

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'B' BENCH, LUCKNOW**
BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER
ITA Nos.374 & 375/LKW/2017
A.Ys. 2005-06 & 2009-10

M/s MODEL TANNERS (INDIA) PVT. LTD., C/o Sultan Tanners, Jajmau, Kanpur-208010	vs.	ACIT, Central Circle-II, Kanpur
PAN: AAACM9319D		
(Appellant)		(Respondent)

Assessee by:	Sh. Ashish Jaiswal, Adv
Revenue by:	Sh. Puneet Kumar, CIT DR
Date of hearing:	04.11.2025
Date of pronouncement:	30.01.2026

ORDER

PER NIKHIL CHOUDHARY, A.M.

These two appeals have been filed by the assessee against the orders of the Id. CIT(A)-4, Kanpur, both dated 28.02.2017 against the orders of the Id. AO passed under section 153C r.w.s. 153A of the Income Tax Act, 1961 for the A.Ys. 2005-06 and 2009-10 respectively, wherein the Id. CIT(A) has partly allowed the appeal for the A.Y. 2005-06 and dismissed the appeal for the A.Y. 2009-10. The grounds of appeal are as under:-

ITA No.374/LKW/2017 A.Y. 2005-06

"01. Because the CIT(A) has failed to appreciate the facts and circumstances of the case and has arbitrarily held, that the order passed by the Assessing Officer is in conformity with the provisions of section 153C, which finding is bad in law, the order passed be quashed.

02. Because no incriminating material relating to or belonging to the assessee was found at the time of search, the entire assessment framed under section 153C read with section 153A and upheld by the CIT(A) is without jurisdiction, bad in law and be quashed.

03. Because in absence of any incriminating material, the assessment framed by the Assessing Officer under section 153C read with section 153A and upheld by the CIT(A) is bad in law and be quashed.

04. Because in any case, the order passed by the CIT(A) is bad in law and be quashed.

05. Because the CIT(A) has erred on facts and in law in upholding the disallowance of deduction of Rs. 1,91,12,870/- claimed u/s 801B) which disallowance is arbitrary and be deleted.

06. Because the CIT(A) has failed to appreciate that sale proceeds of licence of Rs.2,31,21,485 and duty draw back Rs.95,10,794/- are all part of the revenue account relating to and belonging to the industrial undertaking and its activity the same is eligible for deduction u/s.801B of the Act, 1961, the deduction claimed u/s.801B be allowed.”

ITA No. 375/LKW/2017 A.Y. 2009-10

“01. Because the CIT(A) has failed to appreciate the facts and circumstances of the case and has arbitrarily held, that the order passed by the Assessing Officer is in conformity with the provisions of section 153C, which finding is bad in law, the order passed be quashed.

02. Because no incriminating material relating to or belonging to the assessee was found at the time of search, the entire assessment framed under section 153C read with section 153A and upheld by the CIT(A) is without jurisdiction, bad in law and be quashed.

03. Because in absence of any incriminating material, the assessment framed by the Assessing Officer under section 153C read with section 153A and upheld by the CIT(A) is bad in law and be quashed.

04. Because in any case, the order passed by the CIT(A) is bad in law and be quashed.”

2. In the assessment year 2005-06, the assessee has also prayed for admission of certain additional grounds which are as under: -

“1. THAT THE ASSESSMENT PROCEEDING INITIATED U/S. 153C OF THE IT ACT, 1961 IS WITHOUT JURISDICTION AND VOID AB INITIO AS BEYOND PERIOD OF SIX ASSESSMENT YEAR AS PRESCRIBED BY THE FIRST PROVISO TO SECTION 153C OF THE IT ACT, 1961.

2. THAT THE ASSESSMENT HAS BEEN COMPLETED BY THE LD. AO WITHOUT VALID AND LAWFUL APPROVAL OF JCIT MANDATORILY REQUIRED U/S. 153D OF THE IT ACT, 1961.”

It has been submitted that the above grounds of appeal were purely legal in nature and went to the root of the matter and therefore, they may kindly be admitted in the interest of justice. Reliance was placed upon the decision of the Hon’ble Supreme Court in the case of National Thermal Power Company Limited

vs. CIT (1998) 229 ITR 383 (SC). The admission of the said additional grounds was opposed by the Id. CIT DR on the grounds that these were not questions of law but these were mixed questions of law and fact. The first question required discovery of when the seized documents were handed over and the same was not available on the records while the second question required examination of the approval process by the Id. Range Head. Accordingly, they were not fit grounds for admission. We have duly considered the matter. Whether the proceeding initiated under section 153C is without jurisdiction and *void ab initio*, is a pure question of law which requires to be considered. The fact that some enquiry may be required to determine the facts upon which validity of the assessment depends, cannot be a ground in our view to refuse to admit the said ground. Similarly, the issue of whether the approval of the JCIT was valid and legal is a matter to be decided in the light of various decisions of the Courts and Tribunals. Accordingly, since it effects the validity of the assessment, it is also fit to be admitted for consideration. Accordingly, both the grounds were admitted for considering the appeal of the assessment year 2005-06.

3. The facts of the case are that for the A.Y. 2005-06, a return of income was filed under section 139(1) on 31.10.2005. During the course of scrutiny proceedings, the Id. AO had referred the case for special audit under section 142(2A) vide his order dated 27.12.2007. The assessee challenged the said order vide a Writ Petition Bearing No. 176/2008 and the Hon'ble Allahabad High Court stayed the operation and effect of the said order dated order dated 27.12.2017 till final decision was taken in the matter. Thus, the assessment proceedings came to be stayed. Subsequently, a search was carried out in the case of Sh. Mehtab Alam, one of the Directors of the company and Smt. Nausheen Farah Lari while they were boarding a flight to Kolkata on 24.09.2010 from Amausi Airport, Lucknow. During the course of the search, Rs. 2 Crores were recovered from their possession. Besides this cash, some documents were also found among which, was a letter addressed to the AGM, Canara Bank Overseas Branch, Civil Lines, Kanpur issued by the Director M/s Model Tanners India Pvt. Ltd., Unit-II, Jajmau, Kanpur which

was marked at page no. 5 of the seized material bearing identification mark LP-1. The said letter, addressed to the AGM stated that a sum of Rs. 50,00,000/- had been withdrawn from the Branch for the purpose of purchase of Rawhides from Kolkata due to the lesser price prevailing in the market and this cash was being carried by Mr. Mehtab Alam. The bank was requested to issue a certificate for the aforementioned purpose. Consequent to this search, the case of the assessee was centralized with the DCIT, Central Circle-I, Kanpur on 23.03.2012. Subsequently, it was transferred to the DCIT, Central Circle-II. Prior to this, the ACIT, Central Circle-I, (who was also the Assessing Officer for Sh. Mehtab Alam and Smt. Nausheen Farah Lari) recorded a satisfaction that the said document pertained to the assessee and he accordingly initiated proceedings under section 153C r.w.s. 153A of the Income Tax Act in respect of the assessee for the search year and the six years preceding. The ld. AO observed that the assessee was a Manufacturer and Exporter of leather products, it had two units situated at Unnao and Banther and was claiming deduction under section 80IB. Despite being asked to, the assessee did not file evidences / explanation in the proceedings before the ld. AO to substantiate its claim for deduction under section 80IB for Unit -II i.e. the unit at Banther. The ld. AO, on the basis of some material available on record concluded that the assessee in order to claim deduction under section 80IB at 100% for Unit-II, had diverted its profits. He therefore, disallowed claim of 80IB on the second unit amounting to Rs. 1,91,12,870/-. He also noticed that certain statutory amounts were payable by the assessee on the due date of the filing of the return and therefore, he disallowed these also to the extent of Rs. 4,70,419/-. Thereafter the matter of the writ against the original assessment came up for hearing before the Hon'ble High Court. The Hon'ble High Court was informed that in the interim period of the stay, a search operation had been conducted on 24.09.2010 at Amausi Airport, Lucknow and consequent to this search, a notice under section 153C had been issued on 16.05.2012 which had culminated in an assessment passed by the ACIT, Central Circle-I, Kanpur on 31.03.2013. It was submitted before the Hon'ble High Court that with the issue of assessment in the case of

search or requisition under the second proviso to section 153A of the Act, the assessment relating to the present assessment year had abated by operation of law. The Hon'ble High Court had agreed that the assessment of the relevant assessment year has since abated and therefore, dismissed the writ petition.

4. Aggrieved with the additions made in the assessment order, the assessee went in appeal before the Id. CIT(A). Before the Id. CIT(A), it was submitted that the order passed under section 153C dated 31.03.2013 was without jurisdiction, bad in law and fit to be quashed because there was no satisfaction as contemplated under section 153C. It was submitted that there was neither any money, bullion, jewellery or any other valuable article or thing or books of accounts or documents seized which belonged to the assessee and therefore, the entire action under section 153C was without jurisdiction and therefore, the order was liable to be cancelled. It was accordingly, submitted that the entire proceedings were *void ab initio*. The additions made by the Assessing Officer during the course of assessment were also challenged. Subsequently, the Id. CIT(A) records that the assessee withdrew the original grounds of appeal on additions of Rs. 2,31,21,485/- and Rs. 95,10,794/- being sale proceeds of license and duty drawback which were not part of industrial activity and hence not eligible for deduction under section 80IB of the Act and they also withdrew the appeal against the addition of Rs. 4,70,419/- on account of statutory dues not paid before the due date of the filing of return. In dealing with the issue of the assessment being *void ab initio*, it was submitted that no satisfaction as contemplated under section 153C had been drawn up because satisfaction had to be recorded that the seized material contained any undisclosed income or that the material seized was incriminating in nature. On the other hand, the satisfaction notes proceeded on the basis of needing to make enquiries without forming any reasonable belief that there had been found to be any income which had not been disclosed by the assessee. Furthermore, the entire amount of Rs. 2 Crores seized from the possession of Sh. Mehtab Alam and Smt. Nausheen Farah Lari had been accepted and explained in their hands. It was further submitted that the transaction relates to an event that happened on 24.09.2010 and had no

relevance / connection for the year under consideration therefore, because there were no such documents, books of accounts, valuable articles or things relating to the year under consideration, the very assumption of jurisdiction to issue notice under section 153C for the year under consideration did not arise. It was submitted that it had been held in a number of cases namely All Cargo Global Logistics Limited vs. DCIT 137 ITD 287, ACIT, Mumbai vs. Jayendra P. Jhaveri (ITA Nos. 2141-2144/MUM/212) that if no incriminating material had been found, an assessment under section 153C could not be made for that particular year and if the same was done, it would be *void ab initio*. Thus, the ld. AO only had jurisdiction to frame an assessment under section 153C if incriminating material pertaining to that year was available. It was submitted that ground nos. 1 and 2 of the memorandum of appeal related to disallowance of deduction under section 80IB. This matter was not related to assessment to be framed under section 153C. It related to an assessment to be framed under section 143(3). On the day when the order under section 153C was passed, the original assessment proceedings under section 143(3) was stayed by the Hon'ble High Court. The Hon'ble High Court had vacated the stay at a later date. Thus, the assessment proceedings under section 143(3) became alive on that later date and the additions could have been made in that assessment. However, the matter could not be considered in the assessment under section 153C. Thus, the addition made by the AO by disallowing the deduction claimed under section 80IB was not only erroneous but misconceived and without jurisdiction. The ld. CIT(A) forwarded these additional grounds to the AO for his comments and the AO replied that the satisfaction note was recorded on 16.05.2012 on the basis of a search and seizure operation conducted on 24.09.2010, on the basis of cash of Rs. 2 Crores seized from Sh. Mehtab Alam and Smt. Nausheen Farah Lari at Chaudhary Charan Singh Airport, Lucknow which were sought to be explained by letters addressed to Bank Managers, one of which was pertaining to the assessee for an amount of Rs. 50 Lacs. Therefore, there were good and sufficient grounds to issue notice under section 153C. The ld. CIT(A), thereafter, dismissed this plea of the assessee. He noted that not only was some

part of the sum of Rs. 2 Crores stated to belong to the assessee but a letter of the assessee dated to the AGM, Canara Bank had also stated that an amount of Rs. 50 Lacs was being given to Sh. Mehtab Alam in cash for purchase of Rawhides and furthermore, Sh. Mehtab Alam had also given a statement. He, therefore, held that the initiation of action under section 153C by the AO is justified. Therefore, he disallowed the additional grounds. Discussing the deduction under section 80IB and the disallowance of Rs. 1,91,12,870/-, the ld. CIT(A) held that the matter was already covered by the decision of the ITAT in ITA Nos. 561 & 562/LKW/2013 for the A.Ys. 2008-09 and 2009-10 in which the ITAT had decided the issue in favour of the Revenue. Hence, following these orders of the ITAT, he confirmed the disallowance of Rs. 1,91,12,870/-. He also dismissed the grounds of the assessee relating to charge of interest but he allowed the disallowance of certain expenditures on adhoc basis and accordingly partly allowed the appeal of the assessee.

5. In the A.Y. 2009-10, the AO issued a notice under section 153C on 16.05.2012, in response to which the assessee submitted that the return e-filed on 26.09.2009 under section 139(1) may be treated as the return filed in compliance to the notice under section 153C. Thereafter, the AO noted that during the scrutiny assessment of the case under section 143(3), the income of the assessee had been determined at a total income of Rs. 96,29,100/- and therefore, he assessed the income of the assessee at Rs. 96,29,100/- and issued the notice of demand and *challan* accordingly.

6. The assessee was aggrieved against this order passed by the ld. AO and he accordingly filed an appeal against it. It was submitted that the AO had made several mistakes in making additions under section 14A amounting to Rs. 1,34,058/- and disallowing a deduction of Rs. 11,71,898/- under section 80IB of the Income Tax Act. Besides this, the AO had also erred in holding that the amounts of Rs. 4,24,17,204/-, being sale proceeds of license and Rs. 1,97,98,180/- being duty drawback were not part of industrial activity and hence not eligible for deduction under section 80IB of the Act. The assessee also filed additional ground

in which he challenged the notice under section 153C and the subsequent order framed under section 153C r.w.s. 153A.

7. The ld. CIT(A) considered the arguments of the assessee and referred the matter to the AO for a report. Upon receiving the report, he dismissed these grounds of the assessee on the same logic that he dismissed these grounds for the proceedings for the A.Y. 2005-06. With regard to the disallowances in the assessment order, the ld. CIT(A) noted that the computation of total income in the assessment under section 153C r.w.s. 153A was based on the total income of the original assessment order under section 143(3) dated 30.09.2011. The said assessment order had been agitated before the ld. CIT(A)-2, Kanpur and who had confirmed the additions. The matter had subsequently travelled to the ITAT which had set aside the issue of addition on account of section 14A to the file of the AO. Therefore, the ld. CIT(A) held that in view of this direction of the ITAT, the AO should re-compute the income accordingly for the assessment made in pursuance to section 153C also and accordingly he held that ground nos. 1 and 2 were infructuous and he treated them as dismissed. On the issue of disallowance of deduction of Rs. 11,71,898/-, he observed that the ITAT Lucknow in ITA Nos. 561 & 562/LKW/2013 had already decided the issue against the assessee and therefore, he declined to interfere with the computation of total income. He, therefore, dismissed the ground for statistical purposes.

8. The assessee is aggrieved at these orders passed by the ld. CIT(A) and has accordingly come in appeal before us. Sh. Ashish Jaiswal, Advocate (hereinafter referred to as the ld. AR) arguing on behalf of the assessee submitted that consequent to the search proceedings conducted in the case of Sh. Mehtab Alam and Smt. Nausheen Farah Lari on 24.09.2010, the PAN of the assessee was transferred to Central Circle vide order under section 127 dated 23.03.2012. The satisfaction note was recorded thereafter and notice under section 153C was issued on 16.05.2012 for the A.Y. 2005-06 to the A.Y. 2010-11. It was submitted that as per the first proviso to section 153C, the reference to the date of initiation of search under section 132 in the second proviso to sub section 1 of section 153A

was to be construed as reference to the date of receiving the books of accounts or documents or assets seized or requisitioned by the AO having the jurisdiction over such other person. It was submitted that the issue of the proviso to section 153C for considering six assessment years for assessment on the basis of the date of initiation of the search under section 132 or date of receiving satisfaction note recorded by the AO of the other person had been settled by the Hon'ble Supreme Court in the case of PCIT vs. Shalimar Town Planners Pvt. Ltd. in Civil Appeal Nos. 6049 of 2023 dated March 2, 2024 where the Hon'ble Supreme Court had held that the notices issued under section 153C would be valid for a period of six years from the end of the financial year preceding the date on which satisfaction was recorded in terms of the decision in CIT vs. Jasjit Singh (2023) 155 taxman.com 295 SC. It was submitted that during the pendency of the writ petition before the Hon'ble High Court, a search and seizure operation had been carried out under section 132(1) on 24.09.2010 at Amausi Airport, Lucknow. Consequently, the cases had been centralized and a notice under section 153C was issued, in respect of which the assessment was completed on 31.03.2013. It was submitted that the Hon'ble High Court had dismissed the writ as infructuous on the issue of special audit under section 142(2A) as the assessment under section 153C had been completed on 31.03.2013 in consequence to the search proceedings. Thus, the observation of the Id. AO and comments that the Hon'ble High Court has decided the issue of additional ground of appeal was misplaced as the Hon'ble High Court had neither adjudicated the issue as to whether assessment year 2005-06 in the case fell within the six assessment years as per the first proviso nor given any finding on this relevant issue. It was submitted that the Hon'ble High Court had simply dismissed the writ on the issue of special audit under section 142(2A) as infructuous, on the submission made by the counsel of the appellant that the assessment had been completed in consequence to a search. The Hon'ble High Court had not done any adjudication or recorded any finding as to the relevant assessment year which would fall under six assessment years under section 153C (1) first proviso. On the facts of the case and the settled provision of law by various

judicial precedents, finally settled by the Hon'ble Supreme Court in the case of CIT vs. Jasjit Singh (supra) that the notices under section 153C would be valid for a period of six years from the end of the financial year preceding the date on which the satisfaction was recorded, the instant year, i.e. A.Y. 2005-06 would not come within six assessment years and the assessment completed was beyond the six years and therefore, without jurisdiction. Thus, it was submitted that the assessment proceedings initiated under section 153C on 16.05.2012 was without jurisdiction, being beyond six assessment years as prescribed under the first proviso of section 153C(1) of the Act. It was submitted that the satisfaction notes and notice have been issued on 16.05.2012, therefore, the hand over to the AO or such other person of seized material was 16.05.2012. Thus, no assessment before assessment year 2007-08 could have been opened in the instant case and the current year would be assessment year 2013-14. The ld. AR further submitted that even if it was assumed that the case of the assessee was centralized under section 127 on 23.03.2012 subsequent to which notice under section 153C of the Act was issued then also, the current year would be assessment year 2012-13 and the preceding six years would be the assessment year 2006-07 to assessment year 2011-12. In this case also, the assessment year 2005-06 would be beyond the six assessment years and the assessment proceedings under section 153C was without jurisdiction. Accordingly, since the assessment proceedings initiated for assessment year 2005-06 was beyond six assessment years, the assessment proceedings initiated and completed were without jurisdiction and *void ab initio*. The ld. counsel placed reliance on the following case laws in support of his contention as under:-

1. Principal Commissioner of Income-tax v. Shalimar Town Planners (P.) Ltd vide CIVIL APPEAL NOS. 6049 OF 2023 DATED MARCH 21, 2024
2. CIT v. Jasjit Singh [2023] 155 taxmann.com 155/295 Taxman 612/458 ITR 437 (SC)
3. K.S. Nutrition and Food (P.) Ltd. Vs. ITO, ITA No. 2005 (Delhi) of 2018 dated 21.04.2022
4. ACIT Central Circle-1 vs. M/s Lucknow Mall Developers Pvt Ltd., ITSSA No.239 & 240/Lkw/2020 dated 12.10.2021
5. M/s Mehdipur Balaji Impex Pvt Ltd vs. DCIT CC-2, ITA No.97 & 98/Lkw/2019 dated 06.04.2021

6. M/s Mehdiipur Balaji Impex Pvt Ltd vs. DCIT CC-2, ITA No.103/Lkw/2019 dated 29.12.2021
7. M/s Bina Fashions N Foods (P) Ltd vs. DCIT Central Circle 2, ITA No.610/Del/2016 dated 17.10.2020
8. PCIT vs. Sarwar Agency (P) Ltd., ITA No. 422 of 2017 dated 17.08.0217
9. CIT vs. RRJ Securities Ltd., ITA No.164,175 & 177 of 2015 dated 30.10.2015
10. Chain Roop Baid vs. ACIT, Circle-4, ITA No. 79 (Gau) of 2012 dated 22.01.2015”

It was further submitted that if the observation of the ld. AO was to be subscribed to then the order of the Hon'ble High Court would result in meaning that six assessment years was to be considered from the date of search as per section 153A and not as per the first proviso to section 153C (1), which could never be the intention of the Hon'ble High Court as matter had neither been brought before the Hon'ble High Court for adjudication on this matter nor had the Court had given any finding in this issue. Furthermore, the issue stood settled by the order of the Hon'ble Supreme Court in the case of CIT vs. Jasjit Singh (2023) 458 ITR 437 SC. In view of the same, it was submitted that the assessment proceedings for the assessment year, being initiated beyond six assessment years deserved to be quashed. Without prejudice to these arguments, the ld. AR also submitted that an assessment under section 133C could not be framed in the absence of incriminating material which had and for the same he placed reliance on the decision of the Hon'ble Supreme Court in the case of DCIT, Central Circle-20 vs. M/s UK Paints (Overseas) Ltd., in Civil Appeal No. 6634 of 2021 dated 25.04.2023 where the Hon'ble Supreme Court had confirmed the order of the Hon'ble High Court, which quashed the assessment order in the absence of incriminating material. The ld. AR also drew our attention to the decision of the Hon'ble Supreme Court in the case of CIT-3, Pune vs. Singhad Technical Education Society (2017) 397 ITR 344 (SC) wherein as per the provisions of section 153C incriminating material which was seized had to pertain to the assessment year in question and in the present case, there was no incriminating material that pertained to the assessment year in question. Therefore, it was submitted that the proceeding initiated and completed under section 153C were *void ab initio*.

9. For the A.Y. 2009-10, the Id. AR submitted that the AO had merely repeated the order that was passed under section 143(3) and since the matters already stood covered in the scrutiny assessment, they could not be the subject matter of an assessment under section 153A. However, since they had been made part of the order under section 153A, the assessee was justified in agitating the additions made in this regard in the order under section 153C r.w.s 153A. Furthermore, the Id. AR argued that in view of the fact that there was no incriminating material recovered against the assessee during the course of search on Sh. Mehtab Alam and Smt. Nausheen Farah Lari, the proceedings under section 153C did not lie against the assessee and were *void ab initio*. It was also submitted that since no material was recovered pertaining to six assessment years, no additions could be made in respect of this assessment year. The Id. AR also submitted that copies of various judgments before us in both his paper book and during the course of hearing.

10. Responding to the said arguments, the Id. CIT DR, Sh. Puneet Kumar, CIT DR pointed out that the Id. AR was completely misplaced in challenging the application of section 153C upon the assessee. He pointed out that in the search operation conducted on Sh. Mehtab Alam and Smt. Nausheen Farah Lari on 24.09.2010 not only had cash belonging to the assessee being seized but that a letter had been seized that belonged to the assessee, which was addressed to his Branch Manager and which sought to explain a certain amount of the cash that was found with Sh. Mehtab Alam. Therefore, since part of the cash was stated to belong to the assessee and document was found belong to the assessee, the provisions of section 153C were clearly attracted. The Id. CIT DR questioned the interpretation of the Id. AR on the provisions of section 153C and pointed out that the satisfaction of undisclosed income did not appear anywhere in section 153C. The only satisfaction was that the money, bullion, jewellery, other valuable article or thing, books of accounts or documents seized or requisitioned pertained to or any information contained therein related to the assessee. Thus, there was no reason to question the initiation of proceedings under section 153C against the assessee

on this account because it was quite clear that the said letter both belonged to and pertained to the assessee besides containing information regarding the assessee. With reference to the date of initiation of proceedings, it was submitted that when the ld. AO of the searched person and the ld. AO of the person against whom under section 153C were being initiated were the same, then there was no requirement of handing over of the books of accounts or documents from one AO to another. Since, the AO was the same therefore, the assessment year had to be counted from the period when he received the books of accounts for the first time. The fact that jurisdiction of the assessee may have been transferred to that AO on a later date was not material because once he had received the material pertaining to the assessee and the jurisdiction was subsequently acquired by him, the date of receiving the material will not be the date of jurisdiction but be counted from the date on which the material came into his possession. It was submitted that the date of handing over of the seized material to the AO i.e. DCIT, Central Circle-I had not been mentioned anywhere in the assessment records. However, considering that the jurisdiction had been acquired on 18.11.2011, he submitted that the assessment year 2005-06 came within the period in which proceedings could be initiated. The ld. DR further drew our attention to the decision of the Hon'ble Supreme Court in the case of Super Malls Pvt. Ltd., vs. PCIT-8, New Delhi (2020) 115 taxman.com 105 (SC) that when the AO of the searched person and the third person was same, it was sufficient by the AO to record satisfaction note that document seized from searched person belonged to other person and there was no requirement of transmitting documents so seized from the searched person. Accordingly, he prayed that there was no justification to hold that the proceedings were barred by limitation. The ld. CIT DR also argued that because the Hon'ble High Court had subsequently held that the proceedings for the A.Y. 2005-06 stood abated therefore, the entire field was open to the AO for that assessment year and the AO could accordingly make additions for disallowance of expenses claimed under section 80IB. Following the order of the Hon'ble High Court, there was no reason for the AO to frame a fresh assessment under section 143(3) because his

area of jurisdiction would not be restricted to only the incriminating materials found during the search. He drew our attention to a report submitted by the AO which contained a copy of the order of the Hon'ble Court to make his point. With regard to the A.Y. 2009-10, the Id. CIT DR pointed out that the AO had merely taken the last assessed income as the assessed income for the purpose of computing the tax. He had not made any discussions or additions or any of the issues in the course of this assessment order. Therefore, there was no occasion to entertain any appeal on any of the additions made in the original assessment order while hearing the appeal of the assessee. He noted that the matter had already travelled all the way to the ITAT and the ITAT had given certain directions. Once, those directions were complied with and the consequent orders passed, the AO will be obliged to compute the income on the basis of the last assessed income in regular proceedings. Accordingly, he argued that there was no mistake in the order of the Id. CIT in dismissing the appeal of the assessee.

11. We have duly considered the facts and circumstances of the case and the legal issues involved. A common issue in both the years is whether the initiation of the proceedings was in conformity with the provisions of section 153C. The assessee has argued that because no incriminating material was found during the course of the search on Sh. Mehtab Alam and Smt. Nausheen Farah Lari and no satisfaction of escapement of income could be arrived at from the material that was found, proceedings under section 153C could not be initiated against the assessee. He has also argued that proceedings under section 153C could not be initiated for those assessment years where incriminating material was not found. We must examine both these issues. We note from the assessment order and the order of the Id. CIT(A) that cash amounting to Rs. 2 Crores was seized from the persons of Sh. Mehtab Alam and Smt. Nausheen Farah Lari on 29.04.2010 while they were boarding a flight to Kolkata from Amausi Airport, Lucknow. Several letters were found addressed to Branch Managers by Directors of various companies, with which they were associated, suggesting that the amounts had been withdrawn by them from their bank accounts and given to Sh. Mehtab Alam

for carrying the same to Kolkata for purchase of Rawhides. One of these letters, marked as page 5 of the seized Annexure LP-1 was a letter addressed to the AGM, Canara Bank (Overseas Branch), Civil Lines, Kanpur issued by the Director of the assessee company. Thus what emerges from this seizure is that the letter contained information relating to the assessee, belonged to the assessee and sought to explain a portion of the cash that was found with Sh. Mehtab Alam on the date of the search. In our view, therefore, the ld. CIT(A) was perfectly justified in holding that the pre-conditions for initiation of action under section 153C were met because the provisions of section 153C only speak of the satisfaction of the AO to the extent that the money belongs to and the document pertains to or contains information with relation to the assessee. There is no pre-condition prescribed in the said section that necessitate a satisfaction for escapement of income. Accordingly, we can find no merits in ground no. 1 of either appeal to hold that the order passed by the AO was liable to be quashed being *void ab initio*. Furthermore, the assessee has submitted before us that no proceedings under section 153C could be initiated in respect of an assessment year to which the incriminating material did not pertain. We observe from the provisions of the Act as they stood at the time of assessment, that once action under section 153C is triggered then the AO is required to take the same action (under section 153A) as would be taken in the case of an assessee that had been searched or in whose case documents have been requisitioned. Clauses (a) and (b) of section 153A make it abundantly clear that under section 153A, the ld. AO is to issue a notice to the assessee for six assessment years preceding the year of search and also to assess / re-assess the income of those six assessment years. Hence, the fact that the incriminating material may not belong to a particular assessment year would be of no consequence, because once the provisions of section 153C are invoked, then the AO is obliged to take action as per the provisions of section 153A.

12. However, we may thereafter address the additional ground raised by the assessee in A.Y. 2005-06 (ITA No. 374/LKW/2017) that assessment year 2005-06 could not fall within the period of six assessment years in view of the first proviso

to section 153C (1) of the Act. The first proviso to section 153C (1) of the Act makes it clear that in the case of any other person referred to in section 153C, the period of limitation referred to in clauses (a) or (b) of section 153A will be counted from the end of the financial year in which the books of accounts or documents or assets seized or requisitioned, are handed over under section 153C to the AO having jurisdiction over such other person, whichever is later. It has been argued by the Revenue that in view of the order of the Hon'ble Allahabad High Court in Civil Misc. Writ Petition No. 176 of 2008, wherein the Hon'ble Allahabad High Court has recorded in para 8 of its order, that the assessment of the relevant assessment year 2005-06 has since abated, the matter has already been decided in the case of the assessee by the Hon'ble High Court and therefore, the challenge is unwarranted and liable to be dismissed. However, the assessee has submitted that the said orders of the Hon'ble Allahabad High Court only pertained to the order of the special audit passed by the AO on 29.11.2007 and the Hon'ble Allahabad High Court, acting upon the submissions of the assessee's and departmental counsels, that since the notices were issued and assessment under section 153A had been completed after search and seizure operation dated 24.09.2010 and the six previous years would include the assessment year 2005-06, the subject assessment in which the order for special audit was passed, would abate by operation of law, had concurred with the said finding and dismissed the writ application as infructuous. We agree with the assessee that the matter of the first proviso to section 153C (1) had not been placed before the Hon'ble High Court or examined by it. In the circumstances, the decision of the Hon'ble High Court to dismiss the writ petition on the grounds that the assessment proceedings had since abated on account of the submissions made before it to that effect, cannot be interpreted to hold that the Hon'ble Allahabad High Court had relaxed the conditions as laid down under the first proviso to section 153C (1). The Hon'ble Supreme Court in the case of Commissioner of Income-Tax vs M/S. Sun Engineering Works (P.) Ltd. 198 ITR 197 (SC) has held that a decision could not be interpreted out of the context to the question of law that were raised before it.

Furthermore, the Hon'ble Supreme Court in the case of Union of India & Ors vs. Dhanvanti Devi (1996) SUPP. (5) SCR 32 has pointed out that a decision is only an authority for what it actually decides and it is the essence of the decision which constitutes its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Consequently, it is seen that the issue before the Hon'ble Allahabad High Court in the said writ petition was only whether the special audit was justified or not and when arguments were presented before it to the effect that the assessment for the A.Y. 2005-06 in which the special audit had been ordered, had itself abated, the Hon'ble Allahabad High Court dismissed that writ petition as infructuous. Such an order cannot be held to be the reasoned judgment of the Hon'ble Allahabad High Court to hold that assessment year 2005-06 could be taken up for assessment under section 153C outside of the provisions of the first proviso to section 153C (1) which were never brought to its knowledge or argued before it by either party. The Hon'ble Supreme Court in the case of CIT vs. Jasjit Singh (2023) 155 taxman.com 155 (SC) has effectively settled the issue by pointing out that the application of the first proviso to section 153C (1) would not be confined just to the question of abatement but also with regard to the date from which a six year period was to be reckoned in respect of which returns were to be filed by the third party and thus the period from which the other person would be assessed would commence only from the date when the materials were forwarded to their jurisdictional AO. Upholding the orders of the Hon'ble Delhi High Court in the case of SSP Aviation Limited vs. DICT (2012) 20 taxman.com 214 (Delhi), the Hon'ble Supreme Court has held that a plain reading of section 153C supports the interpretation that the date could not, "relate back" to the date of seizure. In the circumstances, it has to be held in the case of the assessee also, that the time limits for the computation of which six-year period was to be reckoned for taking up proceedings under section 153C r.w.s. 153A, have to be as per the provisions of the first proviso to section 153C(1). The ld. CIT DR has pointed out that the date of handing of seized material to the AO is not apparent from the record but he has

also pointed out that the AO first assumed jurisdiction over the cases of the group on 18.11.2011. Therefore, if this date is to be taken into account as the first possible date of the handing over of the seized material, then assessment year 2005-06 comes within the purview. We note that as per the provisions of section 153C, even if the said date is taken to be the date of receipt of the seized material then the assessment year of the handing over would be assessment year 2012-13 and the earliest assessment year in which the assessment proceedings could be taken up under section 153C, would be assessment year 2006-07, thereby putting the present assessment year out of the purview of the scope of any assessment under section 153C r.w.s 153A. However, we note that in the present case, the case of the assessee was centralized with the same AO only on 23.03.2012 and the satisfaction note was recorded by that AO on 16.05.2012. Thus, for the purposes of counting the period in which the seized material came into the possession of the AO, the period before 23.03.2012 could not be taken into account. That being the case also, even if the date of conferment of jurisdiction is taken as the date of receipt of seized material, the earliest assessment year in which proceeding under section 153C r.w.s 153A could be undertaken in the case of the assessee was assessment year 2006-07. Thus, the present assessment year would fall outside the purview of assessments permissible under section 153C r.w.s. 153A and must therefore, held to be barred by limitation. That being the case, we allow the additional ground no. 1 and quash the assessment. In view of the fact that the assessment stands quashed on account of limitation, all other grounds preferred by the assessee not already decided are held to be infructuous and dismissed as such.

13. Coming to ITA No. 375/LKW/2017, we note that the AO has not made any additions in the present assessment order that he has passed under section 153C r.w.s. 153A. Rather he has simply reiterated the assessed income that was determined in the assessment under section 143(3) on 30.09.2011. This cannot be interpreted as adopting the findings of the first assessment order in the assessment under section 153C r.w.s. 153A, so as to give the assessee another

opportunity to appeal against the additions that were made in the assessment order passed under section 143(3) on 30.09.2011. Rather it has to be seen as adoption of the last assessed income for the purposes of computation of total income of the assessee. There is therefore, in our view absolutely no justification for the assessee to seek to challenge on merits any of the issues that were determined in the first assessment order passed on 30.09.2011 in a proceeding against the order under section 153C r.w.s. 153A. Those findings have to be challenged in the appropriate appellate proceedings, which they have already been done and the findings of the appellate authorities have to be adopted finally for the purpose of computation of total income in any subsequent assessment. Accordingly, we can find no fault with the order of the Id. CIT(A) to dismiss the appeals of the assessee as in our view also that appeal was not maintainable as issues raised therein did not emanate out of the orders under section 153C r.w.s. 153A. For the same reasons, we do not find any merit in the grounds of appeal filed by the assessee before us and they are accordingly dismissed as they are not maintainable.

14. In the result, ITA No. 374/LKW/2017 is partly allowed while ITA No. 375/LKW/2017 is dismissed.

Order pronounced on 30.01.2026 under Rule 34(4) of the ITAT Rules, 1963.

Sd/-

[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED: 30/01/2026

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)

Sd/-

[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

By order
Sr. P.S.