

**IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI**

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

ITA No. 43/Ran/2023

(Assessment Years-2013-14)

Abhishek Gourasaria, 118, Flat No. 2B, surabhi Apartment, K Road, Bistupur, Jamshedpur-831001. <b>PAN No. ADWPG 2149 R</b>	Vs.	A.C.I.T., Jamshedpur
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri Rajiv Mittal, A.R.
Department represented by	Shri Khub Chand Pandya, Sr.DR
Date of hearing	06/10/2025
Date of pronouncement	06/10/2025

**ORDER**

**PER: BENCH**

1. This is an appeal filed by the assessee against the order of the Id. CIT(A), NFAC, Delhi in Appeal No. NFAC/2012-13/10071135 dated 04/01/2023 for the A.Y. 2013-14.
2. Shri Rajiv Mittal represented on behalf of the assessee and Shri Khub Chand Pandya, Id. Sr. DR represented on behalf of the revenue.
3. It was submitted by the Id. AR that there was a search and seizure operation on the premises of one M/s CDS Properties Pvt. Ltd. on 02/03/2015. It was the submission that in the course of search, a diary marked as CDSPL-1 was found and seized which contained entries mentioning the cash received by the said M/s CDS Properties Pvt. Ltd. on the sale of flats. The assessee's father's name was found in the said diary. The property had been purchased in the name of the assessee, consequently, the assessee had been asked to explain the cash

payment representing the on-money for the purchase of the property and as to why the same should not be treated as unaccounted investment in the hands of the assessee. The assessee had denied having paid any amount in cash to M/s CDS Properties Pvt. Ltd. other than Rs. 11,000/- towards the booking of the flat. The Assessing Officer did not accept the contentions of the assessee and made an addition of Rs. 9,88,128/- alleging the same to be the on-money paid by the assessee. It was submitted by the Id. AR that this assessment is the consequence of a search on M/s CDS Properties Pvt. Ltd.. It was a submission that this is evidence found in respect of a cash transaction recorded in a diary found and seized in the said search. It was a submission that consequently, the assessment, if any, was liable to be done under Section 153C of the Act and not by reopening of the assessment. The Id. AR has filed written submissions as follows:

*"The Return of Income for the assessment year 2013-14 was filed on 21.12.2013 declaring total income at Rs.4,94,690/-. Subsequently, information was received from credible sources that the assessee has purchased flat from M/s. CDS Properties Pvt. Ltd. For which he made 'on money' cash payment. In response to the notice u/s.148 of the Act, assessee filed return of income on 08.10.2020 declaring total income of Rs. 4,94,690/-. The assessee has declared income from salary, profit and gains of business and profession and income from other sources.*

*The Diary unearthed by the department during the Search and Seizure operation from the premises of builder/developer have not revealed anywhere that Assessee Shri Abhishek Gaurisaria has given any money to M/s CDS Properties Pvt. Ltd. in cash. I have paid the amount totaling to 211,97,000/-through my Bank account No.505902010005199 on 03.03.2012 ₹5,51,000/-, on 12.03.2012 6,35,000/-through and 11,000/-in cash as booking Amount for the purchase of*

*flat No. G-1 of 700 sq. ft. in the apartment Krishnakunj, Bistupur, Jamshedpur. As per the seized documents cash was deposited by "Sohanna" allegedly related the name to my Father Shri Sohan Lal Gaurisaria.*

*The Assessing Officer erred in initiating the proceedings u/s 147/148 on the basis of the details/documents made available to him by the investigation department that is too not related to Assessee in any way and thus have not acted upon his own reason to believe. The action of Ld. Assessing Officer is without Jurisdiction.*

*Reliance may be placed on the following judgments in this regard It has been held in the following cases, that the provision invoked by the Assessing Officer without having of his own satisfaction on the material received/possessed, the provision contained U/S 147 cannot be invoked on the borrowed information from the Investigation Wing of the Dept.*

- 1. ACIT Vs. Dhariya Construction Co. (2010) 328ITR 515 S.C.*
  - 2. CIT v. India Terminal Connector System-Ltd. ITA No. 6430 of 2011.*
  - 3. Phool Chand Bajrang Lal V. Income-tax Officer (1993) 203 ITR 456 SC:*
  - 4. CIT V. Pradeep Kumar Gupta (2008) 303 ITR 95;*
- Sec 153C read as under-*

*"Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that, (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or (b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in*

*which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A: Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person: Apparently, it is clear that the Ld. AO did not considered the specific provision of Sec.153C of the Income Tax Act which is applicable in the case search assessment ignoring the various judicial rulings and assuming the jurisdiction u/s 147 and issued notice u/s 148 of the IT Act, as such order is liable to be cancelled/set aside.*

*AO discussed the record found in Search and seized u/s 132(1) in the form of a diary containing Page 01 to 07, marked as CDSPL-1, which was the basis of the issue of notice u/s 148 of IT Act. By doing so the Ld Assessing Officer overlooked the specific provision of Section 153C of the IT Act 1961, which should be primarily invoked as per various judicial rulings. Some of them are mentioned below:*

*1. ACIT Vs. Arun Kumar 140 TTJ 219 ITAT Amritsar Bench.*

*As decided in ARUN KUMAR KAPOOR [2012 ITAT AMRITSAR] held that the notice issued u/s 148 of the Act and the consequent assessment framed u/s 147 of Act is void-ab-initio as in the instant case, assessment based upon incriminating documents found during the course of search of 3rd party premises can be made u/s 153C of the Act. Thus, the assessment in the present case itself becomes null and void."*

4. In reply, the Id. Sr.DR vehemently supported the orders of the Assessing Officer and the Id. CIT(A).
5. We have considered the rival submissions. A perusal of the facts in the present case clearly shows that admittedly a diary has been found in the course of search on M/s CDS Properties Pvt. Ltd.. The said diary records the name of

assessee's father for having paid certain amounts. The property admittedly has been purchased in the name of the assessee. As the investment is in the name of the assessee, obviously, the assessment is being proposed in the name of the assessee. However, a perusal of the provisions of Section 153C shows that the said provision is applicable to search cases and in respect of cases where information in relation to a third party has also been obtained in the course of the search. As the information against the assessee has been obtained as a consequence of the search in the case of M/s CDS Properties Pvt. Ltd., obviously, the assessment cannot be reopened under Section 147 and the provisions of Section 153C/153A as required is liable to be applied. As the same has not been done but the assessment has been done by issuing notice under Section 148 for the purpose of reopening, we are of the view that the reopening done is bad in law and consequently, the same stands quashed. In the result, consequential assessment order also stands quashed.

6. In the result, the appeal of the assessee is allowed.

Order announced in open court on 06/10/2025.

Sd/-  
(RATNESH NANDAN SAHAY)  
ACCOUNTANT MEMBER

Sd/-  
(GEORGE MATHAN)  
JUDICIAL MEMBER

Ranchi, Dated: 06/10/2025

*\*Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi