IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.1812/PUN/2025
Assessment year : 2017-18

ITO, Ward 2(2), Pune	**Vs.**	Sagar Construction Company BA Gateway, Sakal Nagar, Baner Road, Aundh, Pune – 411020
		PAN: ABAFS4929D
(Appellant)		**(Respondent)**

CO No.43/PUN/2025
Assessment year : 2017-18

Sagar Construction Company BA Gateway, Sakal Nagar, Baner Road, Aundh, Pune – 411020	**Vs.**	ITO, Ward 2(2), Pune
PAN: ABAFS4929D		
(Appellant)		**(Respondent)**

Assessee by	**:**	Shri Suhas Bora and Riya Oswal
Department by	**:**	Shri S. Sadananda Singh, JCIT
Date of hearing	**:**	20-11-2025
Date of pronouncement	**:**	08-01-2026

O R D E R

PER R.K. PANDA, VP:

This appeal filed by the Revenue is directed against the order dated 12.06.2025 of the Ld. CIT(A) / NFAC, Delhi relating to assessment year 2017-18. The assessee has filed the CO against the appeal filed by the Revenue. For the sake of convenience, the appeal filed by the Revenue and the CO filed by the assessee were heard together and are being disposed of by this common order.

2. Facts of the case, in brief, are that the assesse is a partnership firm engaged in the business of contractors, promoters, developers, builders and real estate developers. It filed its return of income on 28.10.2017 disclosing total income of Rs.44,06,250/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). Subsequently on the basis of information obtained that the assessee has taken unsecured loan of Rs.1.62 crores in cash through Shri Sachin Nahar, the Assessing Officer reopened the assessment by recording the following reasons, copy of which is placed at page 15 of the paper book:

01. The assessee is a Firm and filed original Return of Income for AY 2017-18 declaring total income of Rs. 44,06,250/- on 28/10/2017. The assessee has derived income from business etc. The said return has been processed u/s 143(1) of the Income Tax Act.

02. An information has been received from Insight Portal on 15/03/2021 in the case of Sagar Construction Company for A.Y. 2017-18. As per the information, a search and seizure action u/s 132 of the Act was carried out in the case of Shri Sachin Nahar on 01/08/2017 by the DDIT (Inv.), Shri Sachin Nahar is working as finance broker. He is working as middleman who provides a platform for those investors who are having surplus fund and the borrowers who are in the need of funds.

As per the information, the assessee Sagar Construction Company had taken loan through Sachin Nahar amounting Rs. 1,62,00,000/- in cash. It is Violation of provision of section 269SS of the Income-tax Act, 1961. Further, the interest amount paid by the assessee in cash is his unaccounted income, which is not offered for taxation while filing the ITR for A.Y. 2017-18.

03. In this case, it is found that the assessee had filed the return of income for A.Y. 2017-18 declaring total income of Rs. Nil/-. However, the interest amount paid by the assessee for the loan of Rs. 1,62,00,000/- taken by the assessee in cash, is the unaccounted income of the assessee, which he has not offered for taxation while filing the ITR for A.Y. 2017-18. I have therefore, reason to believe that the income chargeable to tax amounting to more than Rs. 1 lakh taken in cash has escaped assessment within the meaning of provisions of section 147(b) of the IT Act, 1961.

3. The Assessing Officer accordingly issued notice u/s 148 of the Act dated 29.03.2021 in response to which the assessee filed its return of income on 11.05.2021 declaring total income of Rs.44,06,250/-. The Assessing Officer

thereafter issued statutory notices u/s 142(1) and 143(2) of the Act in response to which the assessee submitted its reply. The assessee also filed objections against the reopening of assessment u/s 147 on 16.02.2022. The Assessing Officer disposed of the objections on 07.03.2022 as per the directions of Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd vs ITO reported in (2003) 259 ITR 19 (SC). Thereafter, the Assessing Officer issued notice u/s 142(1) of the Act dated 07.03.2021 stating that the objections raised have already been disposed of and asked the assessee to file its response to the notice issued.

4. During the course of assessment proceedings the Assessing Officer asked the assessee to explain as to why the said amount not be made taxable on account of violation of provisions of section 269SS and 269T of the Act. The assessee in response to the same gave the details of 16 parties from whom it had taken loan through proper banking channel. The Assessing Officer thereafter asked the assessee to furnish the documentary evidence substantiating the said loans which have been arranged through Sri Sachin Nahar. From the reply submitted by the assessee, he noted that during the course of search proceedings certain documents / loose sheets were seized wherein it has been found that the assessee had taken unsecured loans in cash through Sri Sachin Nahar. He reproduced some of the scanned sheets wherein it is clearly found that the loans have been made in cash. He, therefore, asked the assessee to explain as to why addition of the same should not be made to the total income of the assessee.

5. The assessee submitted that the total outstanding unsecured loan during the year under consideration was Rs.12,85,03,100/- which has already been disclosed in the financials submitted. The assessee during the year under consideration has taken loan of Rs.1,61,00,000/- from 16 parties through Sri Sachin Nahar. However, in absence of any details furnished by the assessee to prove the genuineness and creditworthiness of the loan creditors amounting to Rs.1,61,00,000/- which were received through Sri Sachin Nahar, the Assessing Officer, invoking the provisions of section 68 r.w.s. 115BBE of the Act, made addition of the same to the total income of the assessee. Since the assessee has also paid interest amounting to Rs.17,80,059/-, the Assessing Officer disallowed the same u/s 37 of the Act. Thus, the Assessing Officer computed the total income of the assessee at Rs.2,22,86,304/-.

6. Before the Ld. CIT(A) / NFAC the assessee submitted that the reasons for reopening were communited to the assessee after 11 months of issue of notice u/s 148 of the Act although the assessee had filed the return in response to the notice u/s 148 of the Act within prescribed time and requested the Assessing Officer for supply of the reasons vide submissions dated 17.07.2021 and 24.01.2022. It was submitted that the assessee received notices u/s 142(1) of the Act dated 10.02.2022 and 07.03.2022 in which the objections raised by the assessee were disposed of mechanically without any speaking order. Referring to the decision of Hon’ble Supreme Court in the case of GKN Driveshafts (India) Ltd vs ITO (supra) it was

submitted that the Assessing Officer has violated the guidelines issued by the Hon'ble Supreme Court, therefore, such reopening of the assessment should be quashed on account of violation of the directions of Hon'ble Supreme Court. It was further submitted that the Assessing Officer should have issued notice u/s 153C of the Act instead of notice u/s 148 of the Act since the reopening was based on incriminating material found during the course of search at the premises of Sri Sachin Nahar. For the above proposition, the assessee relied on various decisions.

7. So far as the merit of the case is concerned, it was submitted that as per the reasons for reopening the assessment it is the allegation of the Assessing Officer that the assessee has taken unsecured loan from Sri Sachin Nahar in cash. However, no such unsecured loan has been received by the assessee in cash but all the loans were received through proper banking channel. The Assessing Officer in the order has accepted and satisfied that all the loans were taken through banking channel which has been mentioned at para 20 of the assessment order. The assessee submitted that to prove the identity, genuineness and creditworthiness of the persons from whom the said loans were received the assessee had submitted the confirmation letters, PAN numbers, bank statements of the lenders, return of acknowledgement of ITR V of the lenders and TDS certificates / 15G forms for verification. The assessee filed an application for admission of additional evidences under Rule 46A before the Ld. CIT(A) / NFAC. The invocation of

provisions of section 115BBE of the Act was also challenged before the Ld. CIT(A) / NFAC.

8. Based on the arguments advanced by the assessee, the Ld. CIT(A) / NFAC deleted the addition by observing as under:

5.2 **Ground No. 2:-** Vide this ground, the appellant has challenged the addition of Rs.1,61,00,000/- made u/s 68 and that of Rs.17,80,059/- claimed as payment of interest to the said 16 persons, disallowed.

5.2.1 As stated by the AO in the first part of the assessment order, the AO was in receipt of information, unearthed by the investigation wing, during the search and seizure action u/s 132 undertaken on Sh. Sachin Nahar. The information on the basis of which the assessment was reopened and which is the genesis of this litigation is that the said Sh. Nahar was a middle man and through him the appellant took loans amounting to Rs. 1,62,00,000/- in cash. The quoted information in para 2 of the assessment order makes it clear that the information about loan contained the following crucial details :-

i. That the loan was taken in cash.

ii. That the total cash loan amount, obtained through Sh. Sachin Nahar was Rs. 1,62,00,000/-.

iii. The information that the transactions were in cash is further reinforced by the fact that the information considered these transactions to be in violation to section 269SS of the Act.

iv. As per the information, even the interest amount on this loan was paid in cash.

5.2.2 However, as stated in para 5 of the assessment order, the appellant submitted a reply dated 16.02.2022 stating that he had received total loan of Rs.1,61,00,000/- from 16 entities through Sh. Nahar and none of it was in cash but only through banking channels. The appellant also clarified that none of the transactions are in violation of section 269SS and submitted the tax audit report filed by it alongwith other details to substantiate the above. On his part, the AO had

reproduced the copies of seized documents and stated in para 7 of the order that the seized record reveal that the appellant had received the loans in cash and paid the interest thereon also in cash and stated that the submission made by the appellant is rejected.

5.2.3 But in the subsequent part of the same para of the assessment order states as given below:-

> *"The assessee in response to the notices issued u/s 142(1) has given a list of persons from whom the unsecured loans have been received through Shri Sachin Nahra and also provided bank statements of its own concern, copy of ledger accounts in its books, but failed to submit any confirmation from the parties from whom the said loans have been received, any ITR to prove the creditworthiness, identity and bank statements of concerned parties to prove the genuineness of the unsecured loan, which the assessee failed to do so."*
>
> (Emphasis supplied)

5.2.4 From the above it is seen that the AO totally departed from the information that the appellant had received total loans of Rs.1,62,00,000/- in cash arranged by Sh. Sachin Nahar and also that payment of interest was in cash. The AO went by the submission of the appellant that the loan amount is Rs.1,61,00,000/- instead of Rs.1,62,00,000/- as provided in the information. The AO also accepted the submission of the appellant that the loan was obtained through the banking channels and not received in cash as reported in the information. Finally, the AO also agreed that the interest on these loans were paid through banking channels and not in cash, as given in the information. Thus, it is seen that the AO totally accepted all these claims of the appellant, in contrast with the information based on which the assessment was reopened. However, the AO went on to make the addition u/s 68 and disallowed the claim of interest payment, only on the ground that because the appellant failed to provide the confirmations from the said parties from whom the loan was taken, any ITR to prove the credit worthiness and identity and bank statement the genuineness, identity, credit worthiness was not proved and hence made the addition of Rs.1,61,00,000/- u/s section 68.

5.2.5 The AO has further reproduced the reply of the appellant submitted on 30.03.2022. As per the appellant's submission, reproduced on the last para of page 19 and 20 of the assessment order, the appellant has stated that ledger extract of all

these parties was submitted on 16.02.2022, the bank statement of all banks was submitted on 24.01.2022 and copy of confirmations of unsecured loans was provided as annexure 4 of the reply dated 30.03.2022. The appellant also reiterated that from the confirmations submitted, it was clear that all the transactions were done through banking channels. From the above submission, it is clear that the appellant did provide the confirmations from the creditors and hence, the conclusion drawn by the AO that the loans genuineness was not proved, just because confirmations were not given by the appellant is not borne out from the records. On the contrary, the reproduction of the appellant's submission by the AO himself clearly reveals that the confirmations were provided by the appellant. The appellant rightly urged the AO, in the course of the video conference, that if the AO was not satisfied with the confirmations, he should have asked for the same, by issuing notices u/s 133(6), from the said parties. The AO has treated this request of the appellant as an effort to shift the onus to prove the genuineness of the loans to the AO, which is totally incorrect and not brought out from the records. Thus, the sole basis of the AO, for making the additions that the appellant could not produce the confirmation, is erroneous and not brought out from the records. It is relevant to note here that the appellant produced the bank statements, ledger accounts and also confirmations from the parties. The said loans were also duly reflected in point no 31 of the tax audit report of the appellant as well.

5.2.6 Thus from the above discussion, it is clear that the AO totally jettisoned the contents of the information both in terms of quantum of loan (from Rs.1,62,00,000/- to Rs.1,61,00,000/-) and the mode of transactions (from cash to bank mode) and accepted the appellant's books and submissions, in this regard. Having once done that, the AO's further action of making the addition, treating the genuineness of the loans as unproved, merely on the claimed basis that the appellant did not produce the confirmation of the parties, which basis is not even correct, as examined in the preceding paragraph, was totally misconceived. Once the AO had accepted the books of the appellant, in terms of mode and amount of loan, he certainly did not have any basis for rejecting the claim of the appellant, on the flimsy ground of non-submission of confirmations, which is not even true and based on records, as examined and concluded in the preceding paragraph.

5.2.7 Also, it is paradoxical to note that on one hand, the AO has repeated umpteen times that the loans in question were obtained by the appellant through Sh. Sachin Nahar and maintained the same throughout the order, but at the same time ends up adding the entire loan u/s 68 on the premise that the appellant was unable to prove

the genuineness of the same. Once the AO accepts that the said loans were arranged by Sh. Sachin Nahar then automatically the source of loans stands explained and he cannot swing back and forth to conclude that genuineness, identity and creditworthiness of the loan transaction & lenders was questionable. It is also relevant to note that in the entire 23-page assessment order, there is not even a whisper of allegation about the fact that loans were not arranged or that the appellant paid cash in lieu of book entries by Sh. Nahar. Once the fact of receipt of loan from the source entities controlled by Sh. Nahar remains unquestioned, its genuineness cannot be questioned and added back u/s 68. The AO cannot, in the same breath, embrace and espouse two contradictory facts. If the source of loan through the entities controlled by Sh. Nahar is accepted, as is the case here, then the genuineness, identity and creditworthiness of transactions and lenders stands explained and cannot be added u/s 68.

5.2.8 Once the appellant has submitted the Confirmation letter, Bank Statements and shown the loans in its audit report he was able to the identity, genuineness and creditworthiness of the persons from whom the said loans have been received. If the Assessing Officer was still unsatisfied he could have made enquiries from the parties before rejecting the claim of the appellant. In **ITO Vs. More Marketing Pvt. Ltd (ITAT Mumbai)**, the Hon'ble ITAT held that ITR and bank statements were sufficient to prove the genuineness and creditworthiness under Section 68 of Income Tax Act. It is a settled law that when documentary evidences are submitted by the appellant, the Assessing Officer is duty bound to examine the same before rejecting it, by making further enquiries. Without testing such documents by making proper enquiries, no adverse inference could have been drawn by the Assessing Officer regarding the submitted documents. Once all the relevant documents are submitted by the appellant regarding the loan creditors, the onus cast on the Appellant u/s 68 of the Act stands duly discharged and no addition could be made in its hands. Reliance in this regard is placed on the decision of **Hon'ble Jurisdictional High Court in the case of CIT vs Orchid Industries P Ltd reported in 397ITR 136 (Bom)**. Thus, it is held that the three main ingredients of section 68 i.e. identity of the lenders, genuineness of the transactions and creditworthiness of the lenders is proved and the nature and source of the loans is explained. Hence, the addition of Rs.1,61,00,000/- made u/s section 68 is hereby deleted and **this ground of appeal is allowed**.

5.2.9 The appellant has, as a part of ground no. 2 itself, question the disallowance of Rs.17,80,059/- as payment of interest to the above 16 parties, disallowed by the AO. Once, the addition u/s 68 treating the loan transactions as non-genuine, is deleted, the disallowance of interest also has to be deleted. Accordingly, the disallowance of Rs.17,80,059/- is also deleted. **Accordingly, this ground of appeal is allowed.**

9. So far as the validity of the assessment u/s 147 of the Act is concerned, the Ld. CIT(A) / NFAC did not adjudicate the same since he has deleted the addition on merit by observing as under:

> 5.3 **Ground No. 1 :-** Vide this ground , the appellant has also raised objections on issue of notice under sec 148 of Income Tax Act on 16-02-2022 to which assessing officer has disposed the objections mechanically and not by any speaking order on 07-03-2022 and the fact that the AO passed the Assessment order u/s 147 r.w.s 144B of Income Tax Act on 30-03-2022 (i.e. within a period of four weeks from the date of service of rejection order) and claims that the above action of the AO violates the procedure laid down by the Hon'ble Supreme court in GKN Driveshafts (India) Ltd vs ITO (2003) 259 ITR 19 (SC) and doesn't provide sufficient time to take remedial action to challenge the order of rejection which is against Natural Justice. These technical grounds regarding violation of principals of natural justice and regarding non adherence with the provisions laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts, raised by the appellant are not being adjudicated, as the addition made by the AO has been deleted on merits.

10. Aggrieved with such order of the Ld. CIT(A) / NFAC the Revenue is in appeal before the Tribunal by raising the following grounds:

1. *Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) was justified in deleting the addition of Rs.1,61,00,000/- made on account of unsecured loan u/s 68 of the Income Tax Act, 1961?*

2. *Whether on the facts and circumstances of the case and in law, the Hon'ble CIT(A) was justified in deleting the of Rs.17,80,059/- made on account of interest paid on alleged unsecured loans is 37 of the Income tax Act, 1961?*

3. *Whether on the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in not complying with the provision of Rule 46A(3) of the IT Rules while admitting fresh evidence in the form of confirmation letter, PAN number, bank statement of lender along with ITR-V of the lenders when the assessee has specifically made an application under Rule 46A for admission of additional evidence during appellate proceedings?*

4. *The appellant craves leave to add, amend, alter, vary and/or withdraw any of all of the above grounds of appeal in the course of appellate proceeding.*

11. The assessee has taken the following grounds in the CO:

1) The Ld. AO has failed to issue notice u/sec 153C of the Act and has erroneously invoked section 147, the impugned assessment order passed u/sec 143(3) r.w.s. 147 is bad in law, void ab initio, and without jurisdiction. The same deserves to be annulled.

2) The reassessment proceedings initiated u/sec 147 are invalid as the conditions precedent for assumption of jurisdiction were not satisfied. The AO had material allegedly belonging to the assessee found during search, and therefore, the only proper course available was to proceed u/sec 153C. Failure to do so vitiates the entire reassessment.

3) Without prejudice, the reassessment proceedings are further vitiated as the objections raised by the assessee against initiation of reassessment were disposed of in a mechanical manner and not by way of a reasoned speaking order, thereby violating the binding procedure laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd v. ITO (259 ITR 19).

4) The assessment order passed u/sec 143(3) r.w.s. 147 is liable to be quashed on account of gross violation of principles of natural justice inasmuch as the rejection of objections and passing of the final order were done in undue haste, depriving the assessee of effective opportunity to challenge the same.

5) The assessee craves leave to add, alter, amend, withdraw, or substitute any of the above grounds of cross objection, either before or during the hearing of this appeal.

6) In view of the above, the assessee respectfully prays that the Hon'ble Tribunal may be pleased to:

a) Admit and allow the above Cross Objections;

b) Hold that the assessment framed u/s 143(3) r.w.s. 147 is bad in law and void ab initio for want of jurisdiction;

c) Dismiss the Department's appeal and confirm the order passed by the CIT(A); and

d) Pass such other and further order(s) as may be deemed fit in the interest of justice.

12. The Ld. Counsel for the assessee at the outset submitted that the basis of reopening was the information obtained and the notings in the seized material from a search u/s 132 of the Act in the case of Sri Sachin Nahar. Referring to para 6

page 4 of assessment order, the Ld. Counsel for the assessee drew the attention of the Bench to the same which reads as under:

> 6. As stated above, it is crystal clear that the assessee is having business transaction with Shri Sachin Nahra. In this regard, it is pertinent to mention here that during the course of search proceedings, certain documents/loose sheets were seized, wherein it has been found that the assessee had taken unsecured loans in cash through Shri Sachin Nahra. Some of the scanned sheets, wherein it is clearly found that the transactions have been made in cash as reproduced below:

13. He submitted that when the Assessing Officer relied upon some seized documents which belong to or are pertaining to the assessee, he could have acted upon u/s 153C only and not u/s 147 of the Act. Referring to the following decisions, he submitted that once the assessment proceedings are initiated on the basis of search conducted in third-party case, then the provisions of Sec. 153C of the Act are applicable which override the applicability of Sec.147 and Sec.148 of the Act:

1. *Sejal Jewellery & Anr. Vs. Union of India & Ors (Writ Petition No. 3057 of 2019) (Bombay HC)*
2. *The Pr. Commissioner of Income Tax & Anr. v. M/s VSL Mining Company Pvt. Ltd (Karnataka High Court) (2024) TaxCorp (DT) 93485*
3. *ITO vs. Narendra Sampatlal Bafna vide ITA No.688/PUN/2024*
4. *Vijaykumar Mangilalji Chordiya Vs. NFAC, Delhi (Pune ITAT) (2024)*
5. *Jagjeet Singh v. DCIT/ACIT (Amritsar ITAT) (2024)*
6. *Mr. Nilesh Bharani vs DCIT CC 4(1) Mumbai (2023) Taxcorp (AT) 103442 (ITAT-Mumbai)*

14. He submitted that it is the settled proposition of law that section 153C of the Act is a complete code for cases of ‘other persons’ where seized material belongs

to them and therefore, resort to section 147 in such cases is not in accordance with law. He submitted that the jurisdictional defect which strikes the root of the assessment cannot be cured u/s 292B of the Act. For the above proposition, he relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Laxman Das Khandelwal reported in 417 ITR 325 (SC). He accordingly submitted that since the Assessing Officer, instead of issuing notice u/s 153C of the Act has issued notice u/s 148 of the Act, therefore, such reopening being not in accordance with law, has to be quashed.

15. In his second plank of argument the Ld. Counsel for the assessee drew the attention of the Bench to the chronology of events which are as under:

Particulars	**PB Reference**	**Date**
Notice u/s 148	01	29.03.2021
Return filed in response to notice u/s 148	04, 11, 13	11.05.2021
Request for asking reasons for issuing notice u/s 148	04	17.07.2021
Reasons provided	13, 15	02.02.2022
Objections filed by the assessee	22 to 31	17.02.2022
Objections disposed vide notice	43, 44	07.03.2022
Show cause notice	50	24.03.2022
Assessment Order	86 to 110	30.03.2022

16. He submitted that when the Assessing Officer rejected the objections by passing a non-speaking order by simply mentioning that the objections raised by

the assessee have been disposed off in terms of directions of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. ITO, such order has to be quashed since the Assessing Officer has not followed the due procedure. Since the Assessing Officer has not passed a speaking order while disposing of the objections raised by the assessee, therefore, such order should be quashed. For the above proposition, he relied on the following decesions:

i) Vilas B. Rukari (HUF) vs. ITO vide ITA No.2197/PUN/2017 order dated 19.11.2019 for assessment year 2006-07

ii) DCIT vs. P3 Properties vide ITA Nos.391 & 392/PUN/2016 order dated 04.05.2018 for assessment years 2008-09 & 2009-10

iii) Avinash R. Mahamuni vs. ITO vide ITA No.1582/PUN/2018 order dated 30.04.2019 for assessment year 2011-12

iv) Abhijit Despande vs. DCIT vide ITA No 492/PUN/2018 order dated 03.05.2019 for assessment year 2010-11

17. The Ld. Counsel for the assessee further submitted that when objections were rejected on 07.03.2022 and the re-assessment order was passed on 30.03.2022, the assessee was not provided any reasonable opportunity to challenge the reopening before the higher authorities, therefore, in view of the decision of Hon'ble Bombay High Court in the case of Asian Paints Ltd. Vs. DCIT reported in 296 ITR 90 (Bom) and in the case of Bayer Material Science Pvt. Ltd. Vs. ACIT reported in 382 ITR 333 (Bom) and the decision of the Co-ordinate Bench of the Tribunal in the case of Vilas B. Rukari (HUF) vs. ITO (supra), such re-assessment order is bad in law.

18. The Ld. Counsel for the assessee in his yet another plank of argument submitted that as per the reasons recorded by the Assessing Officer, he has stated that the assessee has taken loan of Rs.1,62,00,000/- in cash and interest amount has also been paid in cash. Further, the Assessing Officer has also mentioned that the assessee has filed the return of income on 28.10.2017 declaring total income of Rs.44,06,250/-. However, in para 3 of the assessment order, the Assessing Officer has stated that the assessee had filed return of income declaring total income at 'Nil' and the interest amount paid by the assessee for loan of Rs.1,62,00,000/- taken in cash is the unaccounted income of the assessee which he has not offered for taxation while filing the ITR. He submitted that the above contrary stand taken by the Assessing Officer shows that there is absolutely lack of mind by the Assessing Officer and the reasons recorded are merely on the basis of presumption. The Assessing Officer has not carried out any inquiry or verified the facts before drawing the conclusion about the escapement of income.

19. Referring to the following decisions, he submitted that when the reasons recorded are vague, far-fetched and cannot by any stretch of imagination lead to conclusion of escapement of income, such re-assessment proceedings are bad in law and are liable to be quashed:

i) Milind Madhukar Edke vs. ITO vide ITA No.648/PUN/2020 order dated 18.01.2023

ii) ITO vs. Lakshmi Mewal Das reported in 103 ITR 437 (SC)

20. So far as the merit of the case is concerned, the Ld. Counsel for the assessee submitted that the assessee has provided the names, addresses, PANs of creditors confirmations and bank trails, the proof of repayment of interest through proper banking channel, therefore, the assessee has discharged the primary onus cast on it. However, the Assessing Officer has not brought any contrary evidence. He has not conducted any enquiry or verification, therefore, such addition made by the Assessing Officer is not in accordance with law and since the Ld. CIT(A) / NFAC, after considering the submissions made by the assessee has deleted the addition, therefore, the same should be upheld and the grounds raised by the Revenue be dismissed.

21. He further submitted that the Ld. CIT(A) / NFAC has not relied on any fresh evidence as the confirmation and bank statements were part of the assessment record. He submitted that even assuming that any document was filed subsequently it was only clarificatory covered by Rule 46A(1)(c) of the IT Rules, 1962 which is evident from the application made u/s 46A by the assessee, copy of which is placed at pages 131 to 135 of the paper book. He submitted that since the Ld. CIT(A) / NFAC has not violated any of the provisions of Rule 46A and his conclusions are based on verified evidence and sound reasoning and the Revenue has failed to demonstrate any perversity or omission in appreciation of facts, therefore, the order of the Ld. CIT(A) / NFAC be upheld and the grounds raised by the Revenue be dismissed.

22. Without prejudice to the above, the Ld. Counsel for the assessee filed an application under Rule 46A of the IT Rules, 1962 for admission of additional evidence in the appeal filed by the Revenue, the contents of which are as under:

APPLICATION UNDER RULE 46A OF THE INCOME TAX RULES, 1962 FOR ADMISSION OF ADDITIONAL EVIDENCE IN THE APPEAL FILED AGAINST ORDER U/S 147 rws 144B OF THE INCOME TAX ACT, 1961 ("the Act")

The Applicant desires that the document/s referred to in the subsequent paragraphs be admitted by Your Honour for reasons explained in the following paragraphs:

Addition u/s 68 of Rs 1,61,00,000/-

1. Your Honour would observe on page no 18 to 21 of assessment order that Applicant had already given Name, PAN, Amount, Ledgers, Conformations letter of major parties, Bank Statement of Assessee and relevant Page of Tax Audit Report for reporting of loan transaction of parties from whom unsecured loan is taken. However, the A.O. alleged in his order that the Applicant has not given ITR\ROI, and Bank statement to prove creditworthiness of the lenders given unsecured loan.

2. In this regard, the Applicant respectfully submits that the Applicant was not given proper opportunity to prove creditworthiness of the lenders giving unsecured loan. Since the Applicant had already given Name, PAN, Amount, Ledgers, Conformations letter of major parties, Bank Statement of Assessee and relevant Page of Tax Audit Report for reporting of loan transaction of parties from whom unsecured loan is taken. Hence Appellant was under impression that any further information may be called from the respective parties by issuance of notices u/s 133(6) of the Act.

3. Therefore, the Applicant prays that the Confirmation letter, PAN Number, Bank Statement of lender along with Return of acknowledgment of ITR V of lender may kindly be admitted as additional piece of evidence to support this ground of appeal.

4. The above referred documents and details are in fact most essential for adjudication and correct understanding in relation to the addition made by the AO and grounds of appeal of the appellant. These documents are utmost important evidences required to be considered because without marshalling of these documents, there will be total injustice to appellant. The appellant submits that there was reasonable cause for not submitting these documents and accordingly, the same may kindly be admitted as additional evidences. In this context, the appellant relies upon the following decisions.

Smt. Prabhavati S Shah v/s. CIT [231 ITR 1 (Bom)]
In this case, the H.C. held that the information sought to be produced by the appellant was necessary to decide the controversy in regard to the genuineness of the loan taken by the Assessee and therefore, the first appellate authority should have exercised the powers conferred upon it u/s. 250(4) and taken on record such information and considered the same for deciding the issue.

Keshav Mills Co Ltd. v/s. CIT [56 ITR 365 (SC)]
SC held that the first appellate authority does not exceed his jurisdiction if he asks or allows the Assessee to produce or file additional evidence.

In view of the foregoing and in view of the fact that the above-mentioned documentary evidence go to the very root of the issue before Your Honour, we humbly request Your Honour to admit them under sub-clause (b), (c) &(d) of clause 1 of Rule 46A of Income Tax Rules, 1962 and consider the same while disposing our appeal.

In case the issue is remanded to the A.O., the Applicant prays that proper opportunity of hearing be provided to the Applicant.

23. He accordingly submitted that the appeal filed by the Revenue be dismissed and the grounds raised by the assessee in the CO be allowed.

24. The Ld. DR on the other hand filed a detailed written submission stating that section 153C of the Act does not bar the jurisdiction of the Assessing Officer to reopen the assessment u/s 147 of the Act when information against the assessee is received from the search conducted on another person. He submitted that section 153C of the Act does not by itself preclude an Assessing Officer from reopening the assessment u/s 147 / 148 of the Act on the basis of information found during a search conducted u/s 132 of the Act or the requisition made u/s 132A of the Act in respect of another person. He submitted that in a case where pursuant to search conducted u/s 132 of the Act or the requisition made u/s 132A of the Act in respect

of another person (searched person), assets, documents or books of account, which either belong to the assessee or contain information pertaining to the said assessee are found and the same are handed over to the Assessing Officer of the assessee, he would subject to satisfaction of the other jurisdictional conditions stipulated under Section 153C of the Act, having the jurisdiction to make a reassessment/assessment of the income of the assessee under Section 153C of the Act. However, the same cannot mean that he is bound to exercise the said jurisdiction. In the event, the AO does not assume the jurisdiction to proceed with making an assessment / reassessment under Section 153C of the Act, for want of the necessary ingredients thereto that the recourse to Section 147/148 is not ousted. He submitted that the non-obstante clause u/s 153C of the Act does not override the provisions of section 147 of the Act.

25. Referring to the decision of Hon'ble Delhi High Court in the case of PCIT vs. Naveen Kumar Gupta reported in (2025) 479 ITR 586 (Del), he submitted that the Hon'ble High Court in the said decision has held that where jurisdictional conditions to initiate further steps under section 153C were not satisfied, non obstante clause as used in section 153C could not be read to completely exclude provisions of section 147 and thus the Assessing Officer could initiate reassessment proceedings under section 147 even if proceedings under section 153C could have been initiated.

26. Referring to the decision of Hon'ble Gujarat High Court in the case of Amar Jewellers Ltd. Vs. ACIT reported in (2022) 444 ITR 97 (Guj), he submitted that the Hon'ble High Court in the said decision has held that non obstante clause of section 153A(1) relating to normal assessment procedure is to be understood as merely dispensing with procedural aspect; search assessment can be reopened under section 147.

27. Referring to the decision of Hon'ble Delhi High Court in the case of CIT vs. Anil Kumar Bhatia reported in (2013) 352 ITR 493 (Del), he submitted that the Hon'ble High Court in the said decision has held that post search reassessment in respect of all 6 years can be made even if original returns are already processed u/s 143(1)(a) and the Assessing Officer has power u/s 153A to make assessment for all six years and compute total income of assessee, including undisclosed income, notwithstanding that returns for these years have already been processed u/s 143(1)(a) of the Act.

28. So far as the decision relied on by the Ld. Counsel for the assessee in the case of Sejal Jewellery & Anr. Vs. Union of India & Ors (supra), he submitted that the said decision is distinguishable and not applicable to the facts of the present case. He submitted that the decision was in a writ petition and therefore, there is no ratio decidendi that follows from the said decision. Further, in the case of Sejal Jewellery Vs. UoI & Ors, there was a search whereas in the instant case there is no

search and seizure and therefore, the material factual matrix being different from the decision of Hon'ble Bombay High Court in the case of Sejal Jewellery & Anr. Vs. Union of India & Ors (supra) cannot come to the rescue of the assessee. He submitted that the Hon'ble Delhi High Court was asked to address the interplay between the provisions of section 153C and 147 of the Act and the Hon'ble High Court has decided the issue in favour of the Revenue holding that the Assessing Officer could initiate the re-assessment proceedings u/s 147 of the Act even if the proceedings u/s 153C could have been initiated. He accordingly submitted that the argument of the assessee that the provisions of section 153C should have been invoked instead of 147 will not invalidate the re-assessment proceedings.

29. So far as the argument of the Ld. Counsel for the assessee that the Assessing Officer has violated the procedure laid down in the decision of Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd vs ITO (supra) by rejecting the objections through a non-speaking order is concerned, he submitted that the Assessing Officer has passed the rejection order addressing the specific objections categorically as per the directions laid down in the case of GKN Driveshafts (India) Ltd vs ITO (supra), therefore, the argument of the Ld. Counsel for the assessee is not tenable.

30. So far as the argument of the Ld. Counsel for the assessee that 4 weeks time has not been provided after disposing of the objections and passing of the order is

concerned, he submitted that the assessment was getting barred by limitation by 31.03.2022 and the Assessing Officer has passed the order on 30.03.2022 and therefore, the same cannot be held to be invalid.

31. Coming to the merits of the case, the Ld. DR submitted that the assessee has not filed any details before the Assessing Officer except the PAN details of the so-called creditors and has filed the details for the first time before the Ld. CIT(A) / NFAC which was in violation of Rule 46A. The Ld. CIT(A) / NFAC has not called for any remand report from the Assessing Officer nor gave any opportunity to the Assessing Officer to verify the same. Further, the assessee is filing certain additional evidences before the Tribunal for the first time. This itself shows that full details were even not filed before the Ld. CIT(A) / NFAC. Therefore, under these circumstances, the order of the Ld. CIT(A) / NFAC be reversed and that of the Assessing Officer be restored.

32. The Ld. Counsel for the assessee in his rejoinder submitted that the argument of the Ld. DR that section 153C of the Act does not bar reopening of the assessment u/s 147 when information received from a search on another person is factually incorrect and contrary to the decision of the Hon'ble Jurisdictional High Court. He submitted that the Hon'ble Bombay High Court in the case of Sejal Jewellery & Anr. Vs. Union of India & Ors (supra) has clearly held that if the information arises from a search on another person, then the only procedure

available is section 153C and not 147 / 148 of the Act. He submitted that this is not an obiter and it is the ratio decidendi based on jurisdictional binding precedents in various cases such as Continental Warehousing and Murli Agro etc. He submitted that the Ld. DR's attempt to term this a 'writ' with 'no ratio' is legally invalid because Writ decisions are also binding judicial precedents unless explicitly limited. Further, the decision was rendered after examining the statutory scheme of 153A/153C, and therefore squarely applies. Further, the decisions relied on by the Ld. DR in the case of Hon'ble Delhi High Court and the Hon'ble Gujarat High Court are of non-jurisdictional High Courts whereas the decision of Hon'ble Bombay High Court in the case of Sejal Jewellery & Anr. Vs. Union of India & Ors (supra) is the decision of jurisdictional High Court which is binding on the Tribunal. He submitted that the information on the basis of which the case of the assessee was reopened and notice u/s 148 of the Act was issued arises solely out of search on another person which triggers section 153C of the Act as a matter of legislative mandate and not the administrative discretion.

33. Referring to the decision of the Hon'ble Supreme Court in the case of CIT vs. M/s Calcutta Knitwears reported in (2014) 362 ITR 673 (SC), he submitted that the Hon'ble Supreme Court in the said decision has held that the 'satisfaction' and the 'forwarding of material' u/s 153C is mandatory and not optional. He submitted that even the decision of Hon'ble Delhi High Court in the case of PCIT vs. Naveen Kumar Gupta (supra) is not applicable since in that case the Hon'ble Delhi High

Court has dealt with the reopening of completed assessment u/s 153A and whether abated or non-abated years can be reopened. They did not deal with the situation where the Assessing Officer received search based information of a third person but issued notice straight u/s 148 instead of 153C of the Act.

34. So far as the argument of the Ld. DR that the decision in the case of Sejal Jewellery & Anr. Vs. Union of India & Ors (supra) does not apply because there was no search in the case of the assessee is concerned, he submitted that the same is contrary to the provisions of section 153C of the Act itself. He submitted that the provisions of section 153C of the Act applies precisely when search is on another person but material "pertains to" or 'relates to' the assessee are found from the premises of the searched person. Therefore, the argument of the Ld. DR actually reinforces that the provisions of section 153C and not 147 should have been invoked.

35. So far as the argument of the Ld. DR that the Assessing Officer has passed a speaking order while disposing of the objections is concerned, he submitted that the rejection order is mechanical, non-reasoned and does not deal with each of the objections. He submitted that the said order shows zero independent application of mind and does not address mandatory applicability of provisions of section 153C of the Act.

36. So far as the argument of the Ld. DR that no satisfaction note exists u/s 153C and therefore the Assessing Officer has rightly invoked the provisions of section 147 of the Act is concerned, he submitted that there is no satisfaction recorded by the Assessing Officer of the searched person and the Assessing Officer of the assessee. However, this is mandatory as per the decisions of Hon'ble Supreme Court in the case of CIT vs. Calcutta Knitwears (supra) and Sinhgad Technical Education and the decision of Hon'ble Delhi High Court in the case of Pepsi Foods. He accordingly submitted that the legal grounds raised by the assessee in the CO are to be decided in favour of the assessee.

37. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case reopened the assessment u/s 147 of the Act on the ground that the assessee has received cash loan of Rs.1,62,00,000/- through Sri Sachin Nahar in violation of provisions of section 269SS and interest amount paid by the assessee in cash is unaccounted income which has not been offered to tax while filing the ITR for assessment year 2017-18. The reasons for such reopening have already been reproduced in the preceding paragraphs. We find the Assessing Officer, rejecting the various explanations given by the assessee, made addition of Rs.1,62,00,000/- by invoking the provisions of section 68 r.w.s. 115BBE of the Act and also made further

addition of the interest paid of Rs.17,80,059/- by invoking the provisions of section 37 of the Act. We find before the Ld. CIT(A) / NFAC the assessee, apart from challenging the addition on merit, challenged the validity of reopening of the assessment on the ground that only notice u/s 153C could have been issued instead of notice u/s 148 of the Act. Further, the Assessing Officer has not followed the due procedure laid down by the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd vs ITO (supra) by not disposing of the objections by passing a speaking order. It was also argued that the time gap between the disposal of objections and passing of the final order was less than 4 weeks and therefore, such order passed u/s 147 r.w.s. 143(3) of the Act is not in accordance with law.

38. We find the Ld. CIT(A) / NFAC deleted the addition, the reasons of which have already been reproduced in the preceding paragraphs. He, however, did not adjudicate the legal grounds raised by the assessee before him holding that since he has deleted the addition on merit, the same need not be adjudicated. Against this backdrop, we have to decide the appeal filed by the Revenue as well as the grounds raised in the CO by the assessee. A perusal of the assessment order shows that the Assessing Officer reopened the assessment on the basis of information received from the Insite portal according to which search and seizure action u/s 132 of the Act was carried out in the case of Sri Sachin Nahar on 01.08.2007 during which it was found that the assessee company has taken loan from Sri Sachin Nahar amounting to Rs.1,62,00,000/- in cash and has also paid interest which remains

unaccounted. We find the Assessing Officer in the assessment order at para 6 page 4 has observed as under:

> 6. As stated above, it is crystal clear that the assessee is having business transaction with Shri Sachin Nahra. In this regard, it is pertinent to mention here that during the course of search proceedings, certain documents/loose sheets were seized, wherein it has been found that the assessee had taken unsecured loans in cash through Shri Sachin Nahra. Some of the scanned sheets, wherein it is clearly found that the transactions have been made in cash as reproduced below:

39. This clearly shows that during the course of search proceedings certain documents / loose sheets were seized which contain the information that the assessee had taken unsecured loan in cash through Sri Sachin Nahar.

40. We find an identical issue had come up before the Co-ordinate Bench of the Tribunal in the case of ITO vs. Narendra Sampatlal Bafna (supra). In that case also, the case of the assessee was reopened on the basis of search on Sri Sachin Nahar during which it was gathered that Shri Bafna had received cash loan of Rs.6,20,000/- throush Sri Sachin Nahar. The Assessing Officer made the addition and when the assessee challenged the validity of re-assessment proceedings by issuing notice u/s 148 instead of 153C, the Ld. CIT(A) / NFAC allowed the appeal of the assessee both on legal grounds as well as on merit. When the Revenue challenged the order of the Ld. CIT(A) / NFAC, the Tribunal vide ITA No.688/PUN/2024 order dated 19.08.2024 dismissed the appeal filed by the Revenue by observing as under:

"16. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed by both the sides. We have also considered the various decisions cited before us. We find the Assessing Officer, on the basis of information available that the assessee has taken cash loan of Rs.6,20,00,000/- from various persons through Shri Sachin Nahar, who made a statement u/s 132(4) of the Act to this effect during the course of search proceedings at his premises and on the basis of entries found in the loose sheets and other books of account maintained by him, reopened the assessment u/s 147 of the Act after recording reasons which have already been reproduced earlier. Since the assessee could not give any satisfactory explanation regarding the loan of Rs.6,20,00,000/- provided by Shri Sachin Nahar, the Assessing Officer, invoking the provisions of section 69A of the Act read with section 115BBE made addition to the total income of the assessee. We find the CIT(A) / NFAC quashed the re-assessment proceedings holding that the proper course of action before the Assessing Officer should have been u/s 153C of the Act. He also deleted the addition on merit by holding that the said addition was made merely on the basis of the statement recorded u/s 132(4) of the Act of Shri Sachin Nahar and no other corroborative material or evidence was available with the Assessing Officer. Further, despite two reminders, the Assessing Officer could not supply any evidence to the CIT(A) / NFAC regarding the existence of such material before him based on which the addition was made.

17. So far as the first issue raised by the Revenue in the grounds of appeal challenging the order of the CIT(A) / NFAC in quashing the re-assessment proceedings are concerned, we find that the case of the assessee was reopened on the basis of information received from the DCIT, Central Circle – 1, Pune according to which details emerged during the statement recorded u/s 132(4) of the Act of Shri Sachin Nahar and during search and post search enquiries by the Investigation wing and also during the course of enquiries conducted during search proceedings by the Central Circle – 1(1), Pune that the assessee has received cash loan of Rs.6,20,00,000/- through Shri Sachin Nahar. Further, the various documents, note books, note pads and loose sheets found during the course of search contained the business details of Shri Sachin Nahar. The provisions of section 153C of the Act read as under:

***"153C.** (1) 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 :
……..”

18. A perusal of the above provisions shows that the same is applicable if any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to or 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 issue notice and assess or re-assess the income of the other person in accordance with the provisions of section 153A of the Act (emphasis supplied by us).

19. In the instant case, the reopening of the assessment was based on the basis of information that emerged from the statement of Shri Sachin Nahar u/s 132(4) and on the basis of details of notings in his money lending business which contained the name of the assessee as stated by the Assessing Officer. We find the letter No.Pn/DCIT/Cen.Cir.1(1)/Sharing of lnfo./2020-21/dated 05.03.2021 of ACIT Central Circle 1(1), Pune addressed to the Income Tax Officer, Ward 1, Ahmednagar which reads as under:

"To
The Income Tax Officer,
Ward 1, Ahmednagar

Sub: Sharing of Information in the case of Shri Sachin Nahar -reg.

Ref: This office letter No. Pn/DCIT/CC 1(1)/Info./2019-20 dated 10.06.2019

Reference may kindly be made to this office letter No. Pn/DCIT/CC 1(1)/Info./2019-20 dated 10.06.2019 vide which information about the cash loan was provided to you. In the case of Shri Sachin Nahar, Search was carried out on 04/08/2017, wherein Shri Sachin Nahar has admitted that various parties have taken cash loans from other parties through him, since he was a broker between these two parties, Shri Sachin Nahar has received commission for this transaction. The details of the parties who have taken cash loans have been obtained from Shri Sachin Nahar. There is also a mention of these persons in the seized documents (copy enclosed).

> *2. The case of NARENDRA BAFNA (PAN: AAVPB7561N), who has taken cash loan from various parties through Shri Sachin Nahar, pertains to your charge. The copy of statement recorded u/s. 132(4) of the IT Act, 1961 on 04.08.2017 of Shri Sachin Nahar as well as related documents regarding cash loan taken by the party along with the related pages of Shri Sachin Nahar's submission containing name of the above mentioned person and the Assessment Years in which the transactions were made are enclosed herewith for reference and necessary action at your end."*

20. We find the Assessing Officer at para 2 of the reasons recorded has mentioned as under:

> *"During search at his residence, various notebooks, notepad and loose papers were found and seized as Bundle No 1 to 28. In his statement recorded u/s. 132(4) of the Act at his residence on 02.08.2017, Shri Sachin Nahar stated that this seized material contain details of his money lending business in Cash and the Notings therein are related to Principal amount lent by lenders & borrowed by borrowers, names of lenders & borrowers, interest component etc. In the said seized registers, there are two types of notings, one which contains the accounts of borrowers and other registers contain notings of names of investors (depositors) in coded words. Here it is important to mention that Sachin Nahar used to write the name of investors and borrowers in certain coded words. Further the amounts mentioned in the seized documents are short by three zeros. For example for amount 100000, the noting is made 100 in seized registers."*

21. From the above it is clear that certain documents were seized from the premises of Shri Sachin Nahar which contained information relating to the present assessee. Therefore, the provisions of section 153C are applicable as according to the said section, it is applicable if any information contained in the seized document relates to the assessee.

22. Under these circumstances and in view of the detailed reasoning given by the CIT(A) / NFAC based on various decisions, we uphold the order of the Ld. CIT(A) / NFAC that the reopening of the assessment u/s 147 was not valid and the proper course of action that should have been taken by the Assessing Officer was u/s 153C as the provisions of section 153C of the Act are clearly applicable to the facts of the case. We, therefore, uphold the order of the CIT(A) / NFAC on the issue of validity of re-assessment proceedings. The first issue raised by the Revenue is accordingly dismissed."

41. Similar view has been taken by the Co-ordinate Bench of the Tribunal in the case of Vijaykumar Mangilalji Chordiya vs. NFAC, Delhi vide ITA No.1075/PUN/2024 order dated 19.09.2024 for assessment year 2013-14. We find

the Mumbai Bench of the Tribunal in the case of Nilesh Bharani vs. DCIT (supra) has also decided the similar issue holding that the best course of action in such cases is provisions of section 153C and not 147 of the Act. The relevant observations of the Tribunal from para 50 onwards read as under:

> *"50. On a careful perusal of the provisions as referred to above, we find that, there was a vast difference in the application of provisions of the section 153C of the Act prior to 01/06/2015 and thereafter. Substantial amendment was made in the said section in two phases:*
>
> > *i) W.e.f. 01/06/2015- when no simultaneous amendment was made in the section 153A of the Act; and*
> >
> > *ii) W.e.f. 01/04/2017- when the amendment was made parallel to the amendment u/s 153A of the Act.*
>
> *51. Thus,*
>
> *a) The section 153C was amended w.e.f. 01/06/2015 when the following additional amendments were made and this led to construction of the said section as below:*
>
> > *"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……."*
>
> *b) Thereafter, the following amendments were made in the said section w.e.f. 01/04/2017 and, the section shaped and which remained in the statute till 31/03/2021 mentioned above.*
>
> *c) The amendments brought in section 153C was only to protect the revenue and not to resort to rigours of section 148 and whenever in cases of search in case of a person, any material or information pertaining to such other person is found AO*

can initiate 153C and can make addition or assessment for the relevant assessment year or years.

52. On perusal of the above section amended from time to time, it is clear that the provisions of the said section could only be applied till 31/05/2015 when from the premises of the searched person, some books of account and/or valuables or documents seized or requisitioned belongs to a person other than the person searched. Which meant that a document or books of account, valuables or asset seized etc belonging to the other person not searched should have been found in a physical form from the premises of the person searched. Any information contained in the material so seized from the premises of the person searched which did not belong to the non-searched person but contained therein any information relating to the non- searched person did not authorize the revenue to take an action u/s 153C of the Act. In that case, the only course available to the revenue till 31/05/2015 was to issue a notice u/s 148 of the Act because the information/ material seized did not belong to the non-searched person. There was a specific emphasis to the words BELONGS OR BELONG TO A PERSON other than the person searched. In this case, admittedly, during the course of the said searches in the premises of share brokers or others, no material in physical form of the assessee was found. Therefore, upto 31/05/2015, in absence of any physical seizure belonging to a nonsearched person, no assessment proceedings could be initiated by taking recourse to the provision u/s 153C of the Act.

53. Now, after the amendment therein w.e.f. 01/06/2015, we find that, the concept of belonging was just restricted to the valuables found in any form u/s 153C(1)(a) of the Act, but a new sub clause (b) has been inserted as above, where the requirement in physical form of books of account, documents, etc. of a person not searched to have been seized from the premises of the person searched was dispensed with and the word „belonging" was removed by substituting the same with pertains or pertain to besides making an addition of the words there in for any information contained therein pertains or relates to a person not searched. Thus, the scope of application of the said section was widened, particularly to overcome the judicial interpretation against the revenue whose officers were applying the said section 153C of the Act considering any information in the seized material as pertaining or relating to the person not searched as against the term belonging to. Therefore, the said amendment w.e.f. 01/06/2015 actually clarified as to what was the mind of the revenue even as per the said section 153C of the Act as it existed earlier.

54. The concept of assessments/ reassessments of income u/s 153A and also with the section 153C of the Act was introduced by the Finance Act 2003 w.e.f. 01/06/2003 and the said amendment in the section 153C of the Act was made w.e.f. 01/06/2015. The purpose of the same was explained in the para 36 to the Notes to Clauses of the Finance Bill 2015 as below:

Clause 36 of the Bill seeks to amend section 153C of the Income-tax Act relating to assessment of income of any other person.

The existing provisions contained in section 153C provide that in the course of an assessment proceeding, in the case of a person in whose case search action under section 132 or action under section 132A have been conducted, and whether the Assessing Officer is satisfied that the assets or books of account or documents seized belong to another person, then, the assets or books of account or documents seized shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person, if he is satisfied that the books of accounts or documents or assets seized have a bearing on determination on the total income of such other person. It is proposed to amend sub-section (1) of the said section so as to provide that 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 the relevant assessment year or years referred to in sub-section (1) of section 153A.*
>
> *This amendment will take effect from 1st June, 2015.*

55. Thus, on a bare perusal of the plain language of the above explanation in respect of the amendment introduced in the section 153C of the Act w.e.f. 01/06/2015, we find that it mandates that in case any information is found during the course of any search anywhere in respect of a person not searched, then for the purpose of reassessment of income on the basis of the same, it can only be considered by taking recourse to the provisions of the section 153C to make a reassessment of income u/s 153A of the Act and not under section 148 of the Act to make an assessment u/s 147 of the Act.

56. Before us, Ld. A.R. submitted that, here the revenue used some information was gathered from the seized material from the premises of the persons searched as has been mentioned by the CIT (A) in his appellate order and also in reasons recorded in para 2 (supra) that the fact that assessee taken accommodation entry of bogus LTCG was found from the search of Evergreen Enterprises, then the only course available to the revenue was to take the route of the section 153C of the Act and not u/s 148 of the Act. It is because that there was a definite information of escapement of the income, its quantification, the nature of the transactions, the

scrip transacted, the person who assisted etc. etc. found from the person searched u/s132 of the Act by the revenue through the investigation unit and accordingly directly passed on the AO of the assessee as against the mandate as per the provisions of the section 153C of the Act. The investigation unit was legally obliged to send the same to the AO of the person searched may be with a recommendation to send the same to the AOs of all those concerned persons as has been done by the investigation unit directly but definitely in an illegal manner beyond the prescribed jurisdiction for the purpose by the law. This is the precise information to be used by the revenue to initiate proceedings of reassessment by issuing a notice u/s 153C of the Act instead erroneously u/s 148 of the Act.

57. We agree with the contention of the assessee that, since, section 153C of the Act overrides the provisions of the sections 147, 148,149, 151 and 153 of the Act, it was absolutely mandatory for the Assessing Officer of the person searched to send the same to the AO of the non-searched person and thereafter, the concept of verification of it being incriminating or not is in the sole domain of the Assessing officer of the person not searched who if after verification finds that the information received by him from the AO of the person searched is incriminating and contains details of some escaped income for one or more assessment years, he will record a satisfaction to the said effect and proceed to reassess the same u/s 153A of the Act which is clear by the words – if that AO (of the non-searched assessee) is satisfied that the information so received has a bearing on the determination of total income of the said person for the relevant year or years, which means that a satisfaction to the effect of escapement of such income may be for one year or more after verification of the material received, because in some cases it may be that the person searched may not be recording the relevant transaction in his books of account leading to an incrimination but the non-searched person might have properly disclosed the said transaction in his books of account, where it can no more remain incriminating in his hands. In such case, no reassessment proceedings can be initiated under the provisions of the section 153C of the Act of the non-searched person. Here in this case as noted above the information of alleged bogus LTCG was gathered from the search of Evergreen Enterprises and other searches of entry operators. Thus, the only recourse for the AO was to initiate 153C of the Act qua this addition, and even rope into this issue or addition in the assessment made u/s 153A for that year by recording the satisfaction that this information was gathered from a search."

42. We further find that the Co-ordinate Bench of the Tribunal in the case of Ashok Dhanraj Chordia vs. PCIT vide ITA No.977/PUN/2024 order dated 30.07.2025 for assessment year 2017-18, following the decision of Hon'ble Bombay High Court in the case of Sejal Jewellery & Anr. Vs. Union of India &

Ors. (supra) and distinguishing the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Naveen Kumar Gupta (supra), has observed as under:

> *"21. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. PCIT and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case on the basis of information received that the assessee has borrowed cash loan from Shri Sachin Nahar which was found during the course of search at his premises, issued notice u/s 148 of the Act. We find after obtaining the reasons recorded for reopening of the assessment, the assessee filed his objections and on the basis of such objections, the Assessing Officer dropped the reopening proceedings. We find the Ld. PCIT examined the record and noted that the Assessing Officer has erroneously dropped the proceedings without properly verifying the documents on record and accepted the objections for which such dropping of the proceedings has become erroneous and prejudicial to the interest of Revenue. He, therefore, partly set aside the disposing of the objections of the assessee by the Assessing Officer to his file for proper verification of the facts and re-examining the issue afresh, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the Ld. Counsel for the assessee as per the legal ground that since the reopening of the assessment was based on seized documents from the premises of Shri Sachin Nahar, which contained entries relating to the assesse, the proper course of action should have been through issue of notice u/s 153C of the Act and not resorting to proceedings u/s 147 of the Act. It is his submission that once the re-assessment proceedings are held to be invalid, the subsequent proceedings u/s 263 of the Act become nullity.*
>
> *22. We find some force in the above arguments of the Ld. Counsel for the assessee. We find an identical issue had come up before the Hon'ble Bombay High Court in the case of Sejal Jewellery & Anr. Vs. Union of India & Ors. (supra). In that case a search action was carried out in the case of one Shilpi Jewellers Pvt. Ltd. during which materials were seized and such materials were further explored and enquired. Such enquiry revealed significant information in regard to M/s. Green Valley Gems Pvt. Ltd. which according to the Revenue had provided accommodation entries to the petitioner, in which it was also revealed that M/s. Green Valley Gems Pvt. Ltd. was a shell company. Accordingly reopening proceedings u/s 147 were initiated and notice u/s 148 of the Act was issued. When the petitioner challenged such reopening of assessment on the ground that the assessment could have been only made u/s 153C and not u/s 147 of the Act, the Hon'ble Bombay High Court accepted the contention of the petitioner and quashed the re-assessment proceedings by observing as under:*
>
> > *"12. We have heard learned counsel for the parties and with their assistance, we have perused the record. At the outset, we may observe that the (2023) 149 taxmann.com 399 (SC) (1993) 69 Taxman 627 (SC) 18*

February, 2025 WP3057_2019.DOC jurisdiction of the Assessing Officer to issue the impugned notice would be required to be considered on the basis of the departmental record and on such basis, the relevant provisions of law which would govern the facts and circumstances of the case in the hands of the Assessing Officer. In the present case, the impugned notice under Section 148 of the I.T, Act was issued to the petitioner on 29 March, 2019. The petitioner received a copy of 'reasons to believe' furnished by respondent no. 3 on 11 September, 2019, which were objected by the petitioner. On such objection, an order was passed by the Assessing officer rejecting the objections as raised by the petitioners, so as to proceed to reassess the income of the petitioner under Section 147 of the Act.

13. As clearly seen from the record, to which, we have made a reference in the aforesaid paragraphs, it appears to be quite clear that there was a search and seizure action on 4 October, 2018 on the business premises of one 'Shilpi Jewellers Pvt. Ltd.', which has been the basis for the reopening of the petitioner's assessment, as also recorded in the reasons for reopening, which inter alia state that there were certain incriminating evidences, in the form of various loose papers and data back-ups of various electronic devices, as found and seized. The search action was against Shilpi Jewellers Pvt. Ltd., its associate concerns, as well as the key individuals of the Group. The 18 February, 2025 WP3057_2019.DOC department asserts that the materials elicited during the search action revealed, that all these persons had accepted large unsecured loans from various shell/paper companies/entities during the year ended on 31 March 2012. On further enquiries being made, the profiling of the loan creditor companies in ITD application, indicated that the loan creditor companies/entities who advanced huge loans to Shilpi Jewellers Pvt. Ltd. and its associate concerns, as well as the key individuals of this group, did not have any creditworthiness for extending such huge loans. It was, particularly, recorded that the petitioner/ assessee was part of said group, which had shown loan receipts during the year ended on 31 March, 2012 from a company, viz. M/s. Green Valley Gems Pvt. Ltd., which was reported to be a shell/paper company, engaged in providing accommodation entries to the beneficiary parties. The reasons for reopening of the assessment were set out in detail, referring to such material and further enquiry which was undertaken in that regard, including materials being gathered in regard to M/s.Green Valley Gems Pvt. Ltd. from whom the petitioners had alleged to have taken accommodation entries. It is on the basis of such information, which was certainly not the information borne out or gathered from the return of income, which was filed and/or any material thereunder, the Assessing Officer reached to a conclusion to reopen the assessment, on the ground that the assessee had not explained such loan receipt 18 February, 2025 WP3057_2019.DOC transactions. Such opinion was formed by the Assessing Officer on the basis that M/s. Green Valley Gems Pvt. Ltd. was a shell/paper company. It is on such premise that the Assessing Officer was of the view that income had escaped assessment within the purview of

Clause (c) of Explanation 2 of Section 147 of the I.T. Act and such escapement had occurred due to the assessee's failure to disclose true, proper and complete facts in the return of income, filed for the subject assessment year. Accordingly, notice under Section 148 was issued.

14. Thus, on the perusal of such reasons, it is quite clear that the provisions of Section 153A providing for "Assessment in case of search or requisition" and the provisions of Section 153C, which provide for "Assessment of income of any other person", which ordain that recourse be taken to the provisions of Section 153A stand attracted for an assessment to be undertaken.

15. As the controversy revolves around the applicability of Section 153A and more particularly, as to whether Section 153A read with Section 153C vis- a-vis the provisions of Section 147 of the I.T. Act, it will be appropriate to extract the said provisions, which reads thus:

> *"147. Income escaping assessment.--If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss 18 February, 2025 WP3057_2019.DOC or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):*
>
> *Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:*
>
> *Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:*
>
> *Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which*

are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.--Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.--For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:--

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return; (ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;]

(c) where an assessment has been made, but--

(i) income chargeable to tax has been underassessed; or

(ii) such income has been assessed at too low a rate; or

(iii) such income has been made the subject of excessive relief under this Act ; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;

(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.--For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub- section (2) of section 148.

Explanation 4.--For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012 (23 of 2012), shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

153A. Assessment in case of search or requisition.

(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003 [but on or before the 31st day of March, 2021], the Assessing Officer shall--

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b), in 18 February, 2025 WP3057_2019.DOC the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years :

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section

132 or making of requisition under section 132A, as the case may be, shall abate :

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income 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:

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and(c)the search 18 February, 2025 WP3057_2019.DOC under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.--For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation 2.--For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account. (2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

Explanation.--For the removal of doubts, it is hereby declared that,

i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

153C. Assessment of income of any other person.

(1) 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 18 February, 2025 WP3057_2019.DOC

(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 :

Provided further that the Central Government may by rules30 made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income 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 as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year--

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made, before 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, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A. (3) Nothing contained in this section shall apply in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of April, 2021.

16. On a plain reading of Section 153A, it is clear that it begins with a 'non- obstante' clause, when it provides that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after 31st May, 2003 but on or before 31 March, 2021, the Assessing Officer shall have jurisdiction to issue notice to such person to furnish the return of income as specified in the notice or assess or reassess the total income as provided by the provision. Section

153C also begins with a non-obstante 18 February, 2025 WP3057_2019.DOC clause, when it provides that notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, to provide that, in a situation which may fall under Section 153C insofar as assessment of income of any other person is concerned, the Assessing Officer shall proceed against such other person and issue notice and assess or reassess the income of other persons in accordance with the provisions of Section 153A, if he is satisfied that the books of account or document or assets seized or requisitioned have a bearing on the determination of the total income of such person for a period as specified in the said provision and after compliance of other provisions as mandated. On the other hand, Section 147 provides for "Income escaping assessment", can be invoked when any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year. In such situation, the Assessing Officer may subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year and for which a prior notice under Section 148 would be required to be issued. Section 147 does not contemplate an eventuality which Section 153A or Section 153C contemplates, the basis of which is inter alia a search action under Section 132 being resorted as noted hereinabove. Thus, both these provisions are quite compartmentalized although the deeming effect 18 February, 2025 WP3057_2019.DOC of both the provisions, may be the same. However, the situations in which such provisions operate are required to be invoked are completely different. This is clear from the bare reading of the provisions, hence would not warrant any elaborate discussion.

17. The purport and effect of these provisions had fell for consideration of the Supreme Court in Abhisar Buildwell P. Ltd. (supra), wherein the scope of assessment under Section 153A of the I.T. Act was considered. In this case, the Revenue's contention was to the effect that the Assessing Officer was competent to consider all the materials which were available on record, including the materials found during search so as to make an assessment of the total income. Some of the High Courts had accepted such propositions. However, the assessee had contended that there were also decisions of the High Courts to the effect that if assessment proceedings were not pending on the date of initiation of the search, the Assessing Officer needs to consider only the incriminating material found during the search, and was precluded from considering any other material derived from any other source. It is in such context, the Supreme Court considering the purport of the provisions of Section 153A of the I.T. Act, vis a vis its applicability qua the provisions of Section 147, and the applicability of Section 132, 132A and notably the 18 February, 2025 WP3057_2019.DOC decision of the Delhi High Court in Commissioner of Income Tax, Central-III vs. Kabul Chawla6 inter alia held that the

provisions of Section 153A(1) need to be mandatorily resorted once a search takes place. The Supreme Court held as under:

> *"7.1 In the case of Kabul Chawla (supra), the Delhi High Court, while considering the very issue and on interpretation of Section 153A of the Act, 1961, has summarised the legal position as under*
>
> *Summary of the legal position*
>
> *38. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:*
>
> *i. Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.*
>
> *ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.*
>
> *iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words, there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".*
>
> *iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."*
>
> *v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be (2015) 61 taxmann.com 412 (Delhi) 18 February, 2025 WP3057_2019.DOC made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e., those pending on the date of search) and the word 'reassess' to completed assessment proceedings.*

> *vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*
>
> *vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment."*

18. The Supreme Court held that it was in complete agreement with the view taken by the Delhi High Court in Kabul Chawla (supra) and of the Gujarat High Court in Principal Commissioner of Income Tax-4 vs. Saumya Construction7 taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

19. Insofar as the present proceedings are concerned, the following observations made by the Supreme Court in the context of Section 147 and 148 of the I.T. Act need to be noted:

> *"11. As per the provisions of Section 153A, in case of a search under Section 132 or requisition under Section 132A, the AO gets the jurisdiction to assess or reassess the 'total income' in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153A, the assessment or re-assessment, if any, (2016) 387 ITR 529 (Guj.) 18 February, 2025 WP3057_2019.DOC relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132A, as the case may be, shall abate.*
>
> *As per sub-section (2) of Section 153A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub- section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the 'total income' for*

the entire six years period/block assessment period. The intention does not seem to be to re-open the completed/unabated assessments, unless any incriminating material is found with respect to concerned assessment year falling within last six years preceding the search. Therefore, on true interpretation of Section 153A of the Act, 1961, in case of a search under Section 132 or requisition under Section 132A and during the search any incriminating material is found, even in case of unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under Sections 147/148 of the Act, subject to fulfillment of the conditions mentioned in sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under section 153A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under Sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.

12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during 18 February, 2025 WP3057_2019.DOC the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, second proviso to section 153A and sub- section (2) of Section

153A would be redundant and/or re- writing the said provisions, which is not permissible under the law."

20. It is thus clear that in the event any incriminating material is found during the search, the Revenue necessarily would be required to take recourse to the provisions of Section 153A and in the event no incriminating material found during the search, then the power of the Revenue to have the reassessment under Sections 147/148 of the I.T. Act stands saved, failing which, the Revenue would be left without remedy. It is on such observations the conclusions as rendered by the Supreme Court and which are relevant to the case in hand, are required to be noted, which reads thus:

"14. 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 18 February, 2025 WP3057_2019.DOC 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.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs."

21. The Rajasthan High Court in Shyam Sunder Khandelwal s/o. Late Damodar Lal Khandelwal vs. Assistant Commissioner of Income Tax, Central Circle-2, Jaipur8 (supra) also had taken a similar view when the issue which had arisen before the Court was in regard to the notice issued under Section 148 of the I. T. Act, the basis of issuance of such notice was the material seized during search. The contention of the assessee was to the effect that in the said circumstances, the proceedings ought to have been initiated under Section 153C of the I.T. Act. The Division Bench referring to the decision of Supreme Court in Abhisar Buildwell P. Ltd. (supra) as also the decision of Karnataka High Court in Sri Dinakara Suvarna (supra) allowed the petitions observing that the department had not set up a case, that for initiating proceedings under Civil Writ Petition No. 18363/2019 dated 19.03.2024 18 February, 2025 WP3057_2019.DOC Section 148, it had material other than the material seized during the search of a related party. The relevant observations of the Division Bench are required to be noted, which reads thus:

> *"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 18 February, 2025 WP3057_2019.DOC period of Section 153A to 153D, the cases being dealt thereunder were circumscribed in the scope of newly substituted Section 148."

We are in complete agreement with the view taken by the Division Bench of Rajasthan High Court in the aforesaid decision.

22. Applying the principles of law as discussed hereinabove, we are of the clear opinion that the foundation of the present case was certainly a search action which was undertaken by the Revenue against one Shilpi Jewellers Pvt. Ltd. and in such search and seizure action, materials were seized and such materials were further explored and enquired. Such enquiry revealed significant information in regard to M/s. Green Valley Gems Pvt. Ltd., which according to the Revenue had provided accommodation entries to the petitioner, in which it was also revealed that Green Valley Gems Pvt. Ltd. was a shell company. We do not find that the record would indicate something which is not on the basis of such new materials gathered under the search and seizure action under Section 132. If this be the case, then certainly the provisions of Section 153C read with Section 153A would be applicable, as held by the Supreme Court in Abhisar Buildwell P. Ltd. (supra) when the Court interpreted the effect and purport of Section 153C and 153A, as also held by the Rajasthan High Court in Shyam Sunder Khandelwal (supra).”

23. We further find the Co-ordinate Bench of the Tribunal in the case of ITO vs. Narendra Sampatlal Bafna (supra) while deciding an identical issue where the re-assessment proceedings were initiated on the basis of search at the premises of Shri Sachin Nahar has held that the only course of action available with the Revenue was under section 153C proceedings and accordingly the order of Ld. CIT(A) quashing the re-assessment proceedings was upheld. The relevant observations of the Tribunal from para 17 to 22 read as under:

“17. So far as the first issue raised by the Revenue in the grounds of appeal challenging the order of the CIT(A) / NFAC in quashing the re-assessment

proceedings are concerned, we find that the case of the assessee was reopened on the basis of information received from the DCIT, Central Circle – 1, Pune according to which details emerged during the statement recorded u/s 132(4) of the Act of Shri Sachin Nahar and during search and post search enquiries by the Investigation wing and also during the course of enquiries conducted during search proceedings by the Central Circle – 1(1), Pune that the assessee has received cash loan of Rs.6,20,00,000/- through Shri Sachin Nahar. Further, the various documents, note books, note pads and loose sheets found during the course of search contained the business details of Shri Sachin Nahar. The provisions of section 153C of the Act read as under:

> ***"153C.*** *(1) 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 :*
> *……."*
>
> *18. A perusal of the above provisions shows that the same is applicable if any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to or any books of account or documents seized or requisitioned pertains or pertain to or <u>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 issue notice and assess or re-assess the income of the other person in accordance with the provisions of section 153A of the Act</u> (emphasis supplied by us).*
>
> *19. In the instant case, the reopening of the assessment was based on the basis of information that emerged from the statement of Shri Sachin Nahar u/s 132(4) and on the basis of details of notings in his money lending*

business which contained the name of the assessee as stated by the Assessing Officer. We find the letter No.Pn/DCIT/Cen.Cir.1(1)/Sharing of lnfo./2020-21/dated 05.03.2021 of ACIT Central Circle 1(1), Pune addressed to the Income Tax Officer, Ward 1, Ahmednagar which reads as under:

> *"To*
> *The Income Tax Officer,*
> *Ward 1, Ahmednagar*
>
> *Sub: Sharing of Information in the case of Shri Sachin Nahar -reg.*
>
> *Ref: This office letter No. Pn/DCIT/CC 1(1)/Info./2019-20 dated 10.06.2019*
>
> *Reference may kindly be made to this office letter No. Pn/DCIT/CC 1(1)/Info./2019-20 dated 10.06.2019 vide which information about the cash loan was provided to you. In the case of Shri Sachin Nahar, Search was carried out on 04/08/2017, wherein Shri Sachin Nahar has admitted that various parties have taken cash loans from other parties through him, since he was a broker between these two parties, Shri Sachin Nahar has received commission for this transaction. The details of the parties who have taken cash loans have been obtained from Shri Sachin Nahar. There is also a mention of these persons in the seized documents (copy enclosed).*
>
> *2. The case of NARENDRA BAFNA (PAN: AAVPB7561N), who has taken cash loan from various parties through Shri Sachin Nahar, pertains to your charge. The copy of statement recorded u/s. 132(4) of the IT Act, 1961 on 04.08.2017 of Shri Sachin Nahar as well as related documents regarding cash loan taken by the party along with the related pages of Shri Sachin Nahar's submission containing name of the above mentioned person and the Assessment Years in which the transactions were made are enclosed herewith for reference and necessary action at your end."*

20. We find the Assessing Officer at para 2 of the reasons recorded has mentioned as under:

> *"During search at his residence, various notebooks, notepad and loose papers were found and seized as Bundle No 1 to 28. In his statement recorded u/s. 132(4) of the Act at his residence on 02.08.2017, Shri Sachin Nahar stated that this seized material contain details of his money lending business in Cash and the Notings therein are related to Principal amount lent by lenders & borrowed by borrowers, names of lenders & borrowers, interest component etc. In the said seized registers, there are two types of notings, one which contains the accounts of borrowers and other registers contain notings of names of investors (depositors) in coded words. Here it is important to mention that Sachin Nahar used to*

write the name of investors and borrowers in certain coded words. Further the amounts mentioned in the seized documents are short by three zeros. For example for amount 100000, the noting is made 100 in seized registers."

21. From the above it is clear that certain documents were seized from the premises of Shri Sachin Nahar which contained information relating to the present assessee. Therefore, the provisions of section 153C are applicable as according to the said section, it is applicable if any information contained in the seized document relates to the assessee.

22. Under these circumstances and in view of the detailed reasoning given by the CIT(A) / NFAC based on various decisions, we uphold the order of the Ld. CIT(A) / NFAC that the reopening of the assessment u/s 147 was not valid and the proper course of action that should have been taken by the Assessing Officer was u/s 153C as the provisions of section 153C of the Act are clearly applicable to the facts of the case. We, therefore, uphold the order of the CIT(A) / NFAC on the issue of validity of re-assessment proceedings. The first issue raised by the Revenue is accordingly dismissed."

24. The various other decisions relied on by Ld. Counsel for the assessee also supports his case to the proposition that in such type of cases, the only recourse available to the department is issue of notice u/s 153C and not 148.

25. So far as the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Naveen Kumar Gupta (supra) relied upon by the Ld. DR is concerned, the same is not applicable to the facts of the present case in view of the binding decision of jurisdictional Hon'ble High Court in the case of Sejal Jewellery & Anr. Vs. Union of India (supra). We, therefore, hold that the proper course of action in the instant case should have been issue of notice u/s 153C of the Act and not u/s 148 of the Act. Since the assessment is held to be invalid on account of issue of notice u/s 148 of the Act as against 153C of the Act, therefore, the order of the Ld. PCIT invoking jurisdiction u/s 263 of the Act becomes infructuous. We, therefore, quash the 263 proceedings initiated by the Ld. PCIT. Since the assessee succeeds on this legal ground, the other grounds are not being adjudicated being academic in nature. The appeal of the assessee is accordingly allowed."

43. In view of the above discussion, we hold that the Assessing Officer instead of issuing notice u/s 153C, has issued notice u/s 147 of the Act which is not in accordance with law. Therefore, the same is liable to be quashed. We hold and direct accordingly. The grounds raised by the assessee in the CO on this issue are accordingly allowed.

44. So far as the other legal grounds raised by the assessee in the CO are concerned i.e. passing a cryptic and non-speaking order is concerned, we find the Assessing Officer has passed an order as per his wisdom and the assessee cannot say that the same is cryptic and non-speaking one. Therefore, the same is dismissed.

45. Similarly, so far as the ground that the mandatory period of 4 weeks has not been given and the order has been passed in haste is concerned, we find the assessment was getting barred by limitation by 31.03.2022 and the Assessing Officer has passed the order on 30.03.2022 and undisputedly there was a gap of 23 days from the date of disposal of the objections and passing of the final order. However, we find the Assessing Officer issued notice u/s 148 of the Act on 29.03.2021 asking the assessee to file the return within 30 days, the assessee should have filed its return of income on or before 28.04.2021. However, the assessee filed the return on 11.05.2021 i.e. after the due date. Further, instead of asking for reasons immediately, the assessee took more than 2 months for asking for reasons. Therefore, when the assessee has made delay in filing the return and asking for reasons, he should not have any grievance for disposal of the appeal after a gap of 23 days from the date of the objections especially when the assessment was getting barred by limitation. We, therefore, do not find any merit in the grounds challenging the passing of the order in haste. In any case, since the assessee succeeds on the first legal issue raised by it i.e. validity of re-assessment proceedings by issue of notice u/s 148 of the Act instead of 153C of the Act,

therefore, the 1st legal issue raised in the CO filed by the assessee is allowed. Since we are allowing the legal ground raised in the CO challenging the validity of re-opening, therefore, the other grounds raised by the assessee as well as the appeal of the Revenue become academic and are not being adjudicated.

46. In the result, the appeal filed by the Revenue is dismissed and the CO filed by the assessee is allowed.

Order pronounced in the open Court on 8th January, 2026.

Sd/-	**Sd/-**
(ASTHA CHANDRA)	(R. K. PANDA)
JUDICIAL MEMBER	VICE PRESIDENT

पुणे Pune; दिनांक Dated : 8th January, 2026
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Assistant Registrar
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	02.01.2026		Sr. PS/PS
2	Draft placed before author	05.01.2026		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Office Superintendent			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			