IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "I"NEW DELHI

BEFORE SHRIMAHAVIR SINGH, HON'BLE VICE PRESIDENT
AND
SHRISANJAY AWASTHI, ACCOUNTANT MEMBER

आ.अ.सं/.I.T.A No.2801/Del/2024
निर्धारणवर्ष/Assessment Year: 2015-16

ASSISTANT COMMISSIONER OF INCOME TAX, Central Circle-25, Room No.317, 3rd Floor, E-2, ARA Centre, Jhandewalan Extension, Delhi.	बनाम **Vs.**	FARIDABAD PRESSWELL PVT. LTD. 24, Ashoka Chamber, 5B, Rajindra Park, Pusa Road, New Delhi. PAN No. AAACFS815B
अपीलार्थी **Appellant**		प्रत्यर्थी/**Respondent**

Assessee by	Shri Salil Aggarwal, Sr. Advocate Shri Shailesh Gupta, CA and Shri Madhur Aggarwal, Advocate
Revenue by	Ms. Pooja Swaroop, CIT DR

सुनवाईकीतारीख/ Date of hearing:	17.12.2025
उद्घोषणाकीतारीख/Pronouncement on	09.01.2026

आदेश /O R D E R

PER SANJAY AWASTHI, ACCOUNTANT MEMBER:

1. The present appeal arises from order dated 08.03.2024, passed u/s 250 of the Income Tax Act, 1961 (hereafter as "the Act"), by Ld.CIT(A)-28, New Delhi. In this case a search and seizure operation was carried out on one Shri Surendra Arya and JBM group of companies on 05.10.2017. During the course of search on a key employee, Shri Suresh Kumar Mishra, details of transactions made for purchase of certain land were found. Apparently, the assessee had purchased 312214 sq. mts. Of land, which was registered in the month of January and February, 2015

from the seized material, an inference was drawn that some part of the consideration (Rs. 8 crores) for the said transaction was made in cash and not disclosed for tax purposes. The impugned addition was made accordingly.

1.1 The assessee carried this matter in appeal and was successful in pleading his case on the ground that the actual purchase of land had not been made from one M/s Vedehi Synthetic Ltd., to whom the said impugned cash payment was supposed to have been made, but from three persons (Vijay Kumar Ishwar Lal Patel, Mahesh Kumar Ishwar Lal Patel and Hemendra Kumar Ishwar Lal Patel). It is also recorded in the impugned order that the payment to M/s Vedehi Synthetic Ltd. was actually made in FY 2013-14, both the cheque part of it and the alleged cash part of it. On the finding that the payment through cheque and alleged cash was made to M/s Vedehi Synthetics Ltd. during FY 2013-14 and thus the same could not be treated for the sake of any assessment of income during AY 2015-16,the relief is seen to have been given on this basis [paras 5.3.4 and 5.3.5 of the impugned order].

1.2 The Revenue being aggrieved with this finding has approached the ITAT with the following grounds of appeal: -

> *"1. Whether on facts and in circumstances of the ease, Ld.CIT(A) is legally justified in deleting the addition on account of unexplained cash investment of Rs.8,00,00,000/-, without appreciating the fact that incriminating material in the form of hard disk in which details of certain properties maintained in excel*

sheet have been found in which details of various cash payment mentioned was found during the course of search on assessee.

2. Whether on facts and in circumstances of the case, Ld.CIT(A) is legally justified in deleting the addition on account of unexplained cash investment of Rs.8,00,00,000/-, without appreciating the fact that incriminating material in the form of excel format have been found in which details of registry of land at Daslana was found during the course of search on assessee.

3. Whether on facts and in circumstances of the case, Ld.CIT(A) is legally justified in deleting the addition on account of unexplained cash investment of Rs.8,00,00,000/-, without appreciating the fact that incriminating material in the form of excel sheet contain details viz. survey no., area of meter, name of the seller, name of the purchase company of JBM group etc. As per these details FaribadadPresswell Pvt. Ltd. had purchased total 312214 sqm. Land which was registered in the month of January & February 2015.

4. Whether on facts and in circumstances of the case, Ld.CIT(A) is justified in holding that the cash transactions are made first, since cheque payments are made at the time of any agreement/contract and also to ensure safety of the amount to be received by the seller, even when the general practice in land deals is that the cash payments are made at the time of registration of the land so as to protect the interests of both the buyer and the seller of the land and not at the time ofagreement/contract.

5. Whether on facts and in circumstances of the case, Ld.CTT(A) has erred in deleting the addition on account of unexplained cash investment of Rs.8,00,00,000/-, even when the AO has expressly mentioned in the assessment order that the assessee failed to factually substantiate its claim that the assessee has not purchased land from Vedehi Synthetic Ltd and has not incurred any unaccounted investment and also that the agreement got cancelled and amount given to Vedehi Synthetic Ltd was received back."

1.3 In this case theassessee has also moved an application under Rule 27 of the ITAT Rules, 1963 [hereafter "the Rules"] ostensibly in support of the impugned order, as under: -

"Additional Ground No. 1 That on the facts and circumstances of the case the approval accorded under section 153D of the Act (if any) is a mechanical and arbitrary approval without there being any application of mind and also without satisfying the statutory

preconditions of the Act and as such, the assessment so framed is null and void and deserves to be quashed.

Additional Ground No. 2 That the learned Commissioner of Income Tax (Appeals) has further erred both in law and on facts in sustaining the initiation of proceedings under section 153C of the Act and, further completion of assessment under section 153C/143(3) of the Act without satisfying the statutory pre-conditions for initiation of the proceedings and, completion of assessment under the Act, as no document pertaining or belonging to assessee was recorded in the satisfaction note.

Additional Ground No. 3 That on the facts and circumstances of the case the impugned assessment order so passed is null and void, and is also in complete violation of CBDT Circular No. 19/2019, since no DIN is mentioned in the entire body of assessment order."

It is therefore prayed, it be held that proceeding initiated u/s 153C of the Income Tax Act were bad in law and order of learned CIT (A) need be upheld even on the ground of wrongful assumption of jurisdiction on the part of learned AO to have framed assessment under section 153 C of the Income Tax Act."

2. The Revenue has raised objections to the grounds advanced through the instrumentality of the Rule through written submissions and the assessee's contention with respect to the Rules has been challenged by the Ld. DR through oral arguments. To appreciate the difference in opinion in regard to the Rules, it is best to extract portions from the written submissions filed by both sides.

2.1 The Ld. AR's contention in writing are selectively reproduced as under: -

"2. It is most respectfully submitted that since the assessee had succeeded in the appeal fully on merits, it did not prefer an appeal. However, the Revenue has since filed the instant appeal, the assessee-respondent seeks to support the order of the learned Commissioner of Income Tax (Appeals) as provided in Rule 27 of the Income Tax Appellate Tribunal Rules, as such, in view of Rule 27 of the Income Tax Appellate Tribunal Rules, 1963, the respondent seeks to raise, urge and argue the ground challenging

the initiation of proceedings, in an appeal filed by the revenue. It is thus, prayed that the respondent be permitted to make its submissions in respect of the contention as was being specifically raised vide ground nos. 2 and 4 before the learned Commissioner of Income Tax (Appeals) and was also decided by him in his impugned order."

"It is submitted that this submission is being made in view of Rule 27 of the Income Ta Appellate Tribunal Rules and is otherwise well settled proposition of law that the respondent is entitled to raise a legal ground at any stage of the proceedings, even though he may not have filed an appeal against such an order. The Judicial pronouncements are under:

1. *83 ITR 223 (Bom) (B.R.Bamsi v/s CIT)*
2. *129 ITR 475 (All) (Moralia & Sons v/s CIT)*
3. *220 ITR 398 (Ker) (CIT v/s Cochin Refineries Ltd)*
4. *176 CTR 406 (Gau) (Assam Company (I) Ltd v/s CIT)*
5. *102 ITD 189 (Del) (ITO v/s Gurvinder Kaur)*
6. *284 ITR 80 (SC) CIT V. Varas International P. Ltd.*
7. *149 Taxmann 456 (Guj) KharidVechan Sangh Ltd. vs CIT.*
8. *397 ITR 282 (AH) CIT vs Jindal Polyster Ltd."*

2.2 The Ld. DR, on the other hand, has filed submissions, from which some portions are reproduced as under: -

"Respondent may support order on grounds decided against him,

27. The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him."

4. As stated in the Rule above, the prerequisites and conditions for eligibility of filing application under this Rule are, as under:

(i) the ground(s) should have been filed before the previous appellate authority, and

(ii) the ground(s) should have been decided against the respondent in the order appealed against.

5. On perusal of the grounds of appeal taken by the respondent assessee for the Ld. CIT(A) as seen in para 3, page 2-3 of the appellate order dated 08.03.2024 (copy attached with this e-mail it can be observed that:

(i) The respondent assessee had not taken any ground w.r.t. mechanical approval under section 153D of the Act (as stated in Additional Ground No.1) and therefore this ground was neither before the previous appellate authority nor was it adjudicated against the respondent assessee.

(ii) The respondent assessee had not taken any ground w.r.t. DIN (as stated in Additional Ground No.3) and therefore this ground was neither before the previous appellate authority nor was it adjudicated against the assessee.

(iii) Regarding the ground w.r.t. incriminating material (as stated in Additional Ground No.2), the Ld. CIT(A) in para 5.3.5 of the appellate order dated 08.03.2024 has held the unexplained cash found during the course of search to be pertaining to FY 2013-14 relevant to AY 2014-15 and not to present AY 2015- 16. As the Ld. CIT(A) deleted the addition in favour of the respondent assessee, hence, even this ground has not been decided against the respondent assessee.

6. In view of the aforementioned facts and circumstances of the case, it is apparent beyond doubt that the respondent asseessee does not satisfy the prerequisites of Rule 27 of the ITAT Rules and hence, is NOT eligible to file application under Rule 27 of the ITAT Rules in the present appeal of Revenue.

7. Regarding the case laws relied upon by the respondent assessee it is submitted that all of them are distinguishable from the facts and circumstances of the present case. Some of them have been elaborated below as sample, as under:

(i) 284 ITR 80 (SC) CIT v. Varas International R Ltd.: There is no mention of Rule 27 of ITAT Rules here and no discussion also even indicating the same.

(ii) 102 ITD 189 (Deh ITO vs. Gurinder Kaur ITAT Delhi: In this case, it has been stated therein, as reproduced below:

"...In the instant case, the assessee had raised the point of non-recording o f reason before the Commissioner (Appeals) though the around was not so categorical. Even so, such ground could be inferred from the fact that the assessee had been repeatedly asking for the reasons recorded, which were not supplied to her. Even before the Tribunal, right from September 2004, the assessee

had been requesting for production of the department's records obviously calling upon the department to show that reasons for reopening had been recorded, but due to some difficulty or the other, the department had not been able to produce the records. The Commissioner (Appeals) had not recorded any finding on the question whether the reasons were recorded or not, but having regard to the judgment of the Delhi High Court in Rohtak & Hissar Districts Electric Supply Co. (P.) Ltd. v. CIT [1981] 128ITR 52/ 5 Taxman 116, it was possible to hold that he found it against the assessee on the point. On that reasoning, it was open to the assessee to raise the question of non-recording of reasons for reopening the assessment before the Tribunal for the first time and seek to support the ultimate decision of the Commissioner (Appeals). Even the non-disclosure of the reasons could be said to be covered by grounds taken before the Commissioner (Appeals) and in the absence of any definite decision by the Commissioner (Appeals), the same conclusion would follow, namely, that it was open to the assessee to invoke rule 27 even in respect of that point...."

It can be seen in the order of ITAT Delhi above that:

(a) the ground was clearly expressed throughout the assessement proceedings, appellate proceedings and even before the ITAT though it was not formally filed before Ld. CIT(A) and ITAT

(b) Despite the above, the CIT(A) had not given any finding on the matter

However, in the present case the respondent assessee has not even mentioned Section 153D of the Act and about DIN anywhere during the course of appellate proceedings nor has it filed it as a ground. Regarding incriminating material, the Ld. CIT(A) has held the issue in favour of the assessee. So, again the conditions and prerequisites even as per this case of ITAT, Delhi are NOT satisfied in case of the respondent assessee.

9. This is, therefore, to submit strong objections by the Revenue to the admission of the above referred application under Rule 27 of the ITAT Rules dated 13.03.2025of the respondent assessee and to pray for rejection of the same."

3. The Ld. AR requested that the Bench may consider the arguments, both for and against, the Rules before adjudicating on the substantive

issues. The Ld. AR pointed out that an omnibus ground was agitated before the Ld. CIT(A), challenging the validity of the assessment completed u/s 153C of the Act as under: -

> *"2. That on the facts and circumstances of the case and in law notice issued u/s 153C as well as proceedings conducted there under are against the provisions contained in the Income Tax Act, 1961, and is bad in law, barred by limitation and is without jurisdiction and hence liable to be quashed".*

It was further pointed out by the Ld. AR that the assessee had extensively challenged the assumption of jurisdiction by the Ld. AO and also the fact that the approval u/s 153D of the Act had been given in a mechanical manner and was thus illegal following the case of Shiv Kumar Nayyar reported in 163 taxmann.com 9 (Del). The Ld. AR took pains to point out the objections of the assessee in this regard at pages 12 and 13 of the impugned order, where the fact that the approvals had been given to group cases through a single order, was duly pointed out. The Ld. AR argued that as per the case of B.R. Bansi reported in 83 ITR 223 (Bom), the assessee could urge a ground in his defense which supports a favourable order of the first appellate authority, even though such a ground had not been raised earlier and such ground is legal and does not necessitate any other fact finding or evidence. It was the submission that such a ground would be allowable as a weapon of defense and if such a ground, even if it adversely affects the entire assessment proceedings by invalidating them, would only result in the appeal of Revenue failing. It was urged, following the case of Smt. Gurinder Kaur, reported in 102 ITD 189 (Del-Trib) where it has been recorded that when the CIT(A) has not recorded any finding on the question whether the reasons were recorded or not, but having regard to the judgment of the Hon'ble Delhi High Court in *Rohtak & Hissar Districts Electric Supply Co. (P.) Ltd.* v. *CIT* reported in 128 ITR 52, it may be held that the finding was

against the assessee on this point. On this reasoning, it is open to the assessee to raise the question of non-recording of reasons for reopening the assessment before the Tribunal for the first time and thereby seek to support the ultimate decision of the CIT(A).

The Ld. AR also relied on the case of New India Life Assurance Co. reported in 31 ITR 844 (Bom), to canvass the point that if the respondent has not challenged the order of the trial court by filing a cross-appeal or cross-objections then he is presumed to be quite content with the decision given by the trial court. Therefore, under these circumstances, his only right is to support the decision of the trial court, not only on the grounds contained in the judgment of the trial court, but on any other ground. Arguing further, it was the submission that as per the case of Hukumchand Mills Ltd,reported in 63 ITR 232 (SC) the Hon'ble Apex Court held that Rules 12 and 27 of the ITAT Rules are not exhaustive of the powers of the Tribunal asthe rules are merely procedural in character and do not circumscribe or control the power of the Tribunal under section 33(4) of the 1922 Act. Thereafter, the Ld. AR took us through the critical portions in the case of State of Kerala vs. Vijaya Stores reported in 116 ITR 15 (SC), to emphasize the point that if the other side has any grievance, he has a right to file a cross-appeal or cross-objections. But if no such thing is done then the other party is deemed to be satisfied with the decision, on which he is entitled to support the judgment of the first officer on any ground open to him, but he is not entitled to raise a ground so as to work adversely to the appellant and in his favour. The Ld. AR also read out paras 10 and 11 from the case of Smt. Gurinder Kaur reported in 102 ITD 189 (Del- Trib) to advance the argument that a new point, not requiring any investigation on facts, could be raised for the first time before the ITAT under Rule 27, provided the other side had an opportunity to meet the contentions. It was the submission that here

also the Bench was pleased to afford an opportunity to the Revenue. It was the further submission that in the case of Varas International (P) Ltd, reported in 284 ITR 80 (SC) in para 10 thereon, the grievance of the assessee that the issue regarding countervailing duty had not been squarely raised either before the Tribunal or in the reference application was correct but a benefit of doubt was to be granted to the department as a pure question of law was involved in the argument that the amount levied was a countervailing duty. Thus, an opportunity should be granted to the assessee of meeting its case fairly, leading to a remanding back tothe Tribunal for the purposes of deciding the issue relating to the countervailing duty. The Ld. AR further submitted that in the case of Sanjay Sawhney, reported in 116 taxmann.com 701 (Del), it has been held that where the assessee ultimately succeeded before CIT(A) and was thus not an aggrieved party in Revenue's appeal, the Tribunal committed a mistake by not permitting the assessee to support the final order of CIT(A) by assailing his findings on issues that had been decided against him. The Ld. AR also relied on the cases listed in the extract of his application under Rule 27 (supra).

3.1 The crux of the Ld. AR’s arguments were that though the assessee had raised a generic ground (Ground number 2 in Form 35-supra) challenging the assessment in general, but it was worth emphasizing that the issue of irregularity in grant of approval u/s 153D of the Act was vigorously challenged before the CIT(A) and this particular issue had been glossed over and not specifically decided in the impugned order. The fact of no specific decision had to imply a decision against the assessee. Thus, the invocation of Rule 27 was justified, as the plethora of case laws relied upon by him supported such a view.

3.2 It was also averred that it was now a settled position that approval u/s 153Dof the Act could not be given in a mechanical manner and the cases of Shiv Kumar Nayyar (supra) and many others relied upon by him, supported that view. It was pointed out in pages 4 to 30 of the paper book that the relevant approvals u/s 153D of the Act were given in a bunched-up manner and also suffered from other infirmities frowned upon by the Hon'ble Jurisdictional High Court. The Ld. AR took pains to emphasize that the grounds raised through the application under Rule 27 were intended to support and strengthen the impugned order with this legal ground, where relief has been given on a different ground of the impugned transaction not belonging to the assessment year under consideration.

4.0 The Ld. DR relied on the written submissions, opposing the admittance of additional grounds under Rule 27, argued that the Ground number 2 in Form 35 (supra) was general and did not specifically challenge or question any irregularity in granting of approval u/s 153D of the Act. It was the submission that even otherwise a plain reading of the impugned order revealed that Ground number 2 in Form 35 had not been held against the assessee as it was not specifically adjudicated. The Ld. DR drew our attention to the case of Sanjay Sawhney (supra) where it was clearly laid down that only those issues specifically decided against the assessee could be raised under Rule 27. The Ld. DR also distinguished some of the cases relied upon by the Ld. AR. It was also pointed that the

issue of DIN not being there was also never put forth before the Ld. CIT(A) for any adjudication. The Ld. DR argued that the case of Smt. Gurinder Kaur (supra) was distinguishable as in that case the reasons recorded were never shared with the assessee. The Ld. DR concluded her arguments by stating that the ground challenging the irregularity in exercise of powers u/s 153D of the Act was never specifically raised before the Ld. CIT(A) and thus could not be urged at this stage.

5.0 At this stage we deem it fit to adjudicate on the issue of under what circumstances the assessee can support the order of the Ld. CIT(A) through the invocation of Rule 27 of the ITAT Rules, 1963. We have heard the Ld. AR canvassing the grounds raised through Rule 27 and we have heard the Ld. DR opposing the same. It is clear thatif at the time of hearing the respondent wishes to take up an issue decided against him by the CIT(A), the opportunity is given under Rule 27, which reads as under:

> ***27. The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him."***

It is clear that at the stage of ITAT, both the assessee as well as the department can be the appellant. The ITAT has its own set of Rules, where both the appellant as well as the respondent are given various rights in order to protect their respective interests. An appellant can not only raise all his grievances through grounds of appeal raised by him in the appeal memo but he also has a right to raise additional grounds of appeal, with the leave of the tribunal.The ITAT Rules extensively provide for the rights of a respondent at many stages. In cases where a party gets a substantial

relief by the CIT(A) and prefers not to go in appeal, despite there being certain adverse findings of the CIT(A) against him, then the respondent can file cross objections even after the expiry of limitation period provided for appeals. At this stage we need to discuss the rationale of such a provision. The powers of the Tribunalare the same as those of an appellate court under the Code of Civil Procedure. The Civil Procedure Code. Order XLI, rule 22, Civil Procedure Code, states:

> *"(I) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the court below, but take any cross-objection to the decree which he could have taken by way of appeal….."*
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> *This factor has been summarized in the case of **New India Life Assurance Co. [1957] 31 ITR 844 (Bom)** in the following manner:*
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> *"The position with regard to the respondent is different; it is not open to him to urge before the court of appeal and get a relief which would adversely affect the appellant. If the respondent wanted to challenge the decision of the trial court, it was open to him to file a cross-appeal or cross-objections. But the very fact that he has not done so shows that he is quite content with the decision given by the trial court. Therefore, under these circumstances, his only right is to support the decision of the trial court. It is true that he may support the decision of the trial court, not only on the grounds contained in the judgment of the trial court, but on any other ground. In appreciating the question that arises before us, one must clearly bear in mind the fundamental difference in the positions of the appellant and the respondent. The appellant is the party who is dissatisfied with the judgment; the respondent is the party who is satisfied with the judgment."*

5.1 The very logic of this Rule may be understood from an extract from the case of**CIT vs. Sundaram & Co. Pvt. Ltd. Reported in 52 ITR 763 (Mad)**, as follows:

> *"13. The reason for such a rule is obvious. If the final outcome of a decision is favourable to a person it would not matter to him how and by what reasoning the decision is arrived at so long as it is not challenged by his adversary. But, if it is attacked he must be in a position to support it on every ground he urged before the deciding*

> *authority whether or not it found favour. If he were not given that amount of freedom he would be a victim of wrong reasons. This would be unjust in the extreme. If rule 27 had not been enacted there would still have been scope for invoking the principle underlying that rule in the name of natural justice. The true rule is that an appeal is a continuation of the original proceeding and that rights of parties cannot be defeated by the form of the order but by the actual decision."*

In the case of Sundaram & Co. (supra), the assessment was reopened under section 147 of the Act and certain disallowances were made. The assessee preferred first appeal, challenging both the validity of reopening as well as the merits of the case. The CIT(A) came to the conclusion that the assessee was entitled to some relief in respect of the quantum and so he granted relief partially. However, the reopening was held to be valid. There was a further appeal at the instance of the department. During the hearing of the appeal, the assessee raised the objection before the Tribunal that the proceedings under s.147 were entirely without jurisdiction. On behalf of the department,it was contended before the Tribunal that the assessee was not competent to raise this objection as he had not filed an independent appeal against the adverse findings of the CIT(A). It is in this context that the High Court had to go into the scope of the powers of the Tribunal while dealing with an appeal before it. After referring to the powers of the Tribunal to grant leave to the appellant, to raise additional grounds, the Hon'ble Court interpreted Rule 27 and observed:

> *"Turning to rule 27 which permits the respondent before the Tribunal to support the order of the Appellate Assistant Commissioner on any of the grounds decided against him, it seems to be clear that this is a right conferred upon him. The Tribunal*

has no discretion to deprive the respondent of the benefit of this rule. It is an enabling provision which the respondent can avail himself of in order to retain the benefit which has accrued to him from the order appealed against."

It is trite law that the Tribunal may, under Section 254(1) of the Act, pass such orders as it deems fit, though the said decision must be in respect of the subject matter of the dispute. The critical words in section 254(1) of the Act are that the Tribunal shall pass such orders *"thereon"* as it thinks fit. The said words occurring in section 254(1) of the Act restrict the jurisdiction of the Tribunal to the subject-matter of the appeal. However, what is the subject-matter of an appeal before the Appellate Tribunal is largely a question of fact. In the case of Sundaram & Co.(supra), the Hon'ble Madras HighCourt had also examined as to what constituted 'subject-matter of an appeal' and held as follows:

"The subject-matter is that which the Tribunal or the appellate court is called upon to decide and to adjudicate. The subject-matter cannot be identified with the grounds raised either by the appellant or by the respondent. In the present case the subject-matter of the appeal before the Tribunal was the reduction of tax rebate in respect of Rs.3,54,716. It is impossible to contend that the subject-matter of the appeal lay within a narrower limit and that it was the question whether the Appellate Assistant Commissioner was right in not allowing reduction of rebate on the ground mentioned by him. The assessee had obtained relief before the Appellate Assistant Commissioner to a particular extent. And this was objected to by the department in the appeal before the Tribunal. The applicability of section 34 of the Act was a general question raised by the assessee even before the Appellate Assistant Commissioner. It cannot be said that it became debarred from raising the question over again before the Tribunal because of the fact that it did not choose to file an appeal against other portions of the order of the Assistant Commissioner which was unfavourable to it. The scope of section 34 was a ground which was decided against the assessee before the Appellate Assistant Commissioner and we do not see how the assessee is precluded from relying upon rule 27 and urging that ground before the Tribunal with a view to

support only that portion of the Appellate Assistant Commissioner's order which was favourable to it."

The principle underlying this decision is that the Tribunal has no power to enlarge the scope of the appeal before it by permitting either the appellant or the respondent to urge grounds which would have the effect of destroying the finality of that portion of the order of the original authority which had not been appealed against by either of the parties. But this does not mean that the respondent should be denied the opportunity of supporting a decision in his favour which has come up on appeal on a ground decided against him by the authority whose decision is challenged.

5.2 In **CIT v. Mahalakshmi Textile Mills Ltd reported in 66 ITR 710 (SC)**, after referring to the corresponding provision in the 1922 Act (section 33 (4) of the Act), the Hon'ble Supreme Court held as follows:

"Under sub-section (4) of section 33 of the Indian Income-tax Act, 1922, the Appellate Tribunal is competent to pass such orders on the appeal 'as it thinks fit'. There is nothing in the Income-tax Act which restricts the Tribunal to the determination of questions raised before the departmental authorities. All questions, whether of law or of fact which relate to the assessment of the assessee may be raised before the Tribunal: If for reasons recorded by the departmental authorities in rejecting a contention raised by the assessee, grant of relief to him on another ground is justified, it would be open to the departmental authorities and the Tribunal, and indeed they would be under a duty, to grant that relief. The right of the assessee to relief is not restricted to the plea raised by him."

5.3 In **Steel Containers Ltd. v. CIT (1978) 112 ITR 995 (Cal)**, the A.O. disallowed a portion of the remuneration paid to Balmer Lawrie and Co. Ltd. as excessive in terms of section 40(c)(i) of the Act. The ITAT found

that section 40(c)(i) of the Act could not apply to the allowance or remuneration paid to Balmer Lawrie and Co. Ltd., it being a corporate entity. The disallowance could not be made under the said section. One of the questions referred to the High Court was, whether it was open to the Tribunal, after finding that section 40(c)(i) of the Act was not applicable, to sustain the disallowance partially under section 37 of the Act, in the absence of a cross-appeal or cross-objections by the Revenue. Dealing with the rival contentions of the parties, the Hon'ble Court observed as under:

> *"….The Supreme Court observed that under section 33(4) of the Indian Income-tax Act, 1922, which is in similar terms to section 254 of the Income-tax Act, 1961, the Tribunal was competent to pass such orders on appeal as it thinks fit. There was nothing in the Income-tax Act which restricted the Tribunal to the determination of the questions raised before the departmental authority. All questions, whether of law or of fact, which related to the assessment of the assessee might be raised before the Tribunal. If for reasons recorded by the departmental authority in respect of contention raised by the assessee, grant of relief to him on another ground was justified, it would be open to the departmental authority and the Tribunal, and indeed they would be under a duty, to grant that relief. Similarly, if the disallowance of certain expenditure to an assessee was warranted by a certain provision of law where the allowance and disallowance were the subject-matter of the appeal, in our opinion, the Tribunal was competent under section 254 to deal with that question and decide the same in accordance with law…."*

It is very clear that the pleadings of the respondent under Rule 27 cannot be said to be outside the scope of Tribunal on matters to be heard. The Hon'ble Gujarat High Court, in the case of **Principal Commission of Income Tax,Vadodara-II v. SunPharmaceuticals Industries Ltd reported in 86 taxmann.com 148 (Gujarat)**, observed as follows:

"11. To put the controversy beyond doubt, Rule 27 of the Rules makes it clear that the respondent in appeal before the Tribunal even without filing an appeal can support the order appealed against on any of the grounds decided against him. It can be easily appreciated that all prayers in the appeal may be allowed by the Commissioner (Appeals), however, some of the contentions of the appellant may not have appealed to the Commissioner. When such an order of the Commissioner is at large before the Tribunal, the respondent before the Tribunal would be entitled to defend the order of the Commissioner on all grounds including on grounds held against him by the Commissioner without filing an independent appeal or cross-objection."

Similar issue came-up before Division Bench of this Court in case of Dahod Sahakari KharidVechan Sangh Ltd. v. CIT (2006) 282 ITR 321 (Guj) in which the Court observed as under:

"19. In case a party having succeeded before Commissioner (Appeals) opts not to file cross objection even when an appeal has been preferred by the other party, from that it is not possible to infer that the said party has accepted the order or the part thereof which was against the respondent. The Tribunal has, in the present case, unfortunately drawn such an inference which is not supported by the plain language employed by the provision.

20. If the inference drawn by the Tribunal is accepted as a correct proposition, it would render Rule 27 of the Tribunal Rules redundant and nugatory. It is not possible to interpret the provision in such manner. Any interpretation placed on a provision has to be in harmony with the other provisions under the Act or the connected Rules and an interpretation which makes other connected provisions otiose has to be to avoided. Rule 27 of the Tribunal Rules is clear and unambiguous. The right granted to the respondent by the said Rule cannot be taken away by the Tribunal by referring to provisions of Section 253(4) of the Act. The Tribunal was, therefore, in error in holding that the finding recorded by the Commissioner (Appeals) remained unchallenged since the assessee had not filed cross objection."

5.4 Another connected issue deserves to be discussed in the light of a locus classics on the subject, also relied upon by the Ld. AR. If a party appeals, he is the one who comes before the Appellate Tribunal to redress a grievance alleged by him. If the other side has a grievance, he has a right to file a cross-appeal. But, if no such thing is done, he is deemed to be satisfied with the decision. He is, therefore, entitled to

support the judgment of the first appellate authority on any ground but he is not entitled to raise a ground which will work adversely to the appellant. In fact, such a ground may be a totally new ground, if it is purely one of law, and does not necessitate the regarding of any evidence, even though the nature of the objection may be such that it is not only a defense to the appeal itself but goes further and may affect the validity of the entire proceedings. However, the entertainment of such a ground would be subject to the restriction that even if it is accepted, it should be given effect to only for the purpose of sustaining the order in appeal and dismissing the appeal and cannot be made use of to disturb or to set aside the order in favour of the appellant. This proposition was held by the Bombay High Court in the case of **B.R. Bamasi v. CIT (1972) 83 ITR 223 (Bom)**. It was stated that the assessee could use the argument only to sustain the order of the AAC but not to get further relief and have the assessment itself annulled and thus adversely affect the appellant and place it in a worse position than if it had not appealed at all.

5.5 At this stage we need to discuss the case of **Sanjay Sawhney Vs. PCIT, reported in 116 taxmann.com 701 (Del)**,sinceit is not only a binding precedent butit also lucidly sets out the scope and limitations of Rule 27. Before extracting relevant passages from this case law, a brief mention of the facts is needed since such an exercise would compare and even contrast the facts there and in the case before us. In the Sanjay

Sawhney case in the appeal before CIT(A), besides challenging the additions made by the Assessing Officer on merits, the assessee also raised legal grounds *qua* the validity of the reassessment proceedings undertaken by the revenue under section 153C of the Act. The jurisdictional challenge to reassessment proceedings was principally on two fundamental legal grounds, *viz.* (*i*) the AO failed to record a satisfaction note for initiating proceedings under section 153C and, (*ii*) there was no nexus between the issues in the assessment proceedings and the incriminating material seized during the search. The CIT(A) rejected the aforesaid pleas and held that there was no need for recording the satisfaction and that further the law did not postulate any requirement for existence of nexus between the assessment framed and the incriminating material as a precondition for reassessment proceedings. On merits, CIT(A) allowed the appeal in favour of the assessee and deleted all the additions/disallowances made by the AO.The Hon'ble Delhi High Court, after analyzing a number of judgements of the Hon'ble Supreme Court as well as of various High Courts, has held as under:

> *"22. Therefore, the position of law that materializes on a reading of the aforesaid decisions is that the appellant herein, (Respondent before ITAT) could have invoked Rule 27 to assail those grounds that were decided against him if those grounds/issues had a bearing on the final decision of the CIT(A). Revenue was certainly not taken by surprise as the appeal is considered to be continuation of the original proceedings. The ITAT had no discretion to deprive the appellant the benefit of the enabling Rule provision to defend the order of the CIT(A). The question of jurisdiction -which is sought to be urged by the Respondent while supporting the order in appeal,*

had a bearing on the final order passed by the CIT(A), because if the said issues were to be decided in favour of the appellant herein the assessee, that would have been an additional reason to delete the additions made by the A.O."

*"26. **The upshot of the above discussion is that Rule 27 embodies a fundamental principal that a Respondent who may not have been aggrieved by the final order of the Lower Authority or the Court, and therefore, has not filed an appeal against the same, is entitled to defend such an order before the Appellate forum on all grounds, including the ground which has been held against him by the Lower Authority, though the final order is in its favour. In the instant case, the Assessee was not an aggrieved party, as he had succeeded before the CIT (A) in the ultimate analysis**.(emphasis added). Not having filed a cross objection, even when the appeal was preferred by the Revenue, it does not mean that an inference can be drawn that the Respondent- assessee had accepted the findings in part of the final order, that was decided against him. Therefore, when the Revenue filed an appeal before the ITAT, the Appellant herein (Respondent before the Tribunal) was entitled under law to defend the same and support the order in appeal on any of the grounds decided against it. The Respondent – assessee had taken the ground of maintainability before Commissioner (Appeals) and, therefore, in the appeal filed by the Revenue, it could rely upon Rule 27 and advance his arguments, even though it had not filed cross objections against the findings which were against him. The ITAT, therefore, committed a mistake by not permitting the assessee to support the final order of CIT (A), by assailing the findings of the CIT(A) on the issues that had been decided against him. The Appellant – assessee, as a Respondent before the ITAT was entitled to agitate the jurisdictional issue relating to the validity of the reassessment proceedings. We are, therefore, of the considered opinion that the impugned order passed by the ITAT suffers from perversity in so far as it refused to allow the Appellant – assessee (Respondent before the Tribunal) to urge the grounds by way of an oral application under Rule 27. The question of law as framed is answered in favour of the Appellant – assessee and resultantly the impugned order is set aside. The matter is remanded back before the ITAT with a direction to hear the matter afresh by allowing the Appellant- assessee to raise the additional grounds, under Rule 27 of the ITAT Rules, pertaining to issues relating to the assumption of jurisdiction and the validity of the reassessment proceedings under Section 153C of the Act."*

A plain reading of this judgement shows that there the section 153C of the Act itself was under challenge, and that issue was held against the assessee at first appellate stage. Such a situation is not prevailing here as

the Ground number 2 in Form 35, pertaining to proceedings u/s 153C of the Act, have not been specifically adjudicated. Even though the assessee has alleged illegality in the grant of approval u/s 153D of the Act, but such a specific challenge is not visible in the Grounds of Appeal as per Form 35. Also, the question of any irregularity of DIN (as per additional ground number 3) is not even mentioned anywhere. Thus, the case of Sanjay Sawhney (supra) itself decides the issue against the assessee, since neither the issue of illegality in grant of approval u/s 153D of the Act nor the issue of DIN were specifically part of first appellate proceedings. The evident conclusion from the reading of above judgements would be that the Respondent can defend, under the shelter of Rule 27, the order of the CIT(A) against any of the issues decided against him. However, the relief sought cannot cause prejudice to the appellant more than what was coming out of the CIT(A)'s order.

5.6 Regarding the second additional ground under Rule 27, pertaining to the assessment being done without any live nexus with seized material, would need to be discussed. The second ground (supra) pertains to a challenging of the fact that the impugned addition has been made on a basis other than the seized material recovered during the course of search and seizure operation. In this regard it is true that the issue has been decided against the assessee by the Ld. CIT(A) on the basis of findings given in para 5.3.5 as under:

"5.3.5 In view of the above, It m found that the documents, found and scaled from a very senior personnel of the Group i.e. GM Finance and the transactions recorded were also corroborated partly with the books of the appellant except the payments made in cash. Thus, the document cannot to# hi Id as dumb document and it is very much Incriminating in nature. Further, it is also evident that the payments done through cheques were made In the FY 2013-14 to M/s VedehiSothetic Ltd., thus, as a natural corollary it is obvious that the cash transaction® had been also made in the same FY i.e. 2013-14. In a normal business parlance also the cash transactions are made first since, the cheque payments are made at the time of any agreement/ contract and also to ensure safety of the amount to be received by the seller. The excel sheet seined thus, clearly exhibit that part 'A' is the payment made through the bank and part 'B' is the cash payment made in the F.Y. 2013-14 by the appellant to Vedehi Synthetics Limited. There is no other evidence on record which shows that the cash payments were made in the FY 2014-15. Considering the above, it is held that the unaccounted cash payments of Rs.8 crores were actually made by the appellant to M/s Vedehi Synthetic Ltd. in the FY 2013-14 relevant to the AY 2014-15, however, the AO has inadvertently considered the same as unexplained cash payments in the AY 2015-16. TheAO may take appropriate actionor consider reopening thecase of theappellant pertaining to AY 2014-15 considering therecent judgment of Hon'ble Supreme Court in the case of Principal Commissioner of Income Tax, Central-3 Vs. Abhisar Buildwell P. Ltd. (Civil Appeal No.6580 of 2021) (2023) wherein it was held that the completed/unabated assessments can be reopened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfillment of the conditions as envisaged/mentioned u/s 147/148 of the Act."

A plain reading of the finding as extracted (supra) from the impugned order it is obvious that the fact finding has been done in this regard by the authorities below and at least on the face of it there is no patent error in relying on information/material recovered during the course of search and seizure operation in presuming that the alleged impugned transaction did take place. We hasten to add that in this very same paragraph the Ld. CIT(A) has also given a finding that the impugned transaction cannot relate to the assessment year under consideration, and has thus, given relief on the same.

5.7 Thus, to sum up, on the issue regarding the grounds raised on account of Rule 27, it deserves to be mentioned that ground 1 is not directly emanating from ground 2 as per Form 35 filed before the Ld. CIT(A). Following the extensive discussion on this issue, especially following the Sanjay Sawhney case (supra), the first ground fails the test of the issue being raised and decided against by the Ld. CIT(A). Accordingly, this ground is rejected. Furthermore, ground 3 (as per application under Rule 27) also cannot help the assessee because it was not presented before the Ld. CIT(A) for any kind of consideration. Lastly, ground no.2 (as per the application under Rule 27) also fails since the fact finding done in the impugned order as per the extract (supra), makes it clear that the impugned addition, howsoever, erroneously made, does have a connection with the seized material. In result all the three grounds raised as per Rule 27 fail.

6. Regarding the merit of the case, we find that the Ld. CIT(A) has given a correct finding on the peculiar facts of this case, in paras 5.3.1 to 5.3.5 (para 5.3.5 has been extracted- supra) and such a finding does not deserve to be disturbed in any way. In the result, the appeal of the Revenue fails on merit as it deserves to be reiterated that the Ld. CIT(A) has correctly deleted the addition made during this year.

7. In the result, the additional grounds raised by the assessee are dismissed, but with the upholding of the Ld. CIT(A)'s finding in favour of the assessee, the Appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 09 .01.2026

Sd/-	**Sd/-**
(MAHAVIR SINGH)	**(SANJAY AWASTHI)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated: 09.01.2026

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI