

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

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

**IT(SS)A Nos.39 & 40/PUN/2024
Assessment year : 2019-20**

DCIT, Central Circle – 1, Aurangabad	Vs.	Smt. Asha Bhagwanrao Kadam A-3/201, Karishma Society, Opp. Karve Road, Kothrud, Pune – 411038
		PAN: AARPK2868D
(Appellant)		(Respondent)

**ITA Nos.1894, 1895 & 1896/PUN/2024
Assessment years : 2019-20, 2018-19 & 2018-19**

DCIT, Central Circle – 1, Aurangabad	Vs.	Smt. Asha Bhagwanrao Kadam A-3/201, Karishma Society, Opp. Karve Road, Kothrud, Pune – 411038
		PAN: AARPK2868D
(Appellant)		(Respondent)

**ITA Nos.607 to 611/PUN/2025
Assessment years : 2019-20 & 2018-19**

Smt. Asha Bhagwanrao Kadam A-3/201, Karishma Society, Opp. Karve Road, Kothrud, Pune – 411038	Vs.	DCIT, Central Circle – 1, Aurangabad
PAN: AARPK2868D		
(Appellant)		(Respondent)

Assessee by : Shri Pramod S Shingte
Department by : S/Shri Amol Khairnar, CIT-DR and
Vidya Ratna Kishore

Date of hearing : 16-12-2025
Date of pronouncement : 19-01-2026

ORDER

PER BENCH:

IT(SS)A No.39/PUN/2024 filed by the Revenue and ITA No.607/PUN/2025 filed by the assessee are cross appeals and are directed against the order dated 16.07.2024 of the Ld. CIT(A), Pune-12 relating to assessment year 2019-2020. IT(SS)A No.40/PUN/2024 and ITA No.1895/PUN/2025 filed by the Revenue and ITA Nos.610/PUN/2025 and 609/PUN/2025 filed by the assessee are cross appeals and are directed against the common order dated 18.07.2024 of the Ld. CIT(A), Pune-12 deleting the penalty levied by the Assessing Officer u/s 271D of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to assessment years 2018-19 and 2019-2020 respectively and not deciding certain legal grounds. ITA Nos.1896/PUN/2025 and 1894/PUN/2025 filed by the Revenue and ITA Nos.611/PUN/2025 and 608/PUN/2025 filed by the assessee are cross appeals and are directed against the common order dated 18.07.2024 of the Ld. CIT(A), Pune-12 deleting the penalty levied by the Assessing Officer u/s 271E of the Act relating to assessment years 2018-19 and 2019-2020 respectively but not deciding the legal grounds raised before him. For the sake of convenience, all the 10 appeals were heard together and are being disposed of by this common order.

2. There is a delay of 11 days in filing of these appeals before the Tribunal by the assessee for which the assessee has filed condonation applications along with

affidavits explaining the reasons for such delay. After considering the contents of the condonation applications filed along with the affidavits and after hearing the Ld. DR, the delay in filing of these appeals is condoned and the appeals are admitted for adjudication.

3. First we take up IT(SS)A No.39/PUN/2024 filed by the Revenue and ITA No.607/PUN/2025 filed by the assessee for assessment year 2019-20. Facts of the case, in brief, are that the assessee is an individual engaged in the business of carrying on the role of an investor along with handling the household responsibilities. She filed her return of income on 16.10.2019 declaring total income of Rs.1,48,82,180/-. The return was revised on 19.11.2019 declaring total income of Rs.1,46,76,910/-. A search action u/s 132 of the Act was conducted in Disha (Kotgire) Group of Aurangabad, Pune and Kolkata on 21.01.2020. The Kotgire Group is headed by Shri Devanand Narayan Kotgire (DNK in short) of Aurangabad and the main concerns of the group are under the brand name of DISHA. The group is engaged in real estate activity involving plotting activity and construction and sale of flats and shops. The group has also entered into partnerships with many persons for real estate activity including persons of Manjeet (Rajpal) Group, Pride group and Loharuka group. The assessee was also covered in the said search action u/s 132 of the Act conducted at Aurangabad. A search warrant was issued u/s 132 of the Act in the name of the assessee. A notice u/s 153A of the Act was also issued on 10.02.2021. The assessee in response to

the said notice filed her return of income electronically on 20.05.2021 declaring total income of Rs.1,31,01,660/- and agricultural income of Rs.1,42,561/-. The Assessing Officer thereafter issued a notice u/s 143(2) of the Act on 30.06.2021 which was duly served on the assessee. Subsequently notice u/s 142(1) of the Act along with a detailed questionnaire dated 21.09.2021 was issued to the assessee. The assessee in response to the same submitted various details as called for from time to time.

4. During the course of assessment proceedings the Assessing Officer noted that during the course of search u/s 132 of the Act at the business and residential premises of different members / associate concerns of the Manjeet Disha group of Aurangabad on 21.01.2020 some pocket diaries were seized at the residential premises of Shri Ratnakar Kulkarni who is an accountant in Disha group. The seized documents contain records of cash transactions pertaining to various concerns and individuals of Disha, Rajpal, Price and Loharuka groups for the past 10 years. These documents are in the form of small pocket diaries and contain the details of cash transactions which have been maintained very meticulously. He noted that an employee of Disha group Shri Ratnakar Kulkarni has accepted in his statement recorded u/s 132(4) of the Act that the transactions are in cash and have not been entered in the books of account and have been meticulously prepared on the instructions of Devanand Narayan Kotgire (DNK). The fact that these handwritten diaries belong to Dish Group has been accepted by the head

accountant of Disha Group Shri Purushottam Binorkar and his name appears in the employee list of Disha group. The Assessing Officer noted that during the course of post-search enquiries in the statement recorded, DNK also accepted the ownership of these diaries. The Assessing Officer noted that these diaries contain the transactions in date-wise manner and appear to be a cash book for such unaccounted receipts and payments and same has been accepted by the accountants in their statements. He noted that in the said diaries the assessee under consideration made cash payment to DNK and also received cash from DNK. The Assessing Officer extracted the financial year-wise receipts and payments and noted that for financial year 2018-19 there is cumulative difference of Rs.2,97,23,580/-. He, therefore, issued a show cause notice asking the assessee to explain as to why the provisions of section 269SS and 269T of the Act should not be initiated. In absence of any reply filed by the assessee, the Assessing Officer held that the assessee has nothing to explain in this regard. He, therefore, invoking the provisions of section 68 r.w.s. 115BBE of the Act, made addition of Rs.2,97,23,580/- to the total income of the assessee and determined the income at Rs.4,28,25,240/-.

5. Before the Ld. CIT(A) the assessee, apart from challenging the addition on merit, raised an additional ground challenging the validity of the assessment on the ground that the order passed u/s 143(3) r.w.s. 153A of the Act dated 30.09.2021 was in consequence to a notice issued u/s 153A of the Act dated 10.02.2021 which

is invalid and *void ab initio* as there was no authorization against the assessee. Further, no incriminating material whatsoever was found in the case of the assessee. It was argued that the proceedings u/s 153A of the Act could not have been initiated and only the proceedings u/s 153C could have been initiated on the basis of the alleged incriminating material found in the possession of Disha group of cases.

6. Based on the arguments advanced by the assessee the Ld. CIT(A) quashed the assessment order dated 30.09.2021 passed u/s 143(3) r.w.s. 153A of the Act treating the same as invalid by observing as under:

Finding:

4.2 I have considered the submissions filed by the appellant. During the appellate proceedings, the appellant has challenged the notice u/s 153A of the Act for the AYs 2014-15 to 2019-20 which were issued by Ld. AO on 10.02.2021 and requested to treat the notices as void-ab-initio. A search action under section 132 of the Act was conducted in case of Disha Group, which belongs to Shri Devanand Narayan Kotgire. In this search action authorization was also issued in the name of Shri Rahul Bhagwanrao Kadam (hereinafter referred as RBK), (son of Appellant) and accordingly search on DNK group was extended in the case of RBK also. In that search one of the two Bank Lockers at Karad Urban Co-Op Bank, which was in the name of the appellant and her husband were sealed, the copy of relevant Pachanama drawn on **22.01.2020** is as under.

DIRECTORATE OF INCOME TAX (INV.), PUNE
PANCHANAMA
[TO BE PREPARED IN QUADRIPLICATE]

PARTY NO:

A.	Warrant in the case of	Shri Rahul Bhagwanrao Kadam	
B.	Warrant to search: (Details & Ownership of place of search)	Residence of Shri Rahul Bhagwanrao Kadam at A3, 201, Karishma Society, off Karve road, Kothrud, Pune-411038	
C.	(A) and (B) stated to be assessed by	(A)	(B)

D.	Search Party Consisting of :		
I]	Authorized Officers:		
S.No.	Name of the Officers	Full Designation	
1	Shri Ganesh S. Rakh	DDIT(Inv.), Unit-II(2), Pune	
II]	Other Officials who assisted the Authorized Officer		
1	Shri Syed Mahfooz Alam	ITI	
2	Shri Hari Singh Rajpurohit	ITI	
3	Shri Kishan Pawar	TA	

E.	Name and complete address of the Panchas:(Witness No.1)	Name and complete address of the Panchas:(Witness No.2)
	Shashikant Kalase, 403, Pathane Galli, Malwade, Sonand, Sangala, Dis- Solapur Mob-9762248575	Shri Dhas Lahu Bhagchand, Jangav, Ashti, Beed-414203 Mob-9975795455

On being called by Shri Ganesh S. Rakh, DDIT (Inv.), Unit-II(2), Pune on 21.01.2020 at 08:45A.M, we, the above named Panchas, presented ourselves at the above place of search. The Authorized Officer Shri Ganesh S. Rakh, DDIT (Inv.), Unit-II(2), Pune, showed us the warrant of Authorization dated 20.01.2020 issued under section 132 of the Income-tax Act 1961 / ~~37-A of the Wealth tax Act 1957~~ in the case of (A) above, to search the place mentioned at (B) above and duly signed and sealed by the Pr. Director of Income-tax (Inv.), Nagpur to Shri Rahul Bhagwanrao Kadam, who was present in the said place at the time and who after reading the said Authorization / ~~after the authorization was explained in local language viz _____ by _____ signed it, in our presence and along with us, in token of having perused the same.~~

2. ~~As today's search was in continuance of the proceedings on _____ we, along with the aforesaid Authorized Officers, before the commencement of proceedings today, inspected the seals which had been placed on that date and found them to be intact / tampered with as narrated in the enclosure.~~

3. The above mentioned search party offered themselves for personal search before commencing the search, which was taken / declined.

4. A search of the above mentioned place was carried out by the said party in our presence in orderly manner without hurting the sentiments of any of the occupants of the premises. Nothing untoward / ~~the events narrated in the enclosure~~, happened in the course of the search.

5. In the course of the Search,

A] The following were seized:

i) As per Annexure-A.

B] The following were found but not seized:

i) Cash found – Rs. 7,21,660/- as per Annexure-B.

ii) Jewellery found- worth Rs. 51,23,326/- as per Annexure-C.

6. In the course of the search, the Authorized Officer, Shri Ganesh S. Rakh, DDIT (Inv.), Unit-II(2), Pune recorded the statements of Shri Rahul Bhagwanrao Kadam on oath. In our presence, no coercion, threat, inducement, promise or other undue influence was brought to bear on the above deponent (s). The statement was read over/ explained in the local language viz. _____ to the deponent, who signed the statement in token of having understood its contents and of agreeing that it had been correctly recorded.

7. The following other important persons were present in the place of search and either took an active part in or helped the search proceedings.

S.No.	Name of the person	Relationship
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8. The search commenced on 21.01.2020 at 08:45 A.M. The proceedings were closed on 22.01.2020 at 11:35 P.M. as finally concluded / ~~as temporarily concluded for the day to be commenced subsequently for which purpose seals were placed on the _____ in our presence.~~

9. An order under section 132(3) of the Income tax Act 1961 in respect of the sealed premises _____ was served on _____ by the said Authorized Officer.

10. Before leaving the above mentioned place of search the entire search party again offered themselves for personal search which was ~~taken~~ /declined. The above Panchanama has been read by us and It is certified that it has been correctly recorded.

Signature of the Panchas with Date: -

Witness No.1 [Signature]

Witness No.2 [Signature]

Signature of the Authorized Officer

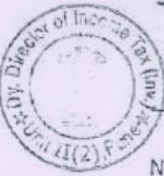
[Signature]

Signature of person receiving the copy of the Panchanama (with date)

[Signature] 22/01/2020

Name: - Shri Ganesh S. Rakh
Designation: - DDIT(Inv.), Unit-II(2), Pune
Date: - 22.01.2020

Name: - Rahul B Kadam
Position in relationship to "A" self
Date: -22.01.2020



4.3 The Ld. AO had initially issued notices u/s 153A of the Act on **10.02.2021** for AYs 2014-15 to 2019-20 (6 Yrs), however, there was no initial authorization against the appellant while sealing her lockers. The details of said notices are

under.

Sr. No.	AY	Notice u/s	Issuing date of notice
1	2014-15	153A	10.02.2021
2	2015-16	153A	10.02.2021
3	2016-17	153A	10.02.2021
4	2017-18	153A	10.02.2021
5	2018-19	153A	10.02.2021
6	2019-20	153A	10.02.2021

In response to notices u/s 153A, the appellant filed returns of income for AYs 2014-15 to 2019-20 as under.

Sr. No.	AY	Dated	Returned Income
1	2014-15	20.05.2021	23,69,850/-
2	2015-16	20.05.2021	74,36,250/-
3	2016-17	20.05.2021	1,14,18,170/-
4	2017-18	20.05.2021	40,53,770/-
5	2018-19	20.05.2021	29,49,420/-
6	2019-20	20.05.2021	1,31,01,660/-

In response to these returns, the Ld. AO issued notices u/s 143(2) of the Act for AYs 2014-15 to 2019-20 on 30.06.2021. During the hearing before the Ld. AO, the appellant pointed out that, though the cases are reopened for 6 years from A.Y 2014-15 to AY 2019-20, but there was no authorization against the appellant, and such authorization was only in the name of RBK and therefore above referred notices issued u/s 153A are not valid. The fact has been acknowledged by the Ld. AO and he realized that there was no authorization in the case of the appellant and subsequent warrant of authorization was issued only on 10.06.2020 (mainly to open the sealed locker in the name of the appellant), the copy of relevant Pachanama drawn on **10.06.2020** is as under.

PANCHNAMA
(To be prepared in quadruplicate)

A. Warrant in the case of

Rahul Bhagwanrao Kadam, Smt Asha Bhagwanrao Kadam and Shri Bhagwanrao N. Kadam
 locker No. ~~75~~ at The Karad Urban Co.Op. Bank Ltd., Karad, Branch Karve Road, Pune.

B. Warrant to search
(Details & Ownership of place of search)
Telephone Number

C. (A) and (B) stated to be assessed by

D. Search Party consisting of

AUTHORIZED OFFICER NAME FULL DESIGNATION

Sr. No.	AUTHORIZED OFFICER NAME	DESIGNATION
1.	Shri Sushil B Shendge	DDIT(Inv.) Aurangabad

OTHER OFFICIALS WHO ASSISTED THE AUTHORISED OFFICERS

Sr. No.	NAME OF THE OFFICIALS	DESIGNATION
1.	Shri Nilesh Kulkarni	Inspector, Aurangabad
2.	Shri Shailendra Kr. Singh	Inspector, Aurangabad

E. Name and complete address of Panchas :

Sr. No.	Name of the Panchas	Address
1.	Shri Mandar Bharal Joshi	Flat No.07, Virkar Building, Lane No.05, Karve Nagar, Pune.
2.	Shri Madhav Kandoba Dongre	Kopregaoon, Uttam Nagar, IInd Floor, Anjani Niwas, Pune

1. On being called by **Shri Sushil B Shendge, DDIT(Inv.), Aurangabad** on **10.06.2020** at **12:45 PM**, we, the above named Panchas, presented ourselves at the above place of search. The authorised Officer **Shri Sushil B Shendge, DDIT(Inv.), Aurangabad** showed the warrant of authorisation dated **04.06.2020** issued under section 132 of the Income-tax Act, 1961/37A of the W.T.Act,1957 in the case of (A) above, to search the place mentioned at (B) above and duly signed and sealed by the ~~Director of Income Tax (Inv.), Nagpur/Pune, Addl.DIT(Inv.) Nashik to~~ **Shri Rahul Bhagwanrao Kadam and Smt Prachi Yatin Vaidya(Branch Manager)** who was present in the said place at the time and who after reading the said authorisation/after the authorisation was explained in local language, viz,.....by ~~Shri/Smt.....~~ signed in, in our presence and along with us, in token of having perused the same.

2. ~~As today's search was in continuance of the proceedings on we, along with the aforesaid authorised officers, before the commencement of proceedings today, inspected the seals which had been placed on the date and found them to be intact/tampered with as narrated in the enclosure.~~

3. The above-mentioned search party offered themselves for personal Survey, Search & Seizure search before commencing the search, which was ~~taken/declined~~.

4. A search of the above-mentioned place was carried out by the said party in our presence in an orderly manner without hurting the sentiments of any of the occupants of the premises. Nothing untoward/~~the events narrated in the enclosure,~~ happened in the course of search.

5. In the course of the search :-

(a) The following were found and seized :

- (i) Books of account and documents as per Annexure NIL (sheets)
- (ii) Bullion, i.e. gold, silver etc., as per Annexure NIL (sheets)
- (iii) Cash as per Annexure NIL (sheets)
- (iv) Jewellery, ornaments, etc., which have been inventorised separately for each place from where recovered, as per Annexure NIL(sheets).
- (v) Silver articles and silverware as per Annexure NIL (sheets)
- (vi) Other values, locker keys, FDs., etc., as per Annexure NIL (sheets)

(b) The following were found but not seized :-

- (i) Books of account and documents as per Annexure NIL Marks of identification were placed on these and specimen of the marks and the pages where these have been place are shown in the inventory prepared, viz, Annexure NIL
- (ii) The other valuable articles or things (including money) as per Annexure NIL (Separate inventories of jewellery, ornaments, silverware, etc., where prepared for items found in different places or claimed to be belonging to different persons.)

6. In the course of the search, the authorised officer _____ recorded the statement(s) of _____ on solemn affirmation/oath, in our presence. No coercion threat, inducement, promise or other undue influence was brought to bear on the above deponent. The statement was read over/explained ~~in the local language,~~ viz, ~~to~~ the deponent who signed the statement in token of having understood its contents and of agreeing that it had been correctly recorded.

7. The following other important persons were present in the place of search and either took an active part in or helped the search proceedings:

NAME	RELATIONSHIP
Smt Prachi Yatin Vaidya	Branch Manager

8. The search commenced on **10.06.2020** at **12:45 PM**. The proceedings were closed on **10.06.2020** at **1:15 PM** as finally concluded/~~as temporarily concluded for the day to be commenced subsequently for which purpose seals were placed on the entire place/on in our presence.~~

9. ~~An order under section 132(3) of the I.T.Act, 1961 in respect of the sealed premises/.....was served on Shri/ Smt.....by the said authorised officer.~~

10. ~~An order under second proviso to section 132(1) was served on Shri/Smt.....by the said Authorised Officer.(Annexure N)~~

11. Before leaving the above-mentioned place of search, the entire search party again offered themselves for personal search which was ~~taken~~/declined. The above panchnama has been read by us/ explained to us ~~in local language.....~~by Shri/Smt..... and it is certified that it has been correctly recorded.

Signature of the Panchas with dates:

1. m.B. Joshi
10/06/20


2. MKY
10/6/2020

Signature of the Authorised officer

Sushil B. Shendge
(Sushil B. Shendge)
Name: Dy. Director of Income Tax (Inv.)
Designation: Aurangabad.
Date: 10.06.2020

Signature of the person receiving copy of Panchnama

[Signature]
Name: _____
Position in relationship "A": _____
Date: 10.06.2020

Seal: 

4.4 However, on opening of the locker nothing incriminating was found in both the lockers. Thereafter, the Ld. AO issued fresh notice under section 153A of the Act dated **03.08.2021** for the AYs for 2015-16 to 2020-21 (6 Years), whereby the first AY i.e. AY 2014-15 (as in earlier notice u/s 153A) was excluded and AY 2020-21 was added. The details of said notice are as under.

Sr. No.	AY	Notice u/s	Issuing date of notice
1	2015-16	153A	03.08.2021
2	2016-17	153A	03.08.2021
3	2017-18	153A	03.08.2021
4	2018-19	153A	03.08.2021
5	2019-20	153A	03.08.2021
6	2020-21	153A	03.08.2021

4.5 However, the Ld. AO considered the returns of income filed by the appellant in response to notice u/s **153A dated 10.02.2021** and passed the orders u/s 143(3) r.w.s. 153A on 30.09.2021 for AYs 2015-16 to 2019-20, which are based on the earlier defective notice u/s 153A dated **10.02.2021** and not based on the corrected fresh notice u/s **153A dated 03.08.2021**.

Sr. No.	A.Y.	Order Passed u/s	Date of order	Income assessed
1	2015-16	143(3) r.w.s. 153A	30/09/2021	74,36,250/-
2	2016-17	143(3) r.w.s. 153A	30/09/2021	1,14,18,170/-

3	2017-18	143(3) r.w.s. 153A	30/09/2021	40,53,770/-
4	2018-19	143(3) r.w.s. 153A	30/09/2021	29,49,420/-
5	2019-20	143(3) r.w.s. 153A	30/09/2021	4,28,25,240/-

4.6 In view of the above scenario, it is seen that as correctly pointed out by the appellant, the Ld. AO had issued fresh notice u/s 153A on 03.08.2021 for AYs 2015-16 to 2020-21, after ascertaining that no authorization was issued against the appellant vide pachanama dated 22.01.2020. Thus, the Ld. AO was bound to complete the assessment proceedings on the basis of corrected notice u/s 153A dated 03.08.2021. However, the Ld. AO completed the assessments on 30.09.2021 on the basis of earlier issued defective notices u/s 153A. The earlier notice u/s 153A dated 10.02.2021 was not valid as no authorization was issued in the name of the appellant on 22.01.2020. Thus, having held that the notice u/s 153A of the Act dated 10.02.2021 issued by Ld. AO is invalid, accordingly, the assessment order dated 30.09.2021 u/s 143(3) r.w.s. 153A for the AY under consideration is also held to be invalid. The **additional ground no. 1** raised by the appellant is therefore **allowed**.

4.7 Since the order u/s 143(3) r.w.s. 153A of the Act is held to be invalid and bad in law, adjudication of the other issues has become academic only and therefore, these issues are not being adjudicated separately. Thus, adjudication on the rest of the additional grounds and all of the original grounds of appeal is not separately required.

5. With the result, appeal is **allowed**.

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

Grounds in IT(SS)A No.39/PUN/2024

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the order as 143(3) r.w.s. 153A passed on 30.09.2021 is invalid even after noting that assessment order u/s 143(3)*

r.w.s. 153A dtd. 30.09.2021 was passed subsequent to the corrected notice us 153A dated 03.08. 2021.

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the order u/s 143(3) r.w.s. 153A dated 30.09.2021 was passed based on the notice issued u/s 153A of the Act, dated 10.02.2021, whereas the said proceedings had abated.*
 3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that unless the first notice issued u/s 153A is abated no new notice u/s 153A for the year can be issued and order under section 143(3) r.w.s. 153A dated 30.09.2021 was passed on the basis of corrected notice u/s 153A dated 03.08.2021.*
 4. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in not making inquiry or directing the AO to submit a report as per Section 250(4) before holding the order 143(3) r.w.s. 153A dtd. 30.09.2021 to be invalid when as per the order of Hon'ble Delhi High Court in the case of CIT Vs Jansampark Advertising & Marketing Limited [375 ITR 373 (Delhi)], CIT(A) was required to conduct inquiry u/s 250(4) in cases of incomplete facts on record and incomplete inquiry by AO.*
 5. *On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in holding that the order u/s 143(3) r.w.s. 153A dtd. 30.09.2021 was invalid and did not take cognizance of the corrected notice u/s 153A dated 01.08.2021 which may be verified by calling for records of the assessment proceedings.*
 6. *On the facts and in the circumstances of the case and in law, the order of the Ld. CIT(A) may be set aside and order passed under section 143(3) r.w.s. 153A dated 30.09.2021 may be upheld.*
 7. *The appellant craves leave to add, alter, modify, delete and amend any of the grounds, as per the circumstances of the case.*
8. The assessee in the cross appeal has raised the following grounds:

Grounds in ITA Ns.607/PUN/2025

1. *On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in initiating proceeding under section 153A by issuing notice dated 03/08/2021, without realizing the fact that no incriminating material whatsoever has been found in case of appellant and therefore entire proceedings are bad in law.*

2. *On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in initiating proceedings under section 153A on the basis of alleged incriminating material which was found in the possession of Disha Group search conducted on 21/01/2020, under such circumstances the proceeding ought to have been initiated under section 153C of IT Act and therefore notice under section 153A is bad in law and consequential proceedings are not tenable in the eyes of law.*
3. *On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in passing order under section 143(3) r.w.s 153A dated 30/09/2021, without specifying the DIN and Notice Number as envisaged in CBDT circular No. 19/2019 dated 14/08/2019 and therefore the relevant notice is invalid and consequently orders also becomes invalid.*

Without prejudice to the above ground following ground on is taken on merit

4. *On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in making an addition of Rs.2,97,23,580/- as cumulative difference of cash transaction with credit balance by invoking provision of section 68 r.w.s 115BBE of the Act as unexplained credit. The action of Learned Assessing Officer is contrary to his own presumption that cash receipts from Dattatray N. Kotgire are cash loan entries therefore he initiated independent proceedings for initiating penalty under section 271D and 271E for violating the provision of section 269SS and 269T of the IT Act.*
5. *On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in passing the order under section 143(3) r.w.s. 153A and making an addition of Rs.2,97,23,580/- on the basis of documents found in the possession of other party search, especially without confronting such document to the appellant, the action being violative of principal of natural justice the entire additions deserve to be deleted.*
6. *On the facts and in the circumstances of the case and in law the learned Assessing Officer erred in making and addition of Rs.2,97,23,580/- on protective basis as according to him same amount will be added to the total income in hand of Devanand Narayanrao Kotgire on substantive basis, your appellant prays for deletion of entire addition.*

Your appellant prays for deletion of entire addition. Your appellant craves for to add, alter amend, modify, delete any or all grounds of appeal before or during the course of hearing in the interest of natural justice.

9. The Ld. Counsel for the assessee at the outset heavily relied on the order of the Ld. CIT(A) in quashing the assessment order passed u/s 143(3) r.w.s. 153A of

the Act. He submitted that the Assessing Officer initially issued a notice u/s 153A of the Act on 10.02.2021 for assessment years 2014-15 to 2019-20. However, when it was pointed to the Assessing Officer that there was no initial authorization against the assessee while sealing her bank lockers, the Assessing Officer issued a fresh notice u/s 153A of the Act on 03.08.2021. He submitted that the assessee in response to the first notice issued u/s 153A of the Act on 10.02.2021 had filed the return of income for all the six assessment years on 20.05.2021. The Assessing Officer had issued notice u/s 143(2) of the Act on 30.06.2021 on the basis of return filed on 20.05.2021 for assessment years 2014-15 to 2019-2020. When the Assessing Officer issued notice u/s 153A of the Act on 03.08.2021, although the assessee had not filed any return of income, however, the Assessing Officer considered the returns of income filed by the assessee earlier in response to the notice issued u/s 153A of the Act dated 10.02.2021 and passed the orders u/s 143(3) r.w.s. 153A of the Act. Since the order passed by the Assessing Officer is on the basis of return filed earlier in response to the defective notice u/s 153A of the Act and not based on the corrected fresh notice u/s 153A of the Act dated 03.08.2021, therefore, the Ld. CIT(A) was fully justified in quashing the assessment order as invalid. Further, no notice u/s 143(2) of the Act was issued to the assessee before completion of the assessment on the basis of correct 153A notice issued by the Assessing Officer. He submitted that no incriminating material whatsoever was found during the course of search, therefore, the decision of Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd.

reported in (2023) 454 ITR 212 (SC) is clearly applicable. He submitted that there is no mention of any drop of the first notice issued u/s 153A of the Act. Since there was no search in the case of the assessee, therefore, no 153A notice could have been issued to the assessee. He also relied on the following decisions:

- i) *The decision of Hon'ble Orissa High Court in the case of CIT vs. Sikhya 'O' Anusandhan vide ITA Nos.117 to 123 of 2011 order dated 03.01.2023.*
- ii) *The decision of Hon'ble Delhi High Court in the case of PCIT vs. Subhash Khattar vide ITA No.60/2017 order dated 25.07.2017.*
- iii) *Shri Fazal Sarang vs. DCIT vide ITA No.1456/Mum/2012 order dated 04.01.2017 for A.Y. 2008-09.*

10. The Ld. DR on the other hand submitted that when the assessee did not file her return in response to the second notice u/s 153A of the Act, there is no question of issue of any notice u/s 143(2) of the Act. He submitted that since simultaneous search action was conducted and incriminating material was found in the case of other searched persons, therefore, the decision in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. (supra) is not applicable to the facts of the present case.

11. Referring to the decision of Hon'ble Delhi High Court in the case of CIT Vs Jansampark Advertising & Marketing Limited reported in 375 ITR 373 (Del), he submitted that the Ld. CIT(A) in the instant case has not applied his mind before quashing the assessment proceedings, hence the same is *void ab initio*. The Ld. DR filed a copy of the report obtained from the field which reads as under:



OFFICE OF THE
 DY. COMMISSIONER OF INCOME TAX,
 CENTRAL CIRCLE-1,
 AAYAKAR BHAVAN, NEAR HOLY CROSS ENGLISH SCHOOL,
 CANTONMENT, AURANGABAD (Ph. 0240 - 2373001)
 EMAIL: aurangabad.dcit.cen1@incometax.gov.in

No. ABD/DCIT/CC-1/Asha Kadam/2025-26/311 Date: 23/07/2025

To,
 The Commissioner of Income-tax (DR),
 Income Tax Appellate Tribunal-1,
 2nd Floor, Maharashtra JeevanPradhikaran Building
 Near St Mary High School, 463, Stavely Road
 Pune-411001

Sir,

Sub.: Departmental appeal before the ITAT, Pune in the case of Smt. Asha B. Kadam (PAN-AARPK2868D), for A.Y.s 2018-19 & 2019-20: -reg.

Ref.: E-mail dated 22/07/2025 from your office.
 0-0-0

With refer to the above

2. Through the e-mail under reference, the undersigned has been directed to state or clarify whether assessment in the above-mentioned assessee for the A.Y.s 2018-19 & 2019-20 were completed u/s. 153A notice dated 10/02/2021 or 153A notice dated 03/08/2021.

"On going through assessment folder in r/o the assessee for both the years, it is seen that the notices u/s. 153A of the Act, dated 10/02/2021 were issued for the years in question by then A.O. under impression that the assessee's case was also covered through the initial search action and the search warrant dated 21.01.2020. However, during the search assessment proceedings it was seen that the assessee's was covered under search warrant dated 04/06/2020 only. Accordingly, the first proceedings-initiated u/s. 153A dated 10/02/2021 were abetted and fresh proceedings were initiated by issuing of notice u/s. 153A dated 03/08/2021 for the years in question. A system generated 'order sheet' of both the notices are enclosed herewith for kind perusal and references. On perusal of 'order sheet' under notice u/s. 153A dated 03/08/2021, it can be seen that the order u/s. 153A was generated on 30.09.2021. On the other hand, no such history noting related to order generated u/s. 153A is reflected in the 'order sheet' under notice u/s. 153A dated 10/02/2021.

In the assessment order, due to over sight or mistake only, notice u/s. 153A dated 10/02/2021 was mentioned instead of notice u/s. 153A dated 03/08/2021 hence the appeal may be decided on merit. The order sheet dated 03/08/2021 clearly indicates that orders u/s 153A of the Act, dated 30/09/2021 for both the years were passed under the notice u/s. 153A dated 03/08/2021".

3. Further, the required documents are provided as under:

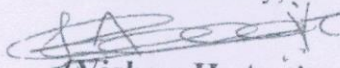
i). Copy of both notices

ii). Copy of order sheet of proceedings initiated by both notices

iii). Copy of approval of Range head for passing assessment order

Encl. As above

Yours faithfully,


(Vishnu H. Auti)

Dy Commissioner of Income-tax,
Central Circle -1, Aurangabad

12. He submitted that since the assessee did not file any return in response to the second notice issued u/s 153A dated 03.08.2021, therefore, the Assessing Officer had not issued notice u/s 143(2) of the Act. Even otherwise also referring to the decision of Hon'ble Delhi High Court in the case of Ashok Chaddha vs. ITO reported in (2011) 337 ITR 399 (Del), he submitted that the Hon'ble High Court in the said decision has held that the issue of notice u/s 143(2) of the Act is not mandatory for finalization of assessment u/s 153A of the Act.

13. Referring to the decision of Hon'ble Madras High Court in the case of B. Kubendran vs. DCIT reported in (2021) 434 ITR 161 (Mad), he submitted that the

Hon'ble High Court in the said decision has held that in framing an assessment under section 153A, due regard must be given to the principles of natural justice, which requirement will stand satisfied either by issuance of notice under section 143(2) or a questionnaire under section 142(1).

14. Referring to the decision of Hon'ble Punjab and Haryana High Court in the case of Tarsem Singla vs. DCIT reported in (2016) 385 ITR 138 (P&H), he submitted that the Hon'ble High Court in the said decision has held that there is no mandatory requirement of issuance of notice u/s 143(2) of the Act in respect of assessment proceedings u/s 153A of the Act.

15. Referring to the decision of Hon'ble Kerala High Court in the case of CIT vs. Promy Kuriakose reported in (2016) 386 ITR 597 (Ker), he submitted that the Hon'ble High Court in the said decision has held that there is no requirement of notice u/s 143(2) of the Act for completing an assessment u/s 153C and if that is so the question of time limit prescribed under the proviso to section 153A(2) of the Act does not have any relevance for assessment proceedings u/s 153C of the Act. He accordingly submitted that since the Ld. CIT(A) has not considered the facts properly and has quashed the assessment proceedings on the ground that the Assessing Officer completed the assessment on the basis of return filed in response to the first notice issued u/s 153A of the Act, the same is liable to be quashed. He, however, submitted that since the Ld. CIT(A) has not decided the appeal on merit,

he has no objection if the matter is restored to his file with a direction to decide the grounds on merit.

16. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A) 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 completed the assessment u/s 143(3) r.w.s. 153A of the Act on 30.09.2021 determining the total income of the assessee at Rs.4,28,25,240/- as against the returned income of Rs.1,31,01,660/- by making an addition of Rs.2,97,23,580/- being the difference between the cash receipts from and cash payments to DNK. We find the Ld. CIT(A) quashed the assessment proceedings on the ground that the Assessing Officer has considered the returns of income filed by the assessee in response to the notice issued u/s 153A dated 10.02.2021 and passed the orders on 30.09.2021 for assessment years 2015-16 to 2019-20 which are based on earlier defective notice issued u/s 153A dated 10.02.2021 and not based on the corrected fresh notice u/s 153A dated 03.08.2021. The reasons of such order have already been reproduced in the preceding paragraphs. It is the submission of the Ld. DR that although the 153A notices dated 10.02.2021 were issued for the years under question by the then Assessing Officer under the impression that the case of the assessee was also covered during the initial search action and the search warrant dated 21.01.2020, however, when he came to know that the assessee was covered under search

warrant dated 04.06.2020 only, he issued a fresh notice u/s 153A of the Act dated 03.08.2021 for the year under consideration. Further the Assessing Officer has issued notice u/s 142(1) of the Act to the assessee after issue of the second notice u/s 153A of the Act dated 03.08.2021. Since the assessee has not filed any return in response to the second notice, the question of issue of notice u/s 143(2) does not arise. It is also his submission that even otherwise also in case of assessment u/s 143(3) r.w.s. 153A of the Act no notice u/s 143(2) of the Act is required. It is also his submission that since the Ld. CIT(A) has not adjudicated the issue on merit, the same may be restored to the file of the Ld. CIT(A) for fresh adjudication.

17. We find some force in the above arguments of the Ld. DR. A perusal of the comments of the DCIT which has already been reproduced in the preceding paragraphs shows that after the Assessing Officer noticed the mistake that no search has taken place in the case of the assessee on the basis of search warrant dated 21.01.2020, he dropped the first proceedings initiated u/s 153A of the Act dated 10.02.2021 and fresh proceeding were initiated by issuing notice u/s 153A dated 03.08.2021. A perusal of the copies of the order sheet entries shows that the notices u/s 142(1) of the Act were duly issued subsequent to the second notice dated 03.08.2021 issued u/s 153A of the Act. Under these circumstances, we are unable to accept the order of the Ld. CIT(A) in quashing the assessment order dated 30.09.2021 passed u/s 143(3) r.w.s. 153A of the Act holding the same to be invalid. We find the Hon'ble Delhi High Court in the case of CIT vs. Jansampark

Advertising and Marketing P. Ltd. (supra) has held that the CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of the Tribunal, to have ensured that effective inquiry was carried out. The relevant observations of Hon'ble High Court from para 38 onwards read as under:

“38. The provision of appeal, before the CIT (Appeals) and then before the ITAT, is made more as a check on the abuse of power and authority by the AO. Whilst it is true that it is the obligation of the AO to conduct proper scrutiny of the material, given the fact that the two appellate authorities above are also forums for fact-finding, in the event of AO failing to discharge his functions properly, the obligation to conduct proper inquiry on facts would naturally shift to the door of the said appellate authority. For such purposes, we only need to point out one step in the procedure in appeal as prescribed in Section 250 of the Income Tax Act wherein, besides it being obligatory for the right of hearing to be afforded not only to the assessee but also the AO, the first appellate authority is given the liberty to make, or cause to be made, "further inquiry", in terms of sub-section (4) which reads as under:-

“The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals)”.

39. The further inquiry envisaged under Section 250(4) quoted above is generally by calling what is known as "remand report". The purpose of this enabling clause is essentially to ensure that the matter of assessment reaches finality with all the requisite facts found. The assessment proceedings re- opened on the basis of preliminary satisfaction that some part of the income has escaped assessment, particularly when some unexplained credit entries have come to the notice (as in Section 68), cannot conclude, save and except by reaching satisfaction on the touchstone of the three tests mentioned earlier; viz. the identity of the third party making the payment, its creditworthiness and genuineness of the transaction. Whilst it is true that the assessee cannot be called upon to adduce conclusive proof on all these three questions, it is nonetheless legitimate expectation of the process that he would bring in some proof so as to discharge the initial burden placed on him. Since Section 68 itself declares that the credited sum would have to be included in the income of the assessee in the absence of explanation, or in the event of explanation being not satisfactory, it naturally follows that the material submitted by the assessee with his explanation must itself be wholesome or not

untrue. It is only when the explanation and the material offered by the assessee at this stage passes this muster that the initial onus placed on him would shift leaving it to the AO to start inquiring into the affairs of the third party.

40. The CIT (Appeals), as also the ITAT, in the case at hand, in our view, unjustifiably criticized the AO for not having confronted the assessee with the facts regarding return of some of the summons under Section 131 or not having given opportunity for the identity of all the share applicants to be properly established. The order sheet entries taken note of in the order of CIT (Appeals) seem to indicate otherwise. The order of CIT (Appeals), which was confirmed by ITAT in the second appeal, does not demonstrate as to on the basis of which material it had been concluded that the genuineness of the transactions had been duly established. There is virtually no discussion in the said orders on such score, except for vague description of the material submitted by the assessee at the appellate stage. Whilst it does appear that the time given to the assessee for proving the identity of the third party was too short, and further that it is probably not always possible for the assessee placed in such situation to be able to enforce the physical attendance of such third party (who, in the case of share applicants vis-à-vis a company, would be individuals at large and may not be even in direct or personal contact), the curtains on such exercise at verification may not be drawn and adverse inferences reached only on the basis of returning undelivered of the summonses under Section 131. Conversely, with doubts as to the genuineness of some of the parties persisting on account of non-delivery of the processes, the initial burden on the assessee to adduce proof of identity cannot be treated as discharged.

41. We are inclined to agree with the CIT (Appeals), and consequently with ITAT, to the extent of their conclusion that the assessee herein had come up with some proof of identity of some of the entries in question. But, from this inference, or from the fact that the transactions were through banking channels, it does not necessarily follow that satisfaction as to the creditworthiness of the parties or the genuineness of the transactions in question would also have been established.

42. The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal a uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under Section 148 issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a "further inquiry" in exercise of the power under Section 250(4). This approach not having been adopted, the impugned order of ITAT, and consequently that of CIT (Appeals), cannot be approved or upheld.

43. In the result, the questions of law stand answered in favour of the Revenue though with a direction that the matter of assessment arising out of notice under Section 148 Income Tax Act issued on 18.04.2007 for AY 2004-05 in respect of the assessee would stand remitted to the CIT (Appeals) for fresh consideration/adjudication in accordance with law.

44. In above view, the contentions of the assessee respecting the validity of the assessment, as preserved for consideration by this court by order dated 29.08.2014 in ITAT No. 289/2014, would also be examined by the CIT (Appeals). Given the fact that such objections have a bearing on the issue of jurisdiction, consideration of such contentions of the assessee must precede the scrutiny of the questioned credit entries from the perspective of Section 68.

45. The appeal is disposed of in above terms.”

18. Respectfully following the decision of Hon'ble Delhi High Court cited (supra), we deem it proper to restore the issue to the file of the Ld. CIT(A) with a direction to adjudicate the issue afresh and in accordance with law after obtaining the remand report from the Assessing Officer regarding the chronology of events that led to the issue of second notice by the Assessing Officer and as to whether any return has been filed by the assessee in response to the same or not and whether notice u/s 142(1) were issued or not and whether the assessment order was passed based on the first defective notice u/s 153A or the correct second notice u/s 153A. Needless to say, the Ld. CIT(A) shall decide the issue as per fact and law after providing due opportunity of being heard to the assessee. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

19. Since we have restored the appeal filed by the Revenue to the file of the Ld. CIT(A), therefore, the appeal filed by the assessee is also restored to the file of the Ld. CIT(A) for fresh adjudication.

20. So far as the remaining appeals are concerned, the same relate to the order of the Ld. CIT(A) in deleting the penalty levied by the Assessing Officer u/s 271D and 271E of the Act. While the Revenue has filed the appeals challenging the deletion of penalty by the Ld. CIT(A) we find the assessee has filed the appeals raising certain legal issues. Since the Ld. CIT(A) has deleted the penalty on the ground that the order passed by the Assessing Officer on the basis of the first notice issued u/s 153A which was defective one and has not adjudicated the various legal grounds raised by the assessee in her appeal and since we have already restored the appeal filed by the Revenue to the file of the Ld. CIT(A) for fresh adjudication, therefore, we deem it proper to restore all these appeals to the file of the Ld. CIT(A) with similar directions.

21. In the result, all the appeals filed by the Revenue as well as the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 19th January, 2026.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER
पुणे Pune; दिनांक Dated : 19th January, 2026
GCVSR

Sd/-
(R. K. PANDA)
VICE PRESIDENT

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, 'A' 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	14.01.2026		Sr. PS/PS
2	Draft placed before author	16.01.2026		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			