IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

ITA No.6197/Mum/2024 to 6203/Mum/2024
(**Assessment Years :2011-12 & 2012-13; 2014-15 to 2018-19**)

Kashyap Kanaiyalal Mehta 26/27, A Wing Ahuja Towers Rajabhau Desai Road Prabhadevi road Prabhadevi, Mumbai-400 025	Vs.	DCIT CC 4(1), Mumbai
PAN/GIR No.AAFPM4290H		
(Appellant)	..	**(Respondent)**

Assessee by	Shri Vinod Kumar Bindal CA (virtually appeared) a/w. Satish Kumar
Revenue by	Shri Ritesh Misra, CIT DR
Date of Hearing	**17/02/2026**
Date of Pronouncement	**27/03/2026**

आदेश / O R D E R

PER BENCH:

ITA No. 6197/Mum/2024

The present bunch of appeals has been filed by the assessee against the appellate orders passed by the learned

Commissioner of Income Tax (Appeals)-52, Mumbai for Assessment Years 2011-12, 2012-13 and 2014-15 to 2018-19, whereby the reassessment orders passed by the Assessing Officer under section 143(3) read with section 147 for the AY 2011-12 and u/s 153A r.ws. 143(3) for the later Assessment years 2012-13, 2014-15 to 2017-18 and u/s 143(3) for the AY 2018-19 of the Income Tax Act, 1961 have been upheld. Since common issues permeate through all these appeals and the factual matrix giving rise to the dispute is substantially identical, these appeals were heard together and are being disposed of by way of this consolidated order. For the sake of convenience, the facts as emanating from AY 2012-13 are taken as the lead year for the assessments made u/s 153A and for the AY 2011-12, separate findings rendered therein shall apply mutatis mutandis to the remaining years as well.

2. The assessee in the various grounds of appeal and additional grounds raised before us has primarily challenged the legality of the reassessment proceedings initiated under section 147 of the Act for the AY 2011-12 and the consequential additions made by the Assessing Officer. The grievance of the assessee, in substance, is that the reassessment proceedings initiated by the Assessing Officer are without jurisdiction and void ab initio. According to the assessee, the very basis of the reopening of assessment

emanates from investigation material which arose in the context of search related proceedings and therefore, the assessment of such alleged escapement of income could only have been undertaken within the statutory framework governing search assessments. The assessee has further challenged the additions made on merits on account of alleged bogus long term capital gains and the consequential addition of commission expenditure.

3. Brief facts borne out from the record are that the assessee had filed his return of income under section 139(1) of the Act on 30.09.2011 declaring total income of Rs. 66,83,960/-. The said return was processed under section 143(1) of the Act and no scrutiny assessment was framed thereafter. Subsequently, information was received from the Directorate of Investigation, Kolkata indicating that the assessee had allegedly booked accommodation entries in the nature of long-term capital gains through certain penny stock companies. Based on the said information, the assessment was reopened by issuance of notice under section 148 dated 06.03.2017. In the reassessment proceedings that followed, the Assessing Officer treated the long-term capital gain declared by the assessee on sale of shares of M/s Shree Nath Commercial & Finance Ltd. as bogus and made an addition of Rs.5,20,78,411/- under section 68 of the Act. Besides the said addition, the Assessing Officer also made an addition of

Rs.29,24,005/- under section 69C of the Act on account of alleged commission stated to have been paid for arranging the said accommodation entries.

4. The aforesaid additions were confirmed by the learned Commissioner of Income Tax (Appeals). The assessee carried the matter in appeal before the Tribunal in ITA No.1236/Mum/2019. In the said proceedings the assessee raised a legal ground challenging the jurisdiction of the Assessing Officer who had framed the reassessment order. The Tribunal restored the matter to the file of the learned CIT(A) for fresh adjudication of the said legal issue. However, even in the set-aside proceedings the learned CIT(A) rejected the contention of the assessee and upheld the reassessment order dated 28.12.2017. The assessee once again preferred an appeal before the Tribunal in ITA No.640/Mum/2023 and the coordinate bench, after examining the statutory provisions and the factual background of the case, accepted the jurisdictional challenge raised by the assessee and quashed the reassessment order holding that the Assessing Officer had not assumed valid jurisdiction in accordance with law.

> *"The Assessee/Appellant herein has preferred this appeal against the order dated 01.02.2023 impugned herein passed by Ld. Commissioner of Income Tax (Appeal) {in short 'Ld. Commissioner)'} u/s 250 r.w.s. 154 of the Income Tax Act 1961 (in short 'the Act').*

2. *In the instant, the Assessee has declared its total income of Rs. 66,83,960/- by filling its return of income dated 30.09.2011, which was processed u/s 143(1) of the Act, whereby the return filed by the Assessee was accepted and no scrutiny assessment was done. Subsequently, the case of the Assessee was reopened u/s 147 of the Act, after recording the following reasons:-*

"Information has been received from the Directorate of Investigation that an organized racket of generating bogus entries of LTCG in penny stocks has been unearthed is a result of investigation carried out throughout the country. As a result of this investigation, 64000 beneficiaries who have taken bogus entries of LTCG amounting to Rs.38,000 crores have been identified. Sh. Kashyap K Mehta, having PAN: AAFPM4290H who is assessed in this charge has also availed of such an entry. The same is reflected in the return of Income filed by the assessee for AY 2011-12 by way of claim of exemption amounting to Rs.5,22,02,762/- u/s. 10(38) of the Income tax Act, 1961.

The Directorate of Investigation has made available various confessional statements of entries involved in the transactions for generating such bogus claims of LTCG. I have examined these statements and the detailed report of the investigation. I have also examined these evidence vis-a-vis the return of income filed by the assessee. After appraisal of these material on record, Here is enough reason to believe that not only the claim of exemption u/s.10(38) of the Act by the assessee at Rs.5,22,02,762/- is prima facie bogus but by making such bogus claim, the assessee has clearly failed to disclose all material facts for determination of income. In fact in this case the assessee seems to have fabricated evidence in order to mislead the revenue to believe the apparent as real".

3. *On the basis of aforesaid reasons, the notice dated 06.03.2017 u/s 148 of the Act was issued and served upon the Assessee, in response to which the Assessee vide letter*

dated 27.03.2017, filed its return of income on 27.03.2017. The Assessee also raised the objections for reopening of the case on 24.10.2017, which were disposed off, by the AO vide order dated 27.10.2017.

The Assessing Officer vide assessment order dated 28.12.2017 u/s 143(3) r.w.s. 147 of the Act, ultimately made the additions of Rs. 52078411 /- by treating the capital gain transaction as non genuine and unexplained cash credit u/s 68 of the Act, representing, the undisclosed income and of Rs. 29,24,005/- being 6% of Rs. 4,87,33,411/- as commission u/s 69C of the Act, for providing arranged capital gains to various parties.

4. *The Assessee being aggrieved carried the matter uoto the level of the ITAT. The Hon'ble ITAT vide order dated 24.06.2022 remanded the case to the file of the Ld. Commissioner for decision afresh. In the remand proceedings before the Ld. Commissioner, the Assessee challenged the jurisdiction of the assessing officer as well as additions on merit. The Ld. Commissioner vide impugned order dated 01.02.2023 affirmed the said additions and also the jurisdiction of the assessing officer in passing the assessment order dated 28.02.2017.*

5. *The Assessee being aggrieved is an appeal before us and raised the following grounds of appeal as under:-*

1. The CIT(A) erred in law and on facts by not following the binding precedent decision of the Hon'ble ITAT 'D' Bench, Mumbai vide order dated 28/07/2022 passed in the case of Mrs. Rupal Kashyap Mehta, the spouse of the assessee on identical facts/law, thereby breaking the principles of judicial discipline which require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities as enunciated by Apex Court judgement in UOI vs Kamlakshi Finance Corporation Ltd. Thus, the impugned appellate order and the original

assessment order in appeal must be declared as illegal and void ab initio.

2. *The CIT(A) erred in law and on facts in dismissing the following grounds of appeal taken / relating to the jurisdictional error occurred due to:*

a.) *Non-issuance of the mandatory assessment jurisdiction transfer order u/s 127(2) of the Act by PCIT, while transferring assessment jurisdiction from the ITO Ward 27(3)(2) Mumbai to the ACIT 21(2) Mumbai.*

b.) *Non-issuance of the mandatory intimation u/s 129 of the Act for change in the incumbent AO and never given to the assessee by the AO.*

c.) *Framing the impugned assessment order by illegally assuming jurisdiction u/s 147 of the Act instead of the correct section 153A r.w.s. 153C of the Act, by relying on an incriminating information found by the revenue, admittedly in a search on a third party.*

Thus, the impugned assessment order passed u/s 147 of the Act is void ab initio and liable to be quashed as illegal.

3. *The CIT(A) erred in law and on facts otherwise also in not adjudicating the ground restored by the Hon'ble ITAT challenging the addition of Rs. 5,20,78,411/- made u/s 68 of the Act for LTCG on sale of listed equity shares of Shreenath Commercials and Finance Ltd relying on a report of the investigation wing of the department and some statements recorded u/s 132(4)/ 131 of the Act at the back of the appellant without giving copies of the material gathered and cross examination of the persons whose statements were relied by the revenue. Thus, the impugned addition by incorrect application of law and assumption of a void ab initio jurisdiction must be deleted.*

4. *The CIT(A) erred in law and on facts otherwise also in*

not adjudicating the ground restored by the Hon'ble ITAT challenging the addition of Rs. 29,24,005/- made by the AO u/s 69C of the Act alleging the same to be an unexplained expenditure being commission @ 6% of the amount of e long-term capital gain on sale of those listed equity shares, merely on surmises/r conjectures and without any basis / evidence. Thus, the impugned addition made on presumptions must be deleted.

5. The Ld. CIT(A) erred in law and on facts in considering the gain on sale of shares of M/s Shreenath Commercial & Finance Ltd. As penny stock without appreciating the documents, evidences etc. submitted in the assessment as well as appellate proceedings supporting the genuineness of the transactions of sale and purchase of shares. Thus, the addition must be deleted.

6. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.

6. *At the outset, we observe that the Assessee has raised the legal ground (2 c) with regard to the jurisdiction of the assessing officer in framing the assessment u/s 147 of the Act instead of section 153A r.w.s. 153C of the Act by relying on an incriminating information found by the Revenue, in search operation on a 3rd party.*

6.1 *We observe the similar issue was also raised before the Hon'ble Tribunal in Assessee's wife case i.e. Rupal Kashyap Mehta Vs. ITO Ward-21(3)(1) (ITA No. 1235/Mum/2019 decided on 28.07.2022 and Hon'ble Tribunal in that case has clearly held the assessment order u/s 147/143(3) as void-ab-initio being passed without assuming valid and legal jurisdiction u/s 153A of the Act. For completeness and ready reference, the conclusion drawn by the Hon'ble ITAT, is reproduced below.*

18. We have heard the rival submissions and perused the relevant record available before us, on the issue of jurisdiction of the AO on both the counts as raised by assessee before us as discussed above and the relevant law on these points. First of all, in order to appreciate the issue raised by assessee in the aforesaid submissions, the provisions of the section 153A of the Act as were applicable during the relevant period need to be appreciated which was as below:

153A. *(1) 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 the 31st day of May, 2003 [but on or before the 31st day of March, 2021], the Assessing Officer shall—*

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years [and for the relevant assessment year or years] referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made [and for the relevant assessment year or years:

Provided *that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years [and for the relevant assessment year or years:*

Provided further *that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years* ***and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate****:*

Provided also *that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years:*

Provided also *that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—*

(i) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant

assessment year or in aggregate in the relevant assessment years;

(ii) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

a. the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

*Explanation 1.—For the purposes of this sub-section, the expression "**relevant assessment year**" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which **falls beyond six assessment years** but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.*

*Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, **deposits in bank account**.*

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner:

***Provided** that such revival shall cease to have effect, if such order of annulment is set aside.]*

Explanation.—For the removal of doubts, it is hereby declared that,—

(i) save as otherwise provided in this section, section 153B

and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

19. Thus, on perusal of the above, it is clear from the language in the **Second Proviso** to the Section 153A(1) of the Act w.e.f. 01/04/2017 which envisages, *"Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years* ***and for the relevant assessment year or years*** *referred to in this sub-section* ***pending on the date of initiation of the search*** *under section 132 or making of requisition under section 132A, as the case may be,* ***shall abate****"*. Ergo, on the search has taken place and AO was in possession of any documents, information or evidence which reveal that the income has escaped assessment amounts to or is likely to amount to Rs. 50 lakhs or more in the relevant assessment year or in aggregate in relevant assessment years, if falls within 10 assessment years from the end of assessment year in which search has been conducted, then the AO can on resort to frame the assessment u/s 153A.

20. It is an undisputed fact that the reassessment proceedings initiated by notice u/s 148 of the Act issued on 31/03/2017 were pending on the date of the search, i.e., 06/10/2017 and the impugned assessment order was passed later on 28/12/2017. Once search u/s 132(1) or requisition u/s 132A has taken place, then the provisions of section 153A gets triggered and AO has to mandatorily pass assessment order for the period prescribed therein. Second proviso clearly provides

that, all the pending assessment on the date of search gets abated. Here in this case assessment proceedings initiated u/s148 was pending on the date of search. Thus, the AO should have treated the pending assessment proceedings initiated u/s 148 of the Act for this AY 2011-12 as abated, because it fell in the extended period of 4 relevant assessment years as per the provision brought from 1.04.2017. It is neither, the assessee's acquiescence nor the AO's discretion in this matter, because it is purely a matter of jurisdiction which needs to be acquired in accordance with the statute. It was incumbent upon the AO to pass order u/s 153A, as after the amendment if the AO is in possession of any document or other evidence which reveal that the income which has escaped assessment is more than Rs. 50 lakhs, which here in this Rs. 6.93 crores. The AO here in this case did not act upon in accordance with the law though specifically brought to his notice by the assessee in writing before completing the reassessment on 28/12/2017. The additional time of 4 years were specifically brought within the scope of ***relevant assessment years*** *inserted by the Finance Act, 2017,w.e.f. 01/04/2017, if the income escaped assessment is more than Rs. 50 lakhs in terms of 4th Proviso. It is noteworthy that prior to the enactment of the Finance Act 2017, the period covered by the sections 153A/153C and 148 of the Act was limited to the six years only. It is trite law that if there is a special provisions for assuming jurisdiction to pass order, it will always prevail over the general provisions which cannot at all be resorted to make a thing or act apparently permissible which is otherwise impermissible under the special provisions.*

21. It is clear as per scheme of the Act, the provisions of the section 148 of the Act were not at all available for a period of the ten years including for

*the relevant assessment year in this case. The rule of construction which is relevant to the present issue is expressed in the maxim "**generalia specialibus non derogant",** meaning where there is a conflict between a general or special provision, the latter shall prevail. This proposition has been upheld in **Forbes Campbell & Co. Ltd. v. CIT (1994) 206 ITR 495 (Bom)**. The Hon'ble Supreme Court in in **CTO vs. Binani Cement Ltd. & Anr on 19 February, 2014- CIVIL APPEAL NO.336 OF 2003,** after considering Union of India & Anr. vs. Indian Fisheries (P) Ltd. (1965) 57 ITR 331,334 (SC); CIT vs. Indian Molasses Co. (P) Ltd. (1989) 176 ITR 473 (Cal), ITO vs. Shrilekha Business Consultancy (P.) Ltd. approved the said law.*

22. *Thus, in view of the aforesaid position of law as above, we hold that the AO could have only pass reassessment order u/s 153A of the Act for the A.Y.2011-12 instead of the section 147 of the Act, because after the search, the only option to the AO was to undertake the period of 10 years for the purpose of assessment and reassessment u/s 153A of the Act and the AY 2011-12 falls within the ambit of relevant assessment years of 10 years from the date of search, as income escaped assessment was more than Rs. 50 Lakhs. AO even though might have reopened the assessment u/s. 147 on the basis of information or evidence on record, but once search u/s 132(1) has taken place, then the reassessment proceedings initiated by notice u/s 148 has to be reckoned as pending in terms of 2nd proviso to section 153A, therefore, such an assessment for the AY 2011-12 which was sought to be reopened gets abated. Once the assessment is abated, the entire assessment is open and AO should have frame the assessment /re-assessment taking into consideration all the material on record*

coming in his possession only u/s 153A, which here in this case, AO has failed to comply with the mandatory requirement of law as brought in the statute and the Finance Act 2017 w.e.f. 01.04.2017. Because here in this case, search has taken place after the amendment, therefore the amended provisions was likely to be applicable. We, therefore, hold that the assessment order u/s 147/143(3) is void ab initio being passed without assuming a valid and legal jurisdiction u/s 153A of the Act and instead he has resorted to section 147 of the Act which he could not have and is hereby quashed.

8. *Now coming to ground nos. 2 (a) and (b), the Assessee has also raised the issue that in the instant case, by transferring jurisdiction from ITO, Ward 27(3)(2) Navi Mumbai to the ACIT 21(2) Mumbai, neither the mandatory assessment jurisdiction transfer order has been passed u/s 127(2) of the Act nor the intimation u/s 29 of the Act, for change in the incumbent of AO was given to the Assessee. Therefore, the assessment order being void-ab-initio is liable to be quashed.*

8.1 *We find that the Hon'ble Tribunal in the case of Assessee's wife case i.e. Rupal Kashyap Mehta Vs. ACIT-21(2) (supra) also dealt with the identical situation/issue and categorically held that the AO ward-21(3)(1) Mumbai who passed the Assessment order in the subjected appeal, never had any jurisdiction of the Assessee's case and therefore the assessment passed by the AO is without a valid jurisdiction. For ready reference and completeness, the concluding part of the order passed by the Hon'ble Tribunal in the said case is reproduced below.*

23. Now coming to other legal ground raised by the assessee, that assessment order has been passed by the AO who did not had jurisdiction. The provisions of the section 127 of the Act are as below:

***127.** (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or] Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.*

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—

*a. where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners to whom such Assessing Officers are subordinate **are in agreement**, then the Principal Director General or Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner from whose jurisdiction the case is to be transferred may, **after giving the assessee a reasonable opportunity of being heard** in the matter, wherever it is possible to do so, **and after recording his reasons for doing so, pass the order**;*

b. where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or

Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(3) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.—In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued there under, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.

24. The reply given by the income-tax department on 21/03/2022 to the application filed by

the assessee under the Rights to Information Act 2005 seeking information about the assessment jurisdiction transfer order in her case has been scanned below:

सत्यमेव जयते

कार्यालय
Office of the
प्रधान आयकर आयुक्त-27, मुंबई
Principal Commissioner of Income Tax-27, Mumbai
चौथी मंजिल, टावर नं. 6, रेलवे स्टेशन संग्रह,
4th Floor, Tower no. 6, Railway Station Complex,
वाशी, नवी मुंबई – 400 703.
Vashi, Navi Mumbai- 400 703
Mail id: mumbai.pcit27@incometax.gov.in
Phone No.- 022-27812945

No.Pr.CIT-27/RTI/Rupal Mehta/2021-22 Date: 21.03.2022

Name of the RTI Applicant	Smt. Rupal K. Mehta
PAN of the assese	AGRPM5338E
Address of the RTI Applicant	2203, Artesia, Baburao Pendharkar Road, Hind Cycle Road, Worli, Prabhadevi, Mumbai-400025.
Date of application	Application dated 25.02.2022 received in this office Tapal on 02.03.2022.
Date of order	21.03.2022

ORDER U/S 7(1) OF THE RTI ACT, 2005

The RTI application dated 25.02.2022 filed in Tapal by Smt. Rupal K. Mehta on 02.03.2022.

2. The information sought by the RTI applicant and their replies there to is as under:

Sr. No.	Information sought	Replies thereto
(i)	The applicant has sought certified photocopy of the assessment jurisdiction transfer order passed u/s. 127(2) of I.T. Act by the PCIT-27, Mumbai to transfer the assessment jurisdiction of the assesse from ITO ward 27(3)(2), Mumbai to ITO ward 21(3)(1), Mumbai during the calendar year 2017.	As per details available on system address of applicant had been changed / updated from Ghatkopar to Worli, Prabhadevi, Mumbai-400025, accordingly PAN / assessment jurisdiction of applicant was migrated / changed from erstwhile ITO ward 27(3)(2), Mumbai to erstwhile ITO ward 21(3)(1), Mumbai through system on 14.09.2017.

4. The above mentioned RTI application is hereby disposed.

5. If the applicant is aggrieved by this order, she is entitled to file an appeal u/s. 19 of the RTI Act, 2005, within 30 days of receipt of this order before Shri Anil Kumar, Pr.CIT-27, Mumbai the First Appellate Authority, Room No.401,4th Floor, Tower No.6, Vashi Railway Station Commercial Complex, Vashi, Navi Mumbai – 400 703.

(RAJENDRA PRASAD)
CPIO & ITO (HQ) (Tech) to PCIT-27,
Mumbai.

आयकर अधिकारी (मुख्या.) तकनिकी-27, मुंबई
RAJENDRA PRASAD
Income Tax Officer (H.Q.) Tech-27, Mumbai

25. Thus, on perusal of the above provisions of the law, it is clear that the PCIT 27 Mumbai was under a legal obligation to pass a written speaking reasoned assessment jurisdiction transfer order u/s 127(2) of the Act after seeking consent from the PCIT 21 Mumbai in writing before the same could be transferred from the ITO 27(3)(2) Mumbai to ITO Ward 21(3)(1) Mumbai. Since, this legal requirement to assume jurisdiction by the AO who passed the assessment order in this appeal is completely missing, we are in agreement with the contentions of the assessee as above which were also not controverted on facts by the DR at the time of hearing and thus, we hold that the AO ward 21(3)(1) Mumbai who passed the assessment order in this appeal never held any assessment jurisdiction on the assessee and this order is held void ab initio passed by an AO without a valid and legal jurisdiction.

26. Thus, it is manifest that the AO passing the impugned assessment order did not possess any valid and legal jurisdiction and following the judgment of the Hon'ble Apex Court in Kanwar Singh Saini (supra), the same must be quashed as void ab initio.

27. In nutshell, both the above contentions of the assessee are accepted and the assessment order in this appeal is quashed on both grounds even considering those independent of each other. ***The Hon'ble Bombay High Court in Mavany Brothers vs CIT (2015) 62 taxmann.com 50 (Bom) has held in para 16 that in case the Tribunal after examining all the facts comes to the conclusion that the notice was without jurisdiction then the other issues as formulated herein will not arise for consideration. This is so as the foundation of proceedings on the other issues is the validity of the reopening notices. Since, the assessment order has been quashed as above on the jurisdiction, following the above jurisdictional High Court judgment the other grounds of appeal on merits become academic and have not been adjudicated.***

28. In the result, the appeal filed by the assessee is allowed.

9. Though the Ld. DR supported the order passed by the Ld. Commissioner and also tried to demonstrate the exercise of valid jurisdiction by the AO in making the assessment order, however it is fact that identical issues/grounds as raised by the Assessee in this appeal, have already been dealt with by the Hon'ble Tribunal in the Assessee's wife case, wherein also the identical facts and circumstances existed on the basis of same search and seizure operation carried out on dated 06/10/2017, as involved in the instant case, therefore, respectfully following the said decision of the Hon'ble Tribunal, we are inclined to accept the grounds raised by the Assessee,

which are legal in nature and consequently, quashing the assessment order itself being void-ab-initio.

10. Since, we have quashed the assessment order itself, therefore adjudication of the additions on merit would prove futile exercise, hence we are not adverting to.

11. In the result, appeal filed by the Assessee allowed.

5. Notwithstanding the fact that the reassessment order dated 28.12.2017 had already been quashed by the Tribunal for want of jurisdiction, the Assessing Officer again issued notice under section 148 dated 29.03.2018 after the search conducted on the assessee on 06.10.2017. The reopening was initiated on the allegation that the assessee had also booked bogus long-term capital gain in another listed scrip namely D.B. (International) Stock Brokers Ltd. on the basis of information allegedly received from the Investigation Wing. In the reassessment order passed on 28.12.2018, which is impugned before us in the present appeal, the Assessing Officer adopted the income assessed in the earlier reassessment order dated 28.12.2017 as the base income and further made an addition of Rs.2,27,92,240/- in respect of alleged bogus long-term capital gain on sale of shares of D.B. (International) Stock Brokers Ltd. Besides the said addition, a further addition under section 69C of the Act was made on account of alleged commission said to have been paid for arranging the said transactions.

6. The assessee challenged the aforesaid assessment order before the learned CIT(A), however the learned CIT(A) confirmed the additions made by the Assessing Officer vide order dated 23.10.2024. Being aggrieved, the assessee has preferred the present appeal before us. At the outset it may be noted that the additions involved in this appeal essentially comprise two components. The first relates to the addition of Rs.5,20,78,411/- pertaining to Shree Nath shares which had originally been made in the reassessment order dated 28.12.2017. The second relates to the addition of Rs.2,27,92,240/- pertaining to alleged bogus long-term capital gain arising from sale of shares of D.B. (International) Stock Brokers Ltd., made in the reassessment order dated 28.12.2018. Since the earlier reassessment order dated 28.12.2017 itself stands quashed by the Tribunal for want of jurisdiction, the income determined therein cannot survive and therefore cannot be adopted as the base income in the impugned reassessment order.

7. The learned counsel appearing for the assessee submitted that the present reassessment order suffers from the very same jurisdictional infirmity which had already been adjudicated by the Tribunal in the assessee’s own case for this very assessment year. It was submitted that once a search under section 132 had taken place on 06.10.2017, the

statutory provisions of section 153A stood triggered and any reassessment proceedings initiated under section 147 were liable to abate. According to the learned counsel, the reasons recorded for reopening themselves indicate that the alleged escapement of income was noticed during the search proceedings and therefore the reopening under section 148 dated 29.03.2018 was legally unsustainable.

"Reasons to believe that income chargeable to Tax escaped assessment u/s 147 of the Income Tax Act:

1. Assessee filed return of income on 30.09.2011 declaring total income at Rs. 66,88,960/-. The return was processed u/s 143(1) of the Income Tax Act, 1961. The case had been reopened by issue of notice u/s 148 of the Act. Subsequently, assessment u/s 143(3) r.w.s 147 was completed on 28.12.2017 at an assessed income of Rs. 6,16,86,380/-.

2. Subsequently, in this case, information was received from the DDIT (Inv) Unit-1 Mumbai vide letter dated 19.03.2018 that ***during the course of search/survey u/ss 132/133A in the case of M/s Sunshine Housing & Infrastructure Pvt. Ltd. and its group concern has been conducted on 06.10.2017.*** *During the proceedings, it was noticed that* ***assessee had taken accommodation entries of bogus LTCG through sale of penny stocks viz. Shreenath and M/s D B International during the F.Y. 2010-11 relevant to AY 2011-12.*** *The assessee had received large sums of money by way of sale of shares of the penny stocks of M/s Shreenath & M/s DB International and claimed benefit of exemption u/s 10(38) of the Act amounting to Rs. 7,50,52,172/-.*

4. It is to mention here that assessee had taken accommodation bogus LTCC and claimed same as exempt u/s 10(38) of the Act amounting to Rs. 7,50,52,172/-. The

Directorate Income Tax (Inv), Kolkata has undertaken the investigation regarding the issuance obtaining entries of bogus LTCG through sale of penny stock/scrips and M/s Shreenath and M/s D B International had also been identified as bogus scrip.

5. Further, I have also examined the information vis-a-vis the return of income of the assessee. After appraisal of the material on record, there is enough reason to believe that the assessee prima facie has taken the accommodation entry of bogus LTCG through sale of penny stock of scrip M/s Shreenath & M/s DB International and the assessee is clearly failed to disclose all material facts for determination of income.

6. Hence, I have reason to believe that income of Rs.7,50,52,172/- chargeable to tax, has escaped assessment by reason of the failure on part of assessee to disclose fully and true material facts necessary for its assessment for A.Y. 2011-12 within the meaning of the provisions of section 147 of the Income-tax Act, 1961."

8. On the basis of the above factual and legal position, the learned counsel submitted that the issue is squarely covered by the decision of the coordinate bench rendered in the assessee's own case. According to him, once the Tribunal had already held that the Assessing Officer could not have assumed jurisdiction under section 147 after the search dated 06.10.2017, then the present reassessment order dated 28.12.2018, which is founded upon the same search and the same nature of allegations, deserves to be quashed following the said binding precedent.

9. The learned CIT-DR relied upon the orders of the authorities below and submitted that the Assessing Officer had validly exercised jurisdiction while issuing notice under section 148. However, the learned CIT-DR could not controvert the factual position that the reasons recorded for reopening were based on the information allegedly noticed during the search proceedings conducted on the assessee.

10. We have carefully considered the rival submissions and perused the material available on record. We have also examined the earlier order of the coordinate bench of the Tribunal rendered in the assessee's own case. From a careful analysis of the facts, it becomes evident that the entire reassessment proceeding culminating in the impugned order dated 28.12.2018 is founded upon the allegation that income exceeding Rs.7.50 crores had escaped assessment on account of long-term capital gain claimed as exempt on sale of shares of the aforesaid companies and that such information had surfaced during the course of search on the assessee. Once such is the admitted factual position, the statutory scheme of section 153A becomes applicable and the Assessing Officer cannot resort to the general provisions of section 147. Respectfully following the earlier decision of the Tribunal in the assessee's own case, we hold that the Assessing Officer lacked jurisdiction to initiate reassessment proceedings under section 147 after the search dated 06.10.2017 and

therefore the impugned reassessment order is liable to be quashed as void ab initio.

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11. The aforesaid appeals have been filed by the assessee against the appellate orders dated 18/10/2024 passed by the CIT (A) for the AYs 2012-13, 2014-15 to 2018-19, whereby the respective assessment orders passed on 29/12/2019 u/s 153A of the Act were confirmed. There was an income-tax search in the premises of the assessee on 06/10/2017 having a joint search warrant as per the panchnama placed on record in the name of the assessees Kashyap Kanaiyalal Mehta, Rupal Kashyap Mehta, Sunshine Housing & Infrastructure (P) Ltd, Zenith Barter (P) Ltd only where name of any other assessee was not included.

12. The grounds of appeal taken by the assessee in brief are as below:

Firstly, addition made in absence of any incriminating material found during the course of search in the premises of the assessee where the material relied was found in income-tax searches with no common search / joint warrant in searches.

Secondly, no mandatory DIN on the body of the assessment orders.

Thirdly, incompetent and mechanical approval u/s153Dof the Act by the Addl CIT.

Lastly, illegal jurisdiction of the AO based on a void ab initio assessment jurisdictional order passed u/s 127(2) of the Act.

13. Brief facts are that during the course of the search, a statement of the assessee was recorded u/s 132(4) of the Act, though the assessee has refuted that there was any such valid statement of the assessee u/s 132(4) of the Act. It is also an admitted fact, that no material or information qua the additions made in all the assessment orders in appeal were found during the course of search as the AO has also not mentioned any such material having being detected during the search action in the premises of the assessee. Whatever material has been referred to in the assessment order as confronted to the assessee during the course of search, was available with the Authorised Officers at the relevant time having being procured from extraneous sources in income-tax searches elsewhere at different times and in none of those search warrants, the name of the assessee was appearing as per panchnamas or information of those searches placed on record. Thus, those searches were independent income-tax searches. The AO"s main reliance is based on the so-called statement of the assessee only recorded u/s 132(4) of the Act.

14. In the so-called statement recorded u/s 132(4) of the Act

on 10/10/2017, the assessee was shown the statements recorded u/s 132(4) of the Act elsewhere to rebut while recording his statement in respect of the additions made to reject the claim of Long-term capital gains as exempt u/s 10(38) of the Act for the period relevant to the **AY 2012-13**, the assessee was asked the following questions:

Q.25 Please state whether you or any of your family members have invested in the shares of D. B. (International) Stock Brokers Limited?

Ans. Sir, I confirm that the following persons have invested in D. B. (International) Stock Brokers Limited:

S.No.	*Name of person*	*Years*
1.	*Kashyap K. Mehta (self)*	*A.Y.2011-12*
2.	*RupalK.Mehta(wife)*	*A.Y.s2011-12,2012-13*
3.	*Kashyap K.MehtaHUF*	*A.Y.s2011-12,2012-13*

Q.26Please state whether you or any of your family members have invested in the shares of Shree Nath Commercial & Finance Limited?

Ans. Sir, I confirm that the following persons have invested in Shree Nath Commercial & Finance Limited:

S.No.	*Name of person*	*Years*
1.	*Kashyap K. Mehta (self)*	*A.Y.2011-12*

2.	RupalK.Mehta(wife)	A.Y.s2011-12

Q.29 What do you know about the business activity of D. B. (International) Stock Brokers Limited and Shree Nath Commercial & Finance Ltd?

Ans. Sir, I am not aware about the same. I have invested in the shares of D. B. (International) Stock Brokers Limited and Shree Nath Commercial & Finance Ltd on the recommendation and advice of Lt. Mr. Nagin Goradia.

Q.30 Who are the directors of D. B. (International) Stock Brokers Limited and Shree Nath Commercial & Finance Ltd?

Ans. Sir, I am not aware about the same. I have invested in the shares of D. B. (International) Stock Brokers Limited and Shree Nath Commercial & Finance Ltd on the recommendation and advice of Lt. Mr. Nagin Goradia.

Q.31 I am showing you the statement recordedu/s 132(4)of the I.T.Act, 1961 of Shri Raj Kumar Kedia at P-12, 2ndFloor, Hauz Khas Enclave, New Delhi. In the said statement in answer to Q.No.11 he has stated that the D.B. (International) Stock Brokers Limited is a paper company controlled and managed by various accommodation entry operators. Please offer your comments for this observation and state why the long term capital gain claimed as exempt u/s 10(38) by you, your wife Smt. Rupal K. Mehta and Kashyap K. Mehta HUF should not be treated as bogus long term capital gain and why the exemption claimed by you, your wife Smt. Rupal K. Mehta and Kashyap K. Mehta HUF should not be disallowed and taxed accordingly in the relevant years?

Ans. Sir, I am not aware that D. B. (International) Stock Brokers Limited is a paper company or not. All documentary evidences including demat statement and contract notes pertaining to D. B. (International) Stock Brokers Limited within a week's time.

15. Further, as is mentioned in the relevant para 5.22 of the assessment orders for the **AYs 2014-15 to 2018-19,** the assessee was asked as below:

Q.30 I am showing you the copy of Page No. 50 and 51 of Annexure A-4, which is seized from the premise, 12, Sharda Sadan, 7, SG Marg, Dadar East, Mumbai office of M/s Evergreen Enterprises during the course of search action u/s132of the Income-tax Act.This seized document is confronted to Ashwin Rathod, employee in M/s Evergreen Enterprises. In his statement u/s 132(4) of the IT Act on 09.10.2017, he has admitted that this document contains the details of cash loan advanced to Nilesh Bharani, partner in M/s Evergreen Enterprises and finance broker, from Sunshine Group and cash loan repaid to Sunshine Group.

Please offer your comments in this respect.

Ans: I have seen this page. I admit that I have been giving cash loan to Nilesh Bharani, partner in M/s Evergreen Enterprises, which are recorded in this page as SS. I have also received interest in cash from Nilesh Bharani.

I am unable to recollect the exact details of cash loan transactions. I have to check the facts regarding this with my records which are not with me. Please give me three days time by the end of which I will file thedetails of these cash transactions with Nilesh Bharani.

Q.31I amshowing you the copy of Page No. 328 of Annexure A-1, which is seized from the premise 12, Sharda Sadan, 7, SG Marg, Dadar East, Mumbai office of M/s Evergreen Enterprises during the course of search action u/s 132 of the Income-tax Act. This seized document is confronted to Ashwin Rathod, employee in M/s Evergreen Enterprises. In his statement u/s 132 of the IT Act on 09.10.2017, he has admitted that this document contains the details of cash loan outstanding in the name of Kashyap K. Mehta and Roopal Mehta.

Ans. As stated above, I used to do cash loan transactions with Nilesh Bharani I am unable to recollect the exact details of cash loan transactions.

I have to check the facts regarding this with my records which are not with me. Please give me three days time by the end of which I will file the details of these cash transactions with Nilesh Bharani.

It is clearly evident from the above deposition that assessee has provided cash loan to Mr. Nilesh Bharani and earned interest income on the same.

16. The Ld. Counsel of the assessee submitted that all these questions and answers relevant to the additions made in the hands of the assessee in the respective AYs clearly demonstrate and confirm the contention of the assessee that no such evidence much less incriminating the assessee in any manner was found during the course of search in the premises of the assessee searched u/s 132 of the Act and therefore, by following the judgment of the Apex Court in **PCIT vs Abhisar Buildwell (P)Ltd [2023] 149 taxmann.com 399 (SC)**, no addition at all could be made in any assessment order passed u/s 153A of the Act.

17. The ld. CIT(DR)relied on the orders of the lower authorities and vehemently stressed that since the assessee was confronted with the said information, though admittedly not found during the course of search in the premises of the assessee but was sourced by the Authorised Officers from some where else, the said statements recorded u/s 132(4) of

the Act become part of the incriminating evidence so as to justify the addition based on the directions of the Hon'ble Apex Court in Abhisar Buildwell (supra). However, the learned CIT DR could not controvert the facts as above but her only strenuous arguments were that since in the statements recorded u/s132(4)of the Act, the said information was confronted to the assessee, the same amounts to detection of incriminating material during the course of search.

18. In rebuttal Mr Bindal the ld. counsel of the assessee stated that on this issue, the judicial pronouncements on existence of the law are clear which stipulate that to make any addition u/s 153A of the Act, any material relied should have been found during the course of search in the premises of the assessee only and nowhere else. He categorically stated that if anything was found during the course of search in the premises of some other assessee where the name of the assessee did not figure at all, then the course of reassessment available with the Revenue Authorities have been specifically designed in the statute u/s 153C of the Act which is also *para-materia* and non obstante section as is the section 153A of the Act. These two sections were applicable at the relevant time only in respect of income-tax searches conducted either in the premises of the assessee or in the premises of someone else allegedly detecting incriminating material in respect of an

assessee not searched.

19. If the Revenue really wanted to take cognizance of the said material in any manner in the hands of the assessee, then the course of the said reassessment lied elsewhere and not u/s 153A of the Act which in terms of the mandate of the Hon'ble Apex Court in **Abhisar Buildwell** (supra) is unambiguously defined as below in para 14 (iv):

14.(iv)in case no incriminating materialis unearthed during the search, the AO cannot assess or reassesss taking into consideration the other material in respect of completed assessments / unabated assessments. Meaning thereby, in respect of completed / unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961.

20. Mr Bindal referred to the decision of the coordinate bench dated 27/02/2025 in the case of **Mrs Rupal Kashyap Mehta**, the wife of the assessee, in the appeals nos. ITA 6191 to 6196/M/2024 where on the identical facts, the Tribunal deleted the additions made by holding as below:

*"10. The Ld. Counsel also referred to the decision of the coordinate Bench in the case of **Nilesh Bharani vs DCIT** in appeal no. **ITA/612/Mum/2020** dated **28/02/2023** where the Bench held as below:*

91. We have already observed in our earlier paragraphs

that the entire procedure to make an assessment or reassessment of income of the alleged escaped income either u/s 148 or section 153C of the Act practically is the same except the jurisdiction and root cause which are different. The legislature has specifically carved out scope of assessment / reassessment of income of a person not searched of such alleged escaped income based on some incriminating information found during a search on some other person searched by taking recourse to the section 153C of the Act. The AO has not been empowered to extend the scope of an assessment/ reassessment u/s 153A read with the section153C of the Act beyond the alleged incriminating material found during the course of search in the case of some other person, because assessment / reassessment in such case is specifically restricted to the income based on the said incriminating information only. Whereas, in the proceedings initiated u/s148 of the Act, the AO may extend the scope of the assessment / reassessment on other amounts also if any information about those is on his record over and above the alleged escaped income as per the reasons recorded. The purpose of restriction of assessment for amount of income by taking recourse to the provisions u/s 153C of the Act to alleged incriminating material and not on suspicion has been upheld by the Hon'ble Supreme Court in the case of Sinhgad Technical Education Society (supra).

92. Accordingly, we hold that any incriminating information of any undisclosed income of the person not searched which was found during the course of a search having taken place up to 31/03/2021 on some other assessee, can only be taken into consideration for an assessment / reassessment in the hands of the said person not searched through the domain of the section 153C of the Act. Thus, any assessment /reassessment proceedings-initiated u/s 148 of the Actin respect of the said incriminating information found during the course of a search up to 31/03/2021 on some other assessee is illegal and is ab initio as the same can be considered only by taking recourse to the provisions of the section 153C r.w.s. 153A of the Act. Thus, the assessment of the said amount of LTCG, which was

claimed to be exempt u/s 10(38) of the Act by the assessee, made u/s 147 of the Act is beyond the scope of section 147, albeit it can be roped in only u/s 153C.

93. If on overall appreciation of the scheme of assessment / reassessment of income after the income-tax searches on the assessee searched and also for the persons not searched based on detection of some incriminating information during the said searches conducted upto 31/03/2021, the following legal course of action is open for the AOs, which can be summed up, in the following manner:

(i) It is mandatory for the AO of the person searched to make an assessment / reassessment of income of the said assessee u/s153Aof the Act for the6 assessment years prior to the date of search and also for the extended 4 relevant assessment years, subject to fulfillment of the prescribed conditions for the same, on the basis of an income-tax search conducted on him.

(ii) However, in the assessment / reassessment orders passed within the scope of section 153A of the Act, the AO cannot consider any undisclosed income detected by way of an incriminating information pertaining / relating to the said assessee, during an income-tax search conducted in the premises of some other assessee(s),even conducted at the sametime or in some connected matter. In such a case where AO gets any information or material about any assessee from the search of some other person, he can, make assessment of the undisclosed income/ amount emanating from such information or material for the assessment/reassessment vide separate assessment/ reassessment orders to be passed u/s 153A by taking recourse to the provisions of the section 153C of the Act. Because the cause of action for the said incriminating information for different amounts had originated in different search(es) in the different premises of other assessees and for the same, the mandatory route legislated u/s 153Cof the Act must be followed.

(iii) Further, an assessee can also be assessed multiple times u/s 153C r.w.s 153A of the Act, despite having already been assessed u/s 153A of Act on the basis of an income-tax search in his premises, where the incriminating information has been received u/s 153C of the Act by the AOs of the searched person as well as of the person not searched, which information originates in different searches at different times on different persons as well.

3. Besides the same, necessary reliance was placed on the following legal judicial pronouncements:

i. *PCIT vs Abhisar Buildwell (P.) Ltd (2023) 149 taxmann.com 399 (SC) (DOD- 24.04.2023)*

ii. *PCIT vs Jay Ace Technologies Ltd. (2023) taxmann.com 45 (SC) (DOD-28.07.2023)*

iii. *AtulBharanivsDCIT–ITANo2021/M/2023–DOD20.11.2023*

iv. *Poonam Promoters and Developers Pvt Ltd vs ACIT–ITAT Delhi ITA No. 4785/Del/2015- (DOD- 23.01.2024)*

v. *Mr.RiteshRaivsDCIT–ITATChennai–ITANo.811&812/Chny/2022–(DOD- 19.07.2023)*

vi. *PCITvsMeeraGupta–ITATDelhi–ITANo.403/2023 (DOD-27.07.2023)*

vii. *PCIT vs Kaushik Devji bhai Patel – (2023) 152 taxmann.com 462 (Gujarat) (DOD-04.05.2023)*

viii. *PCITvsJayAmbeyAromatics–(2023)156taxmann.com 691 (SC) (DOD- 24/11/2023)*

ix. *PCIT vs Oxygen Business Park(P)Ltd–(2023)157 taxmann.com 175 (Delhi) (DOD- 08/12/2023)*

x. *SakshamCommoditiesLtdvsITO(2024)161taxmann.com485(Delhi)confirmedby the Apex Court in SLPno. 51947/2024 vide order dated 16/12/2024.*

xi. *PCIT vs Pavitra Real com Pvt Ltd(2024)120CCH0035 (Delhi HC)*

xii. *Hon'ble ITAT Mumbai "D" Bench in the case of Rajeshkumar Ramesh chandra Shah vs DCIT in ITA No. 5568to5573/Mum/2024forAYs2013-14to2018-19DoD-31.01.2025, the judgment arising from the same search and on*

identical facts(as in the case of assessee)has directed the AO to delete the additions in all the years under dispute (para 12 to 14, page no. 8 to 10)

4. We find that in respect of the addition made for the AY 2012-13by rejecting the LTCG, claimed exempt u/s10(38) of the Act by the assessee in his return of income though in the assessment order by the same charge AO, and on the identical set of facts as was in the case of ***Atul Shamji Bharani vs DCIT,*** *the Coordinate Bench of the ITAT, Mumbai in* ***appeal no. 2022/Mum/2023*** *vide order* ***dated 09/08/2024****for the AY 2013-14,has held as below:*

39. We have considered the submissions of both sides and perused the material available on record. In the present case, undisputedly the addition is made under section 68 and section 69C of the Act on account of alleged accommodation entries of bogus long-term capital gain. From the perusal of the assessment order, it is discernible that the said addition is not based on any material or document found during the course of search/survey action under section 132/133Aof the Act conducted at the residential premises of the assessee. It is further evident that the AO has placed reliance upon the findings of the Investigation Wing, Kolkata, wherein the scrip M/s Shree Nath Commercial & Finance Ltd. was included in the list of 84 companies whose share prices were manipulated by a syndicate of entry operators. The AO from pages 4-12 of the assessment order discussed the findings of the Investigation Wing, Kolkata, wherein the modus operandi of providing bogus accommodation entry, players on the scheme, role of the operator, role of the promoters of the penny stock companies, role of shareholders and exit providers has been discussed. fluctuation, the history of the company, and the financials of the scrip M/s D.B. (International) Stock Brokers Ltd. From pages 18-27, the Ao has analysed the statements of the entry providers in the scrip of M/s D.B. (International) Stock Brokers Ltd. It is pertinent to note that these statements were recorded under section 132(4) of the Act on 13/06/2014 during the course of the search action at their premises. Thus,

itis worth noting that none of the statements were pursuant to search/survey action under section 132/133A of the Act conducted at the residential premises of the assessee on 06/10/2017 and are much prior to the search in the case of the assessee. From the perusal of the statements, it is further pertinent to note that though the entry operator has agreed that they have arranged investments in the shares in M/s D.B. (International) Stock Brokers Ltd. on behalf of some of the beneficiaries, however there is no allegation against the assessee. Similarly, from pages 27-36, the AO analysed the financials and price fluctuation in the scrip M/s Shree Nath Commercial & Finance Ltd. Identical to M/s D.B. (International) Stock Brokers Ltd., the statement of entry operators relied upon by the AO, who admitted to have provided accommodation entry in M/s Shree Nath Commercial & Finance Ltd., were recorded in the year 2015, i.e. much prior to the search/survey conducted at the residential premises of the assessee. Therefore, from afore-noted factual position, it is evident that the entire addition is based on the information received during the search carried out in case of some other persons. Further, from para-7.10 of the assessment order, it is also evident that the statement of the assessee was also recorded under section 132(4) of the Act pursuant to the information received during the search carried out in case of some other persons. In view of the aforesaid peculiar factual matrix of the present case, it is the plea of the assessee that the assessment should have been done under section 153C of the Act instead of the assessment order being passed under section 153A of the Act.

40. We find that a similar controversy came up for consideration before the coordinate bench of the Tribunal in Anoop Kumar Gupta v/s ACIT, in ITA no.454/Del./2020,for the assessment year 2015-16, wherein despite the large no. of incriminating documents being found and impounded during the search, no addition was made by the AO in the assessment proceedings, as the AO was convinced with the explanation given by the taxpayer for those documents. However, in another search based on any independent

warrant of authorisation, certain incriminating documents were found. Accordingly, the issue arose that whether the tax payer needs to be questioned based on those incriminating documents only by taking recourse to section 153C of the Act and not under section 153A of the Act irrespective of the fact whether the assessment is abated or not. The coordinate bench of the Tribunal while deciding this issue in favour of the assessee, vide order dated 05/10/2023, held that any addition on the basis of some incriminating material found elsewhere could not be assessed in the assessment order passed under section 153A of the Act, but it could be considered only in a separate assessment order by taking recourse to the mandatory and special non obstante provisions of section 153C of the Act and then to pass a separate assessment order under section 153A r.w. section 153C of the Act. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as follows:-

"23. It is pertinent to note that though the ld. AO had stated that large number of incriminating documents were found and impounded during the search, we find that ultimately no addition was made based on the same by the ld. AO in the assessment proceedings, as the ld. AO was convinced with the explanations given by the assessee for those documents. The fact of assessee claiming exemption nu/s10(38)of the Act for sale of shares of MARL was duly disclosed in the return of income filed on 29.11.2015 prior to the search itself. No document whatsoever was found and seized from the premises of the assessee during his search representing any incriminating document qua the issue of claim of exemption u/s10(38) of the Act. The only document which falls within the ambit of incriminating nature is the forged signature of Shri Koteshwar Rao in the documents pertaining to allotment of preferential shares submitted to Ministry of Corporate Affairs (MCA), which was also not seized from the premises of the assessee. The investigation wing of Income Tax Department had gathered those informations from MCA and had confronted Shri Koteshwar Rao during the course of search. Shri Koteshwar Rao denied having affixed his signature

thereon as he had resigned from the post of Director of MARL in the year 2012. However, from the statements recorded by the investigation wing of income tax department from various persons involved, it is evident that the signature of Shri Koteshwar Rao was indeed forged in the documents pertaining to allotment of preference shares to various persons including the assessee and his family members. At this juncture, it would be relevant to note that both Shri Koteshwar Rao as well as the assessee in their individual sworn statements had categorically denied having known each other. Hence it becomes evident that assessee was never involved in any of the forgery acts that had been carried out in the allotment of preference shares of MARL. But we find that the assessee was confronted by the revenue with those very same forged signed documents in order to draw adverse inference on the claim of exemption u/s10(38)of the Act on the assessee. Hence the said forged signed documents become incriminating documents found during the course of search of third parties (which include MARL and Shri Koteshwar Rao). Accordingly, if at all the assessee need to be questioned based on those incriminating documents, as per the scheme of provisions of Chapter XIV (sections 153A to153C) of the Act , it could be done only by taking recourse to section153C of the Act and not u/s153Aof the Act irrespective of the fact whether the assessment is abated or not. This is so because , the provisions of Sections 153A and153Cof the Act are special provisions starting with non-obstante clause thereon which had been introduced in the statute only for the limited purpose of framing assessments pursuant to search actions carried out and information / materials surfaced therein.

24. We find that the assessment for this assessment year was not completed as the time limit to issue any notice u/s143(2)of the Act was still available to the ld. AO and undoubtedly, as per the law as existed then, no addition in an assessment order passed u/s 153Aof the Act in the case of the assessee was possible on the basis of some alleged incriminating information/material seized/statements from of

the alleged entry providers as no incriminating material in any manner at all depicting bogus LTCG was found during the course of search in the premises of the assessee or on the strength of any search warrant in the name of the assessee in any premises anywhere. Thus, the only course available to the revenue was to initiate proceedings u/s 153C of the Act as has been held by the Hon'ble Supreme Court in Vikram Sujitkumar Bhatia vs ITO reported in 149 taxmann.com 123 (SC). We find that the Hon'ble Supreme Court in the case of Abhisar Buildwell Pvt Ltd reported in 149 taxmann.com 399 (SC) had not overruled / could not at all overrule the special provisions u/s 153C of the Act mandated by the legislature for the purpose. The directions therein by the Hon'ble Apex Court to consider material available with the ld. AO in pending assessments which was gathered by the ld. AO in normal course and not flowing from any search action for which the mandatory recourse is the route provided in section 153C of the Act only and there could be several assessments of the same assessee in addition to the single assessment u/s 153A of the Act for the relevant period on search on him. This is so because the cause of action u/s153C of the Act can arise up to 10 years when some incriminating information pertaining to the assessee is detected in searches elsewhere at different times which were not accessible to the revenue earlier. The assessment procedures under the two specific situations have, therefore, been categorically mandated by the legislature without any fetters and need to be followed by all the courts including the Hon'ble Supreme Court being a jurisdictional issue as has been held by the Hon'ble Supreme Court in S S Con Build Pvt Ltd reported in 293 Taxman 491 (SC) dated 4.5.2023 by following the earlier Apex Court judgment in Kanwar SinghSaini vs High Court of Delhi reported in (2012) 4 SCC 307. We find that undisputedly section 153C of the Act starts with a non obstante clause and both the AOs involved were bound to act as per this provision as term deployed therein is "shall". Accordingly, as per the law, no addition in an assessment order passed u/s 153A of the Act without following the mandatory route of section 153C of the Act in the case of the assessee was possible on the basis of some alleged

material seized / statements from / of the alleged entry providers as no incriminating material in any manner at all depicting bogus LTCG was found during the course of search in the premises of the assessee or on the strength of any search warrant in the name of the assessee in any premises anywhere. Thus, the only course available for the revenue was to initiate proceedings u/s 153C of the Act on the assessee whereby the AO of the entry provider was statutorily required, (and not the officers of the investigation unit of the department under any circumstance on the basis of the seized material) if he was satisfied that the seized material/information from the searched entry provider had some bearing etc. on the determination of the assessable income of the assessee by sending the same to the AO of the assessee and then the AO of the assessee should have proceeded to assess the same by a separate assessment order u/s 153A read with the section 153C of the Act. Undisputedly, section 153C of the Act is a non obstante section and a complete code by itself and both the AOs involved were bound to act as per this provision as term deployed therein is "shall". No option was available with the AOs to act otherwise overruling the law at their whims.

Therefore, if the material found and seized from an entry provider 'pertains or pertain to, or any information contained therein, relates to the assessee, then the ld. AO of the said entry provider must have initiated the assessment process u/s 153Cof the Act. It is in his exclusive domain to be satisfied whether 'pertains or pertain to, or any information contained therein, relates to' or not and the statute in an unambiguous language has not bestowed this power on any other authority, which admittedly here has been completely misunderstood to be with the Investigation Unit of the income-tax department by the ld. AO while completing the assessment.

21. For the sake of convenience, the provisions of section153Cof the Act as it stood at the relevant point of time are reproduced hereunder:-

"Assessment of income of any other person u/s 153C of the Act

153C. (1)Notwithstanding anything contained in section139,section147,section148,section149, section151 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, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A: Provided that in case of such other person, the reference to the date of initiation of these arch under section 132 or making of requisition under section 132A in the second proviso to sub section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not berequired to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has orhave been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted undersection 132or requisition is made under section132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section(1)of section142 has been issued to him, or
(b) a return of income has been furnished by such other person but no notice under sub-section(2)of section143has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or
(c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section153A."

(emphas is supplied by us)

25. It would not be out of place to refer to the Notes on Clauses of the Finance Bill 2015 when the legislature thought it fit to amend the provisions of section 153Cof the Act w.e.f. 01.06.2015.

"Clause 36 of the Bill seeks to amend section 153Cof the Income-tax Act relating to assessment of income of any other person.The existing provisions contained in section 153C provide that in the course of an assessment proceeding, in the case of a person in whose case search action under section 132or action undersection 132Ahave been conducted, and whether the Assessing Officer is satisfied that the assets or

books of account or documents seized belong to another person, then, the assets or books of account or documents seized shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person, if he is satisfied that the books of accounts or documents or assets seized have a bearing on determination on the total income of such other person.

It is proposed to amend sub-section (1) of the said section so as to provide that 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, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned, shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if that Assessing Officer is satisfied that the books of account or documents or assets, seized or requisitioned, have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A.

This amendment will take effect from 1st June,2015."

26. On perusal of the above provision read with relevant Notes on Clause to the Finance Bill 2015, it is clear that any information or entry found in any document seized pertaining/ relating to a person other than the person searched from the searched premises as was referred u/s 153Aof the Act was to behanded over by the investigation wing to the AO of such

other person (searched) and then that AO of the searched person shall handover the same to the AO of the person not searched who thereafter was to proceed against such other non-person by issuing a notice u/s153CoftheAct and then to assess / re-assess income of such other not searched person.

27. Further on perusal of the proviso to section 153Cof the Act , it is very clear that the first proviso as it existed then, the deemed date of search for initiation of proceeding u/s153Cof the Act in the case of a non-searched person (assessee here) was the date of receiving the documents by the AO of the assessee. It is pertinent to note that the panchanama was finally closed in the hands of the assessee on 31.3.2016 at 8.40 P.M. The case of the assessee got centralised only on 5.9.2016, which means the AO could have received any information relating to bogus LTCG based on entry operators statements only on or after 5.9.2016 and certainly not before that date. This is so because absolutely no documents of incriminating nature was found and seized in the premises of the assessee during the course of search on 30.3.2016 which got concluded on 31.3.2016 at 8.40 P.M. Hence even if 5.9.2016 is construed as the date of receipt of information by the AO of the assessee, then that would become the date of search on the assessee in order to proceed on the assessee in terms of section 153Cof the Act. This view of ours is fortified by the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs RRJ Securities Ltd reported in 380 ITR 612 (Del) followed in Pr. CIT vs Raj Buildworth (P) Ltd reported in 113 taxmann.com 600 (Delhi) and the SLP of the revenue dismissed by the Hon'ble Apex Court which is reported in 113 taxmann.com 601 (SC). Consequently, the period relevant to the Asst Year 2015-16 herein, when the impugned incriminating material was found in a search of a third person, got shifted from the scope of an assessment u/s153A of the Act to the provisions of the sections 153C of the Act being one of the six assessment year preceding the date of search in the case of the other person.

28. Thus, it could be safely concluded that in addition to the

assessment order passed u/s 153Aof the Act on the basis of an income-tax search conducted on the assessee, the impugned amount assessed in this assessment order as undisclosed / unexplained income, allegedly based on some incriminating material found elsewhere, with respect to the long term capital gain already declared in the return of income filed on 29/11/2015 could not be assessed in the said assessment order passed u/s 153A of the Act but it could be considered for the purpose only and only in a separate assessment order by taking recourse to the mandatory and special non obstante provisions of the section153Cof the Act and then to pass a separate assessment order u/s153Ar.w.s.153CoftheAct.Hadrecourse to section 153Cof the Act been adopted by the revenue, then it would be in accordance with the decision of the Hon'ble Supreme Court in the case of ITO vs Vikram SujitkumarBhatia(supra). Hence the consideration of denial of exemption u/s 10(38)of the Act for the long term capital gain on sale of shares of MARL could not be done by the revenue legally in the proceedings u/s 153Aof the Act on the assessee."

41.Therefore, respectfully following the aforesaid decision of the coordinate bench of the Tribunal, we are of the considered view that any addition under section68andsection 69Cof the Act in the facts of the present case cannot be done by taking recourse to the provisions of section153Aof the Act. Accordingly, the additional grounds and ground no. 1 raised by the assessee are allowed.

5. Thus, respectfully following the above findings and directions of coordinate bench of the ITAT which applies squarely on the facts of the present case also, the addition of Rs 1,26,85,229/-made in respect of an already declared LTCG, claimed exempt u/s 10(38) of the Act in the original return of income in the assessment order passed u/s 153A of the Act for the AY 2012-13 is hereby deleted as it is beyond the scope of assessment u/s 153A as not based on any seized or incriminating material.

6. Consequently, the addition of Rs 3,80,557/- made u/s 69C of the Act alleging unexplained expenditure incurred to earn the said LTCG is also deleted.

AY 2014-15 to AY 2018-19

*7. Further, similarly **for the AY 2014-15 to 2018-19**, the additions were made by the AO by working out the unexplained cash loan given by the assessee to one Mr Nilesh Bharani relying on some information found in a different search and premises of Mr Nilesh Bharani where the name of the assessee was not there in any panchnama by stating that since Mr Nilesh Bharani had admitted in his statement recorded u/s 132(4), receipt of such cash loan from the assessee outside the declared sources in the return of income of the assessee. The said fact was not admitted by the assessee and which was also retracted by Mr Nilesh Bharani later vide his letter addressed to the Investigation Unit on 14/10/2017 when the husband of the assessee also retracted his statement recorded on 10/10/2017 as mentioned in foregoing paragraphs separately. The charts of the additions made are given below:*

Para5.31forallegedcashloangiven

***5.31.** In the light of the above discussion,the cash loans given by the assessee to Shri Nilesh Bharani are assessed as undisclosed investment in loans amounting to **Rs. 56,00,000/-** for AYs 2014-15 to 2018-19, u/s 69 of the IT Act as detailed below.*

ment year	Opening Balance	Cash loan given during theyear	Cash loan received back during theyear	Balance outstanding cash loan
	Amtin '000	Amtin '000	Amtin '000	Amtin„000
2012-13				0
2013-14	0			0
2014-15	0	4200		4200
2015-16	4200	1400		5600
2016-17	5600		3100*	2500
2017-18	2500			2500
2018-19	2500			2500
Total		5600	3100	

Para 5.33 for estimated interest earned on the above loans

5.33. *Further, the interest earned / receivable on cash loan,lent,by,you,amounting,to,**Rs.25,28,582/-** for AY 2014-15 to 2018-19, is to added to the total income of the assessee AY wise as detailed below:*

Assessment year	Interest of Current Year Loans	Interest of earlier year loans	Total Interest for the year

	Amt in Rs.	*Amt in Rs.*	*Amt in Rs.*
	A	*B*	*C*
2012-13			*0*
2013-14			*0*
2014-15	*2,34,167*		*2,34,167*
2015-16	*1,59,833*	*6,38,750*	*7,98,583*
2016-17		*7,35,416*	*7,35,416*
2017-18		*3,80,208*	*3,80,208*
2018-19		*3,80,208*	*3,80,208*
Total	*3,94,000*	*21,34,582*	***25,28,582***

8. Thus, the additions were made by the AO in the above five AYs and also estimated the interest income having been earned thereon in cash outside the declared sources of income in her return of income by the assessee on the said amounts allegedly lent by the assessee to Mr Nilesh Bharani, though there was no such evidence in the alleged material relied upon as per the above chart.

9. For such additions in respect of the cash loans lent, the learned counsel of the assessee also placed reliance on the decision dated 31/01/2025 of the coordinate bench of the ITAT Mumbai in the case of ***Rajesh kumar Rameshchandra Shah*** *in appeal nos. ITA 5568 to 5573/Mum/2024 where the facts were identical based on an income-tax search on MrNilesh Bharani as in this case, except to the extent that there the assessee denied any knowledge of any such transactions rather knowledge of Evergreen Enterprises but here Mr Kashyap K Mehta, the husband of the assessee on confrontation admitted to have undertaken some transactions in cash with Nilesh Bharani / Evergreen Enterprises but also*

in the same breath categorically stated that he is not aware of the quantum and would responding 3 days thereafter, after looking into his records.

10. In respect of these additions, the learned counsel of the assessee submitted that the search in the premises of the assessee continued for 6 days from 06/10/2017 till11/10/2017, including the residential and business premises of the assessee as well as other associates when no such records or books of account were found and no material in any manner was also found from the assessee having been made any investment or having earned any interest income. He also said that these questions were raised on the husband of the assessee on the 5th day of the search, i.e. on 10/10/2017 when the alleged material/information had already been found in an independent income-tax search conducted in the premises of Mr Nilesh Bharani in the afternoon of 06/10/2017. The ld. counsel also said that no other material has been referred to in the assessment orders which could suggest any such undisclosed income. He also stated that physical presence of many Revenue Officers as per the Panchnamas for the 6 days (from 06/10/2017 to 11/10/2017) in the premises of the assessee without having found any material needing examination and confrontation with the assessee itself during the said search, demonstrate the clear mental pressure and harassment exerted to the husband of the assessee to pressurise him to sign on the dotted lines as recorded by the Revenue Officers on the 5th day of the search in their residence. Admittedly, the statement was also retracted by the assessee at the earliest thereafter on 23/10/2017 proves that the said statement was not at all voluntary and where words were allegedly put in the mouth of the husband of the assessee.

11. The ld. Counsel also stated that no question at all, which must have been asked, as a corollary to the answer given by the husband of the assessee, as to where those records which were not available with him at that time, were

kept to surface the truth. He stated that the Revenue Officers were duty bound to take consequent action u/s 132 r.w.s. 133A to find the said record and if the assessee was not forthcoming with such information, he could have been confronted about it then and there only and not later. However, the same was also not done later including on 03/11/2017 when another panchnama was drawn to vacate the prohibited order in continuation to the search proceedings undertaken on 06/10/2017 in the premises of the assessee and admittedly by the said date MrKashyap K Mehta, the husband of the assessee, had already retracted his earlier statement dated 10/10/2017 vide letter dated 23/10/2017, a fact not denied by the Revenue. The learned counsel of the assessee also drew the attention of the bench to the said statement of the husband of the assessee, which interestingly was not signed at all on any page by the Authorised Officer Mr Ashwini Prasad, the then DDIT, Unit 5(4), Mumbai, as is placed on PB page no. 19-33 with annexures thereto from PB page no. 34-57 dated 20/01/2025. ***He also drew the attention of the bench to the copy of the statement of the husband of the assessee to Q. No. 31 on Page no.10 and 32 of the PB showing that the said statement was resumed on 07/10/2017 at 12:00 pm with Q. No. 21 and closed on 07/10/2017 at 10:00 pm at Q. No. 33 as per Page 18 of the PB, being another statement recorded by Mr Raghav Gupta, DDIT Investigation. Thereafter, another statement dated 10/10/2017 allegedly recorded by Mr Ashwani Prasad u/s 132(4), though not signed by him nor his any stamp is there, commenced with Q. No. 1. and which does not mention time of its commencement on 10/10/2017 nor mentions time of closure on 10/10/2017.***

12. The ld. Counsel also demonstrated that Q. Nos. 30 and 31 were practically the last questions in the entire said proceedings wherein the statement had total 36 questions and Q. No. 32 to Q.No.36 were just to confirm only the questions about the seizure and return devices and cash etc. The entire statement has been typed in achronological manner of different

issues and not in a manner the information found or is found and confronted. Such types of statements are typed after assimilating the alleged information in one serial form and then typed. ***This in entirety shows that the statement of the husband of the assessee relied by the Revenue is not a legal statement u/s 132(4) of the Act as was not tendered under the normal circumstances, <u>was also not authenticated by the authorised officer before whom it was allegedly recorded so the Revenue is completely barred to take cognizance of the same against anybody including the deponent Kashyap K Mehta nor the assessee.</u>***

13. The contention of assessee also finds support from the legal pronouncements in CIT vs Lavanya Land (P) Ltd [2017] 83 taxmann.com 161 (Bombay), Aurum Platz (P) Ltd vs DCIT [2023] 152 taxmann.com 85 (Mumbai), CIT vs. Harjeev Aggarwal (2016) 70 taxmann.com 95 (Delhi) and PCIT vs Agson Global (P) Ltd [2022] 134 taxmann.com 256 (Delhi) holding that a statement recorded u/s132(4)of the Act per se not at all evidence, unless it is supported with any material gathered during the course of said search.

14. After considering the rival submissions and on perusal of the facts on record and the decisions of the coordinate bench as mentioned above, we agree with the contention of the Ld. Counsel that the additions made on an uncorroborated statement of the husband of the assessee cannot be sustained at least within the scope of assessment under section 153A as the statement is not corroborated with any other material found from the search and statement per se cannot be reckoned as incriminating material.

15. It is a well settled proposition by various High Courts that addition cannot be made only on the basis of admission made by the assessee in the absence of any incriminating material. The Hon"ble Delhi High Court in the case of PCIT vs.

Pavitra Realcon Pvt. Ltd. and others in ITA No.579/2018, 587/2018 and 590/2018 vide judgment dated 29/05/2024 had referred to various decisions which are as under:-

"20. However, it is an undisputed fact that the statement recorded under Section 132(4) of the Act has better evidentiary value but it is also a settled position of law that addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the content of the statements.

21. In the case of Kailashben Manharlal Chokshi v. CIT', the Gujarat High Court held that the additions could not be made only on the basis of admissions made by the assessee, in the absence of any corroborative material. The relevant para graph no.26 of the said decision has been reproduced hereinbelow: -

26. In view of what has been stated hereinabove we are of the view that this explanation seems to be more convincing, has not been considered by the authorities below and additions were made and/or confirmed merely on the basis of statement recorded under section 132(4) of the Act. Despite the fact that the said statement was later on retracted no evidence has been led by the Revenue authority, we are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission. We are also of the view that from the statement recorded at such odd hours cannot be considered to be a voluntary statement, if it is subsequently retracted and necessary evidence is led contrary to such admission. Hence, there is no reason not to disbelieve the retraction made by the Assessing Officer and explanation duly supported by the evidence. We are, therefore, of the view that the Tribunal was not justified in making addition of Rs. 6 lakhs on the basis of statement recorded by the Assessing Officer under section 132(4) of the Act. The Tribunal has com mitted an error in ignoring the retraction made by the assessee.

[Emphasissupplied]

22. Further, the position with respect to whether a statement recorded under Section 132(4) of the Act could be a standalone basis for making assessment was clarified by this Court in the case of CIT v. Harjeev Aggarwal, wherein, it was held that merely because an admission has been made by the assessee during the search operation, the same could not be used to make additions in the absence of any evidence to corroborate the same. The relevant paragraph of the said decision is extracted herein below:

"20. In our view, a plain reading of section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a statement recorded during the search. The words "evidence found as a result of search" would not take within its sweep statements recorded during search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by virtue of the Explanation to section 132(4) of the Act. However, such statements on a standalone basis without reference to any other material discovered during search and seizure operations would not empower the Assessing Officer to make a block assessment merely because any admission was made by the assessee during search operation,

[Emphasissupplied]

23. In our opinion, the Act does not contemplate computing of undisclosed income solely on the basis of statements made during a search. However, these statements do constitute information, and if they relate to the evidence or material found during the search, they can be used in proceedings under the Act, as specified under Section 132(4) of the Act. Nonetheless, such statements alone, without any other material discovered during the search which would corroborate said statements, do

not grant the AO the authority to make an assessment.

24. Coming to the findings of the ITAT with respect to incriminating material in the case of M/s Pavitra Realcon Pvt. Ltd and M/s Delicate Real Estate Pvt. Ltd, it is seen that the ITAT has explicitly held in paragraph no. 18 that no addition has been made on the basis of any incriminating material found during the course of search. Further, the ITAT relied on the decision of the Supreme Court in the case of CIT v. Sinhgad Technical Education Society and held as follows: -

"18. Further, while writing the order ithas come to our notice that the Hon'ble Apex Court in the case of Sinhgad Technical Education Society has held that section 153C can be invoked only when incriminating materials assessment year-wise are recorded in satisfaction note which is missing here. Therefore, the proceedings drawn u/s 143(3) as against 153C are invalid for want of any incriminating material found for the 19. In view of the above, the additional grounds raised by the assessee in the case of M/s Pavitra Realcon Pvt. Ltd. And M/s Delicate Real Estate Pvt. Ltd. are accepted. Since the assessee succeeds on this legal ground, we refrain ourselves from adjudicating the issue on merit as far as these two cases are concerned."

25. Also, the Supreme Court in the case of CIT v. Abhisar Buildwell (P) Ltd., has clarified that in case no incriminating material is found during the search conducted under Section 132 of theAct, the AO will have no jurisdiction to make an assessment. The relevant paragraph is reproduced herein below: -

"36.4. In case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material

found during the course of search under Section 132 or requisition under Section 132-A of the 1961 Act. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under Sections 147/148 of the Act and those powers are saved."

[Emphasissupplied]"

16. Similarly, the Hon"ble Delhi High Court in the case of PCIT vs. Anand Kumar Jain (HUF) in ITA No.23/2021 and other appeals vide judgment and order dated 12/02/2021 had held that statement u/s.132(4) does not construe incriminating material for carrying out the assessment u/s.153AoftheActand statement cannot justify the additions made by the ld. AO. Similarly other judgments which have been referred and relied upon by the ld. Counsel which are not repeated but underlying principle is that for making the addition within the scope and ambit of Section 153A for unabated assessment years, statement alone cannot be treated as incriminating material and here in this case this statement is not of the assessee but of her husband and here it is not a case of assessment u/s.153C that any material or document found from search of other person has been made the basis for addition. Albeit in case of assessment u/s. 153A (searched person) wherein the addition for unabated assessment has to be confined on the basis of incriminating material found during the course of search.

17. It is undisputed fact that no material much less incriminating material was found during the course of search from the premises of the assessee in support of the additions, made for the quantum amounts of the alleged cash loans given and the estimated interest thereon in all the AYs as per chart herein above is deleted. We direct accordingly to delete the additions as above.

18. Since, all the above appeals have been decided on the above grounds by deleting the additions, other grounds taken by the assessee have become academic and not adjudicated for any of the above assessment years.

19. In the result, all the appeals filed by the assessee are allowed."

21. The ld. Counsel also relied on the decision of the coordinate bench*(constituted by the same set of members as herein) of the* ITAT *in* ***Deepak Kakubhai Mehta vs DCIT in ITA No. 6505/Mum/2025 to 6511/Mum/2025 for the 7 AYs 2012-13 to 2018-19 – DOD 06.01.2026***to support his contention where the facts were identical and emanated from the **same** search on Mr Nilesh Bharaniand all the other decisions in Hemendra Ramji Vira vs DCIT CC 4(1) in the ITA Nos. 2467/M/2025 to 2472/M/2025 for 7 AYs 2013-14 to 2018-19 – DOD 26.06.2025, Shantilal Hirji Savla vs DCIT in ITA Nos. 357 to 363/Mum/2025 - DOD 22.05.2025 for the 7 AYs 2012-13 to 2018-19 (para nos. 13 and 14), Rajesh Kumar Rameshchandra Shah in ITA 5568-5573/M/2024 dated 31/01/2025 (AYs 2013-14 to 2018-19) and Leshark Global LLP vs DCIT in ITA No. 3177/Mum/2025 to 3183/Mum/2025 for the 7 AYs 2012-13 to 2018-19 DOD 31.07.2025, delivered post the decision of the coordinate bench in the case of Ms Rupal Kashyap Mehta have also been considered. The relevant paras in the Deepak K Mehta (supra) decision are as below:

"57. The relevant findings recorded by the coordinate benches, which squarely apply to the facts of the present case, are placed on record and are reproduced hereunder.

16. ***In Shantilal Savla - ITA No. 357 to 363/Mum/2025 DoD 22/05/2025***

13. We have heard the rival submissions and perused the material available on record. The issue pertaining to the existence of incriminating material for the assumption of jurisdiction by the Ld. AO under section 153A of the Act has been duly challenged by the assessee before the Ld. CIT(A) and the Hon'ble ITAT. The incriminating material relied upon by the revenue was found at the premises of Mr. Nilesh Bharani and M/s Evergreen Enterprises, and the statements of the partners therein were recorded as evidence of undisclosed income. It is an undisputed fact that Mr. Nilesh Bharani is engaged in the business of finance, particularly in cash lending and borrowing, and has earned income in cash. However, based on the statement of the assessee, it is evident that the assessee merely advanced a loan of Rs. 35 lakhs to Mr. Nilesh Bharani through banking channels. The assessee was also subjected to a search under section 132 of the Act on 18/12/2017, but no incriminating documents or material were found at the premises of the assessee. The entire addition in the present case is based solely on presumptions and pertains to third parties involved in the same search proceedings. Factually, the same issue has already been adjudicated in favour of the assessee. We respectfully rely on the decisions of the Coordinate Bench of the ITAT-Mumbai in the cases of RajeshkumarRameshchandra Shah vs. DCIT (supra) and Rupal Kashyap Mehta (supra), and observe that the Hon'ble Supreme Court's ruling in Abhisar Buildwell (P.) Ltd. is squarely applicable to the facts of the present case.

14. Accordingly, as there is no incriminating material found in the possession of the assessee during the search, the additions made for AYs. 2012–13 to 2016–17 are beyond the

jurisdiction of the Ld. AO under section 153A of the Act. Consequently, Ground Nos. 1 to 3 raised by the assessee are allowed.

*17. **RajeshkumarRameshchandra Shah - ITA No. 5568 to 5573/M/2024***

12. As could be seen from the above extract, in the cross examination taken on oath, on a specific question asked by the assessee, Shri Nilesh Shamji Bharani denied of having entered into any cash loan transaction with the assessee. Thus, the facts on record reveal that except the so called incriminating material seized from the premises of Shri Nilesh Shamji Bharani and some statements recorded u/s. 132(4) of the Act from individuals related to M/s. Evergreen Enterprises, the A.O. had no other corroborative evidence available with him to establish that the assessee had actually advanced any cash loan to Shri Nilesh Shamji Bharani. Moreover, the assessee from the very beginning had emphatically denied of having any cash loan transaction with Shri Nilesh Shamji Bharani. Even, a couple of days after recording of statements u/s. 132(4) of the Act, the concerned persons including Shri Nilesh Shamji Bharani had retracted their statements. In fact, Shri Nilesh Shamji Bharani had filed an Affidavit before the A.O. in course of assessment proceedings completely denying the fact of cash loan transaction and had explained that the entries appearing in the seized document, in reality, represents the cash given to him by his father.

13. When the assessee as well as Shri Nilesh Shamji Bharani and other individuals have denied of alleged cash transaction in subsequent events, the duty of the A.O. was to gather more corroborative evidence to establish on record that the entries appearing in the seized material actually represent cash loan transaction of the assessee. However, except the seized material and the statements recorded u/s. 132(4) of the Act from some third-party individuals, the A.O. has absolutely no other evidence on record to corroborate the alleged cash loan transaction of the assessee. Pertinently, though, during the

time search and seizure operation was carried out in case of M/s. Evergreen Enterprises and Shri Nilesh Shamji Bharani, a search and seizure operation was also carried out in case of the assessee, however, not a single piece of incriminating material was recovered from the assessee indicating involvement of assessee in the alleged cash loan transaction or any other illegal activity. In fact, it is relevant to observe, in the statement recorded u/s. 132(4) of the Act, Shri Jagdish T Ramani, who allegedly was assisting Shri Nilesh Shamji Bharani in his work, had stated that Shri Nilesh Shamji Bharani had instructed him to follow up with the lender, i.e., the assessee, to determine the modality of payment. He had stated that he instructed one of the office boys to collect money from the lender and after the money is collected, it is given to the borrower on execution of a promissory note. He had further stated that after the money is delivered to the borrower and promissory note is obtained, he had instructed the office boy to deliver the promissory note to the lender. It is quite surprising that considering the magnitude of the alleged cash loan transaction appearing in the seized document, not a single piece of incriminating material relating a cash loan transaction was recovered from the assessee during the search and seizure operation conducted on assessee. If the version of Mr. Jagdish T Ramani that the promissory note given by the borrower is delivered to the lender is to be taken on face value, then at least if not all few such promissory notes would have been recovered in course of search and seizure operation carried out in case of the assessee. It is quite improbable that such huge amount of cash loan transaction would not leave any trace of incriminating material /evidence with the assessee. Thus, on cumulative analysis of facts and materials available on record, we are of the opinion that is no conclusive evidence was available with the A.O. to establish on record that the entries appearing in the seized material actually represent cash loan transaction of the assessee.

14. In view of the aforesaid, we have no hesitation in holding that the additions made on account of unexplained investment on account of alleged cash loan transaction and addition made

on account of notional interest thereon being not based on cogent evidence, are unsustainable. Accordingly, we direct the A.O. to delete the additions in all the years under dispute.

18. ***Hemendra Ramji Vira vs DCIT in ITA No. 2470 to 2472/Mum/2025 (DoD: 26/06/2025) (relevant paras only)***

43. Further, similarly for the AY 2016-17 to 2018-19, the additions were made by the AO by working out the unexplained cash loan given by the assessee to one Mr Nilesh Bharani relying on some information found in a different search and premises of Mr Nilesh Bharani where the name of the assessee was not there in any panchnama by stating that since Mr Nilesh Bharani had admitted in his statement recorded u/s 132(4), receipt of such cash loan from the assessee outside the declared sources in the return of income of the assessee is to be assessed u/s 153A. The said fact was though initially partly admitted by the assessee without actually quantifying the same, yet lateron also retracted by him through an affidavit filed on 09/12/2019 and Mr Nilesh Bharani later also retracted his statement recorded u/s 132(4) vide his letter addressed to the investigation Unit on 14/10/2017. The charts of the additions made are given below:

Para 5.33 for alleged cash loan given in the assessment orders

5.33 In the light of the above discussion, the cash loans given by the assessee to Shri Nilesh Bharani are assessed as undisclosed investment in loans amounting to Rs. 29,34,00,000/- for AY 2012-13 to 2018-19, u/s 69 of the IT Act as detailed below.

Assessment Year	*Opening Balance*	*Cash loan given during the*	*Cash loan receiv*	*Balance outstanding cash*

		year	*ed back durin g the year*	*loan*
	Amt in Rs	*Amt in Rs*	*Amt in Rs*	*Amt in Rs*
2012-13	*0000*	*0000*	*0000*	*0000*
2013-14	*0000*	*0000*	*0000*	*0000*
2014-15	*0000*	*0000*	*0000*	*0000*
2015-16	*0000*	*0000*	*0000*	*0000*
2016-17	*000*	*2,05,00,0 00*		*2,05,00,0 00*
2017-18	*2,05,00,0 00*	*27,29,00, 000*		*29,34,00, 000*
2018-19	*29,34,00, 000*	*0000*		*29,34,00, 000*
Total		*29,34,00, 000*		

Para 5.34 for estimated interest earned on the above loans

5.34 Further the interest earned / receivable on cash loan lent by you amounting to Rs. 6,33,67,134/- for AY 2012-13 to 2018-19, is to added to the total income of the assessee AY wise as detailed below:

Assessment year	*Interest of Current Year Loans*	*Interest of earlier year loans*	*Total Interest for the year*
	Amt in Rs	*Amt in Rs*	*Amt in Rs*
	A	*B*	*C*
2012-13	*0000*	*0000*	*0000*

2013-14	*0000*	*0000*	*0000*
2014-15	*0000*	*0000*	*0000*
2015-16	*0000*	*0000*	*0000*
2016-17	*12,05,425*	*0000*	*12,05,425*
2017-18	*2,44,93,710*	*24,60,000*	*2,69,53,710*
2018-19	*0000*	*3,52,08,000*	*3,52,08,000*
Total	*3,94,000*	*21,34,582*	*25,28,582*

………..

49. Upon a comprehensive consideration of the rival submissions and a meticulous perusal of the material on record, as well as the decisions rendered by the coordinate benches, we find ourselves in respectful agreement with the contention advanced by the learned counsel. The additions sought to be made solely on the basis of an uncorroborated statement of the assessee cannot, in law, be sustained—at least within the contours of assessment under section 153A of the Act. A solitary statement, unbacked by any cogent or credible material unearthed during the search, cannot, by any judicial reckoning, be construed as incriminating material. The absence of corroborative evidence renders such a statement insufficient to invoke or justify additions under the said provision.

……..

53. It is undisputed fact that no material much less incriminating material was found during the course of search from the premises of the assessee in support of the additions, made for the quantum amounts of the alleged cash loans given and the estimated interest thereon in all AYs as per chart herein above is deleted. We direct accordingly to delete the additions as above.

*19. **Leshark Global LLP vs DCIT in ITA No. 3177 to 3183/Mum/2025 (DoD: 31/07/2025) (relevant paras)***

10. Upon a careful consideration of the facts of the case, the rival submissions, and the material available on record, we find that the core issue arising in the present appeals pertains to the additions made under Section 69 of the Act towards alleged cash loans purportedly advanced by the assessee to one Mr. Nilesh Bharani and his associates, as well as the notional interest computed thereon under Section 56. It is undisputed that these additions are founded solely upon certain loose sheets, coded ledger extracts, and statements recovered and recorded during the course of search proceedings conducted not on the assessee but in the case of a third party, namely, Mr. Nilesh Bharani and entities associated with him.

11. As rightly contended by the learned counsel for the assessee, Shri Vinod Kumar Bindal, this precise issue, both in law and in fact has been deliberated upon by the Co-ordinate Benches of the Tribunal in several matters involving identical allegations and evidentiary foundations. He specifically drew our attention to the decisions of the Tribunal in the cases of:

- *Ms. Rupal Kashyap Mehta vs. DCIT in ITA Nos. 6191 to 6196/Mum/2024 (order dated 27.02.2025),*
- *Rajesh Kumar Rameshchandra Shah vs. DCIT in ITA Nos. 5568 to 5573/Mum/2024 (order dated 31.01.2025), and*
- *Nilesh Bharani vs. DCIT in ITA No. 612/Mum/2020 (order dated 28.02.2023).*

In each of these matters, the additions made under Sections 69 and 56 were based exclusively on the so-called ―incriminating‖ material seized from the premises of Mr. Nilesh Bharani, which included handwritten ledgers, coded entries, and statements recorded during investigation. The Co-ordinate Benches, after a meticulous examination of the evidentiary trail and the legal framework governing search assessments, unequivocally held that such third-party material howsoever incriminating it may

appear cannot be used to make additions in the hands of another assessee under Section 153A, unless the procedural mandate of Section 153C is duly followed.

12. This Tribunal in Nilesh Bharani (supra), while elaborating the statutory architecture, observed that the jurisdiction under Section 153A is strictly confined to the material unearthed during the course of search conducted on the assessee himself. Where the Revenue seeks to act on the basis of documents found during the search of another person, the only lawful recourse is via Section 153C requiring satisfaction to be recorded that the material belongs to or pertains to the assessee and in the absence of such compliance, the jurisdiction exercised under Section 153A would be rendered invalid and the consequential assessment orders, non-est in law.

13. The same reasoning was echoed in Rupal Kashyap Mehta (supra), where this Tribunal found that the alleged transactions were neither corroborated by any material found during the search on the assessee nor independently supported by any verifiable documentation, and that even the statement relied upon by the Revenue had been retracted, unauthenticated, or was otherwise uncorroborated. On those grounds alone, the additions were deleted.

14. In light of the binding ratio laid down by the Hon"ble Supreme Court in ***PCIT vs. Abhisar Buildwell Pvt. Ltd. [(2023) 149 taxmann.com 399 (SC)****], which held that no addition can be made under Section 153A in respect of unabated assessments in the absence of incriminating material found during the search on the assessee, and following the aforementioned consistent judicial pronouncements of the Co-ordinate Benches, we hold that the additions made in the present case resting entirely on documents recovered from the search conducted in the case of Mr. Nilesh Bharani are legally untenable. The Revenue has*

neither invoked nor complied with the provisions of Section 153C, and hence, the assumption of jurisdiction under Section 153A in respect of these additions stands vitiated. Consequently, the additions made under Section 69 of the Act across all the assessment years under appeal are hereby directed to be deleted.

15. Consequentially, the additions made under Section 56 of the Act towards notional interest income on the said alleged cash loans quantified and tabulated by the Assessing Officer in paragraphs 5.29 and 5.30 of the assessment order for A.Y. 2012–13 are devoid of any independent legal or factual basis. These additions are purely derivative in nature, arising only from the presumption of unexplained investments having been made, and hence, cannot stand once the substantive additions under Section 69 have been found to be unsustainable. There is neither any primary transaction nor any independently discovered evidence which could justify the estimation of such income. In the absence of any corroborative or incriminating material found during the search, such additions are wholly speculative and deserve to be deleted. Accordingly, all the grounds of appeal pertaining to the additions made under Sections 69 and 56 across the assessment years in question are allowed, and the impugned additions are directed to be deleted in full.

22. Judicial discipline thus mandates that in the absence of any distinguishing feature brought on record by the Revenue, a consistent view taken by coordinate benches on identical facts ought to be followed. We see no reason to depart from the settled position.

23. Accordingly, even on merits, the additions made under section 69 of the Act on account of alleged cash loans are unsustainable and are liable to be deleted.

24. The Assessing Officer has further brought to tax notional interest allegedly earned on the aforesaid cash loans under section 56 of the Act. The computation of such interest is based on estimated rates and on the assumption that the principal amount of cash loans was advanced and remained outstanding over the years.

25. At the threshold, it must be observed that the addition on account of notional interest is purely derivative in nature. It presupposes the existence of the principal transaction, namely, the advancement of cash loans. Once the substantive addition under section 69 is found to be unsustainable, the superstructure built thereon necessarily collapses.

25.1. Even otherwise, the Act does not permit taxation of hypothetical or imaginary income. Income-tax is levied on real income, and unless there is evidence of accrual or receipt of interest, no addition can be sustained. In the present case, there is no evidence to demonstrate that any interest was agreed upon, accrued, or received by the assessee.

26. The Assessing Officer has merely extrapolated figures based on assumptions, without any contractual basis or corroborative evidence. Such an exercise, howsoever arithmetically detailed, does not meet the threshold of legal sustainability.

27. Accordingly, the additions made under section 56 of the Act towards notional interest on the alleged cash loans are devoid of legal and factual basis and are liable to be deleted.

28. We have given our thoughtful consideration to the rival submissions advanced by the parties, carefully perused the orders of the authorities below and the material placed on record, and examined the statutory scheme governing assessments consequent to search as well as the judicial precedents cited at the bar. At the very threshold, it is important to bear in mind that the jurisdiction exercised by the Assessing Officer in the aftermath of a search is not unbridled but is circumscribed by the statutory framework contained in sections 153A and 153C of the Act. These provisions constitute a self-contained code dealing with assessment or reassessment of income discovered as a consequence of search and seizure operations. Therefore, the existence of incriminating material found during the course of search assumes pivotal significance in determining the permissible scope of additions in assessments framed under

section 153A in respect of completed or unabated assessments. The judicial principles explaining the scope and limitations of section 153A have been elaborated in a catena of decisions relied upon before us. On similar cases, relevant observations of which have already been reproduced above.

29. Thus, keeping the above statutory framework in perspective, when we examine the factual matrix of the present case also, it becomes manifest that the additions made by the Assessing Officer do not emanate from any incriminating material discovered during the search conducted in the premises of the assessee. Rather, the assessment orders themselves reveal that the foundation of the additions rests primarily upon materials and statements obtained during searches conducted in the premises of other persons and subsequently confronted to the assessee during the recording of his statement under section 132(4). Such confrontation, however, does not alter the intrinsic character or the origin of the material. A document seized in the search of a third party does not become a document discovered in the search of the assessee merely because it is shown to him for explanation. To accept such a proposition would effectively blur the clear statutory distinction between sections 153A and 153C and would permit the Revenue to circumvent the specific jurisdictional route prescribed by the legislature. **In our considered view, therefore, where the**

very foundation of the addition lies in material discovered in a third-party search, the appropriate statutory recourse lies under section 153C and not under section 153A in the case of the assessee. This very finding applied to the AY 2018-19 which was not abated but pending as on the date of the search as then the only course for the AO was to use the section 153C as no material was found at all from the premises of the assessee in the income-tax search on him and reliance was being taken on some seized material elsewhere. The provisions of the section 153C overrule all other machinery provisions under the Act as is specifically codifed therein. The AO was duty bound to abate all the pending assessment proceedings for the AY 2018-19 and then to proceed u/s 153C of the Act only.

30. The above conclusion also finds authoritative support from the judgment of the Hon'ble Supreme Court in PCIT vs. Abhisar Buildwell (P.) Ltd. wherein the Apex Court has categorically held that in respect of completed or unabated assessments, no addition can be made under section 153A in the absence of incriminating material found during the course of search. The ratio of the said decision leaves no manner of doubt that the power under section 153A is not intended to provide a fresh opportunity to the Assessing Officer to revisit completed assessments de hors any search-

related material. The jurisdiction under section 153A is intrinsically linked with the incriminating material unearthed during search and cannot be expanded to include issues or materials unconnected with the search.

31. Another significant factor which lends considerable weight to the assessee's contention is that the controversy arising in the present appeals has already been examined by the coordinate bench of this Tribunal in the case of Mrs. Rupal Kashyap Mehta, who is the spouse of the present assessee. The said decision arises out of the same search proceedings and is founded on the identical set of facts and materials which have been relied upon by the Revenue in the present case. The Tribunal, after examining the entire search matrix and the nature of materials relied upon by the department, came to the conclusion that the additions made by the Assessing Officer were unsustainable in law as they were not based on incriminating material discovered during the search on the assessee. The said decision also takes into account the connected orders rendered in the case of Shri Nilesh Bharani and other related matters arising from the same investigation. Judicial discipline demands that where facts are materially identical and no distinguishing feature is brought to our notice, the coordinate bench decision deserves to be followed.

32. Applying the above legal principles to the facts of the present case, we find that the additions made by the Assessing Officer in the impugned assessment orders are essentially based on certain tabulations and notings allegedly found in the course of search conducted in the premises of other persons, coupled with statements recorded from such third parties. The assessment orders do not indicate the discovery of any independent incriminating material from the premises of the assessee during the course of search which could justify the additions made under section 153A. The alleged transactions of cash loans and the estimation of interest income thereon have been inferred primarily on the basis of third-party materials and extrapolations drawn therefrom. Such inferential additions, in the absence of any incriminating material discovered during the search on the assessee, fall outside the permissible scope of assessment under section 153A.

AY 2012-13 Appeal No. ITA 6198/M/2024

33. Thus, after perusing the paragraphs 13 to 15 of the appellate order of the coordinate bench as above in the case of Ms Rupal Kashyap Mehta, wife of the assessee, where the facts were absolutely identical arising out with same search having the same material and the other orders of the Tribunal relied by the learned Counsel of the assessee as above, the additions of Rs 53,72,620/- made u/s 68 of the Act alleging

the said a bogus LTCG and Rs 1,61,179/- u/s 69C as unexplained commission / expenditure to get the said LTCG are deleted.

34. Thus, the appeal of the assessee for the AY 2012-13 is allowed.

AYs 2014-15 to 2018-19 Appeal No. ITA 6199 to 6203/M/2024

35. Further, similarly, on facts **for the AY 2014-15 to 2018-19**,the additions were made by the AO by working out the unexplained cash loan given by the assessee to one Mr Nilesh Bharani relying on some information found in a different search and premises of Mr Nilesh Bharani where the name of the assessee was not there in any panchnama by stating that since Mr Nilesh Bharani had admitted in his statement recorded u/s 132(4), receipt of such cash loan from the assessee outside the declared sources in the return of income of the assessee. The said fact was not admitted by the assessee and which was also retracted by Mr Nilesh Bharani later vide his letter addressed to the Investigation Unit on 14/10/2017 when the assessee also retracted his statement recorded on 10/10/2017 as mentioned inforegoing paragraphs separately. The charts of the additions made are given below:

5.31. *In the light of the above discussion,thecash loans given by the assessee to Shri Nilesh Bharani are assessed as undisclosed investment in loans amounting to* ***Rs. 4,50,00,000/-*** *for AY 2014-15 to 2018-19, u/s 69 of the IT Act as detailed below.*

essment year	Opening Balance	Cash loan given during theyear	Cashloan received back during theyear	Balance outstanding cash loan
	Amtin ‘000	Amtin ‘000	Amtin ‘000	Amtin‘000
2012-13				0
2013-14	0			0
2014-15	0	32500		32500
2015-16	32500	12500		45000
2016-17	45000		5000	40000
2017-18	40000			40000
2018-19	40000			40000
Total		45000	5000	

Para5.31.1forestimatedinterestearnedontheabove loans

5.31.1*Further the interest earned / receivable on cash loanlentbyyouamountingto****Rs.2,75,56,249/-****forAY2014-15 to 2018-19, is to added to the total income of theassessee AY wise as detailed below:*

essment year	Interestof Current Year Loans	Interestof earlier year Loans	Total Interest for the Year
	Amt in Rs.	Amt in Rs.	Amt in Rs.
	A	B	C
2012-13			0
2013-14			0
2014-15	23,68,750		23,68,750
2015-16	14,21,875	49,42,708	63,64,583
2016-17		66,56,250	66,56,250
2017-18		60,83,333	60,83,333
2018-19		60,83,333	60,83,333
Total	37,90,625	237,65,624	**2,75,56,249**

5.31.2.1*Inthelightoftheabovediscussion,thecash loans given by the assessee to Shri Nilesh Bharani are assessed as undisclosed investment in loans amounting to* ***Rs. 9,85,48,000/-*** *for AY 2016-17 to 2018-19, u/s 69 of the IT Act as detailed below.*

essment year	Opening Balance	Cash loan given during The year	Cash loan received back during The year	Balance outstanding cash loan

	Amt in „000	*Amt in „000*	*Amt in „000*	*Amt in „000*
2016-17	*0*	*74,548*		*74548*
2017-18	*74548*	*24000*		*98548*
2018-19	*98548*			*98548*
Total		*98548*		

36. Thus, the additions were made by the AO in the above five AYs in two charts one for the AY 2014-15(Rs 3,25,00,000/-)and the AY 2015-16(Rs 1,25,00,000/-)and the second chart for the AY 2016-17(Rs 7,45,48,000/-)and the AY 2017-18 (Rs 2,40,00,000/-) besides also the estimated interest income as per para 5.31.1. of the assessment order having been earned thereon in cash outside the declared sources of income in his return of income by the assessee on the said amounts allegedly lent by the assessee to Mr Nilesh Bharani, though there was no such evidence in the alleged material relied upon as per the above chart.

37. Therefore, after perusing the paragraphs 16 to 27 of the appellate order of the coordinate bench, reproduced herein as above in the case of Ms Rupal Kashyap Mehta, wife of the assessee, where the facts were absolutely identical arising out with same search having the same material based on the statement of the assessee only and the other orders of the

Tribunal relied by the ld. Counsel of the assessee as above which were also the fallout of the search on Mr Nilesh Bharani, all the additions made in all the above 5 assessment years as tabulated herein above in para 15 for the alleged cash loans given and estimated interest thereon are deleted.

38. In view of the foregoing discussion and respectfully following the consistent line of judicial precedents rendered on materially identical facts arising out of the same search proceedings, we hold that the additions made by the Assessing Officer in the impugned assessment orders cannot be sustained. In so far as assessment year 2011-12 is concerned, the reassessment order passed under section 143(3) read with section 147 is liable to be quashed as void ab initio since the Assessing Officer could not have assumed jurisdiction under section 147 after the search conducted on 06.10.2017. Likewise, for assessment year 2012-13 and assessment years 2014-15 to 2018-19 as has been held in para 29 hereinabove, the additions made in the assessments framed under section 153A are unsustainable in law as they are not founded upon any incriminating material discovered during the search on the assessee but are instead based on materials sourced from independent searches. Consequently, the additions made in the respective assessment years stand deleted.

39. In the result, appeals of the assessee are allowed.

Order pronounced on 27th March, 2026.

Sd/- **(ARUN KHODPIA)** **ACCOUNTANT MEMBER**	**Sd/-** **(AMIT SHUKLA)** **JUDICIAL MEMBER**

Mumbai: Dated 27/03/2026
KARUNA, *sr.ps*

<u>Copy of the Order forwarded to</u> :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Mumbai