

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

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

AND

SHRI AMITABH SHUKLA, ACCOUNTNAT MEMBER

**ITA No.3594/Del/2025
[Assessment Year: 2014-15]**

M/s JSP Projects Private Limited, C/o- CA Vaibhav Goel, 75, Navyug Market, First Floor, Ghaziabad(UP) Uttar Pradesh-201001	Vs	DCIT, Central Circle-13, 2 nd Floor, Income Tax Building, E-2 ARA Centre, Jhandewalan Extension, Delhi-110055
PAN-AADCJ0677L		
Appellant		Respondent

Assessee by	Shri Ved Jain, Adv. Ms. Uma Upadhyay, CA & Shri Aditya Garg, Adv.
Revenue by	Ms. Amisha S. Gupta, CIT-DR

Date of Hearing	15.10.2025
Date of Pronouncement	09.01.2026

ORDER

PER AMITABH SHUKLA, AM,

This appeal has been preferred by the A against order dated 21.04.2025 of Ld. Commissioner of Income Tax(Appeals)-25, (hereinafter referred to as 'ld. CIT(A) New Delhi, in Appeal No. 10559/2013-14, arising out of order u/s 153C of the Income Tax Act, 1961 (hereinafter referred to as "the Act") passed on 28.03.2023 by DCIT, Central Circle-28, pertaining to Assessment Year 2014-15.

2. The assessee has raised following grounds of appeal:-

Grounds of appeal:-

No incriminating material qua the appellant found

1. That on the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in upholding the assumption of jurisdiction by the learned Assessing Officer under Section 153C of the Income-tax Act, 1961, for the assessment year under consideration, without the existence of any incriminating material qua the appellant, found during the course of search conducted on Alankit Group. That, ledgers produced during the reassessment proceedings u/s 153C cannot per se be regarded as incriminating material available with the Assessing Officer; That the assessment order passed under section 153C of the Income Tax Act, 1961 is bad in law, void ab initio, and without jurisdiction, and therefore deserves to be quashed.

Initiation of Proceedings barred by limitation - 'Cash Credit' is not asset

2. That on the facts and in the circumstances of the case, and in law, the learned CIT(A) erred in upholding the assumption of jurisdiction by the learned Assessing Officer under Section 153C of the Income-tax Act, 1961, for the assessment year under consideration, without appreciating that, in terms of the proviso to Section 153C, the "date of search" is to be reckoned as 15.02.2022 (the date of receipt of documents by the AO having jurisdiction). Since AY 2014-15 falls outside the six-year period (AYs 2016-17 to 2021-22), and no satisfaction was recorded that the escaped income is represented by an asset, the initiation of proceedings is bad in law.

Non-supply of satisfaction note prepared by AO of searched person

3. That in the facts and circumstances of the case, the Ld. CIT(A) erred in law in sustaining the action of Ld AO in completing the assessment proceedings u/s 153C of the Act for the assessment year under consideration without bringing on record the copy of the satisfaction note recorded by the Ld AO having jurisdiction over the searched person. That, the assessment order passed u/s 153C without satisfying the mandatory jurisdiction condition is not valid in law;

Mechanical recording of facts in satisfaction note

4. That in the facts and circumstances of the case and in law, Ld CIT(A) erred in sustaining the assumption of jurisdiction based on the satisfaction note recorded by Ld DCIT; Circle - 13(1) Delhi in mechanical and ritualistic manner; That, the satisfaction note does not reflect any application of mind towards evidence available on record;

Invalid Order u/s 127(2) of the Income Tax Act, 1961

5. That in the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the assumption of jurisdiction by the La. DCI, Central Circle-28, Delhi, based on a transfer order under Section 127(2) of the Income Tax Act, 1961, without recording any reasons. That the order passed under Section 127(2) of the Income Tax Act, 1961 by the PCIT-4, Delhi, based merely on a letter from ITO (Hqrs)-1 0/o CCIT(Central) - 2 and without the agreement or concurrence of an officer of equal rank, is invalid in law, and consequently, all assessment proceedings made thereafter by Ld DCIT, CC -28 are also invalid.

Non-compliance with Section 65B of Indian Evidence Act 1872/section 63 of BSA 2023

6. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred on fact and in law in sustaining the addition of Rs. 9,01,92,544/- (1,51,54,233 + 7,50,38,311) on the basis of soft data / excel sheet seized during search action at the premises of third person, which does not qualify to be admitted as evidence without bringing any independent corroborative evidence on record and that too without providing certificate u/s 65B of the Indian Evidence Act, 1872. Hence, addition made of Rs.9,01,92,544/- merely on the basis of alleged unsubstantiated soft data/ excel sheets, is bad in law and is liable to be quashed.

Addition u/s 68 of the Income Tax Act, 1961 not attracted

7. That on the facts and in the circumstances of the case and in law, the La. CIT(A) erred in sustaining the addition of Rs. 9,01,92,544/- (i.e. Rs 1,51,54,233/- + Rs 7,50,38,311/-) u/s 68 of the Act on account of unexplained source of repayment of unsecured loan and interest by arbitrarily rejecting the explanation and documentary evidences put forth by the appellant to discharge its onus u/s 68 of the Act without pointing out any defect or shortcoming by conducting any independent enquiry. That, the provisions of section 68 of the Income Tax Act, 1961 are not applicable on facts of the case.

Addition u/s 69C of the Income Tax Act, 1961 not attracted

8. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) in sustaining addition of Rs. 27,05,776/- (i.e. Rs 4,54,627 + Rs 22,51,149) u/s 69C of the Act being notional commission estimated @ 3 percent on repayment of unsecured loan and interest of Rs. 9,01,92,544/- without adducing any corroborative evidence on record which could prove the payment of alleged commission by the appellant company. Hence, addition made of Rs. 27,05,776/- u/s 69C of the Act on the basis of doubt, suspicion, conjecture and surmises is bad in law and is liable to be deleted.

Violation of principle of natural justice

9. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in sustaining addition of Rs. 9,01,92,544/-u/s 68 of the Act on account of unexplained source of repayment of unsecured loan and interest on the basis of unsubstantiated statement of third persons without providing complete copy of their statement and also without providing opportunity of cross-examination of said deponents even though specifically requested by the appellant. That, addition made without disclosing the information and material in the possession of Ld AO is per se violative of the principles of fairness. Hence, addition made of Rs. 9,01,92,544/-u/s 68 of the Act in violation of principle of natural justice, is bad in law and is liable to be deleted.

10. That on facts and circumstances of the case and in law, Ld CIT(A) erred in sustaining the action of the Ld AO without appreciating that no show cause notice was issued during the course of the assessment proceedings in terms of CBDT Instruction No 20/2015 (Para 4) dated 29.12.2015.

3. At the outset, we have noted that the assessee has raised legal grounds challenging jurisdiction sufficiency and validity of the assessment. The Latin legal maxim *Sublato fundamento cadit opus* that corresponds to hypothesis that a superstructure does not survive on weak foundation is essential part of jurisprudence. This maxim literally translates to, "If the foundation is removed, the superstructure falls". It is a well-established principle in law, especially in cases

where the initial action or underlying basis of a legal right is found to be invalid, causing all subsequent actions dependent on it to fail. Another related maxim with a similar meaning is *Debile fundamentum fallit opus*, which translates to "Where there is a weak foundation, the work fails". As grounds of appeal nos. 1 is legal grounds raising the presumption of lack of jurisdiction with the Ld.AO to pass the assessment order as well as validity of assessment, we would like to take the same first. It is trite law that a superstructure does not survive on weak foundation.

4. It is the case of the assessee that the assessment order under section 153C for AY 2014-15 is void ab initio and is bad in law. The ld. counsel for the assessee submitted that search in case of Alankit Group was conducted on 18.10.2019 under section 132. The AO of the searched person handed over the seized documents to the AO of the assessee on 14.02.2022. Reference was invited to relevant satisfaction note placed on page-71 and 72 of the paper book filed by the assessee. The ld. Counsel submitted that in the present case, Return of Income was filed on 29.11.2014 and assessment under section 143(3) was completed on 06.12.2016. Thus, the assessment had attained finality. It was submitted that the issue is now res-integra that completed assessments could not be disturbed in the assessment under section 153C in the absence of any incriminating documents. The ld. Counsel argued that a perusal of the satisfaction note and the assessment order under section 153C(supra) clearly shows that no incriminating documents was specifically seized as belonging to the assessee. It was argued that the seized material reproduced in the

assessment order on pages 25, 31 to 33 alludes ledger accounts which contained disclosed entries and those which were duly accounted for in the books of accounts.

5. In support of her contentions, the Id. Counsel placed reliance upon the decision of Hon'ble Apex Court in *Abhisar Buildwell* (454 ITR 212) holding that where no incriminating material found during search, no addition can be made in respect of completed assessment. Thus, it was held that

"14. In view of the above and for the reasons stated above, it is concluded as under: 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."

6. It was submitted that Hon'ble Supreme Court following the ratio of *Abhisar Buildwell* (supra) has applied the same ratio to section 153C of the Act vide SC order in the case of *DCIT Central Circle 20 V. M/S U.K. Paints (Overseas) Ltd.* [2023] 454 ITR 441 (SC), dated April 25, 2023.

"In this batch of appeals, the assessments in case of each Assessee were under Section 153-C of the Income Tax Act, 1961 (for short, 'the Act'). As found by the High Court in none of the cases any incriminating material was found during the search either from the Assessee or from third party. In that view of the matter, as such, the assessments under Section 153-C of the Act are rightly set aside by the High Court. However, Shri N Venkataraman, learned ASG appearing on behalf of the Revenue, taking the clue from some of the observations made by this Court in the recent decision in the case of Principal Commissioner of Income Tax, Central -3 Vs. Abhisar Buildwell P. Ltd., Civil Appeal No. 6580/2021, more particularly, paragraphs 11 and 13, has prayed to observe that the Revenue may be permitted to initiate re-assessment proceedings under Section 147/148 of the Act as in the aforesaid decision, the powers of the re-assessment of the Revenue even in case of the block assessment under Section 153-A of the Act have been saved.

As observed hereinabove, as no incriminating material was found in case of any of the Assessee either from the Assessee or from the third party and the assessments were under Section 153-C of the Act, the High Court has rightly set aside the Assessment Order(s). Therefore, the impugned judgment and order(s) passed by the High Court do not require any interference by this Court.

Hence, all these appeals deserve to be dismissed and are accordingly dismissed."

7. Further, reliance was placed upon the decision of Hon'ble jurisdictional High Court in the case of CIT v. Kabul Chawla 2015 SCC On Line Del 11555, holding that the information/material which has been relied upon for assessment has to relate with the assessee.

"(iv) Although section 153A 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 Assessing Officer 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 the seized material."

8. Per Contra, ld. DR placed reliance upon the orders of authorities below.

9. We have heard rival submissions in the light of materials placed on record. We have noted from the order of the ld. CIT(A) that the same concerns raised by the assessee have not been adequately handled. The decision of the ld. CIT(A) is primarily based upon lukewarm response to appellate proceedings. The facts of the case have not been properly analyzed by the First Appellate Authority. As regards, non-availability of incriminating document, we have found sufficient force in the arguments raised by the appellant. Perusal of the assessment order alludes that the ld. Assessing Officer has primarily made the addition on the basis of search and seizure operation carried out in the residential premises of one Shri Sunil Kumar Gupta an alleged close confidant of the Alankit Group and its Directors as well as information available in the seized HP laptop of Shri Gupta. Heavy reliance has also been placed upon the sworn statement of Shri Gupta under section 132(4) dated 18.10.2019. There is nothing substantial in the reasons recorded or the order under section 153C which allude towards any incriminating material found qua the assessee. The judicial precedents on the subject pronounced by Hon'ble Apex Court and Hon'ble Delhi High Court are categorically clear in laying down that no addition under section 153C can be made in cases where no incriminating material has been found. Accordingly, in respectful compliance

to the decision of Hon'ble Apex Court in Abhisar Buildwell, U.K. Paints (Overseas) Ltd., and of Hon'ble Delhi High Court in Kabul Chawla (supra), it is held that the order under section 153C passed by the ld. AO in the case of the assessee is bad in law and therefore the order of lower authorities is set-aside and the order under section 153C is quashed. The ground of appeal no.1 raised by the assessee is allowed.

10. The assessee has succeeded on its legal grounds qua jurisdictional sufficiency, all the other grounds of appeal raised by the assessee nos. 2 to 10 on other legal grounds as well as the merits of the addition, have become academic in nature and hence left open.

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

Order pronounced in the open court on 09TH January, 2026.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Dated: 09.01.2026

Shekhar

Sd/-
[AMITABH SHUKLA]
ACCOUNTANT MEMBER

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi,