

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

BEFORE DR. MANISH BORAD, ACCOUNTANT MEMBER &  
SHRI VINAY BHAMORE, JUDICIAL MEMBER

I.T.A.No.987/PUN/2025  
(Assessment Year : 2014-15)

DCIT, Circle-1, Nashik	vs.	M/s. Shree Sai Properties, 2 Nilayam Apartment, Opp. Vasant Market, Canada Corner, Nashik - 422001 PAN : ABSFS3624H
(Appellant)		(Respondent)

For Assessee	:	Shri Subodh Ratnaparkhi, CA
For Revenue	:	Shri Amit Bobde, CIT

Date of Hearing	:	20.11.2025
Date of Pronouncement	:	27.01.2026

**ORDER**

**PER DR.MANISH BORAD, AM**

This appeal at the instance of the Revenue for the Assessment Year 2014-15 is directed against the order of National Faceless Appeal Centre (NFAC)/ Commissioner of Income Tax (Appeals), Delhi ["**CIT(A)**"] dated 13.02.2025 passed under section 250 of the Income Tax Act, 1961 ("**Act**") which is arising out of Assessment Order dated 29.12.2017 passed u/s. 147 r.w.s. 143(3) of the Act.

2. In the instant appeal, Revenue has raised following grounds of appeal:-

- “1. Whether on the facts and circumstances of the case, the Ld. CTT(A) is justified in deleting the addition of Rs.7,93,62,371/- and Rs.86,63,700/- made by the AO on account of on money receipt in cash.

2. *Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in not considering the fact that there are clear notings on the seized documents where details of cash payment of Rs. 86,63,700/- are mentioned against Plot No. 367. Makhmalabad that is sold by the assessee to Kokani family.*
3. *Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in not considering the fact that Mr. Fakhruddin Kokani has admitted and accepted that the entries on seized documents were written in his own handwriting and that he has confirmed on oath that he alongwith his sister have purchased said land at 367. Makhmalabad from assessee.*
4. *Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in not considering the fact that since the notings of cash amount of Rs. 86,63,700/- in cash correspond with notings of Rs.81,33,000/- in cheque amount, the same ratio of cash amount to amount received through banking channel must have been followed for sale of other plots by assessee to members of Kokani family.*
5. *Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in not considering the fact that by not disclosing details of cash transactions, assessee had failed to disclose fully and truly all material facts necessary for assessment and therefore the case of assessee came under the ambit of provisions of Section 147 of the Income Tax Act, 1961.”*

3. Brief facts of the case as culled out from the records are that the assessee is a Partnership firm engaged in the business of Land Development at Nashik. Nil income declared in the return of income for A.Y. 2014-15 furnished on 17.11.2014. Return was taken up for scrutiny and assessment u/s.143(3) of the Act completed on 16.12.2016 accepting the returned income. Prior to completion of the assessment, search and seizure action was conducted u/s.132 of the Act by the Investigation Wing of the Income Tax Department of the Kokani Group of Nashik on 08.09.2015. During the course of search, various incriminating documents were found and there was a reference of a sale of Land (owned by assessee) at page 16 and 17 of the seized document at Item No.7 of Annexure A. Further, there was survey action carried

out in the case of M/s. PH Infrastructure, Nashik in which one of the partner is Mr. Shashikant Shivchand Parakh who is also partner in the assessee firm M/s.Shree Sai Properties. Based on the information available in the seized material found during the course of search at Kokani Group, notice u/s.148 of the Act was issued on 24.03.2017 after duly recording the reasons and reassessment proceedings were carried out. The assessee in response to notice u/s.148 of the Act submitted vide letter dated 03.04.2017 that return of income for A.Y. 2014-15 filed on 07.11.2014 be treated as return filed in response to notice u/s.148 of the Act. Ld. Assessing Officer thereafter issued statutory notices u/s.143(2) and 142(1) of the Act. Ld. AO referring to the seized material at pages 16 and 17 found in the case of Kokani Group has observed that there are two lists in which on one side the payments through cheques are mentioned and on the other side payment in cash are mentioned and that in these lists at backside of page 16 there is an item at “367 Makhmalabad” of the land located at Nashik. This land has been sold by the assessee to Fakruddin Salauddin Kokani (in short ‘Fakruddin Kokani’) family members. The amount mentioned therein at page 16 against “367 Makhmalabad” is Rs.81,33,300/- and on the second sheet cash payment of Rs.86,63,700/- is mentioned against “367 Makhmalabad”. On both these seized documents name of the assessee is not appearing and only “367 Makhmalabad” is mentioned. Ld. Assessing Officer based on this information show caused the assessee stating that only single transaction pertaining to assessee is mentioned in the seized material but the assessee has sold various other properties to the Kokani Group for a total consideration of Rs.8,26,37,030/- and therefore based on the alleged cash payment appearing in the seized document at page 17 ld. AO extrapolated the figure and

observed that assessee has received cash of Rs.8,80,26,071 from the Kokani family members over and above the registered sale consideration.

4. The assessee filed reply before the ld. AO on 04.07.2017 stating that the assessee had never had any connection with the Kokani Group. Assessee entered into agreement to sell the properties in question to M/s.Dhananjay Marketing Private Limited of Thakkar Group but thereafter on the directions of Thakkar Group, the agreements to sell with Dhananjay Marketing Private Limited were cancelled and the plots were registered in the name of Kokani family and sale consideration is duly disclosed in the Books of Accounts. It was also stated that no cash has been received from Kokani Group and that the assessee had never met the Kokani Group family. During the course of assessment proceedings, assessee asked for the statement of Fakruddin Kokani and also requested for cross objection. The statement of Fakruddin Kokani were provided to the assessee which were again referred by the assessee in its written submission stating that in the reply given by Fakruddin Kokani he has not mentioned any name of the assessee firm. It is also referred that Fakruddin Kokani has stated that they have purchased this land from Parakh and he had not met him personally and there is no mention about payment of cash to M/s. Shree Sai Properties over and above the agreement value. However, ld. Assessing Officer was not satisfied with these contentions and came to a conclusion that Rs.86,63,700/- is unaccounted sales and secondly cash of Rs.7,93,62,371/- has been received by the assessee over and above the agreed sale consideration. Relevant finding of ld. AO at para 9.2 to para 10 reads as under :

*“9.2 On analysis of seized documents, on page No. 16 & 17 of item No. 7 of Annexure A seized from Shri Fakruddin Kokani where the*

entries regarding land description is mentioned, out of which one entry under black component, i.e. 367 Makhamalabad Rs.86,63,700/- is mentioned, Further, on back of page No. 16 with same description Rs.81,33,300/- is mentioned under the white component of Savargaon transaction. It is clear from this entries that Kokani family has paid Rs.86,63,700/- in cash and Rs.81,33,300/- through other modes for one plot. On the basis of above mentioned facts it is clear that the assessee has received cash of Rs.86,63,700/- which is not recorded in its books of account. Hence, Rs.86,63,700/- is treated as assessee's unaccounted sales during the financial year under consideration and therefore it is treated as assessee's undisclosed business income for the year under consideration and added back to the total income of the assessee. Also penalty proceedings under section 271(1)(c) of the Income Tax Act, 1961 is initiated separately for concealment of income.

[Addition Rs.86,63,700/-]

9.3 Further on analysis from the seized documents scanned copy of the same is enclosed above. It is clear that the total deal was finalised at Rs.17,16,39,300/- and Mr. Fakruddin Kokani in his own handwriting written the details how he utilised the entire amount Shri Fakruddin Kokani has also in his own hand writing mentioned that Rs.8,58,19,700/- in white and Rs.8,58,19,700/- in black.

xxxxxxxxxx

xxxxxxxxxx

9.4 Also on verification of all registered sale deeds executed between the assessee and kokani family it is found that the assessee has paid total Rs 8,26,37,030/- through different cheques to kokani family for 44 plots. Hence, it is clear that the assessee has received Rs.8,26,37,030/- through cheques which were dully reflected in the registered deed. It has been established that the same ratio of cash to the cheque amount must have been present for transaction of these plots like Rs.86.63 lacs in cash for Rs 81.31 by cheque. The total registered consideration of purchase by Kokani family members at S. No. 367 is of Rs.8,26,37,030/- for which the cash of Rs.8,80,26,071/- must have been given by the Kokani family members to the sellers in cash over and above registered sale consideration.

9.5 It is also seen that these amounts are neither reflected in registered documents nor in the books of the assessee. Also from the seized documents it is clear that the assessee has received unaccounted sum of Rs.8,80,26,071/- against the sale of land situated at S. No. 367 Makhmalabad, Nashik for 44 Plots from Kokani family. On going through the details of the above mentioned decision, it is found that the decision relied by assessee are distinguishable on facts and also the case laws mentioned by the assessee are not identical to the facts of this case On the basis of above mentioned facts it is clear that the assessee has received cash of Rs.8,80,26,071/- which is not recorded in its books of account.

9.6 Hence, the said unaccounted sum of Rs.7,93,62,371/- [Rs.8,80,26,071/- (Total Cash Component) Rs.86,63,700/- (Already Added in Para No. 9.2 Above)] is treated as assessee's unaccounted

*sales during the financial year under consideration and therefore it is treated as assessee's undisclosed business income for the year under consideration and added back to the total income of the assessee. Also penalty proceedings under section 271(1)(c) of the Income Tax Act, 1961 is initiated separately for concealment of income.*

*[Addition Rs.7,93,62,371/-]*

*10. After going through the submissions and above mentioned discussion, the total assessed income of the assessee is as under :*

<i>Total Income as per return</i>	<i>:</i>	<i>(-)Rs.1,95,25,614/-</i>
<i>Add : As per discussion in para No.9.2</i>	<i>:</i>	<i>Rs.86,63,700/-</i>
<i>Add : As per discussion in para No.9.5</i>	<i>:</i>	<i>Rs.7,93,62,371/-</i>
		<i>-----</i>
<i>Assessed Income</i>		<i>Rs. 6,85,00,457/-</i>
		<i>-----</i>

5. Aggrieved assessee preferred appeal before ld.CIT(A). In the appeal filed before ld.CIT(A), assessee raised two legal issues along with merits of the case firstly contending that reopening u/s.147 of the Act is invalid and bad in law as the same set of facts existed at the time of original assessment u/s.143(3) of the Act. Second legal issue was raised contending that if the reason to believe that reopening the assessment of the assessee is based on the incriminating material found and seized during the course of search u/s.132 of the Act, then ld. AO ought to have carried out the proceedings u/s.153C of the Act and not u/s.147 of the Act. On merits, it has been contended that ld. AO erred in estimating alleged on money by extrapolating the figures on the basis of single entry in the alleged seized document. Further, the assessee was not provided an opportunity of cross examination. Assessee also filed detailed written submission. Ld.CIT(A) after considering the same firstly dealt with the legal issue raised by the assessee in Ground No.3 that ld. AO was required to carry out assessment proceedings u/s.153C and

not u/s.147 and ld.CIT(A) held that the impugned assessment should have been framed u/s.153C of the Act since incriminating material was found during the course of search u/s.132 of the Act in the case of Kokani Group and the information contained in the incriminating material pertained to the assessee and hence assessment u/s.147 of the Act stands quashed. So far as the second legal issue regarding the validity of the reopening u/s.147 of the Act ld. CIT(A) did not adjudicate the same since the assessment was quashed dealing with the issue of section 153C vis-a-vis 147 of the Act. Further, on merits of the case ld. CIT(A) has referred to the statement given by Fakruddin Kokani and came to conclusion that ld. AO has not made any confirmation or enquiry from the Kokani Group about the person who has been paid towards on money for purchase of land and no corroborative evidence has been brought on record by ld. AO affirming the payment of cash to the assessee and that the impugned addition has been made without any tangible evidence and solely on the basis of estimation and the extrapolation and accordingly deleted the addition of Rs.86,63,700/- and Rs.7,93,62,371/- made by the Assessing Officer.

6. Aggrieved Revenue is now in appeal before this Tribunal. Perusal of the grounds raised by the Revenue indicates that Grounds of appeal No. 1, 2, 3 and 4 have been raised against the deletion made by the Assessing Officer on merits of the case and through Ground No.5 the legal issue has been raised stating that reopening proceedings u/s.147 is justified as the assessee failed to disclose fully and truly all material facts necessary for assessment.

7. Ld. Departmental Representative made multifold contentions giving reference to the following written submissions :

*“In this case, Ld.CIT(A) has quashed the assessment framed u/s 147 rws 143(3) on the grounds that since the information related to land transaction was collected as result of search action on the Konkani group , the provisions of section 147 are not applicable and action should have been taken u/s 153C. This written submission is submitted on the specific issue of section 153C vs section 147. On the merits of the case, the revenue relies on the arguments and submissions which would be made during the course of the hearing. On the issue of section 153C vs section 147, it is to be stated and submitted that :*

*1. S.153C Income Tax Act doesn't bar AO's jurisdiction to reopen assessment u/s 147 when information against assessee is received from search conducted on another person. Section 153C of the Income Tax Act, 1961 does not by itself preclude an Assessing Officer from reopening assessments under Section 147/148 of the Act, on the basis of information found during a search conducted under Section 132 or requisition made under Section 132A of Act in respect of another person.*

*1.2 Section 153C of the Act contains a special provision relating to assessment of a person pursuant to material found during the search operations conducted under Section 132 on any other person or as a result of requisition made under Section 132A of the Act.It empowers the Assessing Officer of the person searched, to handover records of undisclosed assets belonging to the other person (found in the books of account of the searched person), to the Assessing Officer of that other person. The Assessing Officer of that other person is empowered to proceed against such other person for evading tax on such undisclosed income.*

*1.3 The said provision u/s 153C of the Act has been enacted for the purpose of simplifying the procedure in search cases. Thus, the import of such provisions cannot be to oust the recourse to the normal provisions, which in any event are available for assessment / reassessment of an income of an assessee. However, it is to be submitted that the jurisdiction under Section 147 will stand barred when the AO decides to proceed under Section 153C. It is to reason that the Act does not contemplate parallel assessment proceedings.*

*1.4 In a case where pursuant to search conducted under Section 132 of the Act or requisition made under Section 132A of the Act in respect of another person (searched person), assets, documents or books of account, which either belong to the assessee or contain information pertaining to the said assessee, are found and the same are handed over to the AO of the assessee; he would subject to satisfaction of the other jurisdictional conditions stipulated under Section 153C of the Act, having the jurisdiction to make a reassessment/assessment of the income of the assessee under Section 153C of the Act. However, the same cannot mean that he is bound to exercise the said jurisdiction. In the event, the AO does not assume the jurisdiction to proceed with making an assessment/ reassessment under Section 153C of the Act, for want of the necessary ingredients thereto, it is to submit that the recourse to Section 147/148 is not ousted.”*

1.5 It is to submit that the non-obstante clause under Section 153C of the Act does not override the provisions of Section 147 of the Act.

2. In the case at hand, the AO of the assessee received information which revealed that the Assessee-Respondent had received cash payments over and above the disclosed sale amount in a land transaction with the members of the Konkani Family. Accordingly, notices were issued to assessee-appellant under Section 148 of the Act for reassessment of income, which came to be successfully challenged by the assessee/assessee Appellant before CIT(A) and hence, this appeal.

3.1 The Assessee appears to claim that since Section 153C is a special provision which commences with a non obstante provision, the same would override the other provisions relating to assessment/ reassessment, including Section 147 of the Act. It appears to submit that since Section 153C of the Act sets out a specified procedure for conducting the assessment, the same cannot be sidestepped.

3.2 At the outset, it is to submit that, the following "jurisdictional conditions" are to be necessarily satisfied for invoking Section 153C:

- (a) the AO of the searched person being satisfied that the assets and material found during the search proceedings or requisitioned are incriminating insofar as the assessee (other than the searched person) is concerned;
- (b) recording its satisfaction to the aforesaid effect;
- (c) transmitting the same to the AO of the other person (person other than the searched person);

It is to humbly submit that at this stage, "it is not necessary for the AO to form any opinion that the valuable articles, books of account or documents would reflect any undisclosed income of such a person. The AO has to merely forward the said material to the AO of the other person exercising jurisdiction in respect of the other person."

It is to submit that further jurisdictional conditions as follows are required to be fulfilled :

- (d) the AO of the non-searched person being satisfied that the material information received has a bearing on the determination of the total income;
- (e) the AO of such non-searched person issuing a notice to commence assessment / reassessment proceedings.

It is to state and submit that, if any of the aforesaid conditions are not satisfied, then the income of such other person cannot be assessed or reassessed under Section 153C of the Act for want of the necessary jurisdiction by the AO of the non-searched person.

3.3 It is to humbly submit that, the non obstante clause, kicks-in only on the AO assuming the jurisdiction under Section 153C of the Act, to make an assessment/ reassessment. The non obstante provisions cannot come into play, if the AO does not take recourse to provision of Section 153C of the Act.

3.4 A non obstante clause is generally appended to section with a view to give the connecting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the non obstante clause. It is equivalent to saying that in spite of the provisions or Act mentioned in the non obstante clause, the provision following it will have its full operation or the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment or the provision in which the non obstante clause occurs.

The non obstante clauses are not always to be regarded as repealing clauses nor as clauses which expressly or completely supersede any other provision of the law, but merely as clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of the principle enacting provision to which the non obstante clause is attached.

A non obstante clause has two parts- the non obstante clause and the enacting part. The purpose of enacting a non obstante clause is that in case of a conflict between the two parts, the enacting part will have full sway in spite of the contrary provisions contained in the non obstante clause. Therefore, the object and purpose of the enacting part should be first ascertained and then the assistance of the non obstante clause should be taken to nullify the effect of any contrary provision contained in the clause.

The enacting part of section 153A has three stipulations (i) to issue notice calling for the returns of income for six assessment years (ii) to assess or reassess total income of each of the six assessment years and (iii) not to proceed with any pending assessment or reassessment as on the date of initiation of search as the same would abate. Since some of the provisions contained in the enacting part may come into conflict with the provisions contained in the non obstante clause, these impediments are removed by means of the non obstante clause. Thus, by enacting the non obstante clause in the section, the formalities of issuing notice under section 139, application of the provisions of section 147, 148, 149 or 151 for reopening a case for escaped assessment, taking of approval from the concerned authorities for reopening the assessment and the time limit for completion of regular assessment have been done away with. Thus, assumption of jurisdiction by the Assessing Officer under section 153A has been made simple and easy.

A perusal of section 153A shows that it starts with a non obstante clause relating to the normal assessment procedure which is covered by sections 139, 147, 148, 149, 151 and 153 respectively in respect of searches made after 31-5-2003.

Under the provisions of section 153A, the Assessing Officer is bound to issue notice to the assessee to furnish returns for each assessment year falling within the six assessment years immediately preceding

*the assessment year relevant to the previous year in which the search or requisition was made. Another significant feature of this section is that the Assessing Officer is empowered to assess or reassess the "total income" of the aforesaid years. This is a significant departure from the earlier block assessment scheme in which the block assessment roped in only the undisclosed income and the regular assessment proceedings were preserved, resulting in multiple assessments. Under section 153A, however, the Assessing Officer has been given the power to assess or reassess the "total income" of the six assessment years in question in separate assessment orders. This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax.*

*The argument as regards the non obstante clause contained in section 153A and its effect, that it would exclude the very applicability of sections 147 and 148 respectively, is without any merit. The non obstante clause in section 153A should be understood as merely dispensing with the procedural aspect of section 147.*

*Consequent to the notice under section 153A, the earlier return that may be filed for the purpose of assessment which is pending would be treated as non est in law. Further, section 153A(1) itself provides that on filing of the return consequent to the notice, the provision of the Act will apply to the return of income so filed. Consequently, the return filed under section 153A(1) is a return furnished under section 139. Consequently, the assessee is being assessed in respect of abated assessment for the first time under the Act. Therefore, the provisions of the Act which would be otherwise applicable in case of return filed in the regular course under section 139(1) would also continue to apply in case of return filed under section 153A.*

*3.5 If one looks at it from another angle, unlike Chapter XIV-B which provided for a special procedure for assessment of search cases, section 153A provides for an assessment in case of search, and was introduced by the Finance Act, 2003 with effect from 1-6-2003. Sec 153A does not provide that a search assessment has to be made on the basis of evidence found as a result of search or other documents and such other materials or information as are available with the Assessing Officer and relatable to the evidence found. The earlier section 158BB which is not applicable in case of a search conducted after 31-5-2003, provided that the computation of the undisclosed income can only be on the basis of the evidence found as a result of search or other documents and materials or information as are available with the Assessing Officer, provided they are relatable to the evidence found.*

*Section 153A(1)(b) provides for the assessment or reassessment of the total income of the six assessment years immediately preceding the assessment year relevant to the previous year in which the search took place. There is no condition in this section that additions should be strictly made on the basis of evidence found in the course of the search or other post-search material or information available with the Assessing Officer which can be related to the evidence found.*

*Therefore, it is to humbly submit that even assessments that have been undertaken u/s 153A can also be reopened u/s 147 provided the ingredients required for its trigger are available. Accordingly, to say that the assessment undertaken under section 153A can never be reopened under section 147, would be an incorrect statement of law and therefore assessments that have not been undertaken u/s 153A can always be reopened u/s 147/148. To hold otherwise, would not be in consonance with the legislative intention behind the enactment of section 153A and the statutory position as on date.*

*3.6 It is to humbly submit that, by its very nature, Section 153C of the Act is an enabling provision, which enables the Assessing Officer to assume jurisdiction to assess/reassess the income of the Assessee, in cases where the jurisdictional conditions as set out in Section 153C are satisfied. The non obstante provision as contained in Section 153C(1) of the Act must necessarily be construed in the aforesaid context.*

*The non obstante provision, in such circumstances, cannot be construed to mean that recourse to a provision, which by nature is an enabling provision, is necessary and by implication, the other provisions in respect of which, the main enactment is accorded primacy are inoperative and nugatory.*

*3.7 In conclusion, it is to submit that the non obstante clause in Section 153C cannot be read to completely exclude the provisions of Sections 143 or 147, in cases where the assessee's income is sought to be assessed on the basis of information found during search proceedings.*

*However, it is to clarify that it will not be open for the AO to take recourse to Section 147, where the AO has taken steps under Section 153C of the Act or vice versa.*

*Thus, if the conditions for exercise of jurisdiction under Section 153C of the Act are satisfied and the AO issues a notice as required under Section 153C of the Act, any reassessment under Section 147 of the Act would become impermissible.*

*The assumption that provisions of Section 153C of the Act precludes any proceeding under Section 147 of the Act by virtue of the non obstante clause, is unpersuasive. The scheme of Sections 153C of the Act indicates that the said provision was enacted to simplify the procedure, while maintaining the necessary safeguards, for assessment / reassessment in cases where assets belonging to the assessee or books of account or documents, which contain information pertaining to the assessee are found pursuant to a search conducted under Section 132 of the Act or requisition made under Section 132A of the Act, in respect of a person other than the assessee.”*

*Accordingly, it is to submit that, in the instant case, the AO had not assumed jurisdiction under Section 153C of the Act and therefore the re-assessment proceedings initiated under Section 147 cannot be faulted.*

*3.8 The following judicial pronouncements support the above view:*

SN	Name and Citation	Remarks/Relevant paragraphs
1.	Pr. CIT-7, New Delhi vs Naveen Kumar Gupta [Delhi] ITA No. 401/2022 dtd 20-11-2024 [168 taxmann.com 574 (Del)(20-11-2024)]	Paras 43,44,47,48,57,58,59,60,61 and 65. Follows para 39 - Pr. CIT vs Abhisar Buildwell (P) Ltd (2023) 454 ITR 212 (SC). Para 20 for the issue to be decided by the Hon. HC. The Hon'ble Delhi High Court has not concurred with the Rajasthan High Court decision in <i>Shyam Sunder Khandelwal v. Asstt. CIT</i> [2024] 161 taxmann.com 255/471 ITR 45 (Rajasthan) [ref para 62] & the Karnataka High Court decision in <i>Pr. CIT v. VSL Mining Company (P.) Ltd.</i> [2024] 167 taxmann.com 373 (Karnataka) [ref para 64].
2.	Amar Jewellers Ltd vs ACIT (2022) 444 ITR 97 (Guj) dtd 31-01-2022	Paras 46, 47, 48, 49, 52, 53, 55, 76 & 84. Even assessments completed u/s 153A were reopened u/s 147/148 holding therefore that the non obstante clause in section 153A did not exclude the applicability of section 147/148.
3.	CIT vs Anil Kumar Bhatia 24 taxmann.com 98(Delhi) (2012)	Paras 18, 19, 21 & 22.
4.	Sejal Jewellery & Anr vs UoI : WP No. 3057 of 2019 alongwith 12 other WPs	Para 4 on page 4 indicates that the petitioner was searched along with its associate concerns as well as the key individuals of the group.
5.	Saloni Prakash Kumar v. ITO [2023] 155 taxmann.com 432 (Madras)	Para 20. Section 153C of the IT Act is only an enabling provision to issue a notice notwithstanding anything contained in Sections 139, 147, 148 etc of the IT Act. However, it does not preclude the Department from issuing notice for reopening the assessment under Section 147.

3.9 *The Hon'ble Delhi High Court in Pr. CIT-7, New Delhi vs Naveen Kumar Gupta [Delhi] ITA No. 401/2022 dtd 20-11-2024 [168 taxmann.com 574 (Del)(20-11-2024)] has held that :*

- (i) *In Shyam Sunder Khandelwal (supra) (and connected petitions), the Rajasthan High Court had interpreted the non obstante clause of Sections 153A and 153C to have an overriding effect on the legal provisions for assessment / reassessment including under Sections 139,147,148, 149 and 153 of the Act. We are unable to concur that the said provisions are overridden merely on account of assets, books of account, documents and material being seized or requisitioned which either belong to or contain information regarding a person other than the one searched. If the AO does not exercise the jurisdiction under Section 153C of the Act, recourse to the normal provisions of assessment or reassessment are not foreclosed. The provisions of Section 153C of the Act are enacted for the purpose of simplifying the procedure in search cases. The import of such provision cannot be to oust the recourse to the normal provisions, which in any event are available for assessment / reassessment of an income of an assessee. [para 62].*

- (ii) *We are, respectfully, unable to concur with the decision of the Karnataka High Court in VSL Mining Company Pvt. Ltd. (supra). In the said case, the Court concluded that "once material pursuant to a search is relied on, the AO is required to follow the procedure as contemplated under Sections 153A, 153B and 153C of the Act and recourse of regular proceedings are barred. [para 64]*

*Therefore, as the Hon'ble Delhi High Court has interpreted the decisions in Shyam Sunder Khandelwal (supra) and VSL Mining Company Private Limited (supra) as above, it would be incorrect for a lower forum to hold another view.*

*3.10 It is pertinent to mention here that Hon. Madras High Court in Saloni Prakash Kumar v. ITO [2023] 155 taxmann.com 432 (Madras) has held that Section 153C of the IT Act is only an enabling provision to issue a notice notwithstanding anything contained in Sections 139, 147, 148 etc of the IT Act. However, it does not preclude the Department from issuing notice for reopening the assessment under Section 147.*

*4.0 The Bombay High Court decision in Sejal Jewellery vs Union of India& OrsWP No. 3297 of 2019is the oft repeated decision that is quoted to be in favour of the proposition that if a search and seizure operation has taken place or there is information available from a search and seizure, then the only resort available to the AO is to invoke the provisions of section 153A/153C and not section 147/148. In this connection, it is to mention that firstly the decision is pertaining to a writ petition filed by the assessee therein, which came to be collectively disposed of by the Hon'ble Bombay High Court and accordingly there is no ratio decidendi that follows from the said decision. In the decisions of the Hon'ble Delhi High Court, the Hon'ble Court was asked to decide the question regarding the precluding of sections 153A/ 153C on one hand to sections 147/ 148 on the other i.e the interplay between sections 153A/153C and sections 147/148. There were 13 Writ Petitions that were clubbed and decided by the Hon'ble Bombay High Court taking writ petition No. 3057 of 2019 i.e Sejal Jewellery vs Union of India& Ors as the lead writ petition.*

*4.1 The facts of the case very clearly indicate that the petitioner was searched (para-4 on page 4 of the said decision) along with its associate concerns as well as the key individuals of the group. It is in these facts and circumstances that the Hon'ble Bombay High Court concluded that the provisions of section 153A/ 153C should be resorted to by the AO instead of invoking the provisions of section 147/148.*

*4.2 However, it is to submit that, there has been no search and seizure in the case of the assessee Appellant and therefore, the material factual matrix being different, the decision of the Bombay High Court in Sejal Jewellery (supra) cannot come to the rescue of the assessee. It is pertinent to mention here that no survey u/s 133A has been carried out on the premises of the assessee( M/s.Shree Sai properties ) as has been misconstrued by the CIT(A). The survey was carried out on the premises of M/s P.H. Infrastructure in which one of the partners ( Shri. Shashikant Shivchand Parakh) of the assessee-firm was also partner. In any case, the principal issue*

*Delhi High Court was asked to address was the interplay between the provisions of Section 153C of the Act and Section 147 of the Act. It was the Assessee's case [in Naveen Kumar Gupta (supra)] that recourse to Section 147 of the Act would be unavailable in cases where the AO is empowered to proceed under Section 153C of the Act. This was the substantial question of law that the Hon'ble Delhi High Court was asked to decide and accordingly what flows from the decision is the ratio decidendi and the said issue, unlike the writ petition before the Hon'ble Bombay High Court. Accordingly, the decision in Naveen Kumar Gupta (supra) would hold the field.*

5. *In view of the above, it is humbly prayed, that the order of the AO be upheld on issue of reassessment u/s 147 rws 143(3). On the merits of the case, the revenue relies on the arguments and submissions which would be made during the course of the hearing. It is prayed accordingly."*

8. Referring to the above written submissions, ld. DR summarised that provisions of section 153C of the Act precludes any proceedings u/s.147 of the Act by virtue of non obstante clause is unpersuasive. So far as merits of the case are concerned, he only stated that name of the property which has been sold by the assessee is appearing in the seized material and therefore ld. AO has rightly extrapolated the figure for the on money payment for the remaining properties transferred by the assessee to the other family members of Kokani Group.

9. On the other hand, ld. Counsel for the assessee vehemently argued referring to the following written submissions :

*"1. Brief facts:*

*1.1 The respondent is a partnership firm engaged in the business of land development at Nashik. The return of income for the year under appeal was filed on 17.11.2014, declaring a total income of Rs. NIL.*

*1.2 Search and seizure action u/s.132 was carried out by the Investigation Wing of the Income Tax Department on Kokani Group of Nashik on 08.09.2015. Incriminating documents (marked as page no. 16 & page no. 17 of item no.7 of Annexure A, reproduced at page 2 and 3 of the asst. order) were seized from the searched premises. An English copy of the above-mentioned seized documents appears enclosed at page nos. 15 of the paper book.*

*It is the case of the Id AO that the information contained in the said seized papers relates to the respondent. Simultaneously, a Survey action under Section 133A was carried out on M/s.P.H. Infrastructure (a group concern of the respondent).*

*1.3 Originally, assessment u/s 143(3) was completed on 16.12.2016, accepting the returned income. Thereafter, the assessment was reopened by issue of notice u/s 148 and completed by framing order u/s 143(3) r.w.s 147 on 29.12.2017, making addition of Rs.8,80,26,071/- (Rs. 86,63,700/- plus Rs.7,93,62,371/- as unaccounted cash sale receipts. The Hon.CIT(A) allowed the appeal on the ground challenging the assumption of jurisdiction u/s 147 as well as on the merits of the addition. The department is in appeal before your honours. The respondent separately prefers an application u/r 27 of the ITAT Rules 1963.*

*1.4 With these brief facts, the issues under appeal are addressed as under.*

*2. Reopening u/s 147 not appropriate by law:-*

*(Ground no. 05)*

<i>Reference in orders</i>	
<i>Ld. AO</i>	<i>Hon.CIT(A)</i>
<i>Para no.01 to 02/pg no.01 to 04</i>	<i>Para no.05/pg no.15 to 17</i>

*2.1 Re-opening of assessment u/s 147 not appropriate as the provisions of section 153C are attracted:*

*(a) The respondent under ground no. 3 (which has been dealt with by the Hon. CIT(A) first) challenged the reopening of assessment u/s 147, arguing that the appropriate provisions as per law were those contained in section 153C. The Hon. CIT(A) at para nos. 5/pg no. 15 & 16 of the CIT(A) order has dealt with this issue, concluding that the assessment should have been framed as provided u/s 153C and not u/s 147/148 of the Income Tax Act, 1961. This leads to quashing of the assessment framed pursuant to notice u/s 148.*

*(b) In the above regard, it is firstly pointed out that the department has not challenged this specific issue in appeal before the Hon. Tribunal. The department under ground no. 5 refers to escapement of income and therefore application of section 147 of the I.T. Act, 1961, to the case of the respondent. However, the challenge to re-opening u/s 147 [raised in ground no. 1 & 2 before Hon. CIT(A)] have not been adjudicated by the CIT(A). Kindly refer to pg no. 16 & 17 of the CIT(A) order. In such circumstances, the respondent firstly argues that the department having not challenged the finding of the Hon. CIT(A), that the reopening of assessment should have been u/s 153C and not us 147, [whereby the assessment itself is quashed by the Hon. CIT(A)] the present appeal filed by the department requires to be dismissed for this reason alone.*

*(c) Having stated the above, the merits of the claim that the assessment should be as provided by section 153C [ground allowed by the Hon. CIT(A)] are supported with the following arguments.*

*The provision of section 153C reads as under.*

*"Assessment of income of any other person.*

*153C. (1) Notwithstanding anything contained in section 119, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that.*

*(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*

*(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,*

- *As is recorded by the Id. AO in the asst. order, a search and seizure action u/s 132 was carried out on Kokani Group on 08.09.2015. In the course of said search action, apparently incriminating documents marked as page no. 16 & page no. 17 of item no. 07 of Annexure A, containing incriminating information relating to the respondent, were seized. The said seized papers allegedly recorded unaccounted cash transactions of the respondent with Kokani Group, with regard to alleged on-money received against the sale of land. Even the reasons recorded (enclosed pages no. 17 & 18 of the paper book) note the fact that the reopening of the assessment is based on incriminating documents found in the course of a search action on Kokani Group.*
- *As per the provisions of section 153C, if the seized documents contain information relating to a person other than the searched person, then the procedure to bring to tax any undisclosed income arising from such information is by way of issue of notice u/s 153A and not u/s 148. It is humbly pointed out that in the present case, as held by the Hon. CIT(A), no fresh information was collected by the Id.AO or no information has come to the notice of the Id.AO in the normal course, other than the evidence/information collected as a result of the search action on Kokani Group. Accordingly, the reopening of the assessment u/s 147 based on information contained in seized papers found in the course of the search action of Kokani Group is unjustified. The Id.AO failed to appreciate that the provisions of Section 153C of the Act are non-obstantive provisions and the same specifically exclude the operation of Sec 147 of the IT Act, 1961. Therefore, the Id.AO in the present case has grossly erred in invoking the provisions of Section 147, instead of Section 153C of the Act.*
- *In this regards, the respondent relies upon the recent decision of the Hon. Jurisdictional Bombay High Court in the case of Sejal Jewellery-vs-UOI, 171 taxmann.com 846 (Bom)(2025), wherein Hon. Bombay High Court relying on the Hon. Supreme Court's decision in PCIT v. Abhisar Buildwell Pvt. Ltd. (2023)*

149 taxmann.com 399(SC), and other decisions, held that, when search material forms the basis of reassessment, proceedings must be initiated under Section 153C, not Section 147. The Hon. Court held that the AO lacked jurisdiction under Section 147, rendering the notice invalid. Consequently, the court quashed and set aside the notice under Section 148 and allowed the petition of the assessee. (Relevant paragraphs 16 to 24).

- In the case of *Shyam Sunder Khandelwal vs. ACIT*, 161 taxmann.com 255 (Rajasthan) [2024], the Hon. High Court held that "once there is incriminating material seized or requisitioned belonging or relatable to the person other than on whom search was conducted, section 153C is to be resorted to". (Relevant paragraph 23 onwards).
- A similar view is also taken in the case of *Sri Dinakara Suvarna vs. DCIT*, 143 taxmann.com 362 (Karnataka) (2022/ SLP dismissed in *DCIT vs. Sri Dinakara Suvarna*, 151 taxmann.com 489 (SC) [2023]
- The same view is taken in the under mentioned decisions.
  - (i) *Pr. CIT vs. VSL Mining Company (P.) Ltd.*, 167 taxmann.com 373 (Kar.) [2024]
  - (ii) *Tirupati Construction Company vs. ITO*, 165 taxmann.com 176 (Raj.) [2024]
  - (iii) *Ashok Dhanraj Chordia vs. PCIT, Pune-1*, ITA No.977/PUN/2024, Hon. Members, "A" Bench, ITAT, Pune dt. 30.07.2025

(Copies of the above decisions are submitted as part of the legal compendium on 28.10.2025)

- The decision of the Hon. Bombay High Court in *Sejal Jewellery-vs-UOI*, 171 taxmann.com 846 (Bom) (2025) is further followed in the under mentioned decisions.
  - (iv) *(iv) Atul Vijay Madan-vs-DCIT*, ITA No. 1529/Pun/2024, Hon. Members, "A" Bench, ITAT Pune dt. 07/05/2025
  - (v) *(P) Vidarbha Mining Private Limited-vs-DCIT*, ITA No. 1265/Mum/2024, Hon. Members, "F" Bench, ITAT Mumbai dt. 30.07.2025
  - (vi) *(Parshwa Investment-vs-DCIT*, ITA No. 1429/Mum/2025, Hon. Members, "C" Bench, ITAT Mumbai dt. 30/06/2025

(Copies of these decisions form part of the legal compendium no. 2).

Given the above-cited facts and legal precedents, the respondent reiterates that the assessment based upon the documents found during the course of a search on a third party can be made only under s. 153C. The present assessment u/s 147 is not in accordance with the law and is required to be quashed on that account alone.

## 2.2 Challenge to reopening u/s 147

Respondent under ground no. 1 & 2 raised before the Hon. CIT(A) had challenged the re-opening of assessment u/s 147, arguing the same to be on a change of opinion as well as without any valid and independent belief on the part of the Id AO. The submission of the assessee in this regard, as made before the Hon. CIT(A), is reproduced at page no. 3 to 6 of the Hon. CIT(A) order. The Hon. CIT(A), in view of his finding/decision that the reopening of assessment u/s 147 is not appropriate by law and should have been as provided by u/s 153C, did not adjudicate the grounds no. 1 & 2 challenging the reopening u/s 147.

The respondent prays that in a case, where the findings of the Hon. CIT(A) vis-a-vis the applicability of section 153C to the present proceedings is not upheld, then the matter may kindly be restored to the file of the Hon. CIT(A) to adjudicate ground no. 1 & 2 of the grounds raised before Hon. CIT(A) challenging re-opening u/s 147. Alternatively, the respondent may kindly be permitted to argue the ground relying upon Rule 27 of the ITAT, Rules 1963.

3. Merits of the addition - Alleged cash on-money receipt of Rs.8,80,26,071/- (Rs.86,63,700/- plus Rs.7.93,62,371/-)

(Ground nos. 01 to 04 of the department's appeal)

Reference in orders	
Ld.AO	Hon. CIT(A)
Para no. 09/pg no.15 to 17	Pg no. 17 to 19

## 3.1 Facts of the matter in brief

In the course of search action u/s 132 on Kokani Group on 08.09.2015, incriminating documents marked as page no. 16 & page no. 17 of item no. 7 of Annexure A, recording the receipt of funds for Savargaon land and application of such receipts by Mr. Fakruddin Kokani and Others were found and seized. According to Mr. Fakruddin Kokani's statement, the transactions recorded on the said papers pertained to the purchase and sale of land with the Thakkar group. Reference to this effect can be found on seized page no. 17, third line, where a note about Thakkar not giving an account is mentioned. The respondent is not named on the seized paper nor by Mr. Fakruddin Kokani in his statement recorded by the department to have received any cash consideration.

One of the entries noted on the seized page no. 17 record payment of Rs. 86,63,700/- against the noting (367, Makhmalabad) (1.7.2013). The Id. AO assumed the said amount to be paid to the respondent in cash for the purchase of Makhmalabad land, and in view of the other plots sold by the respondent to other family members of the Kokani family (details at pg no. 04 of the asst. order and also at pg no. 44 of the paper book), the Id. AO extrapolated this information to further presume receipt of unaccounted cash sale consideration of Rs.7,93,62,371/- (on a proportionate basis), thereby making the total addition of Rs.8,80,26,071/- (86,63,700/- plus 7,93,62,371/-) as unaccounted sales.

3.2 Addition made by the Id AO is not justified for the following reasons:-

The relevant seized paper no. 17 (reproduced on pg no. 03 of the AO order) does not in any manner indicate that any cash consideration was paid to the respondent firm. Neither the name of the respondent nor its partner is mentioned on the seized paper. Even the searched person, Mr. Fakruddin Kokani, has never stated that consideration in cash was paid to the respondent or any of its partners. In fact, the said Mr. Fakruddin Kokani (as well as the respondent) admitted during the proceedings that they met for the first time at the execution of the agreements.

Relevant documents form part of the paper book as under :

Sr. No.	Particulars	Enclosed at pg nos. of the paper book	Relevant question no./page no. of paper book
1	Statement of Mr. Fakruddin Kokani recorded in the course of search action u/s 132(4) on 08.09.2015	198 to 204	Q. No. 12/201 & 202
2	Statement of Mr. Fakruddin Kokani recorded issued u/s. 131 of the IT Act, 1961 on 23.10.2015	205 to 207	Q. No. 4 to 8 /205 & 206
3	Statement of Shri. Shashikant Shivchand Parakh, partner of assessee, recorded in response to summons issued u/s. 131 of the IT Act, 1961 on 20.10.2015	208 to 211	Q. No. 9 to 12/209 to 211

Originally, the plots of Makhmalabad were agreed to be sold to M/s Dhananjay Marketing Private Ltd. of Thakkar Group of Nashik vide agreement dt. 25th April 2013. Necessary documents were also executed (Pg no. 19 to 40 of paperbook). On the request of Thakkar Group, the respondent cancelled the agreement to sale vide cancellation agreement dt.04.07.2013. The amounts received from M/s Dhananjay Marketing Private Ltd. of Thakkar Group were repaid. (Ledger account at pg no. 41 to 43 of the paperbook) thus the case that the entire transaction of sale of land at Makhmalabad, Nashik, was to be executed with Thakkar Group. However, prior to registration of the final sale deed with Dhananjay Marketing Private Ltd., at the request of Thakkar Group, the respondent registered sale agreements with Kokani Family. It is

- The relevant seized paper no. 16 & 17 of item no. 2 of Annexure A is the basis of the present addition. Mr. Fakruddin Kokani has admitted in his statement u/s 131 dt. 23.10.2025 (pg no. 205 to 207 of paperbook) that the said entries pertain to the sale of land at Savargaon to Thakkar Group and the purchase of Makhmalabad land. No involvement of the respondent firm or its partner is apparent from the seized paper, nor so identified by the searched party. An addition has been made in the hands of the respondent, without any

*verification of the relevant facts/identity of the person to whom the amount is paid by Mr. Fakruddin Kokani.*

- *A survey action u/s 133A was carried out on the partner of the respondent firm. No documents implicating the respondent in any wrongdoing were found during such action.*
- *The Id.AO further extrapolated the information about alleged cash consideration in the sale of one plot, Rs. 86,63,700/-, to further presume unaccounted sales of Rs.7,93,62,371/-based upon the sale of balance plots to members of the Kokani family. Discussion about the addition is at para no. 2.3/pg no. 4 of the asst. order, and it is clear that the Id AO has made the addition based on an unsupported presumption that such cash must have been given. The addition of Rs. 86,63,700/- as well as the extrapolation made thereafter for the addition of Rs. 7,93,62,371/-, is without an iota of evidence. Such unjustified extrapolation is unjustified for the simple reason that Mr. Fakruddin Kokani has kept a detailed cash account of the entire receipt as well as application of cash funds. The extrapolated figure of Rs. 7,93,62,371/- does not find any recognition in the said seized papers. Thus, when the original data (seized papers of Mr.Fakruddin Kokani) does not mention any such payment, the presumption by the Id AO of such cash payment is uncalled for. As per seized paper no. 17, the Kokani family have received a total amount of Rs. 17,16,39,300/- in cash and totally applied the same for investments/personal withdrawals. Mr. Fakruddin Kokani has not mentioned any cash payment of Rs. 7,93,62,371/- (extrapolated amount) on the sized paper. In such circumstances, none should be presumed.*
- *In support of the claim that no addition on account of on-money receipts as made by the Id AO is warranted, the respondent relies upon the under-mentioned decisions.*
  - a) *Common Cause v/s Union of India, 77 taxmann.com245 (SC);*
  - b) *DCIT-vs-Sunil Kumar Sharma, 159 taxmann.com 179 (Karnataka) [2024] SLP dismissed in CIT-vs-Sunil Kumar Sharma, 165 taxmann.com 846 (SC)[2024]*
  - c) *CIT-vs-M.K.E. Menon, 248 ITR 310 (Bom.) (2001)*
  - d) *ACIT-vs-Ms. Katrina Rosemary Turcotte, 87 taxmann.com 116 (Mumbai - Trih.) [2017]*

*(Copies of the above decisions are submitted as part of the legal compendium on 28.10.2025).*

- *It is further pointed out that additions based on documents found in the course of search action u/s 132 on Kokani Group Nashik stood deleted in the under-mentioned cases.*
  - e) *M/s. Dhananjay Marketing Pvt. Ltd-vs- DCIT, IT(SS)A No.65/Pun/2017, Hon. Members, "A" Bench, ITAT Pune dt. 19.05.2021*

- f) *JACIT-vs-M/s Thakkar Housing Development Pvt. Ltd, ITA Nos. 2131 & 2135/Mum/2021, Hon. Members, "E" Bench, ITAT Mumbai dt. 22.08.2022*

*(Copies of these decisions form part of the legal compendium no. 02).*

*In the light of the above facts and legal precedents, it is reiterated that addition of Rs.8,80,26,071/- (86,63,700/- plus 7,93,62,371/-) made to the income of the respondent, as unaccounted cash sales in respect of plots of land at survey no.367. Makhmalabad, Nashik, purely based on unfounded presumptions without bringing any cogent corroborative evidences on record may kindly not be upheld.*

4. *Denial of opportunity to cross-examine the parties giving adverse evidence*

*(Prayer made u/r 27 of ITAT Rules, 1963)*

<i>Reference in orders</i>	
<i>Ld.AO</i>	<i>Hon. CIT(A)</i>
<i>Para no. 07/pg no.09 to 10</i>	<i>Pg no. 19</i>

4.1 *The Id. AO did not grant the respondent any opportunity to cross-examine the person giving adverse information, i.e Mr. Fakruddin Kokani, even though an adverse inference is drawn from the said information and is the only source relied upon to make the addition in the hands of the respondent. The respondent had specifically requested cross-examination vide letter dt. 18.09.2017 (copy enclosed at pages 226 to 229 of paperbook), which could not be organised by the Id. AO.*

4.2 *On the claim for cross-examination, your respondent relies upon the under-mentioned decisions wherein the principle that information collected behind the back of the assessee and not tested by cross-examination has no evidentiary value is laid down.*

- (i) M/s. Andaman Timber Industries-vs-Comm. of Central Excise Kolkata 281 CTR 241 (SC) (2015). (1)*
- (ii) H.R. Mehta-vs- ACIT, 72 taxmann.com 110 (Bom)*
- (iii) M/s R.W. Promotions P. Ltd. -Vs-ACIT, 376 ITR 342 (Bom) (2015)*

5. *The respondent prays that the appeal may kindly be allowed."*

10. Ld. Counsel for the assessee referred to the documents placed in the paper book and the case various case laws. Index of the documents as well as the case laws relied on by the ld. Counsel for the assessee are scanned below :

**APPEAL NO. ITA 987/PUN/2025****INDEX OF PAPERBOOK**

Sr. No.	Particulars	Enclosed at pg nos.	Whether available before Hon. CIT (A)	Whether available before Id. AO
1	Written submission dt. 02.05.2022 filed before Hon. CIT(Appeals) NFAC Delhi during appeal proceedings.	01 to 14	Yes	No
2	English copy of seized documents marked as page no. 16 & page no. 17 of item no.7 of Annexure A (reproduced on page nos. 02 & 03 of the asst. order)	15	Yes	No
3	Notice u/s 148 of the Income Tax Act, 1961 dt. 24.03.2014 alongwith reasons recorded for re-opening of assessment forwarded vide letter dt. 12.04.2017	16 to 18	Yes	Yes
4	Agreement dt. 25th April 2013 (marked as cancelled) entered with M/s. Dhananjay Marketing Private Ltd of Thakkar Group.	19 to 27	Yes	Yes
5	Cancellation agreement dt.04.07.2013 with M/s. Dhananjay Marketing Private Ltd. of Thakkar Group.	28 to 40	Yes	Yes
6	Ledger account of M/s. Dhananjay Marketing Private Ltd. reflecting the receipt of consideration and refund of the same by the assessee between 01.04.2013 to 15.02.2015	41 to 43	Yes	Yes
7	Details of sale of plots to Kokani family with ledger account of the family members of the Kokani family and copies of registered sale deeds executed with the assessee alongwith sample English translation of one of sale deed.	44 to 197	Yes	Yes
8	Statement of Mr. Fakruddin Kokani recorded in the course of search action u/s 132(4) on 08.09.2015	198 to 204	Yes	Yes
9	Statement of Mr. Fakruddin Kokani recorded issued u/s. 131 of the IT Act, 1961 on 23.10.2015	205 to 207	Yes	Yes
10	Statement of Shri. Shashikant Shivchand Parakh, partner of assessee, recorded in response to summons issued u/s. 131 of the IT Act, 1961 on 20.10.2015	208 to 211	Yes	Yes
11	Special Power of Attorney granted by assessee firm to Mr. Abhishek Narendra Thakker.	212 to 220	Yes	Yes
12	Letters dt. 06.12.2017, 22.12.2017 and 18.09.2017 filed in the course of asst. proceedings before Id. AO.	221 to 229	Yes	Yes
13	Acknowledgement for filing return with computation of income and audited financial statements for A.Y. 2014-15	230 to 247	Yes	Yes

We certify that above referred documents were available before Hon. CIT(A)/Id. AO as marked above.

X Rian  
SHREE SAI PROPERTIES  
PARTNER  
(RESPONDENT)

**LEGAL COMPENDIUM**

Sr. no.	Decisions	Enclosed at Page No's
<b>I</b>	<b>In support of the proposition that where incriminating documents contain information relating to the assessee, the proceedings lie u/s 153C</b>	
1	Sejal Jewellery -vs- UOI, 171 taxmann.com 846 (Bom)(2025)	01 to 14
2	Shyam Sunder Khandelwal -vs- ACIT, 161 taxmann.com 255 (Rajasthan) [2024]	15 to 24
3	DCIT, Circle 42(1)(1), Mumbai -vs- Ghanshyam Rasiklal Shah, ITA No.4707/MUM/2024 & CO No. 208/MUM/2024, Hon. Members "G" Bench, ITAT Mumbai dt. 21/04/2025	25 to 39
4	Sri Dinakara Suvarna -vs- DCIT, 143 taxmann.com 362 (Karnataka) [2022] SLP dismissed in DCIT-vs-Sri Dinakara Suvarna, 151 taxmann.com 489 (SC) [2023]	40 to 46
5	Pr CIT-vs-VSL Mining Company (P.) Ltd, 167 taxmann.com 373 (Karnataka) [2024]	116 to 121
6	Tirupati Construction Company-vs-ITO, 165 taxmann.com 176 (Rajasthan) [2024]	122 to 127
7	Ashok Dhanraj Chordia-vs- PCIT, Pune-1, ITA No.977/PUN/2024, Hon. Members, "A", Bench, ITAT Pune dt. 30.07.2025	128 to 164
8	PCIT v. Abhisar Buildwell Pvt. Ltd., 149 taxmann.com 399(SC) (2023)	165 to 184
<b>II</b>	<b>In support of the proposition that seized loose paper non-corroborated by any other evidence will not justify adverse view.</b>	
9	Common Cause -vs- Union of India, 77 taxmann.com245 (SC)[2017]	47 to 55
10	DCIT -vs- Sunil Kumar Sharma, 159 taxmann.com 179 (Karnataka) [2024] SLP dismissed in CIT -vs- Sunil Kumar Sharma, 165 taxmann.com 846 (SC)[2024]	56 to 83
11	CIT -vs- M.K.E. Menon, 248 ITR 310 (Bom.)(2001)[2017]	84 to 87
12	ACIT -vs- Ms. Katrina Rosemary Turcotte, 87 taxmann.com 116 (Mumbai - Trib.)[2017]	88 to 101
<b>III</b>	<b>In support of the proposition that cross examination of third party is required to be granted.</b>	
13	M/s. Andaman Timber Industries -vs- Comm. of Central Excise Kolkata 281 CTR 241 (SC)(2015)	102 to 106
14	H.R. Mehta -vs- ACIT, 72 taxmann.com 110 (Bom)[2016]	107 to 111
15	M/s R.W. Promotions P. Ltd. -vs- ACIT, 376 ITR 342 (Bom)(2015)	112 to 115


**LEGAL COMPENDIUM NO 02**

<b>Sr. no.</b>	<b>Decisions</b>	<b>Enclosed at Page No's</b>
<b>I</b>	<b>In support of the proposition that where incriminating documents contain information relating to the assessee, the proceedings lie u/s 153C</b>	
1	Atul Vijay Madan-vs-DCIT, ITA No.1529/Pun/2024, Hon. Members, "A" Bench, ITAT Pune dt. 07/05/2025	116 to 126
2	Vidarbha Mining Private Limited-vs-DCIT, ITA No. 1265/Mum/2024, Hon. Members, "F" Bench, ITAT Mumbai dt. 30.07.2025	127 to 135
3	Parshwa Investment-vs-DCIT, ITA No. 1429/Mum/2025, Hon. Members, "C" Bench, ITAT Mumbai dt. 30/06/2025	136 to 147
<b>II</b>	<b>In support of the proposition that seized loose paper non-corroborated by any other evidence will not justify adverse view. (Additions based on search action u/s 132 on Kokani Group Nashik, deleted).</b>	
4	M/s. Dhananjay Marketing Pvt. Ltd-vs- DCIT, IT(SS)A No.65/Pun/2017, Hon. Members, "A" Bench, ITAT-Pune dt. 19.05.2021	148 to 174
5	ACIT-vs-M/s Thakkar Housing Development Pvt. Ltd, ITA Nos. 2131 & 2135/Mum/2021, Hon. Members, "E" Bench, ITAT Mumbai dt. 22.08.2022	175 to 222

11. We have heard the rival contentions and perused the record placed before us. We have also carefully gone through the decisions referred and relied on by both the sides. We will first take up the legal issue raised by the Revenue in Ground No.5 stating that the case of the assessee's case comes under the ambit of provisions of section 147 and ld. AO has carried out valid reassessment proceedings after forming reason to believe about alleged escapement of income on the basis of information received from Investigation Wing, Nashik including the incriminating documents found and seized during the course of search in the case of Kokani Group on 08.09.2015. We observe that the assessee which is a partnership firm is

engaged in the business of land development at Nashik. Regular assessment proceedings u/s.143(3) stands completed on 16.12.2016 for the year under appeal accepting the returned income. The search on the Kokani Group of Nashik conducted u/s.132 of the Act on 08.09.2015 and various incriminating material were found and seized. The one referred by ld. AO for carrying out the reassessment proceedings in the instant case have been translated in English by the assessee, placed at paper book and is scanned below :

Details of Page No. 16 and 17 of Fakruddin Kokni

Back side of Page No. 16		
Details of Money received from savargaon Land		17,16,39,300
2	85819700 White	
20850000	Withdrwal	
8133300	367 Makhmalabad	
2356000	54/7 Gangapur	
858196	TDS	
1600000	Sunil Patil	11/7/2013
7000000	Abhishekh	21/08/2013
450000	Pandit Keru Varkhede	21/08/2013
15000000	Pandit Keru Varkhede	27/08/2013
250000	Kunbu	30/08/2013
400000	Shivam Enterprises	3/9/2013
1300000	Sunil Patil	11/9/2013
276360	Naik Advocate	20/09/2013
4000000	Sunil Patil	23/09/2013
2907800	Sunil Patil	27/09/2013
877000	Shivam Enterprises	28/09/2013
200000	Natha Enterprises	14/11/2013
2000000	Sunil Patil	14/11/2013
<b>CERTIFIED TRUE COPY</b> <b>For SHREE SAI PROPERTIES</b>  <b>Partner</b>		
68458656		

Scan image of Page No. 17  
Details of Money received from savargaon Land 17,16,39,300

85819700 Black

300	Not Given by thakkar	
27805700	Withdrawal	
7896000	Gaon wale 2 Thappa	1/7/2013
8663700	367 makhmalabad	1/7/2013
9708000	54/7 Gangapur	1/7/2013
19750000	Kadva Mhalungi	1/7/2013
1996000	Withdrawal	1/7/2013
10000000	Abhishek Jama	1/7/2013
4000000	Sunil Patil	25/11/2013
100000	Nahate Enterprises	26/11/2013
500000	Sajid Miya Interest	4/12/2013
1000000	Sunil Patil	8/1/2014
500000	Self Ghar Me Lana	12/9/2014
600000	Self Ghar Me Lana	3/7/2014
500000	Self Ghar Me Lana	18/07/2014
3500000	Rajegaokar Interest	8/9/2014
300000	Self Ghar Me Lana	10/11/2014

Details of Other Expenses white amount is page no. 164(20-11/2014)

96819700

12. Now in the above seized material, ld. AO referred to the entry appearing with a particular "367 Makhmalabad" and that on page 16 it is mentioned 'White' that means cheque has been received at Rs.81,33,300/- and on page 17 is mentioned 'Black' with the amount Rs.86,63,700/-. Now the land at "367 Makhmalabad" is owned by the assessee and the various plots of land at "367 Makhmalabad" have been transferred by assessee to various family members of Kokani Group for a total consideration of Rs.8,26,37,030/- which have been

registered under the sale deed entered on 05.07.2013. Now the observation of the AO in the assessment order indicates that the incriminating material found during the course of search in the case of Kokani Group and subsequently at page 16 and 17 on the basis of information about the assessee in the form of name of the land "367 Makhmalabad". Except this incriminating material, there is no other document referred by the ld. AO for carrying out the reassessment proceedings nor any other information is mentioned. It is also noted in the assessment order that assessee has not been subjected to any survey action and only the assessee's sister concern firm namely PH Infrastructure was subjected to survey action and the partner in this firm is also the partner of the assessee firm. So admittedly the reassessment proceedings in question have been initiated solely on the basis of incriminating material found and seized during the course of search in the case of Kokani Group. Now the assessee has contended before ld.CIT(A) referring to various judgments that if the AO had reason to believe that in the seized material found during the course of search in the case of Kokani Group there is certain information or document relating to the person other than searched person then ld. AO should have carried out the proceedings u/s.153A r.w.s.153A and that ld.AO had no jurisdiction to proceed u/s.147 of the Act. Ld.CIT(A) has dealt with this issue adjudicating Ground No.3 by the assessee and the same reads as under :

*"Ground No.3*

*The ground of appeal is being taken up for adjudication first.*

*As per the assessment order of the Ld. AO, the search and seizure action u/s 132 of the Act was carried out on the Kokani Group on 08.09.2015 and a survey was simultaneously carried out on the appellant group. During the course of search u/s 132 of the Act, certain incriminating documents pertaining to M/s Shree Sai Properties (Appellant) were seized. As per para no. 2/pages 2 and 3 of the assessment order of the Ld. AO, the said seized papers*

*reflected unaccounted cash transactions of the appellant with the searched group.*

*Hence, this is a case of the assessment of the appellant to be framed as per the provisions of section 153C of the Act which clearly mentions that if the documents seized or requisitioned belong to a person other than the person referred under section 153A of the Act, then the documents shall be handed over to the assessing officer having jurisdiction over such person and the assessment shall be framed in accordance with provisions of section 153A of the Act. Thus, if the seized documents contain incriminating material with regards to a person other than the searched person, then the procedure to tax any undisclosed income from the incriminating documents is by the way of issue of notice u/s 153C of the Act and not u/s 148 of the Act*

*It is pertinent to mention no fresh information was collected by the Ld. AO or no information has come to the notice of Ld. AO in normal course, other than information collected as a result of search u/s 132 of the Act on Kokani Group. Hence, the provisions of section 147 are not applicable for reopening the assessment of the appellant.*

*The reliance is placed on the following judicial decisions:-*

- i) Kalyanji Velji HUF vs. DCIT (85 ITR Trib) (Trib) 500 (Mum)*
- ii) ITO vs. Shri Vasant Rao Laxman Khandge (ITA No. 1971/PUN/2014)*
- iii) Shri Adarsh Agarwal vs. ITO (ITA no.777/Del/2019)*

*In view of the facts and circumstances as stated above, the impugned assessment should have been framed u/s 153C of the Act, hence the assessment u/s 147/148 of the Act framed by the Ld. AO is hereby quashed.*

*The ground of appeal no. 3 is allowed.”*

13. We further note that similar type of issue also came for adjudication before the Hon'ble Jurisdictional High Court in the case of *Sejal Jewellery Vs. Union of India (2025) 171 taxmann.com 846 (Bombay)* wherein the Hon'ble Court has also taken into consideration the judgment of Hon'ble High Court of Rajasthan in the case of *Shyam Sunder Khandelwal Vs. ACIT 161 taxmann.com 255 (Rajasthan)* and Hon'ble Court has discussed about non obstante clause appearing in provisions of section 153A and 153C of the Act along with scope of section 147 in para 16 of the order which reads as under :

*“16. On a plain reading of Section 153A, it is clear that it begins with a 'non-obstante' clause, when it provides that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after 31st May, 2003 but on or before 31 March, 2021, the Assessing Officer shall have jurisdiction to issue notice to such person to furnish the return of income as specified in the notice or assess or reassess the total income as provided by the provision. Section 153C also begins with a non-obstante clause, when it provides that notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, to provide that, in a situation which may fall under Section 153C insofar as assessment of income of any other person is concerned, the Assessing Officer shall proceed against such other person and issue notice and assess or reassess the income of other persons in accordance with the provisions of Section 153A, if he is satisfied that the books of account or document or assets seized or requisitioned have a bearing on the determination of the total income of such person for a period as specified in the said provision and after compliance of other provisions as mandated. On the other hand, Section 147 provides for "Income escaping assessment", can be invoked when any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year. In such situation, the Assessing Officer may subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year and for which a prior notice under Section 148 would be required to be issued. Section 147 does not contemplate an eventuality which Section 153A or Section 153C contemplates, the basis of which is inter alia a search action under Section 132 being resorted as noted hereinabove. Thus, both these provisions are quite compartmentalized although the deeming effect of both the provisions, may be the same. However, the situations in which such provisions operate are required to be invoked are completely different. This is clear from the bare reading of the provisions, hence would not warrant any elaborate discussion.”*

14. Further, Hon'ble Court has also discussed the ratio laid down by the Hon'ble Apex Court in the case of *PCIT Vs. Abhisar Buildwell(P) Ltd. (2024) 161 taxmann.com 255 (Raj.)* and has also taken note of the judgment of Hon'ble High Court of Rajasthan in the case of *Shyam Sunder Khandelwal (supra)* wherein the Hon'ble Court has laid down the ratio that where the basis of the initiation of proceedings u/s.148 in case of the assessee was material seized relating to or belonging to

assessee during search conducted on M Group, notice issued u/s.148 and impugned orders rejecting objections prior to issuance of notice were to be quashed and set aside. Hon'ble Jurisdictional High Court in the case of *Sejal Jewellery (supra)* has considered the ratio laid down by the Hon'ble Rajasthan High Court in the case of *Shyam Sunder Khandelwal (supra)* and has shown its complete agreement with the view taken by the Division Bench of Hon'ble Rajasthan High Court. For the sake of convenience, para 21 to 24 of the judgment in the case of *Sejal Jewellery (supra)* is reproduced below :

*"21. The Rajasthan High Court in Shyam Sunder Khandelwal (supra) also had taken a similar view when the issue which had arisen before the Court was in regard to the notice issued under Section 148 of the I. T. Act, the basis of issuance of such notice was the material seized during search. The contention of the assessee was to the effect that in the said circumstances, the proceedings ought to have been initiated under Section 153C of the L.T. Act. The Division Bench referring to the decision of Supreme Court in Abhisar Buildwell (P).Ltd. (supra) as also the decision of Karnataka High Court in Sri Dinakara Suvarna (supra) allowed the petitions observing that the department had not set up a case, that for initiating proceedings under Section 148, it had material other than the material seized during the search of a related party. The relevant observations of the Division Bench are required to be noted, which reads thus:*

*"23. The reasons supplied in case in hand for initiation of proceedings under Section 147/148 are based on the incriminating material and documents including Pen Drives seized during the search carried out of the Manihar Group and the statements recorded during proceedings. From the information received the AO noticed that the loan advanced and interest earned thereon were unaccounted. In other words the basis for initiation of Section 148 proceedings is the material seized relating to or belonging to the petitioner, during the search conducted of Manihar Group.*

*24. In the case where search or requisition is made, the AO under Section 153A mandatorily is required to issue notices to the assessee for filing of income tax return for the relevant preceding years. The AO assumes jurisdiction to assess/reassess 'total income' by passing separate order for each assessment.*

*25. In cases of the person other than on whom search was conducted but material belonging or relating such person was seized or requisition, the AO has to proceed under Section 153C. The two pre-requisites are that the AO dealing with the assessee on whom search was conducted or requisition made,*

*being satisfied that seized material belongs or relates to other assessee shall hand over it to AO having jurisdiction of such assessee. Thereafter, the satisfaction of AO receiving the seized material that the material handed over has a bearing for determination of total income of such other person for the relevant preceding years. On fulfillment of twin conditions the AO shall proceed in accordance with the provisions of Section 153A.*

*26. Special procedure is prescribed under Section 153A to 153D for assessment in cases of search and requisition. There cannot be a quibble with the proposition that the special provision shall prevail over the general provision. To say it differently the provisions of Section 153A to 153D have prevalence over the regular provisions for assessment or reassessment under Section 143 & 147/148.*

*27. Section 153A and 153C starts with non-obstante clause. The procedure for assessment/reassessment in Section 153A, 153C in cases of search or requisition has an overriding effect to the regular provisions for assessment or reassessment under Sections 139, 147, 148, 149, 151 & 153.*

*28. The language of explanation 2 to new Section 148 is akin to Section 153A and Section 153C Corollary being that after seizing of operational period of Section 153A to 153D. the cases being dealt thereunder were circumscribed in the scope of newly substituted Section 148."*

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

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

*23. Insofar as Mr. Suresh Kumar's contention supporting the proceedings under Section 147 and 148 of I.T. Act are concerned, for the aforesaid reasons, such contention would in fact go contrary to the intention of the legislature as depicted by the provisions of Section 153A and 153C of the IT. Act. There would not be any difficulty in accepting the proposition as canvassed by Mr. Suresh Kumar, referring to the decision of the Supreme Court in *Phool**

*Chand Bajrang Lal (supra), however, the facts in the present case are distinct. There cannot be any doubt on the position in law when the Revenue intends to proceed purely on materials relevant for an action under Section 148 read with Section 147. We have already observed that the provisions of Sections 147, 148 vis-a-vis Section 153A and Section 153 are quite compartmentalized. To avoid any overlapping of these provisions, the legislature in its wisdom has thought it appropriate to provide for an independent effect, to be given under Section 153A read with Section 153C by incorporating the "non-obstante" clause, in these provisions, which carves out an exception to any normal/regular action being resorted under Section 147.*

*24. In this view of the matter, we are of the clear opinion that the impugned notice under Section 147 of the I.T. Act and all actions consequent thereto are required to be held to be without jurisdiction and bad in law. The petition is accordingly allowed in terms of prayer clauses (a) and (b)."*

15. In light of the above judgment of Hon'ble Jurisdictional High Court as well as that of Hon'ble Rajasthan High Court, we find that the judgment referred and relied on by Id. DR in the case of *PCIT Vs. Naveen Kumar Gupta 168 taxmann.com 574 (Delhi)* will not be applicable as we sitting at Pune Benches of ITAT are bound by the judgment of Hon'ble Jurisdictional High Court. We find that from the judgment of Hon'ble Jurisdictional High Court in the case of *Sejal Jewellery (supra)* has also been followed by the Coordinate Benches in the decisions given below :

- (i) *(iv) Atul Vijay Madan-vs-DCIT, ITA No. 1529/Pun/2024, Hon. Members, "A" Bench, ITAT Pune dt. 07/05/2025*
- (ii) *(P) Vidarbha Mining Private Limited-vs-DCIT, ITA No. 1265/Mum/2024, Hon. Members, "F" Bench, ITAT Mumbai dt. 30.07.2025*
- (iii) *(Parshwa Investment-vs-DCIT, ITA No. 1429/Mum/2025, Hon. Members, "C" Bench, ITAT Mumbai dt. 30/06/2025*

16. Further, similar view has also been taken in the case of following decisions :

- (i) *Pr. CIT vs. VSL Mining Company (P.) Ltd., 167 taxmann.com 373 (Kar.) [2024]*

- (i) *Tirupati Construction Company vs. ITO, 165 taxmann.com 176 (Raj.) [2024]*
- (ii) *Ashok Dhanraj Chordia vs. PCIT, Pune-1, ITA No.977/PUN/2024, Hon. Members, "A" Bench, ITAT, Pune dt. 30.07.2025*

17. Further on examining the facts of the instant case in light of the above judgment of Hon'ble Jurisdictional High Court, we find that in the instant case ld. AO has initiated the assessment proceedings solely on the basis of incriminating material found during the course of search in the case of Kokani Group and there being no other information available with the AO and therefore since the reopening has been carried out on the basis of the incriminating material found in the case of search where the information pertaining to the person other than the searched person, i.e. assessee then the only recourse left with the AO was to frame the assessment u/s.153C r.w.s.143(3) and not u/s.147 of the Act.

18. Based on the above referred settled judicial precedents, we are inclined to hold that where during the course of search any incriminating material is found for the person other than the searched person then the only course of action left with AO is to proceed u/s.153C of the Act as the said section started with non obstinate clause and therefore in the instant case ld. AO erred in assuming jurisdiction u/s.147 of the Act and the same is not in accordance with law. Under these facts and circumstances, we hold that ld.CIT(A) has rightly quashed the impugned proceedings u/s.147 of the Act and the same needs no interference. Ground No.5 raised by the Revenue is dismissed.

19. So far as the merits of the case are concerned, Revenue has raised Ground Nos. 1,2 and 4 against the deletion of addition of Rs.86,63,700/- and Rs.7,93,62,371/- made by the

Assessing Officer. We observe that the information contained in the alleged seized material is only having a reference of the words "367 Makhmalabad" and that referring to sale consideration received through cheque at Rs.81,33,300/- and the alleged on money payment of Rs.86,63,700/-. We note that during the course of assessment proceedings assessee has submitted that sale consideration received through cheque is duly disclosed in regular books of account and no such cash was received towards "ON MONEY" from sale of plots to Kokani Group and further the searched person Fakruddin Kokani has not mentioned the name of the assessee for making the alleged payment to assessee. We also note that ld. AO based on the alleged single entry of "367 Makhmalabad" has extrapolated the figures for the remaining sale agreements entered into between the assessee and Kokani Group family members. Ld. CIT(A) on due consideration of these facts has given the relief to the assessee observing as follows :

*"Ground Nos. 4 and 5*

*The grounds of appeal have been raised against additions of Rs. 86,63,700/-and Rs 7,93,62,371/- by the Ld. AO on account of on money receipt in cash on sale of plots by the assessee at Mauje-Makhmalabad, Dist.- Nashik and extrapolating the said figure to the other plots sold by the assessee respectively as per documents found and seized from the search of Kokani Group.*

*As per the assessment order of the Ld. AO, during the course of search u/s 132 of the Act on Kokani Group on 08.09.2015, incriminating documents marked as page no. 16 and page no. 17 of item no. 7 of Annexure-A were seized which recorded the receipt of Savargaon Land and application of the said receipts by Shri Fakhruddin Kokani and others.*

*As per the statement of Shri Fakhruddin Kokani, the transactions recorded on the said papers pertained to purchased and sell of land with Thakkar Group. A survey u/s 133A of the Act was also carried out on the assessee M/s Shree Sai Properties simultaneously. One of the entries on seized page no. 17 recorded payment of Rs. 86,63,700/- against the noting-survey no. 367, Makhmalabad. The Ld. AO observed that the said payment was cash component paid to the assessee against agreement value of Rs. 81,33,300/-, In view of the findings, the Ld. AO made addition of Rs. 86,63,700/-as unaccounted-sells of the assessee. Thereafter, in view of the other plots sold by the assessee to other family members of Kokani Group,*

*the Ld. AO extrapolated this information to presume further unaccounted sales of Rs. 7,93,62,371/- thereby making an addition of Rs. 8,80,26,071/- (Rs. 86,63,700+ Rs. 7,93,62,371) to the income of the assessee as unaccounted sales in respect of plots at survey no. 367/3, Makhmalabad, Nashik.*

*The assessment order of the Ld. AO and the submissions of the appellant have been perused. From the facts, it is evident that the appellant had sold plots of land bearing survey no. 367/3 at Makhmalabad, Nashik to members of the Kokani Family vide 11 separate agreements. It is seen that prior to the sale of these plots to Kokani Family, these were agreed to be sold to M/s Dhananjay Marketing Pvt. Ltd. Of Thakkar Group vide agreement dated 25.04.2013. However, on the request of Thakkar Group, the appellant cancelled the agreement to sell on 04.07.2013 and the appellant registered the sale agreement with Kokani Family. As per the submissions of the appellant, the appellant's partners and Kokani Family had met each other for the first time on the date of registration of sale agreement. The same has been stated by Shri Fakhruddin Kokani in his statement recorded u/s 132(4) of the Act on 08.09.2015 and by Shri Shashikant Shivchand Parakh, partner of the appellant firm in his statement recorded u/s 133A of the Act.*

*Shri Fakhruddin Kokani in his statement in respect of transaction recorded on page no. 13 and page no. 17 of item no. 7 of annexure-A has stated that a sum of Rs. 8,58,19,700/- was received by cheque by him and his family members in lieu of land at Savargaon and remaining amount of Rs. 8,58,19,600/- received in cash on behalf of 13 members who were the owner of the land at Savargaon.*

*Shri Kokani in his later statement u/s 131 of the Act on 23.10.2015 has denied knowing the appellant personally before the date of signing of the agreement to sell. From the statement of Shri Kokani, it is concluded that he did not know the partner of the appellant firm i.e. Shri Shashikant Shivchand Parakh personally and had not met him before. Shri Kokani has not categorically stated that he had paid any cash component to the appellant. Shri Shashikant Shivchand Parakh in his statement recorded u/s 131 of the Act on 20.10.2015 has denied receiving any cash component or black money from Kokani Family. It has been reiterated by him that they had never met Kokani Family members before the date of registration. Further, the statement recorded of Shri Fakhruddin Kokani does not implicate the appellant in any manner nor does it contain any reference about payment of on money to the appellant firm. I find merit in the submissions of the appellant that since the appellant did not know the Kokani Family before hand, there was little chance of any cash having been exchanged between the two parties.*

*During the course of assessment proceedings, the appellant has provided all the relevant documents pertaining to sale/purchase of land at Savargaon/Makhmalabad which include copy of agreement dated 25.04.2013 entered into with Dhananjay Marketing Pvt. Ltd., copy of cancellation agreement dated 04.07.2013 with Dhananjay Marketing Pvt. Ltd. of Thakkar Group, copy of ledger account of M/s Dhananjay Marketing Pvt. Ltd. reflecting the receipt of consideration and refund of the same by the appellant, copy of ledger account of Family members of Kokani Group and copies of registered sale*

*deeds executed with the appellant firm. Further, the appellant has received the entire sale consideration as per the terms of registered sale agreements through banking channels.*

*The Ld. AO has not made any confirmation or inquiry from the Kokani Group as to whom the cash payment had been made. No corroborative evidence has been brought on record by the Ld. AO to confirm the payment of cash to the appellant. Nothing adverse or any cogent evidence has been brought on record by the Ld. AO in form of any material or any statement to hold that cash been received by the appellant.*

*Further, the Ld. AO has wrongly made the addition on account of presumption of unaccounted sales of Rs. 7,93,62,371/- without any tangible evidence and solely on the basis of estimates and extrapolation. It is pertinent to mention that the impugned paper do not contain recordings of any on money receipt by the appellant, hence, the extrapolation of on money receipt without any independent and corroborative evidence is based on surmises and needs to be deleted. In absence of any direct evidence demonstrating receipt of cash payments, no addition can be made on estimate basis.*

*In view of the facts and circumstances, the impugned addition of Rs. 86,63,700/-and Rs 7,93,62,371/- by the Ld. AO on account of on money receipt in cash are hereby directed to be deleted.*

*The grounds of appeal no. 4 and 5 are allowed.”*

20. The above finding of ld.CIT(A) that ld.AO has merely extrapolated the figures without having any concrete evidence remains uncontroverted at the end of ld. DR and it has been admitted that for the extrapolated figures there is no reference in the seized material. Further incriminating material seized paper 17 does not in any manner indicate that any cash consideration was paid to the respondent firm because the name of the assessee firm is not appearing nor of its partners. It has also been demonstrated that the plots of Makhmalabad owned by the assessee were previously agreed to be sold to Dhananjay Marketing Pvt. Ltd of Thakkar Group vide Registered Agreement dated 25.04.2013 and necessary documents were also executed but thereafter at the request of Thakkar Group the agreements dated 25.04.2013 were cancelled and the plots of land were registered in the name of Kokani family on 05.07.2013 purely on the direction of

Thakkar Group. Further, Fakruddin Kokani in his statement u/s.131 dated 23.10.2015 has stated that the said entries appearing in seized papers No.16 and 17 pertain to the sale of land of Savargaon to Thakkar Group and the purchase of Makhmalabad land are owned by the respondent firm its partners is not appearing in the seized papers nor has been identified by the search party. However, ld. AO inspite of the fact that assessee's name was not appearing either in the seized documents nor in the statement given by Fakruddin Kokani has went a step ahead and without having any seized material or any concrete information based on independent enquiry from Kokani Group, has extrapolated figures of cash and has fastened the addition of Rs.7,93,62,371/- in the hands of assessee for the alleged "ON MONEY" receipt from sale of land at "367 Makhmalabad". It has been consistently held that if the seized loose sheets are not corroborated by any other evidence showing the live nexus or link with any person, then no adverse view should be taken and in support ld. Counsel of the assessee has referred to following decisions in the written submissions :

- i) *Common Cause v/s Union of India, 77 taxmann.com245 (SC);*
- ii) *DCIT-vs-Sunil Kumar Sharma, 159 taxmann.com 179 (Karnataka) [2024] SLP dismissed in CIT-vs-Sunil Kumar Sharma, 165 taxmann.com 846 (SC)[2024]*
- iii) *CIT-vs-M.K.E. Menon, 248 ITR 310 (Bom.) (2001)*
- iv) *ACIT-vs-Ms. Katrina Rosemary Turcotte, 87 taxmann.com 116 (Mumbai - Trih.) [2017]*

21. We also take note of the judgment of Hon'ble Jurisdictional High Court in the case of *CIT Vs. Dr. MKE Memon (2000) 112 Taxman 96 (Bombay)* note that Hon'ble Court held that Assessing Officer cannot estimate undisclosed

income under Chapter XIVB on arbitrary basis. Para 8 of the order of Hon'ble Court reads as under :

*“8. In conclusion, we would also like to mention that Chapter XIV-B lays down a special procedure for the assessment of search cases and provides for assessment of undisclosed income as a result of the search. Under section 158BB, read with 158BC of the Act, what is assessed is the undisclosed income of the block period and not the total income or loss of the previous year required to be assessed under the regular assessment vide section 143(3). This exercise under section 143(3) of the Act for regular assessment stands on a different footing in contrast to the exercise undertaken by the Assessing Officer under Chapter XIV-B where the Assessing Officer has to assess only the undisclosed income. Therefore, the scope of regular assessment is quite different from the scope of assessment under Chapter XIV-B. The regular assessment is to ensure that the assessee had not understated the income or has not computed excessive loss or has not underpaid the tax in any manner whereas what is assessed under Chapter XIV-B is only the undisclosed income for the block period and not the income or loss of the previous year which is only done in the normal regular assessment under section 143(3). In large number of cases we find that the above distinction is not kept in mind by the Assessing Officer. It is for this reason that we have spelt out the difference between the regular assessment and the block assessment under Chapter XIV-B.”*

22. Ld. Counsel for the assessee has also referred to following decisions wherein the additions based on the documents found during the course of search in the case of Kokani Group stood deleted :

i. *M/s. Dhannanjay Marketing Pvt. Ltd. Vs. DCIT – IT(SS) A. No.65/PUN/2017 and others dated 19.05.2021*

ii. *ACI Vs. M/s. Thakkar Housing Development Pvt. Ltd. – ITA Nos. 2131 & 2135/Mum/2021 order dated 22.08.2022*

23. We find the Coordinate Bench, Pune in the case of *M/s. Dhannanjay Marketing Pvt. Ltd. Vs. DCIT – IT(SS) A. No.65/PUN/2017 and others dated 19.05.2021* has observed as under:

*“48. We have carefully perused the seized material of which scanned images were reproduced in the assessment order as well as in the order of ld. CIT(A). One of such seized material is reproduced vide page No.27 of the impugned order vide para 6.7. On mere perusal of the said seized material, it is clear that this document contains some numeric figures on the left side as well as*

on the right side. Against the figures, finding on the left side of the page, an alphabet "T" was found. From this it cannot be said that the document contains some transactions giving rise to the taxable income nor it indicates any date of any transaction nor does it indicate any names of the parties to the transaction. Therefore, this document cannot be said to be a speaking one, can be termed as "dumb document". So is the case in respect of the document reproduced at page Nos.28, 29 and 30 of the impugned order. The Assessing Officer based on the seized material had concluded that the vendors had incurred expenditure in the form of development, purchase of lands out of on-money received over and above the consideration stated in the sale deed from the buyers of the land i.e. the respondent-assessee herein and its group companies and then proceeded to make addition in the hands of assessee as undisclosed investment on purchase of lands.

49. It is also important to significantly note that even the vendors of the land in the statement u/s 132(4) of the Act had only confirmed the receipt of the on-money to the extent of Rs.11,94,19,700/-altogether. They nowhere stated that they received on-money consideration from the respondent assessee or its group companies on sale of the land. Even on cross-examination also, they had denied to have received any on-money on sale of the subject land from respondent assessee. On the mere fact that the Department has found certain evidence in the form of loose sheets indicating incurring of certain expenditure on household items and development of lands and purchase of lands etc does not lead to conclusion that the respondent assessee or its group companies had paid on-money consideration, also considering the fact that the seized material indicates incurring of such expenditure much before the date of agreement of purchase i.e. July, 2013, no prudent person would have paid the on-money consideration much before i.e. 2 and 2/1 years before date of agreement of sale.

50. It is settled position of law that onus lies upon the Department to collect cogent evidence to corroborate the notings on the loose sheets. The additions cannot be made merely on the basis of notings on the loose sheet papers which are in the nature of "dumb documents" having no evidentiary value. The onus lies on the Department to collect the evidence to corroborate the notings on the loose sheets. In the present case, it is undisputed position that as a result of search and seizure action in the case of respondent-assessee and its group companies, no material whatsoever was seized and found indicating payment of on-money consideration at the time of purchase of the lands. Reliance in this regard can be placed on the following decisions:

- i) Pr.CIT vs. Umesh Ishrani (2019) 108 taxmann.com 437 (Bom)
- ii) CIT vs. Atam Valves (P.) Ltd. (2009) 184 Taxman 6 (P&H)
- iii) CIT vs. Maulikkumar K. Shah (2008) 307 ITR 137 (Guj)
- iv) CIT vs. C.L. Khatri (2006) 282 ITR 97 (MP)
- v) Pr.CIT vs. Kamlesh Prahladbhai Modi (2018) 94 taxmann.com 356 (Guj)
- vi) CIT vs. Shri Girish Chaudhary (2008) 296 ITR 619 (Del)
- vii) CIT vs. Vivek Aggarwal (2015) 56 taxmann.com 7 (Del)

- viii) *CIT vs. Salek Chand Agarwal (2008) 300 ITR 426 (All)*
- ix) *CIT vs. Dinesh Jain (HUF) 352 ITR 629 (Del)*

51. We find that the conclusions reached by the Assessing Officer are merely based on presumptions and assumptions without bringing corroborative material on record. It is settled position of law that no addition in the assessment can be made merely based on assumptions, suspicion, guess work and conjuncture or on irrelevant inadmissible material. Reliance can be placed in this regard on the following decisions:

- i) *Dhirajlal Girdharilal vs. CIT (1954) 26 ITR 736 (SC)*
- ii) *Dhakeswari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 775 (SC)*
- iii) *CIT vs. Maharajadhiraja Kameshwar Singh of Darbhanga (1933) 1 ITR 94 (PC)*
- iv) *Lalchand Bhagat Ambica Ram vs. CIT (1959) 37 ITR 288 (SC)*
- v) *Umacharan Shaw & Bros vs. CIT (1959) 37 ITR 271 (SC)*
- vi) *Omar Salay Mohamed Sait vs. CIT (1959) 37 ITR 151 (SC)*

52. Recently, the Hon'ble Delhi High Court in the case of *CIT vs. Dinesh Jain (HUF)*, 352 ITR 629 after referring to the decision of the Hon'ble Supreme Court in the case of *Lalchand Bhagat Ambica Ram vs. CIT (1959) 37 ITR 288 (SC)* held that no addition can be made taking into account notorious practice prevalent in the similar trade. The relevant findings vide para 14 and 15 are as under:

“.....

14. In *Lalchand Bhagat Ambica Ram Vs. Commissioner of Income Tax, Bihar and Orissa (1959) 37 ITR 288*, the Supreme Court disapproved the practice of making additions in the assessments on mere suspicion and surmise or by taking note of the notorious practices prevailing in trade circles. At page 299 of the report, it was observed as follows :

"Adverting to the various probabilities which weighed with the Income-tax Officer we may observe that the notoriety for smuggling food grains and other commodities to Bengal by country boats acquired by Sahibgunj and the notoriety achieved by Dhulian as a great receiving centre for such commodities were merely a background of suspicion and the appellant could not be tarred with the same brush as every arhatdar and grain merchant who might have been indulging in smuggling operations, without an iota of evidence in that behalf. "

15. This takes care of the argument of Mr. Sabharwal that judicial notice can be taken of the practice prevailing in the property market of not disclosing the full consideration for transfer of properties.”

53. *The Hon'ble Supreme Court in the case of K.P. Varghese vs. ITO (1981) 131 ITR 597 (SC) held that the capital gains is intended to tax the gains of assessee not what an assessee might have gained and what is not gained cannot be computed as gain and the assessee cannot fastened with the liability on a fictional income. Similarly, the Hon'ble Supreme Court in the case of CIT Vs. Shivakami Co. (P.) Ltd. (1986) 159 ITR 71 (SC) held that unless there is evidence that more than what was stated was received, no higher price can be taken to be the basis for making addition. In the present case, we do not find any material on record suggesting the payment of on-money consideration at the time of purchase of land by the respondent-assessee and its group companies. Therefore, it can be said that the Assessing Officer had failed to bring on record any reliable evidence to prove that the respondent assessee had made investment in purchase of lands over and above the stated consideration. Therefore, we do not see any perversity in the findings of the ld. CIT(A) in deleting the addition based on the seized material. The findings given by us in relation to the appeal filed by the assessee for the same year also equally holds good in respect of present appeal and therefore, we do not find any merit in the appeal filed by the Revenue and we dismiss the appeal. Accordingly, we dismiss the appeal filed by the Revenue.”*

24. In light of the above facts as well as legal precedents, we find that firstly in absence of any name of the assessee or its partners in the seized material, ld. AO erred in making the addition for the amount mentioned against the “367 *Makhmalabad*” land mentioned in the seized material and we further hold that ld.AO grossly erred in extrapolating the figures of the alleged on money in absence of any corroborative incriminating material or any other information procured through independent examination of the facts and therefore the impugned addition in our considered view is based on surmises and conjectures and has rightly been deleted by ld.CIT(A) on due observation that the impugned addition has been made without any tangible evidence and solely on the basis of estimations and extrapolation. Finding of ld.CIT(A) needs no interference. Ground Nos. 1 to 4 raised by the Revenue are dismissed.

25. In the result, appeal of the Revenue is dismissed.

Order pronounced on this 27<sup>th</sup> day of January, 2026.

Sd/-

[VINAY BHAMORE]  
JUDICIAL MEMBER

Sd/-

[MANISH BORAD]  
ACCOUNTANT MEMBER

Pune, Dated : 27<sup>th</sup> January, 2026  
*Satish*

Copy to

1.	The appellant
2.	The respondent
3.	The Ld. PCIT concerned.
4.	D.R. ITAT, "B" Bench, Pune.
5.	Guard File.

//True Copy //

By Order

Assistant Registrar,  
ITAT, Pune Benches,  
Pune.