3rd party."

40. In view of above discussion the notices issued under Section 148 and the impugned orders are quashed.

However, the respondents shall be at liberty to proceed against the petitioners in accordance with law.

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

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

43. The writ petitions are allowed accordingly."

15. We thus, in terms of our aforesaid observations, concur with the CIT(A) that as the A.O. had wrongly assumed jurisdiction and initiated and framed the assessment vide his order passed u/s 147 r.w.s 144C(3) of the Act, dated 05.07.2023, therefore, the same cannot be sustained and is liable to be quashed on the said count itself.

16. Although we have approved the view taken by the CIT(A) that the impugned assessment framed by the A.O under Section 147 r.w.s 144C(3) of the Act, dated 05.07.2023 cannot be sustained for want of valid assumption of jurisdiction, but as the revenue in the present appeal has also assailed the observations of the CIT(A) on the other grounds based on

which the impugned assessment had been vitiated by him, viz. (i). that the A.O had grossly erred in law and facts of the case in framing the assessment without allowing an opportunity to the assessee to cross-examine the author of the handwritten scribbling that was found and seized in the course of the search proceedings conducted on M/s Sandhya Hotels Pvt. Ltd i.e. a third party, despite the fact that the impugned addition was based on the bald contents of the said dumb incriminating document; and (ii). that as the assessee was not found to be the owner of any money, valuable article or thing, therefore, the impugned addition simpliciter on the basis of the handwritten scribbling could not have been made within the meaning of Section 69A of the Act; therefore, we shall for the sake of completeness deal with the sustainability of the said observations of the CIT(A) which have been assailed before us.

17. We find that the A.O. had made the impugned addition of Rs. 3.75 crore (supra) based on the contents of the seized handwritten scribbling that was seized in the course of the search proceedings conducted in the case of M/s Sandhya Hotels Pvt. Ltd (supra). We find that the said seized handwritten scribbling is an unsigned, undated loose sheet. Apart from relying on the said handwritten scribbling, nothing has been brought on

record by the A.O. which would irrefutably evidence that the assessee had received any on money on the sale of the shares. It is settled law that dumb documents found from third parties cannot, by themselves, constitute evidence of undisclosed income of another person. We find that neither corroborative evidence has been brought on record by the department to establish receipt of unaccounted money by the assessee nor any corresponding unaccounted asset evidencing any trail of the same was found. Also, the assessee's *alibi* of being abroad on the relevant dates on which the unaccounted cash is alleged to have been received by him is supported by his passport entries and has not been controverted by the A.O. We, thus, in the backdrop of the aforesaid facts, find substance in the view taken by the CIT(A) that as the A.O had neither provided the copies of the statements relied upon by him for drawing adverse inferences in the hands of the assessee, nor granted any opportunity to the assessee to cross-examine the concerned parties, therefore, there was no justification for him to have acted upon such material that was gathered at the back of the assessee, as the same was in gross violation of the principles of natural justice. Our aforesaid view is supported by the judgment of the **Hon'ble Supreme Court** in the case of **M/s. Andaman Timber Industries Vs. Commissioner of Central Excise [(2015) 281 ELT 431 (SC)]**. The Hon'ble

Supreme Court after exhaustive deliberations on the denial of the right of an assessee for cross-examination of a witness, whose statement was being acted upon by the adjudicating authority and had formed the basis of drawing an inference in his hands, had held that not allowing the same amounted to violation of the principles of natural justice because of which the assessee was adversely affected. The Hon'ble Apex Court further observed that not allowing cross-examination constituted a serious procedural flaw which rendered the order a nullity. The Hon'ble Supreme Court disapproved the view taken by the Tribunal, which had observed that no useful purpose would have been served by allowing the cross-examination of third parties to the assessee before it. The Hon'ble Apex Court had observed that it was not for the Tribunal to have guessed as to for what purpose the assessee/respondent wanted to cross-examine the third party and what extraction he wanted from them. The Hon'ble Supreme Court, considering the aforesaid facts, had set aside the impugned order passed by the Tribunal and allowed the appeal. For the sake of clarity, the relevant observations of the Hon'ble Apex Court are culled out as under:

“We have heard Mr. Kavin Gulati, learned senior counsel appearing for the assessee, and Mr. K. Radhakrishnan, learned senior counsel who appeared for the Revenue.

According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made

the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause Notice.

We, thus, set aside the impugned order as passed by the Tribunal and allow this appeal.”

18. Also, we find that a similar issue had been looked into by the **Hon'ble High Court of Rajasthan** in the case of **CIT, Central, Jaipur Vs. Sunita**

Dhadda (2018) 100 taxmann.com 525 (Rajasthan). The indulgence of the Hon'ble High Court was, *inter alia*, sought for adjudicating, viz., (i). that whether an assessee who was fastened with the tax liability based on the testimony of a third party, was supposed to be afforded an opportunity for cross-examination; and (ii) that what would be the effect in case, the opportunity for cross-examination was not afforded. We find that the Hon'ble High Court, drawing support from the judgment of the Hon'ble Supreme Court in the case of M/s. Andaman Timber Industries Vs. Commissioner of Central Excise (supra) along with a host of other judicial pronouncements, had approved the view taken by the Tribunal that had held that for the said failure on the part of the A.O. to allow cross-examination of the third party, the adverse inference that was drawn by the A.O. in the hands of the assessee before them were liable to be vacated. Also, we may herein observe that the aforesaid judgment of the Hon'ble High Court of Rajasthan in the case of CIT, Central, Jaipur Vs. Sunita Dhadda (supra) had thereafter been approved by the **Hon'ble Supreme Court** in the case of **CIT Vs. Sunita Dhadda (2018) 100 taxmann.com 526 (SC)** and the petition filed by the Department had been dismissed. Further, we find that the **Hon'ble High Court of Gujarat**, in the case of **Laxmanbhai S. Patel Vs. CIT (2010) 327 ITR 281 (Guj.)**, had deliberated

upon the ramifications of not allowing the opportunity of cross-examination to the assessee. It was observed that, in the absence of allowing of cross-examination, the addition which was based on the statement of the third party was required to be deleted on the ground of violation of the principles of natural justice. **The Hon'ble High Court of Bombay**, in the case of **M/s R.W. Promotions P. Ltd. Vs. ACIT (2015) 61 taxmann.com 54 (Bombay)**, had held that the right to cross-examination is a part of the *audi alteram partem* principle, and the same can be denied only on exclusive and extraordinary grounds, that too, only after recording them in writing and then communicating the same to the assessee. It was further observed by the Hon'ble High Court that the denial of the right to cross-examine renders the assessment against the assessee as null and void. Further, we find that the **ITAT, Delhi** in the case of **Amarjit Singh Bakshi (HUF) Vs. ACIT (2003) 86 ITD 131 (Delhi) (TM)** has held that where the documents in question were not recovered from the possession of the assessee, but were recovered from somewhere else, and the assessee was not allowed to cross-examine the concerned person, then no addition could be made in the hands of the assessee based on such documents.

19. We thus, in terms of our aforesaid observations approve the view taken by the CIT(A) that the impugned addition of Rs. 3.75 crore (supra) made by the A.O. in gross violation of the basic principles of natural justice i.e *audi alteram partem* cannot be sustained and is liable to be quashed even on the said count.

20. Apropos the CIT(A) view that as Section 69A requires that the assessee is found to be the owner of unexplained money or valuable article or thing, therefore, as in the present case no such money or valuable article or thing was found in the possession of the assessee, therefore, in the absence of satisfaction of the essential ingredients of section 69A of the Act there was no justification for the A.O to have made the impugned addition under the said statutory provision, we find substance in the same. As the addition of Rs. 3.75 crore (supra) made by the A.O u/s 69A of the Act fails to satisfy the pre-conditions contemplated in the said statutory provision, therefore, the same cannot be sustained and has rightly been vacated by the CIT(A) on the said ground.

21. We thus, in terms of our aforesaid observations, finding no infirmity in the well reasoned order passed by the CIT(A), uphold the same.

22. In the result, the appeal filed by the revenue is dismissed, while for the cross-objection filed by the assessee is allowed.

Order pronounced U/Rule 34(4) of the Appellate Tribunal Rules, 1963 on 30th September, 2025.

<p>Sd/- (एस. बालकृष्णन) (S. BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER</p>	<p>Sd/- (रवीश सूद) (RAVISH SOOD) न्यायिक सदस्य/JUDICIAL MEMBER</p>
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Hyderabad, dated 30.09.2025.

#*L.Rama /sps

आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1.	निर्धारिती/ The Assessee	:	Shri Apparao Mukkamala, 4545, Warwick Circle DR, MI, Grand Blanc, USA
2.	राजस्व/ The Revenue	:	The Deputy Commissioner of Income Tax, International Taxation, Circle, Ground Floor, Infinity Tower, Sankaramatam Road, Visakhapatnam
3.	The Principal Commissioner of Income Tax, Visakhapatnam.		
4.	विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, / DR, ITAT, Visakhapatnam.		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam