

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

ITA No.5458/Del/2025
Assessment Year: 2022-23

Montage Enterprises Pvt. Ltd., 205, 2 nd Floor, V-4, Mayur Plaza -2, Local shopping Centre, Mayur Vihar, Phase-1, East Delhi, Delhi	Vs.	DCIT/ACIT, Central Circle-II, Noida
PAN :AACCM8173H		
(Appellant)		(Respondent)

With
ITA No.5906/Del/2025
Assessment Year: 2022-23

DCIT/ACIT, Central Circle-II, Noida	Vs.	Montage Enterprises Pvt. Ltd., 205, 2 nd Floor, V-4, Mayur Plaza -2, Local shopping Centre, Mayur Vihar, Phase-1, East Delhi, Delhi
PAN: AACCM8173H		
(Appellant)		(Respondent)

Assessee by	Sh. Rohit Kapoor, Adv. Sh. Veersen Aggarwal, ITP
Department by	Sh. Siddharth Bhim Singh Meena, CIT(DR)

Date of hearing	08.12.2025
Date of pronouncement	29.12.2025

ORDER

PER SATBEER SINGH GODARA, JM

These assessee's and Revenue's cross appeals ITA No.5458/Del/2025 and 5906/Del/2025 for assessment year 2022-23, arises against the Commissioner of Income Tax (Appeals)-3 [in short, the "CIT(A)"], Noida's order dated 30.07.2025 passed in case no. CIT(Appeals), Noida-3/10126/2021-22, involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

Heard both the parties. Case files perused.

2. We notice at the outset that there arises the first and foremost issue of validity of the impugned section 143(3) assessment itself framed by the learned DCIT, Central Circle-II, Noida as per the assessee's pleadings in its appeal ITA No.5458/Del/2025. A combined perusal of both these case files indicates that the assessee/appellant is engaged in the business of manufacturing and sale of flexible packaging material etc. It has filed its return for the impugned assessment year 2022-23 on 29.10.2022, declaring loss of Rs.64,53,88,702/-. And the same was taken for scrutiny. The learned departmental authorities thereafter carried out section 132 search action as well as section 133A survey in its case on

21.02.2023. There is further no dispute that the learned Assessing Officer then proceeded to frame the impugned assessment on 30th March, 2024 in its case *inter alia* making various disallowances/additions etc., involving varying sums, which stand partly upheld in the CIT(A)'s lower appellate discussion.

3. It is in this factual backdrop that the assessee seeks to raise its precise question challenging validity of the impugned assessment for the sole reason that the same ought to have been framed under section 148 with approval under section 148B of the Act in light of Homelife Buildcon (P.) Ltd. Vs. DCIT, (2025) 176 taxmann.com 614 (Chandigarh – Trib.) as relied in Jamna Das Nikkamal Jain Saraf Pvt. Ltd. Vs DCIT (ITA No. 403/Chd./2025) decided on 04.11.2025, adjudicating the very issue against the department as under:

“11.4 In conclusion, it was submitted that since the year under appeal formed part of the three assessment years immediately preceding the year in which search was conducted, the assessment ought to have been framed under section 148 with approval u/s 148B. The framing of the assessment u/s 143(3) and approval taken only for the purposes of section 143(3) was thus asserted to be fundamentally defective, non-compliant with statutory mandate, and consequently void ab initio. On these grounds, following the ratio in Homelife Buildcon Pvt. Ltd., it was prayed that the impugned assessment be quashed.

12. *The Ld. CIT-DR Shri Manav Bansal opposed the contention, stating that the return for A.Y. 2022-23 was filed prior to the date of*

search, and validly selected for scrutiny under CASS. The AO was competent to complete the assessment u/s 143(3).

12.1 He contended that section 148B applies only to “re-assessment” and not to “regular assessments.” The AO’s approval from Addl. CIT, being in line with the CBDT Instruction No. 7/2022 dated 15.07.2022, fulfils the supervisory requirement. The DR also submitted that Homelife Buildcon is distinguishable, as the AO therein relied on third-party search data, whereas the present case is based on assessee’s own seized material.

13. We have carefully considered the rival submissions and perused the record. It is undisputed that search u/s 132 was conducted on 24.11.2022, relevant to A.Y. 2023-24. Thus, A.Y. 2022-23 is one of the three preceding years under Explanation 2(iv) to section 148. The Explanation reads that if a search is initiated, “the Assessing Officer shall be deemed to have information suggesting escapement of income for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated.”

13.1 Therefore, the only permissible statutory course was to issue notice u/s 148 and obtain prior approval u/s 148B before passing assessment order.

13.2 As the Assessing Officer completed the assessment under section 143(3) of the Act without issuing the notice under section 148 of the Act. Therefore, the question before us is whether the assessment proceedings initiated under section 143(3) of the Act can be validly continued and completed after a search under section 132 has been conducted in the case of the same assessee, without following the procedure prescribed under section 148 (Explanation 2) of the Act.

13.3 In our considered opinion, the answer lies in the scheme of the Act itself. Section 143 provides the general framework for regular assessment, whereas sections 147–148 (post-2021 regime) deal with reassessment based on information suggesting escapement of income, including that unearthed during a search.

13.4 A plain reading of section 143(2) shows that such notice can be issued only when a return of income is furnished under section 139 or in response to a notice under section 142(1). It empowers the Assessing Officer to scrutinize that return if he considers that income has been understated or tax underpaid. However, when a search under section 132 takes place and materials are found indicating possible escapement of income, the statute envisages a different route

for carrying out assessment or reassessment under section 147 read with section 148, which is the special mechanism for bringing to tax the income discovered in consequence of a search.

13.5 Although section 148 (inserted w.e.f. 01.04.2021) does not begin with a non-obstante clause similar to the erstwhile section 153A, its context and Explanation 2 make it clear that where a search is initiated, the jurisdiction thereafter must flow through this special channel, subject to prior satisfaction and approval of the Principal Commissioner or Commissioner. The legislative intent is to ensure that when a search is carried out, the assessment is framed under the specific provisions meant for such cases and not under the general provision of section 143(3). Further we may mention that no notice under section 143(2) could have been issued after 3 months from the from the end of the financial year in which the return is furnished. In the present case the original return of income was filled on 4/11/2022 for the assessment year 202223 and 143 (2) was issued on 21/6/2023 , therefore also the assessment was framed under 143(3) of the Act is not sustainable. In other words the time required for issuing the notice under 143(2) had already expired, and the revenue can not be allowed to issued issue 143(2) on 21.6.2023 after the search was carried out and notice had been issued on 21.6.2023 and assessment was framed under 143(3) of the Act. The relevant portion of section 143(3) reads as under:-

143(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer or the prescribed income-tax authority, as the case may be, if considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, shall serve on the assessee a notice requiring him, on a date to be specified therein, either to attend the office of the Assessing Officer or to produce any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be issued after the expiry of three months from the end of the financial year in which the return is furnished.

13.6 This position finds substantial support from the ratio of various decisions of Hon'ble High Court and Hon'ble Supreme Court. The Courts unanimously held that once a search has been conducted and proceedings are triggered under section 153A, the Assessing Officer cannot continue parallel proceedings under section 143(3) or section 147 for the same assessment year, because the entire assessment for that year stands merged in the search assessment. The Courts emphasized that the existence of a special procedure for assessment consequent to a search is a complete code in itself;

therefore, ordinary assessments abate and cannot coexist with the search-based assessment.

13.7 Drawing this analogy to the current regime, it is evident that when a search takes place and information is unearthed suggesting escapement of income, the Assessing Officer must act under section 148 (which now performs the role formerly assigned to section 153A) rather than continuing with a pending section 143(3) proceeding. The legislative intent remains the same — to prevent multiplicity of proceedings and ensure that only one comprehensive order is passed, factoring in both the pre-search and postsearch materials.

13.8 The rationale is further reinforced by the well-settled principle of generalia specialibus non derogant — the special provision overrides the general. Section 148 (as a special provision triggered by search information) must prevail over section 143 (the general provision for regular scrutiny). Allowing the Assessing Officer to continue and conclude proceedings under section 143(3) after a search would defeat this legislative scheme and render the safeguards, such as prior approval of the Principal Commissioner, redundant.

13.9 Accordingly, we hold that once a search is initiated under section 132 and material is found relating to the assessee, the pending assessment under section 143(3) cannot validly continue, as the time for issuing the 143(2) in response to original return of income had already expired, therefore the Assessing Officer must necessarily proceed in accordance with the special provisions contained in section 148 of the Act.”

4. Learned CIT(DR) representing the Revenue vehemently supports the impugned assessment that the Assessing Officer had rightly finalized the same under the normal provision once the entire issue was pending before him as on the date of search.

5. We have given our thoughtful consideration to the assessee's and the Revenue's foregoing vehement submissions. We find merit in the assessee's legal ground herein once the impugned search had taken place in its case, no normal assessment under section

143(3) of the Act could have been framed in light of the tribunal's foregoing twin decisions going against the department. We thus adopt the above extracted reason *mutatis mutandis* to quash the impugned assessment framed by the learned Assessing Officer on 30th March, 2024 in very terms.

6. We next notice with the able assistance coming from both the parties that the learned CIT(A)'s impugned estimation has considered the assessee's average GP @ 11.84% in AYs 2012-13 to AY 2021-22 alongwith the flexible packaging material industry's comparable instances having the GP rate @ 6.96% (pages 122-123) in the lower appellate discussion to arrive at the "mean" profit rate of 9.40% i.e. $11.84\% + 6.96\% \div 2$, which is challenged by both the parties. That being the case, the assessee takes us to case law CIT Vs. K.Y. Pilliah & Sons (1967) 63 ITR 411 (SC), CIT Vs. Surjeet Singh Mahesh Kumar (1994) 210 ITR 83 (Del.), Bimal Kumar Anant Kumar Vs. CIT (2007) 159 TAXMAN 402 (All.), Salem Steel Co. Vs. CIT (2010) 322 ITR 349 (Mad.), Telelinks & Ors. Vs. CIT (2015) 377 ITR 158 (P&H), quoted in the lower appellate discussion at page 125 onwards that even such an estimation is not to be an unbridled and unguided one but to be based on the very sector's book results

at this relevant point of time. We thus reject the Revenue's vehement contentions seeking to assess the assessee @ 18% and direct the learned Assessing Officer to estimate its GP @ 6.96% going by the segmental trends only. Ordered accordingly.

All other remaining issues between the parties stand rendered academic in forgoing terms.

7. This assessee's appeal ITA No.5458/Del/2025 is allowed and the Revenue's cross appeal ITA No. 5906/Del/2025 is dismissed. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 29th December, 2025

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Dated: 29th December, 2025.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi